

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 23 2020

S.C. SUPREME COURT

On Petition for Writ of Certiorari to Court of Common Pleas

CAPITAL PCR ACTION

APPEAL FROM PICKENS COUNTY
Honorable Alexander S. Macaulay, Circuit Court Judge

Jerry Buck Inman, #5256
a/k/a Jerry Buck Inmon Respondent-Petitioner

v.

State of South Carolina Petitioner-Respondent.

Appellate Case No. 2020-000881

APPENDIX
VOLUME 3 OF 10

E. CHARLES GROSE, JR.
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466

DIANA HOLT
Diana Holt, LLC
P.O. Box 6454
Columbia, SC 29260
(803) 782-1663

**ATTORNEYS FOR
RESPONDENT-PETITIONER**

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803)734-3727

**ATTORNEYS FOR
PETITIONER-RESPONDENT**

INDEX

PCR ORDERS GRANTING RELIEF AND DENYING RECONSIDERATION

Order Granting Post-Conviction Relief Filed April 21, 2020.....	1
Order Denying Rule 59 (E) Motions Filed May 20, 2020	69
Form 4 Order Filed May 20, 2020.....	84
Amendment to Order Denying Rule 59(E) Motions Filed May 22, 2020	89
Rule 59(e) Motion and Proffer of Mr. Inman’s Proposed Order Filed May 1, 2020.....	92
Respondent’s Rule 59(E) Motion Filed May 8, 2020	226
Response in Opposition to the State’s Rule 59(E) Motion Filed May 12, 2020	399
Response to Applicant’s Rule 59(E) Motion Filed May 20, 2020	403
Reply to State’s Response to Mr. Inman’s Rule 59(E) Filed May 20, 2020	416

PCR STAY DOCUMENTS AND ORDERS OF APPOINTMENT

Motion for a Stay of Execution and for the Appointment of a Post-Conviction Relief Judge Dated October 10, 2012.....	425
Return to Petition for Stay of Execution Pending Post-Conviction Relief Dated October 16, 2012.....	430
SC Supreme Court Order Granting the Motion for a Stay of Execution Dated October 31, 2012, and appointment of Judge Macaulay for PCR proceeding	482
Order Appointing Counsel-Filed November 29, 2012	484

PCR ACTION FILINGS, NON-DISPOSITIVE ORDERS AND OTHER DOCUMENTS

Application for Post-Conviction Relief-Filed June 21, 2012	488
Return of Respondents to Application for Post-Conviction Relief and Request for Status Conference and Appointment of Counsel-Filed October 18, 2012	496
First Amended Application for Post-Conviction Relief Filed April 13, 2016	542
Motion for In Camera Inspection of Discovery Materials Asserted to be Privileged or Redacted in Discovery Production (Rule 26, SCRCP) Filed May 12, 2016	551
Return to Amended Application for Post-Conviction Relief and Motion to Dismiss Filed May 16, 2016.....	579
Motion for Summary Judgment Filed July 7, 2016.....	623
Cross-Motion for Summary Disposition Filed August 10, 2016	659
Motion for Protective Order and for Postponement of Disposition Filed August 17, 2016.....	674
Order Denying and Dismissing (Respondent’s Motion for Summary Judgment or in the Alternative Motion to Dismiss and Applicant’s Cross-Motion for Summary Disposition, Granting PCR and Remanding for Jury Sentencing), Filed August 26, 2016	678
Second Amended Application for Post-Conviction Relief Filed October 20, 2016.....	683
Return to Second Amended Application for Post-Conviction Relief and Motion to Dismiss Filed November 7, 2016.....	695
Motion to Quash AGO Request SCDC Transport Mr. Inman to Court on August 20, 2018 and Prohibiting the AGO from Directly Requesting SCDC to Transport Mr. Inman in the Absence of an Order by this Court Filed August 10, 2018	761
Response in Opposition to Motion to Quash Transportation Request Filed August 15, 2018	771

Respondent’s Request for Specific Questioning to Establish Knowing and Voluntary Waiver Filed August 20, 2018	785

Second [sic] Amended Application for Post-Conviction Relief Filed August 20, 2018	789

Other Motions and Orders Regarding Discovery Matters

Third Party Motion to Compel Filed February 14, 2014	799

Response to Third Party Motion to Compel Filed February 20, 2014.....	813

Ex Parte Order (filed on public index), resolving motions involving Third Party, Filed April 10, 2014.....	819

Motion to Compel Discovery Filed January 11, 2016.....	821

Motion to Compel Filed February 3, 2016	825

Form 4 Order Filed March 7, 2016 (finding circuit court does not have jurisdiction)	829

Order Filed March 8, 2016 (finding that State’s filing in the original jurisdiction must be resolved before circuit court proceeded on pending matters).....	833

PCR HEARING TRANSCRIPT

PCR Merits Hearing, August 20-23, 2018	837

Court Reporter’s Index	838

Pre-trial matters	844

Testimony

James Bannister	950

Direct (Grose)	951

Matters of Law	996

Questioning of Applicant Inman by Court.....	1025

Testimony

James Bannister	1033
Direct (Grose)(cont.).....	1033
Cross (Butterbaugh)	1084
Redirect (Grose).....	1148
Recross (Butterbaugh).....	1164
Dr. Marti Loring	
Direct (Grose).....	1176
Cross (Brown).....	1190
Dr. Louis Viamonte	
Voir Dire (Butterbaugh).....	1240
Direct (Grose).....	1244
Cross (Butterbaugh).....	1264
Dr. Donna Maddox	
Direct (Grose).....	1277
Joseph Savitz	
Direct (Grose).....	1347
Cross (Mitchell).....	1356
Redirect (Grose).....	1363
Dr. Donna Maddox	
Direct (Grose) (cont.).....	1366
Cross (Brown).....	1407

Redirect (Grose).....	1444
Applicant Rests.....	1457
Symmes Culbertson	
Direct (Butterbaugh).....	1458
John DeJong	
Direct (Mitchell).....	1481
Cross (Grose).....	1494
Redirect (Mitchell).....	1496
Recross (Grose).....	1497
Respondent Rests.....	1502

Exhibits from PCR Merits Hearing, August 20-23, 2018

Applicant’s Exhibit #1, Letter from Mr. Inman.....	1503
Applicant’s Exhibit # 2, E-mail correspondence.....	1504
Applicant’s Exhibit # 3, E-mail correspondence.....	1507
Applicant’s Exhibit # 4, Motion to Reconsider Order dated 11/15/07, RE Jury Trial Sentencing.....	1512
Applicant’s Exhibit # 5, Motion to Reconsider and for New Trial.....	1514
Applicant’s Exhibit # 6, Order Regarding Motion to Reconsider and for New Trial.....	1519
Applicant’s Exhibit #7, Motion and Memorandum to Determine Mode of Trial.....	1520
Applicant’s Exhibit # 8, Supreme Court Order.....	1545
Applicant’s Exhibit # 9, Appeal from Pickens County, 11/21/07.....	1547

Applicant’s Exhibit # 10, Appeal from Pickens County, 1/2/08.....	1555
Applicant’s Exhibit #11, Appeal, 1/9/08.....	1600
Applicant’s Exhibit # 12, Affidavit of Jerry Inman 6/8/07.....	1632
Applicant’s Exhibit # 13, Agreement Confirming Terms of Sentencing.....	1633
Applicant’s Exhibit # 14, Ex Parte Funding Order Number 11, 28, 32, 34.....	1637
Applicant’s Exhibit # 14(a), Order Assigning Case to Judge Few.....	1643
Applicant’s Exhibit # 15, E-mails from 10/08.....	1644
Applicant’s Exhibit # 15(a), Order Appointing Counsel Jim Bannister.....	1650
Applicant’s Exhibit # 16, 10/24/08 Letter from Robert Ariail to Judge Miller.....	1652
Applicant’s Exhibit # 16(a), Order Denying Writ of Prohibition, Assigning Judge Miller.....	1653
Applicant’s Exhibit # 17, 2/6/09 Letter from Robert Ariail to Judge Miller.....	1655
Applicant’s Exhibit # 17(a), Order Clarifying Appointment of Counsel.....	1656
Applicant’s Exhibit # 18, 2/13/09 Letter from Robert Ariail to Jim Bannister.....	1658
Applicant’s Exhibit # 18(a), Jim Bannister Detailed Time Sheet.....	1659
Applicant’s Exhibit # 19, 2/13/09 Letter from Robert Ariail to Judge Miller.....	1679
Applicant’s Exhibit # 20, 3/9/09 Letter from Betty Strom to Judge Miller.....	1680
Applicant’s Exhibit # 21, 3/16/09 Letter from Jim Bannister to Judge Miller.....	1681

Applicant's Exhibit # 22, 3/25/09 Letter from Betty Storm to Judge Miller.....	1682
Applicant's Exhibit # 23, 4/1/09 Letter from Robert Ariail to Judge Miller.....	1683
Applicant's Exhibit # 24, 4/6/09 Letter from Bill Godfrey to Judge Miller.....	1684
Applicant's Exhibit # 25, Notice of Limited Appearance for Dr. Marti Loring.....	1685
Applicant's Exhibit # 26, 4/16/09 E-mail from Bill Godfrey to Jim Bannister.....	1686
Applicant's Exhibit # 27, Motion for Release of Witness and Related Relief dated 4/2/09.....	1687
Applicant's Exhibit # 28, 4/17/09 E-mail from Bill Godfrey to Bob Ariail.....	1707
Applicant's Exhibit # 29, Ex Parte Funding Order #48.....	1708
Applicant's Exhibit # 30, 2/16/09 Billing from Janet Vogelsang.....	1710
Applicant's Exhibit # 31, Ex Parte Order #41.....	1711
Applicant's Exhibit # 32, Psychiatric Evaluation of Jerry Buck Inman by Dr. Schwartz-Watts.....	1713
Applicant's Exhibit # 33, Ex Parte Order, Symmes Culbertson, 8/25/08.....	1716
Applicant's Exhibit # 34, Donna Schwartz-Watts Statement of Charges, 9/12/08.....	1718
Applicant's Exhibit # 35, Gregg Dwyer, MD Statement of Charges 12/5/08.....	1719
Applicant's Exhibit # 36, Document by Marti Loring, 3/7/14.....	1720
Applicant's Exhibit # 37, Dr. Louis Viamonte, MD Curriculum Vitae.....	1722

Applicant’s Exhibit # 38, Dr. Louis Viamonte Synopsis of Psychiatric Evaluation.....	1725
Applicant’s Exhibit # 39, Dr. Donna Schwartz-Maddox Report.....	1726
Applicant’s Exhibit # 40, Dr. Tora L. Brawley Neuropsychological Evaluation.....	1737
Applicant’s Exhibit # 41, Dr. Donna Schwartz-Maddox Curriculum Vitae.....	1740
Applicant’s Exhibit # 42, Complaint and Demand for Jury Trial.....	1750
Applicant’s Exhibit # 43, Psychiatric Evaluation of Jerry Inman.....	1871
Applicant’s Exhibit # 44, Ex Parte Funding Order #17.....	1877
Applicant’s Exhibit # 45, Ex Parte Funding Order #21.....	1894
Applicant’s Exhibit # 46, Initial Brief of Appellant.....	1899
*Applicant’s Exhibit # 47, Donald P. Geary Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit # 48, Trina Lucas Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit # 49, Michael Baker Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit # 50, Michael Bednarz Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit #51, Tracey Meyers-Enderson Deposition Transcript (sealed in Pickens County Clerk of Court Office– not included)	
*Applicant’s Exhibit # 52, Alan Taylor Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit # 53, Roger Lindsay Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	
*Applicant’s Exhibit # 54, David Blake Deposition Transcript (sealed in Pickens County Clerk of Court Office – not included)	

Applicant’s Exhibit # 55, Robert Ariail Excerpted Deposition Transcript	1927
Respondent’s Exhibits # 1, Letter to Mr. Bannister from Mr. Inman, 1/21/08.....	1933
Respondent’s Exhibits # 2, E-mail Chain	1937
Respondent’s Exhibits # 3, E-mail Chain	1944
Respondent’s Exhibits # 4, Letters from Jerry Inman	1946
Respondent’s Exhibits # 5, Sentencing Order, 4/22/09.....	1955
Respondent’s Exhibits # 6, Brower v. State of Georgia Cite	1966
Respondent’s Exhibits # 7, Excerpted Transcript Hearing Held 11/16/10, State v. Steven Louis Barnes.....	1968
Respondent’s Exhibits # 8, Proffered Questions for Jerry Inman	1974
Court’s Exhibit #1, E-mail Chain Between Judge Macaulay and Counsel	1977
Certificate of Reporter	1981

PCR ADDITIONAL LITIGATION (ORIGINAL WRIT)

Motion to Unseal and Disclose Filed September 17, 2015.....	1982
Memorandum in Response to State’s Motion to Unseal and Disclose Filed September 30, 2015	1994
Reply to Memorandum in Response to Motion to Unseal Ex Parte Funding Requests and Orders filed October 7, 2015	2060
Order Denying Motion to Unseal and Disclose filed November 24, 2015	2063
Respondent’s Rule 59, SCRCF, Motion to Alter or Amend or to Reconsider Filed December 14, 2015	2073
Response to the Rule 59, SCRCF Motion to Alter or Amend or to Reconsider filed December 29, 2015	2193

Order Denying and Dismissing Respondent’s Motion to Alter or Amend or to Reconsider Filed January 4, 2016	2197
Petition for Extraordinary Writ of Certiorari (re: unsealing of <i>ex parte</i> funding requests)	2201
Response to State’s Petition for this Court to Invoke its Original Jurisdiction and Issue and Extraordinary Writ of <i>Certiorari</i>	2443
Reply to Return to Petition for Extraordinary Writ of Certiorari	2460
Motion to Expedite Petition for Extraordinary Writ.....	2477
Response to State’s Motion to Expedite Petition for Extraordinary Writ.....	2511
Order (denying writ of certiorari)	2517
October 23, 2015 PCR motion hearing transcript	2518
Exhibits from October 23, 2015 PCR motions hearing: Respondent Exhibit #1-Thames Decision (ID only)	

SENTENCING AND CHARGING DOCUMENTS

Sentencing Order-Filed April 22, 2009	2577
Order Denying Motion for New Trial-filed July 28, 2009	2586
Death Penalty Sentencing Report-Dated August 24, 2009.....	2587
Indictments	2588
Notice of Intent to Seek the Death Penalty.....	2596

PRE-SENTENCING APPEAL

Notice of Appeal, November 21, 2007	2597
Initial Brief of Appellant-filed January 7, 2008	2609

Order, Supreme Court of South Carolina (dismissing notice without prejudice) Filed January 9, 2008	2655
Petition for Writ of Certiorari, Supreme Court of the United States, Filed April 4, 2008 (per US Supreme Court’s website).....	2658
Brief in Opposition to the Petition for Writ of Certiorari, Filed May 8, 2008.....	2688
June 8, 2008 Opinion, denying petition, issued June 9, 2008	2723

DIRECT APPEAL DOCUMENTS

Notice of Appeal date August 4, 2009-filed August 6, 2009.....	2724
Final Brief of Appellant.....	2727
Final Brief of Respondent.....	2755
Final Reply Brief of Appellant	2864
Supreme Court of South Carolina Opinion No. 27081 Filed December 28, 2011	2874
Petition for Rehearing Dated January 12, 2012.....	2904
Order Denying Petition for Rehearing Dated January 25, 2012.....	2910
Remittitur Dated January 25, 2012.....	2912
Petition for Stay of Execution Dated January 26, 2012.....	2913
Return to Petition for Stay of Execution to Allow Seeking Certiorari in the Supreme Court of the United States Dated February 3, 2012	2917
Supreme Court of South Carolina Order Granting Petition for Stay of Execution Dated February 23, 2012	2926
Petition for Writ of Certiorari filed in the Supreme Court of the United States Dated June 11, 2012	2929
Appendix	2965
Opinion of South Carolina Supreme Court.....	2966
Order Denying Rehearing	2984

United States Supreme Court Order Granting an Extension of Time	2986
S.C. Code § 16-3-20 (1976)	2987
Supreme Court of the United States Order Denying Petition for Writ of Certiorari Dated October 1, 2012	2992
Record on Appeal	
Transcript Dated September 8-11, 2008	
Court Reporters Index	2994
Opening Statements by Ms. Strom	3022
Opening Statements by Mr. Bannister	3028
Testimony	
Holly Elaine Bergman	
Direct Examination by Ms. Strom.....	3037
Cross Examination by Mr. Culbertson.....	3045
Christina Ann Morello	
Direct Examination by Ms. Strom.....	3050
Cross Examination by Mr. Culbertson.....	3056
G.W. McCoig	
Direct Examination by Mr. Ariail	3060
Cross Examination by Mr. Bannister	3070
Jeffrey Kindley	
Direct Examination by Mr. Ariail	3076
Cross Examination by M. Bannister	3095
Suzanne Clavel	
Direct Examination by Mr. Ariail	3101
Cross Examination by Mr. Culbertson.....	3109
Matters of Law	3115

Motions.....	3116
Testimony	
Vera Elizabeth Patterson	
Direct Examination by Ms. Strom.....	3121
Cross Examination by Mr. Culbertson.....	3131
Michael Hannon	
Direct Examination by Mr. Ariail	3139
Cross Examination by Mr. Bannister	3165
Rhonda Jackson	
Direct Examination by Mr. Ariail	3168
Cross Examination by Mr. Bannister	3186
Matters of Law	3191
Testimony	
Jessica Gann	
Direct Examination by Ms. Strom.....	3194
Cross Examination by Mr. Bannister	3203
Redirect Examination by Ms. Strom	3204
Michael Hannon	
Direct Examination by Mr. Ariail	3205
Cross Examination by Mr. Bannister	3216
Eric Dean Christensen, M.D.	
Direct Examination by Mr. Ariail	3220
Cross Examination by Mr. Bannister	3238
State Rests.....	3244
Motions	3245
Matters of Law	3248
Testimony	
David Richard Price, PhD	
Direct Examination by Mr. Bannister	3256

Cross Examination by Mr. Ariail	3305
Redirect Examination by Mr. Bannister.....	3313
Recross Examination by Mr. Ariail.....	3314
Motions	3316
Testimony	
Marti Loring, PhD	
Direct Examination by Mr. Bannister	3325
<i>VOIR DIRE</i> Examination by Mr. Ariail.....	3328
Matters of Law	3329
Testimony	
Claude Tournay	
Direct Examination by Mr. Bannister	3353
James Evans Aiken	
Direct Examination by Mr. Culbertson.....	3365
Cross Examination by Mr. Ariail	3381
Denise Baker	
Direct Examination by Mr. Bannister	3386
Questioning of the Defendant.....	3404
Testimony	
David Michael Hensley	
Direct Examination by Mr. Bannister	3406
Motion for Mistrial and Matters of Law	3412
Transcript Dated April 20, 21 and 22, 2009	
Court Reporters Index	3441
Motions	3445
Testimony	
Marti Loring, PhD	
Direct Examination by Mr. Bannister	3473
Cross Examination by Ms. Strom.....	3487

Redirect Examination by Mr. Bannister.....	3494
Motions	3499
Testimony	
John Mauldin	
Direct Examination by Mr. Bannister	3520
Cross Examination by Mr. Ariail.....	3559
Redirect Examination by Mr. Bannister	3589
Troy Tessier	
Direct Examination by Mr. Bannister	3590
Cross Examination by Mr. Ariail.....	3594
Susan Allen	
Direct Examination by Mr. Bannister	3597
Cross Examination by Mr. Ariail.....	3604
Matters of Law	3606
Desa Ballard	
Direct Examination by Mr. Bannister	3617
Cross Examination by Mr. Ariail.....	3632
Matters of Law	3642
Motions	3649
Testimony	
Kenneth McArthur	
Direct Examination by Mr. Bannister	3666
Matters of Law	3668
Testimony	
Marti Loring, PhD	
Examination by the Court.....	3673
Cross Examination by Mr. Bannister	3707
Cross Examination by Ms. Strom	3711
Matters of Law	3719

Closing Argument by Mr. Ariail.....	3730
Defendant Inman’s Comments to the Court.....	3741
Closing Argument by Mr. Bannister.....	3742
Questioning of the Defendant.....	3750
Decision of the Court.....	3752
Transcript dated January 8, 2007.....	3767
Motions	3770
Transcript dated April 16, 2007	3777
Transcript dated September 14, 2007.....	3787
Motions	3799
Transcript dated May 8, 2008	3845
Motions	3847
Transcript dated July 18, 2008	3863
Motions	3865
Transcript dated July 30, 2008	3877
Motions	3880
Guilty Plea Transcript dated August 19, 2008.....	3921
Testimony	
Donna Marie Schwartz-Watts, M.D.	
Direct Examination by Mr. Culbertson	3933
Jerry Buck Inman	
Examination by the Court.....	3935
Transcript dated August 27, 2008.....	3987
Motions	3990
Testimony	
Carla Field	
Direct Examination by Mr. Bannister	4006
Examination by the Court.....	4020
Redirect Examination by Mr. Bannister.....	4021

Examination by the Court	4023
Motions	4025
Transcript dated April 14, 2009	4040
Motions	4042
Indictments	4056
Sentencing Order	4064
Defendant's Exhibit 32, Rule NISI.....	4073
Defendant's Exhibit 33-Motion to Compel, Attendance of Out-Of-State Witness	4074
Defendant's Exhibit #34-Motion to Secure Attendance of Out-Of-State Witness	4075
Defendant's Exhibit #35-Partial Transcript from State v. Laney.....	4076
Defendant's Exhibit #36-Motion to Quash Death Notice	4086
Defendant's Exhibit #37-State's Memorandum in Opposition.....	4099
Defendant's Exhibit #38-Defendant's Reply Memorandum.....	4101
Defendant's Exhibit #39-Letter dated August 13, 2007.....	4159
Defendant's Exhibit #40-Renewal of Defendant's Motion to Quash	4160
Defendant's Exhibit #41-Resolution of Laney Case Document.....	4163
Defendant's Exhibit #42-Resolution of Laney Case Document.....	4164
Defendant's Exhibit #43-Partial Transcript from State v. Laney Sentencing Proceeding.....	4165
State's Exhibit #25-Proposeal.....	4213
State's Exhibit #26-Order	4214
State's Exhibit #27-Note from Laney Jury	4216

State’s Exhibit #28-Note from Laney Jury	4217
State’s Exhibit #29-Letter dated July 16, 2006	4219
Court’s Exhibit #3-Letter dated April 16, 2009	4220
Motion to Determine Mode of Trial	4221
State’s Response to Defendant’s Motion to Determine Mode of Trial	4223
Renewed Motion for Recusal of Thirteenth Circuit Solicitor’s Office	4224
Response to Renewed Motion for Recusal of Thirteenth Circuit Solicitor’s Office.....	4226
State’s Response to Defendant’s Motion to Reconsider Order Dated November 15, 2007 re: Jury Trial Sentencing After Entry of Guilty Plea	4227
Motion to Suspend Proceedings.....	4228
Motion to Determine Role of Solicitor Ariail and Prosecution Team	4230
Renewed Motion for Mistrial, Motion to Impose Life Without Parole and Memorandum in Support thereof	4233
State’s Response to Motion to Reconsider and for New Trial	4261
Response to Motion to Suspend Proceedings	4262
Motion to Reconsider and for A New Trial	4263
Order.....	4267
Petition for Attendance for An Out-Of-State Witness.....	4268
Return to Petition for Attendance for an Out-Of-State Witness	4271
Motion to Seek Assurance of Out-Of-State Witnesses Appearance in South Carolina.....	4279

Motion for Continuance Based Upon Duty to Present Mitigation Evidence	4282
Certificate of Counsel.....	4285
HEARING EXHIBITS (not included in Record on Appeal)	
<u>January 8, 2007 Motion for DNA Hearing</u>	
*State's Exhibit #1-DNA Analysis (Sealed by The Honorable John Few – not included)	
*State's Exhibit #2-Property Release Form (Sealed by The Honorable John Few – not included)	
<u>May 8, 2008 Motion for Change of Venue</u>	
Defendant's Exhibit #1-Survey.....	4287
<u>August 19, 2008 Guilty Plea Hearing</u>	
State's Exhibit #1 and 2-Photos	(will transport)
State's Exhibit #3-Diagram	4308
State's Exhibit #4-7-Photos	(will transport)
State's Exhibit #8-Admonition and Waiver-Jefferson County Sheriff's Department.....	4313
State's Exhibit #9-Statement of Jerry Inman.....	4312
State's Exhibit #10-SLED Miranda Rights.....	4315
State's Exhibit #11-Voluntary Statement of Jerry Inman.....	4317
Defendant's Exhibit# 1-Psychiatric Evaluation of Jerry Buck Inman	4321
Court's Exhibit #1-Summary of Facts supporting Charges Against Jerry Inman.....	4324

September 8-11, 2008 Sentencing Hearing

State's exhibit #12-15-Photos	(will transport) ¹
State's Exhibit #16-CD	(will transport)
State's Exhibit #16 A,B and C-Photos.....	(will transport)
State's Exhibit #17-Summary of Criminal History	4336
State's Exhibit #17 A-Certified conviction.....	4337
State's Exhibit #17 B and C-Certified Copy of Conviction.....	4347
State's Exhibit #17D-Certified Copy of Release	4356
State's Exhibit #18-Advice of Rights and Waiver.....	4357
State's Exhibit #19-Statement of Jerry Inman in Alabama Case.....	4358
State's Exhibit #20-Advice of Rights and Waiver.....	4360
State's Exhibit #21-Signed Statement of Jerry Inman in Alabama Case ..	4361
State's Exhibit #22-Admonition and Waiver-Jefferson County	4367
State's Exhibit #23-Statement of Jerry Inman in Tennessee Case	4367
State's Exhibit #24-Bikini top	[will not transport – at Clerk's Office]
Defendant's Exhibit #1-Psychiatric Evaluation of Jerry Buck Inman	4370
Defendant's Exhibit #2-Curriculum Vitas-David Richard Price, PhD	4373
Defendant's Exhibit #3-North Carolina Department of Corrections Mental Health Record.....	4402
Defendant's Exhibit #4-18-Florida Department of Corrections Mental Health Record	4403
Defendant's Exhibit #19-Pickens County Medical Information Report	4423
Defendant's Exhibit #20-Drawing.....	(will transport)
Defendant's Exhibit #21-Authenticity of Documents.....	4425
Defendant's Exhibit #22-27-Photos.....	(will transport)
Defendant's Exhibit #28-Timeline.....	4427
Defendant's Exhibit #29-Diagram	(will transport)

¹ State's Exhibits 1-11 were previously marked and entered into evidence on August 19, 2008. They are included under the exhibits listed for that date.

Defendant's Exhibit #30-Letter dated April 28, 2004	4428
Defendant's Exhibit #31-Florida Department of Corrections Mental Health Record	4429
Court's Exhibit #2-SLED Live Feed Investigation ²	4431

April 20-22, 2009 Sentencing Hearing

State's Exhibit #25-Proposal	4544
State's Exhibit #26-Order	4545
State's Exhibit #27-Note from Laney Jury	4547
State's Exhibit #28-Note from Laney Jury	4548
State's Exhibit #30-Marti Loring's Testimony from <u>State v. Andres Torres</u>	4550
Defense Exhibit #44-Partial Transcript from <u>State v. Motts-Voir Dire</u> of Marti Loring ³	4630
Defense Exhibit #45-Partial Transcript from <u>State v. Edens</u> <u>and Holloway</u>	4683
Court's Exhibit #3-Letter dated April 16, 2009 ⁴	4689
Court's Exhibit #4-Genogram Chart	(will transport)
Court's Exhibit #5-Timeline Chart	(will transport)
Court's Exhibit #6-9-Photos	(will transport)

² Court's Exhibit # 1 was previously marked and entered into evidence on August 19, 2008. It is included under the exhibits listed for that date.

³ Defense Exhibits # 32-43 were included in the Record on Appeal and are included with the Record on Appeal in this Appendix.

⁴ Court's Exhibit 3 was included in the Record on Appeal and is included with the Record on Appeal in this Appendix.

1 allegations. If you want to rule on them at the end,
2 that's fine, but I'm just being candid with the Court.

3 THE COURT: But can you waive that for the applicant?

4 MR. GROSE: I think it's ---

5 THE COURT: I mean, as we've noted throughout this
6 trial, the colloquy between Judge Miller and the defendant
7 at that time was a thing that was extensive to be sure
8 that he knew what he was doing. He was aware of it.

9 MR. GROSE: Right.

10 THE COURT: I don't think, of course, Mr. Bannister
11 never, what is it, conceded anything as far as his rights
12 or what he perceived as the rights.

13 All right. Let me see. Which are the questions that
14 deal with voluntariness? Or any -- two?

15 MS. BROWN: Most all of them deal with the
16 voluntariness and his interactions with counsel. And it's
17 specifically to this action, though, Your Honor, I draw
18 your attention to the Question 6. Because this is a civil
19 proceeding, he would need to know that his lack of
20 testimony on any factual point that he would have had
21 knowledge of gives rise to an adverse inference or could
22 give rise to an adverse inference. So all of the
23 communications with counsel on any issue come into play.
24 He's a fact witness here in the civil action.

25 THE COURT: Let's see. You seem to have a copy of

1 the application. Thank you.

2 All right. Now, which ones are the ones that you say
3 are related to the voluntariness? 11 or 10?

4 MR. GROSE: It -- well -- and I don't have it in
5 front of me, but 10(a) I ---

6 THE COURT: You've got a colleague that I think she
7 has another copy.

8 MR. GROSE: Thank you.

9 THE COURT: Very good. Now, sir.

10 MR. GROSE: All right. So 10(a) is that Mr. Inman
11 was denied the right to effective assistance of counsel,
12 cites the state and Federal constitution during the guilt
13 or innocence phase of his ---

14 THE COURT: Now, this gentleman has an eighth-grade
15 education.

16 MR. GROSE: He has an IQ of over 100.

17 THE COURT: Well, a person with no education is still
18 somewhat -- has a disadvantage.

19 MR. GROSE: I don't disagree with that.

20 THE COURT: Well, what I'm saying is would he know
21 what Article 1, Section 3 and 14 of the South Carolina
22 Constitution is?

23 MR. GROSE: Probably not. But that's why he has ---

24 THE COURT: That's what I'm just asking.

25 MR. GROSE: --- lawyers to help him with that.

1 THE COURT: Are you suggesting, and I think it's an
2 appropriate analogy, that this is the same as a criminal
3 defendant was waiving his right to testify? And I'll go
4 through the little colloquy of what those rights are. I
5 wouldn't refer him to an article in the Constitution.

6 MR. GROSE: And then in Paragraph 11, the statement
7 of grounds, 11(a), Paragraph 1 is that trial counsel's
8 ineffective for advising Mr. Inman to plead guilty and
9 appeals the trial judge denying the request to sentence by
10 the jury when the state law did not allow jury sentencing.
11 That's the issue -- we're not going forward on that issue.
12 We're going forward on the appellate counsel issue.

13 And Number 2 is for not developing information
14 through experts retained by the defense that Mr. Inman's
15 sexual misconduct was the result of a rare medical
16 condition that was treatable and controllable with common
17 drugs and failing to advise the Court sitting in judgment
18 of Mr. Inman that this supported the verdict of guilty but
19 mentally ill.

20 We are not going to have -- after the evaluation --
21 when we pled this, the evaluation wasn't completed. We
22 were anticipating going to a trial, and we were on
23 deadline to file the pleadings, and we do not have expert
24 testimony to support that. So the proof is going to fail
25 on that regardless. And, you know ---

1 THE COURT: What do you say about that, Ms. Brown?
2 This is 2(b), I guess.

3 MR. GROSE: Question 2(b)?

4 THE COURT: Wait a minute. It looks like -- 11(b).

5 MR. GROSE: I think it's 11(a)(1) and (2) is what I
6 was referring to. (B) gets into the sentencing phase.

7 THE COURT: What do you say, Ms. Brown?

8 MS. BROWN: Yes, sir. When you claim ineffective
9 assistance of counsel, you're looking at the entirety of
10 the representation. Why counsel did what counsel did is
11 on the record. Why counsel would advise a certain way
12 would be something Mr. Inman would know. Just withdrawing
13 a portion of the claim doesn't mean that Mr. Inman is any
14 less a fact witness. We heard a lot of testimony ---

15 THE COURT: Again, it's not getting to that point.
16 Obviously, he's a fact witness.

17 MS. BROWN: Yes, sir.

18 THE COURT: And I'd be interested, if you can, give
19 me authority that says that an applicant in a capital PCR
20 does not have to -- cannot be compelled to testify. I
21 mean, in other words, to exercise his right to testify.
22 You can't just put him in the closet and not let him know
23 that he has the right to testify.

24 MR. GROSE: And that's why I think you should advise
25 him that he has the right to testify, and if he doesn't

1 want to testify, that's ---

2 THE COURT: Well, how can I advise him of his right
3 to testify without telling him what he can testify to?

4 MR. GROSE: Well, I think you can -- I think you
5 could, in the same general way ---

6 THE COURT: Could I go through -- well, I think --
7 all right. That's what we're going to do then. I'm going
8 through your questions with him as far as -- let's see.
9 It's 11(a)(1) -- (1), of course, is that --- it's the
10 interpretation of the statute. And, I guess, he's not,
11 what is it . . .

12 (Pause in proceedings.)

13 MR. GROSE: Judge, if I could interrupt.

14 THE COURT: Yes, sir. Certainly.

15 MR. GROSE: We had a discussion, I think it was off
16 the record, yesterday about the fact that we were going to
17 speak with Mr. Inman and let him know what to expect
18 today, and we did.

19 THE COURT: That's what I would do with any -- in
20 fact, as you well know, that's what you do. In fact, you
21 usually try to give them an overnight opportunity to
22 consult with their family as well as their ---

23 MR. GROSE: And we did that. We talked with him last
24 night. We talked with him today. The questions that we
25 have prepared him for, although we think they're overbroad

1 and duplicative and some are no longer relevant, are the
2 ones that the attorney general submitted. We've not
3 prepared him for what you're now contemplating doing. So
4 I just wanted to let you know that.

5 THE COURT: What I am contemplating, Mr. Grose, is a
6 complete understanding as best that I can give him as to
7 what he is waiving ---

8 MR. GROSE: I understand.

9 THE COURT: --- so he can do it knowledgeably,
10 intelligently and, what is it, freely. I'm not trying to
11 do anything else other than what I see is my
12 responsibility as an officer of the Court.

13 MR. GROSE: And I didn't mean to suggest that, but I
14 -- but if we're going to go through ---

15 THE COURT: What are you suggesting?

16 MR. GROSE: If you're going to go through the
17 application, he's not prepared for you to discuss that
18 with him. That's all I'm saying.

19 MS. BROWN: Your Honor, I agree going through the
20 application would be appropriate because these are the
21 allegations he's making and verifying. He's verifying
22 they're true to the best of his ability, so he's already
23 started his testimony in that respect. So I think going
24 through is very good. I think following up with the
25 questions that we proposed, especially 6 and 7, because

1 there is an adverse inference at issue. And 7 is this is
2 your one opportunity.

3 THE COURT: You're talking about your questions.

4 MS. BROWN: Yes, sir. On page 2, Question 6 and 7.

5 As you stated earlier, Your Honor, civil litigation,
6 he's a fact witness. We have the right to call him. It
7 may support something that we find important as a defense
8 that waiver of a particular issue or clause in a statement
9 simply does not address.

10 MR. GROSE: Judge, we have absolutely no problem with
11 asking 6 and 7. I think those are very fair questions and
12 go to his understanding. So . . .

13 THE COURT: And this case was tried in, what, 2007?

14 MS. HOLT: 2008, 2009.

15 THE COURT: 2008.

16 I'd say, again, in cases like this where you have --
17 I don't like the term, what is it, the involvement of
18 constitutional rights. I think that, what is it, the
19 constitutional rights are pretty much established and then
20 you interpret those rights, and if they need to be
21 changed, you do it in a constitutional fashion.

22 Now, I'll probably disqualify myself forever from the
23 Supreme Court nomination, but one of the cases I'm fairly
24 familiar with was State vs. Huey back in 2000. And the
25 Court there followed the law, or thought he had, and it

1 was reversed, if I'm not mistaken. But later in 2009,
2 which is after this trial, they reversed the decision in
3 Huey. I think it was Rosemond.

4 And the issue in those cases and the issue that was
5 reversed, overruled in Huey, and what this law in 2009 was
6 declared to be: It is proper to instruct the jury in a
7 capital sentencing phase that it may recommend a life
8 sentence for any reason or no reason at all including as
9 an act of mercy. In other words, I mentioned to you
10 earlier yesterday what the old law was, but before we --
11 our law was -- along with all the other capital statutes
12 in the United States vitiated by Furman vs. Georgia.

13 In South Carolina, the verdict of the jury was three:
14 not guilty, guilty, or guilty with a recommendation of
15 mercy. And Huey was based on that, really. And then,
16 what is it, when they said that it was improper, they
17 rectified that in Rosemond by saying that it is proper to
18 instruct a jury in a capital sentencing phase that it may
19 recommend a life sentence for any reason or no reason at
20 all including as an act of mercy. Of course, they
21 qualified that -- Ms. Brown, you seem to be somewhat
22 concerned about that -- as long as the consideration of
23 mercy is not inconsistent with the instruction that,
24 quote, the jury shall not be guided by sympathy,
25 prejudice, passion or public opinion.

1 Now, when I read what little I've been able to read
2 through all of the voluminous record here, that that
3 question was never posed to the -- even in Judge Miller's
4 colloquy. He said it had to be unanimous, had to be this,
5 had to be that. They did not say that they could exercise
6 mercy as long as that exercise of mercy was not contrary
7 or based on any sort of concept of or guided by sympathy,
8 prejudice, passion or public opinion. And that would be
9 one of the questions I would have asked him if I was
10 permitted to do that.

11 But, again, I think that's something for maybe
12 another court to look at. Because I understand, at this
13 point, you do not want me to ask questions like that that
14 goes to the voluntariness of his weight.

15 I'll ask the State first what is it they have an
16 interest in, and then I'll come back to the applicant's
17 attorney.

18 MS. BROWN: As you picked up, Your Honor, I was
19 trying to follow very closely on this because I had sort
20 of bifurcated this in my mind. We were talking about
21 whether he wanted to testify. If he wants to testify,
22 those are kind of the questions along those lines that we
23 would ask.

24 THE COURT: I don't know about you, but the trials
25 I've tried, I mean, not even capital cases, but even a

1 misdemeanor or at least a serious misdemeanor, and the
2 client or the defendant, what is it, you ask or his
3 attorney does that he does not wish to take the stand.
4 I've also, when I was back practicing many times, what is
5 it, I would rely on the -- as the defense attorney, rely
6 on the defendant's plea of not guilty and recommend that
7 he not take the stand. And everybody complained about it,
8 said I was being foolish, but I had more success than not
9 having success with that strategy.

10 But anyway, the point is that that's why, in your
11 colloquy, that you ask him do you understand that I'll
12 instruct the jury that you cannot consider anything such
13 as prejudice that would be prejudicial to you in the sense
14 of sympathy, passion or public opinion. And I'll also,
15 what is it, would say that they cannot consider anything
16 that has not been subject to the facts. In other words,
17 I'm letting him know that if he waives his right, I will
18 instruct them, and this is the crucial one, that the jury
19 cannot consider the failure of him to testify against him
20 in any way, it cannot be even discussed in the jury room,
21 to be sure he understands that what he's giving up, it
22 also has protections in it.

23 MS. BROWN: Yes, Your Honor. And that's why we
24 think ---

25 THE COURT: And that's how I understand being

1 knowledgeable. And normally, I don't charge that the jury
2 can consider, you know, mercy. But we're in a situation
3 on this particular case is we are trying to determine
4 whether something is perspective or retroactive.

5 MS. BROWN: And as you point out, you're in a
6 different posture when you're a defendant and you're a
7 civil applicant, a civil litigant. An adverse inference,
8 you're right, there would be a charge.

9 THE COURT: Excuse me. Excuse me. I'm interrupting
10 you because I want to move on.

11 This is a question of constitutional rights. You
12 don't have separate civil constitutional rights and
13 separate criminal constitutional rights.

14 MS. BROWN: Well, and that's why we've sort of
15 bifurcated our discussion on it, Your Honor. As far as
16 testimony here, it's a civil applicant. There is no
17 constitutional right, there's no Fifth Amendment right,
18 per se, where he doesn't have to testify. That's why ---

19 THE COURT: He doesn't have to -- his waiver does not
20 have to be knowledgeable? He doesn't have to know what
21 he's giving up?

22 MS. BROWN: Actually, that's why we want these
23 questions, Your Honor, including ---

24 THE COURT: And that's why I'm asking why not -- does
25 that exclude the fact that he was not asked about mercy,

1 that, he knowingly realized that he didn't have to be,
2 what is it, found innocent?

3 MS. BROWN: If he agrees to give sworn testimony, I
4 think we can all ask him these questions. But I think the
5 first step is are you going to testify or are you going to
6 refuse to testify, and do you realize in this civil
7 context, there could be an adverse inference where it
8 wasn't in the criminal context?

9 THE COURT: Well, an adverse inference to whom? The
10 jury? We don't have a jury.

11 MS. BROWN: We would argue to you, Your Honor ---

12 THE COURT: I would definitely consider it an adverse
13 inference if he's not advised as to what rights he's
14 giving up to challenge.

15 MS. BROWN: And we would ask you to go over all of
16 the allegations and these questions with him so he knows
17 and he can make that intelligent decision.

18 THE COURT: All right. Well, I guess I've let a cat
19 out of the bag. So what I'm going to do is what I would
20 think any good judge would do, and that is I'm going to
21 let you decide what you want to ask and what you don't
22 want to ask. If the other side asks something you don't
23 want them to ask or doesn't ask something you want them to
24 ask, note it on the record and we'll let somebody else,
25 and I'll rule on it at the time and I'll let another court

1 review it. Again, that's a part of the system as well.

2 All right. So what we'll do is I'm going to let you
3 -- I'm getting out of the trial of this case, and I hope I
4 have not violated any sort of duty of my own -- or, I
5 mean, as a judge in interjecting something. Because I
6 found it interesting that this case is based on something
7 that was found after the trial, and I didn't know how far
8 it would go in determining whether or not his actual
9 waiver during trial was complete, that he had -- he knew
10 that, what is it, he would have a right to have -- in the
11 light of Hurst, a right to have a jury determine his
12 sentence, that a judge alone could not make the factual
13 determination.

14 Very well. All right. Anything further from the
15 applicant? I'm just going to let you all conduct your own
16 trial.

17 MR. GROSE: Well, we're going to object to any
18 questioning of Mr. Inman by the State.

19 THE COURT: Well, let's do it at the time. Let's
20 don't do it -- the thing is, we don't have a jury,
21 Mr. Grose.

22 MR. GROSE: I understand.

23 THE COURT: So you make your objections, state your
24 grounds for objection, I'll rule on it, we'll move on.

25 MR. GROSE: Okay.

1 THE COURT: And you, of course, you will have a
2 chance to respond. Same for your objections. You'll have
3 a chance to respond.

4 All right. Okay. We've taken a half an hour now,
5 and I was 15 minutes late. I apologize.

6 MR. GROSE: And he's not expecting to be interrogated
7 by the Attorney General's Office, so we need to ---

8 THE COURT: It's not interrogating. He's a party.

9 MR. GROSE: Well, question, whatever you want to call
10 it, he's not expecting them to ask him any questions.

11 THE COURT: Why didn't you tell him? Why didn't you
12 tell him that that had not been decided? I don't know.
13 Did I rule yesterday that he would not have to testify?

14 MR. GROSE: The motion was, was for you to ask him
15 these questions, not for them to be able to determine
16 whether or not they can call him as a witness later in the
17 trial. They can't call him now because we haven't rested.

18 THE COURT: Right.

19 MR. GROSE: And so I thought that we were getting a
20 determination as to whether or not he voluntarily waived
21 his presence here, and then that can be determined to be
22 an adverse inference against him. We're fine with that.
23 It's their motion, and you're getting ready to do things
24 that they haven't asked you to do until today.

25 THE COURT: They haven't asked me to do anything.

1 What I've done today, Mr. Grose, is trying to be sure that
2 a party to a lawsuit's rights are protected.

3 MR. GROSE: And I appreciate that.

4 THE COURT: And if you don't feel that it's
5 appropriate, you can make the motion. I'll be more than
6 happy to recuse myself.

7 MR. GROSE: Well, I'm not asking you to recuse
8 yourself. I'm asking you not to allow them to question
9 him if he doesn't want to participate in this hearing.

10 THE COURT: All right.

11 MR. GROSE: They had a chance. They could have tried
12 to depose him before this if they wanted to, and we could
13 have litigated all of this in an entirely different ---

14 THE COURT: Well, let's find out what they have to
15 say. Maybe she'll just say we don't want to -- she's
16 saying "interrogate," but it's also examine.

17 MS. BROWN: Your Honor, we sent the normal
18 transportation letter. He is an inmate. We can't just
19 not make arrangements to have him here. So we sent that
20 transportation ---

21 THE COURT: Well, let me ask you, do you want to
22 examine him?

23 MS. BROWN: We believe that we will like to call him.

24 THE COURT: All right. And what authority do you
25 have? You say it's well established, they say it's not

1 the rule.

2 MS. BROWN: Well, in the noncapital cases, you hear
3 them all the time. In the capital cases, we ---

4 THE COURT: Well, I'm just asking -- well, give me
5 authority. I don't know what everybody says and everybody
6 does. I go to the cafe to get that information.

7 MS. BROWN: I don't know if I can give you authority
8 on this because it's a civil action. He's a party. But I
9 can give you a case where ---

10 THE COURT: Well, now, apparently, this has been
11 called out with postconviction relief. It's a separate
12 type of civil action.

13 MS. BROWN: Well, if I may please hand up ---

14 THE COURT: Well, please. What you can do is look
15 for it and then come back and we'll take it up.

16 MS. BROWN: Oh, I wanted to hand you up a complete
17 copy of the order of dismissal in Quincy Allen. It's a
18 capital case out of Richland county, a guilty plea.
19 Mr. Allen testified I think three times, if I'm not
20 mistaken.

21 MR. GROSE: But he ---

22 THE COURT: Mr. Grose.

23 MR. GROSE: Yes, sir.

24 THE COURT: One at a time.

25 All right. Ms. Brown, you finish.

1 MS. BROWN: And as far as authority, not only did he
2 testify, but the judge in that particular case said how
3 important, because it was his decision. Whether it was a
4 voluntary decision was of the utmost importance, and we're
5 in that same position here with a plea. Did he know? Did
6 he understand? In that particular case, Your Honor, at
7 issue was whether there was an agreement that the judge
8 was going to give a life sentence if he pled guilty. And
9 there was testimony from attorneys. They thought this ---

10 THE COURT: My point is, what was the authority for
11 being able to call an applicant against his will in a PCR?

12 MS. BROWN: Well, it wasn't against his will here,
13 and that's where the adverse inference comes up. We can
14 call him, but he has to -- I'm sorry, Your Honor.

15 THE COURT: All I want to know, do you have authority
16 one way or the other about an applicant testifying in the
17 PCR hearing?

18 MS. BROWN: 17-27-40 and 50 requires verification of
19 the allegations, these facts in support of the allegation.
20 Rule 601 of the civil procedure talks about competency of
21 the witness. Every person is competent to be a witness
22 except as otherwise provided by the rule.

23 Your Honor, there's no privilege or any kind of
24 constitutional privilege or rule or right that would
25 prevent it. So the default is he needs to tell us or the

1 allegation would be struck for lack of proof.

2 There's also failure to prosecute under the civil
3 rules. And if you do not present facts and authority that
4 are in your personal knowledge, then it could be dismissed
5 for that as well.

6 And the expression here is that there is a great
7 wealth of reasons that you can call anyone in a civil case
8 that has relevant information. Now, if they don't
9 cooperate, what happens? In criminal law, no adverse
10 inference. In civil, adverse inference. So there are
11 some implications to that, and that's why we were asking
12 for him to be advised of it before he says, "No. I'm not
13 going to do this." We have waiver, adverse
14 inference ---

15 THE COURT: Well, they've agreed to your questions,
16 and that is one of the questions. I don't know if he
17 understands with his, what is it, 100 IQ ---

18 MS. HOLT: 120.

19 THE COURT: --- what adverse inference means in a
20 legal . . .

21 MS. BROWN: And I think we've tried to set out that
22 that could be used against you. And that's why we wanted
23 him questioned first.

24 And, again, a lot of this is because he is
25 incarcerated. If he were here, then at the appropriate

1 time, we call him to the stand. If he says, "No. I'm not
2 going to cooperate," we might ask for everything to be
3 struck that would depend on that.

4 THE COURT: I understand.

5 MS. BROWN: Yes. Thank you.

6 THE COURT: All right. Now we're on the record,
7 that's good. I have, I guess you'd say, something to
8 protect the Court from, what is it, its intrusion.

9 MR. GROSE: First, as you know, death is different.

10 Second, they did not cite you any authority that they
11 can call a capital PCR applicant to testify against a
12 will ---

13 THE COURT: Do you have any authority that says they
14 can't?

15 MR. GROSE: I have the Course and Practice in the
16 History of South Carolina, and I ---

17 THE COURT: Well, let's go get there. Otherwise,
18 you're going to be, what is it, vouching for the practice
19 in capital murder cases where a jury doesn't have to
20 determine the sentence. Because that's the course of
21 practice in South Carolina. So let's not don't use that
22 as a ---

23 MR. GROSE: Fair enough. But I have the Fifth
24 Amendment, which does apply.

25 I understand that there will be an inference for him

1 not coming. You have Applicant's Exhibit Number 1 where
2 he has said that he doesn't want to be here. You know, he
3 was offered, and we've confirmed with him that he was
4 offered the opportunity to come just as they represented,
5 and he declined that. Really, in any civil case, that's
6 all you need. I realize we have constitutional rights
7 involved here.

8 THE COURT: Well, as I say, please, let's don't
9 conflict the civil and criminal rights that we're provided
10 by our Constitution. I mean, we can sue for, what, \$25 or
11 more or something like that in the Constitution, but this
12 is not at issue here. So I do understand they do have
13 civil rights in the Constitution.

14 MR. GROSE: Right. Now, I didn't -- I don't know
15 what else I can give you.

16 THE COURT: Well, I just wanted to know if you're
17 ready to proceed.

18 MR. GROSE: I'm ready to proceed with you asking the
19 questions that they proposed.

20 THE COURT: All right. That's what we'll do unless
21 they insist on going beyond, and then you'll make your
22 motion, and we'll rule on it and then we'll move on.

23 MR. GROSE: And I don't think they have a right to
24 call witnesses during our case. We object to them being
25 able to call before we can rest.

1 THE COURT: Well, that's perhaps going to bring us
2 back to this same situation when you rest that they're
3 entitled to call their own witnesses.

4 MR. GROSE: Right. But if he says "I voluntarily
5 didn't appear" and answers all these questions ---

6 THE COURT: Well, you can raise that point at the
7 time they do it. Now, let's don't anticipate trouble for
8 this court, because the Court already has enough trouble.

9 MR. GROSE: I'm not trying to make extra trouble.

10 THE COURT: Very good.

11 MR. GROSE: I'm trying to prevent ---

12 THE COURT: Mr. Grose, maybe they're persuaded by
13 your reasoning.

14 MR. GROSE: You know, it's one of these things when
15 I'm here in a PCR, I'm the dumbest person in the
16 courtroom. When I'm up there on the witness stand as a
17 witness in a PCR, they talk about how wonderful I am. So
18 it's all situational.

19 THE COURT: We all do that.

20 All right. I'll tell you what. Let's go off the
21 record to make the connections to be sure -- oh, excuse
22 me. Yes, ma'am?

23 MS. HOLT: Your Honor, are they going beyond the
24 questions?

25 THE COURT: I'm going to permit them to ask the

1 questions.

2 MS. HOLT: But limited to these questions?

3 THE COURT: Right.

4 MS. HOLT: Okay.

5 THE COURT: Isn't that what you asked?

6 MS. BROWN: Yes, sir. If he refuses to testify -- I
7 mean if he decides to testify, then we'll have another
8 issue of when you would like to hear it. You have control
9 when witnesses are called. We can take someone out of
10 order.

11 THE COURT: Well, as I understand it, the status or
12 the posture of the case as we are is that you made a
13 motion to ask if he does not appear and it's done by
14 telephone conference or whatever the nomenclature -- the
15 proper nomenclature, that you want these questions asked.

16 MS. BROWN: Yes, sir.

17 THE COURT: And I'm going to -- now that's another
18 thing. Should the Court ask the questions or would you
19 ask the questions?

20 MS. BROWN: Well, we've asked the Court to as you
21 normally see if somebody understands the waiver.

22 THE COURT: That's -- forgive me. That's the reason
23 I asked the question, to be sure there's no question about
24 how we should proceed.

25 MS. BROWN: Yes, sir.

1 THE COURT: And I see the nodding of a head, which is
2 now on the record ---

3 MS. BROWN: Yes, Your Honor.

4 THE COURT: --- that the applicant agrees that the
5 Court will ask ---

6 MS. HOLT: Yes.

7 THE COURT: --- the -- if I can find that. See,
8 that's the nice thing about this organization.
9 Respondent's Request for Specific Questions to Establish
10 Knowing and Voluntary Waiver consisting of seven
11 questions.

12 MS. BROWN: Seven questions, Your Honor. And if I
13 may call your attention to page 3, we also said that
14 should the Court need to make additional inquiries,
15 depending on the answers, we believe that would be
16 responsible. That would be up to Your Honor.

17 THE COURT: Very well.

18 And, by the way, I don't usually require, as you
19 found authority in a memorandum or anything, to ask
20 anything I want to, to qualify, interject too often.

21 MS. BROWN: Well, there would be no objection. Thank
22 you, sir.

23 THE COURT: All right. Is that acceptable to the
24 applicant, Mr. Grose?

25 MR. GROSE: Yes, sir.

1 THE COURT: Very good. I'm just using one counsel at
2 a time on a question, if that's all right. So no offense,
3 I trust.

4 All right. Let's see if we can get things set up
5 here.

6 Did y'all make an arrangement for somebody to swear
7 him, or are we going to even put him under oath?

8 MS. BROWN: There is supposed to be an individual
9 with him, a notary, I think, to be able to ---

10 MS. HOLT: I just thought of this. If the applicant
11 needs to confer with counsel, having a forum to do that.

12 THE COURT: If he asks?

13 MS. HOLT: Yes.

14 THE COURT: Well, let's not anticipate as much as be
15 prepared.

16 (Pause in proceedings.)

17 (WHEREUPON, Jerry Buck Inman appeared telephonically.)

18 THE COURT: Okay. I can hear everyone, it seems.

19 All right. I understand, now, are you Jerry Buck
20 Inman?

21 APPLICANT INMAN: Yes, sir.

22 THE COURT: Your number is 5226.

23 APPLICANT INMAN: 5256, yes, sir.

24 THE COURT: 5256.

25 MR. GROSE: Yes, sir.

1 THE COURT: All right. Now, I'm going to ask that a
2 notary I think you have there to swear you at this time,
3 Mr. Inman. Do you understand?

4 APPLICANT INMAN: Yes, sir.

5 THE COURT: Very good.

6 UNIDENTIFIED: Judge Macaulay, do I need to stay
7 after I swear him in?

8 THE COURT: Do you need to stay?

9 UNIDENTIFIED: Yes, sir. Can I leave?

10 THE COURT: No, ma'am. Unless you'd like to.

11 UNIDENTIFIED: Okay. Thank you.

12 Would you please state your name for the record.

13 APPLICANT INMAN: Jerry Buck Inman.

14 WHEREUPON,

15 JERRY BUCK INMAN

16 After having been duly sworn, testified as follows:

17 UNIDENTIFIED: Is that sufficient, Judge?

18 THE COURT: Any objection from the applicant?

19 MR. GROSE: No, sir.

20 THE COURT: From the State?

21 MS. BROWN: No, objection.

22 THE COURT: Thank you very much. That is sufficient.

23 UNIDENTIFIED: Thank you, sir.

24 THE COURT: Now, Mr. Inman, the Court has certain
25 questions to ask you. And listen very carefully. If you

1 do not understand the questions or the words I use, please
2 advise me and I will explain them to you. Do you
3 understand this?

4 APPLICANT INMAN: Yes, sir.

5 THE COURT: All right. Question 1, you are allowed
6 to attend the hearing scheduled to begin on August the
7 20th, 2018, on the allegations of your application. This
8 court may even order you to attend. Do you understand
9 that you have been offered transportation to this hearing
10 and the ability to be present at your hearing? Do you
11 understand these things?

12 APPLICANT INMAN: Yes, sir.

13 THE COURT: Do you wish to waive those rights to be
14 present?

15 APPLICANT INMAN: Yes, sir.

16 THE COURT: You are also allowed to attend and give
17 your testimony as to the allegations in your application.
18 Are you aware that this court may find that your failure
19 to testify in support of your allegations results in a
20 failure of proof and/or a waiver of your claims? Do you
21 understand that?

22 APPLICANT INMAN: Yes, sir.

23 THE COURT: Are you aware that to be entitled to
24 relief on your existing claims of ineffective assistance
25 and involuntary guilty plea, you must show deficient

1 representation and prejudice? Do you understand that?

2 APPLICANT INMAN: Yes, sir.

3 THE COURT: Do you understand that you have the
4 burden of proof in this action?

5 APPLICANT INMAN: Yes, sir.

6 THE COURT: Are you aware this court may find that
7 your failure to testify and to establish that an error in
8 your plea counsel's representation affected your decision
9 to plead guilty results in a failure to show the necessary
10 prejudice to obtain the relief that you seek?

11 APPLICANT INMAN: Yes, sir.

12 THE COURT: Do you understand that without your
13 testimony to support your claims, this court may find that
14 you will not be permitted to depart from the
15 representations you gave at your plea, in other words,
16 during your trial?

17 APPLICANT INMAN: Yes, sir.

18 THE COURT: Do you understand that this court may
19 find the absence of your testimony actually gives rise to
20 an adverse inference? Do you understand that an adverse
21 inference means the Court may consider the absence of your
22 testimony to be taken as a fact you believe your plea was
23 voluntary and that your mistake of counsel affected and
24 that no -- excuse me -- and that no mistake of counsel
25 affected your decision? Let me restate that. Do you

1 understand that this court may find the absence of your
2 testimony actually gives rise to an adverse inference,
3 that is, a failure to testify means that your testimony
4 would not have been favorable to you if you did testify?

5 APPLICANT INMAN: Yes, sir.

6 THE COURT: You understand that?

7 APPLICANT INMAN: Yes, sir.

8 THE COURT: Do you understand an adverse inference
9 will mean the Court may consider in the absence of your
10 testimony to be taken as a fact you believe your plea was
11 voluntary and that no mistake of counsel affected your
12 decision? Do you understand that?

13 APPLICANT INMAN: Yes, sir.

14 THE COURT: Do you understand that this is your one
15 opportunity to present testimony for the state record?

16 APPLICANT INMAN: Yes, sir.

17 THE COURT: Do you understand -- I'm going to repeat
18 it because this is essential and crucial. Do you
19 understand this is your one opportunity to present
20 testimony for the state record -- state court record?

21 APPLICANT INMAN: Yeah.

22 There's -- there's one statement I would like to
23 make.

24 THE COURT: Very well. Do you want to consult with
25 your attorneys?

1 APPLICANT INMAN: No, sir.

2 THE COURT: All right. State your question.

3 APPLICANT INMAN: I understand that there's a
4 question of when I pled guilty, that I was asking for a
5 jury trial. That's false. When I pled guilty, it was
6 with the understanding that I wanted a judge sentencing
7 and not a jury sentencing. And I understood that, and,
8 again, that's what I wish for.

9 THE COURT: Very well. But you do understand if you
10 fail to be present for testimony in the state court, your
11 decision should be made with full knowledge that the
12 decision is a final one? Do you understand that?

13 APPLICANT INMAN: Yes, sir.

14 THE COURT: All right. Any further questions from
15 the State?

16 MS. BROWN: Yes, sir. I'd like to ---

17 MR. GROSE: We object.

18 THE COURT: All right. I'm just asking if there are
19 any in the context of what was stated on these questions.

20 MR. GROSE: We just maintain our objection that the
21 State cannot ask questions.

22 THE COURT: All right. Very well. All right. Any
23 questions from the applicant?

24 MS. HOLT: One moment, Your Honor.

25 THE COURT: Any questions from the applicant?

1 MS. HOLT: No, sir.

2 THE COURT: Very well. All right. Anything else
3 from the witness at this time -- or the applicant at this
4 time?

5 MS. BROWN: I would ask if the Court would like to
6 ask if Mr. Inman wants to come and testify or make that
7 statement in court, then I would have to make arrangements
8 for transportation to make this statement again to you
9 under oath in Court.

10 THE COURT: What does the applicant say?

11 MS. HOLT: This was -- this suffices.

12 MR. GROSE: Yeah. I think we've already covered
13 that.

14 THE COURT: I don't know what else would be said,
15 given this particular ---

16 MS. BROWN: Sworn statement. We all understand this
17 would be in the record.

18 MS. HOLT: That's right.

19 THE COURT: Very well. All right. Mr. Inman, I
20 thank you for your patience with the Court, and good luck.

21 APPLICANT INMAN: All right. Thank you.

22 THE COURT: All right. This ends the telephone
23 communication with the applicant.

24 Thank you very much for those that made this possible
25 there at the department.

1 UNIDENTIFIED: Yes, sir.

2 THE COURT: All right. If y'all don't mind, I would
3 like to take a little brief respite.

4 (WHEREUPON, a recess is taken at 11:08 a.m.)

5 (WHEREUPON, proceedings reconvened at 11:27 a.m.)

6 THE COURT: All right. Anything from the applicant
7 before we proceed?

8 MS. HOLT: Yes, Your Honor. I spoke with the State
9 and let them know that I was going to put on the record
10 the following. In working closely with Mr. Inman, since
11 the five years I've been his attorney and Mr. Grose as
12 well and going over all the allegations in the
13 application, last night was the first time Mr. Inman made
14 the statement that he did not want to be sentenced by a
15 jury but he wanted to be sentenced by a judge, the very
16 first time.

17 THE COURT: All right. Is there any response from
18 the State?

19 MS. BROWN: We have no knowledge of that statement.
20 I wouldn't ask Ms. Holt anything about it.

21 THE COURT: I'm just -- well, do you have anything
22 you ---

23 MS. BROWN: No, Your Honor.

24 THE COURT: She said that that was the first time she
25 heard it, and ended up as a statement, I trust, that was

1 -- Mr. Inman gave in his telephone conversation.

2 MS. HOLT: Concerning jury versus judge sentencing.
3 Yes, sir.

4 THE COURT: Well, that was a voluntary statement.
5 That was a statement made by him not in response to any of
6 the questions asked of him.

7 MS. HOLT: Yes, sir.

8 THE COURT: And that's the one you're referring to.

9 MS. HOLT: Yes, sir.

10 THE COURT: All right. I just want to be sure.
11 Is there anything you want to say about that?

12 MS. BROWN: No, sir.

13 THE COURT: Very good. All right. So we are now
14 back where we were yesterday afternoon. I see
15 Mr. Bannister in the courtroom.

16 MR. GROSE: Yes, sir.

17 THE COURT: All right.

18 MR. GROSE: Before we begin, Your Honor, just as a
19 matter of housekeeping, I believe that Applicant's 4
20 through 12 were already in evidence. If not, I would move
21 them in at this point.

22 THE COURT: Just a second.

23 Any objection?

24 MS. BUTTERBAUGH: No, Your Honor.

25 THE COURT: All right. Without objection,

1 Applicant's 4 through 12 are admitted.

2 (WHEREUPON, Applicant's Exhibit Numbers 4, 5, 6, 7, 8, 9,
3 10, 11 and 12 were admitted into evidence.)

4 MR. GROSE: And there had been an objection by the
5 State to Applicant's 13. And Mr. Bannister identified
6 that yesterday, so I would move for Applicant's 13 to be
7 admitted.

8 THE COURT: What is Applicant's 13?

9 MR. GROSE: It's the agreement confirming the terms
10 of sentencing.

11 THE COURT: Your proposed agreement, I think.

12 MR. GROSE: Right. Well, it's just captioned that
13 way. But yes. "Proposed" is correct.

14 Do you need to see it?

15 MS. BUTTERBAUGH: Yes.

16 (Reviews exhibit) Your Honor, we have no objection to
17 the proposed agreement.

18 THE COURT: All right. Now, that's Applicant's 13?

19 MR. GROSE: Yes, sir.

20 (WHEREUPON, Applicant's Exhibit Number 13 was admitted
21 into evidence.)

22 DIRECT EXAMINATION (Continued)

23 BY MR. GROSE:

24 Q Yesterday in testimony, you made a comment about
25 there being a problem in the case that was probably never

1 going to leave.

2 A Yes.

3 Q And what was that problem?

4 A Well, in a nutshell, I think we were one or two
5 witnesses away from the conclusion of our presentation of
6 mitigation. Dr. Marti Loring was on the stand. I want to
7 say that we had just gotten through the initial basis for
8 her qualification as a mitigation specialist, a life -- I
9 forget the terminology now, but she basically would
10 testify to sort of what had been Jerry Inman's life based
11 on various interviews and things that she had done, which
12 is, as I understood it, a pretty integral part of a
13 mitigation required for us to do.

14 So I believe we were in the process of qualifying
15 her, and then Solicitor Ariail, during the qualification
16 process, basically walked her through a series of
17 questions that were designed to indicate to her that she
18 was not licensed to practice in South Carolina, I forget
19 what the exact specialty was, but psychiatry or something
20 along those lines, and that there was a statute in
21 particular, it was a criminal statute which meant that she
22 was practicing illegally in South Carolina, and that was a
23 violation of the law.

24 I can refer back to the transcript, but I'll say that
25 this was an issue that I was aware had come up in a

1 previous case with Solicitor Ariail. It was not my death
2 penalty case, but it was another death penalty case. I
3 believe, at least from talking with the defense attorneys
4 in the other case, that the issue had resulted in a life
5 sentence for the defendant that Solicitor Ariail had
6 raised that issue with.

7 And in a case like this, from where I was sitting, a
8 lot of what we were doing was, I guess, playing for the
9 fumble, if you will. There weren't a lot of issues in the
10 case. The jury trial sentencing was a significant issue,
11 but the other ones were moon-cast shadows compared to that
12 one.

13 This particular issue, though, in preparing for the
14 what-if scenarios in trial, we had done research into
15 things that Solicitor Ariail had done in the past that had
16 resulted in mistriable types of scenarios. And this was
17 one of those areas where he had done the research -- where
18 we had done the research. And so when he injected this
19 issue into the case, we were prepared for it.

20 And I think what changed a little bit was that
21 Dr. Loring realized that Solicitor Ariail, as the chief
22 prosecutor for this circuit which included Pickens and
23 Greenville, that she would be subject potentially to
24 indictment if he really believed that this was illegal
25 conduct. And then it just -- at that point, it became an

1 issue that just grew legs as we continued into it.

2 I think the judge looked in the audience and saw one
3 of our fellow defense members back there and appointed him
4 to represent Dr. Loring so that she could go have counsel
5 to talk about the situation. We got on the phone with
6 appellate counsel. I mean, it was one -- it was one of
7 those moments where suddenly everybody realized that what
8 had been proceeding in a relatively orderly fashion
9 without any real significant missteps had suddenly become
10 potentially a mistrial.

11 Q Okay. And thank you for that answer. I want to
12 refer you back to a couple things that you said in that.

13 You had indicated that Dr. Loring was one of your
14 experts to talk about Jerry's life history, basically?

15 A That's correct.

16 (WHEREUPON, Applicant's Exhibit Number 14 was marked for
17 identification.)

18 BY MR. GROSE:

19 Q Jim, I'm going to hand you what has been marked as
20 Applicant's Exhibit Number 14 and ask that you flip
21 through that, please.

22 A (Reviews exhibit) So Applicant's Exhibit Number 14 is
23 an ex parte funding order designated Number 11. This was
24 filed August 31, 2007, and this was our request -- at
25 least the initial funding order was our request to

1 authorize Dr. Loring as an expert.

2 Q And, in fact, there's several funding orders involved
3 in that, isn't there?

4 A Yes. I see. So there's Ex Parte Funding Order
5 Number 28, Number 32 and Number 34, all of which are
6 dealing with Dr. Loring.

7 Q Okay. And yesterday you had testified about the
8 guidelines from the American Bar Association for capital
9 cases being the prevailing professional norms. Do you
10 recall that?

11 A Yes.

12 Q And is it fair to say that those guidelines require
13 defense counsel to prepare for not only guilt-innocence
14 phase, but also for sentencing phase?

15 A Yes. I believe that's correct.

16 Q And part of that is conducting a thorough background
17 social history on the client.

18 A That's correct. Yes. I believe a social historian
19 was a necessary part of an adequate defense in a capital
20 case at the sentencing phase.

21 Q And did you view that as an important part in
22 Mr. Inman's case?

23 A Yes. And as we slowly started to peel back some of
24 the issues that had resulted in where we ended up in terms
25 of Jerry Buck Inman being on trial for having murdered

1 Tiffany Souers, it became more important because we really
2 started getting at sort of the heart of maybe the why.

3 Q Right. And it's important to try to explain to a
4 sentencer why something like this happened.

5 A I thought so, yes, for two reasons in this case. One
6 obviously had to do with the mitigation that it presented
7 for how we ended up here, but, two, I felt like if there
8 was ever going to be an opportunity for us to be in a
9 position to have the Souers on board potentially for a
10 life sentence at some point in the future, that helping
11 explain to them how we ended up here would be of benefit.

12 Q Okay. As well as to the judge.

13 A Right.

14 Q Yeah. You still have your time sheets in front of
15 you?

16 A Yes, I do.

17 Q I'm going to show you the page that I'm looking at.
18 It looks like 7/7 is the first time entry, 2008.

19 A All right 7/7/2008.

20 Q All right. In looking at that time entry and looking
21 at the one at the bottom of the page for 7/17/2008, does
22 that reflect that you were already researching
23 interference with witnesses and witness intimidation?

24 A That is correct.

25 Q Now, this was before the situation with Dr. Loring

1 happened; is that right?

2 A That's correct, yes.

3 Q All right. And so what -- I mean, you may have
4 already answered this earlier, but what was causing you to
5 consider this that early?

6 A So -- and I think this may even be true today. We
7 were convinced that Solicitor Ariail really didn't
8 understand exactly how significant what he had done in the
9 previous death penalty case and the impact that would --
10 running the witness off the witness stand, threatening
11 them with a crime. So, again, we were playing for the
12 fumble, which is we were waiting to see is he going to do
13 this again at our trial. We thought that it was at least
14 an outside chance that he might go there, and so we
15 prepared for that. You know, obviously, we were hoping
16 that he wouldn't, but he did, and we were ready for it, I
17 guess would be the best way to describe.

18 Q Okay. And when it happened, were you able to observe
19 Dr. Loring's demeanor and her reaction to it?

20 A Yes. I was sitting at a podium that was maybe ten
21 yards from her. And yes. I saw exactly what happened.

22 Q All right. And how did you react to that?

23 A Well, so as soon as -- well, and I'll refer to the
24 transcript, but my memory is once this issue sort of
25 started coming to be, it took me, in all honesty, a moment

1 to recognize that I can't believe that we are really
2 getting ready to go into this. And I made an objection.
3 I remember this distinctly. I had this research in my
4 computer, and I had to dig through about five files on my
5 computer to find it. And once I got it, I think I made
6 the objection with the case law citing specifically to
7 quote paragraphs, I hope.

8 And then it was like you could see it donned on
9 Dr. Loring that this is the guy who's the prosecutor.
10 He's accusing me of criminal conduct. What am I going to
11 do?

12 And I think the judge saw it, too, because then
13 somehow we got into a discussion of the judge was granting
14 her immunity, which, in the back of my mind, I was
15 thinking I don't think he can do that, because I'd done
16 the research on this issue about intimidation of witness
17 and, you know, what's the proper objection to make. And I
18 don't recall that that was a solution that ever was
19 permitted.

20 I don't think it was in the judge's purview to be
21 able to grant immunity to a witness. Now, I could be
22 completely wrong about that, but I remember we got into
23 that and I was thinking, as I was sitting at counsel
24 table, he can't really do that. I mean, he's not going to
25 be able to bind the attorney general, he's not going to be

1 able to bind whoever, and Dr. Loring's got other cases in
2 other jurisdictions. I mean, this was a -- I was trying
3 to protect her, preserve the record and do what we could.

4 Q Right. And, of course, you were trying to protect
5 the record for Mr. Inman.

6 A Correct.

7 Q And is it fair to say that there was some realization
8 that Dr. Loring needed independent legal advice?

9 A Yes. So I remember that there were two people, I
10 would say, at the moment, Judge Miller, and Betty Strom
11 who was sitting at counsel table with Solicitor Ariail,
12 had their head in their hands like I can't believe that
13 we're in the middle of this.

14 And so I was making objections, but I remember Judge
15 Miller asked Dr. Loring if she thought she needed counsel.
16 And she said, "Yes. I think I do." And that is when she
17 got appointed counsel here in the courtroom.

18 Q And do you recall who that was?

19 A It's -- if you say it, I'll remember. Bill ---

20 Q Godfrey?

21 A Godfrey. Yes.

22 Q Okay. And, of course, I would imagine, correct me if
23 I'm wrong, but in doing that, Judge Miller was trying to
24 make certain that everybody had a chance to protect their
25 rights, including Dr. Loring.

1 A I think that, based on what -- so watching Dr. Loring
2 and seeing her kind of process this, I think it was clear
3 that she was uncomfortable going forward without talking
4 to counsel to understand what the ramifications were of
5 her being on the witness stand and going forward at this
6 point. And, of course, I want to say Solicitor Ariail
7 said at some point, "I'm not giving her immunity." So, I
8 mean, it was like a doubling-down of the position he had
9 taken during the voir dire.

10 Q Okay. And after she had the opportunity to consult
11 with independent counsel, what happened with regarding the
12 continuation of her testimony?

13 A So, again, I'll stand corrected if the record's got
14 something different in it, but my memory was we took a
15 break. Bill Godfrey and Dr. Loring went to a private
16 room. They had a discussion that lasted a significant
17 period of time. I think I got on the phone with some of
18 my other colleagues to just kind of see if I could get any
19 advice from them about where we were at the moment.

20 We came back into court, and then I think Dr. Loring,
21 that was when she said, "Look, I'm uncomfortable going
22 forward, and I'm going to take the Fifth. I'm not going
23 to participate," which really put us in a bind at that
24 point because I didn't have any other social historian to
25 testify about the things that I thought were important

1 relevant to Jerry Buck Inman's history. And so I think,
2 at that point, I started moving for a mistrial. I want to
3 say the judge took a break, and then we came back with
4 this -- he came back with the decision to just stay the
5 case, and let's all take a breath and figure out where we
6 are and pause.

7 Which I don't know if it was at that moment or at a
8 moment later on, but I was objecting to the State or maybe
9 I took this position later on, but the problem with that
10 is had we had a jury, as I understood the law back then at
11 least, if we'd had a jury and we ended up in a mistrial,
12 it would have been an automatic life sentence for
13 Mr. Inman. And I felt like since we had been in a
14 position where we should have been entitled to a jury
15 sentencing anyway, that the stay was this end run around
16 what should have been a declaration of mistrial and an
17 automatic life without parole. That was the logic in my
18 head.

19 Q And, again, the record will reflect this, but would
20 it be fair to say that the procedure that Judge Miller
21 adopted allowed you to present the witnesses that you had
22 available in September of 2008 and then there was a stay
23 so that you could address the social worker piece of your
24 mitigation case?

25 A Yes. So I don't want to jump ahead of your

1 questions, but after the stay, I think everybody kind of
2 -- well, at least on my side, the understanding was we're
3 not going to be back in court anytime soon, so it was a,
4 okay, what are our next steps at this point? I was not
5 having any communication with Dr. Loring. She was
6 represented by Bill Godfrey. From that moment forward, I
7 think I was under a constraint to communicate through Bill
8 Godfrey with her because she was represented.

9 So there was just a lot of problems that this was
10 creating and things we had to deal with that nobody had
11 really -- I hadn't anticipated that far down the road.

12 (WHEREUPON, Applicant's Exhibit Number 15 was marked for
13 identification.)

14 BY MR. GROSE:

15 Q I'm going to hand you what has been marked as
16 Applicant's Exhibit Number 15 and ask if you can look
17 through those.

18 A (Reviews exhibit) Yeah. I probably need just a
19 second to read through these.

20 Q Take your time.

21 A I mean, clearly, these are -- this is my e-mail
22 address, so Exhibit -- Applicant's Number 15 is
23 communication between me, Dr. Loring, Marsha Pickett and
24 it looks like Bill Godfrey, too. So if you want to ask me
25 some questions about it, let me refresh my recollection.

1 Q While you do that, I'm going to -- if we can go off
2 the record, I'll just go ahead and mark some additional
3 exhibits so we don't slow that down.

4 THE COURT: Very well. We're off the record.
5 (WHEREUPON, Applicant's Exhibit Numbers 16 through 28 were
6 marked for identification.)

7 BY MR. GROSE:

8 Q While we were off the record, you indicated you had
9 enough time to look at that.

10 A I have, yes.

11 Q Okay. And what are those e-mails?

12 A So these are -- these are e-mails where -- let's see.
13 These are in basically October 23rd, 24th. I think we
14 were still, at that point, trying to figure out what our
15 next steps as it related to Dr. Loring. Dr. Loring had
16 gotten an attorney, her own attorney through her business
17 in Georgia to advise her. Bill Godfrey was indicating he
18 wanted to get out of this mess.

19 And we were trying to figure out -- so what became
20 the issue was in terms of just the legality of her being
21 able to testify unfettered was not entirely clear, or at
22 least is my memory it was not entirely clear that you
23 could do what she had done, and that is interview Jerry
24 Buck Inman, interview his sister, interview other people
25 under the licenses she had without potentially running

1 afoul of the code section that Solicitor Ariail had
2 raised.

3 Now, I want to say ultimately, there was an order
4 issued from Chief Justice Toal that related more
5 particularly to doctors testifying in malpractice cases
6 which sort of ended that issue and made it very clear that
7 that was not a valid argument under our section. At the
8 moments where we were trying to figure out is there any
9 validity whatsoever to this, it was still at least a not
10 completely answered question. We're fairly certain we
11 knew what the answer would be, but we were uncertain.

12 Q All right. And on the first page of that exhibit,
13 where does Dr. Loring leave off as far as her
14 participation in Mr. Inman's case?

15 A So she's saying she's talked to her attorney and that
16 once she's been threatened with criminal prosecution, it's
17 kind of impossible to unring the bell, and she's not
18 interested in setting herself up to be possibly prosecuted
19 in our jurisdiction or any others.

20 The other problem was with -- and I'm not sure I
21 remember exactly how this worked, but she's indicating
22 that, based on what we could qualify her for without
23 worrying too much about it, there's still other issues
24 that needed to come in, including interviewing Jerry Buck
25 Inman's sister Denise, that might not be covered by the

1 qualification that we thought would be sufficient. So it
2 just became a very, very complicated analysis to figure
3 out what she could potentially testify to, what she wasn't
4 going to be able to testify to and whether she was going
5 to be comfortable to do it in any form or fashion.

6 Q Okay. And now with her unavailable, what option --
7 did that lead you to consider getting another expert that
8 could take her place?

9 A Yes, it did.

10 Q All right. And, of course, you had discussed that on
11 the record some, but did you meet with some difficulties
12 doing that?

13 A I did.

14 So I was -- I thought it would be a little bit easier
15 to find a social historian than it turned out to be. This
16 kind of expertise does not generate a lot of individuals
17 in that field, or at least I couldn't find many folks to
18 even contact in the State of South Carolina. And part of
19 the problem that this issue created was I couldn't go out
20 of the state or I'd have the same problem potentially that
21 Dr. Loring had had. So now I'm limited to our
22 jurisdiction and people that are licensed in South
23 Carolina in order to avoid this issue coming up again.

24 I want to say I talked to three different people.
25 One in particular, whose name I can't remember, but she

1 turned me down flat. She's like, "I heard what happened.
2 I'm not getting involved in that."

3 Q When you say "heard what happened," with Solicitor
4 Ariail?

5 A That is with the Solicitor Ariail. It's like why am
6 I going to subject myself to that kind of an environment?
7 These are hard enough to begin with, and I've got enough
8 work at this point. I don't need to do that. I'm just
9 not -- I'm not going to get involved.

10 I ultimately spoke with, I want to say maybe had a
11 brief conversation or some exchanges with somebody else.
12 But Jan Vogelsang was somebody whose name I recognized. I
13 knew her from having spoken with some of the other death
14 penalty lawyers in South Carolina. And she indicated that
15 she would be willing to get involved. The problem was
16 going to be that she had at least two cases that were in
17 front of Mr. Inman's case in terms of what her workload
18 was, and it was going to be a while before she could go
19 back and get involved.

20 Now, I actually -- so I sought funding for Jan
21 Vogelsang. And really, from that point forward, I just
22 assumed that Dr. Loring was no longer going to be part of
23 our case.

24 Q Right. And, of course, those e-mails was her
25 position on that.

1 A Yes. I mean, it was not only the issue of can we
2 legally get in what she's talking about or what she did,
3 but it was also that -- I mean, she was -- she is a neat
4 personality but a very sensitive one, I guess would be the
5 way to put it. And I just felt like -- I felt like that
6 there was some -- no matter what we did, there was going
7 to always be some fear in the back of her mind that if she
8 said or did something, that she was going to expose
9 herself, and that just wasn't her personality to be in
10 that kind of situation, I did not think. That was my
11 judgment on having spent time with her, knowing her and
12 preparing her for Jerry Buck Inman's case.

13 Q Now, you indicated earlier that after the trial was
14 stayed, that there was a feeling it would be a while
15 before you were back in court.

16 A That's correct.

17 Q And it would be fair to say that you would need that
18 time to get ready with a new expert.

19 A Yes. I mean, we -- well, first, finding somebody,
20 that did not happen overnight. That took some time.
21 Convincing Ms. Vogelsang to get involved, that took a
22 little bit of time. I want to say we delivered a lot of
23 the documents that we had given to Dr. Loring to her to
24 review at some point. I think we had funding maybe before
25 we did that so she got -- so we knew she'd get paid for

1 that for sure. But yeah. I mean, I knew it was going to
2 be a while before we were going to be ready.

3 Q I want to hand you Applicant's Exhibits 16 and 17, I
4 believe. Yes.

5 A (Reviews exhibits) So let's see. October 24, 2008,
6 is a letter from Solicitor Ariail I'm CC'd on. I don't
7 have an independent recollection of this, but I'm sure I
8 received it. And then 17 is February 6, 2009. This is
9 another letter from Solicitor Ariail that I'm copied on to
10 Judge Miller.

11 Q It looks like there was some discussion about
12 resuming the trial as early as November ---

13 MS. BUTTERBAUGH: Your Honor, I'd object. He's
14 testifying.

15 THE COURT: State your question. Maybe restate your
16 question.

17 BY MR. GROSE:

18 Q What does the letter in Applicant's Exhibit Number 16
19 reflect?

20 A So October 24, 2008, we're getting indication from
21 the judge that he'd like to restart the trial on November
22 the 17th, and the State is saying that that's acceptable
23 to them. They're referencing in particular that
24 Dr. Loring has, since our trial or our aborted trial,
25 testified in Spartanburg in another death penalty case up

1 there as a forensic sociologist.

2 February 6, 2009, it looks like we are now at a point
3 where the prosecution is suggesting that we start back on
4 February the 23rd, conclude the mitigation portion of the
5 case, and then subsequently hear issues relating to the
6 mistrial motion, which is, I would say, by February of
7 2009, at least from where I was sitting, I had done a lot
8 of work on the fact that I still believed this was a
9 mistriable moment and that mistrial should be granted.

10 Q Okay. Were you prepared to resume the trial in
11 November of 2008?

12 A No, I was not.

13 Q All right. And were you prepared to resume the trial
14 in February of 2009?

15 A No.

16 Q I'm going to hand you what's been marked as
17 Applicant's Exhibits 18, 19, 20, 21 and 22, give you a
18 second to look through those.

19 A Okay. (Reviews exhibits) Okay. So Applicant's 18,
20 19, 20, 21 and 22 are letters back and forth to the judge.
21 And primarily, these are relating to what would become the
22 motion for a mistrial, I believe.

23 Q And were there ultimately arguments regarding the
24 mistrial motion?

25 A Yes. I want to say it was like a mini trial in and

1 of itself.

2 Q And you called -- did you call witnesses at that
3 hearing?

4 A Yes. Absolutely.

5 Q Okay. And, of course, the transcript would reflect
6 who those were.

7 A That's correct.

8 Q Okay. Now, I believe that this trial sentencing
9 phase resumed in April of 2009; is that correct?

10 A Yes. That is correct.

11 Q Were you prepared to go forward at that point?

12 A I was prepared to go forward with the mistrial.

13 Q Were you prepared to go forward with any mitigation
14 at that point?

15 A No.

16 Q Okay. If you could turn to page 1,263. It's in
17 Volume 3, I believe.

18 A Okay. 1,263, a motion for continuance based upon
19 duty to present mitigation evidence.

20 Q Okay. And in the record, it looks like that's a
21 three-page motion; is that correct?

22 A That is correct.

23 Q Okay. I want to hand you what's already in evidence
24 as Respondent's Exhibit Number 3. Can you compare that
25 with what's in the record?

1 A (Reviews exhibit) As far as I can tell, they appear
2 to be identical.

3 Q All right. Are there more pages to it, though?

4 A Let's see. Yes.

5 So in the record at 1,263, you have a motion. In the
6 Applicant -- or Respondent's Exhibit Number 3, there's a
7 motion for continuance, and then there's an affidavit of
8 Teresa Norris, affidavit of Jan Vogelsang, and there is my
9 affidavit in support of the motion for continuance.

10 Q And were the affidavits -- what was the intent of
11 including those affidavits with the motion?

12 A Well, so the -- a couple of things. The letters that
13 we had referred to, kind of going backwards from
14 Exhibit 22, I felt like what we were getting ready to do
15 is have a -- it made sense to me to go have the motion for
16 a mistrial heard first. Because if that was granted, then
17 this case was over.

18 Second, there just wasn't any way to have
19 Ms. Vogelsang prepared in April of 2009. I had made that
20 pretty clear, I thought, in discussions with the solicitor
21 and with Judge Miller about that. And so I can only
22 describe it this way. It was like all of a sudden in the
23 spring of 2009, everybody decided they'd had enough of
24 this case and we were going to get it resolved one way or
25 the other no matter what. And so I was trying ---

1 Q When you say everyone, who do you mean?

2 A Oh, I meant the judge, the solicitor. Everyone other
3 than our -- the defense counsel. You know, maybe you
4 could even throw my client in there. Everybody was -- had
5 had enough.

6 And so I was trying to be clear that I was doing the
7 best I could to try to get Ms. Vogelsang ready to go.
8 There were constraints that were not -- nothing I could do
9 anything about. And to suddenly come in and say, okay,
10 April is the date when it wasn't the defense's fault that
11 we were in this position to begin with, I mean, you just
12 felt like, look, if we had just gotten through with
13 Dr. Loring's testimony without this issue being raised,
14 which I couldn't see any sense in from where I sat, we
15 wouldn't be in this position. We would have been done in
16 September. And so now to turn around and tell me that
17 we've got to have it done in April to somehow make up for
18 what I think, at that point, everybody had realized was a
19 pretty grave error on the part of the solicitor, it just
20 seemed inherently unfair and contradictory of due process.

21 Q And did the solicitor take action to try to force the
22 April trial?

23 A Yes. So what started happening is -- and this is
24 where I started to realize, okay, they're getting ready to
25 try -- "they" being collectively maybe the trial court and

1 Solicitor Ariail are getting ready to put me in a position
2 where they're going to try to fix what happened in
3 September, and they're going to try to do it in a way that
4 will waive any potential issues that were created by the
5 solicitor's objection to begin with.

6 I felt like that they were going to -- I was
7 preparing for the eventuality that, despite my objections
8 and request for a continuance, which I thought was a very
9 reasonable one given the situation we were in, that there
10 was a chance it was going to be denied and we were going
11 to be in trial in April, and I was just going to have to
12 do the best I could -- or we were going to have to do the
13 best we could.

14 Q I'm going to hand you what's Applicant's 23, 24, 25,
15 26 and 27. I'll give you a second to look at those and
16 refresh your memory.

17 A (Reviews exhibits) All right. I've looked at all of
18 them. I haven't read Exhibit Number 27 because that's got
19 a number of attachments to it. I have a general
20 recollection of Exhibit 27, which is the motion for
21 release of witness and related relief.

22 Applicant's 23, 24, 25 and 26 are communications
23 relating to Dr. Loring and whether or not she was going to
24 be a witness at the upcoming scheduling of the
25 continuation of the case in April of 2009, I believe.

1 Q Okay. And you still have Volume 3 in front of you?

2 A I do.

3 Q If you could look at page 1,252 of Volume 3.

4 A Okay.

5 Q Is that another pleading relating to the Dr. Loring
6 issue?

7 A That's correct. That is correct, if I'm not
8 mistaken. And this was filed by Bill Godfrey, who was
9 still acting as Dr. Loring's attorney as of April 7, 2009.

10 Q And, in fact, one of the exhibits I handed you a
11 minute ago was his limited notice of appearance for
12 exactly that purpose, wasn't it?

13 A That is correct. That would have been
14 Applicant's 25.

15 Q So in April of 2009, can you tell Judge Macaulay what
16 the issue was with Dr. Loring at that point?

17 A So in April of 2009, I had had no meaningful
18 communication with her about what she would have been
19 testifying about back in September of '08. My surmise was
20 that the Solicitor's Office had determined that they could
21 potentially cure their error if they could get Dr. Loring
22 back on the stand and have her testifying. I felt like
23 that even if they were successful in having her back and
24 testifying, they still missed the point that she wasn't a
25 fact witness. It wasn't like she was testifying to an

1 alibi or something that she saw. She was an expert
2 witness who was supposed to give opinions, and in this
3 case, we were hoping back in September she would be one of
4 the more compelling witnesses for the judge's
5 consideration. She had a real kind of style about how she
6 liked to testify, and I don't know. She had appeared in a
7 number of different death penalty cases that had resulted
8 in life sentences, and so while, you know, we were
9 realistic about what our chances were, we still wanted to
10 put up the best case that we could have. So I did not see
11 that as curing the error. But in any event, I think that
12 they did.

13 And so what began is this -- it just -- it was,
14 again, it was one of those moments where you just were
15 looking at everybody saying how did we get here all of a
16 sudden, because Mr. Godfrey filed a return to the State's
17 request for an out-of-state subpoena for Dr. Loring. And
18 he, in that motion, was basically saying, look, she's been
19 intimidated off the stand, still a little bit up in the
20 air about what she can and can't testify to. And
21 ultimately, she's not in a position to testify, so she's
22 not a material witness at this point. And so we had a --
23 we were going to have a hearing on whether or not the
24 out-of-state subpoena was going to be issued in the first
25 place.

1 Q Okay. And do you recall what happened with that
2 hearing?

3 A I recall that the judge issued the subpoena, and I
4 think it was, well, we'll see what happens when she gets
5 here kind of thing, but I'm going to go ahead and issue
6 the subpoena.

7 Q All right. And was there more issues that arose
8 after the subpoena got issued?

9 A Well, if my recollection is correct, so timing became
10 a big issue. We're headed towards our second round of
11 this trial. We've got the mistrial motion is going to be
12 heard. It's clear the Solicitor's Office believed that
13 they needed Dr. Loring there to cure the error from the
14 initial September trial, and so -- but they're running out
15 of time to get the subpoena served on Dr. Loring because
16 she lived in Georgia. Not only that, she travels or
17 traveled pretty extensively in different jurisdictions
18 doing the social history work that she did. So for
19 whatever reason, the Solicitor's Office determined that
20 they needed to have her arrested as a material witness.
21 So ---

22 MS. BUTTERBAUGH: Objection, Your Honor.

23 THE COURT: State your objection.

24 MS. BUTTERBAUGH: Lack of personal knowledge.

25 MR. GROSE: I think he can -- he's here to testify

1 about issues regarding his ability to go forward in ---

2 THE COURT: He's talking about a specific strategy
3 that apparently he wasn't a part of.

4 MR. GROSE: Well, but he can talk about his
5 impressions on that. Because one of the issues is
6 appellate counsel not appealing the continuance motion
7 that Mr. Bannister made, and he can testify to his
8 recollection of what was going on with regards to
9 Dr. Loring.

10 THE COURT: Explain it. I'll reserve my ruling on it
11 until I find out if he does have a basis for that
12 statement that there was a process to arrest her in
13 Georgia.

14 THE WITNESS: That's correct. Yes. So I'm
15 describing what the timeline was of events.

16 THE COURT: I'm just asking, do you have any personal
17 knowledge of that effort?

18 THE WITNESS: Yes. Because we ended up having a
19 hearing that was relevant directly to Dr. Loring and what
20 she had to go through down in Georgia.

21 So her -- Bill Godfrey and I had some conversations
22 about it personally because he was telling me what had
23 happened and transpired. But also, I want to say we put
24 that into the record as part of the hearing because what
25 resulted in the efforts from the Solicitor's Office here

1 to get Dr. Loring from Georgia to Greenville was also
2 part and parcel to the intimidation of Dr. Loring that we
3 felt impaired her ability to testify for us into the
4 future.

5 MR. GROSE: I'd like for you ---

6 THE COURT: Just a moment.

7 MR. GROSE: I'm sorry.

8 THE COURT: Have you all resolved anything? You
9 showed the ---

10 MR. GROSE: I showed her another exhibit I want to
11 show Mr. Bannister.

12 MS. BUTTERBAUGH: My objection still stands because
13 this was a decision by DeKalb County in Georgia. This was
14 not a decision by the Solicitor's Office here. So his
15 characterization of it, he lacks personal knowledge as
16 to ---

17 THE COURT: Excuse me, ma'am. Maybe I missed
18 something. I thought it originated in the 13th circuit.

19 THE WITNESS: I saw the affidavits that were -- and
20 again, this is ten years ago, Judge, so if I'm a little
21 bit wrong on this, but these documents, I want to say,
22 were in the record. But I saw the affidavits that were
23 signed.

24 THE COURT: Affidavits by whom?

25 THE WITNESS: By the individuals in Georgia that were

1 to issue the arrest warrant for Dr. Loring.

2 THE COURT: Did it have any connection with the
3 proceedings in the 13th circuit in South Carolina?

4 THE WITNESS: You know, so I want to say that it was
5 referencing representations made to them by the
6 Solicitor's Office, but I don't remember off the top of my
7 head.

8 THE COURT: I think that we're trying to find
9 something that would vouch for that statement.

10 MR. GROSE: Well, and, Judge, we're going to give you
11 all of the depositions that were taken in Georgia related
12 to this issue.

13 THE COURT: That's the way to make my day, I promise
14 you.

15 MR. GROSE: Christmas is early, right?

16 THE COURT: I'd rather than read all the depositions
17 just find out if this witness knows that there was some
18 connection with the proceeding in Pickens County.

19 MR. GROSE: Well, he filed a motion that I'm going to
20 get to in just a minute that relates to all of this.

21 THE COURT: Well, let's do that. Let's not get the
22 Court where it's not supposed to be.

23 All right. Your objection continues, and I'll rule
24 on it eventually.

25 MS. BUTTERBAUGH: Thank you, Your Honor.

1 BY MR. GROSE:

2 Q I'm going to show you Applicant's Exhibit -- is
3 that ---

4 A 28.

5 Q --- 28. Do you recall that e-mail?

6 A I do. This is an e-mail from Judge Miller that's
7 going out to Solicitor Ariail, Betty Strom, myself, Symmes
8 Culbertson, co-counsel, and Bill Godfrey. This is -- I
9 remember seeing this. This is April 17th at 12:15 a.m. in
10 the morning. So I would have gotten this on 4/17 when I
11 got in the office. And this is referring specifically to
12 what I was describing as the attempted arrest of
13 Dr. Loring down in Georgia.

14 THE COURT: What does it say?

15 THE WITNESS: "Law enforcement officers attempting to
16 arrest Dr. Loring for her failure to appear at a rule to
17 show cause hearing set for this afternoon for which she
18 was never personally served regarding the South Carolina
19 subpoena in this case." If all of this information ---

20 THE COURT: Your objection still stands? It sounds
21 like it's communication from the judge in the case. Is
22 that not correct?

23 THE WITNESS: That's correct.

24 THE COURT: To this gentleman.

25 MS. BUTTERBAUGH: Yes, sir.

1 THE COURT: All right. You still say the gentleman
2 doesn't have knowledge of purported, what is it, arrest or
3 attempt to arrest in Georgia?

4 MS. BUTTERBAUGH: Beg the Court's indulgence.

5 Your Honor, as long as it's not for the truth of the
6 matter asserted, we have no problem with this e-mail
7 coming in.

8 MR. GROSE: We have the depositions to answer that,
9 but this was the communication.

10 THE COURT: All right, all right. Without objection.

11 MS. BUTTERBAUGH: Yes.

12 THE COURT: This as Exhibit Number 28.

13 MR. GROSE: Thank you, Your Honor. Just for the
14 record ---

15 THE COURT: It's admitted.

16 And also his -- that apparently is a source of his
17 knowledge as to the incident in Georgia.

18 (WHEREUPON, Applicant's Exhibit Number 28 was admitted
19 into evidence.)

20 MR. GROSE: And, Your Honor, I don't think that I've
21 moved to admit all the exhibits ---

22 THE COURT: Going back to 16 and 17 ---

23 MR. GROSE: I don't know that I have ---

24 THE COURT: Just a moment. We'll go off the record.

25 (Off the record.)

1 MR. GROSE: I believe you just admitted 28. 14
2 through 27 have not been admitted, and I would move for
3 the admission at this time.

4 THE COURT: All right. Any objection?

5 MS. BUTTERBAUGH: No objection, Your Honor.

6 THE COURT: All right. Without objection,
7 Applicant's Exhibit Numbers 14, 15, 16, 17, 18, 19, 20,
8 21, 22, 23, 24, 25, 26 and 27 are admitted, and 28 has
9 been admitted.

10 (WHEREUPON, Applicant's Exhibit Numbers 14, 15, 16, 17,
11 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 were admitted
12 into evidence.)

13 MR. GROSE: Thank you, Your Honor.

14 BY MR. GROSE:

15 Q Mr. Bannister, I think that you were in the process
16 of reading into the record the e-mail from Judge Miller.

17 A Yes. Well, so let's see. "If all this information
18 is correct and if Dr. Loring is arrested and if someone
19 involved in this case from South Carolina has pressured
20 Georgia law enforcement to improperly expedite this
21 matter, there will be consequences imposed by this court
22 for an offending participant."

23 And then -- do you want me to keep reading or is --
24 the whole thing?

25 Q The whole thing, please.

1 A Okay. "Dr. Loring's South Carolina attorney has
2 assured me that Dr. Loring will be present Monday,
3 April 20, 2009, in Pickens county for the resumption of
4 these proceedings, and that service of a subpoena will not
5 be necessary. I accept this assurance and expect
6 Dr. Loring's attendance at the hearing. Whether counsel
7 for the defendant wishes to call her as a witness in
8 mitigation is irrelevant for purposes of this e-mail.

9 "I remind all counsel that orderly presentation of
10 the case in mitigation on behalf of Mr. Inman is the sole
11 responsibility of Mr. Inman's counsel. The decision as to
12 what relevant and competent evidence and which witnesses
13 will be presented rests solely in their discretion and
14 will be unmolested from any other source. However,
15 Dr. Loring will be present on Monday. Her presence bears
16 great weight on pending issues in this case. Interference
17 by any party with her appearance on Monday is unacceptable
18 and will be regarded as willful contempt of court.

19 "The machinations from all sides surrounding the
20 defendant's motion for mistrial have gotten out of hand.
21 Competent zealous representation is required in all
22 capital litigation; however, overzealous representation
23 will not be tolerated. I remind every attorney involved
24 in this case of their ethical obligations. I have known
25 and respected each attorney involved in this case for

1 years and I look forward to years of continued association
2 with each of you. Do not allow passion or pride to
3 overwhelm dedication to the rule of law.

4 "I respectfully request Dr. Loring's attorney to
5 forward this e-mail to her so that she is apprised of the
6 situation and informed of this court's expectations. I am
7 appreciative of her voluntary attendance and the
8 professionalism it exhibits."

9 THE COURT: That is from Judge Miller?

10 THE WITNESS: That is from Judge Miller, yes, Your
11 Honor.

12 THE COURT: Objection overruled.

13 BY MR. GROSE:

14 Q And Dr. Loring did appear?

15 A Dr. Loring did appear, yes.

16 THE COURT: What was the date of the hearing?

17 THE WITNESS: April the 20th, 2009, is the date I've
18 got referenced in this e-mail, Your Honor.

19 BY MR. GROSE:

20 Q Now, Volume 3, if you can turn to page 1,260, 61 and
21 62, please.

22 A (Witness complies) This was a motion that I filed to
23 seek assurance of out-of-state witnesses' appearance in
24 South Carolina.

25 Q All right. And who were you trying to have the Court

1 bring to South Carolina?

2 A I wanted each of the individuals that had been
3 involved in the attempted arrest of Dr. Loring to be
4 present in South Carolina to be questioned about whether
5 or not there had been any involvement with the 13th
6 Circuit Solicitor's Office and to create the record of
7 exactly what had been done to Dr. Loring in Georgia.

8 Q Okay. And looking at page 1,261, was one of those
9 witnesses Don Geary, G-E-A-R-Y? Third line.

10 A That is correct.

11 Q Okay. Now, what was -- I think that motion is
12 self-explanatory, but just to make a complete record, why
13 did you want to be able to have those witnesses come to
14 South Carolina?

15 A So generally, because I wanted to -- I wanted the
16 record to be created as contemporaneously as possible with
17 what had happened down in Georgia. We felt like that if
18 the Solicitor's Office had been involved in it, that that
19 would be a further indication of the intimidation of
20 Dr. Loring and just how far this had gone in terms of
21 almost a personal situation with the solicitor at that
22 point.

23 We wanted to get to the bottom, specifically of what
24 I've referenced in page 1,261. The dates and times that
25 the different filings in DeKalb County were clocked in

1 could not be accurate. In other words, they were
2 asserting things, that she had purposely avoided service
3 were made after the order to arrest her was issued is my
4 memory of it, and looking back at this was what my
5 recollection was.

6 So I had in my hand a piece of paper -- or pieces of
7 paper that seemed to indicate that there never had really
8 been any attempt to serve her over the process. They had
9 just gone straight to let's have her arrested so we can
10 bring her back to South Carolina, which I thought was
11 entirely improper.

12 Q And you raised the possibility that those timestamps
13 on the Georgia documents might not be accurate. If they
14 are accurate, what does that mean?

15 A Okay. Give me just a second to look back at it right
16 quick.

17 (Reviews exhibit) So what it meant was that
18 Dr. Loring never had any notice -- I mean that she wasn't
19 trying to avoid service of process. What it also meant, I
20 couldn't see a situation -- in my mind, now, I'm talking
21 from my perspective, Judge, not necessarily what was going
22 on in the Solicitor's Office, but I couldn't see how this
23 got done in the way it was done without something from the
24 Solicitor's Office directing them that, hey, we've got to
25 have her up here, we've got to have her now, and do what

1 you've got to do.

2 Q And you wanted to have an opportunity to question the
3 people in Georgia that were involved in that?

4 A Absolutely. I mean, this -- yes.

5 (WHEREUPON, Applicant's Exhibit Numbers 29, 30, 31, 32,
6 33, 34 and 35 were marked for identification.)

7 BY MR. GROSE:

8 Q I'm going to hand you what's marked as Applicant's
9 Exhibits 29 and 30.

10 A (Reviews exhibits) Okay. So Applicant's Exhibit 29
11 is Ex Parte Funding Order Number 48 where I sought funding
12 for Jan Vogelsang. That would have been -- let's see.
13 That's clocked in January of 2009.

14 And then Applicant's Number 30 is dated
15 February 16, 2009. This was an invoice for her initial
16 review of the file, which is what my recollection was is
17 that we got a significant amount of documentation to her
18 within a reasonable time of when she was authorized for
19 funding.

20 Q Okay. Now, if you had had the time, would you have
21 continued to work with Ms. Vogelsang?

22 A I don't think the reality that I was not going to be
23 given the time of working with Jan Vogelsang did not
24 really hit until we started seeing what they were doing,
25 what we believed they were doing to Dr. Loring in terms of

1 making her be here for the April 2009 hearing.

2 Q And would you have wanted to give Ms. Vogelsang time
3 to do the work that she needed to do?

4 A Yes. And particularly, the frustration was, you
5 know, if you want to fix the error, then give me the time
6 to get my social historian up to speed. There were new
7 things that were going on with Mr. Inman, and I felt like
8 those were going to be important to include into the
9 testimony, you know. And we -- you're always kind of
10 rethinking, given the position you're in getting ready for
11 trial, exactly how to present it in the most positive
12 light. And, you know, having now had the testimony from
13 his sister Denise in, I want to say, the first round about
14 all the sexual abuse that he had undergone, you know, I
15 just felt like that opened up some potential areas to get
16 further into it. So I was actually thinking this was
17 going to be probably even a more robust ability to put
18 together his life history in a way that would be hopefully
19 compelling for a life sentence.

20 Q Okay. And do you feel like you did what was
21 necessary to preserve the continuance motion?

22 A I did, yes.

23 Q And I'm going to hand you Applicant's Exhibit
24 Number 5, which is already into evidence. If you look at
25 Item Number Q, that's your new trial motion, I believe.

1 A Yes. So Applicant's Exhibit Number 5 at Item
2 Number Q, one of the issues I was raising in the posttrial
3 motions was denial of our motion for continuance
4 April 20, 2009.

5 Q Okay. And you ultimately, I think we established
6 yesterday that you got a ruling on that motion.

7 A On the motion to continue?

8 Q No. I mean on the motion for new trial.

9 A Oh, I did. Yes. It was denied.

10 Q And you got a ruling on the to continue, too, didn't
11 you?

12 A I did.

13 And I've got to tell you, it was particularly
14 frustrating because, you know, when you go ex parte to
15 request funding, you're meeting with the judge personally
16 in chambers. I mean, that's the procedure. So it wasn't
17 like it was some surprise that I was bringing in a new
18 social historian. And I said, "Look, Dr. Loring is
19 burned. I can't get back where we were with her. I've
20 got to do something new, and I've got to get somebody from
21 South Carolina. So here's my application for Jan
22 Vogelsang. It's going to be a while before she's going to
23 be ready."

24 And, you know, I just couldn't imagine a scenario
25 where we wouldn't -- we'd already waited six months,

1 what's another six, right? Or whatever we needed to get
2 to a point where we're ready to go. What was the
3 difference? I mean, here we are ten years later, and
4 we're still dealing with this issue. We could have taken
5 six, eight, ten months, we could have got it done the
6 right way, we could have put the witness on the stand.

7 The other errors would have -- I mean, the mistrial
8 issue might still have stayed alive, but we would have had
9 the testimony that I felt like was necessary for me to
10 satisfy my obligations.

11 Q All right. And to your knowledge, has anybody that
12 might be relevant to Jerry Inman's social history passed
13 away?

14 A I know his mother's passed away. His stepfather may
15 have, too, at this point because I have not had any
16 communication. But I know he was not in great health back
17 when we were going through this. I hope that his sister
18 has not because she is -- she was a compelling witness, in
19 my opinion.

20 Q And you recall the time frame when Jerry's mother
21 passed away?

22 A You know, I want to say it was within about eighteen
23 months of the conclusion of round two.

24 Q Okay. Round two, you mean the April 2009 trial?

25 A Yes. April 2009. Sorry.

1 Q Okay. To this day, do you understand why you weren't
2 given that time?

3 A Well, if you're asking me my opinion of why I wasn't
4 given that time, it is -- from where I sat, it appeared
5 that everybody was sick of this case, everybody -- not
6 defense counsel, but -- and they wanted a conclusion,
7 period. I mean, we'd been under intense public scrutiny,
8 we had gavel-to-gavel coverage, we'd had issues with mics
9 being turned on. I mean, it was -- it was intense, you
10 know. There were potentially political ramifications. I
11 mean, the whole thing was just -- like I think the idea
12 was we're going to get through this, get a resolution, and
13 then we'll worry about what happens later, later.

14 MR. GROSE: I would move 29 and 30 into evidence, if
15 I haven't already done so.

16 THE COURT: Any objection?

17 MS. BUTTERBAUGH: No objection, Your Honor.

18 THE COURT: Without objection, Applicant's 29 and 30
19 are admitted.

20 (WHEREUPON, Applicant's Exhibit Numbers 29 and 30 were
21 admitted into evidence.)

22 BY MR. GROSE:

23 Q And before I leave the social historian, y'all did
24 have a mitigation investigator, right?

25 A We did. Carolyn Graham.

1 Q All right. And what was her role?

2 A So Carolyn's role was to help us find witnesses to
3 help us obtain documents, to help organize and put
4 together communications between social historian or, in
5 this case, Dr. Price and any other experts that we had.
6 You know, she was -- she was very good at what she did.

7 Q And she would have obtained the documents that went
8 to Dr. Loring or Ms. Vogelsang?

9 A My specific memory is that my in-house investigator
10 Danny Hyatt was the one that, with Carolyn Graham, they
11 took everything we had. Because, of course, we'd been in
12 trial mode, so I think everything was in my office.

13 But obviously, those documents included -- especially
14 the prison records were pretty voluminous that we had
15 acquired from Florida, from North Carolina, I want to say.
16 And back from his hometown in Tennessee, there may have
17 been some documents there, too. But all of that was in --
18 was packaged up.

19 So Carolyn obtained those records, they were in our
20 records office, and Danny and Carolyn took it, I believe,
21 to Jan Vogelsang and let her go through it. Or we
22 provided it here in my office. I can't remember which.

23 Q Did you consult with Dr. Donna Schwartz-Watts?

24 A Yes.

25 Q Of course, she's now remarried and is

1 Dr. Schwartz-Maddox.

2 A Correct.

3 Q And did you consult with her throughout the case?

4 A So there was a point in time where -- and I don't
5 remember when this was exactly, but there was a point in
6 time where we made the decision that we were not going to
7 call her as a witness at the sentencing phase of the
8 trial. I mean, obviously, she'd been a witness for the
9 guilty plea for his competency, but we determined not to
10 call her during the sentencing phase.

11 Q Okay. And I'm going to show you what's marked as
12 Applicant's Exhibit Number 32.

13 A (Reviews exhibit) Yes. I remember this clearly.

14 Q And what is that?

15 A This was the report that Dr. Maddox created in our
16 case.

17 Q Okay. And if you could look at your time sheets for
18 a second, and you go back to the first page.

19 A Yes.

20 Q As early as your first day on the case,
21 February 6, 2007, were you already having conferences with
22 Dr. Schwartz-Watts?

23 A Yes.

24 Q And I want to show you what's been marked as
25 Applicant's Exhibit 31. Does that reflect whether or not

1 you had funding for Dr. Schwartz-Watts?

2 A It does.

3 Q Okay. Now, do you recall at the guilty plea whether
4 or not it was on the record that Dr. Schwartz-Watts, now
5 Dr. Maddox, was going to be a witness during the
6 sentencing phase?

7 A I don't remember that being on the record.

8 Q Did she continue to do work on the case afterwards?
9 After the guilty plea, I mean.

10 A Let me put it this way. I don't remember when she
11 did her workup on Mr. Inman that resulted in -- well, I
12 guess so she's got dates of evaluation are up to and
13 including June 15th of 2007, so that would have been a
14 couple of months before -- no. That would have been a
15 year, basically, before the trial.

16 Q Okay. I'm going to hand you Applicant's Exhibits 33
17 and 34.

18 A (Reviews exhibits) Yes.

19 Q And does that reflect that she continued to do work
20 after the guilty plea, after she appeared in court?

21 A Yes. So if he was at her office on August 28, 2008,
22 that would have been right before the September trial.

23 Q And do you recall whether or not she recommended a
24 consultation with Dr. Gregg Dwyer?

25 A I remember his name being mentioned. And if she did,

1 then I wouldn't dispute it. I just don't have a specific
2 recollection of that.

3 Q Okay. I'm going to hand you Applicant's Exhibit
4 Number 35. Do you recall that?

5 A (Reviews exhibit) You know, in all honesty, I really
6 -- the date's throwing me off a little bit. December 5th,
7 '08, would have been after the initial trial. I don't
8 honestly remember this. I'm not saying it didn't happen,
9 I just don't have an independent recollection of this.
10 But obviously, he saw Mr. Inman December 5, 2008.

11 Q Okay. And did Dr. Schwartz-Watts, now Dr. Maddox,
12 offer a diagnosis of Mr. Inman?

13 A I believe she did in her report in particular. I'm
14 sorry. If you can point me to a page, I'll ---

15 Q Well, and maybe that's not a fair question. Let me
16 just withdraw that question.

17 What was your understanding of why Dr. Maddox wanted
18 to consult with Dr. Dwyer?

19 A So the basis for the answer of this question is just
20 I know the -- I think I know the expertise for Dr. Dwyer,
21 and Dr. Maddox had been engaged because she had an
22 expertise in the same area that dealt with sexual
23 dysfunction and sexual issues and that kind of thing. And
24 Dr. Dwyer, in prior experience or other interactions with
25 him, I knew that he had a specialty in that area, too.

1 And obviously, since this was a series of rapes and then a
2 rape-murder, that was part of potentially what we might
3 put up as mitigation. But I don't honestly remember
4 exactly why we sent Jerry over to Dr. Dwyer. I cannot
5 remember that.

6 Q Okay. Now, earlier today I think you testified that
7 part of mitigation is trying to explain why something
8 happened; is that right?

9 A Correct.

10 Q Why the crime happened. And yesterday, you talked
11 about Jerry's remorse and acceptance of responsibility.
12 Do you recall that?

13 A Yes, sir.

14 Q And do you recall testifying about Jerry not
15 understanding why he would have the urges to do something
16 like this that he knows is wrong?

17 A Yes.

18 Q Okay. Do you know what biastophilia is?

19 A No.

20 Q Do you know whether or not biastophilia can be
21 treated with medication and therapy?

22 A No.

23 Q If I posed a hypothetical to you that Jerry Buck
24 Inman has a sexual paraphilia called biastophilia that can
25 be treated with therapy and medication, would you consider

1 that to be important mitigation?

2 A So I would want to know what the clinical elements of
3 it were for the diagnosis, you know. My recollection was
4 that I felt like from Dr. Maddox, she gave us a report at
5 some point that was anticipated to be for the actual
6 mitigation trial. And that's -- for some reason I
7 remember that. And I remember that it was more of a
8 recapitulation of here's what he's done so he's got this
9 diagnosis as opposed to here's what he's done and it's a
10 treatable thing that we can do something about.

11 I mean, we -- during -- and especially the initial
12 stages with Mr. Inman, I was desperate for some help to --
13 from a clinical standpoint, a treatment standpoint because
14 you'd go meet with him sometimes, and he couldn't
15 function, I mean, he couldn't talk to you or wouldn't talk
16 to you. I described it on a number of occasions as it was
17 like a computer and it was in an endless loop. You just
18 couldn't -- you needed to hit control/alt/delete or
19 something to get it back. He just was nonresponsive in a
20 lot of ways. And then on other occasions, he would be
21 difficult to communicate with. He had ideas about what he
22 wanted to do.

23 I mean, it was -- I really felt sorry for him in a
24 lot of ways. I mean, he was obviously in a lot of pain
25 over what was going on.

1 So I don't know what biastophilia is, so I can't
2 answer your question without knowing more about it. If I
3 put my shoes -- if I put myself in my shoes back then, I
4 would have wanted to know could it have been? Absolutely.
5 Would I have wanted medication to help him if it would
6 help him? Absolutely.

7 MR. GROSE: Beg the Court's indulgence, Your Honor.

8 Just as a matter of housekeeping, Your Honor, I
9 believe the last set of exhibits I gave Mr. Bannister have
10 not been moved into evidence probably.

11 THE COURT: Are there any that have been submitted
12 for identification not been moved for admission?

13 THE REPORTER: 31 through 35 have not been admitted.

14 MR. GROSE: And I would make the motion to admit
15 them.

16 THE COURT: Any objection?

17 MS. BUTTERBAUGH: One moment, Your Honor.

18 Your Honor, with the -- no objection with the
19 exception of Number 35, which was the one that
20 Mr. Bannister had no recollection of.

21 THE COURT: All right. So Applicant's Exhibit
22 Numbers 31, 32, 33, 34 are admitted without objection.

23 MS. BUTTERBAUGH: Yes, Your Honor.

24 (WHEREUPON, Applicant's Exhibit Numbers 31, 32, 33 and 34
25 are admitted into evidence.)

1 THE COURT: As far as Exhibit 35, do you have -- who
2 has it?

3 MS. BUTTERBAUGH: That one we would object to simply
4 because he has no recollection of it, no independent
5 recollection. So we would just object to that coming in
6 under this witness and would move that if it would come
7 in, it would come in under a different witness who does
8 have a recollection of it.

9 THE COURT: Excuse me. Was this submitted as a part
10 of an ex parte funding order?

11 THE WITNESS: Judge, if it got paid, it certainly
12 would have been submitted as an ex parte funding order.

13 THE COURT: Where would be -- well, do you know if
14 there was a service provided by Dr. Dwyer?

15 THE WITNESS: I don't deny that we sent Mr. Inman to
16 Dr. Dwyer. I just -- the date is what's throwing me off.
17 I don't recall doing that in December of 2008. But, you
18 know, I just don't know is the problem. I just don't
19 remember. I'm sorry. I don't. But I want to be truthful
20 about it.

21 THE COURT: Well, all it is is a billing, right?

22 THE WITNESS: That's right. It's just a bill.

23 THE COURT: Does it say for what firm to take the
24 case?

25 THE WITNESS: Let's see. Yes. It says for Jerry

1 Inman, clinical interview, prep for interview. And it's
2 services were provided for, and it's got my name, Jim
3 Bannister, and my address. All that's correct.

4 THE COURT: What's the objection to it? That he did
5 not see Dr. Dwyer?

6 MS. BUTTERBAUGH: It's just that his independent
7 recollection of it, Your Honor.

8 THE COURT: Oh, would that have been kept as a part
9 of your professional -- I mean, if you had to go back to
10 your office this afternoon, could you find something like
11 that? I'm not going to ask you to do it. I'm just asking
12 if it's normally kept in a ---

13 THE WITNESS: I'm sure I could find the funding order
14 for it. Now, whether or not I could have found this
15 particular document . . .

16 THE COURT: All right. I'm going to let it in for
17 what it's worth.

18 (WHEREUPON, Applicant's Exhibit Number 35 was admitted
19 into evidence.)

20 MS. BUTTERBAUGH: Thank you, Your Honor.

21 THE COURT: That's an old-fashioned ruling in the
22 13th circuit. All right.

23 MR. GROSE: And we would tender the witness, Your
24 Honor.

25 THE COURT: Pardon?

1 MR. GROSE: We would tender the witness.

2 THE COURT: Oh, for cross-examination. All right.

3 It's 1:00. What sort of cross do you have for
4 Mr. Bannister? How much time do you think you need?

5 MS. BUTTERBAUGH: It will be a fairly lengthy
6 cross.

7 THE COURT: Very well. We'll break for lunch then.

8 (WHEREUPON, a recess is taken at 1:04 p.m.)

9 (WHEREUPON, Applicant's Exhibit Numbers 36, 37, 38, 39 and
10 40 were marked for identification.)

11 (WHEREUPON, proceedings reconvened at 2:25 p.m.)

12 THE COURT: All right. We're back on the case of
13 Jerry Buck Inman vs. The State of South Carolina,
14 2012-CP-39-918.

15 Now, in talking to Mr. Inman on the telephone this
16 morning, I thought his number was 5226, but he says 5256.
17 The reason I was sort of curious, I'm looking at order
18 denying dismissing. Maybe I've got it wrong on my order
19 to begin with. I've changed it to 5256. Is that right?

20 MS. BROWN: According to the printout, Your Honor,
21 from SCDC, it's 5256.

22 THE COURT: Okay. I've changed it. I just want to
23 be sure.

24 All right. Mr. Bannister, are you ready to proceed?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right.

2 MS. BUTTERBAUGH: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. BUTTERBAUGH:

5 Q Mr. Bannister, good afternoon. It's good to see you
6 again.

7 A Hey.

8 Q How are you?

9 A I'm fine.

10 Q Give us an idea kind of what you were facing when
11 you're first appointed to this case.

12 A Well, the case was all over the news. It was clear
13 that they had -- that the State had evidence, DNA evidence
14 linking Mr. Inman to the crime. It was clear that this
15 was, you know, a very innocent, uninvolved victim. In
16 other words, she was just picked out and had no prior
17 involvement with Mr. Inman. She was a young student at
18 Clemson, had lead a really exemplary life and was just as
19 sympathetic a victim as you could find.

20 And so when we started out, it was -- it was a
21 difficult case to try to develop issues and mitigation.
22 And, frankly, Mr. Inman didn't make that very easy for us.

23 Q So this case went unsolved for about two weeks with
24 this intense media coverage as they searched for a
25 suspect, correct?

1 A That's my memory, yes. I mean, I wasn't involved at
2 that point, but yes.

3 Q Okay. And so when they started looking for Mr. Inman
4 after they got this CODIS hit, this DNA hit from the
5 carpet cuttings -- and he was found in Tennessee, correct?

6 A That's my understanding, yes.

7 Q And no connection to South Carolina? No connection
8 to Tiffany Souers?

9 A None.

10 Q And he is a registered sex offender, correct?

11 A Yes. He had been released recently from Florida
12 Department of Corrections, in fact.

13 Q Because he had committed two burglaries, two
14 kidnappings, and another rape even before he had committed
15 the murder of Tiffany, correct?

16 A I know there were two people who were victims of
17 Mr. Inman's in the time period that he was out from the
18 Department of Corrections. What those crimes were, I
19 don't remember. I know they were rape, but whatever else
20 was involved would be in the record.

21 Q And that was in that gap between his release from
22 prison in Florida and the murder of Tiffany?

23 A Yes. That's my memory.

24 Q And he also had -- Mr. Inman and two prior
25 convictions for escape, correct?

1 A I remember one. Whatever his record is is what it
2 was, but I do remember escape was an issue for us.

3 Q Okay. And then Mr. Inman confessed to the murder of
4 Tiffany Souers, correct?

5 A That's correct.

6 Q And at least twice, once to Tennessee agents and then
7 to SLED agents.

8 A Yes. I read both of those.

9 Q Okay. And he went into detail about the rape and the
10 murder.

11 A He did.

12 Q And then during those confessions, he also confessed
13 to the crimes in Tennessee and the crimes in Alabama --
14 and the crime in Alabama, correct?

15 A If you're referring to the two other ladies that were
16 the victims between Florida and his eventual arrest, yes.

17 Q Okay. And the facts of those crimes also came out
18 during the penalty phase.

19 A They did.

20 Q Correct.

21 So prison had not rehabilitated Mr. Inman, correct?

22 MR. GROSE: Objection. Calls for speculation.

23 THE COURT: Are you qualified to give a -- I think it
24 is speculative based on -- unless you can qualify him as
25 an expert on ---

1 MS. BUTTERBAUGH: Well, in his opinion because he
2 had -- Mr. Inman had been in prison, he had two
3 convictions for escape. In his -- after his release, he
4 had committed crimes, and in Mr. Bannister's opinion, as
5 his attorney ---

6 THE COURT: Well, actually, that's why
7 attorney-client ---

8 MS. BUTTERBAUGH: --- in his preparation for a
9 defense. Pardon me.

10 THE COURT: Excuse me. I think that's why attorneys
11 hire, what is it, psychiatrists and others to give
12 testimony as to whether or not they would be rehabilitated
13 or would be a threat to society.

14 I just -- I mean, you can go ahead and answer the
15 question if you feel comfortable with it, but I'm just
16 saying that's usually reserved for an expert.

17 THE WITNESS: So I'll say this from my perspective.
18 Obviously, in terms of presenting the mitigation side of
19 the case in the sentencing phase, we were interested in
20 presenting what evidence we could that would show that he
21 would not be a danger if he was confined, because he's
22 looking at life without parole or the death sentence,
23 period. So considerations about what might happen if he
24 were released back into the public just really were never
25 relevant to what we were looking at.

1 In terms of my own experience with Mr. Inman over the
2 months that we dealt with him and tried to get him not
3 only legal help, but also help in the sense that we were
4 trying to put him in a better place by virtue of having
5 gone through the process with various experts, treatments,
6 that kind of thing, I do feel like he made a tremendous
7 amount of progress in terms of just coming to grips with
8 what he had done, where he had been and, frankly, not
9 being at least quite so angry with himself. I mean, we --
10 I got to see him baptized in the prison down in -- here in
11 Pickens. That was a real powerful moment, and one that I
12 felt was very sincere. In fact, I tried to bring that out
13 in mitigation, but he objected to that because he felt
14 like somehow it cheapened it.

15 BY MS. BUTTERBAUGH:

16 Q When Mr. Inman was arrested, he told agents there
17 that he wanted the death penalty, correct?

18 A Yes. That is correct.

19 Q And he told police he was an animal for what he did
20 to Tiffany.

21 A I believe that's correct, yes.

22 Q And I'll refer you to page 68 of the record, if you
23 can.

24 A Okay.

25 Q And that's where he says, starting at Line 17, and if

1 you just continue down, that's where he talks about -- if
2 you can read that for the Court, please.

3 A Lines 24 and 25 you're talking about?

4 Q Yes. If you'll start at Line 17, please.

5 A Sorry.

6 "QUESTION: And in that conversation, were you aware
7 and did you have a discussion with him that he had or was
8 being sought for the murder of a 20-year-old college
9 student?

10 "ANSWER: Yes, sir.

11 "QUESTION: In that conversation, did he tell you how
12 he thought of himself as a result of the murder and rape
13 of Tiffany Souers? How did he characterize himself?

14 "ANSWER: He stated, 'After that shit right there,
15 I'm a fucking animal.'"

16 Q And if you could turn to page 93 of the record for
17 me, please.

18 A (Witness complies) Okay.

19 Q And if you could look at -- Court's indulgence one
20 moment -- starting at Line 8, please. Or I guess Line 7
21 to give it context.

22 A "QUESTION: And what were you talking to him about
23 extradition? I wanted to make sure ---

24 "ANSWER: I wanted to make sure that he understood we
25 were in Tennessee, and we had charges in South Carolina,

1 and I was going to explain to him the extradition process.
2 And I asked him, 'We have criminal charges against you in
3 South Carolina, do you want to go back to South Carolina
4 with us?'

5 "He then and asked me, 'Does South Carolina have a
6 death penalty?'

7 "I thought he meant in reference to the extradition
8 and whether he wanted a hearing or whether he wanted to
9 waive it. And I can read to you what he said to me. I
10 quoted him in my report. He stopped me and he said,
11 'Don't you understand that's what I want?'"

12 Q Continue, please.

13 A "QUESTION: Before you go into that, what did you
14 explain to him about the death penalty in South Carolina?

15 "ANSWER: I told him that his -- the charges that he
16 had didn't automatically qualify him for the death
17 penalty, that the prosecutor had to elect to seek the
18 death penalty against him, that kind of thing, and there's
19 a process we have to go for or go through. And that's
20 when he stopped me and he said, 'Don't you understand
21 that's what I want? I killed a 20-year-old college
22 student with everything to live for.' And then he said he
23 deserved to get the death penalty."

24 Q Thank you.

25 So you were faced with a client that wanted to plead

1 guilty and then wanted to receive the death penalty.

2 A Yes. Definitely at the beginning.

3 Q At the beginning.

4 A Of the case when we started.

5 Q So when would that have changed?

6 A Well, so I think it was pretty consistent that he
7 wanted the death penalty in large part because he felt
8 like that was what would give the Souers the most relief,
9 and part of his reasoning, from what I can tell in my
10 conversations with him, is that he wanted -- that was his
11 way of trying to make up for what he had done by taking
12 their daughter's life.

13 So when I was discussing the proffer that we made for
14 the potential settlement for life without parole, one of
15 the ways that -- or really the only reason that Jerry
16 signed that document was because we had talked to him
17 about the fact that now we had this issue in the case,
18 that it was likely to result in years of litigation, and
19 in particular, that if the Souers determined that they
20 would rather have the litigation end, then he would be
21 looking at life without parole. And he was -- he was
22 willing to sign the document because he wanted it to be
23 what their wishes were going to be.

24 And we didn't know whether our offer would be taken
25 to the Souers, we didn't know whether the solicitor would

1 consider doing it, but we were fairly certain that there
2 wasn't any way that the Solicitor's Office was going to
3 agree to a life sentence without getting someone from the
4 Souers family on board to say, you know, we just don't
5 want this to go on any further. That was what we
6 believed.

7 So to just paint with a broad brush and say he always
8 wanted the death penalty, I don't think that's a fair
9 characterization of the entire period of the
10 representation, if that makes sense.

11 Q You wrote multiple letters to your team and to
12 Mr. Ariail seeking to plead guilty and seeking the death
13 penalty; is that correct?

14 A So it's a little hard to answer that question.
15 Depending on the time frame you're talking about. But
16 certainly, at the beginning of the case, it was very clear
17 that he wanted to plead guilty. That's why I was doing
18 the research relevant to whose right was that, what role
19 could I play, how far could I push it in terms of allowing
20 him to plead or not allowing him to plead guilty. So I
21 would agree with that characterization at least up through
22 the first trial in September of '08.

23 MS. BUTTERBAUGH: One moment, Your Honor.

24 (WHEREUPON, Respondent's Exhibit Number 4 was marked for
25 identification.)

1 MS. BUTTERBAUGH: For the record, Your Honor, this is
2 a series of letters.

3 BY MS. BUTTERBAUGH:

4 Q Mr. Bannister, if you could start with these letters
5 that ---

6 THE COURT: Excuse me. Could someone give me the
7 exhibit numbers?

8 THE WITNESS: Your Honor, let's see. I've got
9 Exhibit Number -- Respondent's Exhibit Number 4, if I'm
10 reading this handwriting correctly, and Respondent's
11 Exhibit Number 1.

12 THE COURT: Thank you.

13 BY MS. BUTTERBAUGH:

14 Q Let's start with Respondent's Exhibit Number 4. This
15 is a series of letters from Mr. Inman starting in August
16 of 2006 that you wrote to Mr. Ariail and Mr. Culbertson.
17 And have you seen these letters?

18 A Yeah. At least the ones to Mr. Culbertson, and I
19 feel pretty sure I've seen those. Assuming that the one
20 that Mr. Ariail received was provided to me in discovery,
21 I'm sure I've seen them, too. I don't have any specific
22 recollection of these letters, but I'm sure I would have
23 gone through them.

24 Q And if you can give the Court kind of a brief
25 overview of what these letters describe. Because these

1 are letters that he wrote to your team expressing his
2 desire to plead guilty, correct?

3 A Well, so the dates on these start August 9, 2006.
4 And go through, let's see, the October 5th one 2006, I
5 can't remember what the date was that I was appointed, but
6 certainly by the time you get to January 2nd of '07, so
7 I'd say those last three I would have been involved in the
8 receipt of those. I saw the prior ones.

9 But it was consistent with what -- the position we
10 were in at that stage in the case was that he wanted to
11 plead guilty and he wanted to get the death penalty. And
12 in some ways, he worked very hard to make that happen.

13 Q Right. And if you look at this other letter that was
14 addressed to you January 21, 2008 . . .

15 A Let's see. Yeah. That would be Number 1.

16 Q Yes. Respondent's Number 1. And if you could, start
17 -- if you could read into the record starting from "from
18 the start of all this."

19 A Let's see. "From the start of all this, I wanted to
20 plead guilty, waive mitigation and waive all appeals. You
21 and Mr. Culbertson asked me to compromise on some things
22 in the hopes it would maybe help someone else down the
23 line. At this point, I have compromised so much that when
24 it comes down to it, I haven't been able to do anything I
25 set out to do except to plead guilty. That's okay. It's

1 now water under the bridge.

2 "You're a good person, and I understand everything
3 you and Mr. Culbertson and Mr. Dejong are trying to do and
4 am grateful to have you as my attorneys, but you need to
5 try to understand why I'm trying to accomplish what I'm
6 trying to. Nobody who has ever been to prison can ever
7 fully understand what it is like. I am 38 years old, and
8 if given a life sentence, I probably will have a good 30
9 or 40 years left to exist in prison, because existing is
10 all you do in prison. If given the death penalty, I at
11 least know the end will not be so long and I will finally
12 have peace."

13 Do you want me to keep going?

14 Q Yes, please. Just this next paragraph.

15 A Okay. I feel like I'm missing a page, because it
16 jumps to, "Even if she's not, it don't really matter. I
17 have a request for you, and I respectfully ask you to do
18 this with your most persuasive argument, put as much
19 effort in it as I'm sure you're putting into the issue
20 about Bob Ariail."

21 MS. BUTTERBAUGH: Thank you.

22 And this is how we received it in discovery, Your
23 Honor.

24 THE WITNESS: Okay.

25 MS. BUTTERBAUGH: And we move to make these

1 Respondent's 1 and 4 part of the record.

2 THE COURT: Any objection?

3 MR. GROSE: I don't know that -- I don't know that he
4 identified all of them from Solicitor Ariail. He said --
5 I don't think he said he had received those.

6 THE WITNESS: I just don't have a specific
7 recollection of -- I mean, they're not addressed to me.
8 I'm sure I was provided them, and if Mr. Culbertson and if
9 Mr. Ariail got them, and I would have gone through them as
10 part of my preparation. But can I say sitting here that
11 Respondent's Exhibit 4 is something I recognize? No.

12 The one dated January 21, 2008, to Mr. Bannister, I
13 do have -- I have -- this is at least tickling my memory
14 because I know we had some conversations about what was
15 getting ready to happen in April, and this was -- so I'm
16 sure I got this one, especially. Yeah. So Respondent's
17 Exhibit Number 1 I'm sure I received and went over.

18 THE COURT: All right. Respondent's Exhibit Number 1
19 is admitted without objection.

20 (WHEREUPON, Respondent's Exhibit Number 1 was admitted
21 into evidence.)

22 THE COURT: Respondent's Exhibit Number 4 being a
23 series of letters, I think it has been identified as
24 letters that he would have received and he does not deny
25 that he did receive them, and with that I feel like they

1 at least, what is it, qualify for admission to the record
2 for what they are worth.

3 (WHEREUPON, Respondent's Exhibit Number 4 was admitted
4 into evidence.)

5 MS. BUTTERBAUGH: Thank you, Your Honor.

6 THE COURT: Apparently, they did not make that much
7 of an impression on him at the time he received them.

8 THE WITNESS: It was nothing new. Let me put it that
9 way.

10 BY MS. BUTTERBAUGH:

11 Q Let's talk about the team a little bit that you put
12 together for the case. Who was your co-counsel?

13 A Symmes Culbertson, and I guess in a technical sense,
14 John Dejong.

15 Q And Symmes Culbertson had been part of this case from
16 the beginning, correct?

17 A That's correct. I actually joined after him.

18 Q Okay. And they were pretty experienced criminal
19 defense attorneys, correct?

20 A Yes.

21 Q And who was your mitigation investigator?

22 A That was Carolyn Graham.

23 Q And what was her job?

24 A Her job was to collect records, interview potential
25 witnesses, help facilitate communications between those

1 witnesses and getting records to various experts that we
2 hired. And she was particularly adept at obtaining prison
3 records and ferreting out public documents that we could
4 obtain from the various schools, locations and entities
5 that had had some interaction with Mr. Inman.

6 Q And who was your fact investigator or private
7 investigator?

8 A Danny Hyatt.

9 Q And what was his job specifically?

10 A Danny was -- he was one of the people on our team
11 that was fairly close to Mr. Inman in terms of they had
12 more of a friendly relationship. Mine was often
13 adversarial with Mr. Inman. And he was involved with fact
14 witnesses to the extent that we had those. There weren't
15 a lot since we weren't going to have a guilt phase. There
16 were some in Tennessee that related to mitigation. Danny
17 was good at helping track down people. He could talk to
18 them on the phone. And anyway, he was an integral part of
19 what we were doing.

20 Q And you stayed in pretty close contact with your
21 team, correct?

22 A I did. I want to say we tried to have at least
23 weekly meetings between most of us. It was impossible for
24 everybody, but yes.

25 Q So you also had someone in your office working with

1 you, a paralegal or administrative assistant, someone like
2 that?

3 A Yes. My paralegal Cherie Aiken.

4 Q And did that person collect mitigation documents, put
5 everything together in binders, books, folders, something
6 like that?

7 A Yes.

8 Q So you had everything in your office, correct?

9 A The file, you're talking about?

10 Q Yes.

11 A Yes.

12 Q So did any of that ever leave your office?

13 A Oh, I'm certain that we carried parts of it around
14 and to various places. In fact, we took -- we took our
15 file, I want to say, to different death penalty CLE's
16 where we could basically -- the CLE was you take your
17 file, use the collective wisdom to see if you can help
18 generate different ideas about how to defend the case. I
19 know we did one in San Francisco, and I have a memory of
20 doing one in Washington at Lee maybe? I can't remember.
21 It was somewhere else.

22 Q But you kept a master list, kind of, if you will,
23 kind of all of these binders together so you would have a
24 master list of the mitigation?

25 A I don't know if we had a master list. If there was

1 one in the file, then, you know, we did. But I usually
2 tend to keep things in folders with labels on it. I
3 really rely on my paralegal to keep things organized. She
4 maybe has her own way of doing it, but when I need
5 something, she gets it to me.

6 Q Okay. So you were able to get records from
7 applicant's father's military service and his medical
8 records, his prison records, all of that?

9 A I can't recall there being any records we thought
10 were relevant that we were unable to get ahold of,
11 although the educational records, it seems like there just
12 wasn't a whole lot that we could pull up on that.

13 Q Whose educational records?

14 A Mr. Inman's, like grammar school, middle school, high
15 school.

16 Q Okay. But you did get his records to show that he
17 quit school early in eighth or ninth grade, correct?

18 A I think we were aware of when he left school, but
19 what grade that was, I can't -- I mean, I don't know
20 sitting here.

21 Q Okay. But the judge heard that Mr. Inman started
22 using drugs because you guys collected a life history for
23 him through your mitigation investigation, that he started
24 using drugs young when he was like 9 or 10 years old,
25 correct?

1 A When he started I don't have a recollection of, but
2 yes, he had a history of drug abuse.

3 Q And then he ran away from home, quit a lot of jobs
4 just because he would get bored.

5 A I don't honestly remember that, but I don't deny that
6 that was, in fact, the case. But I don't have a
7 recollection of that one way or another. I mean, I know
8 he wasn't permanently employed anywhere. I do remember
9 that. It seems like he went to jail very early, very
10 young in North Carolina. I want to say around 18 or
11 something like that. So he really didn't have a lot of
12 work history that was, I guess, available to me. He spent
13 most of his life incarcerated.

14 Q And as part of your investigation, you obtained the
15 prison records of Mr. Inman, correct?

16 A Yes.

17 Q And those records included his mental health
18 information.

19 A Yes. I believe so.

20 Q Okay. And did you provide those to Dr. Price and to
21 Dr. Donna Maddox -- Dr. David Price and Dr. Donna Maddox?

22 A Yes.

23 Q And Dr. Price, was he your psychological expert who
24 testified during the sentencing phase?

25 A He was.

1 Q And he testified in detail to all of Mr. Inman's
2 psychiatric diagnoses in prison and to his other
3 diagnoses, correct?

4 A He gave his opinion of what the -- of what his
5 diagnosis was and what his history was, yes.

6 Q And so his prison records show that his first suicide
7 attempt in prison was due to the length of a sentence for
8 sexual assault in North Carolina, correct?

9 A I'm sorry. Can you ask that one more time?

10 Q His prison records show that his first suicide
11 attempt was due to the length of his sentence in the
12 sexual assault in North Carolina, correct?

13 A Okay. So I'm hearing your question. It's like two
14 parts. So he made a suicide attempt in North Carolina.

15 Q Uh-huh.

16 A I remember that. I believe that was the one where he
17 cut his throat. Whether or not the reason he cut his
18 throat was because of the length of the sentence, that
19 part I can't answer. I don't -- in fact, I don't believe
20 that was -- well, there may be something saying that was
21 the reason, but I don't believe that to be the reason.

22 Q And why not?

23 A Well, I think Jerry had a number of issues all
24 relating back to the sexual trauma that he had seen for
25 pretty much since his -- since his infancy through his

1 formative years, so I would say that that would be more of
2 the cause for that. But he did it in a very ritualistic
3 way in this instance in North Carolina, you know. He had
4 -- it was almost like having this blood offering he was
5 making. It was a very strange incident.

6 Q But that sexual abuse was testified to by Dr. Price,
7 was testified to by Dr. Loring, and it was also testified
8 to by his sister Denise Baker, correct? So Judge Miller
9 heard about that from three different witnesses.

10 MR. GROSE: Objection. Compound question.

11 THE COURT: Overruled.

12 THE WITNESS: So if the question is did the sexual
13 abuse from Jerry's past come into evidence, then you're
14 correct. It came in through Denise. Dr. Price had
15 information about it, and so did Dr. Loring.

16 BY MS. BUTTERBAUGH:

17 Q Correct.

18 A Correct. Yes.

19 Q So Judge Miller heard that evidence from numerous
20 witnesses.

21 A He heard that evidence from three witnesses that I
22 recall.

23 Q Thank you.

24 So Dr. Price, during his testimony, he gave fairly
25 detailed information about this -- you know, this

1 mitigation information, and he talked about reviewing
2 15 three- to four-inch thick notebooks full of this. If
3 you'll look at page 258 of the record is where he talks
4 about reviewing all of this information.

5 A Okay.

6 Q And then he says -- if you'll read that starting on
7 Line 13, please, 13 to Line 20.

8 A "QUESTION: What did you review? What records did
9 you review? Who did you talk to to reach these
10 conclusions?

11 "I reviewed 15 three- to four-inch notebooks of
12 biographic information on Mr. Inman including records
13 about his family, his incarceration, newspaper clippings,
14 all of his mental health treatment. Actually, there are
15 about 3,000 pages of mental health treatment while
16 incarcerated. I talked to treatment providers that have
17 seen him."

18 Q Thank you.

19 So Dr. Price reviewed details about Jerry's past,
20 about his family, and he said 3,000 pages from the time he
21 was incarcerated and about the details of his past,
22 correct?

23 A Line 18 and 19 it says "there are about 3,000 pages
24 of mental health treatment while incarcerated."

25 Q I mean, that is a thorough review of Mr. Inman's

1 past, correct?

2 A He reviewed the documents I gave him.

3 Q Okay.

4 A Whether that's thorough or not is -- I mean, I wanted
5 him to review everything, so he did.

6 Q So what was Dr. Price's diagnosis; do you recall?

7 A I recall it in my own terms.

8 Q What were your own ---

9 A So I think the diagnosis was a dissociative
10 personality disorder, which the way I thought about it was
11 it was like different pieces of a pie that certain -- that
12 because of the sexual abuse, Mr. Inman had
13 compartmentalized the abuse into one part of his psyche.
14 And then there were -- that creates a dissociation from
15 the other parts where as in normal people, the good and
16 the bad is all mixed up. And Mr. Inman, the bad got
17 slotted to one spot, and his personality fractured into
18 different -- into different pieces.

19 And that actually fit with what we would see because
20 it was sometimes like talking to a different person when
21 you go to meet with him. He had a very artistic side to
22 him that would be -- apparently, he would just go into
23 this -- he'd just start drawing and making these --
24 they're really amazing drawings with the pen and ink he
25 had to use inside of a jail. I mean, it was unbelievable

1 what he could do with that. But it would only come on in
2 certain times. It was not like he had different names and
3 different personalities like Suzie one here, Jeff here,
4 Todd there, but they were definitely different aspects of
5 his personality that were present.

6 With me, most of the time what I saw was sort of the
7 legal hypothetical let's go through all this and help me
8 figure out what the legal ramifications are going to be of
9 what we're doing.

10 Q And that's part of what you wanted to show, correct?
11 That he had these mood disorders, that he had, you know,
12 these different types of diagnoses, correct?

13 A That's right. And it also explains how you got
14 somebody who's willing to let us go forward with some of
15 the issues we were doing, but at the same time is saying I
16 want to plead guilty with these letters we were getting.
17 I mean, it was sometimes night and day, depending on which
18 Jerry you were talking to. My hope had been that with the
19 time we were going to have is to move forward.

20 So what I was expecting with that is to move forward
21 and that there would be time and treatment enough that we
22 would have here in Pickens with what I anticipated being
23 the additional time for Jan Vogelsang to see if we
24 couldn't get even further to kind of integrating these
25 different parts back together. I mean, we were working in

1 that direction with him and had come a long way with him
2 being able to finally accept that he had done what he had
3 done to make a profession of faith with his minister from
4 Tennessee, be baptized. I mean, it's hard to explain how
5 far we came from when we started the first day I met him
6 when he could hardly talk because he was just so
7 dysfunctional at that time.

8 Q Page 272 of the record, if you look at Line 18, could
9 you please read for the Court starting Line 18.

10 A All right. Will you just tell me who this is we're
11 talking about so I can get some context?

12 Q This is still David Price ---

13 A David Price. Okay.

14 Q --- David Price testifying.

15 A All right.

16 Q Line 18.

17 A All right.

18 "QUESTION: All right. Let's go back for a second to
19 the -- you mentioned a couple of things about his family
20 history, and I guess we've alluded a little to what was
21 going on there. What did you find significant from the
22 records about his family history?

23 "ANSWER: You know, his records are pretty
24 significant for being sexually abused, physically abused,
25 a very unstable environment, his mother having periods of

1 anger, and at that time, they thought she was depressed."

2 You want me to keep going?

3 Q Yes. Please.

4 A So we're on page 273. "You have one stable
5 relationship which was with his grandfather who died when
6 he -- his maternal grandfather who died when he was young.
7 He was abandoned by his father who sexually abused him,
8 and he basically acted out the conflict in the home
9 beginning at the age of 10 with drugs, failing in the
10 school system and ultimately winding up on the street.

11 "QUESTION: You mentioned that his mother was
12 schizophrenic. What is schizophrenic?

13 "ANSWER: Schizophrenic is basically a genetic
14 disorder. It's a major psychotic disorder. Pretty much
15 if you've ever been diagnosed with schizophrenia, you'll
16 never get health insurance again. It's a life-long
17 chronic disorder. She's paranoid schizophrenic according
18 to the records, which means she probably had delusions of
19 people trying to harm her or harm her family. You could
20 have depression consistent with schizophrenia."

21 Q That's fine. Thank you.

22 And what did Mr. Inman think about you bringing up
23 his mother in all of this mitigation that you talked
24 about?

25 A Oh, golly. I mean -- well, sort of where we landed

1 was going back to the research regarding, you know, what
2 -- what could we do and what could he do. We took the
3 position, right or wrong, but I believe it was right, that
4 strategy was our call one way or the other. But he pretty
5 much drew a line in the sand that said I'm not
6 participating if you put my mother on the stand. So our
7 -- I guess, if you will, our compromise with him was leave
8 us alone with this other stuff, and we'll agree not to put
9 your mother up on the stand.

10 So, you know, you've got to make tough choices with a
11 client sometimes who's, one, mentally ill, two, you're not
12 sure which one you're talking to depending on where you
13 get. But that seemed to suffice, so we were able to get
14 into this.

15 You know, he would tell us that none of that was true
16 when we've got records to the contrary and things of that
17 nature, but it was a constant balancing of what is he
18 going to allow us to do, what is going to be one step too
19 far, are we still being able to meet our obligations to
20 present mitigation.

21 Q Now, Dr. Price also diagnosed Mr. Inman with a sexual
22 paraphilia; isn't that correct?

23 A If you tell me that is, I wouldn't deny it. I
24 mean ---

25 Q Page 270 of the record, Line 17 through -- or Line 17

1 through I think 22, really.

2 A Yes.

3 Q Specifically, it was a serial rapist, correct?

4 MR. GROSE: I'm going to object. That's out of
5 context.

6 THE COURT: Restate your question.

7 BY MS. BUTTERBAUGH:

8 Q If you could read into the record Line 17.

9 A "QUESTION: You also said that you had diagnosed him
10 with sexual paraphilia.

11 "ANSWER: I would.

12 "QUESTION: And can you expand on that?

13 "ANSWER: He's a serial sexual -- he's a serial
14 rapist. That's the paraphilia that I will give him. I'm
15 not -- it astounds me that he wasn't diagnosed when he was
16 in the Department of Corrections in Florida. Looking in
17 the records at Florida, they documented in the records
18 that he does not have a sexual disorder and he did not
19 meet the criteria for the sexual offender treatment
20 program in the Florida prison when he clearly did."

21 Q Thank you.

22 So Judge Miller heard that testimony that he had a
23 sexual paraphilia.

24 A It was testified to in court, and the judge was
25 present, yes.

1 Q And so he found that as a specific mitigator,
2 correct, and found that in the sentencing order?

3 MR. GROSE: Again, that's out of context. Objection.

4 MS. BUTTERBAUGH: One moment, Your Honor.

5 (WHEREUPON, Respondent's Exhibit Number 5 was marked for
6 identification.)

7 MS. BUTTERBAUGH: For the record, Your Honor, this is
8 the sentencing order.

9 BY MS. BUTTERBAUGH:

10 Q If you could identify that for the record, please.

11 THE COURT: What's the number on it?

12 THE WITNESS: Respondent's Exhibit Number 5, Your
13 Honor. This is the sentencing order dated April 22, 2009.

14 MS. BUTTERBAUGH: Your Honor, I'd like to move
15 Exhibit 5 into the record.

16 MR. GROSE: No objection.

17 THE COURT: Without objection, State's Exhibit
18 Number 5 is admitted.

19 (WHEREUPON, Respondent's Exhibit Number 5 was admitted
20 into evidence.)

21 BY MS. BUTTERBAUGH:

22 Q And if you could look at page 6, please.

23 A (Witness complies) Okay.

24 Q Okay. And do you see where it lists the specific
25 mitigating factors and circumstances that Judge Miller

1 found?

2 A I see a heading Finding in Consideration of
3 Nonstatutory Mitigation Circumstances. Is it under that
4 section?

5 Q If you could read that under the mitigating
6 circumstances, please.

7 A All right. If you're looking for the part relating
8 to Dr. Price's describing the defendant as a serial
9 rapist, if that's what we're talking about ---

10 Q Yes. The sexual paraphilia.

11 A --- it's on page 4 about the fourth line from the
12 bottom. Is that what you're referring to? Dr. Price also
13 describes the defendant as a serial rapist.

14 Q Yes. Thank you.

15 A Okay. So that's on page 4 of Respondent's Exhibit
16 Number 5.

17 And the context behind that and the reason that fell
18 into the category of mitigation, not that necessarily he's
19 being diagnosed as a serial rapist, but the fact that
20 under the sexual predator statutes that were then enforced
21 in Florida, Claude Tournay was the guy who was at the
22 Florida Department of Corrections who was cast with
23 reviewing Mr. Inman's history and determining whether or
24 not he should be released or go to their -- the mental
25 ward that was part of the Department of Corrections so

1 that he could be treated as a -- for his sexual deviancy.

2 So what we were trying to tie in Dr. Price to what we
3 knew Mr. Tournay was going to be testifying to, or at
4 least exposing for Mr. Tournay which was that he just
5 missed it completely. In other words, we wouldn't have
6 been here if Mr. Tournay had not missed all the facts that
7 were relevant to determining Jerry Buck Inman should go
8 over to our mental health treatment facility, should not
9 be released. I mean, that was -- that was how that tied
10 together.

11 Q But didn't Mr. Inman sort of fall into the cracks
12 with Florida statute according to Mr. Tournay's testimony?

13 A That may have been what Mr. Tournay said, but that
14 didn't fit with the documents that Mr. Tournay had in
15 front of him, and it didn't fit with what the criteria
16 were for Mr. Tournay to determine whether or not he should
17 be released.

18 Q In your opinion.

19 A No. I think you can look at the documents and see
20 that he -- it was -- it's not a very difficult analysis.
21 You basically go through and look and say -- and this is
22 from memory, but it was really a check the box. Are there
23 more than one victim? Are the victims outside of the
24 familial relationship? And maybe age or something else
25 was involved, but it was really a non -- there wasn't a

1 whole lot of discretion in there. It was literally look
2 at this, check the box and be done with it, and he should
3 have. That's my memory, anyway.

4 Q Okay. But Denise Baker also testified. This was
5 Jerry's sister, correct?

6 A Yes.

7 Q Okay. And she spoke very candidly about their
8 childhoods.

9 A Yes. I would say it was incredibly difficult
10 testimony for her.

11 Q Okay. And she talked about the seizures that
12 Mr. Inman suffered when he was a child and about ---

13 A It seems like I remember that, yes.

14 Q Okay. And she also talked about their mother and
15 their mother's mental health problems.

16 A Right. Yes.

17 Q And she also talked about the sexual abuse that she
18 suffered when she was a young child, his sister.

19 A That's right.

20 Q And so the judge heard from someone who lived with
21 Jerry, not just from a social worker, from a doctor,
22 correct, about the abuse that they suffered as children?

23 A The judge heard from Denise about it, yes.

24 Q So from your investigation and from your mitigation
25 investigation, was there anything that you think from

1 Jerry's childhood that was not presented?

2 MR. GROSE: Objection. That's -- that calls for
3 speculation and matters that are outside of his personal
4 knowledge.

5 THE COURT: Overrule. Because obviously, he was the
6 attorney that represented the individual. I trust he had
7 some method of deciding what is important and what is not.

8 So you can ask him -- and the question, I think, is
9 was there anything that he didn't -- or was there anything
10 that was not covered as he would have anticipated as the
11 attorney.

12 THE WITNESS: As the attorney, what was not covered
13 was ---

14 THE COURT: Let's do this. I sort of confused the
15 question. Restate your question, maybe, to be satisfied.

16 BY MS. BUTTERBAUGH:

17 Q As the attorney, was there anything during the
18 mitigation investigation, anything that you uncovered that
19 you felt was not presented during the sentencing phase?

20 A Yes.

21 Q And what was that? Or uncovered from Jerry's
22 childhood. I'm sorry. I was more specific in my original
23 question.

24 A So it's so hard to answer that question because I
25 cannot remember everything that Dr. Loring testified to

1 and everything that we had planned on her testifying to.

2 I remember being incredibly frustrated, because at
3 least initially when we were preparing for her testimony,
4 we spent a lot of time going through the testimony, how we
5 were going to march it out and present it in the most
6 effective way as possible.

7 When we got into the second phase of the trial in
8 April of 2009, it was the most bizarre scenario I've ever
9 been involved with as an attorney. The judge called our
10 former expert witness as a witness of the Court and began
11 asking direct questions, at which point I was objecting
12 because there were -- there were things he was asking that
13 I thought were going to elicit information that I would
14 not have intended to bring out had I been the one
15 directing the question.

16 It was also frustrating because there were things
17 that he did not bring out. I mean, there were a number of
18 questions that said can you remember anything else that
19 you and Mr. Bannister talked about, or words to that
20 effect. You know, and Dr. Loring is doing the best she
21 can to remember stuff that happened, let's see, September,
22 April -- so six months without really being involved in
23 it.

24 Furthermore, there were developments that had
25 occurred since that that I thought were important to roll

1 into the mitigation, and I was anticipating with, again,
2 the time I thought we were going to get with Jan
3 Vogelsang, there would be even more that we could add to
4 it.

5 So I can't agree with the statement that everything
6 got in that should have gotten in.

7 Q Thank you.

8 Now, Dr. Maddox was your forensic psychiatrist. She
9 was your expert during the ---

10 A Yeah. Yes.

11 Q Okay. And you had spoken about her, I'm sorry,
12 during direct as well. Her report was introduced during
13 the competency hearing that he was competent to plead.

14 A Right. Her first report was introduced during the
15 competency hearing, yes.

16 Q Now, she met with Mr. Inman between the guilty plea
17 in August of 2008 and the beginning of the sentencing of
18 September of 2008, correct?

19 A Let's see. So remind me of the guilty plea date one
20 more time, please.

21 Q August 2008. August 19th.

22 A Yes. So yes. She met with him at least -- or did
23 part of her evaluation at least one more day than that.
24 I've got it. August 28, 2008.

25 Q Okay. And that was with Dr. Dwyer, correct?

1 A Yes. So the consultation with Dr. Dwyer was 8/28/08.
2 I got billed for it in December of '08. That's what was
3 throwing me off on the dates.

4 So I didn't remember there being a consultation with
5 Dr. Dwyer after the initial trial, and so the consultation
6 with Dr. Dwyer, at least from the records I've got, says
7 8/28/08. And that fits better with my memory of his
8 involvement with Dr. Maddox.

9 Q Okay. So did Dr. Inman -- I'm sorry -- Mr. Inman
10 inform Dr. Maddox and Dr. Dwyer of his life history,
11 specifically his sexual history?

12 A Yes.

13 Q And did she debrief you on that meeting with
14 Mr. Inman?

15 A I received a report.

16 Q Okay. And she told you that Mr. Inman admitted to a
17 total of 12 forcible rapes in his lifetime, correct?

18 A Yes.

19 Q And so do you recall why you did not call Dr. Maddox
20 as a witness in the penalty phase?

21 A So this is my recollection. I got the report that
22 was going to be prepared for purposes of the first part of
23 the mitigation trial on, I want to say -- well, let's see,
24 I got it on -- sometime after September the 2nd of 2008.
25 When I got the report, I felt like that the -- well, for

1 one thing, it was in writing, which I understand why she
2 put it in writing and I don't blame her for putting it in
3 writing, but I would have preferred not to have had it in
4 writing. I just -- I knew I was going to have to turn
5 that over to the solicitor if I was going to go forward.

6 And part of the diagnosis was that he was antisocial
7 personality disorder, which I'd had personal experience
8 with Mr. Ariail in cross-examining witnesses about
9 antisocial personality disorder. And I did not feel like
10 that was going to be a helpful place for us to be in the
11 mitigation section of our trial.

12 I knew that I had Dr. Price and he had this
13 dissociative personality disorder, which I felt like, from
14 a strategy standpoint, was a better way to marry what had
15 happened in Jerry's life, help explain how that helped
16 create the mental disorder and how that mental disorder
17 then contributed to the crimes. I felt like that the
18 other diagnoses that were part of the report were more of
19 a description of what he had done, but it didn't really --
20 at least in the written portion of the report didn't
21 really help describe the why of it.

22 And I was really focused, at least in terms of the
23 strategy, on having a why-are-we-here kind of moment in
24 the trial. And I felt like, with Dr. Price with the issue
25 of Florida not having kept him in jail, that helped

1 explain, in a lot of ways, why we ended up where we were,
2 that is, why Mr. Inman had ended up in trial on a
3 murder-rape conviction.

4 Q So was all the psychiatric records from Mr. Inman,
5 those were what Dr. Maddox reviewed, Dr. Dwyer reviewed,
6 Dr. Price reviewed. So your strategy was to have
7 Dr. Price present, because you felt he was the one to
8 present the best mitigation evidence of the three.

9 A Yes. Based on -- yes. Based on reports I was
10 looking at and trying to marry that with the strategy we
11 were putting forward, yes, I believe that Dr. Price was
12 going to do that in a better way than the report that I
13 had had from Dr. Maddox.

14 Q Okay. Thank you.

15 A And I particularly was not interested in getting into
16 a fight over antisocial personality disorder. I saw that
17 as that was going to be something -- another issue that
18 just wasn't something we were going to -- that I didn't
19 want to have to deal with because I didn't think it was
20 helpful.

21 Q So after the prosecutorial misconduct in the
22 sentencing, first sentencing hearing, you began to seek
23 another social worker, correct?

24 A Eventually. My memory is that we did that a little
25 sooner than what the records have shown me. But yes.

1 Q Okay. And so, again, how successful were you with
2 that?

3 A Well, I felt like we were successful in getting Jan
4 Vogelsang to agree to come in in what was a very
5 controversial -- and it even got worse from February on,
6 but a case with that much attention and that kind of a
7 fight that was going on was just not an easy sell to
8 anybody to get them to agree to get involved.

9 But -- so finding somebody in South Carolina, because
10 you've got to remember, we felt like we had to find
11 somebody from South Carolina to avoid the issue Solicitor
12 Ariail had raised previously with Dr. Loring being from
13 Georgia, and then finding somebody who was willing to get
14 involved in a case that had taken on the aura that this
15 one had, to have anybody out there that would join the
16 team was, I felt like, a victory. I mean, it took a lot
17 of cajoling. I mean, I basically told Jan that she was --
18 it seems like I remember telling her she is it. I didn't
19 have anybody else.

20 Q But it wasn't until January that you got the funding
21 for that, correct?

22 A That's correct, yes.

23 Q And why was that, that it wasn't until January?

24 A So we were still in the process. So early on, like
25 I'd say October, November -- of course, you've got

1 Thanksgiving in there, but October, November we were
2 spending a lot of time trying to convince the solicitor
3 that the best resolution to this case was to withdraw the
4 death penalty and have it be life without parole so that
5 we could end the litigation.

6 You know, I took the -- I worked on the prosecutorial
7 misconduct memorandum, and I wanted to take that to him so
8 he could see -- I mean, I really wanted to explain, look,
9 I don't want to go down this road if we don't have to. I
10 feel like I have to as a lawyer because this is what --
11 representing this client has created this situation, and
12 the record is what it is. I wanted the solicitor to see
13 that this was not going to be an easy row for either one
14 of us to hoe, and so I was hopeful, as had been done in
15 the previous case with this issue, that a compromise would
16 come out of that and we would end up with life without
17 parole.

18 So a lot of my time on the front end was spent where
19 I thought we were going to gain the most traction and get
20 as far as possible. When I realized that that was not
21 going to happen, that I finally got a definitive kind of
22 answer from the Solicitor's Office, then I realized, okay,
23 we're going to have to start turning our attention back to
24 getting ready to finish this trial.

25 And I won't say that I wasn't dealing with it at all

1 during this time period, but I was trying to get names, I
2 was trying to get phone numbers, I was trying to get in
3 touch with people. You had Christmas holidays were coming
4 up in December, and somewhere in all of this, I ended up
5 herniating a disc in my back and had to go get surgery.
6 And that might have been after I got her on board, but
7 that caused a delay in another trial. It was very odd
8 having your medical diagnosis put in the newspapers and on
9 TV for the reason we were having a continuance of the
10 case, but that was just where we were.

11 Q But you had other team members that could have helped
12 out with some of this, correct?

13 A And I'm not saying they weren't helping. I'm just
14 telling you, from where I was sitting, we was -- Carolyn
15 was helping us track down and talk with people. She was
16 instrumental in helping convince Jan, I think. Now, I
17 wasn't present for these conversations, but knowing her
18 like I did, I think she was working pretty hard to
19 convince Jan this is it. We don't have anybody else. And
20 so Jan finally said yes, but, you know, she was always,
21 look, I have to -- I want to say she had a death penalty
22 trial coming up within a couple of months, and she said,
23 "I just can't turn my attention from that until I get
24 through with it."

25 And I was a little surprised that she wanted to go

1 back and kind of redo some of the work that Dr. Loring had
2 done, but I want to say there was some ethical issues in
3 there that she wanted to make sure she could testify
4 firsthand knowledge. There were other things that made
5 sense to me, but it just meant we were going to kind of
6 have to start all over again.

7 Q At that time, you're talking about, you know, dealing
8 with Mr. Ariail and trying to shift this to a life
9 sentence ---

10 A Right.

11 Q --- you're saying that Mr. Inman was on board with
12 that. He didn't want the death penalty.

13 A No. I think what I've said -- and if I didn't say it
14 clearly, let me see if I can be as clear as I can this
15 time. He always wanted the death penalty, but primarily,
16 because from where I was sitting, in my view, because he
17 felt like that was what would help the Souers the most.
18 And he felt such guilt and remorse over what he had done
19 that he felt like that would be the best thing for them to
20 give them some closure, some resolution, whatever.

21 So when this issue popped up in the case with
22 Dr. Loring and when she was not going to be able to be a
23 witness anymore, then it was clear that we had a whole
24 another round of litigation that was going to be coming,
25 and we had enough reports that we had gleaned from

1 newspaper articles and other things that at least
2 Tiffany's mother seemed to be ambivalent about whether the
3 penalty should be life without parole or death, and that
4 we felt like there was an option there that she might be
5 willing to say, look, I'm okay with a life without parole
6 sentence if it will end this litigation.

7 In talking with Jerry and explaining to him that if
8 the solicitor accepted life without parole, then it would
9 have to be in a situation where the Souers were going to
10 be okay with that, they would have to give the solicitor a
11 cover in the news and politically if he was going to be
12 able to do that and, I guess, in our view, sell it to the
13 public.

14 And so understanding that if that's what the Souers
15 wanted and they were going to be given the option and he
16 was okay with signing the document saying, okay, I don't
17 want life without parole, I'd rather have the death
18 penalty, but if this is going to be what the Souers want,
19 I'm willing to sign onto it.

20 Q But you never got confirmation from the Souers that
21 was what ---

22 A No. Communication with them, they had a lawyer very
23 early in the process, and we reached out to him. But he
24 said no more communication with us.

25 Q And this was not something that Solicitor Ariail was

1 going to agree to, correct?

2 A I mean, ultimately, he chose not to agree to that. I
3 think there was a period of time where he was certainly
4 considering it and was seeking his own counsel with his
5 own people in the office and maybe outside the office, so
6 I don't want to say just -- he didn't turn me flat-down no
7 when I delivered the documents and had a meeting with him
8 about it. They sort of took it under advisement, and then
9 they got back to me I can't remember when, but my guess
10 would be it would be around, you know, late in the year.

11 Q So did you speak with Dr. Loring during the interim
12 between that first sentencing hearing September 8, 2008,
13 and the second, which was seven months later, April of
14 2009?

15 A I can't say that we had no communications, but we
16 didn't have -- really, if we were talking, it was more
17 about like the issue of, okay, initially, maybe where are
18 we? What's your attorney advising you to do? I just need
19 to know so we can start making plans.

20 I know for sure at some point I recognized, and I'm
21 pretty sure I let Judge Miller know that it just wasn't
22 going to happen with Dr. Loring. We had to get something
23 -- we had to do something else.

24 Q Okay. So why did you make that decision not to
25 question her about mitigation in that second sentencing

1 hearing?

2 A There were a lot of reasons. The primary one was I
3 didn't feel like the process at that point was fair.
4 That's just the bottom line. The position I had been put
5 in was take this witness cold that you had spent weeks
6 preparing, we want you to cross-examine her so you can fix
7 what the solicitor has done in this case.

8 I knew that she wasn't prepared in the sense that she
9 had been for the original trial. I also knew that she
10 didn't know some of the facts that we had uncovered or had
11 talked to Jerry about in going forward since the trial,
12 and I knew -- or I felt like at least that even if she was
13 willing to offer testimony, that there would be some
14 pullback just by virtue of the fact that she's in the same
15 courthouse, she's in there with Solicitor Ariail, and he's
16 the one that had threatened her in the first place.

17 Add to that the fact that he had, in my view, just
18 sent Georgia authorities down to arrest her and had her in
19 her -- I mean, I remember hearing, and so my impression
20 was that this was still very relevant to her ability to
21 testify was that she had literally been in her house
22 calling people on her phone saying, "What do I do?
23 They're trying to break in my house." I mean, it was --
24 to hear her tell me about it, it was -- and to describe
25 it, it was a very traumatic experience.

1 So I just didn't feel like she was ever going to be
2 in a position to offer the kind of testimony that I
3 anticipated putting forward with the mitigation with a
4 social historian. And it wasn't just social history. I
5 mean, there was more to it than that. So I was mad.

6 Q If you had questioned her, what would that have done
7 to the prosecutorial misconduct claim?

8 A I mean, so really what your question is asking me is
9 what would the Court of Appeals have done with the issue
10 had I chosen the strategy of going ahead and trying to
11 question her. I just wasn't going to participate in what
12 I saw as -- and maybe this is too strong of language, but
13 as a farce. This was not -- we were -- I felt like we
14 were there for one reason and one reason only. It was
15 time to get this case over, and despite what Mr. Bannister
16 or Mr. Culbertson were doing, it was going to end at this
17 trial. And we were going to the Court of Appeals, going
18 to PCR court, some habeas petitions deal with it from that
19 point forward, but we were done. And, you know, it was
20 just hang on and do the best you can. I mean, it was --
21 I'll say it was just a -- it was crazy. It was -- I've
22 never been a part of anything like that before or since.

23 Q Did you seek anybody's advice about that?

24 A Oh, God. Yes.

25 Q Do you recall who?

1 A Well, so I'm sure that I was speaking regularly with
2 my father who practices law with me and has, at this
3 point, 38 years of experience, back then 28, 30 years of
4 experience. I know probably I was talking with John
5 Mauldin and I was speaking with Mr. Dudek down in
6 appellate counsel, too. I mean, I don't know if we were
7 talking about this issue particularly, but, you know, I
8 had a host of people I was in pretty regular contact with
9 if I needed advice, you know, kind of a lawyer's lawyer
10 situation including, I think, Desa Ballard at one point.
11 I was calling her about what my -- you know, the position
12 I was being put in.

13 MS. BUTTERBAUGH: Your Honor, this is Respondent's 3,
14 an e-mail.

15 BY MS. BUTTERBAUGH:

16 Q If you could identify that for the Court, please,
17 Mr. Bannister.

18 A So Respondent's Exhibit Number 3, this is -- I
19 believe this is an e-mail from Desa Ballard to me.

20 And so I had called her -- I can't remember when
21 exactly, but anyway, I had -- when I have had ethical
22 issues that I felt like I needed outside counsel's advice
23 on. I called Desa Ballard on other occasions, and we have
24 used her as an expert to comment on Solicitor Ariail's
25 misconduct.

So I called her because she was already familiar with the case and kind of knew the background, so I didn't have to go through a lot of windup to where we were. And so I was asking her to give me her opinion on where my ethical responsibilities lay in any number of different hypotheticals that I was going to be put in the middle of during the trial, the second trial of the case in April 2009.

MS. BUTTERBAUGH: I'd like to move Respondent's 3
into the record.

MR. GROSE: No objection.

THE COURT: Beg your pardon?

MR. GROSE: No objection.

THE COURT: All right. Without objection,
Respondent's Exhibit Number 3 is admitted.

(WHEREUPON, Respondent's Exhibit Number 3 was admitted
into evidence.)

BY MS. BUTTERBAUGH:

Q And what was her advice to you in that e-mail?

A Well, there's a lot of advice in here.

(Reviews exhibit) So her ultimate advice was: In the nature of law practice, conflicting responsibilities are encountered. Within the framework of these rules of professional conduct, however, many difficult issues of professional discretion can arise. Such issues must be

1 resolved through the exercise of sensitive professional
2 and moral judgment guided by the basic principles
3 underlying the rules. These principles include the
4 lawyer's obligation to zealously to protect and pursue a
5 client's legitimate interest within the bounds of the law
6 while maintaining a professional, courteous and civil
7 attitude toward all persons involved in the legal system.

8 Now, if that isn't a lawyer advice to a lawyer, I
9 don't know what else is. So, you know, it's kind of like
10 the guy in the balloon who's asking for directions and
11 says, "Where am I?" and the guy responds, "You're in a
12 balloon." You know, it's accurate, but it's not
13 particularly helpful.

14 Q But her advice generally to you was to object to her
15 coming in, not to call her as a witness so that you
16 preserve the issue, correct?

17 A Well, not just because you're preserving the issue,
18 but also because, as a zealous advocate and my moral
19 judgment, was that to participate in what was the attempt
20 to cure the solicitor's error was a violation of my
21 zealous advocacy. In other words, that should have been
22 my witness, I should have been able to put her up in a way
23 that I chose, and I should have been able to get out of
24 that witness a direct in accordance with the rules and
25 with the strategy we were doing. And I was getting denied

1 the ability to do that. And I wasn't going to piecemeal
2 it or do it halfway, and I didn't feel like it was fair to
3 require me to do that. And if that was going to waive the
4 issue that had been created, then that made the decision
5 that much easier. But I just wasn't going to -- I wasn't
6 going to participate in something I saw as fundamentally
7 unfair to the client.

8 Q Weren't you chastised by the judge?

9 A Multiple times.

10 Q And for this -- but for this particular issue?

11 A Oh, yeah. I mean, he wanted me to do what he wanted
12 me to do. I mean, he wanted me to engage with Dr. Loring,
13 and I made a decision not to do that because I didn't
14 think it was fair. I didn't think I could meet my ethical
15 obligations in that situation. I didn't understand why we
16 couldn't simply postpone the case until I could get Jan
17 Vogelsang up to speed. I mean, that would have been all
18 it would have taken.

19 And parts of this issue might not have gone away, but
20 the primary one would have been solved, which is I would
21 have had an opportunity to put up mitigation in the
22 fullest sense. I mean, he had an Eighth Amendment right
23 to put up any mitigation, and they were trying to dictate
24 how that was going to happen. And by doing that, they
25 were limiting what we could put up without really knowing

1 because they didn't know what we knew.

2 Q But you also had Dr. Price, you also had the sister,
3 you also had plenty of other mitigation that came out that
4 the Supreme Court itself found, because when Dr. Loring
5 did testify because the Court said to you I find that this
6 witness is necessary for me as a fact-finder, the Supreme
7 Court said this cures the prejudice because you had a lot
8 of other witnesses come in, correct?

9 MR. GROSE: Objection. Compound question.

10 THE COURT: I think so.

11 MR. GROSE: Calls for ---

12 THE COURT: Let's do this. Break it down to a simple
13 question and you can, what is it, develop each --
14 subsequent the question to the response.

15 BY MS. BUTTERBAUGH:

16 Q What other mitigation witnesses came in during the
17 sentencing phase for you?

18 A Which one are we talking about?

19 Q The first one, the first sentencing phase.

20 A Okay. Again, this is by memory. So we had
21 Dr. Price, we had Denise, we had our prison adaptability
22 expert. I can't remember if we had any other family
23 members or other folks. It seems like that was maybe it
24 at the first. Dr. Loring was going to be -- at that time
25 was going to be the last witness.

1 And then in the second trial, we put up the minister
2 who had baptized Jerry, we put up the -- I want to say
3 another member of Jerry's family. I can't remember.

4 Q A stepfather?

5 A Maybe a stepfather. Yeah. A stepfather. Yeah.

6 Q And then the Court called Dr. Loring, correct?

7 A That's right.

8 Q And do you recall why the Court called the stepfather
9 -- I mean, excuse me, Dr. Loring?

10 A The Court made Dr. Loring the Court's witness and
11 called Dr. Loring to the stand to hear what mitigation
12 testimony, if any, she would be able to put in. What the
13 judge's reasonings were behind that, I would be guessing,
14 but, I mean, that's what he did.

15 MS. BUTTERBAUGH: One moment, Your Honor.

16 BY MS. BUTTERBAUGH:

17 Q If you could look at page 658 of the record, please.

18 A (Witness complies) Okay.

19 Q Okay. And if you could read Lines 14 through Line 3
20 of page 659.

21 A You want me to read it to myself or into the record?

22 Q I'm sorry. Into the record.

23 A Okay. Page 658 Line 14, "THE COURT: All right.

24 Well, I'm going to call Dr. Loring. I think she would aid
25 the fact finder, me, I guess, in the determination of the

1 resolution of this case.

2 "And I want to put in the record that she was the
3 number one choice for the social historian in this case
4 and that the defense has had no contact with her since
5 September. That's what was represented to the Court. She
6 was rehabilitated. She's up here despite the fact that
7 she failed to testify in September because of her feelings
8 of intimidation which I did rule was prosecutorial
9 misconduct but did not arise to the level of requiring
10 mistrial or reversal because of the lack of prejudice
11 which is cured in part by her presence, voluntary presence
12 today. So I think it's necessary to put her up to ensure
13 that these claims of due process violation are put to
14 rest, so I'm going to call her as a witness."

15 Q Thank you.

16 And then do you recall what the South Carolina
17 Supreme Court found on the direct appeal dealing with this
18 issue?

19 A My memory is that they found that there was
20 prosecutorial misconduct, that they found that it did not
21 rise to the level of prejudice requiring a mistrial or a
22 reversal, and that the Court's attempts to eliminate the
23 issue were sufficient.

24 Q Thank you.

25 Moving on to the material witness warrant, did

1 Dr. Loring contact you at all when the Georgia
2 investigators first tried to serve her with the rule to
3 show cause?

4 A If she did, I don't remember that. I mean, there
5 were -- I contacted Bill Godfrey letting him know that
6 there was going to be this out-of-court subpoena -- sorry
7 -- out-of-state subpoena request, then there was the
8 hearing was held on that, and then, obviously, the
9 subpoena got issued. It would have been unusual for her
10 to call me or me to call her because she was represented
11 by Mr. Godfrey during all this.

12 So I don't think so, but if you've got something that
13 indicates I e-mailed her something, then I'll defer to
14 that.

15 Q Okay. And do you know if she contacted anyone else,
16 anybody else on your team?

17 A I know that when the police were there getting ready
18 to break in the door, I want to say one of the people she
19 called was Mr. Culbertson, that he got on the phone with
20 her. But I'm -- you'll have to ask him that. I think I
21 remember being told that.

22 Q But nobody contacted her, or she didn't contact
23 anybody previously originally when they were there to
24 serve the subpoena, the out-of-state subpoena.

25 A So we disagree on whether they were ever there to

1 serve the out-of-state subpoena. I don't believe they
2 ever made a reasonable effort to let her know that they
3 were there for service of process. I don't believe they
4 ever made any real attempt. Now, I wasn't in Georgia. I
5 wasn't given the opportunity to cross-examine those
6 witnesses, but I don't believe that happened.

7 I believe that what happened was Georgia went
8 straight to the arrest procedure based on the documents
9 that I read and that I made part of my motion. They got
10 the request, they put it in, they said they won't take a
11 warrant, she won't take service, and they went out to
12 arrest her.

13 Q So did you have any conversations with Dr. Loring
14 during that time period -- so you're saying that you think
15 there was no gap, I guess is what you're saying. You're
16 saying that it was just the come to arrest her, period.
17 So you didn't have any conversations during the day on
18 that day between subpoena ---

19 A Dr. Loring?

20 Q Yes.

21 A No. Hu-uh. I don't believe so. I mean, it would
22 have been -- I have -- I do not believe we had a
23 conversation. I really don't recall having much of any
24 conversation with her after September of '09.

25 Now, I've seen the e-mail where we were talking with

1 Mr. Godfrey, and that obviously happened. That's maybe
2 October. But as we were moving on further down the road,
3 no. I mean, she was represented by Bill Godfrey, he was
4 handling that issue. She was just a non -- she wasn't --
5 it wasn't my issue to deal with any further, you know. I
6 mean, I just -- I would have been uncomfortable with
7 offering her any advice about any of that because that
8 wouldn't have been my place, and I wouldn't have felt like
9 that was what I should do.

10 MS. BUTTERBAUGH: Beg the Court's indulgence.

11 BY MS. BUTTERBAUGH:

12 Q So when you mentioned in that -- I'm sorry,
13 Applicant's -- I'm sorry. I'm going to approach the
14 witness. Applicant's 15, when you reference in there that
15 -- I think it's you that Bill Godfrey wants to get out of
16 the case, do you remember why he had wanted to get out?

17 A I think the problem was he was not getting paid. I
18 mean, you have to remember, Bill was sitting in this
19 courtroom in the back row waiting to enter a plea on
20 something, and he was waiting on us to get done or he had
21 finished a plea or something or was just curious. I can't
22 remember. He was just accidentally here. When the whole
23 thing blew up, he was the only other lawyer in the room
24 that wasn't involved in the case. And so Judge Miller
25 recognized him, and Dr. Loring was looking for an

1 attorney, and so Judge Miller just appointed him out of
2 the blue, I mean, literally. And it was the gift that
3 just kept on giving, apparently, and he wanted -- if he
4 was going to be involved like this, he needed to get paid
5 for it.

6 So I don't know that this is what happened, but I
7 think that, at some point, Bill went to Judge Miller about
8 it, said, "Look, if I'm going to keep being in this, I
9 need to get paid." And I want to say that he ended up
10 being with an order to allow him to get payment for
11 services, but I don't know that personally. That's just
12 -- I have some vague recollection of that's what was kind
13 of going on.

14 Q Okay.

15 A And I'll say while I'm at this Applicant's
16 Number 15, one of the things we were looking at, and I
17 keep going back to this, is we wanted her to testify as
18 more than just a social historian. I mean, there were
19 other parts of her expertise, in particular her -- she was
20 an expert in what trauma did to children, and those
21 opinions were kind of a little bit beyond the simple
22 social history of this is what happened and this is -- in
23 particular, you know, some ways that treatment might have
24 been helpful to Mr. Inman, some other things like that. I
25 mean, it just went beyond just, hey, this is a social

1 history and her genogram where she's got the little
2 squiggly lines that show sexual abuse, physical abuse, you
3 know, alcoholism, schizophrenia, all that stuff in the
4 family history. That's why I get so frustrated every time
5 we start talking about Dr. Loring got to testify and all
6 these other people testified, there was more to it than
7 just the social history that I wanted to get out.

8 Q Now, when you talked to her on the stand, before
9 Judge Miller called her as a Court's witness, you guys
10 kind of walked her through a little bit kind of what had
11 happened to her in Georgia; do you recall that?

12 A On the record, you're talking about?

13 Q Yes. Page 472.

14 A Yes. I'm sure I asked her questions about what had
15 happened in Georgia.

16 I was also very irritated that I had gotten an e-mail
17 from the judge saying, hey, everybody calm down. If
18 there's been any indication that any party has interfered
19 with her being here, then we're going to deal with that.
20 And then when I wanted to deal with it, because we had
21 this discrepancy in the written record showing that what
22 had happened down there seemed virtually impossible, that
23 is, the she has been served with a subpoena and refused to
24 accept service and now we're going to have her arrested,
25 when I wanted to have the witnesses brought up here, I got

1 a flat "no." When Solicitor Ariail asked for Dr. Loring
2 to be brought up here, we had a hearing and he got a
3 subpoena. So I didn't feel like I was being treated
4 fairly in that sense at all.

5 So I wanted to at least do what I could to put on the
6 record what had happened to her down there, because it was
7 significant to a lot of different issues. Not only could
8 she testify in a comprehensive and robust way, but also,
9 it went back to sort of the underlying prosecutorial
10 misconduct claim that we were making, because we knew
11 prejudice was part of it. I mean, I was like I'm not sure
12 how it gets any worse than this. I mean, the only thing
13 they didn't do to her was tase her. I'm saying that
14 facetiously.

15 Q I know. But this has been ---

16 A It's for the record.

17 Q This has been litigated during his -- it was
18 litigated before Judge Miller, and then it was litigated
19 again in the direct appeal, correct?

20 A If the -- is the issue about the prosecutorial
21 misconduct, yes.

22 Q And yes. And this issue dealing with Marti Loring.

23 A I mean, the record speaks for itself, yes.

24 Q Correct.

25 A Do I agree with it? No.

1 Q Correct.

2 A I'm still mad about it.

3 MS. BUTTERBAUGH: Yes, you are.

4 Beg the Court's indulgence a moment.

5 BY MS. BUTTERBAUGH:

6 Q One of the things, too, you mentioned was that, you
7 know, going back that you had prepared kind of because you
8 thought that this might be coming because of the Laney
9 case, and you said you had prepared for it, you guys, you
10 started doing the research early that this might be
11 coming. But you never really prepared Dr. Loring for it,
12 correct?

13 A That's correct.

14 Q So ---

15 A I mean, it was an outside shot. I mean, I figured --
16 I didn't mean to interrupt your question, but in terms of
17 preparing for it, I mean, the solicitor had done it once,
18 and it had resulted in a political -- it wasn't a good
19 situation for him in the press, would be the way I put it,
20 and the guy Laney got life without parole.

21 So I was prepared for it, but I really didn't believe
22 that it was going to happen. I mean, it was just one of
23 those things where I was trying to be as diligent as I
24 could, I had a couple of different things we were looking
25 at that we thought the solicitor had done in the past that

1 he might do again, and then, you know, it just happened,
2 and he did it.

3 Q But she wasn't prepared for it.

4 A No, no. I mean, no. We had no way to know he was --
5 no, no.

6 Q But you didn't tell her it might be coming. You
7 didn't give her a heads-up.

8 A No, no. In fact, he had had -- so Dr. Loring was not
9 -- if my memory's right, Dr. Loring was not the expert
10 that Solicitor Ariail did that to in the Laney case. And
11 Dr. Loring had just finished testifying in another case,
12 and it had kind of gone smoothly. And I want to say maybe
13 that guy got life, too. But it wasn't an issue. This
14 issue didn't get raised.

15 So I didn't have any reason to really believe that he
16 was going to jump into it with Dr. Loring. In fact, it's
17 -- you know, when it happened, it was one of those things
18 where I remembered that in the beginning we had done this
19 research back early on in the case, and that's -- I didn't
20 even have it forefront. I had to dig. I mean, it was
21 dead silent in here. I probably took five minutes trying
22 to find that. I mean, the judge was up here kind of, you
23 know, giving me the -- the look like, okay, move on, find
24 it. And I'm like one more minute, just one more minute.
25 Give me a second. I know what I'm looking for. And it

1 was in about three subfolders. I had to pull it up, read
2 it off my screen for the objection. So . . .

3 Q But you could have prepared her for it. You could
4 have let her know that this was a possibility because he
5 had done it before.

6 A You know, if I -- I mean, I could have done a lot of
7 things. I could have done anything short of flying.

8 If I really thought that it was going to be the issue
9 that it turned into, I suspect I would have made an effort
10 to get her somehow certified at least temporarily. I
11 mean, looking back on it, as we were looking at the issue,
12 I think we explored that a little bit to see was there a
13 temporary certification or something we could do that
14 would give her, you know, a license, but it just didn't
15 cross my mind that it was ever going to turn into what it
16 did.

17 MS. BUTTERBAUGH: One minute, Your Honor.

18 BY MS. BUTTERBAUGH:

19 Q If you'll look, again, at Applicant's 15.

20 A Yes, ma'am.

21 Q I think you have it up there. Okay. On page -- if
22 you'll look down at the bottom where the little Bate stamp
23 is at the bottom, page 5-A, a bunch of zeros and a 5.

24 A Okay. A, bunch of zeros and a 5.

25 Q Yeah. If you look up toward the top.

1 A Uh-huh.

2 Q And so this was your e-mail to her. So she is
3 suggesting to you there's a different way, correct, for
4 her to be kind of qualified to testify for you, correct,
5 in these e-mails?

6 A All right. So at the top of 5, what I've got is this
7 is me writing an e-mail to Marti. "Marti, I will help in
8 whatever way I can. Right now it looks like we've got a
9 good shot at negotiating an LWOP deal. It looks like
10 you'll let all of the attorneys you're working for know
11 that this issue exists. If you need me to talk to them,
12 then let me know."

13 So the lawyers -- I think those were the other death
14 penalty cases she was working.

15 Q Correct. But these e-mails, this was her. So that
16 response, it's your response to her after she had let you
17 know on the first page, the very beginning, you agree to
18 qualify -- if you agree to qualify me as a clinical
19 sociologist.

20 A Let me see here. All right. So this is A0001 you're
21 now on?

22 Q Yes, sir.

23 A Okay. At the top, we're talking about?

24 Q Uh-huh.

25 A (Reviews exhibit) All right. So ask me your question

1 again.

2 Q So she's suggesting an alternative to you, correct?

3 A She is. But if you'll keep reading, it says, "But
4 that does not meet your needs, which you suggest relates
5 to my interviewing Denise which involves the special
6 interviewing skills of a clinical social worker, not
7 therapy."

8 So what we were trying to -- and this is what I was
9 trying to describe before is there was more than just the
10 social history that was part of this. We wanted her to
11 tie in a lot of other things that related to the family,
12 what "trauma" means, how you can cure from -- or cure the
13 results of it. Maybe not "cure" is the right word, but
14 therapy would work and things of that nature. That's my
15 memory now. This is a long time ago. But it was more
16 than just the genogram and here's what's in the family.

17 And we were trying to figure out, okay, can we get
18 there if we change how she's qualified. And ultimately, I
19 want to say -- so this is, you know, we're talking about
20 August -- I'm sorry -- October somewhere in the 24th we're
21 still in the very early stages of trying to kind of figure
22 out where are we now, what are the different ramifications
23 for the solicitor's position. And so this is us working
24 through that a little bit, I think.

25 Q And so when you had the meeting with Mr. Ariail and

1 you say we have a pretty good shot at an LWOP deal ---

2 A Uh-huh.

3 Q --- what did Mr. Ariail say to you in response to
4 that?

5 A So -- again, so the time frame here I think is
6 somewhere between September and October based on the
7 e-mails you've provided me. So this is right after it's
8 all happened.

9 So what I am hearing from people that I believe were
10 close to the solicitor was that he was upset that he had
11 let things get this far, that he had created this issue,
12 and that this might be the moment where we could go in
13 like in the Laney case and try to get a resolution.
14 That's my memory of it. Or to some extent that it was
15 like, okay, nobody knows what's getting ready to happen
16 next. I mean, you know, we had the mistrial issues coming
17 at some point.

18 Q But didn't you have a meeting with him and Betty
19 Strom?

20 A We did. We did. And that meeting took place after I
21 had completed the draft, a pretty finalized draft of the
22 motion for prosecutorial misconduct.

23 Q And his response to you was, "I can't do that,"
24 correct? "I cannot" ---

25 A Eventually. But that would have been after I got

1 this e-mail that's in Applicant's Exhibit 15.

2 Q All right. His response to you was, "I can't do a
3 life sentence because the facts of this case don't support
4 it."

5 A He didn't really give me a reason that I remember,
6 just that he wasn't going to do that. And I'm not even
7 sure he told me that. It might have come through
8 different channels and said it's not going to happen, get
9 ready, you know.

10 MS. BUTTERBAUGH: All right. Thank you, Your Honor.

11 THE COURT: Redirect?

12 MR. GROSE: Yes. And I don't think it will be very
13 long, Judge.

14 REDIRECT EXAMINATION

15 BY MR. GROSE:

16 Q Before I forget, you referenced a report from
17 Dr. Maddox from -- not the report regarding competency,
18 but one after that?

19 A Yes.

20 Q Is that it?

21 A This is it. Yes, sir.

22 (WHEREUPON, Applicant's Exhibit Number 43 was marked for
23 identification.)

24 MR. GROSE: And just for the record, we've marked
25 that as Applicant's Exhibit 43 for identification only.

1 BY MR. GROSE:

2 Q Can you look at page 434 of the record in Volume 1?

3 A Yes, sir.

4 Q And to expedite things, I'm going to represent to you
5 that this is the final pages of the September 2008
6 hearing.

7 A Yes.

8 Q And, in fact, if you want to look, maybe start on 433
9 around Line 17 and read through the conclusion of that
10 transcript, please. It ends on 436. You don't have to
11 read it into the record. Just to read it.

12 A Okay. Yeah. Give me just a second. So these two
13 pages, 434 and -- 434 through 436?

14 Q Yes, sir.

15 A Okay. Sorry. (Reviews exhibit.)

16 (WHEREUPON, Applicant's Exhibit Numbers 44 and 45 were
17 marked for identification.)

18 BY MR. GROSE:

19 Q What was the conversation between you and Judge
20 Miller at the conclusion of the September 2008 hearings?

21 A So we were talking about Dr. Loring. I think that
22 the -- I think that the Court was a little bit put out at
23 that time that Dr. Loring was refusing to testify and
24 asserting the Fifth. I think I described earlier that he
25 had gone through, you know, potentially granting her

1 immunity and some of the other things, which I'm not sure
2 the Court has the authority to do.

3 But in any event, he was a little bit put out with
4 her, and he was talking about my motion for a mistrial.
5 And he said, "I'm not going to grant your mistrial." And
6 I kind of took it as at this point, I'm going to continue
7 the case. I felt like he was leaving the mistrial up in
8 the air for me to give me a chance to kind of figure out
9 where I was, gather together the -- I mean, I think we all
10 want to know what sort of the legal framework was going to
11 be for what was going forward.

12 And he was telling me to get another social historian
13 so that Dr. Loring wouldn't have to come back and be part
14 of the case. And I said -- well, basically, he was
15 telling me she was out. And I said, "Well, don't make her
16 completely out," because I figured part of what we were
17 going to have to do is create a record related to the
18 intimidation. I was already anticipating that we might
19 have to call her back to talk about what -- how she had
20 felt about what had gone on and why she had ultimately not
21 become a witness. But I also got kind of specific
22 instructions that I believe from the judge to go -- you
23 know, if it's not going to work, go get somebody else and
24 we'll give you some time, which is what I thought I was
25 doing from September to January was really what I had --

1 the instructions I had gotten from the Court.

2 Q And do you think it was reasonable to think that you
3 were going to have time to get another expert?

4 A Yeah. I think I said I was shocked as we got closer
5 to April and it looked like this was really going to
6 happen, they were going to force me in a position where I
7 couldn't put up Jan Vogelsang because she just wasn't
8 ready and hadn't had time to get ready. It really caught
9 me off guard. I mean, I had been -- I had felt like I had
10 been pretty informed about, you know, dates, timing, what
11 we were going to be doing. I mean, there was -- I mean,
12 it was a hard-fought litigation, but we all were on the
13 same page as to what was going to be scheduled. And this
14 really -- I don't want to say it came out of left field,
15 but nobody said, hey, we don't care whether Jan Vogelsang
16 is ready or not. We're going forward in April.

17 Q Right.

18 A You know, I had like maybe, I want to say, two, three
19 weeks. Whenever I put together the motion for a
20 continuance and started working on those affidavits is
21 roughly when I started feeling like they may actually try
22 to put me -- "they" being the judge, I guess, put me in
23 the position where we're going to go forward, and I'm not
24 going to be able to have Jan.

25 Q And that's a good point, because it's been sort of

1 presented as the appellate issue, preserving the record
2 was the misconduct issue, but it was also the separate
3 issue of your continuance motion; is that correct?

4 A I thought that was a huge deal, yes.

5 Q Okay. Now, I may have told you not to start soon
6 enough. If you could go to 433 and look at lines --
7 beginning at Line 8.

8 A (Reviews exhibit.)

9 Q You've testified a minute ago that you thought Judge
10 Miller might have been a little irritated with Dr. Loring.

11 A Right, yes.

12 Q And does that reflect it in those lines in the
13 record?

14 A Yes. And I took that to mean that he was going to
15 consider holding her in contempt as a material witness for
16 not having -- not offering testimony. I disagreed with
17 his reasoning there, because I think, in his mind, he'd
18 done what was necessary to assure she could not be
19 prosecuted, and I personally did not believe that that was
20 possible because I didn't think he could grant her
21 immunity, especially after what Solicitor Ariail had said.

22 Q Right.

23 A And I didn't think he could bind the Attorney
24 General's Office, and much less other solicitors in other
25 circuits because she had other cases that were coming.

1 So, you know, when I said I was a little bit worried about
2 where she was, that was part of it.

3 Q And he never held her in contempt, but that reflects
4 that that might have been a consideration at some point.

5 A He was put out that she wouldn't just go ahead and
6 testify, I think. And I think he was surprised that Bill
7 Godfrey gave her the advice to assert her Fifth, but it
8 turns out that was -- in looking at it, I probably would
9 have given the same advice to a witness that had been put
10 in that situation.

11 Q And you mentioned it was more than just the social
12 history. It also had to do with her expertise in trauma
13 as far as her value as a witness.

14 A Yes. And I had specific experience with that in a
15 criminal sexual conduct case up in Spartanburg. We had a
16 case where she came in and was involved. The last name
17 was Trotter of the defendant. But she came in, and she
18 was my expert. She got a chance to interview the, I think
19 it was, 12-, 13-year-old young lady, and she was able to
20 go over the records. And so she brought all that to bear
21 in that case. So I had some experience with that with
22 her. And I knew from other defense attorneys that there
23 were a lot of different levels at which Dr. Loring could
24 operate, and I liked all of them for what we were dealing
25 with.

1 Q And you mentioned earlier that she had testified
2 previously in a trial in Greenville where she was not
3 attacked. Do you recall that testimony?

4 A Yes. And I'm virtually certain about that.

5 Q Would the name Jennifer Holloway ring a bell?

6 A That does sound right. That sounds right, yes.

7 Q And did that result in a life sentence?

8 A It did.

9 Q Okay. Now, you also said that there was other things
10 that had happened and that you had learned that you wanted
11 to go into with an expert. Do you recall what some of
12 that was?

13 A So I think Dr. Loring was made aware that, you know,
14 Jerry had really turned a corner by being able to make a
15 profession of faith, be baptized with his minister from
16 Tennessee. That happened within a couple of days, I want
17 to say, of the actual first trial in September. And in a
18 lot of ways, dealing with Jerry became so much easier from
19 that point forward. Now, he's always a difficult client
20 as I suspect you are aware, but he just -- it was a
21 different -- he was a -- he had a different persona about
22 him. It was -- he just wasn't nearly as troubled and
23 wrapped up in some of the shame and guilt that he had been
24 feeling. I'm not saying that he wasn't still feeling
25 that. He was still very remorseful, but we weren't having

1 these days where he just wasn't ---

2 Q Well, and ---

3 A And so I thought that was -- I thought that was
4 important.

5 He was talking to some of the prison guards. I mean,
6 he became one of their favorite guys down here because he
7 just did everything they told him to do, and that was real
8 important, especially between Trial Number 1 and then
9 Trial Number 2.

10 Q Right.

11 A You know, we just -- I mean, they were -- there was a
12 lot of good things that were going on that I felt like we
13 could take from that moment and continue on with. I was
14 picturing not just what had happened up to the moment we
15 had the April trial, but I was picturing what I thought we
16 were going to be able to accomplish going forward with Jan
17 with more time. I mean, it had taken us two years to get
18 to the point we had gotten to, and I felt like we had made
19 a lot of progress with Jerry from a personal standpoint,
20 and I just saw that continuing. And I wasn't sure what it
21 was going to be, but I felt like it was going to be even
22 better the second time around than what I'd even prepared
23 with Dr. Loring the first time around.

24 Q And I want to show you what's marked as Applicant's
25 Exhibits 44 and 45.

1 A (Reviews exhibits) Yes. I'm familiar with 44 and 45,
2 yes. I'm familiar with both of those.

3 Q And what are those?

4 A So 17 was a funding order for Lisa Mills who was --
5 kind of became Jerry's sort of personal counselor.

6 Dr. Friesen [phonetic] was an expert who was from
7 California that had a subspecialty in dissociative
8 identity disorder who initially I had hired as a potential
9 expert to kind of back up what Dr. Price was saying and
10 maybe go another step. But in terms of he came in and
11 actually -- I remember this. He was like, "Look, we're at
12 that point where if I'm going to do anything, it's going
13 to really leak over into treatment and not expert
14 testimony."

15 Q And that's what I want to get at. Do these orders
16 deal with treatment as much as expert testimony?

17 A Yes. Absolutely. I mean, I'd say the first one was
18 designed for treatment because I needed help in getting
19 Jerry to a place where we could just communicate, so
20 Exhibit 44 with Ms. Mills. Exhibit 21 maybe started out
21 as potential expert testimony, but turned very quickly
22 into treatment.

23 Q And I want to direct you -- and these are funding
24 orders that you prepared, right?

25 A That's correct.

1 Q And I want to direct you to where my finger is where
2 that middle paragraph where it says "specifically." Can
3 you read that?

4 A "Specifically, the defense upbringing the pending
5 charges, his current isolated confinement and his
6 background regarding his religious beliefs are all playing
7 a role in his mental health and are affecting the
8 attorney-client relationship."

9 Q And so -- and Judge Miller approved this treatment,
10 right?

11 A Yes.

12 Q And Ms. Mills, what is her background?

13 A Her background is -- I would say she was a Christian
14 counselor.

15 Q And so she was a counselor.

16 A She was a counselor, yeah.

17 Q And Dr. -- the other doctor, what was ---

18 A Dr. Friesen was -- his background was in treating
19 dissociative identity disorder, but he also had a -- he
20 came at it from a religious background, also.

21 Q And he was a psychologist?

22 A Yes.

23 Q And so there was a recognition by you in the funding
24 process that part of what was going on in the
25 attorney-client relationship was affected by mental

1 illness.

2 A Yes.

3 Q And that it could be treated.

4 A Yes. I felt like -- I mean, what I'm trying to
5 describe, I'm not doing a very good job of it, is I felt
6 like these people over time made a difference that was
7 helpful to Jerry's demeanor, his affect, his ability to
8 reason, to talk, to participate in the case, to, you know,
9 help me to some extent.

10 Q And you thought that that was sincere progress.

11 A I did, yes.

12 Q Okay. And you had also testified earlier, we've come
13 back to it several times, Applicant's Exhibit Number 13,
14 and it was during this time frame where Jerry also agreed
15 to a life sentence if the solicitor would accept it; is
16 that right?

17 A It is.

18 And I'll say that that was one of the toughest things
19 we ever got him to agree to, but he did it because he
20 thought that might be something the Souers would prefer.

21 Q Now, you -- in some of the questioning earlier, you
22 testified about the -- was it Mr. Tournay from the
23 Department of Corrections in Florida?

24 A Claude Tournay.

25 Q Huh?

1 A Claude Tournay, yes.

2 THE COURT: Spell it for the record, please.

3 THE WITNESS: I think it's T-O-U-R-N-A-Y, if I'm not
4 mistaken.

5 BY MR. GROSE:

6 Q And it wasn't just your belief. It was also your
7 expert's belief that the Department of Corrections had not
8 applied ---

9 MS. BUTTERBAUGH: Objection, Your Honor. Leading.

10 BY MR. GROSE:

11 Q Did you have expert opinion that agreed with your
12 belief that the Department of Corrections in Florida
13 dropped the ball?

14 A Yes.

15 Q Okay.

16 A And I held that opinion.

17 Q All right. But my point is, it wasn't just your
18 opinion. You also had, for example, Dr. Price agreed with
19 that.

20 A Yes. And I felt like that the -- well, my direct was
21 really a cross-examination of Mr. Tournay. It was a
22 moment in the case where it was just one of those moments.
23 I was standing next to the witness stand, and I could see
24 the Souers, and I knew the questions he was going to be
25 answering. I'm watching them behind Solicitor Ariail, and

1 they understood, at least from what I could tell from the
2 way they looked, that he was the reason that Jerry Buck
3 Inman didn't stay in jail for his conditions and simply be
4 treated under the mental health aspects of the Florida
5 Department of Corrections.

6 Q All right. And treatment, from your understanding,
7 is treatment a component of the sexual violent predator
8 programs?

9 A Yes.

10 And so we had his father as an example. His dad had
11 gone to prison for a sexual assault that, factually
12 speaking, was very similar to the one that Jerry had
13 committed, this climbing under the house and popping out
14 and then surprising the victim and then raping. It was
15 sort of a similar scenario to the father.

16 So the father had gone to jail for attempted rape and
17 then had been put into Florida's Department of Mental
18 Health and then ultimately had been released. And at
19 least at the time we were talking with him, he had not
20 recommitted. Now, this is the same guy that sexually
21 assaulted Jerry for, you know, at least the first six,
22 eight, nine years of his life. Carolyn Graham was able to
23 track him down, meet with him, get some information from
24 him. And he was a truck driver and functioning on the
25 outside.

1 Q And if I could get you to turn to page 270 of the
2 record, and I'll represent to you that this is in
3 Dr. Price's testimony.

4 A Sure.

5 Q At Line 17 going over to page 271, Line 3, if you
6 could review that real quick.

7 A All right. So Line 17 on 270 to Line 1 on ---

8 Q I'm sorry. Line 3 on page 271. I may have gobbled
9 that.

10 A (Reviews exhibit) Okay.

11 Q And would that be part of the testimony where
12 Dr. Price agreed with you about Florida and their handling
13 of Jerry as a sexually violent predator?

14 A Yes. And I would say Line 8 through 22 is where he's
15 talking about the RRASOR, R-R-A-S-O-R, Rapid Risk
16 Assessment for Sexual Offenders ---

17 Q Right.

18 A --- which is then sort of the matrix by which you can
19 identify, okay, this guy needs to go maybe the next level
20 to -- which is what Mr. Tournay missed completely.

21 Q Right. And those additional lines you referred me to
22 are on page 271; is that correct?

23 A That's correct.

24 Q Okay. And, again, this would have been a treatment
25 program in Florida.

1 A Yes. A sexual offender treatment program in the
2 prison system that was, I believe, under the auspices of
3 their Department of Mental Health.

4 Q Okay. In going back to 270 at Line 18, there was the
5 diagnosis of a sexual paraphilia.

6 A Correct.

7 Q And was it ever explained which paraphilia that he
8 had?

9 A I don't have any specific recollection of that. I
10 mean, if you're asking me did we put it on -- if it's not
11 in the record, then we didn't explain it at the trial.

12 Q Or any recollection as to explaining the treatment
13 for it.

14 A No. I don't -- I don't recall. I'm not sure that
15 would have been Dr. Price's expertise. But in any event,
16 no.

17 Q Okay. And one final question. There was a question
18 from the attorney general about Jerry describing himself
19 as an animal.

20 A Yes.

21 Q Do you believe that Jerry is an animal?

22 A No.

23 Q Why not?

24 A I believe that every person has the potential for
25 good and bad, and I believe that Jerry has as much

1 potential for good, and I saw it. He brought -- I know
2 for a fact that he talked about his religious beliefs with
3 his cell mate -- not cell mate, but his next-door inmate.
4 And I forget who he is, but he was executed about two or
5 three weeks, and Jerry was very proud of the fact that he
6 had brought this person to Christ before he'd been
7 executed. And that meant a lot to Jerry. It meant a lot
8 to me.

9 Q And you saw that before Judge Miller imposed
10 sentence; is that correct?

11 A No. I think that was after.

12 Q No, no, no. Let me rephrase my question. You saw
13 the good in Jerry before the sentence was actually
14 imposed.

15 A Yes. If I hadn't said it, I'll say it. He is one of
16 the more remorseful clients I've ever dealt with in terms
17 of understanding what he had done and having a level of
18 guilt and shame about it. I mean, that was part of the
19 problem. That wrapped up with his -- his religious
20 beliefs were kind of confused because he's -- you know,
21 he's professed Odinism at one point, and he has the
22 Christian background which is why we were involving these
23 Christian counselors with him because it felt like that
24 would be helpful to him.

25 Q And you saw the transformation between September and

1 April portions of the hearing that you testified about
2 earlier?

3 A Yeah. I felt like we had made a major step a couple
4 of days before the trial, and then that continued -- maybe
5 exponentially is a little bit too over-the-top, but it
6 definitely continued between September and April of '09.

7 MR. GROSE: That's all. Thank you. I know this has
8 been a big intrusion over two days on your professional
9 schedule.

10 MS. BUTTERBAUGH: I have a few questions, Your Honor.

11 RECROSS EXAMINATION

12 BY MS. BUTTERBAUGH:

13 Q So this transformation you talk about, did you
14 mention that in your closing?

15 A I think I did. I think I at least was able to talk
16 about -- I mean, Mr. Inman sort of hampered us a little
17 bit by objecting under the priest-penitent privilege.
18 Where he got that, I still don't know.

19 Q Because you could have discussed a lot of this in
20 your closing, correct?

21 A I think I did talk a little bit about that, yes.

22 Q Now, I want to turn your attention to page 360 of the
23 record.

24 A 360. Okay.

25 Q Okay. Because we talked a little bit about

1 Mr. Tournay.

2 A Yes.

3 Q Page -- or, I'm sorry, Line 13, he sort of talks
4 about why he wouldn't have qualified for sort of their
5 version of SVP, the Jimmy Rice Act. And it's Line 16 and
6 17. Specifically because his crime happened prior to
7 1993, so he did not qualify for their act, correct? So he
8 would not have been screened, correct?

9 A That is what Mr. Tournay said. I don't know that I
10 agree that he would not have been screened or could not
11 have been.

12 Q But statutorily under their law, he would not have
13 been screened because his crime happened prior to 1993.

14 A You may be correct, but I don't remember it that way.
15 I want to say that there were records where he was
16 screened. I want to say we had the records from Florida,
17 and Tournay just missed it. This may have been what he
18 was saying, because my recollection of him on the stand is
19 he began to realize where all this was going, which was it
20 was his fault that Jerry Buck Inman got out, and he became
21 evasive at that point.

22 Q And that is your characterization, correct?

23 A That is my characterization. I didn't think he was
24 telling the truth about it, but I don't know what the --
25 sitting here today, I don't know what the law is on that

1 back then. So . . .

2 Q Okay. And Mr. Grose handed you some motions for
3 funding a few minutes ago.

4 A Correct.

5 Q And those motions for funding, there are no facts
6 necessarily contained in those, correct?

7 A I'm sorry?

8 Q There are no facts contained in those, correct?
9 Those were used to get funding so you could obtain facts
10 so that you could use them in your case moving forward,
11 because you obtained experts who will then give you facts
12 that you can use moving forward, correct?

13 A Okay. So let me tell you the way I'm hearing that
14 question.

15 Q Okay.

16 A The way I'm hearing that question is that there are
17 no facts in the ex parte order, which would be incorrect.
18 There are a lot of facts relevant to who these people are,
19 what their background is, why I think they're necessary.
20 If what you're saying is are there any facts about what
21 they have done with the funding, no. That's not in the
22 ex parte order.

23 Q And no facts that you can use to -- I guess to prove
24 your mitigation case, because that's what these experts
25 would do would be go out, collect mitigation, bring it to

1 you and then you can use them moving forward to help your
2 client.

3 A Are you asking me are the fact that the mitigation
4 experts that I'm seeking funding for, are they in the
5 ex parte funding order?

6 Q Because they haven't collected anything yet, correct?
7 Any kind of facts yet.

8 A Okay. So let me tell you the way I'm hearing your
9 question.

10 Q Okay.

11 A Because you have to understand, they're funding
12 orders that -- like Dr. Loring I had maybe two, three
13 funding orders with her, so there are plenty of facts that
14 are being collected as a result of the money that's been
15 expended. So if you go to the first funding order and say
16 are there any facts that have been collected at this
17 point, likely not, although I usually talked to all these
18 people before I was going to put them in a position to say
19 will you get involved in the case.

20 So we would have talked about facts and talked about
21 things that they might be able to help me with. And if
22 there was something relevant to that, like in this case,
23 that I thought that these -- one, Ms. Mills was going to
24 be helpful because of her background, then I would say
25 yes, there's a fact in there that ---

1 THE COURT: May I suggest that the exhibits that have
2 been admitted without objection, they speak for
3 themselves. The ex parte provision of our PCR law
4 provides that it is ex parte and it's not, what is it, to
5 try a case, but to authorize the expenditure to prepare
6 the case.

7 MS. BUTTERBAUGH: Yes, sir. And I don't have any
8 objection to them. I'm sorry.

9 THE COURT: I'm glad, because that's the law as I
10 understand it, and I sign them all the time.

11 But also, as far as the exhibits, they've been
12 admitted without objection. They speak for themselves.

13 MR. GROSE: I wasn't sure that I moved them in, and
14 if I didn't I would now.

15 THE COURT: Oh, you're surely the person to address
16 them. Are they in already? Now, which ones have not been
17 admitted that have been identified?

18 THE REPORTER: From the beginning?

19 THE COURT: I thought we tried to keep up with them.

20 THE REPORTER: I know 44 and 45 have not been.

21 THE COURT: Those are the only two, right?

22 THE REPORTER: 43, but I believe Mr. Grose said that
23 he was marking that for identification only.

24 THE COURT: All right. So 43 is for identification
25 only.

1 THE REPORTER: Right.

2 THE COURT: But 44 and 45 have been moved for
3 admission?

4 MR. GROSE: That's correct.

5 THE COURT: Any objection?

6 MS. BUTTERBAUGH: No, sir.

7 THE COURT: Very good. All right. 44 and 45 are
8 admitted into evidence.

9 (WHEREUPON, Applicant's Exhibit Numbers 44 and 45 were
10 admitted into evidence.)

11 THE COURT: Next.

12 BY MS. BUTTERBAUGH:

13 Q Okay. Moving on. Okay. And my final question, if
14 you look at page 661 in the record, please, and this is
15 dealing with -- if you look at Line 20.

16 A Okay.

17 Q And this is in reference to Jan Vogelsang. If you
18 could read into the record beginning Line 20, please.

19 A So you want me to read what the Court said from the
20 record.

21 Q Yes, please.

22 A "The first thing I'd like to do is to note that the
23 notes of Rule 614 of the South Carolina Rules of Procedure
24 states that the formulation of this rule differs from the
25 rule established in State vs. Anderson.

1 "The second thing I'd like to bring up is that the
2 defense did not contact Dr. Loring. In January, it was
3 the first time, that was three months after the suspension
4 of the case, that I saw a request for funds to get a new
5 social historian. At that time, I'm presuming that the
6 defense was made aware that it would be another year from
7 that date before their new expert would be ready to
8 testify. The Court was never informed of that. Being
9 aware of that, I presume -- I'm assuming this. Being
10 aware of that, the defense did not recontact Dr. Loring to
11 determine whether or not she could be rehabilitated and if
12 she would come testify. It leads me to the conclusion
13 that counsel for the defendant is more interested in
14 pursuing the misconduct issue than presenting a full
15 defense, and as a result, the assertion that due process
16 is violated is disingenuous because defense counsel has
17 perpetrated the failure to prepare for the social history.

18 "Having said that, I'm going to call -- ask
19 Dr. Loring to come around and take the stand."

20 Q Now, if you look at Respondent's Number 1, which,
21 again, is this letter that Mr. Inman wrote to you
22 January 21st of 2008, and in that paragraph -- in the
23 letter -- this letter ---

24 A Hold on. Okay. Go ahead.

25 Q And that's the letter that he wrote to you or kind of

1 indicated to you that he didn't want to put up any more
2 mitigation, correct?

3 A Well, the letter speaks for itself.

4 Q So that second page of the letter, if you can start
5 with "I have a request for you."

6 A You want me to read the exhibit?

7 Q Just that -- yes, please. Just that "I have a
8 request for you."

9 A "I have a request for you, and I respectfully ask you
10 to do this with your most persuasive argument and put as
11 much effort in it as I'm sure you're putting into the
12 issue about Bob Ariail."

13 Q So isn't that kind of consistent with what your
14 client, Mr. Inman, wanted you to do with what the judge is
15 saying, that you're putting a lot of effort into this
16 prosecutorial misconduct claim, and he wants you to put as
17 much issue and as much effort into his wishes as well,
18 correct?

19 A I'm sorry. You're going to have to ask me that
20 question one more time.

21 Q And so he's recognizing that you're putting a lot of
22 effort into this prosecutorial misconduct issue, and he
23 wants you to -- and he's hoping that you will put as much
24 effort into caring for his wishes as well, correct?

25 A That is what he is saying in this letter. I disagree

1 with the idea that that's painted with a broad stroke
2 across everything that Jerry was doing. I mean, Jerry
3 would be sometimes back and forth with different
4 positions. I mean, you know, I heard him today when I was
5 in the courtroom telling everybody that he never wanted to
6 have a jury trial. That's just not true. And that's sort
7 of how all this -- this is part of the issue with dealing
8 with a capital client. They are mentally ill. They have
9 issues. And so, yes, it would be hot this day, cold the
10 next.

11 He was pretty consistent he wanted to do what was
12 appropriate for the Souers family. He was pretty
13 consistent that he wanted it to be the death penalty. But
14 he was also -- he wanted the issues to be preserved, he
15 wanted to live long enough for his mother so that he
16 didn't want to be executed while his mother was still
17 alive. I mean, it just depended on what day you were
18 talking to him and what his -- and I hate to say it, but
19 which fragment of his personality you were dealing with at
20 that moment.

21 So just for a moment, when he's saying in here -- now
22 he's saying, "I don't want -- I never wanted a jury
23 trial," that's not true, because he was trying, in his
24 mind, to figure out which was going to be more like him to
25 accomplish his goals. It depended on what day those goals

1 were, but he was in a lot of pain dealing with what he was
2 dealing with, mental illness, so he wanted relief. He
3 thought execution might be the quickest way to get there.
4 He saw Judge Miller as potentially the guy who was going
5 to give him a life-without-parole sentence.

6 So whether that was -- whether he had a better chance
7 with a jury giving him a sentence of death or whether he
8 had a better chance with a judge giving him a sentence of
9 death, he would go back and forth on that. I mean, I
10 finally just had to say, look, it's not going to be your
11 call anyway because the statute is not going to permit it
12 and we'd have to get the trial judge to overrule it, and I
13 just don't -- my opinion is that Judge Miller's not going
14 to find the Constitution -- sorry -- not going to find the
15 statute with judge-only sentencing unconstitutional at
16 this stage.

17 Q But this is your opinion.

18 A No. This was my experience with him. You've got to
19 remember, I'm talking to him. I'm having all the legal
20 conversations with him. We're going through this. I
21 mean, there were lots of times we had to go back up and go
22 back -- sorry -- we had to back up with where we are and
23 what we were pursuing as a strategy in the case, get back
24 with Jerry, get him back on board in terms of this is why
25 we're doing this, this is where we're going. It was

1 client management became as big a deal as case preparation
2 because it was so back and forth.

3 So you get letters like this. So then you've got to
4 go talk to him, then you've got to say, "Okay. Is this
5 really what you want to do?"

6 And he'd say, "Well, talk to me about what happens
7 next."

8 And so you'd plot it out. He'd want you to take him
9 out 10, 15, 20 years down the road and start telling him,
10 you know, how his appeal's going to look, what was going
11 to happen, you know, what changes when you're pro se. I
12 mean, there were a lot of discussions about all of that.

13 So to your original question about, you know, Jerry
14 wanting to simply drop the whole case and move on, we got
15 that request at various times. We went back and talked to
16 him, and then he would withdraw that request, and he would
17 say, "Okay. Let's go forward with it this way."

18 And when I say, you know, we had some compromises, we
19 had to make some with him, you know. I wasn't
20 anticipating the objection to his minister, but he made it
21 and he stuck me. I mean, there wasn't anything I could do
22 about that. He just really was going to pitch a fit if we
23 let his mother -- if we put his mother on the stand. That
24 was something he was going to draw a line in the sand
25 about, and so we backed off of that and said, "Okay."

1 We'll let Denise handle it."

2 MS. BUTTERBAUGH: Thank you, Your Honor.

3 MR. GROSE: Nothing further.

4 THE COURT: Very good. Well, it's 14 minutes till
5 5:00. We've been here pretty much all day. Well, since
6 10:15 is when I finally arrived.

7 What's the wishes of the applicant?

8 MR. GROSE: Your Honor, we have our next witness is
9 Dr. Loring and she's from Atlanta. I think she'll be a
10 short witness.

11 THE COURT: Dr. Loring. She's not in the courtroom?

12 MR. GROSE: She's outside.

13 And then we also have another short witness that I
14 could put up after that regarding Dr. Loring, and I'd like
15 to try to do that today if we could.

16 THE COURT: Very well. All right. Let's do take a
17 short break.

18 (WHEREUPON, a recess is taken at 4:46 p.m.)

19 (WHEREUPON, proceedings reconvened at 4:57 p.m.)

20 MR. GROSE: We would call Dr. Marti Loring, Your
21 Honor.

22 WHEREUPON,

23 MARTI LORING

24 After having been duly sworn, testified as follows:

25 THE CLERK: State your name for the record, please.

1 THE WITNESS: Dr. Marti Loring.

2 THE COURT: That's M-A-R-T ---

3 THE WITNESS: I.

4 THE COURT: Loring?

5 THE WITNESS: L-O-R-I-N-G.

6 THE COURT: Very good. Thank you, ma'am.

7 THE WITNESS: Good afternoon, Judge.

8 THE COURT: Good afternoon, Doctor.

9 DIRECT EXAMINATION

10 BY MR. GROSE:

11 Q Dr. Loring, could you please, I guess, continue to
12 introduce yourself by way of just your education and
13 professional background.

14 A Yes, sir. Shall I start with college?

15 Q That would be a good place.

16 A Okay. I went to Vassar College up in Poughkeepsie,
17 New York where I majored in psychology. Then I went off
18 to Bryn Mawr graduate school outside of Pennsylvania where
19 I majored in social work and social research. Then I got
20 married and went to Atlanta where I went to Emory graduate
21 school of sociology. I got a master's at Bryn Mawr and
22 then I got a PhD in social psychology or sociology at
23 Emory in Atlanta.

24 Q And what is your professional background? What types
25 of jobs have you held?

1 A Yes, sir. I worked in a number of family service
2 agencies working with marriage counseling and with
3 children, teenagers. I started off in Memphis working in
4 family service, then when I came to Atlanta, I worked at
5 the Bridge Family Center where there were adolescents,
6 kids, adults who had been involved in breaking the law,
7 some with sexual problems.

8 And I did family therapy and individual therapy and
9 child therapy. I was teaching. I taught at a number of
10 colleges, Emory, Georgia State, a couple of others, and
11 then I started a mental health center. And a number of
12 people joined me: psychologists, social workers, a
13 consulting psychiatrist. And we work in the area of
14 trauma and abuse, Judge, where people who are traumatized
15 or abused may come for therapy. We may evaluate them and
16 help, give reports or testimony about them.

17 During that time, I wrote a couple of books about
18 trauma and abuse, and the most recent book was called
19 Intimate Coercion, Recognition and Recovery where I took a
20 look at what does it mean to be coerced, what kind of
21 things do people do, what kind of force does it take them
22 to do that. So that's the kind of thing I've been doing
23 professionally.

24 Q Okay. And with your background and your professional
25 experience, do you sometimes consult with lawyers about

1 cases pending in the criminal courts?

2 A Yes, sir. I do.

3 Q All right. And have you done that in South Carolina?

4 A Yes, I have.

5 Q And have you done it in other states?

6 A Yes, sir. Indeed.

7 Q How many states do you think you've been a
8 consultant?

9 A Let's see. In Georgia, Alabama, Florida, New York,
10 Maryland, Arizona, and Texas.

11 Q Okay. And did you consult with the defense lawyers
12 representing Jerry Buck Inman?

13 A Yes, sir.

14 Excuse me. I forgot New Hampshire.

15 Q Thank you.

16 A Yes, sir.

17 Yes, sir, I did.

18 Q Since Ms. Holt and I have been Mr. Inman's lawyers,
19 have we reached out to talk to you about your experiences
20 in this case?

21 A Yes, sir.

22 Q And I want to hand you what's marked as Applicant's
23 Exhibit Number 36 and ask if you can take a look at that.

24 A (Reviews exhibit) Thank you.

25 Q All right. Do you recognize that document?

1 A Yes, sir, I do.

2 Q And what is that document?

3 A It's a document that I wrote March 7, 2014, about my
4 experiences in working in the Jerry Inman case, Jerry Buck
5 Inman.

6 Q And there's some handwriting on that document; is
7 that right?

8 A Yes, sir. There is.

9 Q And is that handwriting yours?

10 A Yes, sir. It is.

11 MR. GROSE: Okay. Your Honor, I'd move this exhibit
12 into evidence at this time.

13 MS. BROWN: No objection.

14 THE COURT: All right. Without objection,
15 Applicant's Exhibit Number 36 is admitted.

16 (WHEREUPON, Applicant's Exhibit Number 36 was admitted
17 into evidence.)

18 THE COURT: Was the witness qualified as a consulting
19 psychologist in your appearance as an expert in court
20 cases?

21 THE WITNESS: No, judge. A consulting traumatologist
22 or social worker.

23 THE COURT: That's what I needed. Consulting -- what
24 was it? Consulting?

25 THE WITNESS: Either social worker or traumatologist

1 or mitigation.

2 THE COURT: Social worker or ---

3 THE WITNESS: A traumatologist.

4 THE COURT: Traumatologist.

5 THE WITNESS: Or a mitigation specialist, sir.

6 THE COURT: But in those areas?

7 THE WITNESS: Yes, Judge.

8 BY MR. GROSE:

9 Q And following up on the judge's question, you've been
10 qualified as an expert in a number of courts.

11 THE COURT: Well, she's given us those, including New
12 Hampshire.

13 THE WITNESS: Yes, sir. Including New Hampshire.

14 BY MR. GROSE:

15 Q All right. And you were qualified as an expert in
16 Mr. Inman's case?

17 A Yes, sir. I was.

18 MR. GROSE: And I would offer her as an expert in
19 those areas, Your Honor.

20 THE COURT: Any objection or any voir dire?

21 MS. BROWN: I'm sorry. I didn't hear the area you
22 were offering her for.

23 MR. GROSE: The three areas that she just testified
24 to. I believe it was social work, as a traumatologist and
25 a mitigation expert.

1 THE COURT: If she was qualified in this particular
2 case, she's a fact witness in this hearing.

3 MS. BROWN: A fact witness.

4 MR. GROSE: That's correct.

5 THE COURT: I don't think you need to qualify her,
6 but the fact is the Court needed to know what her -- what
7 she was qualified for.

8 MR. GROSE: Fair enough. And I can move on with
9 that, Judge.

10 THE COURT: Okay. Very good.

11 BY MR. GROSE:

12 Q In the document that you have in front of you, the
13 document that you prepared, the first three paragraphs
14 have to do with the procedures you follow and specifically
15 how those were followed with Jerry Inman's mother. If I
16 could have you look at those for just a second and then
17 tell the Court what you do when you interview a client and
18 collateral witnesses, what procedures you follow.

19 A Well, Judge, when I interview a client, I'm
20 interested in talking with them, but I'm also interested
21 in reviewing any relevant records, whether it's school or
22 mental health records or whatever. I like to talk with
23 people I call collateral witnesses, the parents, family,
24 anyone I can get ahold of including teachers, even
25 neighbors who can give me information. So that's what I

1 like to do when I'm evaluating people.

2 And I usually take notes so I don't forget anything.
3 Once in a while, not very often, I get into a situation
4 where someone says, you know, "I want to be open with you,
5 but I don't want you to write down what I have to say."
6 That's what happened with Jerry's mother, Vera. She
7 didn't want me to write anything down.

8 And I first tried to gently question why. I mean,
9 who was she afraid of getting -- you know, what difficulty
10 it would have caused her. She's afraid of getting into
11 trouble with the police. And while I didn't think that
12 was likely to happen and tried to reassure her, she was
13 very strong in her fear that that was going to happen. So
14 in a situation like that, I usually, and with her I did,
15 agree not to write anything down.

16 And it's never been a problem before. When I get to
17 court, I have lots of notes and charts, and then I recall
18 what was told to me because usually it was pretty
19 striking, which was why the person didn't want anything
20 written down. So I include that, too, of course.

21 What the person told me that I didn't write down, I
22 include that, of course, when I testify. Every time
23 before this case and every time since this case, that has
24 proven to be a way of working that worked for me and
25 worked for getting out all the information.

1 Q And do you feel like -- let me rephrase that
2 question, Dr. Loring. Did you leave out some information
3 in this case?

4 A I sure did.

5 Q Okay. And why do you think you left out that
6 information?

7 A Looking back and trying to understand how it could
8 have happened, I just -- I think that this case affected
9 me in a way that no other case ever has before or since.
10 I was -- I was just so anxious, and I was experiencing
11 such kind of dread and fear and really horror of what was
12 going to happen as a result of things that I had been
13 threatened with. It was just amazing. I actually don't
14 think I was as aware of how terrified I was at the time.
15 I think it took some time going by before I became fully
16 aware of how scared and I'd have to say ineffective I was
17 to have left out such important information.

18 Q And when you were saying that you were scared, what
19 was the source that was causing that fear?

20 A Well, the solicitor had told me that I would be
21 locked up, I'd be incarcerated if I did testify because
22 I'm not licensed in South Carolina. This has never come
23 up before, so I wasn't sure exactly what to do.

24 There was a very kind lawyer in the courtroom who
25 volunteered to be my lawyer. He just happened to be

1 there, and apparently I needed a lawyer and he
2 volunteered. So I spoke with him for a few moments, and
3 it seemed to me that the solicitor was pretty clear. I
4 didn't want to be locked up, and if I was going to be
5 locked up, then I shouldn't testify. But it was more
6 complicated than that because I'd been subpoenaed, so I
7 really was supposed to testify.

8 So that was what started it all, but I think you
9 asked me what frightened me.

10 Q Uh-huh.

11 A Then there were other threats. I think the solicitor
12 said not only was I in trouble here, but in any other
13 state where I testified outside of the State of Georgia,
14 he thought that there were serious concerns, too. So then
15 I was frightened about that. And that was the beginning
16 of a series of incidents that kept on and on. It was like
17 I would try to solve them, I think.

18 The solicitor asked me for the names of all the cases
19 I've ever testified in, so I hired a research person, a
20 graduate student and we began to try to put that together.
21 And then it changed, and I was to do all the cases in
22 South Carolina. And then it changed and I was to list all
23 the death penalty cases all over the country. And that
24 concerned me because I signed an agreement with one
25 particular office that I wouldn't tell anyone else the

1 cases I was working with for them. And their head of
2 their -- the lawyer who was head of that agency said, "Oh,
3 no, you don't. So then -- you can't do that. You're
4 under contract with us." So then I wondered what was I
5 supposed to do. I couldn't tell these names of these
6 cases, and I was being ordered to.

7 Should I keep on?

8 Q Yeah, yeah. Finish your answer. I'm sorry.

9 A Oh, okay. So anyway, that worked out where I was
10 just to give the ones in South Carolina. But it seemed
11 like every week there was something else horrendous.

12 I got home -- Judge, I got home one day, and the
13 neighbors came to say that the police had been at my house
14 and they were bringing up the equipment to break down my
15 door, that they were sure that I was in the house, which I
16 wasn't. I was just getting home. And they were --
17 because of information they'd gotten from South Carolina,
18 they thought it was important to break the door down, and
19 the neighbors had come up and talked to them about, you
20 know, please not to do that, and I would certainly have
21 answered the door.

22 My lawyer told me not to get on a plane. Whatever I
23 did, I would be arrested if I went to the airport and
24 boarded a plane. And when I wondered why, he indicated he
25 couldn't tell -- he knew, but he couldn't tell me why, but

1 not to do that. It just kept on going like that.

2 Q All right. And did you have any concerns about what
3 was going on in Mr. Inman's case could affect you
4 professionally?

5 A Oh, yes. Yes, sir. I was -- my husband had died
6 several years previously, and I was just learning how to
7 manage financially and otherwise, and I really thought
8 that this was going to be the end of my career. Because
9 if I got arrested or something like that, then it seemed
10 -- and if I kept having to ask lawyers in other states who
11 headed agencies may I tell the names of your clients and
12 they would get upset like this one did, I just thought
13 that perhaps my way of earning a living would be over. I
14 didn't think it. I really believed that that's what was
15 happening.

16 Q And were you afraid that you might lose your
17 professional license?

18 A Yes. I believe I'd been threatened with that, that I
19 would lose my license as well as being arrested. That was
20 my understanding. So yeah. I was afraid of it and
21 believing that that's what was going to happen.

22 Q If I could see that exhibit for just a moment,
23 please.

24 A Surely.

25 Q Is it fair to say that some of what we've been

1 talking about is summarized on the first page of
2 Applicant's Exhibit Number 36?

3 A Yes, sir.

4 Q Okay. And looking at page 2 of Applicant's
5 Exhibit 36, is this some of the information that got left
6 out of your testimony?

7 A Yes, sir.

8 Q And referring to that, if you need to, can you tell
9 -- please tell Judge Macaulay the information. And this
10 pertains to the information you got from Jerry's mother,
11 right?

12 A Yes, sir.

13 Q If you could tell the judge what that information
14 was.

15 A Judge, if you don't mind, I'm going to look real
16 carefully at my notes because I sure don't want to leave
17 anything else out.

18 Vera told me that she tried to commit suicide
19 multiple times, sometimes in the presence of Jerry, that
20 she took an overdose of medicine, then she tried to hang
21 herself, and with Jerry in the car, she attempted to kill
22 them both by wrecking the car.

23 She told me she often thought about killing Jerry.
24 Once she became aware that she was squeezing his neck with
25 her own hand and thinking that she was going to help him

1 be reunited with God when the telephone rang and that
2 interrupted her. She was crying when she told me this.
3 She said that Jerry looked at her and looked surprised and
4 sad at what she was doing. She wasn't sure exactly how
5 old he was. She thought about 5 to 7 when she had her
6 hand on his neck.

7 She said she did a number of other things like trying
8 to starve him, but he found a garbage can and ate food
9 from it. She also tried to suffocate him with a pillow.

10 She had thoughts of castrating Jerry so he wouldn't,
11 as she said, become like his father. She said she made
12 some attempts to do this.

13 Once she saw his father go into the bedroom and climb
14 into bed with Jerry's sister.

15 She talked often to Jerry about death. She told him
16 about hell and threatened that if he was like his father,
17 he would go to hell.

18 She was choked, raped and beaten by Jerry's father.
19 And the father seemed to become more aroused when Jerry
20 was watching so that he would be choking her and looking
21 up at Jerry watching from the bedroom door, and he laughed
22 like it was a joke and then he'd repeat the whole thing
23 over again.

24 Vera told me that she was often depressed and she
25 would just sit staring into space all day, and during

1 those periods of time, she wouldn't feed or wash Jerry.

2 She had a vague recollection that there was some kind
3 of an accident where he was hurt in the backyard, but she
4 couldn't remember what happened, what the injury was.

5 One night she looked -- I don't know if it was night.
6 Once she looked into Jerry's bedroom at night and reported
7 that she saw the father in Jerry's bed, and that the
8 father's body was going up and down under the covers.

9 Q And when you remembered those things, did you want to
10 make a record of them?

11 A I certainly did. Yes, sir.

12 Q Okay. And did you want to come and relay that
13 information to the Court?

14 A I did, indeed. Yes, sir.

15 Q And are you being compensated for your time here this
16 week?

17 A No, sir. I'm not being paid, nor is my center. I
18 think that my hotel room is going to be three quarters
19 paid for, and that's the extent of it.

20 Q And did you agree to be evaluated by Dr. Louis
21 Viamonte?

22 A Yes, sir, I did.

23 Q Okay. And did you cooperate with him?

24 A Yes, sir, I did.

25 Q And I want to go back to something you said earlier

1 about you've never had an experience before this -- like
2 this before or after Mr. Inman's case. Do you recall that
3 testimony?

4 A Yes, sir. That's absolutely correct.

5 Q And I think you also testified at the time you didn't
6 fully appreciate the effects that this was having on you.

7 A I truly -- I truly didn't. No, sir.

8 Q Okay. As far as those effects of the trauma, for
9 lack of a better word, do you feel like those have
10 resolved for you?

11 A Completely. I have had no other such experience
12 since that time.

13 MR. GROSE: Okay. I beg the Court's indulgence for a
14 moment.

15 That's all I have. Thank you for being here today.

16 THE WITNESS: You're welcome.

17 THE COURT: Cross-examine.

18 MS. BROWN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. BROWN:

21 Q Dr. Loring, I'm Melody Brown. I'm with the Attorney
22 General's Office. I don't believe we've met before.

23 A How do you do?

24 Q How do you do?

25 A Thank you.

1 Q You said everything's resolved with the condition
2 that your doctors diagnosed; is that correct?

3 A Yes, ma'am. That is exactly correct.

4 Q And you remember the facts of the crime in this case?

5 A I'm not sure, ma'am, that I ever knew all of the
6 facts of the crime. Just in general.

7 Q Okay. What generally did you kind of think about the
8 crime, what Mr. Inman had done when you came into the
9 case?

10 A Yes, ma'am. And, ma'am, I'm leaving this right here
11 so I don't take it away by mistake.

12 My understanding is that Mr. Inman was accused of
13 killing a young woman who attended Clemson College.

14 Q Just killing?

15 A I beg your pardon?

16 Q Is that the only thing that you remember, it was a
17 murder?

18 A Yes, ma'am. I believe that the attorney told me that
19 she was also choked and raped.

20 Q And that Mr. Inman confessed. Do you remember that?

21 A If you say so, I'm sure that's true. I honestly
22 don't recall that.

23 Q Okay. Or that he was photographed trying to use the
24 victim's ATM card about 3:22 a.m.? Anything like that?

25 A I have a recollection. And, ma'am, if I may explain.

1 In this case, I was asked to evaluate -- well, I was asked
2 to do mitigation which involved some evaluation, but it
3 was primarily mitigation up until the time of this very,
4 very sad incident as opposed to in a case, for example,
5 where I'd be asked to read police reports and records
6 about an incident and tie the -- of my understanding into
7 that incident. I was not asked to do that in this case,
8 just up until the incident. So that's why my knowledge is
9 only general.

10 Q Well, when you interview people, they tell you a lot
11 of things sometimes, right? You just, you talk to them,
12 you get the information from them. Sometimes it's right,
13 sometimes it's wrong. Sometimes you gather other facts
14 that say, whoa, wait a minute, that lady was not truthful
15 with me, or that gentleman was not truthful with me. Kind
16 of evaluate things, right?

17 A Not entirely. Usually, when people tell me, ma'am,
18 what they have done themselves, when I have the
19 opportunity to document that, that usually turns out to be
20 accurate. When someone's telling me about somebody else,
21 I particularly value documentation when they're talking
22 about someone else and might think they know about the
23 other person but perhaps don't know everything that
24 documents would help me with. So in other words, if I
25 were to put credence, I'm more likely to put credence in

1 if you were to tell me things you yourself had done or
2 felt. I find that is usually on target whereas I would
3 prefer to document what you're saying about other people.

4 Q And when you get a source that you can kind of trust,
5 then you take that and you build on it with other things,
6 right?

7 A No, ma'am. Not always.

8 There are times like in this situation where she was
9 the only one present while doing these things to a young
10 child, so -- and it hadn't been reported, so I had nothing
11 else to go to. I had to pretty much observe her and
12 assess her anxiety and trauma while she was telling me
13 about it and then ask all I could of like her daughter and
14 to try to get a sense of whether this would seem to be
15 accurate from her daughter's perspective as well.

16 Q So the daughter would be another source of that, and
17 then you would know that the first source was accurate
18 because you can verify it, correct?

19 A There are times when that's possible. A lot of what
20 Jerry's mother did with him, unfortunately, wasn't
21 witnessed by other people. I was just thinking back, and
22 I think the daughter witnessed more of the abuse towards
23 Jerry by the father and not so much by the mother. So I
24 think, in this case, it was an assessment of her while she
25 was telling me. And I believe I saw and reviewed some

1 mental health records where she herself, Jerry's mother
2 Vera, had been treated for severe depression as I think
3 about it, so that was helpful to me.

4 Q And sometimes mental health can fog your recall, too,
5 can't it? A mental health issue?

6 A It would depend on the type of depression. Sometimes
7 that could be. With her, with Jerry's mother Vera, she
8 would have these flashbacks when she would talk about what
9 she had done, and so it seemed that she wasn't able to get
10 it out of her mind or fog it. She had the opposite
11 problem where it was so vivid while she was going through
12 it and while she was talking about it. She didn't seem to
13 be -- have the kind of depression where it was difficult
14 to remember. She had the type -- or, in fact, it was with
15 trauma she couldn't help but remember so vividly.

16 Q And she had more of a history of mental issues than
17 her daughter or her son, correct?

18 A I'm so sorry. I don't know the answer to that.

19 Q That's okay. If you don't remember, that's all you
20 have to tell me.

21 A I'm not sure I ever knew. I'm not sure how much the
22 daughter had in the way of mental health treatment or all
23 of what her problems really were.

24 Q Well, let's talk about what happened here. Now, when
25 were you first contacted by the defense for Mr. Inman?

1 A I think it was in 2007. No. Excuse me. I think
2 that's an error. I think it had to have been toward the
3 end of 2006, beginning of 2007. I think that's fair.

4 Q And why do you think it was the end of 2006 or the
5 beginning of 2007?

6 A Because ---

7 Q Is there a recollection that would prompt that
8 recall?

9 A I was being logical, actually, to be honest with you.
10 I actually started working on the case in regard to court
11 issues in 2007, and I believe I had about four months or
12 so, four to six months to begin working on it interviewing
13 people. So would have put it just toward the end of 2006.

14 Q Four to six months.

15 Now, you didn't work alone, correct? You had
16 somebody gathering some facts with you?

17 A There was a team, a legal team, and there certainly
18 were other people on that team. Yes, ma'am.

19 Q Okay. Do you member Ms. Graham?

20 A Yes, ma'am.

21 Q Did she work with you on this case?

22 A I think she was on the legal team for this case,
23 unless I'm mistaken. But I think she was.

24 Q Well, let's go to the trial itself. You were
25 prepared for testimony up until the voir dire began in

1 that September proceeding, correct?

2 A I was prepared to testify. That would be correct.

3 Q Were you at the August 19, 2008, guilty plea?

4 A I don't believe I was. And I say that with --
5 humbly.

6 Q Dr. Maddox testified and then the guilty plea went
7 forward.

8 A I honestly don't know.

9 Q Okay. All right.

10 A I have something. If you wish, I could look it up.
11 I have something where I was excused, and I ---

12 Q I'm sorry. What was that?

13 A I have a document where I was excused from further
14 involvement in the case if you'd like to see that.

15 Q No, ma'am. I appreciate that.

16 A Sure.

17 Q Let's just talk about the recall of what we were
18 doing up at the voir dire point.

19 A Thank you.

20 Q Okay. Let's start in September of 2011, okay?
21 That's after the guilty plea when sentencing is going to
22 start.

23 A Oh, I see.

24 Q With me?

25 A Yes, ma'am. Thank you.

1 Q Oh, sure.

2 Okay. September the 8th is a Monday. That comes
3 around, and you're thinking you're going to give testimony
4 in Mr. Inman's case at that time, right?

5 A I was prepared to testify. That's correct.

6 Q You were prepared. Okay. But you were in another
7 hearing at that same time though, right?

8 A Okay. I don't know exactly what you're talking
9 about. I came here to testify in this case. And I
10 couldn't tell you the exact date that I came here and sat
11 ready to testify, but I can assure you I did.

12 Q Okay. Sure. Let me help you out, what I'm talking
13 about. You remember Stephen Corey Bryant?

14 A Yes, I do.

15 Q And another death penalty case.

16 A Yes, ma'am.

17 Q And you were testifying in Mr. Bryant's case with --
18 do you remember the judge in that case?

19 A I remember testifying in that case.

20 Q Okay. You remember the judge's name over in Sumter?

21 A If you'll tell me what it is, I'll assure you it's
22 the right one.

23 Q Okay. Judge Russo?

24 A Yes. Thank you.

25 Q Okay. All right. And you gave testimony

1 September 8, 2008, in Stephen Corey Bryant's case, right?

2 A Ma'am, if you tell me that's what I did, I accept and
3 believe it. I couldn't retrieve those dates for you
4 without notes. But if you're suggesting I did, I'm sure
5 you're correct and are looking at something that's very
6 correct.

7 Q Okay. Do you remember the judge in this case
8 coordinating with Judge Russo?

9 A Yes, ma'am.

10 Q Okay. That prompts a memory. They were coordinating
11 so you can come from Stephen Corey Bryant directly in to
12 Mr. Inman's case to testify.

13 A Thank you very much. That's exactly what ---

14 Q Okay. You recall that? Okay.

15 And you were actually called by Mr. Inman's defense
16 on Wednesday September the 10th.

17 MS. BROWN: That's in the record on appeal, Your
18 Honor, at 323, if you would like a reference.

19 BY MS. BROWN:

20 Q And at that time, you had a -- and I hope I say this
21 correctly. Please correct me if I'm wrong -- a genogram
22 -- a genogram?

23 A Genogram. Yes, ma'am. You're correct.

24 Q Genogram. So you had that ready at the time in
25 September, correct?

1 A I'm sure I did. Yes, ma'am.

2 Q So you would come to court with notes and a genogram.
3 What else would you come to court with?

4 A Are we talking in general?

5 Q What did you come to court with in September for
6 Mr. Inman?

7 A Well, the genogram for sure. Lots of my own notes.
8 And some of my notes would be collateral witness interview
9 notes, and some would be just any notes of anyone I
10 interviewed, any record I reviewed, that kind of thing.

11 Q Okay. And have we refreshed your recollection a
12 little bit about being in Sumter on Monday and then coming
13 to Mr. Inman's case on Wednesday? Does that refresh your
14 recollection?

15 A Thank you. Yes.

16 Q Okay. During that time period between the time of
17 Stephen Corey Bryant and coming to Mr. Inman's case, did
18 you reinterview anybody?

19 A I don't know.

20 Q Okay. Well, just looking at the time, you tell us
21 that you were ready to go in September before the voir
22 dire questions. You were ready to go in September of
23 2008, and you would have had two days approximately
24 between giving testimony in another capital case, Stephen
25 Corey Bryant, and then being prepared, ready to take the

1 stand September 10th for Mr. Inman. Fair enough?

2 A I'm -- I'm trusting your recounting of the dates.

3 Q Well, what I wanted to ask you about is that you
4 ended up having approximately, according to the record,
5 about two days to get ready between two capital trials.
6 But when you came back to testify, you were called on
7 Monday, April 20, 2010. You didn't testify right off. Do
8 you remember that when you came back for the second time
9 to South Carolina for Mr. Inman?

10 A I am trusting your accounting of the dates for sure.

11 Q Well, Monday April 20th you didn't testify. And you
12 actually didn't testify that Tuesday. You testified
13 Wednesday, April 22nd.

14 A Thank you.

15 Q Does that sound familiar going over that?

16 A Again, I certainly trust you, yes.

17 THE COURT: I'm a little bit confused. I thought
18 that the trial was September '07.

19 MS. BROWN: September was the start of the
20 sentencing. That is when there was voir dire questions
21 posed.

22 THE COURT: Well, that's all right. Just -- all
23 right.

24 Now, what happened on September the 8th, '07 in
25 Sumter County?

1 MS. BROWN: Oh, '08, September the 8th of 2008, that
2 would have been a Monday. Uh-huh.

3 THE COURT: All right. Now we're at April?

4 MS. BROWN: In April, uh-huh, 2009. And this would
5 have been the second half.

6 THE COURT: All right. So there were two days
7 between when she was supposed to be in Pickens. That
8 would have been the 10th and from the time she was in
9 Sumter on the 8th.

10 MS. BROWN: Yes, sir. So two days to prepare. And
11 then when we come back ---

12 THE COURT: But she didn't -- did she miss something?
13 Did she testify on the 10th?

14 MS. BROWN: No, sir. That's when voir dire started.
15 there were questions that ---

16 THE COURT: Well, that's -- excuse me. No. When you
17 said she was going to testify, I just needed ---

18 MS. BROWN: Right, right.

19 THE COURT: She didn't testify.

20 MS. BROWN: She did not testify ---

21 THE COURT: Okay.

22 MS. BROWN: --- but fully prepared to, ready to go
23 between there.

24 BY MS. BROWN:

25 Q And then when we come back in April, first of all,

1 you were asked questions about what happened in Georgia.
2 Do you recall that on that Monday? So you didn't have the
3 full day of Monday to testify in order to get ready to
4 testify for Mr. Inman out of fairness, right? Didn't
5 have that because you were talking about Georgia on
6 Monday.

7 A I'm using you as my historian. Thank you.

8 Q And then on Tuesday, the judge didn't make you
9 testify, but you came back on Wednesday, right?

10 A And thank you for being my ---

11 Q Does that seem right? Okay.

12 A I appreciate you being my historian.

13 Q Your attorney advised Judge Miller that you'd gone
14 over the materials a little that weekend and then Monday
15 night. Seven or eight hours over the weekend, I believe.

16 MS. BROWN: And that would be, Your Honor, for your
17 reference, record on appeal, page 640.

18 BY MS. BROWN:

19 Q And a couple of hours Monday night. But if we're
20 looking at that, that's actually more time than you had
21 with the first go-round. And you said you were ready the
22 first go-round, right?

23 A Thank you for being my historian.

24 Q Okay. Thank you.

25 So the Court gave you until Wednesday of that week.

1 And you did tell the Court now that you didn't have any
2 contact with the defense since September, right?

3 A Thank you for being my historian.

4 Q Okay. All right. And that's ---

5 A There's just one thing. When you said fully ready a
6 moment ago ---

7 Q I'm sorry, but I can't answer questions for you.

8 THE COURT: No. But you can explain your questions.

9 THE WITNESS: I wasn't -- I'm never fully ready on a
10 death penalty case. I'm as ready as I can get. And I'm a
11 perfectionist, Judge. So when I'm as ready as I can get
12 and I have any number of more hours, I study more and do
13 all the more I can, to be honest with you. If I said I
14 was fully ready, I don't remember saying it, but if I did,
15 I certainly misspoke.

16 BY MS. BROWN:

17 Q Okay. Because it's ongoing; is that fair?

18 A I always try to review and learn as much as I can.

19 Q Okay. We won't say fully prepared, but you were
20 ready to go between Bryant and Inman.

21 A From what you've read off as my historian, it
22 certainly sounds like it.

23 Q And then as I mentioned before, when you came back --
24 this is the second time, this is in April of 2009, and you
25 first came in that Monday, talked about Georgia, some

1 stuff that happened in Georgia. And you told the
2 judge ---

3 MS. BROWN: And I'm on record page 472, Your Honor.

4 BY MS. BROWN:

5 Q "In that respect, I'm here voluntarily. I've been
6 through a lot leading up to that in this sense, and it
7 doesn't feel quite so voluntary to me." Now, you're
8 talking about the events in Georgia, right?

9 A Again, I have to thank you for being my historian.
10 Yes.

11 Q What do you mean it doesn't feel so voluntary?

12 A Was that after they tried to break -- they were going
13 to break down my front door?

14 Q This is when you're telling the Court what happened
15 in Georgia. And this is Monday.

16 A I'm asking you to help me. I think that was after
17 they threatened to break down my front door. If I'm
18 wrong, I expect someone to correct me, but that's my
19 memory. And so having been told I better not fly or I'll
20 get arrested, having almost had my front door broken down
21 with my dog inside, I didn't feel like anything was
22 voluntary. And my lawyer told me either you testify, or
23 the judge may feel like he needs to lock you up.

24 Q And your lawyer told you, did you say?

25 A Yes. The solicitor said I had to testify, but I

1 couldn't. My lawyer said, "Wait, the state licensing in
2 South Carolina said you may testify, so you have to
3 because you've been subpoenaed." And I didn't feel like
4 anything to do with this case was very voluntary or
5 anything like that. That would be absolutely correct,
6 ma'am.

7 Q Okay. And you did talk a little bit about the events
8 in Georgia, and you said you got the papers off of your
9 porch. You said that you were not at home when the
10 original papers to show up at the hearing were placed on
11 your porch; is that right?

12 A I trust you as my historian.

13 Q Okay. Well, do you recall saying there was a lady by
14 the last name of Switzer with you the day that you
15 received the papers?

16 A Again, I'm just going to trust you as my historian.
17 If that's what you're saying and that's what was said, I
18 thank you for reminding me.

19 Q Do you recall saying that when you came home after
20 being off the day that the papers were put on your porch,
21 that you got the papers off your porch, and, quote, did a
22 sequence of things before calling your lawyer? This would
23 be on the record on page 475. If it would be helpful for
24 you to look at that, I'll be happy to hand you the record.

25 MR. GROSE: I just want the record to reflect she's

1 not shown her any of this prior testimony.

2 BY MS. BROWN:

3 Q And just offered. I'd be glad to. Would you like to
4 see that?

5 A I honestly don't know. Perhaps I should.

6 MS. BROWN: Okay. Sure. It's 475.

7 Your Honor, with permission, I'll approach the
8 witness.

9 THE COURT: Certainly.

10 You want to mark that?

11 MS. BROWN: It's already in the record, Your Honor.
12 Record, page 475. I just thought this might be easier for
13 the witness.

14 THE COURT: And that's of the -- which transcript?

15 MS. BROWN: The record on appeal. The record on
16 appeal, Your Honor.

17 THE COURT: Okay.

18 THE WITNESS: Would you be so kind to point where
19 you'd like me to look?

20 MS. BROWN: Sure.

21 THE COURT: Line?

22 MS. BROWN: It's on line 11 here.

23 THE COURT: Through?

24 MS. BROWN: Line 19.

25 THE COURT: Thank you.

1 MS. BROWN: Absolutely.

2 THE WITNESS: Thank you.

3 BY MS. BROWN:

4 Q Does that refresh your recollection, ma'am?

5 A I'm just going to tell you, quite honestly, this was
6 so traumatic for me, I don't recollect this. But when you
7 show it to me and ask me to read it, I can say, yes,
8 ma'am, I see this. And I'll be glad to answer any
9 question you have about it.

10 Q Okay.

11 A But I cannot honestly tell you I recollect it because
12 I was so terrified and traumatized, I don't ever recollect
13 saying this. Is that clear? Am I being clear? I was so
14 frightened, I don't even remember saying this, Judge.

15 Q Okay. Do you recall ---

16 THE COURT: You're referring to the information on
17 page 475 in between Lines 11 and 19?

18 THE WITNESS: Yes, Judge. She keeps asking me if I
19 recollect it. I'm so terrified, I do not recollect it.

20 THE COURT: That's all I want to know is what we were
21 -- because I haven't seen the transcript. You'll have to
22 forgive me.

23 MS. BROWN: Yes, sir. And if I ---

24 THE COURT: I just want to be sure that when I do
25 look at it, I'll know what I'm looking for and where.

1 MS. BROWN: Absolutely, Your Honor.

2 THE COURT: Thank you. Let's proceed.

3 BY MS. BROWN:

4 Q On the page that you just reviewed, Doctor, it says
5 that you did a sequence of things. You don't recall what
6 those things were before you called your attorney, do you?

7 A I remember one thing.

8 Q Okay.

9 A Apparently, they had been banging on the door, and my
10 poor dog got so scared that she had an accident. I do
11 remember cleaning up after my little dog. That's the only
12 thing I do remember doing.

13 Q Was it a loud bang?

14 A I wasn't there, so I have no idea. I just assume
15 that that's what happened.

16 Q Oh, okay. All right. And then there's another day
17 when you said that you had left after the authorities had
18 been at your house. Do you recall that day?

19 THE COURT: Is that on the same page?

20 MS. BROWN: It's over at 476, Your Honor.

21 BY MS. BROWN:

22 Q And, Doctor, if you would flip that page you could
23 see that as well, if that helps to refresh your
24 recollection.

25 THE COURT: And what lines?

1 MS. BROWN: Oh, excuse me. I misspoke. I have 476
2 right here.

3 BY MS. BROWN:

4 Q 476. And I'll just let you, if you don't mind, just
5 kind of review from the top starting at 1 down to 25, and
6 just to see if that refreshes your recollection.

7 A (Reviews document) Thank you. I've read it.

8 Q And if you can answer this, do you remember the name
9 of the neighbor that talked to you? You said that a
10 neighbor had talked to you about things that had happened
11 at your house while you were gone.

12 A Yes.

13 Q Who was that neighbor?

14 A Richard and Ann Haynes.

15 Q Okay. Did you get any kind of affidavit or anything
16 from them that would memorialize exactly what they recall?

17 A I did not.

18 Q Have you ever gotten anything from them to
19 memorialize what they recall?

20 A I did not.

21 Q Okay. Later on, do you recall telling the judge that
22 you would do your very best in your role as a mitigation
23 expert?

24 A I'm -- ma'am, I need to apologize. I'm probably
25 doing a poor job of explaining this to you. I don't

1 recall what I said.

2 Q Okay.

3 A I look at this, and I read it. Judge, it's like I'm
4 reading something new. And I hope you never experience
5 the kind of terror and fear that I felt that would cause
6 me to have to tell you that I don't remember this at all.

7 Q Okay.

8 A I hope you don't experience it. I hope I never
9 experience it again.

10 Q Okay. Have you had to talk about this experience
11 before?

12 A I beg your pardon, ma'am?

13 Q I'm sorry. Have you had to talk about this
14 experience before since it happened?

15 A No. I didn't have to talk about it before except
16 when I talked with the psychiatrist who was kind enough to
17 evaluate me recently.

18 Q How did you get to that psychiatrist?

19 A I beg your pardon, ma'am?

20 Q Can you tell us how you came to be treated by the
21 psychiatrist?

22 A Ma'am, I was not treated by him. He was kind enough
23 to evaluate me. And Attorney Holt requested that I be
24 evaluated by him, and I said I would be willing to do
25 that.

1 Q Okay. So you've never sought treatment or anything?

2 A For what I experienced after going through this?

3 Q Yes, ma'am.

4 A Yes, ma'am. I did.

5 Q And where was that?

6 A It was in Atlanta.

7 Q Okay. Did you share that with the doctor that
8 Ms. Holt sent you to?

9 A I'm not sure that I did. Yes, I did. I think, if my
10 memory -- let me think. I may have said that I had got
11 therapy once in a while when it would be helpful to me. I
12 think that's what I told them, which certainly was what
13 happened here. It was very helpful to me.

14 Q Okay. Ma'am, I'd like to approach and show you
15 something that's been marked as Respondent's 2.

16 THE COURT: Very well.

17 BY MS. BROWN:

18 Q And before we talk about it, I'm just going to let
19 you see the whole exhibit and see if that is something you
20 recognize.

21 A (Reviews exhibit) I've read it.

22 Q Okay. Ma'am, is it fair to say that you were
23 communicating with Mr. Inman's defense counsel at least
24 through the end of October of 2008?

25 A Let's see. This appears to be an e-mail that I

1 appeared to have sent to Jim Bannister, and I don't see
2 the date when I wrote it on here. I see a date when he
3 responded to me. Is there somewhere where I should see a
4 date where I wrote it?

5 Q That's the only copy that's entered into evidence.

6 THE COURT: Just ask you, is ---

7 THE WITNESS: Thank you, Judge.

8 THE COURT: It looks like the front line is -- well,
9 let's see. Unless it's 2:39 p.m., 10/24/2008. Would that
10 be right? You want to look at it? It's your exhibit. If
11 you offer something to the Court that you don't want to
12 look at . . .

13 MS. BROWN: This is -- actually, Your Honor, this is
14 what we've received in discovery. But what we're going
15 by ---

16 THE COURT: Excuse me. Well, look and see if -- it
17 looks as the "from" is at the bottom on that particular
18 exhibit.

19 MS. BROWN: I have -- and I guess with the Court's
20 permission, I could ask the witness . . .

21 BY MS. BROWN:

22 Q I have, it looks like, at 2:39 p.m. on 10/24/2008 you
23 wrote -- and this would be Mr. Bannister to you, correct?

24 THE COURT: Well, let's see. That's ---

25 MS. BROWN: I think that's ---

1 THE COURT: Give me the -- the date and time is at
2 the top.

3 MS. BROWN: And, actually, that kind of threw me off,
4 too, Your Honor, but that was the only note that we've
5 received in discovery. So I think it's fair to say ---

6 THE COURT: Well, I can't -- I can't explain
7 something that you put into evidence. I thought you would
8 vouch for it.

9 MS. BROWN: Only that it's received in discovery.
10 That is an e-mail.

11 THE COURT: How would this witness, if you can't
12 explain it, be able to explain it?

13 MS. BROWN: Well, let me follow up, Your Honor. It's
14 a fair point.

15 THE COURT: Yes, ma'am.

16 MS. BROWN: Fair point.

17 BY MS. BROWN:

18 Q You do recognize this, correct?

19 A I beg of you, I don't recognize or remember anything
20 from that horrible, traumatic time in my life. No, I
21 don't recognize that.

22 Q Okay.

23 A No, ma'am. To be honest with you. I just don't know
24 how else to tell you. I was so terrified, I can't even
25 remember that that was I who could have written that.

1 Q Okay. Can you generally remember talking to
2 Mr. Bannister?

3 A I don't know when I did and when I didn't talk with
4 him.

5 Q Okay. Now, that e-mail suggested, at some point,
6 about Alabama, New Hampshire, and I think you told us
7 earlier you testified in Georgia, Alabama, New Hampshire.
8 You were testifying throughout this time; is that correct?

9 A I don't know that. I mean, it's been well over
10 20 years I've been doing all this, so I don't know if I
11 was testifying in those places during this time.

12 Q Okay. All right. Do you recall testifying in Andres
13 Torres in Spartanburg, South Carolina a couple of months
14 after this in -- I think it was 2008?

15 A (No answer.)

16 Q Spartanburg, State of South Carolina vs. Andres
17 Antonio Torres, October 13th through the 23rd, 2008,
18 before the Honorable Roger Couch?

19 A And what is the question, ma'am?

20 Q Did you testify in Mr. Torres's capital proceedings?

21 A I'm sure I did. Yes, ma'am.

22 Q Okay. And that was October of 2008?

23 A I trust you as my historian.

24 Q Okay. Do you remember testifying -- the actual
25 testimony you gave in Stephen Corey Bryant a couple of

1 days before the voir dire incident in this case?

2 A Would you be kind enough to help me with the
3 question, ma'am?

4 Q Sure. Do you recall Mr. Stephen Corey Bryant?

5 A Yes, ma'am.

6 Q You recall giving testimony? Do you actually recall
7 giving the testimony in court in Sumter before Judge
8 Russo?

9 A In general, I do, yes, ma'am. In general.

10 Q Okay. Doctor, you've been qualified as an expert in
11 posttraumatic stress disorder, right?

12 A Yes, ma'am, I have.

13 Q Okay. Do you know most recently when you were
14 qualified as an expert?

15 A Probably a couple of weeks ago. I have a list of all
16 of that, but most recently in Georgia.

17 Q Okay. In Georgia.

18 Did you testify in a case called Brower vs. State?

19 A Yes, ma'am.

20 Q Do you remember your testimony in that particular
21 case as a posttraumatic stress disorder expert?

22 A I would be glad to review anything you'd like to show
23 me about that.

24 Q Sure. Well, let me ask you, do you remember a
25 suggestion that there are four tools you should always use

1 in trying to determine whether there's ---

2 THE COURT: Just a moment.

3 MS. BROWN: --- posttraumatic ---

4 THE COURT: Ma'am, if you would please address the
5 witness and the Court facing us, it helps us ---

6 MS. BROWN: Absolutely.

7 THE COURT: --- rather than walking away from us.

8 MS. BROWN: Absolutely. Your Honor.

9 THE COURT: Thank you, ma'am.

10 MS. BROWN: Sure.

11 BY MS. BROWN:

12 Q Do you remember suggesting that there are four tools
13 that you should always use to diagnose posttraumatic
14 stress disorder?

15 A As I've asked you, if you'd be kind enough to give it
16 to me, I'd be glad to refresh my memory.

17 Q Sure. Have you reviewed cases before, case law
18 before?

19 A Thank you. What would you like for me to review?

20 Q Sure. Let's go ---

21 MR. GROSE: And just for the record, if she's handing
22 Dr. Loring the same thing that she's handed us, this is
23 not testimony. This is a court opinion and would not be
24 -- Dr. Loring asked to see the testimony to refresh her
25 memory.

1 BY MS. BROWN:

2 Q This is just a document to help refresh your
3 recollection. If it doesn't refresh your recollection, I
4 won't put it in.

5 THE COURT: Why don't you -- if you want to help the
6 witness and that's the only thing that you have, you have
7 no testimony or anything else, any other memorialization
8 of anything that she might have had previous knowledge of,
9 address her to what you want her to ---

10 MS. BROWN: Absolutely.

11 THE COURT: Thank you.

12 BY MS. BROWN:

13 Q There's a little short line here. And this -- I'm
14 going to get a little close to you, excuse me, but I
15 thought it might be a little easier for us to read.
16 There's a short line in here that says ---

17 THE COURT: Why don't you find it on your copy,
18 Doctor.

19 BY MS. BROWN:

20 Q Turn the page over. That's okay.

21 A Am I being asked to review a law document?

22 THE COURT: You're asked to review a document. It
23 happens to be a copy of a case, but apparently there is
24 some provision in that case she wants you to look at and I
25 think you'll have a question in regard to it.

1 THE WITNESS: Thank you, Judge.

2 THE COURT: Yes, ma'am.

3 BY MS. BROWN:

4 Q Right here they have a ---

5 THE COURT: Let's do this. I find these things are
6 most helpful.

7 THE WITNESS: Oh, wonderful.

8 THE COURT: Let her show you what she wants you to
9 look at.

10 MS. BROWN: Thank you, sir.

11 THE WITNESS: Absolutely.

12 THE COURT: And I might note, it's now 6:00 ---

13 MS. BROWN: Yes, sir.

14 THE COURT: --- for the record.

15 MS. BROWN: Yes, sir.

16 BY MS. BROWN:

17 Q One little short section here.

18 MS. BROWN: Thank you, sir. I appreciate you letting
19 me do that.

20 THE COURT: My pleasure.

21 THE WITNESS: Thank you, Judge. It's very helpful.

22 THE COURT: Yes, ma'am. You're quite welcome.

23 BY MS. BROWN:

24 Q I just want to ask you a little bit. You said, is
25 that accurate, that you use four tools to diagnose

1 posttraumatic stress disorder?

2 A At that time I did. Yes, ma'am.

3 Q And the trauma symptom checklist, can you tell us a
4 little bit about the trauma symptom checklist?

5 A It's where an individual checks off various symptoms
6 to see if they have symptomatology of PTSD.

7 Q Okay. What's an example of the symptoms?

8 A Would be if someone has flashbacks, for example.

9 Q Okay. And the clinician administered PTSD scale,
10 where does that come from, ma'am?

11 A That's put out by the Veteran Center of our
12 government.

13 Q Okay. And the trauma belief inventory?

14 A That has -- I'm sorry.

15 Q You're right. Go ahead. Just tell me where that
16 comes from.

17 A Oh, that's a tool that asks someone's various beliefs
18 and looks to see if those beliefs are consistent with
19 trauma.

20 Q Can you give me an example of that? What would that
21 be?

22 A For example, someone feels very hopeless.

23 Q How do you elicit that from them?

24 A They're asked to talk about different beliefs that
25 are listed on that scale. I haven't used that for a long

1 time.

2 Q Oh, okay. And last one was Horowitz impact of events
3 scale. Can you tell us where that comes from and give us
4 an example of what that is?

5 A Yes. That's a trauma tool that I also haven't used
6 for some time, that it talks about the impact that various
7 events have had on an individual.

8 Q Okay. Thank you, ma'am. I appreciate that.

9 THE COURT: By the way, is that in the record?

10 MS. BROWN: No, sir.

11 THE COURT: Let's put it in the record, particularly
12 the one that has been highlighted.

13 MS. BROWN: I can move it in as the next exhibit that
14 we have, if that would be okay.

15 THE COURT: Very good.

16 MS. BROWN: I offer it as an exhibit.

17 MR. GROSE: No objection.

18 THE COURT: In as much as it's already been reviewed,
19 for the record.

20 MS. BROWN: And handled, and highlighted. The
21 highlight is mine.

22 (WHEREUPON, Respondent's Exhibit Number 6 was marked for
23 identification and admitted into evidence.)

24 THE COURT: All right. You may proceed.

25 MS. BROWN: Thank you, Your Honor.

1 BY MS. BROWN:

2 Q I would like to show you, well, one page from the
3 record. It is page 673. Just like we did before, ma'am,
4 I'll hand it to you. And this is where you are going to
5 give some testimony -- or you're giving testimony at that
6 second proceeding after the Atlanta events, okay, just to
7 orient you to the time. And you said in there that ---

8 THE COURT: Which lines are you on?

9 MS. BROWN: Excuse me. Starting on the first full
10 sentence on Line 12.

11 THE COURT: 12 through?

12 MS. BROWN: 25.

13 THE COURT: Very good. Thank you, ma'am.

14 MS. BROWN: Yes, sir. I appreciate it.

15 BY MS. BROWN:

16 Q You told the Court that Jerry Buck Inman consented to
17 my doing mitigation as much as I was able to do with only
18 one condition, that I show respect to his mother, which I
19 intend to do. Do you remember that?

20 A I was so terrified, I have no memory whatsoever.

21 It's like I'm reading this for the first time.

22 Q Okay. Well, would you agree that that sounds like a
23 condition, that you're going to treat his mother with
24 respect?

25 A I think -- no, ma'am. I didn't -- I felt that that

1 was coming from him, that he was saying you can do
2 mitigation if you respect my mom. Since I always respect
3 everybody, it didn't feel to me like -- it didn't feel
4 like a condition. From him, he saw it as such. From me,
5 I saw it as, well, that's standard operating procedure for
6 me. So, of course, I'll respect her, and I could have
7 added "and anyone else with whom I would speak."

8 Q But you agree with me that was his condition, what he
9 wanted?

10 A Oh, certainly. He wants everyone to respect his
11 mother. Yes, ma'am.

12 Q Okay. Well, the memo that you read to us earlier,
13 and that's Applicant's 36, your March 7, 2014, memo, that
14 references ---

15 A Excuse me.

16 Q --- things that you remember from -- I'm sorry.
17 What?

18 A I'm lost. What are -- what am I referencing?

19 Q That you just read. Let me show you to refresh your
20 recollection of reading that just a few minutes ago.
21 That's Applicant's 36.

22 A Thank you.

23 Q Sure. That is all based on Mr. Inman's mother and
24 the actions related to you, correct? Mitigation -- if I
25 can rephrase. This may help you. The mitigation that

1 you're telling us about all puts Mr. Inman's mother in a
2 bad light, doesn't it?

3 A Oh, no, ma'am.

4 Q It could be perceived that way, though. Wouldn't you
5 agree with me?

6 A Not -- no, ma'am. Not from anyone ---

7 Q She tried to kill him, didn't she?

8 THE COURT: Just a moment. She's answering your
9 question. Let her complete her answer.

10 MS. BROWN: Sure, sure.

11 BY MS. BROWN:

12 Q Excuse me. Please, go ahead.

13 A That poor, mentally ill woman who adored her son
14 admitted things to me. We had to stop while she was
15 sobbing. She admitted things to me that she'd done to her
16 son, was humiliated, embarrassed and sure she was going to
17 get in trouble with the law. So my perception of it was
18 that it was a mentally ill mother's gift to tell the truth
19 about what she had done to her son regardless of what was
20 going to happen to her, what she seemed to think was going
21 to involve the authorities coming after her.

22 So to me, I felt the respectful thing for me to do
23 was to listen, not write it down like she asked, come to
24 court, and express all the truth of what she said, all
25 that she said that she had done to her son. That seemed

1 to me -- she's no longer living, but that seemed to me the
2 most respectful thing that I could do for her.

3 Q Okay.

4 A Which I failed to do the last time.

5 Q And I don't want to misstate this, so let me make
6 sure that we're clear on this. You have your duty, and
7 sometimes bad facts are out there and you need to share
8 that. But we also have Mr. Inman, and he doesn't want
9 certain things said. Well, could it be, ma'am, that some
10 of that information maybe was not presented not because of
11 an impairment, but by abiding by Mr. Inman's wishes not to
12 show his mother in a bad light? Couldn't that be?

13 A On my part?

14 Q Couldn't it be?

15 A No, ma'am. I felt that this showed Vera, his mother,
16 in an accurate light of taking any consequence that
17 happened to be truthful about what she had done to her
18 son, so I felt it was presenting her in a respectful and
19 truthful light.

20 Q Was there any indication of these events on the
21 genogram or any of the documents that you brought?

22 A I don't know for sure. I would think that I may not
23 have and instead would intend to share them verbally with
24 the Court at the time, and then I would not have written
25 them down, but I'm not -- I'll tell you what I'm sure of

1 and I'll tell you what I'm not. I'm not sure of that,
2 Judge.

3 Q Okay. And you remember saying that you saw some
4 allegations about a prison rape, that Mr. Inman raped a
5 cell mate, but you didn't put that in either? Do you
6 remember that?

7 A No. Would you help me, please, understand your
8 question.

9 Q Sure. On record, page 707 -- and I'll be happy to
10 show you that, refresh your recollection. And by the way,
11 Doctor, I only have a few more questions, so it might help
12 to see a little bit of light at the end of the tunnel.

13 And I'll approach you just like we did before, 707
14 there.

15 THE COURT: Lines?

16 MS. BROWN: Yes, sir. Line 1, which is a portion of
17 a line, down to Line 17.

18 THE COURT: Very good. Thank you, ma'am.

19 MS. BROWN: And I'm sorry. I'll have to amend that,
20 Your Honor. 13. 13. That was -- unfortunately, that was
21 my bifocals. That's my mistake.

22 THE WITNESS: (Reviews document) I've read it.

23 BY MS. BROWN:

24 Q Okay. Do you remember that testimony, ma'am? No?

25 A Same old, same old, Judge. I hate to keep you

1 another second. I don't even remember saying any of this.
2 It's like seeing something for the first time because I
3 was so terrified.

4 Q Okay. Do you remember not asking for Mr. Ariail to
5 leave the courtroom when you gave the testimony?

6 A I beg your pardon, ma'am?

7 Q Do you ever remember saying you didn't need
8 Mr. Ariail to leave the courtroom when you testified? Or
9 is that something that you don't have a recollection of?

10 A I don't have a recollection of, but if I did, it was
11 because I was so scared already I didn't think I could get
12 much more scared.

13 Q Okay. Have you ever testified anywhere that it was
14 your choice not to give testimony?

15 A I beg your pardon, ma'am?

16 Q Have you ever testified under oath anywhere ---

17 THE COURT: Ma'am, ma'am, ma'am, ma'am, we're over
18 here.

19 MS. BROWN: Court's indulgence, please.

20 THE COURT: Yes, ma'am.

21 MS. BROWN: I tend to walk, Your Honor, as you can
22 tell. And I'm sorry. I'll try to not do that.

23 THE COURT: My problem is I can't walk. I have to
24 sit right here, and I can only hear what people say to me.

25 MS. BROWN: Wait a minute.

1 THE COURT: I beg your pardon?

2 MS. BROWN: Wait a minute. You have to sit here?

3 Are you saying I'm going too long? Okay.

4 BY MS. BROWN:

5 Q Do you remember giving testimony, Doctor, in another
6 capital case, State vs. Steven Lewis Barnes in Edgefield
7 before the Honorable Knox McMahon on November 16, 2010?

8 A I see you reading that, so I trust you as my
9 historian.

10 Q Okay.

11 THE COURT: What was the date of the trial?

12 MS. BROWN: This particular testimony was
13 November 16, 2010.

14 THE COURT: Very good. Thank you, ma'am.

15 MS. BROWN: Yes, sir.

16 BY MS. BROWN:

17 Q Do you remember Mr. Barnes' trial?

18 A Yes, ma'am.

19 Q And Solicitor Myers from the 11th circuit asked you
20 some questions in that trial?

21 A Yes. I'll be glad to review anything you'd like.

22 Q Is it correct that he asked you if you were the same
23 lady in the death penalty case in Greenville last year
24 that wouldn't testify? And he referenced Jerry Buck
25 Inman. And isn't it correct that you said, "I chose not

1 to testify until some complicated issues were settled, and
2 then when the South Carolina licensing wrote me a letter
3 saying I was freely welcome to testify, go right ahead, I
4 was so glad to testify at that time"?

5 A Would you like me to review that to be able to
6 respond to a question?

7 Q I only wanted to know if you recall saying it, and
8 I'll be happy to show you this. This is -- let me
9 explain. The first part of the transcript, the cover
10 page, it gives you some information to review, ma'am, an
11 index, and this.

12 THE COURT: Just show her the place, the testimony
13 that you're asking her to review.

14 THE WITNESS: You will point ---

15 BY MS. BROWN:

16 Q Right here. Are you the same lady? It would be on
17 line ---

18 MS. BROWN: Your Honor, starting on Line 5 of the
19 exhibit.

20 THE COURT: Just a moment. Let's just -- we found
21 another highlighter.

22 MS. BROWN: Oh, wonderful. Thank you so much.

23 BY MS. BROWN:

24 Q And this shows an interruption, but what I was going
25 to get to was yours right here. There you are 'ma'am.

1 A Thank you.

2 MS. BROWN: And thank you, sir. I appreciate that.

3 THE WITNESS: (Reviews document) Would you like me to
4 explain that, ma'am?

5 BY MS. BROWN:

6 Q You're free to explain, yes, ma'am.

7 First of all, would you please tell us whether that
8 was your statement.

9 A Clearly, that is my statement. And what I meant by
10 that was that I was so glad I hadn't lost my career as I
11 just felt so sorry I was about to. In that respect, I was
12 glad to testify and keep my career.

13 The second thing I meant by that, ma'am, is I was --
14 there was an attempt to disqualify me from testifying, so
15 I was saying I was glad to have testified. And if I
16 continued, I would have said so I can testify here and
17 other places and keep my career. That's what I meant by
18 that.

19 Q Well, you had mentioned a little bit earlier in your
20 direct that you had an order that you were supposed to
21 list out all the cases that you worked on. Do you
22 remember that?

23 A No, ma'am. I don't believe I said I had an order. I
24 was told I was going to have to. That changed any number
25 of times. So I don't really know whether I had an order

1 or whether I was just told I had to.

2 Q Okay. Do you have any kind of documentation, a
3 letter or anything like that that shows you were requested
4 to make a compilation of all cases?

5 A Attorney Godfrey would simply tell me, "This is
6 what's being demanded of you now."

7 MS. BROWN: Okay. And, Your Honor, for consistency,
8 I'd like to mark the transcript portion and place it in as
9 our next exhibit.

10 MR. GROSE: No objection.

11 THE COURT: And that would be Exhibit Number?

12 THE REPORTER: 7.

13 THE COURT: Very good. State's Exhibit Number 7 is
14 admitted without objection.

15 (WHEREUPON, Respondent's Exhibit Number 7 was marked for
16 identification and admitted into evidence.)

17 MS. BROWN: Thank you, Your Honor. Thank you,
18 Dr. Loring. I have no further questions.

19 Your Honor, would you like for me to leave these
20 documents that are part of the record?

21 THE COURT: Yes. Depending on that they've been
22 admitted.

23 MS. BROWN: These are just the extra sheets from the
24 record.

25 THE COURT: Okay. That's not anything that's in the

1 record that's been referred to, unless you want a complete
2 -- and we don't need to put the whole transcript in, but
3 if you want to put any extra thing, just attach them to
4 the exhibit that has been admitted.

5 MS. BROWN: Thank you very much. I appreciate it.

6 THE COURT: You're quite welcome.

7 Redirect.

8 MR. GROSE: Dr. Loring, I don't have any questions.
9 Thank you for being here.

10 Your Honor, may she be excused?

11 THE COURT: Whose subpoena? Your subpoena? All
12 right. That's all I was asking.

13 Any objection to the witness being excused?

14 MS. BROWN: No objection. Thank you.

15 THE COURT: Very good. You may be excused.

16 THE WITNESS: Judge, thank you for the honor of being
17 able to testify at last to this.

18 THE COURT: My pleasure. And I'm glad that you were
19 able to assist us.

20 THE WITNESS: Thank you, Judge.

21 MR. GROSE: And good luck.

22 THE WITNESS: Thank you, Judge.

23 THE COURT: All right.

24 MR. GROSE: From a scheduling perspective,
25 Dr. Viamonte has been gracious enough to come back in the

1 morning, if that pleases the Court.

2 THE COURT: That does please the Court.

3 MR. GROSE: I've got to please you once this week.

4 THE COURT: I love the exercise.

5 All right. I see another witness.

6 MR. GROSE: That's Dr. Maddox, and she already knew
7 she was going to have to be back tomorrow.

8 THE COURT: All right. Very good. Then y'all have
9 done well.

10 What time do you want to start in the morning?

11 MR. GROSE: 10:00 again.

12 THE COURT: 10:00 is fine with me. I'll try to be --
13 well, I think I was here before 10:00. I was just, what
14 is it, lollygagging before I came in.

15 If you would, when you do gather the question, I
16 usually ask the clerk of court is when I'm back in what I
17 use now as the chambers to check to be sure that
18 everybody, all the attorneys at least are present and if
19 they're ready to go. Also, if you have anything that you
20 want to address before court starts, it might help the
21 procedure. I would appreciate you letting the clerk know
22 and I'll come out immediately and we'll address it as soon
23 as possible.

24 THE COURT: All right. Anything else? We'll stand
25 in recess until 10:00.

(WHEREUPON, court is adjourned at 6:22 p.m., to be
reconvened Wednesday, August 22, 2018.)

1 Wednesday, August 22, 2018

2 (WHEREUPON, Applicant's Exhibits 41, 42 and 46 were marked
3 for identification.)

4 (WHEREUPON, proceedings reconvened at 10:19 a.m.)

5 THE COURT: We're back on the case of Jerry Buck
6 Inman, Number 5256. I still see the 5226 on some of the
7 captions of the papers I've had. Also known as the Jerry
8 Buck Inman with an A vs. The State of South Carolina,
9 2012-CP-39-918.

10 All right. We have the applicant's case. Mr. Grose,
11 Ms. Holt.

12 MR. GROSE: Thank you, Your Honor. Just before we
13 proceed, as a matter of housekeeping, the court reporter
14 has called to our attention that we had certain exhibits
15 marked with the same number, and so I forget what range
16 that was. It was 14, 15, 16, 17, and 18, all of which are
17 applicant's exhibits. And what has been done is, is the
18 second copy of those has been marked 14-A to distinguish
19 them. When the transcript is prepared, the court reporter
20 is going to make a note as to which one it's referring to.

21 THE COURT: All right. Now, in other words, we have
22 eight exhibits with duplicate four numbers. Is that what
23 I understand?

24 MR. GROSE: I think it's five exhibits with duplicate
25 numbers. It's 14 through 18.

1 THE COURT: 18. I had 17.

2 MR. GROSE: However many that is. I think that's
3 five.

4 THE COURT: But I had through 17.

5 So you'll have Applicant's Exhibits 14, 15, 16, 17,
6 and 18 that have been admitted, but also 14-A, 15-A, 16-A,
7 17-A and 18-A, which are five separate exhibits. They've
8 also been admitted? Apparently, they had numbers.

9 MR. GROSE: They had numbers, and they had all been
10 admitted.

11 And just for the record, 14-A is the order of then
12 Chief Justice Toal assigning Judge Few this case. 15-A
13 is ---

14 THE COURT: Just a minute, please.

15 MR. GROSE: I'm sorry.

16 THE COURT: Okay. 15-A.

17 MR. GROSE: 15-A is the order appointing counsel
18 Bannister that was filed -- I'm not sure what date, but in
19 February of 2001.

20 THE COURT: But that is the order appointing him.

21 MR. GROSE: Yes, sir.

22 THE COURT: Okay.

23 MR. GROSE: And 16-A is the two-page order from the
24 South Carolina Supreme Court dated March 21.

25 THE COURT: Just a second please. March 21?

1 MR. GROSE: Yes, sir.

2 THE COURT: What year?

3 MR. GROSE: Huh?

4 THE COURT: What year?

5 MR. GROSE: I'm sorry. March 21 of 2007. And it's
6 denying the writ of prohibition and assigning Judge
7 Miller.

8 THE COURT: Okay.

9 MR. GROSE: 17-A is Judge Miller's order of
10 November 15, 2007.

11 THE COURT: November?

12 MR. GROSE: 15 of '07. And that's clarifying
13 appointment of counsel.

14 And 18-A ---

15 THE COURT: Appointing -- clarifying ---

16 MR. GROSE: Yeah. You'll recall that when the
17 Supreme Court dismissed the writ of prohibition and
18 assigned Judge Miller, they directed to have a hearing to
19 determine whether or not Mr. Culbertson would be appointed
20 in addition to Mr. Dejong and Mr. Bannister.

21 THE COURT: And was he?

22 MR. GROSE: He was. Yes, sir.

23 THE COURT: Okay, sir.

24 MR. GROSE: And then 18-A is Mr. Bannister's time
25 sheets or time records.

1 THE COURT: All right. Very well.

2 By the way, is there any objection or questions about
3 remarking exhibits?

4 MS. BROWN: No, sir. We appreciate the
5 clarification.

6 THE COURT: Very good.

7 MR. GROSE: And we certainly appreciate the court
8 reporter assisting us with all of that. It's very
9 helpful.

10 THE COURT: Very well. Thank you, all.

11 MR. GROSE: If there's nothing further from pretrial,
12 I'm prepared to call witnesses.

13 THE COURT: Very well.

14 Anything else from the State before we call the first
15 witness?

16 MS. BUTTERBAUGH: No, Your Honor.

17 THE COURT: Very well. You may do so.

18 MR. GROSE: At this time, I would call Dr. Louis
19 Viamonte.

20 WHEREUPON,

21 LOUIS VIAMONTE

22 After having been duly sworn, testified as follows:

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

25 THE WITNESS: Yes, sir. My name is Louis Viamonte.

1 It's V as in Victor, I-A-M-O-N-T-E.

2 THE COURT: V-I-A ---

3 THE WITNESS: M-O-N-T-E.

4 THE COURT: One word?

5 THE WITNESS: Yes, sir.

6 THE COURT: Great. Thank you. You may proceed.

7 DIRECT EXAMINATION

8 BY MR. GROSE:

9 Q Dr. Viamonte, can you summarize for Judge Macaulay
10 your educational experience beginning with college?

11 A Yes, sir. Started out at Auburn University, and
12 after -- begin my third year, I withdrew and joined the
13 military, I did an enlistment in the United States Navy,
14 and when I was discharged honorably, I returned to
15 college.

16 I transferred to the University of Alabama at
17 Birmingham, received a degree in medical technology, then
18 proceeded to get a master's in science and biology from
19 UAB, University of Alabama, Birmingham. And then I went
20 on to medical school at Creighton University in Omaha,
21 Nebraska.

22 From there, I did two years of OB/GYN residency in
23 Phoenix, Arizona. I switched to psychiatry, really
24 because I enjoyed psychiatry more. I didn't dislike
25 OB/GYN, but I didn't think I'd be happy 20 years from now

1 but felt like I could do psychiatry and still be happy, so
2 I did and I'm very happy I did that.

3 Went to -- from there to Greenville Health Systems as
4 part of the University of South Carolina and completed my
5 general psychiatric residency there, and then went on to
6 Medical University of South Carolina, MUSC, and completed
7 a forensic psychiatry fellowship.

8 THE COURT: Forensic psychiatry?

9 THE WITNESS: Yes, sir.

10 THE COURT: Very good.

11 BY MR. GROSE:

12 Q And what is your current employment?

13 A I'm currently employed by Carolina Health Systems,
14 they just changed their name to Atrium Health, as an
15 outpatient general psychiatrist. I began Monday. And I
16 didn't go to work yesterday or today, so if I lose my job,
17 Your Honor, I would like a phone call or I'm going to hit
18 you up for a job. But I'm happy to be here.

19 THE COURT: Well, you have to understand that I'm
20 unemployed myself.

21 THE WITNESS: We're going to do a lot of fishing, I
22 think.

23 BY MR. GROSE:

24 Q And I think you've already touched on this, but do
25 you have any training and experience in forensic

1 psychiatry?

2 A I did a fellowship, yes.

3 Q All right. And I'm going to hand you what's been
4 marked as Applicant's Exhibit 37. Do you recognize that
5 document?

6 A Yes. This is my CV.

7 MR. GROSE: And at this time, I would move
8 Applicant's 37 into evidence.

9 THE COURT: Any objection?

10 MS. BUTTERBAUGH: No objection.

11 THE COURT: All right. Applicant's 37 is admitted.

12 (WHEREUPON, Applicant's Exhibit Number 37 was admitted
13 into evidence.)

14 MR. GROSE: And at this time, I would offer
15 Dr. Viamonte as an expert in forensic psychiatry.

16 THE COURT: Any voir dire?

17 MS. BUTTERBAUGH: Yes, Your Honor.

18 MR. GROSE: I'm sorry. And clinical psychiatry.

19 THE COURT: Clinical and forensic psychiatry.

20 MR. GROSE: Yes, sir.

21 VOIR DIRE

22 BY MS. BUTTERBAUGH:

23 Q Good morning, Dr. Viamonte.

24 A Good morning.

25 Q You testified you just completed your fellowship in

1 forensic psychiatry.

2 A That's correct. June 30th.

3 Q And that's the only experience you have in forensic
4 psychiatry?

5 A No, ma'am. Part of your general psychiatry, part of
6 being able to graduate from general psychiatry, you have
7 to have experience in forensic psychiatry, so I spent
8 about two years, maybe more, with -- under the tutelage of
9 Dr. Maddox, Donna Maddox, who's had 30 years, dated her
10 right now, of forensic psychiatry. So I had -- I had an
11 excellent education in general psychiatry, and it's, I
12 feel, a privilege and honor to have been able to learn
13 from her. And we're actually colleagues now, so I've kept
14 with her.

15 Q But specific to forensic psychiatry, what did you do
16 in those two years?

17 A I would follow her around the state, and we would
18 talk about the case. There were times she allowed me to
19 interview the defendant, for example, and there were times
20 I wrote a report and she would grade it. She would allow
21 me to come watch her testify. And I'd watch her testify
22 and we'd talk about it later. We've practiced with me
23 asking her questions as an expert witness. That sort of
24 thing.

25 Q And your research experience is in publications. Can

1 you talk a little bit about that? Because those kind of
2 tended to focus on something other than forensic
3 psychiatry in your CV.

4 A Yeah. So the beginning of your medical career,
5 you're really competitive. And so I wanted to be a
6 doctor. That was the goal. So I did an internship one
7 year in pediatric urology and did a study there with other
8 pediatric urologists.

9 There was also my master's. The reason why I got a
10 master's was to get into medical school, so I still had to
11 do that. And that was an ecology study. I studied fish,
12 fish population. And the medical schools don't care, to
13 be honest with you. They just want to see that you're
14 dedicated and you're willing to do more than other people
15 are willing to do and go the extra mile.

16 And so to answer your question, I'm far more
17 interested in forensic psychiatry than I am catching fish,
18 but that's why. I worked pediatric urology for that
19 matter.

20 Q And how many evaluations -- psychiatric evaluations
21 have you completed?

22 A I mean, I couldn't tell you. I mean, if you think
23 about first year of psychiatry residency, you get on the
24 floor and you start at five and then you increase more up
25 to carrying up to 12. So that's 12 a day. And then

1 you're on call. You're at the ER. Not counting OB/GYN,
2 with OB/GYN, specifically, we look for mental health
3 issues. So you're doing the exam and, I mean, it's over a
4 thousand, easy.

5 Q And with forensic psychiatry, how many would you say
6 you have completed?

7 A Forensic psychiatry, last year I worked in a prison.
8 I carried 12 patients every Friday -- Tuesday and Friday.
9 There were some no-shows, so just make the math easier,
10 eight times 48 weeks. And then that's not counting the
11 amount of evaluations I did at CST or NGRI. So I'm not
12 doing my math very well, but ten times 48 it's, what 480,
13 I guess. I don't know. But enough that I feel confident
14 to be here.

15 Q And how many times have you been qualified as an
16 expert to testify?

17 A I've been qualified as an expert witness in
18 psychiatry twice in the State of South Carolina.

19 MS. BUTTERBAUGH: Thank you, Dr. Viamonte. Thank
20 you, Your Honor. We have no objection.

21 THE COURT: All right. Without objection,
22 Dr. Viamonte will be qualified as a clinical and
23 forensic -- as an expert in clinical and forensic
24 psychiatry.

25 MR. GROSE: Thank you, Your Honor.

DIRECT EXAMINATION (Continued)

BY MR. GROSE:

Q Dr. Viamonte, did Ms. Holt and I ask you to conduct an evaluation of Dr. Marti Loring?

A Yes.

Q And if you could tell the judge a little bit about how we got to you.

A So my colleague Dr. Maddox knew Dr. Loring. They had worked together. Attorney Grose and Holt had originally asked her, and she said, "Well, it's a conflict of interest, but I will contact my colleague, give you his number," because I did not know Dr. Loring.

Q And did you conduct an evaluation of her?

A I did.

Q And can you please tell the judge what procedures you followed in doing that evaluation.

A Sure. So I examined her face-to-face. One of the reasons I wanted to do that was specifically with PTSD, you want to see how someone reacts with facial expressions or body expressions, which we saw yesterday. And I certainly can talk about what I noted yesterday, and it's very similar to what I noted during the examination. That was the most important thing was to do a face-to-face.

What we do as psychiatrists is we ask questions, listen, pay attention to what they say, pay attention if

1 they add anything. And we take these two manuals here
2 that I brought, the DSM. It's our manuals that we use to
3 diagnose. So it's similar to if you're a pilot and you
4 have these manuals and a checklist, and before you take
5 off, you just check, check, check. Well, in psychiatry,
6 we do an examination, and we get this information, and
7 then we look in the manual and say, all right, well, it
8 meets this criteria, it meets this criteria, this point,
9 this point, this point. We say, okay, this is PTSD.

10 In this case -- and, you know, I feel like my job
11 here is to help the Court understand the mental health
12 issue, and if I leave here and you say, thanks, Doc,
13 that's clear as mud now, I didn't do a good job. And so I
14 was a little worried in this case that I was examining
15 someone from 2008, 2009, and during that time we were
16 using this one, the IV-TR.

17 Q And for the record, is that the DSM-IV-TR?

18 A Yes, sir.

19 Q Okay.

20 A We now currently use what's called DSM-V.

21 And so I use both, but I did not -- when I was
22 talking about have to get the information with her,
23 because I didn't want to get here and have someone say,
24 "Well, this is 2008. You used V. Well, what about 2008?"
25 and muddy the waters. Also didn't want is IV-TR and then

1 say, "Well, why didn't you use V because that's what we
2 use now and IV-TR is gone?" And so I did both.

3 And I think the most -- if that's come up. I don't
4 know if it's going to come up or not, but the most
5 important thing I'll say over again is that it doesn't
6 matter because she met criteria with both. So I brought
7 both, and I'm prepared to talk about both.

8 Q All right. Let me just back up for a second. Did
9 you initially have telephone contact with Dr. Loring?

10 A I did. You're right. Sorry about that. I did, and
11 I talked to Dr. Loring to set up a time. Attorney Holt
12 had given us each other's numbers, and we were trying to
13 figure out when and where to meet.

14 Dr. Loring was in Texas doing some work there with
15 refugees, and when we spoke she was very reluctant and
16 what we would call guarded in psychiatry, that it was, I
17 feel, part PTSD. She was avoiding, did not really want to
18 do it. And we talked for 14 minutes, 15 minutes, and I
19 didn't think she was going to do it. I had really, at one
20 point, said, "Well, why don't we talk to Attorney Holt and
21 see what she'll do."

22 And then she said, "Well, no. Let's go ahead and do
23 it."

24 And she was very, very concerned about what it was
25 going to do to her career, which has to do with her

1 diagnosis I'm here to talk about. So I drove down to
2 Atlanta half thinking, well, I'm going to get there and
3 she's not going to do it. But that was telling right from
4 the get-go that she was kind of avoiding.

5 MS. BUTTERBAUGH: Your Honor, we would object to
6 relevancy. This doesn't go to the State of mind of
7 Mr. Inman at all. This goes to the State of mind of a
8 witness, and we think this is improper bolstering and
9 vouching for the credibility of a witness that is not a
10 party to this action.

11 MR. GROSE: Your Honor, Solicitor Ariail had caused
12 the trauma to Dr. Loring. Judge Ned Miller found that
13 Solicitor Ariail had committed misconduct. A unanimous
14 Supreme Court found that Mr. Ariail committed misconduct.
15 And when we are done with this, we're going to be able to
16 explain why the trauma contributed to her inability to
17 remember certain things when she testified under the
18 influence of a trauma caused by Solicitor Ariail.

19 THE COURT: Actually, she did testify, as we all know
20 yesterday, and there was some question about her inability
21 to recall.

22 MR. GROSE: Right. And they cross-examined
23 extensively, yeah.

24 THE COURT: Well, you didn't, but they did.

25 MR. GROSE: That's what I meant. Yes, sir.

1 THE COURT: So I overrule your objection.

2 MS. BUTTERBAUGH: Thank you, Your Honor.

3 MR. GROSE: Thank you, Your Honor.

4 BY MR. GROSE:

5 Q You said you went to Atlanta. Where did you meet
6 Dr. Loring in Atlanta?

7 A It was Dr. Marlyne K. Israelian's office. She's a
8 psychologist in Atlanta. And Dr. -- excuse me -- Attorney
9 Holt had secured a safe place for us to do an interview.

10 Q And as part of your evaluation, did you review any
11 materials?

12 A I did. I read the transcripts of the discussions
13 between -- well, the threats from the solicitor to
14 Dr. Loring, and then the court transcripts concerning what
15 had gone on, and a lot of what Mr. Bannister had said.

16 Q Okay. And when you interview somebody like
17 Dr. Loring in this context, is it important to review
18 collateral information?

19 A It is. And that's why I wanted to read the
20 transcripts. Your Honor, when you interview someone, you
21 use a healthy degree of skepticism. One of my mentors
22 said if someone's lips are moving, they're lying. And so
23 you go into these interviews, and especially this one
24 because of the nature of what she does, she understands
25 trauma, I went in with a very, very healthy degree of

1 skepticism.

2 And so she told me the story. I definitely wanted to
3 read the transcripts to see if they matched up, and they
4 did.

5 Q They did, is that what you said?

6 A Yes, sir.

7 MS. BUTTERBAUGH: Your Honor, objection. This is
8 clearly a violation of State v. Kromah, which talks about
9 the improper bolstering of witnesses and going to their
10 credibility.

11 MR. GROSE: I can reword the question.

12 THE COURT: Very well.

13 BY MR. GROSE:

14 Q Was the history that Dr. Loring gave you consistent
15 with the collateral sources that you reviewed?

16 A Yes, sir. And why that's important is that ---

17 MS. BUTTERBAUGH: Your Honor, same objection.

18 THE COURT: Overruled. Again, if they hadn't spent
19 so much time on her inability to recall facts that she
20 referred constantly to you being the historian, I wouldn't
21 have -- I'd be more receptive to your objection, but I
22 think that you spent ample time in exploring her inability
23 to recall. I think it helps the Court to find out if
24 there's a reason for that.

25 MR. GROSE: Thank you, Judge.

1 THE WITNESS: So yes. Going along with someone who
2 wanted to malingering or essentially lie, it's certainly
3 solid evidence that she wasn't when they match up.

4 BY MR. GROSE:

5 Q And malingering is something that you consider as
6 part of an evaluation; is that correct?

7 A Always. Yes, sir.

8 Q And did you find any reason to believe that
9 Dr. Loring was malingering?

10 A No, sir. Not at all.

11 Q And can you explain why that is?

12 A Well, for one, when someone malingers, there's what
13 we call secondary gain. No one's going to lie -- if
14 you're going to lie, you're going to do it for a reason,
15 and she certainly didn't have a reason to lie.

16 Two, when someone tells a story when they're lying,
17 they tend to want to tell you the story. They offer
18 information. They offer extra information. And the way I
19 did the exam, I intentionally did not talk about trauma,
20 did not talk about PTSD until the very end to see what she
21 would do. And the way she told the story, if someone were
22 malingering or lying, they tend to go by the book, they'll
23 just start hitting. And what she described was more
24 emotions and how she felt. And coupled with the way she
25 looked during the exam when I examined her the first time,

1 she was very relaxed. We talked. We're talking about
2 where she's from, whether she has brothers and sisters,
3 those sorts of things. And she's very relaxed. She even
4 had her feet kicked up in a chair.

5 Then when we started talking about the solicitor in
6 question, she got very tense, she became very tense, she
7 looked pensive, she sounded pensive, again, guarded,
8 didn't want to -- couldn't remember things. It was just
9 inconsistent with what I'd seen, which was telling me
10 there was something there.

11 Furthermore, I did do a cognitive exam, Your Honor.
12 We're testing her memory, and she did great. I, two days
13 later, examined a 21-year-old, and she did just as well as
14 a 21-year-old. So really high memory.

15 Another thing I did was ruled out past medical
16 history, were there any things that -- in her -- in her --
17 medical problem that would affect your memory or how you
18 act or how you perceive the world? There was nothing
19 there. She had no past trauma. That's another thing
20 that's important to do.

21 Everything was fine in her life until this happened.
22 She continued to have problems once the stressor was gone.
23 There were -- oh, yesterday was very telling because you
24 could see that again, and that meant a lot to me, which I
25 was glad I was here because it helps me explain what I saw

1 again.

2 Q What did you see yesterday that was significant?

3 A Yeah. Kind of the same thing of what I saw first
4 when I examined her in Atlanta. When you're not talking
5 about the solicitor, you're not talking about the trauma,
6 she's very relaxed.

7 MS. BUTTERBAUGH: Your Honor, I'm sorry. We have to
8 preserve our objection to this.

9 THE COURT: I beg your pardon?

10 MS. BUTTERBAUGH: We have to preserve our objection
11 to this, Your Honor.

12 THE COURT: Well, your objection is preserved in our
13 rules. You have a continuing objection.

14 MS. BUTTERBAUGH: We have a continued objection to
15 this. Because he was here yesterday, and he's talking
16 about -- now he's clearly bolstering the credibility.

17 THE COURT: Well, you can cross-examine him. It's
18 not bolstering to what is testified of something that was
19 a part of the proceeding yesterday.

20 MS. BUTTERBAUGH: Yes, Your Honor. And he witnessed
21 it yesterday. And now he's now bolstering and ---

22 THE COURT: Well, thank you very much. I
23 understand your objection. You're saying that you want to
24 -- you object because he is addressing the testimony that
25 you elicited or your colleague elicited on

1 cross-examination.

2 MS. BUTTERBAUGH: And he's now bolstering that. Yes,
3 Your Honor.

4 THE COURT: All right. Any more?

5 MS. BUTTERBAUGH: We're continuing ---

6 THE COURT: I want to be sure because I want your
7 objection to continue ---

8 MS. BUTTERBAUGH: Yes, Your Honor.

9 THE COURT: --- and you don't have to continue to
10 interrupt.

11 MS. BUTTERBAUGH: Yes. We have a continuing
12 objection.

13 THE COURT: Under our rules, as I say, the old rules
14 used to be that you had to continually object, maintain
15 your objection to preserve it. Under the new rules we've
16 been operating for some 20 years, I guess, we don't have
17 to do it. It's a continuing objection.

18 And I'm noting for the record your objection to this
19 witness's testimony as to anything he might have observed
20 about the witness at any time prior, what is it,
21 examinations, interviews and also what he viewed here as a
22 spectator, I guess, because he was not called until today.
23 It's continuing.

24 MS. BUTTERBAUGH: Yes, Your Honor. Thank you.

25 THE COURT: You're quite welcome.

1 BY MR. GROSE:

2 Q Doctor, I think where we were is I had asked you to
3 explain or identify anything that you observed yesterday
4 that's significant to your opinion.

5 A I did that's consistent with what I had seen
6 previously where she was very relaxed when speaking of
7 other things, then the solicitor even yesterday, we talk
8 about Mr. Inman, we talked about the mother and did not
9 have any physical signs, and then her voice was lower, she
10 didn't appear anxious. When it got to the solicitor, she
11 sat up, her voice got higher, she actually got smaller.

12 At one point -- and part of PTSD is avoidance. At
13 one point, I don't know, Your Honor, if you saw this or
14 not, I was able to see it from there, she physically moved
15 closer to you away from the stressor. That's part of PTS
16 -- classic. If that's not avoidance, I don't know what
17 is.

18 Q And as far as looking for safety or reassurance, is
19 that also part of PTSD?

20 A I would say so.

21 Q All right. And did you observe some of that
22 yesterday?

23 A I think that part of that as well was ---

24 Q So that's both.

25 A I would say so.

1 Q Okay. All right. And is there anything else
2 significant about your interview with her or the physical
3 observation of her that was significant in making your
4 decision or reaching your opinion?

5 A No. I think I've covered it.

6 Q Okay. Now, I believe you said earlier but I'm going
7 to ask again, do you have an opinion as to whether or not
8 Dr. Loring meets the criteria for posttraumatic stress
9 disorder?

10 A I'm sorry?

11 Q Do you have an opinion whether or not Dr. Loring
12 meets the criteria for posttraumatic stress disorder?

13 A Yes, sir. My opinion is she meets criteria for
14 posttraumatic stress disorder at that time.

15 Q At that time. In the time period of ---

16 A In IV-TR and in V, yes.

17 Q Okay. Now, you mentioned earlier there was some
18 differences between IV-TR and V of the DSM.

19 A Correct.

20 Q Can you explain what the criteria was under
21 DSM-IV-TR?

22 A They're still very similar. The differences in
23 IV-TR, part of the diagnosis, you need an intense fear or
24 helplessness or horror, and she put that on the record in
25 the transcripts. In the transcripts, she mentioned she

1 was, quote, frightened, I'm a little rattled, alarmed,
2 concerned. Those are all -- that's classic intense fear,
3 helplessness.

4 As far as IV is concerned, what we've learned is that
5 there's something called negative alterations and
6 cognitions. And, Your Honor, that's a fancy way of saying
7 PTSD messes with how you feel and how you think. And that
8 was not a part of IV, and now it's part of V. As far as
9 avoidance and intrusive symptoms, increased arousal,
10 there's really some of the wording on this, they change.
11 Psychiatrists just like to put in words and change things,
12 but they're pretty much the same.

13 Q Is it possible, can you walk us through the
14 diagnostic criteria for PTSD step-by-step and explain how
15 Dr. Loring meets that diagnosis?

16 A Sure. V or IV?

17 Q Let's go with IV first.

18 A Okay. So for in IV-TR, the person is exposed to a
19 traumatic event when the person experienced or witnessed a
20 crime involved actual threat and death ---

21 THE COURT: Slow down a little bit.

22 THE WITNESS: Sorry. I can paraphrase probably
23 better. Would you like me to paraphrase or do you want me
24 to read this?

25 THE COURT: Do whatever you feel is the most ---

1 BY MR. GROSE:

2 Q However is the easiest to explain.

3 A Okay. I want to help the best I can.

4 THE COURT: But do remember the court reporter has to
5 take down what we're saying.

6 THE WITNESS: Okay. I'm sorry, Court Reporter.
7 That's probably the first time anyone's ever told me to
8 slow down.

9 Criteria A you need to be exposed to a traumatic
10 event or a serious injury or a threat to physical
11 integrity, yourself or others, or threatened death is
12 involved. In this case, she was threatened with going to
13 jail and your livelihood, your money.

14 BY MR. GROSE:

15 Q Profession.

16 A Profession. And so that hits there. That
17 constitutes getting one.

18 Number two we already talked about. She perceived it
19 as fear.

20 Move on to Part B, basically, intrusive distressing
21 recollections, dreams, flashbacks, physiological distress,
22 physiological reactivity.

23 Now, Dr. Loring mentioned flashbacks, she mentioned
24 nightmares, she mentioned feelings of being -- not being
25 able to -- short of breath. Now we're knocking all of

1 them.

2 C is avoidance. Efforts to avoid thoughts,
3 activities, inability to recall an important aspect of a
4 trauma. Now, she was trying to avoid her thoughts. She
5 didn't want to think about it. I think we saw yesterday
6 inability to recall, an important aspect of trauma that
7 was very present, and, again, consistent.

8 She was markedly -- okay. Feelings of detachment or
9 estrangement. Rather she told me she felt lonely, alone,
10 threatened. That goes along with that.

11 So moving on to D, persistent symptoms, increased
12 arousal. So this is difficulty with sleep, difficulty
13 concentrating, hypervigilance and exaggerated startled
14 response.

15 She mentioned trouble sleeping, and her sleep is
16 disturbed for months.

17 Difficulty concentrating, she mentions that. She
18 mentioned that yesterday. She just couldn't think, she
19 couldn't concentrate, she couldn't do anything.

20 Hypervigilance, that she felt like she had to watch
21 her back, she was constantly afraid the police were just
22 going to break down her door. Walking her dog was a
23 problem for her.

24 Exaggerated startled response, loud noises like a
25 knock and she flinches. That hits that. And all these

1 were for longer than one month, and certainly caused
2 clinically significant distress or impairment.

3 Q Okay. And does that conclude the criteria under the
4 DSM-IV-TR?

5 A Yes, sir.

6 Q And, again, your opinion is, is that she meets that
7 criteria?

8 A Yes, sir.

9 Q All right. Now, I don't know that we necessarily
10 have to walk through all of the steps in the DSM-V.

11 A I don't think so.

12 Q But if you could, again, just explain what the
13 relevant differences between the two of them are and how
14 they apply to Dr. Loring.

15 A Well, it was the -- the main difference was the
16 negative alterations in cognitions and mood. Again, Your
17 Honor, that is how you feel and how you see the world now
18 that you've had this trauma.

19 So inability to remember important aspects, the
20 negative beliefs about oneself. She told me she felt
21 guilty, that she couldn't believe -- yesterday you heard I
22 can't believe I did this, I can't believe I've done this.
23 These are all things that it's close to what was called
24 survivor guilt. There's often soldiers coming home from
25 war, they're suffering from PTSD and they're blaming

1 themselves when their buddy died. That's not your fault
2 your buddy dies. It's the war's fault. That goes along
3 with that.

4 Consequences, persistent negative emotional state,
5 again, we had feelings of attachment. And so that was the
6 main one.

7 We can go through the arousal if you want or the
8 avoidance, but they just really state similar truth of
9 thoughts. That really states similar. So that was the
10 main difference.

11 Q All right. And, again, if you were using the DSM-V
12 to diagnose her during the period in 2008 and 2009 when
13 this was going on, would she have met the criteria?

14 A Yes, sir.

15 Q And I think you've alluded to this before, but can
16 PTSD have an effect on somebody's memory?

17 A Absolutely. In two ways. One, I think an example I
18 feel like everyone has probably experienced is test
19 stress. You're taking a test and you have ten questions
20 left and the teacher says, "You've got five minutes." And
21 now you're rushing, now you're stressed, you think you're
22 going to fail. And you're going through, you finish the
23 test, and you get to one and you have three questions
24 left. You can't think. You go, what's the answer? C,
25 because we all do C. Two days later, you're thinking

1 about it, bam, the answer comes to you. I can't believe I
2 missed that. How on Earth did I not remember that? Or
3 you get the test back and you're reading it. I'm an
4 idiot. I knew that. How did I not remember that? So
5 that is what stress does. Stress will shut you down and
6 you don't remember something.

7 Now, PTSD, posttraumatic stress disorder, so PTSD is
8 test stress times a billion. Other parts of not
9 remembering a traumatic event would feel like it's during
10 the time of stressor. It's a coping mechanism, a
11 protective mechanism where the mind just says this is too
12 much and I'm shutting down. I don't want to remember
13 this. I can't. So it's both can be suppression or just
14 not even formed in your memory.

15 But it's been well documented, and like I said, it's
16 in the DSM. It's right there, the inability to remember.

17 Q Okay. And I'm going to show you what's marked as
18 Applicant's Exhibit Number 38. Do you recognize that?

19 A Yes, sir. That's my brief report I wrote.

20 Q And have you been referring to a copy of that while
21 you've been testifying?

22 A I have. This is my ---

23 MR. GROSE: Your Honor, at this time, I would move
24 Applicant's Number 38 into evidence.

25 THE COURT: Any objection? Or you're familiar with

1 it?

2 MS. BUTTERBAUGH: Yes. I'm familiar with it. We do
3 have an objection, Your Honor.

4 THE COURT: All right. What's the objection?

5 MS. BUTTERBAUGH: First of all, on Monday, Mr. Grose
6 indicated that they were not going to be introducing
7 reports into the record that were not already in discovery
8 and had been a part of the record.

9 Second of all, we do have an objection because this
10 is cumulative to his testimony here today. It is also
11 based on inadmissible hearsay. And based on some case law
12 that we have, Allegra vs. Scully, finding that the
13 admission of the report itself simply because the expert
14 used it in forming his opinion was an error, and we think
15 that, you know, admitting this report today because it is
16 cumulative to his testimony would be an error.

17 MR. GROSE: Maybe the stress is causing me to
18 remember Monday differently, but my recall of Monday,
19 they're saying that they were going to object to a report,
20 I don't think I meant to imply that we weren't going to
21 admit the report. They said the reports would be hearsay.

22 THE COURT: You mean submit the report.

23 MR. GROSE: Submit the report.

24 But, you know, my response was is that they would be
25 here to testify about their report, and that would take

1 care of hearsay considerations. As far as this witness,
2 who's been qualified as an expert under 701, 2 and 3, he's
3 allowed to rely on hearsay if those are things that he
4 ordinarily relies on, which is the case here.

5 THE COURT: What is the report?

6 MR. GROSE: It's this document, Your Honor. It's one
7 page.

8 THE COURT: I know. What is it?

9 MR. GROSE: It's his report from his examination of
10 Dr. Loring.

11 And I would also add just the obvious. This is
12 nonjury, and I certainly think you're capable of deciding
13 what weight to give or not to give to that report. And so
14 some of their concerns are ---

15 THE COURT: Well, let me ask you something. Is
16 anything in the report that you would object to, or is it
17 nothing more than apparently his memorial of his
18 examination?

19 MS. BUTTERBAUGH: Yeah. We object to the
20 characterizations of, you know, the information that
21 Dr. Loring had given to him. You know, because we have
22 the record from the sentencing hearing, we have the record
23 of her -- of Dr. Loring's testimony, we have, you know ---

24 THE COURT: Do you have anything in the record about
25 her condition?

1 MS. BUTTERBAUGH: Her condition at the time of the
2 sentencing hearing, yes, Your Honor.

3 THE COURT: Who examined her there?

4 MS. BUTTERBAUGH: Well, Judge Miller examined her
5 when she testified, and she did not indicate, you know,
6 any of these issues at the time.

7 THE COURT: I see. Well, admittedly, Judge Miller is
8 a doctor, but he's a juris doctor.

9 I'm going to -- and as has been said, if you'll
10 forgive me, it used to be not a rule of law but, what is
11 it, procedural rule, but certain judges in South Carolina
12 let it in for what it's worth, so I'm going to overrule
13 your objection.

14 MR. GROSE: Thank you, Doctor. Please answer any
15 questions that the attorney general might have.

16 THE COURT: Let's see. I don't want to lose Exhibit
17 Number 38.

18 MR. GROSE: I'll put it back down here.

19 THE COURT: The objection is overruled and admitted,
20 Applicant's Exhibit Number 38.

21 (WHEREUPON, Applicant's Exhibit Number 38 was admitted
22 into evidence.)

23 CROSS EXAMINATION

24 BY MS. BUTTERBAUGH:

25 Q So remind me again what your background specifically

1 is in PTSD.

2 A So in a general psychiatry residency, you have
3 certain competencies that you have to obtain to graduate,
4 and PTSD occurs in about 8 percent of the population.
5 It's very common, so you come across it a lot. Probably
6 one of the most common things you come across in your
7 general psychiatry residency. You'll see it in your
8 inpatient rotations. So you're the inpatient doctor,
9 someone has a trauma, they come in, and now they're on the
10 unit because they're so affected by the symptoms of --
11 once a month passes, we consider it PTSD. So you're
12 treating their symptoms of -- from day one I've treated
13 those symptoms.

14 Well, let me just go ahead and back up to OB/GYN. So
15 I was an OB/GYN seven years ago. So seven years I have
16 evaluated for PTSD and gave treatment recommendations.
17 The reason why that's important in OB/GYN is if someone's
18 pregnant, you want to know that the mother is safe, is
19 someone beating her, was this a product of rape. Also,
20 it's important that if that occurred, unfortunately, women
21 may not take care of the pregnancy, they may not take care
22 of the baby as well if it's a product of rape or incest or
23 they're being abused.

24 So you really want to do a good job of assessing
25 pregnant women for PTSD, for trauma, and you want the baby

1 to go home. You want a safe baby, safe mama. And so it
2 does us no good to do a good job delivering a baby and
3 then sending the mom home to an environment where there's
4 some drunk dad that's going to beat them.

5 So I can keep going. A lot -- we've done it a lot.
6 So that is OB/GYN.

7 And I delivered over 300 babies, and that's not
8 counting how many ER visits I did, how many outpatient
9 visits I did. I -- I don't -- I didn't count. I
10 certainly saw a thousand women.

11 Do you want me to keep going?

12 Q No.

13 So following that narrative, you're saying that PTSD
14 is that common amongst pregnant women in your OB/GYN
15 practice.

16 A No, no. You asked me about my experience with PTSD
17 in assessing it. I'm telling you that I've done a lot.
18 It's about 8 percent of the population.

19 Q So 8 percent is not truly that common and that
20 prevalent.

21 A That -- that -- in both mental illness, it is.
22 1 percent of the population will suffer from
23 schizophrenia, 1 percent will suffer from bipolar, about
24 20 percent, major depression. But you start stacking it
25 up, PTSD is pretty common.

1 And I'm using 8 percent as a conservative estimate.
2 There are some estimates that say 15 percent that -- no.
3 It's -- it's -- there's a lot of trauma, there's a lot of
4 PTSD.

5 Certainly our veterans have suffered. They're coming
6 home, and it's unfortunate it's taken this long for PTSD
7 to hit the forefronts of our minds, and we certainly have
8 had thousands and thousands and thousands of service
9 members that have suffered without us really
10 characterizing it well and treating it.

11 Q And so you said you spoke to Dr. Loring by phone,
12 correct?

13 A The first time to set up the evaluation, what time.
14 We were looking at our schedules together.

15 Q And then you met with her for about an hour and a
16 half?

17 A I did.

18 Q And that was the total extent of your time with her,
19 an hour and a half?

20 A Except for yesterday, yeah.

21 Q Is that generally enough time, do you think, to
22 diagnose someone with something as complex as PTSD?

23 A Absolutely. Most evaluations are about an hour to do
24 an HMP, to fully assess for schizophrenia, bipolar. Some
25 people say 45 minutes. In training I had 45 minutes.

1 When you're in the ER, you do even less. Sometimes you do
2 20 minutes. So yeah. I -- we, I feel like, definitely
3 spent a large amount of time.

4 Q But sometimes people with trauma, correct, don't open
5 up to strangers even the first meeting, sometimes the
6 second meeting, correct?

7 A You're absolutely correct, yes. But Dr. Loring was
8 open to telling me about the solicitor.

9 Q And so you talked about, during your hour and a half
10 short meeting with her, that she had this great memory,
11 this great recall, but yet you were here yesterday and she
12 had almost no recall. How do you square that
13 inconsistency?

14 A If I said that, then I made a mistake. First of all,
15 I don't feel like an hour and a half is short. I don't
16 think I felt -- said that at all. What I said was she is
17 consistent with what I saw, meaning that what she told me
18 about the transcripts is consistent with what I saw
19 yesterday.

20 Q Okay.

21 A I'm almost certain I said "consistent," but certainly
22 want to correct that what I saw was consistent.

23 Q Okay. And what did you use to assess her symptoms?

24 A I used questions. You observe.

25 So, Your Honor, it's called mental status exam. What

1 we do is we look at how they appear, we mark down how they
2 behave, we pay close attention to how they communicate,
3 their speech, we ask about mood. There's something called
4 affect, and affect is just a fancy word to say does it
5 match. If I say I'm happy and I'm smiling, they match.
6 If I say I'm happy then I'm like this (demonstrating),
7 then they don't match. These are things that you do every
8 single time that I've done thousands of times.

9 You look for are they suicidal, do you look for --
10 are they thinking correctly, are they psychotic, are they
11 making sense, what's called insight and judgment, meaning
12 do they have a problem, what are they doing about it.
13 Also, did, again, the memory, a brief cognizant exam,
14 check her memory.

15 So you do that continuously, and that's -- it's
16 called a mental status exam. I mean, that's the reason
17 why we do that is because if I came up here, just used my
18 own language, then no psychiatrist can agree. So you've
19 created this exam, and it's the psychiatrist -- it's exam
20 for psychiatrists just like an internist does a physical
21 exam. They check the throat and the eyes, and they come
22 up with a language for that: soft, nontender,
23 nonextended. It's language that internists use to
24 describe the abdomen.

25 We use a mental status exam to describe what we see,

1 what we observe, what we hear, what we've heard so that
2 another psychiatrist can read the exact same -- read it
3 and have a mental picture and know what we're talking
4 about. We're using the same language. If we didn't, we
5 might as well speak in French and the other person speak
6 in Chinese.

7 So that is why we do it that way. And did that
8 answer your question?

9 Q It did, yes.

10 So following up on that, what was that memory
11 assessment that you did with her?

12 A So you test for -- to see their immediate recall.
13 It's more -- I can read you questions if you want, but ---

14 Q No. I don't need you to read me the questions.

15 So how did she do on that memory assessment?

16 A She did very, very well.

17 Q And so how does that compare and how is that
18 consistent then with her testimony yesterday, which she
19 did not recall?

20 A So the memory test, so to speak, that's to see if she
21 has dementia, essentially. Is there something neurologic
22 going wrong globally, so can she have recall of what I
23 gave her, can she recall the past five presidents, those
24 sorts of things globally.

25 Her inability to recall these traumatic events is

1 part of PTSD, so that was why it was important that I
2 checked. I wouldn't be a very good doctor if we brought
3 or came up here and said her memory's affected and I
4 didn't assess, do any sort -- some sort of assessment to
5 see if she has dementia. So that's why.

6 Q Okay. And then doesn't PTSD, though, normally have
7 something to do with death or great bodily injury, serious
8 bodily injury, typically?

9 A So no. That was one of the things -- I mean, that's
10 part of it. I mean, it can happen. But that was one of
11 the things that we've learned over the years is that you
12 don't have to be threatened with death to get PTSD, you
13 don't have to be raped to get PTSD. You can be threatened
14 with serious injury. You can also just see it and
15 experience it, because you can actually hear about it, a
16 loved one getting hurt and get PTSD.

17 We also have often -- I won't say often, but police
18 officers -- call them first responders. So firefighters,
19 they go in and they see this burned child, they can
20 experience PTSD. Police officers that over and over hear
21 about child abuse can experience PTSD.

22 So no, you don't have to be threatened with death.
23 You can be threatened with other things.

24 Q So Dr. Loring wasn't at home, correct, whenever any
25 of this happened, when they threatened her with arrest

1 when -- any of this stuff?

2 A That is what she told me. She told me she was not
3 home. Apparently, her dog was home.

4 Q She was never handcuffed, she was never put in the
5 back of a police car, any of that.

6 A No. That threat to me was carried out by the
7 solicitor. That was threatened in September. And
8 Georgia, in my mind, were the puppets, and the puppet
9 master was in South Carolina. And so he carried out his
10 threat. He said, "I'm going to have you arrested. It
11 will be criminal sanctions if you testify." And he tried
12 to pull it off, and he almost did. So that was a
13 continued threat to her.

14 Q And this was all information that came from her,
15 correct?

16 A And the transcripts.

17 Q And that was the only sources of information that you
18 had in front of you was her and the transcript?

19 A Sure. Yeah. I don't -- the -- Mr. Bannister's
20 testimony in the transcripts was very helpful. You've had
21 a very reliable collateral source. I don't -- I have no
22 reason to disbelieve Mr. Bannister.

23 Q Have you ever met Mr. Inman?

24 A I have not, no.

25 Q So you don't know anything about him?

1 A I know him through a teaching point in forensic
2 psychiatry that Dr. Dwyer was my -- the head, the director
3 of the forensic psychiatry. So he was involved in the
4 case and spoke about it as a teaching point. But no.
5 I've never met him. I'm not involved in it. I have no
6 dog in this fight, if that's what you're getting at.

7 Q One moment.

8 So do you have any personal knowledge about anything
9 that you -- about Dr. Loring that you discussed here today
10 beyond what she told you, beyond the hearsay that's
11 contained in your report?

12 A Well, I don't -- to me it's not hearsay because it
13 was my exam. This is what we do. I wouldn't be a very
14 good doctor if I heard something and just didn't write
15 anything down.

16 And this is common practice to do a report. I was
17 taught to do a report. There's some say don't ever do a
18 forensic exam and not do a report. So this is very
19 common. I'm a little surprised this came up.

20 So no. I don't believe it's hearsay. It's what she
21 said, and that's part of my examination. I've been taught
22 to do the examination. You write down what the person
23 says.

24 Quotes are very important because you can test them
25 back with collateral evidence. That's why it makes it so

1 important.

2 I don't -- I'm not so sure I understand your
3 question. I've never met with Dr. Loring before. I
4 talked to her on the phone for about 15 minutes, and then
5 I examined her for an hour and a half, and then I sat back
6 there -- well, I said "hey" to her in the hall, and then I
7 watched the examination.

8 Q And so beyond what she told you, you have no personal
9 knowledge of the events that occurred at trial, at
10 sentencing, that happened in Georgia, that happened here
11 in Pickens, no personal knowledge of what happened at all
12 beyond what Dr. Loring told you.

13 A I'm so sorry. I don't really understand your
14 question.

15 But I know that when I got ---

16 THE COURT: Excuse me. How about restating your
17 question, try other than putting so much in it that you
18 don't know exactly ---

19 THE WITNESS: I think I may -- I'm sorry.

20 THE COURT: She can only take one person ---

21 THE WITNESS: Oh, that's right. I'm so sorry.

22 THE COURT: --- talking at any time.

23 So anyway, just separate your question so he can
24 answer.

25 MS. BUTTERBAUGH: Thank you, Your Honor.

1 BY MS. BUTTERBAUGH:

2 Q Do you have any personal knowledge of the events that
3 happened in Georgia?

4 A I guess I'm confused by the word "personal
5 knowledge." When I was asked to do the case, Dr. Maddox
6 gave me a heads-up, said, "Hey, I referred you," and gave
7 me a brief rundown. And Attorney Holt, when she called
8 me, she said this is what the case is. And that's beyond
9 -- I mean, I have to know what they want me to do, what
10 the assessment is, what the forensic question is.

11 So beyond what is the forensic question, I had -- I
12 didn't know who Dr. Loring was, I had no idea this
13 happened, I'd never read the transcripts, I hadn't read
14 newspapers.

15 Is that what you want?

16 MS. BUTTERBAUGH: Thank you.

17 Thank you, Your Honor.

18 THE COURT: Very good.

19 Re-examine.

20 MR. GROSE: No further questions.

21 THE COURT: Very well.

22 MR. GROSE: And we'd ask that Dr. Viamonte get
23 excused so he can start his new job.

24 THE COURT: Any objection?

25 MS. BUTTERBAUGH: No, Your Honor.

1 THE COURT: All right. You may be excused. Thank
2 you, sir.

3 THE WITNESS: Yes, sir. Thank you.

4 THE COURT: Don't take the exhibit.

5 THE WITNESS: Yes, sir.

6 MR. GROSE: And the exhibit is back down here.

7 THE COURT: Okay.

8 THE WITNESS: I think he's talking about the CD.

9 MR. GROSE: Oh, that one. Okay. Thank you.

10 THE COURT: Who is your next witness?

11 MR. GROSE: Dr. Donna Maddox.

12 THE COURT: Let's take a short break. I imagine that
13 she might be some time.

14 MR. GROSE: Okay. Thank you, Judge.

15 (WHEREUPON, a recess is taken at 11:18 a.m.)

16 (WHEREUPON, proceedings reconvened at 11:24 a.m.)

17 THE COURT: Is the applicant ready?

18 MR. GROSE: Yes, sir.

19 THE COURT: Is the State ready?

20 MS. BROWN: Yes, Your Honor.

21 THE COURT: Very well. Call your next witness.

22 MR. GROSE: Dr. Maddox.

23 WHEREUPON,

24 DONNA SCHWARTZ MADDOX

25 After having been duly sworn, testified as follows:

1 THE CLERK: If you would, have a seat and state your
2 full name for the record, please.

3 THE WITNESS: Donna, middle name is Schwartz,
4 S-C-H-W-A-R-T-Z, last name Maddox, M-A-D-D-O-X.

5 DIRECT EXAMINATION

6 BY MR. GROSE:

7 Q And I think everybody knows the answer to this
8 question, but just for the record, you used to be
9 Dr. Donna Schwartz-Watts; is that correct?

10 A Yes, sir.

11 Q And so anytime your name appears in the transcript as
12 Dr. Watts or Dr. Schwartz-Watts, that's talking about you.

13 A Yes, sir.

14 Q Okay. Like I say, I think we all know that, but the
15 box that I had to check.

16 Can you please summarize, I guess beginning with
17 college, your educational background for Judge Macaulay.

18 A Certainly. I graduated from Furman University in
19 1985 with a bachelor of arts degree in psychology. I
20 graduated from the University of South Carolina School of
21 Medicine in 1989 with a doctorate in medicine. I
22 completed a residency in general psychiatry at the
23 William S. Hall Psychiatric Institute in the University of
24 South Carolina, and I finished that in 1993. And then I
25 took a year of forensic fellowship training at USC and

1 finished that in 1994.

2 I worked for a number of years at the Department of
3 Mental Health early in my career conducting court-ordered
4 competency to stand trial and criminal responsibility
5 evaluations. Then I worked at the University of South
6 Carolina for 17 years. And there I was a director of
7 forensics and I performed numerous evaluations.

8 I left there and finished my state career up with the
9 Department of Mental Health. I worked at Bryan Hospital
10 and Patrick Harris Hospital treating patients.

11 And I retired officially from the Department of
12 Mental Health in March of this year, and I am now engaged
13 in the private practice of forensic psychiatry.

14 Q Okay. And I think going through all of that history,
15 you have clinical experience?

16 A I do.

17 Q All right. Can you summarize, explain what that is
18 for the judge?

19 A Wow. It's pretty much been my whole career.

20 When I worked at the Department of Mental Health
21 after residency, I treated insanity acquittees. I worked
22 in that program for a number of years. Then when I went
23 to USC, I worked at the Department of Juvenile Justice for
24 15 years treating children and performing evaluations
25 there. I worked in the Department of Corrections treating

1 patients for a number of years. And then, of course,
2 consistently for the last nine years up until March, I was
3 treating inpatient -- acutely mentally ill inpatient
4 psychiatric patients.

5 Q All right. And you also talked about having an
6 experience as -- education and experience as a forensic
7 psychiatrist. Can you kind of highlight some of that for
8 us?

9 A Certainly. My role, I've always practiced forensic
10 psychiatry consistently since 1993. The first few years I
11 was actually in the Department of Forensics at Mental
12 Health and performing those evaluations. And also while I
13 treated the insanity acquittees, that was a part of the
14 Forensics Division at Mental Health.

15 Then the 17 years at USC. I worked at DJJ performing
16 court-ordered evaluations. I performed court-ordered
17 evaluations. That was my job over the 17 years, so I was
18 usually retained by either defense or prosecution or a
19 plaintiff's attorney or a defense attorney for civil
20 cases. And that was the basis of my practice over the
21 17 years.

22 I also, during that period of time, had training in
23 sexual disorders. I went to Canada, and I trained with
24 Dr. John Bradford, who is an expert in assessing and
25 treating paraphilias. I also went to Georgia and had some

1 training with Dr. Gene Abel, who is an expert also in
2 paraphilic disorders.

3 I served as one of the court-appointed examiners for
4 the sexually violent predator statute beginning in 1999
5 and continue to do that now. I still perform annual
6 evaluations, and I still perform pretrial evaluations for
7 the Department of Mental Health. I'm a contract
8 psychiatrist there. And over the last ten years, I've
9 done numerous private and court-ordered evaluations in
10 many states, not just South Carolina, as well.

11 Q All right. And you mentioned being an examiner for
12 the sexually violent predator program. Is there also a
13 treatment or clinical portion of that that you have any
14 experience with?

15 A There is, and I have.

16 Q Can you explain that?

17 A Yes. Early on, I think in the beginning of the
18 program when they first began discharging patients, the
19 Department of Mental Health asked me to do independent
20 evaluations to determine if the person being released was
21 safe to be at large. And early on in that experience, I
22 was not pleased with the people that they were
23 recommending for discharge. I felt like they were at high
24 risk. And they had no psychiatrist there at that time, so
25 I began working there on Fridays. I had a clinic to try

1 to address some of the treatment needs of those higher
2 risk individuals that I felt weren't being addressed, so
3 there was a period of time.

4 Also, when I worked at the Department of Juvenile
5 Justice, I worked with some of the children that had sex
6 offenses there as well.

7 Q Okay. You mentioned performing evaluations for
8 court. It sounds like you've done that for civil cases as
9 well as criminal cases; is that right?

10 A Yes.

11 Q Okay. And in the criminal court context, it sounds
12 like some of them were court ordered evaluations ordered
13 by the judge. Is that fair to say?

14 A Yes. That has happened in times of conflict or times
15 when the judge wanted an independent evaluation, yes.

16 Q And also, when you were conducting competency
17 evaluations at the Department of Mental Health, all those
18 were court ordered pretty much, weren't they?

19 A Correct.

20 Q Okay. And you mentioned that sometimes you're
21 retained by lawyers. Certainly, that includes people like
22 me who represent people that have either been charged or
23 convicted of a crime; is that right?

24 A Yes.

25 Q And have you ever been asked to perform evaluations

1 by prosecutors?

2 A Yes.

3 Q Or consults by prosecutors?

4 A Yes.

5 Q Can you list some of those prosecutors for us?

6 A Sure. Trey Gowdy, Donnie Myers, Bob -- well, not
7 really Bob Ariail. That one doesn't count. We consulted
8 on the Inman case. Scarlett Wilson, the United States
9 District Court.

10 There has been -- let me think of the attorneys.
11 Dean Eichelberger.

12 Q Is that a prosecutor?

13 A Yes.

14 Jane Taylor. There have been some others. Rock
15 Hill, Tommy Pope, York County Solicitor's Office. There's
16 just been various ones throughout the state.

17 Q Okay. And have you ever worked -- been asked to
18 conduct an evaluation by the Attorney General's Office?

19 A Yes.

20 Q And as part of your practice in psychiatry, have you
21 been -- testified in court as an expert before?

22 A I have.

23 Q And do you know how many times that's been?

24 A Over 700.

25 MR. GROSE: Okay. At this time, Your Honor, I would

1 offer -- well, before I do that.

2 BY MR. GROSE:

3 Q Let me hand you Applicant's Exhibit Number 41. Do
4 you recognize that?

5 A (Reviews exhibit) Yes. This is the most recent copy
6 of my curriculum vitae.

7 Q And did you bring that here today?

8 A I did.

9 MR. GROSE: At this time, Your Honor, I would move
10 Applicant's Exhibit Number 41 into evidence.

11 MS. BROWN: No objection.

12 THE COURT: Without objection, Applicant's Exhibit
13 Number 41 is admitted.

14 (WHEREUPON, Applicant's Exhibit Number 41 was admitted
15 into evidence.)

16 MR. GROSE: At this time, I would offer Dr. Maddox as
17 an expert in clinical psychiatry, forensic psychiatry with
18 an expertise or specialty in sexual disorders.

19 THE COURT: All right. Any voir dire?

20 MS. BROWN: No voir dire, Your Honor.

21 THE COURT: Very well. The witness will be
22 recognized as an expert in clinical psychiatry, forensic
23 psychiatry, and with expertise in sexual disorders.

24 THE WITNESS: Yes, sir.

25 THE COURT: Very good. Thank you, ma'am.

1 BY MR. GROSE:

2 Q Did you have any involvement in Jerry Inman's case
3 after his arrest and prior to his guilty plea?

4 A I did.

5 Q Okay. And can you tell us how you got involved in
6 his case?

7 A Yes. Initially -- and actually, Your Honor, I didn't
8 mean to misspeak about Bob Ariail. What had happened when
9 this case had first happened, I contacted Bob Ariail on
10 the phone, and I said we've officially consulted. I'm not
11 going to get involved in this case, and there are reasons
12 for that. In Greenville I had had some experience. I had
13 done some death penalty work there. And Mr. Mauldin and
14 Mr. Ariail do not exchange discovery. And so as an expert
15 witness, it made it very difficult for me to do my job
16 because I didn't always have the collateral information I
17 needed, and knowing that this was going to be a
18 high-profile case, I had consulted Mr. Ariail. So this
19 way, if the defense had called me, that I was recusing
20 myself because I did not want to be involved.

21 And what happened is Symmes Culbertson was -- called
22 me and asked me to work with him. And so when I spoke
23 with him, I explained to him that my new methodology, you
24 know, it was a methodology I had probably developed as a
25 result of Mr. Ariail's cross-examinations is that I wrote

1 reports. And I told him as a defense expert, if you hire
2 me, I am writing a report, I will not withhold a report,
3 so I wanted to make sure that he understood that. He was
4 fine with that.

5 So I called Mr. Ariail back and I asked him did he
6 have a problem if -- and I had Mr. Culbertson's
7 permission, and I asked him did he have a problem if I did
8 this case. Because we had not discussed anything about
9 the case at all. And he had no problem and gave me his
10 permission.

11 And so at that point, Mr. Culbertson contacted me.
12 He and I went to Lee County. Mr. Inman was being held
13 there at that time on safe-keeper status, and we examined
14 him.

15 Q Okay. And so when was the first time that you met
16 Mr. Inman?

17 A September 15, 2006.

18 Q Okay. And how long did you spend with him that day?

19 A 1.75 hours.

20 Q Okay. And over the course of this case, and I mean
21 that broadly from the beginning until today, have you seen
22 Mr. Inman a number of times?

23 A Oh, yes. I've seen him, Your Honor, in 2006, 2007,
24 2008, 2017 and 2018, so over a span of 12 years.

25 Q All right. And as a part of his case, have you

1 reviewed materials?

2 A I have.

3 Q Okay. And did you review materials prior to his
4 guilty plea?

5 A Yes.

6 Q All right. And have you also reviewed materials I
7 would say after his guilty plea until when he was
8 sentenced?

9 A Yes.

10 Q All right. And have we asked you to review
11 additional materials before you came to court here today?

12 A Yes.

13 Q I'm going to hand you what's Applicant's Exhibit
14 Number 39 and ask you to look at that and see if you
15 recognize it.

16 A (Reviews exhibit) Yes, sir. This is a copy of the
17 report I submitted most recently.

18 Q What's the date on that report?

19 THE COURT: What's the number?

20 THE WITNESS: Excuse me. August 8, 2018.

21 BY MR. GROSE:

22 Q The judge, I forgot, that memory thing, the exhibit
23 number?

24 A Oh, I'm sorry. It is -- looks like 5 or maybe 15.

25 Q You're looking at the -- right here. 39. 39.

1 And as part of writing a report to come to court like
2 this, is it part of your custom to list the dates that you
3 visited with or evaluated the individual?

4 A Yes.

5 Q All right. And is it also customary to list some of
6 the sources of information that you reviewed?

7 A Yes.

8 Q And can you tell Judge Macaulay what type -- what was
9 the information that you reviewed regarding Jerry Inman?

10 A It certainly was a discovery related to the case,
11 Your Honor, witness statements, his statement, SLED
12 reports, et cetera. And then I also had his prison
13 records. He had an extensive history of incarceration,
14 Your Honor, both in North Carolina and Florida, and I
15 reviewed those records. He also had a history of
16 treatment. I looked at those records within the
17 Department of Corrections. I looked at his psychiatric
18 records there.

19 Q Was that South Carolina or was that other states or
20 both?

21 A North Carolina and Florida particularly that I
22 remember.

23 Q Okay.

24 A I also had his school records, the ones that were in
25 existence. There were not many, but I had those.

1 Q But it's sometimes hard to get those records.

2 A Oh, yes. Many of them are disposed of, yes.

3 I also had, for example, his mother's psychiatric
4 records showing that she had had -- indeed had treatment.
5 I had his father, very brief prison records about his
6 father. Certainly had records of consultations with
7 Dr. Marti Loring and Dr. Gregg Dwyer, Dr. Tora Brawley.
8 There's been some consultants over the years that I've
9 spoken with. And then I also had some of his hospital
10 records. He was at Grace Hospital in 1989. I had those
11 records.

12 And I think overall generally that covers most. I've
13 had social summaries as well, but that's the big pictures
14 of the separate documents.

15 Q Okay. And are those the type of records that you
16 would ordinarily rely on in conducting an evaluation -- a
17 forensic evaluation for court?

18 A Yes.

19 Q And why is it important to review records like that?

20 A Well, for many reasons. In forensic psychiatry and
21 general psychiatry, if you can get information about
22 someone, there may be things people don't remember as we
23 certainly have seen in court for various and sundry
24 reasons. Sometimes those records spark memories or they
25 give you more information to explore or things that need

1 to be further evaluated.

2 They provide a collateral source of information. You
3 can use that sometimes to see how forthcoming someone is
4 giving a history when you can match those records.

5 And so it also gives you data points. The way I like
6 to look at it is data points of somebody's functioning
7 over a timeline when you have the luxury of having records
8 that go back in time, and so it's a good way to kind of
9 follow them historically as well.

10 Q And why is it important to have those data points
11 over time?

12 A Well, you can see the course of an illness, you can
13 look at somebody's prognosis, you can see responses to
14 treatment, you can see how personalities change, you can
15 see how an illness either gets better or worse. So many,
16 many things that you can gather from that.

17 Q And are there times where diagnoses are consistent
18 over time?

19 A Yes.

20 Q And are there times where a diagnosis may be
21 appropriate at times and not at other times?

22 A That's correct.

23 Q Okay. And looking at the history, are you able to, I
24 guess, form opinions about what was going on from a
25 diagnostic perspective at particular points in time?

1 A Yes.

2 Q Okay. Now, in one of the sections in your report
3 regards Mr. Inman's -- Jerry Inman's developmental
4 history. Why is it important to know about somebody's
5 developmental history?

6 A Well, developmental history, Your Honor, is early
7 development through childhood, and there's a lot of
8 reasons that's important.

9 Q When you say "childhood," what age period are we
10 talking about?

11 A I'd say until they become an adult. For me, it's
12 ages to about 20 or so.

13 Q Okay. Thank you.

14 A And it's important for a number of reasons. You're
15 looking for medical illnesses or things that would affect
16 somebody's brain development. And that's called their
17 cognition, the way they pay attention, the way they
18 remember things. So that's a very important time during
19 development, the brain, especially in teenage years and
20 those sort of things.

21 You're also looking for histories of separation from
22 parents, things that can create some personality
23 disturbances or long-acting maladaptive ways of
24 functioning. You're looking if the person has had
25 exposure to trauma, because those certainly affect

1 personality development and your moral development and
2 your development as a human being. So you're looking for
3 things that may have interfered or things that have been
4 positive to look at how the person became -- it's a data
5 point of their early functioning so you can see how
6 they've progressed over time.

7 Q Now, you talked about brain development. What's
8 important about brain development?

9 A Wow.

10 Q Or what's not important about it?

11 A Yes. I'll tell you what I look for specifically in
12 these developmental histories. I'm looking for things
13 like head injuries, Your Honor. I'm looking for things
14 like maybe birth defects or problems with birth and
15 delivery that maybe would affect their IQ or their
16 abilities to cognitively function. You're looking for
17 things, abuse. Again, just some of those things.

18 But your brain continues to develop. We know a lot
19 about the brain now. We used to think when you were a
20 child, that's when you had the most brain development.
21 But we now know that teenagers, there's another period of
22 time when you're 11 and 12 years old that your brain is
23 undergoing massive development. Some things are turning
24 off, other things are turning on, and so we now know over
25 time that those are all critical times. So you're looking

1 for things that were noxious, things that happened that
2 shouldn't have happened, things that may have affected
3 their school performance and those sorts of things.

4 Q And you mentioned about learning more, but by 2008,
5 when Jerry Inman's sentencing hearing was beginning, we
6 already knew a lot about child and juvenile brain
7 development, didn't we?

8 A Absolutely.

9 Q Okay. Now, and again, I'm interested in prior to, I
10 guess, April when Mr. Inman was sentenced. Is there
11 anything that's important in the developmental period --
12 in the brain development period with a child regarding
13 sexual disorders?

14 A Yes. There can be.

15 Q All right. Can you talk about -- and is sexual
16 identity a right word to use?

17 A That happens at age 10 to 14. So I wouldn't call
18 that childhood. I would call that probably late childhood
19 and early adolescence. But yes. That happens as well.

20 Q Thank you for that.

21 Can you explain what happens at ages 10 to 14?

22 A Yes. Your Honor, I wish I could draw it for you. We
23 usually have two intersecting parabolas. But what happens
24 from ages 0 to 10, children are homosexual in orientation.
25 And what we mean by that, it's not anything they're aware

1 of, but boys play with boys and girls play with girls.
2 Girls have germs and boys have germs. So if you go to an
3 elementary school and you go on the playground, up until
4 fourth grade, you'll see usually the sexes stay with each
5 other. You don't see them comingling or coplaying or
6 those sorts of things.

7 From ages 10 to 14 is when your sexuality is
8 developing and you see a crossover. So from ages 10 to
9 14, it's a period of time developmentally where there may
10 be all kinds of different sexual behaviors that are not
11 indicative of adult development at all. So, for example,
12 you may see 10-year-old boys that have engaged in
13 homosexual acts, but they do not turn out to be homosexual
14 in orientation at all once they're adult. And we refer to
15 that as sex play. They may be playing post office or, you
16 know, showing each other genitals or those sorts of
17 things. So sometimes there's crossovers in the ages of 10
18 to 14. Girls may do somewhat overt sexual things with
19 other girls, but that is not indicative of their adult
20 development.

21 And so what happens is after age 14, your preferences
22 are pretty much -- they're pretty much consistent. And so
23 there's -- usually, the normal crossover is boys hang out
24 with boys until ages 10 to 14, and then after age of 14,
25 they're attracted to females. And that's a normal

1 development that occurs.

2 Q And as far as the way somebody's sexuality develops,
3 are there genetic components? environmental components?
4 both?

5 A That's a really good question, Your Honor, and that's
6 been one of the issues.

7 The paraphilias, which are the deviant sexual
8 disorders, disorders of development that are not
9 normophilic, that are not in the mainstream, they have
10 what's called a biopsychosocial model. Yes, sir.

11 THE COURT: That phrase again?

12 THE WITNESS: Yes. Biopsychosocial. I teach my --
13 my medical students are in the audience, and I teach them
14 -- that's one of the things I grill them on all the time.
15 It's called a biopsychosocial model.

16 And we do that in medicine pretty much for
17 everything, Your Honor. What it is, is you're looking --
18 if somebody has an illness, you're looking at what are the
19 biological components of that illness. And usually, the
20 biological components will be is there a family history?
21 Does it maybe have some kind of genetic component? You
22 might be looking for a medical history. Is there some
23 kind of medical illness or something going on with the
24 person that is contributing that caused this illness.

25 And then thirdly, you're looking for things like

1 substances. There's some substance abusers or some drugs
2 sometimes that may cause people to have any kind of
3 medical disorder. So those are the biological things that
4 we look at.

5 And there is some evidence -- with the paraphilias,
6 we don't know exactly. It's one of those illnesses like
7 schizophrenia or hypertension. We know what parts of the
8 brain are involved, but we're not really sure how it
9 happens. And so we look at the biopsychosocial constructs
10 of that.

11 So biologically, yes, you can have a predisposition
12 to have one of these disorders. We know some areas of the
13 brain that are affected, but at this point, I don't think
14 medicine has gotten far enough that we can say every
15 person that is a serial rapist has a lesion in this part
16 of their frontal lobe, although we know the area of the
17 brain that's involved.

18 The other thing that we look at is you look at your
19 psychological experiences. What has this person gone
20 through? And with these paraphilic disorders, these
21 sexual disorders, there may be things that have happened
22 in childhood that predispose them.

23 And so, for example, the best example I can give you
24 is I had a preacher that I saw that had a foot fetish, and
25 he had some biological predisposition to that. But then

1 when I questioned his babysitter who molested him, would
2 lick his feet. And so sometimes you can see that there
3 may be some things that you've gone through in childhood
4 that maybe have something to do with some of the behaviors
5 you exhibit.

6 BY MR. GROSE:

7 Q Okay. And can it be also experiences where you see
8 things?

9 A It could be, yes. It can be.

10 And then finally, there are social things that are
11 going on. If you're in an environment, and I could give
12 you an example, say if one of the ladies with
13 schizophrenia came into the hospital, maybe she didn't
14 have money that week. Maybe she saw someone get hurt. So
15 all of those things, you have to take each person, look at
16 everything going on with them, what's going on with them
17 internally, what's going on with them biologically, and
18 what's going on in their environment. So that's the
19 approach that we take to the paraphilic disorders.

20 Q Now, you mentioned earlier consultations with people.
21 Was Dr. Loring one of those people?

22 A Yes.

23 Q And did we ask you to read her testimony from the
24 trial?

25 A Yes.

1 Q And did you do that?

2 A I did.

3 Q And as part of the materials that you had available
4 to you, did you have what's in evidence as Applicant's
5 Exhibit I believe it was 36? Correct me if I'm wrong.

6 A Yes.

7 MR. GROSE: Let me verify that number. It is 36,
8 Your Honor.

9 BY MR. GROSE:

10 Q So did you have a lot of sources for learning about
11 Mr. Inman's developmental history?

12 A Yes.

13 Q And what did you find that was significant about
14 Jerry's developmental history?

15 A I'll be glad to go over those. And I need to tell
16 you, I had prepared a report in 2008, and in reading in
17 preparation for testimony, I realized I had left one
18 significant developmental factor off of this present
19 report.

20 Q Okay. And Mr. Bannister referenced that yesterday,
21 is that right, the other report?

22 A No. I'm talking about there was a report, the
23 competency report in 2008. Prior to my testifying before
24 his guilty plea, I had issued a report.

25 Q If you can bear with me a second, I might have that.

1 I can find that for you later.

2 A Yes, sir. But I know what it is. What I left out is
3 Mr. Inman, when he was a younger child, he had had febrile
4 seizures, and he had carried the diagnosis of a seizure
5 disorder and had been on Phenobarbital for a period of
6 time during childhood. And that has no -- he doesn't have
7 a seizure disorder now and that's not relevant, but that
8 is significant during his childhood that he had a medical
9 illness and it was a seizure disorder. So I had
10 inadvertently left that out on this developmental history.

11 Q All right. And with regard to his developmental --
12 was that significant, the seizure disorder?

13 A Well, it is at the time it happens. It meant
14 something was going on that he was not -- he would stare
15 off, he would have staring spells which were observed by
16 his family and medically diagnosed. And so it affects --
17 again, that's just something going on with his brain.
18 It's a noxious stimuli. It's something that's not normal
19 that should not have happened, so it's something to keep
20 into account over development.

21 Q Okay. What else was significant during Jerry's
22 developmental period?

23 A Well, we know, Your Honor, his father was a convicted
24 sex offender. His father was a convicted rapist and had
25 been in Florida for that. So he was being exposed to a

1 person who had committed sexual offenses.

2 Q And was there anything in Dr. Loring's history that
3 you found significant with regards to being exposed to
4 sexual abuse?

5 A Yes.

6 Q And what was that?

7 A The history obtained by Dr. Loring, I had spoken with
8 her and had notes and also have read her testimony. She
9 reported that his father raped his sister, Denise Baker,
10 and his mother in the presence of Mr. Inman, also that
11 Mr. Inman may have been sexually abused by his father.

12 Q Okay. And whether it was from Dr. Loring or any
13 other source, did you develop or learn any information
14 about Jerry witnessing people engaging in sex?

15 A Yes. Through Dr. Loring's reports, yes. And I'll be
16 glad to outline those.

17 I talked with Dr. Loring, this was in June 2008
18 before she would have testified in September, Your Honor,
19 so this is while she was still working on the case. And
20 she told me that she had interviewed his mother, who was
21 Vera MacArthur, who is now dead, his sister, Denise Baker,
22 and his stepfather. And I'm sorry. I don't recall the
23 stepfather's name.

24 She reported that the sister stated that the father
25 would tie her to the bed, and that -- he would tie her to

1 the bed and rape her. It was a bunk bed, and she would be
2 on the top. And at the time, Jerry was 3 years old, and
3 he was in the bottom bunk and he would be sleeping under
4 her while these rapes occurred. She reported that he, the
5 father, would blindfold her and digitally penetrate her.
6 She did report to Dr. Loring that there was one occasion
7 that Jerry heard what was going on and she could hear him
8 crying. She reported whenever they would cry, the father
9 would spank them for crying while this abuse was
10 happening.

11 She also told me, Dr. Loring, that the mother found
12 blood on Mr. Inman's anal area on one occasion. She also
13 noted redness around his anal area -- excuse me -- on more
14 than one occasion. She also noticed redness around his
15 anal area around age 3.

16 And the other thing that I did not know is the sister
17 reported that the grandfather, whom Jerry was very close
18 to, he described -- Mr. Inman described being close to
19 this grandfather, that this grandfather molested the
20 sister as well. So there had been two generations of some
21 sexual abuse going on.

22 Q And what's the significance about the
23 multigenerational aspect?

24 A Well, it's just a toxic environment. And we see
25 that, unfortunately, Your Honor, in cases of incest. And

1 I know the Attorney General's Office would agree, we have
2 some of these cases where there's years of abuse, and the
3 grandfather is parenting grandchildren through incest and
4 those sort of things.

5 Incest is a little bit different in terms of the
6 sexual disorders. Sometimes it occurs because people have
7 sexual disorders. They have paraphilias. Other times it
8 occurs because it's things going on within the family
9 dynamic. And so this is probably a little bit of both.
10 But it's certainly we give credence that, you know, there
11 may be some history of three generations of rape in this
12 family, which it would lend to the biological component
13 for Mr. Inman, and then it also reasons that there was
14 environment where people were sexualized violently in
15 front of him growing up, and that could contribute to his
16 offenses as well.

17 Q And part of the information that we have from
18 Dr. Loring through Applicant's Exhibit Number 36 has to do
19 with Jerry witnessing his father choke, rape and beat his
20 mother.

21 A Yes.

22 Q And is that significant?

23 A Yes. Again, when you're raised in violence and you
24 see violence and then you become violent, that would
25 certainly, again, lead to either a biological component or

1 certainly a psychological component of that that you've
2 seen those things.

3 And it's interesting, Your Honor, and I'll talk about
4 it. He's a rapist. He's a serial rapist. It's a sexual
5 disorder. But the fact that he choked this victim is
6 certainly something that dynamically it's important to
7 look at.

8 Q And we -- we're talking about the biological that I
9 sometimes refer to the genetic, and the part I sometimes
10 refer to sort of the environmental, do those operate
11 together?

12 A Yes. With many illnesses. That's correct. You
13 know, for example, you know, why -- it's always been a
14 mystery in medicine, why does somebody go to bed one night
15 and they wake up the next day and they have hypertension?
16 They didn't do anything specifically that day, but
17 something happened.

18 And so if you look at the onset of all illnesses,
19 whether they're medical or psychiatric, there's usually
20 some stressors going on in the environment. There's
21 usually some genetic predisposition, and something
22 happened that all of a sudden you wake up and you're
23 different. You have an illness that at least we're able
24 to measure and define.

25 Q And at some time, did you also come into any

1 information about Jerry -- well, does Jerry have a history
2 of voyeurism?

3 A Yes.

4 Q Okay. And did that start early in his life?

5 A Yes, it did.

6 Q What can you tell Judge Macaulay about that?

7 A Your Honor, voyeurism, there's nine paraphilic
8 disorders. And what those are, paraphilia means deviant
9 sexual interest. "Para" means alongside and "philia"
10 means an attraction to. So it's attractions to things
11 that are deviant, and there's nine different kinds. And
12 voyeurism is being a peeping Tom. So these are people
13 that are watching people have sex or watching people in a
14 state of undress and the person does not know they are
15 being watched. So this is very different. If you're
16 watching pornography or videos, those persons know they're
17 being viewed. This is somebody that has no idea they're
18 being watched. And so it's one of the sexual disorders.

19 We know that -- we now know, and we knew back
20 actually in 2006, when you have one of these disorders,
21 you don't typically have just one. They may change over a
22 lifetime. So there may be ten years that maybe this
23 person was a peeping Tom, and then the next ten years he
24 may become a pedophile. So if we, for example, look at
25 the persons with sexual disorders, you may see a lot of

1 deviant behaviors over their development.

2 Q Okay. And did you come into any information about a
3 specific voyeuristic event with Jerry?

4 A Yes.

5 Q And what was that?

6 A Your Honor, this happened back in 2008. After we had
7 the Blair hearing, I testified that Mr. Inman was
8 competent to stand trial and he pleaded guilty that day,
9 so I was present for his guilty plea.

10 After that evaluation, I had not finished doing his
11 sexual evaluation, and in anticipation of being called to
12 testify in his sentencing proceedings, Dr. Gregg Dwyer,
13 who was a colleague of mine at the University of South
14 Carolina, Dr. Dwyer and I evaluated Mr. Inman in August
15 and with the specific idea -- Dr. Dwyer, we had just
16 gotten a laboratory similar to that at MUSC. We had a PPG
17 lab. Dr. Dwyer, we had -- that was his specialty. He was
18 going to be -- at USC, he was my colleague, but he was
19 going to be the specialist similar to the lab he set up at
20 MUSC. So Dr. Dwyer and I evaluated him together, and
21 Dr. Dwyer actually was the person that uncovered this
22 history.

23 And what had happened, Your Honor, Jerry had been
24 going into people's homes, he had been looking in windows
25 and watching people undress. He had actually gotten to

1 the point in early -- around ages 12, 13, 14 where he
2 would go into people's homes while they were sleeping,
3 women, and he would touch them. And he had one occasion
4 where he had touched someone and she woke up, and he got
5 scared and ran away. So he had had -- even at a very
6 young age as an adolescent, he was engaging in what we
7 call paraphilic behaviors.

8 But what happened is, he stated that he witnessed --
9 as he got a little bit older, he had started having some
10 consensual sex actually around age 15. He was learning
11 about sexuality and having partners. But what happened is
12 one night when he was peeping, he saw a woman raped. And
13 he doesn't know if it was a couple that were role playing,
14 but he witnessed by looking in a window a woman being
15 raped and she was saying -- I can't remember the words,
16 maybe "God help me" or "stop." But he said at that moment
17 on, it caused an arousal in him and he was forever
18 changed, and that that was -- that became his -- that was
19 his main arousal was to have sex with a nonconsenting
20 person. And when he witnessed that, he knew, he thought
21 about it, it excited him, and that became his primary
22 sexual interests.

23 Q And how old was he when that happened?

24 A Let me be exactly specific for you. I think it was
25 around 16, but let me double-check. I don't -- I thought

1 I had this in my report. It may be somewhere else. But I
2 think it was -- it was -- he was a little bit older,
3 around ages 15 or 16. He had had some sexual development.
4 He had already been engaging in the voyeuristic behaviors,
5 and then he had some sexual -- consensual sexual activity,
6 and then he witnessed this rape or sex play.

7 Q Okay. But this was still during that developmental
8 period.

9 A Correct.

10 Q Okay. And so how does witnessing that interplay with
11 some of the other either things he witnessed or had happen
12 to him?

13 A It's a really difficult and complicated question,
14 Mr. Grose.

15 The problem is, Your Honor, these paraphilias,
16 they're not choices. It's mental illness. It's the way
17 your brain is wired.

18 So, for example, you may take someone that say their
19 interest is homosexual. They have a choice whether they
20 act on it or not, but once their brain is wired for sexual
21 arousal, you can't really change that. And so we don't
22 really know all the reasons why. We know that there's
23 areas of the brain that perhaps there's some issues with.
24 We know that it could have to do with your environment.
25 It may be things that you've been exposed to. But it's

1 just evidence, again, that he's got this wiring for
2 deviant sexual behavior and was engaging in it. Even
3 before he was sexually active, he was going into people's
4 homes and watching them. And then he's raised in an
5 environment where he has seen rapes and those sorts of
6 things, so they all play together. So I think they're
7 very significant.

8 Q And when somebody's sexual identity or what they're
9 aroused to is being set, that's happening in the
10 developmental period; is that correct?

11 A Correct. So ages 10 to 14 is that period of time
12 where his brain, we know that the brain is developing its
13 sexuality around ages 10 to 14. Those areas of the brain
14 are myelinating, and those things are being determined.
15 And so that's a critical time.

16 Q Okay.

17 A And by the way, that is very consistent. If you take
18 people with these disorders, Your Honor, that is a very
19 consistent history.

20 So, for example, they've done a lot of research on
21 pedophilia, of course, because that's usually coming to
22 legal attention a lot. The average age -- if you take a
23 person as an adult that has a pedophilia, his age is
24 usually 10 at the time of his first offense and the victim
25 is an 8-year-old. And so if you look and you take these

1 behaviors over time and you look back in time, these
2 interests have already begun to develop in childhood at
3 times.

4 Q And just to be clear, you're using that as an
5 illustration. There's nothing in Jerry's history
6 regarding pedophilia, is there?

7 A That's correct. No. There's no indication of that
8 at all.

9 Q All right. And you mentioned earlier that you and
10 Dr. Dwyer began -- or saw Jerry together, I guess, is the
11 right ---

12 A Yes. I had asked Mr. Bannister, because although I
13 certainly have had some training, Dr. Dwyer had a lot more
14 training and a lot more interest, and this is what he
15 wanted to do. And he is very -- if you know him, he is
16 very thorough. And so, Your Honor, he was a
17 counterterrorism agent for NCIS and was very adept at
18 doing interrogations and those sorts of things. And he
19 certainly didn't interrogate Mr. Inman.

20 Q That's a questioning practice, I guess.

21 A Oh, yes. He had many, many questions. He had things
22 prepared, he was updated on all the literature, so I
23 thought it would be -- and he allowed me to sit in on that
24 evaluation with him. So we conducted that together.

25 Q And when you're -- I think you testified about this

1 earlier. You're often called to conduct psychosexual
2 evaluations; is that correct?

3 A Yes. Probably right now, probably 50 percent of my
4 practice is that.

5 Q And is -- I wouldn't say routine in the sense of
6 every case, but is it a practice that you, when you're
7 conducting those evaluations, you consult with other
8 professionals?

9 A Oh, yes, yes. Many times I will refer someone for
10 physiologic testing, I will refer them for laboratory
11 testing. It's important to check male hormone levels and
12 those sorts of things. When indicated, I may ask a
13 neuropsychologist, as I did in this case, to evaluate
14 someone if there's an organic component. So not uncommon
15 at all.

16 Q Okay. According to your report, when was it that you
17 and Dr. Dwyer saw Jerry?

18 A August 28th. So it would have been about 11 days
19 after he -- his guilty plea.

20 Q All right. And I'm just going to show you what's
21 already in evidence as Applicant's 33, which is a
22 transportation order. Would that be consistent?

23 A Yes.

24 Q Okay. Was Dr. Dwyer able to complete his evaluation
25 on August 28th of 2008?

1 A No, we were not.

2 Q Okay. I guess the first question is, to your
3 knowledge, what was able to be completed up to that point?

4 A Well, we had completed the interview process. And
5 what we wanted to do at that time, we wanted to have some
6 further testing. We wanted to administer some of the sex
7 offender assessment tools, and we wanted to proceed with
8 the physiological testing. We had the lab, and we were
9 able to do that.

10 Q Okay. And was that something that you had time to do
11 on August 28th?

12 A No. That's a whole another day. We would have
13 needed one more day of evaluation. We were with Mr. Inman
14 that day. It was pretty much the entire day.

15 Q Okay. So this is a pretty intensive process.

16 A Oh, yes.

17 Q And I keep getting something to drink. If you want
18 something let me know, okay?

19 A Thank you.

20 Q So on August 28th of 2008, where you and Dr. Dwyer
21 were at that point, were you able to have a final opinion?

22 A No.

23 Q Okay. Were you able to develop some ideals of what
24 you needed to look into?

25 A Absolutely.

1 Q Okay. And can you tell Judge Macaulay about that?

2 A Yes. Your Honor, one of the things that we had to do
3 in this case, there are two forms of paraphilia that we
4 were concerned with. One is called sexual sadism, and
5 that is arousal to pain and suffering of a human being.
6 And one of the things we needed to do was to make sure
7 that Mr. Inman did not suffer from that sexual disorder
8 because that's a very different disorder. I needed to
9 know that for two reasons. Number one, he strangled the
10 victim, and sometimes people with sexual sadism will
11 strangle people while they were having sex. And so it was
12 very important to determine whether her murder, if her
13 murder was part of that sexual disorder. Okay. So that's
14 one.

15 The other thing that we knew is that he appeared to
16 have what we -- at that time we called it "paraphilia not
17 otherwise specified." Unfortunately, Your Honor, the
18 ninth category covers everything, and that would be having
19 sex with animals, drinking urine, having sex with dead
20 people, having sex giving arousal to enemas, but also
21 there was a subset of serial rape. There is a group of
22 offenders that are not rapists, that don't rape to control
23 people. There is a group of offenders, and it's a mental
24 illness, that their only arousal is to nonconsensual sex.
25 And that's a very rare disorder, but we felt that, based

1 on our interview, that Mr. Inman may have very well indeed
2 had the disorder.

3 Q All right. Can I get you to elaborate on something
4 there? You talked about rapist and control and rape is to
5 do it because of mental illness. Can you explain that a
6 little bit more?

7 A Yes. There are a group of rapists, Your Honor, that
8 are antisocial, that they rape to harm people, to control
9 them, and it's a volition. They choose to do it. There's
10 a group of offenders that the only way they get sexual
11 satisfaction is to have raped someone, so it's very
12 different.

13 They don't do it to control or dominate. It is their
14 only sexual outlet. Now, they're responsible for what
15 they do. They can choose not to act on those urges, but
16 those urges are not coming out of anger, they're not
17 coming out of rage, they're not coming out of being a
18 sociopath and trying to hurt someone. It's how their
19 brain is wired. They can't help it. They can help what
20 they do, but they can't help that their brain has been
21 kind of miswired that way.

22 Q All right. And of these two categories, is one more
23 common than the other?

24 A Yes. Sexual sadism is much more common probably than
25 biastophilia, which is what the rape disorder is called.

1 Q Okay. And I appreciate that answer. But, I mean,
2 when we were talking about the rapists who do it out of
3 anger or control versus rapists who have this mental
4 illness . . .

5 A Yes. The antisocial rapist who just rapes women for
6 control and part of being a sociopath, yes, those are much
7 more common.

8 Q Okay. And you said biastophilia.

9 A Yes.

10 Q I want to ask you to spell that for the court
11 reporter, because I probably can't.

12 A B-I-A-S-T-O-P-H-I-L-I-A.

13 Q And what is biastophilia?

14 A It's -- again, it's a paraphilic disorder. And
15 paraphilic disorders, Your Honor, are deviant urges or
16 arousal, and that they have to be so severe that they've
17 caused you dysfunction in your life. There are many
18 people that have these kinds of urges, but they don't get
19 in legal trouble. For example, you can see on the
20 Internet now lots of people that are sexually deviant.
21 They're able to find each other now and they're in
22 consensual relationships and those sorts of things. So it
23 has to cause you dysfunction.

24 And if you look back in Mr. Inman's history, he's had
25 this going on for 20 years prior to the time that he was

1 arrested in 2006. So he's had numerous arrests because of
2 his urges to rape. He has had no intimate relationships,
3 so he's had significant decrease in functioning because of
4 it. But they're intense urges to have sex with
5 nonconsenting people, to rape women. And it comes from
6 his brain. It doesn't come from his volition. It's not
7 coming from his desire to humiliate, to harm women.

8 Q And you showed me a definition of biastophilia this
9 morning that you thought was particularly helpful.

10 A Yes. Your Honor, what I tried to do this morning for
11 the Court was just try to look at some of the
12 biopsychosocial things I'm talking about because it's --
13 there's not a lot of research. And I found an article
14 today. I thought it was just interesting, and I think it
15 describes it better than I can. "Rape is primarily
16 regarded as a crime against sexual integrity. If rape is
17 the only way for an individual to get sexual satisfaction,
18 it meets the criteria for a paraphilia." So I thought
19 that was a much more succinct way to describe it than I
20 can do.

21 Q Now, in August of 2008, as part of the questioning
22 that Dr. Dwyer did -- and you observed that, I believe,
23 right?

24 A Yes. And I participated. I asked questions as well.
25 It wasn't just me observing. We both were collaterally

1 doing this.

2 Q So in that, did it come out that Jerry had I believe
3 what you refer to in your report as undetected rapes?

4 A Yes.

5 Q Can you explain what you mean by undetected rape?

6 A Yes. Your Honor, Mr. Inman, compared to most sex
7 offenders, he was very forthcoming. He admitted to
8 conduct he had never been charged for. And so one of the
9 questions we'll ask in all the treatment programs, we ask
10 this in the sexually violent predator program as well,
11 we'll say, "Do you have any off-the-record victims?" And
12 usually, it takes -- the person has to have been in
13 treatment for a few years before they begin to admit to
14 those.

15 Q Is that considered an important part of treatment?

16 A Absolutely, absolutely. Getting a full account of
17 the offending history.

18 And so even back in 2008, he admitted to, I think --
19 and I stand corrected. He had off-the-record victims, and
20 then he also admitted to -- the one thing he never
21 admitted to, he adamantly denies that he raped a male in
22 the jail, and he adamantly denies that. But he admitted
23 to all the other offenses he's been charged for and then
24 some other undetected rapes before he was imprisoned in
25 North Carolina and Florida.

1 Q And let's talk about that just for a moment, because
2 as part of the discovery, and I may get the states wrong,
3 but I think there was some witnesses who he had raped in
4 maybe Tennessee and Alabama that was -- that he told about
5 as part of his statement.

6 A Yes. Your Honor, he had -- in Alabama, he had broken
7 into a woman's home and had robbed her, and the intent was
8 to rape her. But she was on her menses, and she also
9 prayed with him and he did not rape her. But he had gone
10 to Sevierville, Tennessee. Prior to killing Ms. Souers
11 and raping her, he had gone to Sevierville, Tennessee and
12 had raped a woman. Her 2-year-old child, I believe, was
13 in the room while this happened. But he did rape a female
14 the week before this offense, had attempted to rape a
15 female a few days before and then raped and killed
16 Ms. Souers.

17 Q And so those three, Ms. Souers and these other two,
18 would be detected rapes or attempted rapes?

19 A Correct.

20 Q Okay. Now, the undetected rapes that you talked
21 about, when did those occur?

22 A Those were before he went to prison.

23 So he also had other detected rapes. The other
24 detected rapes were he had in Florida, Your Honor. That's
25 what he was in prison for.

1 In Florida, he had gone into a home, and he tied up a
2 roommate and raped her.

3 And then he had a rape charge in North Carolina. He
4 has denied that one. He was accused -- he and his cell
5 mate were accused of raping a male in the detention
6 center, I believe it was the detention center, which he
7 denied.

8 These undetected, unreported rapes occurred before
9 his incarceration.

10 Q Okay. So he still would have been in his teens at
11 that point.

12 A That's correct. That's correct. So from ages 15 to
13 17, once he saw this rape, that he no longer had any
14 consensual sexual activity, he never had consensual sexual
15 activity again. Once he saw this rape, he, from then on,
16 only had arousal and only had sexual satisfaction from
17 nonconsenting sex.

18 Q And so from a diagnostic standpoint when you and
19 Dr. Dwyer are working together, what is the significance
20 of these undetected rapes in his teenage years?

21 A Well, a number of things. Number one, it tells you
22 that his drive is strong; number two, it tells you that he
23 was acting on these impulses. Some people -- you've got
24 to understand. Some people have this illness and never
25 act on it. There are some people that can have an illness

1 like that and maybe they write books, or maybe they -- you
2 know, they become celibate. There are many people that
3 can have disorders. It depends on the strength of the
4 impulses and how severe their disorder is.

5 So to me, it said that very early on -- and it would
6 make sense. His testosterone level is going to be high
7 when he's a younger man compared to age 48 now, and so
8 that he acted on those impulses quite frequently.

9 Q And can you elaborate more on about the strength of
10 the urges or the impulses that you just referred to?

11 A Yes. Mr. Inman is very complicated, Your Honor. He
12 minimizes -- I think his urges are much stronger. I think
13 the drive for him to have nonconsenting sex with people is
14 much stronger than he lets on, and that's the one thing
15 he's not forthcoming about.

16 But the reason he's not forthcoming is he doesn't
17 want anything to mitigate what he's done. He did not
18 understand that he had a sexual disorder, so he believes
19 that when he raped Ms. Souers, that he's a horrible
20 person, and he doesn't want to -- so anything that would,
21 in his mind, mitigate against what he's done, he will have
22 no part of that.

23 And so he tells me that he had total complete control
24 over his urges, which I don't believe, especially given
25 that history. We know the history before -- before he got

1 incarcerated, and his drive was quite high.

2 Q Now, you say, you know, he minimizes. But did he
3 cooperate with your evaluation?

4 A Yes. He's always been cooperative.

5 What he does is he malingers well. He doesn't
6 malingering sickness. He tries to act like he's doing better
7 than what he is, and he won't admit to -- when you're
8 trying to get a better history from him, he won't do
9 anything that he thinks would be exculpatory for him.

10 Q All right. And so as part of reaching the diagnosis,
11 we've talked about the things that he observed and
12 happened to him in the developmental period, we've talked
13 about these undetected rapes and the detected rapes when
14 he was a teenager. How does -- well, let me ask you this.
15 What is the criteria to diagnose biastophilia?

16 A You have recurrent deviant urges to have sex with a
17 nonconsenting person, and it has to have caused you
18 dysfunction over a period of time, and it has to last
19 longer than six months.

20 Q Okay. And so what is the relevance of the
21 developmental observations and events and the detected and
22 undetected rapes in this teenager's years for that
23 diagnosis?

24 A I'm not sure I follow the question. I'm sorry.

25 Q How do they help -- how does that information help

1 you get to a diagnosis of biastophilia?

2 A Well, it's consistent. Again, if you look at people
3 with these paraphilic disorders, they usually come early
4 in development, early in adolescence. And they persist
5 into adulthood and they cause dysfunction, so it's very
6 consistent.

7 I've got to add, these are very rare disorders. In
8 30 years, I've seen only three people that have
9 biastophilia. This is an extremely rare -- most rapists
10 are, again, sociopaths that are trying to harm people.
11 This is very rare. It's not a very common disorder. In
12 fact, Dr. Dwyer and I presented nationally because we had
13 two cases at the time when we presented at the American
14 Academy of Psychiatry and Law because this is not common.

15 Q And I think you were here when Dr. Viamonte testified
16 on other issues, and he tried to give us some reference as
17 to how common PTSD might be as a mental illness goes. Can
18 you try to put it into context for us just how rare
19 biastophilia is?

20 A I don't even know if there are any rates that are
21 reported. I've tried to look up some recent data, but I
22 didn't -- there's usually just case reports and those sort
23 of things. It's rare.

24 Q It's rare.

25 And I think you said you've only seen it three times

1 in your -- the -- his -- training or the experience, your
2 professional experience.

3 A Yes. And I develop -- and I evaluate sex offenders
4 probably every week. I actually saw one last week in the
5 sexually violent predator program. He was the third one.
6 Up until last week, it would have been a total of two
7 until I saw one that's been in the sexually violent
8 predator program for 11 years now.

9 Q Wow. So considering this for Jerry in 2008, it's
10 been a decade since. And you've been active with sexual
11 disorders, diagnosing and treating them during that
12 period.

13 A That's correct.

14 Q Okay.

15 A By the way, the other inmate, the other person that
16 had it was also in the sexually violent predator program,
17 and he had been there for ten years and was subsequently
18 released. But the other -- the two that I had seen other
19 than Mr. Inman had actually been -- the system worked,
20 they were referred out of prison, they were committed and
21 placed into treatment.

22 Q Okay. Now, focusing back in 2008, in August of 2008
23 after you and Dr. Dwyer met with Jerry Inman, did you
24 recommend to trial counsel that that evaluation continue?

25 A Yes.

1 Q And did you think it was important to continue that
2 evaluation?

3 A Absolutely. It explained -- well, it explained he
4 had an illness, and it needed to be evaluated to see -- to
5 be fully evaluated to see if it was something that
6 potentially would be presented to the Court or not. It
7 explained why he raped so many people.

8 He wasn't raping people because he certainly had some
9 antisocial features about him. He had broken the law
10 before. He was not a stranger to crime, but he was not
11 the typical rapist. He was not the prototypical rapist.
12 And this was a very different issue. And in my opinion,
13 it was an illness. It needed to be evaluated so that that
14 information could or could not be presented to the Court.

15 Q All right. And that information, the purpose of
16 presenting that to the Court would have been to explain
17 why the rape of Tiffany Souers occurred; is that right?

18 A Yes. And in my opinion, it could have affected -- he
19 may have been eligible for a guilty but mentally ill
20 defense just for the rape.

21 And one thing I have to add, Your Honor, we don't
22 have it -- there's no evidence that the strangling was
23 part of this offense. What I've learned is the strangling
24 happened after the rape, so it would have explained the
25 rape. It wouldn't have been eligible as a defense for the

1 murder, but it would have been eligible perhaps for a
2 guilty but mentally ill defense for her rape, or, at the
3 most, in the sentencing phase, it would have been
4 mitigation. It would have been diminished capacity.

5 Q All right. Now, we asked you to look at Dr. Loring's
6 testimony, and through her, another witness's information
7 was presented to Judge Miller about trauma.

8 A Yes.

9 Q And certainly, the trauma, sounds like it plays a
10 role into diagnosing biastophilia, at least the sexual
11 trauma.

12 A Yes and no.

13 Q Okay.

14 A People that have been abused don't go on to abuse.
15 There's no -- there's no research that indicates just
16 because something's happened to you that you go on to
17 offend, but it's something that you have to take into
18 consideration. It may help form what -- why his brain
19 decided that it would be aroused to rape versus children
20 versus fetishes or those sort of things.

21 Q And you've been involved in a lot of capital cases,
22 right?

23 A Yes.

24 Q And from a mitigation standpoint, one of the things
25 we try to do is explain why the crime happened, right?

1 A Yes. Or, in my case as a psychiatrist, I'm looking
2 was there any mental illness involved that impaired the
3 person's capacity.

4 Q Well, and while the trauma would be considered
5 mitigation, does the trauma help explain why Jerry's
6 crimes with Tiffany Souers happened?

7 A Yes. And also, more importantly and just as
8 important, it explains why he didn't have normal
9 relationships.

10 One of the things that happened, Your Honor, when
11 you're abused and you see horrible things, you have a bad
12 self-esteem. One of the things that happened is he never
13 developed intimate relationships. He's not an unpleasant
14 personality. I know some of his acts are horrendous, Your
15 Honor, but he's a calm person, he's quiet, he's reserved.
16 He doesn't have features about his personality that would
17 make him not -- someone not want to engage with him had
18 they not known about his sexual disorder.

19 And what's happened over time is he told me, he said
20 -- used words like "I'm scum. I'm -- nobody would ever
21 want to have anything to do with me."

22 So I also think when you're exposed to abuse and a
23 mentally ill mother who's not been able to take care of
24 you and not been able to shield you from abuse, it affects
25 your self-confidence and your ability to pick partners or

1 have relationships that are normal.

2 Q Okay. But as far as explaining why the rape
3 occurred, is -- and we're not quite there yet, but you
4 ultimately diagnosed biastophilia.

5 A Yes.

6 Q Okay. So does the biastophilia help explain why the
7 rape occurred?

8 A Absolutely.

9 Q Okay. So did you try to explain to trial counsel
10 what all this meant?

11 A Yes. We called. I have a specific recollection.
12 Dr. Dwyer and I were in the basement. That's where our
13 lab was at USC. Mr. Inman had just left. Mr. Bannister
14 asked me to call him and tell him what we found. And we
15 were somewhat excited about that because you don't really
16 see that disorder. We -- at that point, we were not sure
17 if he had a sexual disorder or whether he was just a
18 rapist. And we tried to explain to him that this was a
19 sexual disorder, that we needed to do further work up.
20 And I did report to him that it would certainly be an
21 issue that could be brought up at least at mitigation and
22 potentially a guilty but mentally ill offense to the rape
23 of Ms. Souers.

24 Q And do you feel like he understood what you were
25 trying to explain to him?

1 A No. And, in fact, his answer was, "You're telling me
2 my guy's a rapist and he's got unreported rapes? No,
3 thank you."

4 Q Okay. And did you get as far as beginning to prepare
5 a report?

6 A Yes. What I do ---

7 Q And this is Applicant's 43.

8 A Yes.

9 Your Honor, what my methodology was at this time is
10 when we had a death penalty trial, normally, whenever I'm
11 a mitigation expert or a witness, I give -- I prepare the
12 report after the person is found guilty, and I turn it
13 over to both sides prior to the sentencing hearing. So my
14 methodology has been to have the report ready at the time
15 of the sentencing hearing.

16 So at that point, when I saw him on August 29th, I
17 presumed we were -- I was still going to testify at some
18 point, so I had began to start my report. And it's not
19 completed by any means. In fact, I had no recollection
20 I'd even done that until Mr. Bannister mentioned that
21 yesterday in court. So this is not a complete report, but
22 I was beginning to formulate a report.

23 Q Okay. And, of course, more work still needed to be
24 done.

25 A Yes. The report's incomplete. It didn't have a

1 school history, it didn't have a vocational history, it
2 didn't have a legal history, it didn't have a sexual
3 history. So it was far from complete.

4 Q Okay.

5 A The other thing, if I can add, I had diagnosed him at
6 that time with antisocial personality disorder, and I
7 remember also Mr. Bannister saying he did not want to
8 present that information.

9 Q And we'll come back to that a little bit later.

10 Did we ask -- Ms. Holt and I ask you to complete your
11 evaluation?

12 A You did.

13 Q All right. And what steps were taken to complete
14 that evaluation?

15 A Well, the first thing I asked is that, again, we
16 consult with Dr. Gregg Dwyer since he had known Mr. Inman
17 from 2006 as well. Dr. Dwyer left the University of South
18 Carolina, and he was at Medical University of South
19 Carolina, so he took the whole lab that we had and brought
20 it down there. And so I thought it would make good sense
21 to consult with Dr. Dwyer again.

22 So actually, Ms. Holt and I both met Dr. Dwyer at
23 MUSC on March 12th to begin the evaluation.

24 Q Was that this year?

25 A 2017.

1 Q Thank you.

2 A Yes, sir. Last year.

3 And I went there with the understanding that I would
4 be participating in the evaluation. And unfortunately,
5 Dr. Dwyer was not allowed to let me participate. It was a
6 surprise to me. I am on faculty at the Medical University
7 of South Carolina. I'm an affiliated professor. I help
8 Dr. Dwyer. I teach his forensic residents every year.
9 But because I had that faculty appointment, I was not
10 allowed to conduct business on that facility unless you're
11 a full-time appointment. So Dr. Dwyer, unfortunately,
12 ethically he would get in trouble with this department. I
13 was not allowed to participate, to sit there while that
14 evaluation was being conducted.

15 So I met with Mr. Inman, and then I advised you all
16 to let Dr. Dwyer do his evaluation. He completed it, and
17 then I spent -- I spent over an hour in consultation with
18 him going over those findings.

19 Q Okay. And what was significant to you about
20 Dr. Dwyer completing his evaluation and the information he
21 provided to you?

22 A A number of things. First of all, Your Honor, some
23 of this we had already done, so we knew, for example, one
24 of the things back in 2008, I had already checked the
25 testosterone level on Mr. Inman. One of the first things

1 you have to do, sometimes if people have high testosterone
2 levels, that's certainly going to affect their volitional
3 capacity. They may do things sexually they normally would
4 not do, and sometimes there's tumors that can cause that
5 or maybe they're doing steroids or things like that. So
6 we knew we had a normal testosterone level back in 2008,
7 so we did not repeat that.

8 But what Dr. Dwyer was able to do, he completed the
9 interviews, he administered the multiphasic sex inventory,
10 some different tests that we use that compares him to
11 other sex offenders and those sort of things. He denied
12 administer of PPG. He did not do the physiologic testing,
13 and he felt comfortable that he could render his own
14 opinions without that testing. And he clearly met the
15 diagnosis of biastophilia. Dr. Dwyer concurred. But the
16 most interesting thing, Your Honor, he does not have
17 sexual sadism.

18 And I was incorrect. I had given a deposition in
19 2016 on this case. I didn't have my records. USC had
20 them.

21 Q All right. And we had to get those and get them to
22 you.

23 A That's correct. So I was testifying from memory.

24 And I was mistaken, Your Honor. I thought that when
25 Mr. Inman was raping Ms. Souers, that he was choking her

1 at the time, and that's not consistent. And Dr. Dwyer
2 corrected me on that, that the history that was given is
3 that Mr. Inman raped Ms. Souers, then he had her go and
4 clean off in the bath to erase evidence, and then he
5 choked her. So it was not part of the rape itself. So he
6 clearly did not meet the criteria for sexual sadism.

7 Q Okay. And I just want to be clear on this, because
8 earlier you said the murder wasn't a part of the offense,
9 but obviously, in the legal sense, it is. But when you're
10 conducting these evaluations, is it important to try to
11 separate out those things?

12 A Yes. When we do forensic evaluations, you have to
13 take each charge. And so, for example, you could have
14 somebody, maybe they're not guilty by reason of insanity
15 for one -- there might be three offenses in the same
16 crime, and there may be one that their not guilty by
17 reason of insanity for and one that they're totally
18 responsible for. So you have to look at each set of the
19 offenses. And so for me, it was very important to know if
20 the murder was part of his sexual disorder or whether it
21 was a separate event.

22 Q Okay. And you mentioned -- well, I'll come back to
23 that. Let me withdraw that.

24 Was there anything else -- well, was part of
25 Dr. Dwyer's additional work, did that help you rule out

1 sexual sadism?

2 A Yes. And that's what I definitely needed to do. And
3 I also needed -- we needed confirmation that, indeed, he
4 suffered from biastophilia because it is so rare. And
5 they were able to confirm those opinions.

6 Q Okay. And with that, did that allow you to complete
7 your evaluation?

8 A Yes.

9 Q Okay. And were you ultimately able to form opinions
10 about what Jerry's diagnoses are, what you diagnosed him
11 with having?

12 A Yes.

13 Q And what are those?

14 A Well, first of all, Your Honor, one thing we haven't
15 talked about, he had -- consistently has had a depression,
16 and it's been treated for years within the Department of
17 Corrections. He was locked up, basically, Your Honor,
18 from age 17. He was out for nine month. He had been
19 locked up for over 20 years. He was out nine months when
20 this offense happened. So over the 20 years prior, while
21 he had been confined, he had a history consistent with
22 pretty bad depression, and he had consistently been on
23 antidepressants. In fact, during his present evaluation
24 with Dr. Dwyer, they had to contact the Department of
25 Corrections to get him back on medications. He was felt

1 to be very depressed. And he was subsequently medicated,
2 and his functioning improved again.

3 So he has had a long history of depression. That's
4 genetic. We know that that has a genetic counter for it.
5 And his mother certainly has a history of major mental
6 illness. So that's -- I think first and foremost, that's
7 been very consistent.

8 Q Okay. And how long has he suffered from major
9 depression?

10 A At least 30 years.

11 Q Okay.

12 A At least that it's been documented.

13 But, of course, for the Court's purpose, I diagnosed
14 the sexual disorder first because I think that's the
15 issue, you know, why did he rape this woman? Did he rape
16 this woman because he was mean and angry and trying to
17 harm people, or did he rape her because he had a
18 paraphilic disorder? These are difficult disorders
19 because we don't like the behaviors that come with these
20 disorders. We don't like the behaviors people engage in,
21 so it's a very tricky and a very difficult subject to talk
22 about, and I could see why maybe people would not want to
23 present it.

24 But they are. They're treatable illnesses. We've
25 got a whole treatment program of people in South Carolina

1 that we can treat these disorders. You use medications,
2 you use therapy.

3 So I did diagnose him. Technically, Your Honor, it's
4 called "other paraphilic disorder."

5 What happened is the DSM-V, it used to be called
6 "paraphilia not otherwise specified." And what that
7 means, it's one of the rare ones that's in the ninth
8 category. And technically, it's called biastophilia, and
9 then now we write what the condition is. And it's in a
10 controlled environment. Right now he's in a prison, he's
11 in a controlled environment. And he's not going to have
12 access to women, and so he's being controlled right now.
13 So that qualifier has to be added to it.

14 I also diagnosed him with a persistent depressive
15 disorder, and that's called dysthymia. That just means
16 he's depressed almost every day for years and years.

17 Q And can I ask you to spell that for the court
18 reporter?

19 A Sure. D-Y-S-T-H-Y-M-I-A.

20 Q Okay. Thank you.

21 A I jokingly, but it's a good way to describe it, if
22 you've seen Winnie-the-Pooh, Eeyore would represent
23 someone who's dysthymic. He's always sad, he always sees
24 the worst in everything, he has a very poor self-esteem.
25 It's a chronic depression.

1 Now, people can have what's called a double
2 depression, and he's had those. So he's had this chronic
3 depression that's persisted for 30 years, but then there's
4 periods of time where he has a superimposed acute
5 depression. So he's had double depressions. Right now,
6 though, it was my opinion that he's just had the
7 dysthymia.

8 His double depression was treated, and at the last
9 time I saw him a few weeks ago, he was much better. He's
10 on antidepressants. He didn't have the same level of
11 depression that I have seen over the years with him.

12 Q And that gets back to what we talked about earlier
13 about how somebody's diagnosis may be different at
14 different times through their life.

15 A That's correct. And the prison records reflect that
16 there were some periods of time where he had the diagnosis
17 of the major depression, which is the acute depression,
18 and then there were periods of time where he was diagnosed
19 with a chronic depression. So that's consistent with some
20 of the records as well.

21 Q Okay. All right. And I'm going to come back to the
22 depression later, but what other diagnosis did you
23 formulate?

24 A I diagnosed him with unspecified trauma and other
25 stressor-related disorder.

1 Q Okay. And what is that?

2 A That represents he's got some features of
3 posttraumatic stress disorder, but more features that he
4 can't recall, Your Honor. When Dr. Loring presented this
5 information, there was information about specific
6 instances of child abuse or things he's witnessed. He has
7 no recollection at all. So I made that diagnosis to
8 reflect that while there have been witnesses that he's had
9 traumatic events, he has -- his consistent story to me is
10 that he recalls bits and pieces of his childhood. He
11 recognizes that he has difficulty recalling a lot of
12 events in his childhood, but this is a diagnosis that
13 reflects that he's had some history of exposure to abuse,
14 and he's having issues from it because he doesn't recall
15 them.

16 Q And we see that children sometimes don't recall their
17 childhood if it's been traumatic.

18 A That's correct. Usually it has to be chronic. You
19 know, if you have just one bad thing happen to you when
20 you're a child, you may remember those things. But if
21 you've had them repeated and it's going on while your
22 brain's developing over a number of years, there are a
23 group of people that don't remember those things. But,
24 for example, there's some people that do.

25 The serial rapist I saw last week had a horrible

1 abuse history and remembered every piece of it. So it
2 depends on your age, it depends on the abuse, who does it.
3 It's very complicated.

4 But I thought that diagnosis best reflected that he
5 had been exposed to some abuse, he has the memory deficits
6 that you see with it and gets very angry when anyone tries
7 to discredit his mother in any way. I think Dr. Loring
8 had kind of touched on that. One of the issues he has is
9 -- that's always been an issue for him is he doesn't want
10 anybody to present his mother in any kind of negative
11 light.

12 Q All right. I think we covered the biastophilia, the
13 depression, the trauma diagnosis. Was there any other
14 diagnosis you made?

15 A Yes. I did diagnose him with a personality disorder.

16 Q And what was that?

17 A I diagnosed him with a personality disorder that has
18 two distinct traits.

19 And, Your Honor, those diagnoses have changed over
20 time over the last 11 years. He's different when I saw
21 him more recently than he was in 2006. So, for example,
22 in 2006, I diagnosed him with antisocial personality
23 disorder, which I think he still has. But back in 2006, I
24 diagnosed him with avoidant personality. I thought, at
25 that time, that he didn't like talking about unpleasant

1 things. He's changed. Now ---

2 THE COURT: It's the individual or the diagnosis that
3 changed?

4 THE WITNESS: The individual.

5 THE COURT: Diagnosis are the same.

6 THE WITNESS: That's correct. He's changed. Yes,
7 Your Honor.

8 BY MR. GROSE:

9 Q He presents himself in a different way.

10 A Yes, sir. What's happened now is he's not as
11 avoidant. He'll talk about unpleasant things, but what
12 I've noticed now, I've diagnosed him as schizoid. He
13 wants to be left alone. He's not avoiding contact because
14 he's anxious around people. He is schizoid. He likes to
15 be by himself. He doesn't want to interact with people
16 given a choice. He would be content sitting in his cell
17 not having to do anything with anyone. He does not need
18 human contact, he does not seek out relationships.
19 Avoidant people want relationships. They just have such
20 poor self-esteem, they can't tolerate the anxiety.

21 So I actually have changed that diagnosis over time.
22 He's much more aloof. He really doesn't want to be
23 bothered. He wants to be left alone.

24 Q And I want to talk about some of these other
25 diagnoses, but before I move on, you mentioned that

1 biastophilia can be treated?

2 A Yes.

3 Q Can you explain that to Judge Macaulay?

4 A Sure, sure. It's the same treatment as with all the
5 sexual disorders. You make sure that there's not
6 biological causes. So, for example, if he had a high
7 testosterone level, we could give him antiandrogen
8 medications to lower his level. He actually would still
9 need that because he still at times has thoughts. Some of
10 the thoughts still are in his brain at times, so I would
11 certainly give him medication. But the main therapy is
12 you have group therapy, the sexually violent predator
13 program. Similar to that treatment program where you have
14 group therapy, you have individual therapy.

15 And then the therapy mainly deals on two things. You
16 have things that are called risk factors. You have things
17 that predispose you to act on these impulses. The person
18 has to be educated. They have to know what those triggers
19 are. And believe it or not, even without treatment, he
20 knew one of his triggers. It was driving. If he went out
21 to drive, he even recognized, without having any treatment
22 at all, that that's one of the things that would
23 predispose him to act on those urges that he had.

24 So you learn to determine what your risk factors are,
25 and then they teach you the things that you need to do to

1 make sure you don't get to that point. And so it's very
2 comprehensive treatment, but they're very treatable.

3 Q Let's go back to the medication for a second. You
4 said he has normal testosterone levels. So you would be
5 trying to lower those below normal?

6 A That's correct.

7 Q All right. And what does that do?

8 A Well, it would take away any -- one of the things you
9 want to make sure is that the person doesn't have any
10 reinforcement. You don't want those neural pathways in
11 your brain reinforced at all. You don't want to do
12 anything that strengthen that deviant pathway, so you
13 don't want them watching movies about rape. And he
14 doesn't do that. He avoids. He doesn't watch things like
15 that. He limits his television watching to sports,
16 sporting events.

17 Q And what television they have access to is pretty
18 limited.

19 A Correct, correct. So he doesn't ---

20 MS. BROWN: Objection to commentary, Your Honor.

21 THE COURT: Very well.

22 MR. GROSE: The Department of Corrections ---

23 THE COURT: Just a moment, if you would, please.

24 Let's just ask the questions and then we'll have the
25 comment to address that argument.

1 MR. GROSE: Okay.

2 BY MR. GROSE:

3 Q Is there a limitation in access to television in the
4 Department of Corrections?

5 A I don't know generally, but I know that Mr. Inman the
6 other week was complaining about the access to television.

7 Q So what type of medication -- well, you removed the
8 triggers like the movies. And then what else do you do?

9 A Well, in Mr. Inman's case, I would take his sex drive
10 totally away so he doesn't have any urges so that, as part
11 of the treatment process, he can learn the appropriate
12 things to do. He's not had treatment. He's not had
13 treatment.

14 I looked at his -- I did his -- looked at his
15 recidivism rates. They're high, and that's why he's got
16 to have treatment. There's things about him that he could
17 learn that would lower his rates to reoffend in the
18 future.

19 I did his assessment back when he was leaving the
20 Florida Department of Corrections. He was the highest
21 rate to reoffend. If we do the testing that we do to the
22 sexually violent predators today, when he was discharged
23 from the Florida Department of Corrections back in 2005,
24 he would have been committed. He was the highest risk to
25 reoffend at that time just based on things in his past

1 that he couldn't control that were amenable to treatment.

2 Q And when you say take his sex drive away completely,
3 is that with the medication?

4 A Yes.

5 Q And what type of medication is that?

6 A We use -- we use two. There's one, it's actually a
7 female hormone that we use for women. It's called
8 Depo-Provera or Provera. You can take it by pill as well.
9 And what it does is it lowers your body's ability -- it's
10 called an antiandrogen, and what it does is it tricks your
11 brain into thinking that you've got -- you don't need to
12 make testosterone anymore, so it kind of cuts off the loop
13 in the brain. And then there's another medication called
14 Lupron that does a similar thing. So there's two
15 medications that are used -- that can be used.

16 Q And then the other component that you talked about
17 was therapy.

18 A In cognitive therapy, yes. Most of these therapies
19 are based on -- there's two kinds of therapies they use.
20 One, it's cognitive behavioral therapy. And so they also
21 teach persons a lot about self-regulating, being aware of
22 your thoughts. It's called dialectical behavioral
23 therapy, but there's a number of therapies that are used
24 now for that treatment.

25 Q And as a result of completing all of these

1 evaluations, even with Mr. Inman being in the Department
2 of Corrections, can he be treated in that atmosphere?

3 A Yes. They have treatment there. And also, Dr. Dwyer
4 has said that Charleston, if he were given a life
5 sentence, I don't know if he would be Lieber or not, but
6 they would offer, they would certainly consult and have
7 offered to do that if he were to receive treatment.

8 Q So Dr. Dwyer, MUSC is willing to treat him?

9 A Yes.

10 Q Okay. Now, as far as somebody's prognosis and
11 treatment, what role does insight play into that?

12 A It's very helpful. Insight is, Your Honor, that you
13 recognize what's wrong.

14 At the time of this crime, he didn't know that he had
15 this illness. He didn't understand. He thought he was a
16 horrible person that's a rapist that has no cure or
17 concern for others, and he thought that this was -- he did
18 not recognize -- he had no idea that this was a mental
19 illness. And so insight is recognizing that it's an
20 illness, that there's triggers, that you have to control
21 it, that there's treatment available, that you recognize,
22 you know, what's going on with you and that you're
23 participating in your care.

24 Q One of the people you consulted, was that Dr. Tora
25 Brawley?

1 A Yes.

2 Q And what does she do?

3 A Dr. Brawley, Your Honor, is a neuropsychologist. I
4 asked her to see Mr. Inman back earlier because he had had
5 the history of the seizures and being on the
6 Phenobarbital, and he had also had, of course, the
7 problems remembering his childhood, so I wanted to be sure
8 that there wasn't a brain damage that was leading him to
9 have some of the memory deficits. And he did not. He has
10 a very intact brain, and there is no evidence that he has
11 any organicity at all.

12 Q I'm going to show you what's been marked as
13 Applicant's Exhibit Number 40. Is that Dr. Brawley's
14 summary of her testing?

15 A Yes.

16 Q And is that the type of information that you rely on
17 in forming opinions?

18 A Yes.

19 Q And that's what you just testified to that helps you
20 understand what's going on with his brain?

21 A That's correct.

22 And the other thing that it's helpful for is it --
23 he's got a high IQ. That makes him much more amenable to
24 treatment. He's going to be able to understand these
25 things. There's a number of the sex offenders in the

1 program that they have cognitive deficits and so they're
2 not able to get the most out of therapy. So the fact that
3 he's bright is actually a good prognostic sign for him.

4 Q Okay. Have you had an opportunity to explain to
5 Mr. Inman what his diagnosis is?

6 A I have.

7 Q And when was that? And I'm talking about the
8 biastophilia for right now.

9 A Yes. Well, early on when he came to see Dr. Dwyer
10 and I in 2008, we began explaining that to him. And we
11 talked about that because he had a lot of guilt. And then
12 last week when I saw him, I was able to discuss it. And
13 Dr. Dwyer discussed it with him as well, too.

14 Q Okay. And so with treatment of mental illness, is
15 that sometimes a process?

16 A Oh, absolutely. And it takes years. This is not
17 something that you go and talk to him and say, "This is
18 your illness," and a light bulb clicks on and he
19 understands. He has got a lot of pathology, has a lot of
20 guilt, has a lot of remorse. He's got many things going
21 on where he doesn't even -- he needs a lot of treatment.

22 Q Okay. And the guilt and the remorse, does that also
23 play into the depression some?

24 A Certainly.

25 Q Okay. I want to talk about the depression a little

1 bit.

2 A Yes.

3 MR. GROSE: I think the judge wants to interrupt.

4 THE COURT: Well, we're looking at 1:00. We've been
5 on this witness alone I think an hour and a half.

6 MR. GROSE: Should we take a lunch break?

7 THE COURT: What do you think?

8 MR. GROSE: I will follow wherever the Court leads
9 us.

10 THE COURT: At some point, we do have to exercise our
11 own judgment.

12 Is this a breaking place?

13 MR. GROSE: It is a breaking place.

14 THE COURT: All right. Is there anything from the
15 State as far as taking a lunch break at this time?

16 MS. BROWN: That's fine with us, Your Honor.

17 THE COURT: Very good. All right. How much time do
18 we need? An hour?

19 MR. GROSE: An hour would be plenty.

20 MS. BROWN: Yes, Your Honor. If we could be back by
21 ten after 2:00, I would appreciate it.

22 THE COURT: We'll do 15 after 2:00. How about that?

23 MS. BROWN: Thank you, sir.

24 THE COURT: Yes, ma'am.

25 It's rather interesting. This is the first time I've

1 had an evidentiary hearing where a witness is being, what
2 is it, released for lunch. And normally, I would give a
3 witness instructions not to discuss her testimony with
4 anyone, including her lawyer, anyone else, because if your
5 thoughts are going to be a part of the record, the Court
6 would request that those thoughts are formulated in the
7 courtroom so we do have a record rather than maybe having
8 some help outside.

9 THE WITNESS: Yes, sir. And I've been in that
10 situation before and I understand. I've had that happen a
11 few times. With the Court's permission, though, I do have
12 a resident and a medical student with me that I was going
13 to eat lunch with if that would be okay.

14 THE COURT: Well, that will be fine just as long as,
15 what is it, your testimony is not a part of your lunch
16 conversation.

17 THE WITNESS: Yes, sir. And I put that on the record
18 so they would understand. Thank you.

19 THE COURT: As I said, the thing is, decisions in a
20 courtroom that are presented in a courtroom have to be
21 made in the courtroom, so you don't want somebody
22 suggesting something else that is not in the witness's
23 mind at the time. In other words, you don't want to,
24 quote, interfere with the witness.

25 Very good.

1 (WHEREUPON, a recess is taken at 12:58 p.m.)

2 (WHEREUPON, proceedings reconvened at 2:20 p.m.)

3 THE COURT: If the witness will please -- that's
4 right. We're going to take Mr. Savitz out of order.

5 WHEREUPON,

6 JOSEPH SAVITZ

7 After having been duly sworn, testified as follows:

8 THE CLERK: If you would have a seat and state your
9 name for the record, please.

10 THE WITNESS: My name is Joseph Savitz, S-A-V-I-T-Z.

11 DIRECT EXAMINATION

12 BY MR. GROSE:

13 Q If you could, please give Judge Macaulay a summary of
14 your educational and professional background.

15 A Well, let's see. I graduated from Abbeville High
16 School. I went to Carolina for a while, went to Erskine
17 for a while, went to Clemson for a while, went back to
18 Carolina for law school. And worked in private practice
19 for about two years, and then I started at Appellate
20 Defense in the first part of 1985, and worked there to the
21 end of 2010.

22 Q Okay. And for a period of time, were you the chief
23 attorney at Appellate Defense?

24 A Yes. Yes, I was. For several years.

25 Q And you've retired from that.

1 A Yes.

2 Q And are you currently practicing law?

3 A No.

4 Q Good for you.

5 Are you familiar -- well, let me ask you this. When
6 did you become familiar with Jerry Inman's case here in
7 Pickens County?

8 A I kept up with all the capital cases, I mean, as they
9 actually happened. So, you know, I mean, if it was -- if
10 it was a factual pattern, it was probably going to be a
11 capital case. We, you know, kept an eye on it.

12 The way I initially became involved with this case
13 when it was a case was I think Mr. Godfrey called me when
14 he had been appointed to represent Ms. Loring during the
15 trial, and we talked on the telephone a good bit about it.
16 And then -- you know, then it went on. And after the
17 death sentence, after he got the death sentence, the
18 transcript came into the office, and I think Bob Dudek and
19 I were initially going to like split it up and do it
20 together. But we were doing like -- he and I were
21 splitting the capital cases generally and the noncapital
22 murders. And I was doing a capital appeal, about one
23 every four months or so, and we were just swamped. And it
24 turned out that I ended up being the one that -- I just
25 said, "I'll do it." And so I wrote -- I picked the issues

1 and I wrote the brief. Didn't argue it, though.

2 Q I want to show you what's been -- I want to show you
3 what's been marked as Applicant's Exhibit Number 46 and
4 ask you to take a look at that.

5 A Yes.

6 Q And what is that?

7 A This looks like the initial brief of appellant that I
8 wrote.

9 Q Okay. And I think if you'll turn to the signature
10 page on that ---

11 A Yes.

12 Q --- is that your signature?

13 A Yes, it is.

14 Q Now, Mr. Dudek appears on that as well, I believe.

15 A Yes.

16 Q But if I understand your testimony correctly, you
17 were the one who selected the issues ---

18 A Yes.

19 Q --- that went into the initial brief.

20 A Yes. I did -- I don't even know if Bob read it, you
21 know, before we filed it. I'm the one that read the
22 transcript, picked out the issues, wrote the brief and,
23 you know, filed it, signed it, filed it.

24 Q Now, even before the transcript came in, you were
25 already familiar with the issue involving Dr. Loring,

1 weren't you?

2 A Yes.

3 Q Okay. And did you review the transcript?

4 A Yes, I did.

5 Q Okay. And how many issues did you select?

6 A Let's see. I don't remember. It looks like three.

7 Q All right. And, if you could, would you please tell
8 Judge Macaulay what those issues were.

9 A Okay. Let's see. The judge committed reversible
10 error by accepting Inman's guilty plea despite defense
11 counsel's insistence. The judge's refusal to allow jury
12 sentencing was preserved for review by Supreme Court on
13 direct appeal because the defense position rendered the
14 plea conditional and, thus, invalid under South Carolina
15 law.

16 Issue Number 2 was the judge committed reversible
17 error at sentencing by refusing to grant a mistrial and
18 recuse the Solicitor's Office from any further involvement
19 in the case despite finding prosecutorial misconduct where
20 the solicitor threatened a key defense witness with a
21 baseless criminal prosecution and then subpoenaed her as a
22 State's witness after the judge granted the defense a
23 continuance to obtain a new expert because of this
24 misconduct.

25 And Number 3 was the judge committed reversible error

1 at sentencing by refusing to allow the defense to
2 cross-examine the solicitor and his deputy on the issue of
3 prosecutorial misconduct as the solicitor's intent was
4 directly relevant to that issue.

5 Q Okay. Now, in reviewing the transcript, do you
6 recall whether or not there was a motion to determine the
7 mode of trial?

8 A Yes, yes. It was. I do remember that, and I do
9 remember that the defense counsel at the hearing below was
10 -- I mean, they felt strongly about that issue.

11 MR. GROSE: Okay. And, Your Honor, before I move on,
12 let me move Applicant's Number 46, the initial brief of
13 appellant, into evidence.

14 MR. MITCHELL: Without objection.

15 THE COURT: All right. Without objection.

16 (WHEREUPON, Applicant's Exhibit Number 46 was admitted
17 into evidence.)

18 BY MR. GROSE:

19 Q I'm going to show you what's already in evidence as
20 Applicant's Exhibit Number 7.

21 A Yes.

22 Q Do you recall reviewing that document?

23 A No, I do not. But, I mean, I'm sure I did, because I
24 remember it being -- you know, like I say, that was the
25 issue that they felt strongest about, actually, besides

1 the prosecutorial misconduct.

2 Q Okay. And when you say "they," who was "they"?

3 A The trial lawyers, I guess. The plea lawyers.

4 Q All right. And as part of reviewing or selecting the
5 issues, did you review a copy of -- or the case Blakely
6 vs. Washington?

7 A If I did, I don't remember. I don't know what that
8 case stands for, so I don't -- I don't remember it.

9 Q Did you review a case called People v. Montour,
10 M-O-N-T-O-U-R, from Colorado in 2007?

11 A If I did, I don't remember it.

12 Q Did you review a case called State vs. Piper from
13 South Dakota in 2006?

14 A That one I probably didn't. That one's not ringing
15 any bells at all.

16 Q All right. State vs. Page, also from South Dakota in
17 2006?

18 A I don't think so. I mean, if these cases are cited
19 in any of the material I reviewed, then probably so. But,
20 I mean, I don't have any -- I mean, it's, what, ten years
21 ago. I don't have any independent recollection of any of
22 those cases.

23 Q And ultimately, you did not include as one of the
24 issues the appeal regarding the mode of trial, did you?

25 A No, I did not.

1 Q Okay. And sitting here today, those four cases,
2 Blakely, the one from Colorado ---

3 A Right.

4 Q --- and the two from South Dakota ---

5 A Right.

6 Q --- can you offer us any testimony about how those
7 might relate to Apprendi and Ring vs. Arizona?

8 A I mean, I don't even know what the cases stand for,
9 so no.

10 Q Okay. I want to show you -- you were familiar with
11 the issue regarding Dr. Loring?

12 A Yes.

13 Q All right. And do you recall whether or not there
14 was an effort to continue the case to get an additional
15 expert?

16 A Yes. I do remember that.

17 Q All right. And I want to show you pages 1,263
18 through 1,265 from the record on appeal, which is a motion
19 for continuance based upon duty to present mitigation
20 evidence.

21 A Right.

22 Q Did you include an issue in the case regarding
23 whether or not Judge Miller erred by not continuing the
24 case so that trial counsel could consult with an expert to
25 replace Dr. Loring?

1 A No, I didn't.

2 Q Okay. Now, do you recall any issues -- I'm talking
3 -- this question goes to the two things I'm asking you
4 about now, the mode of trial and the continuance.

5 A Right.

6 Q Do you recall any issues regarding error preservation
7 on those?

8 A No.

9 Q So you would agree they were preserved for appeal?

10 A You know, the issue I raised about whether or not you
11 got a jury sentencing was -- I mean, it kind of
12 presupposed that they weren't preserved. I mean, the
13 issue -- I know the issues you're pursuing. The issue I
14 raised is actually kind of the reverse of that. It kind
15 of assumed that these -- you know, that you couldn't
16 preserve this issue.

17 So, I mean, there was kind of an issue of
18 preservation, you know, there. But, I mean, my whole
19 argument was that by -- I took the South Carolina law as
20 settled on the issue, and my argument was that by telling
21 Mr. Inman that this could be appealed, that they were
22 basically misleading him and rendering the plea
23 conditional and involuntary. And so, I mean, that's -- I
24 know that's not what you're asking. I mean, as far as --
25 they did everything they could to preserve the issue, if

1 that's what you're asking.

2 Q All right. And do you recall them renewing that
3 issue even after ---

4 A Repeatedly, yes.

5 Q All right. And in your practice at Appellate
6 Defense, are you familiar with cases where somebody has
7 pled guilty but then they're allowed to appeal something
8 that happens at the sentencing portion?

9 A Yes.

10 Q Okay. And with regard to the continuance motion, was
11 there any question as to whether or not that was
12 preserved?

13 A No. That was definitely preserved.

14 MR. GROSE: Okay. Beg the Court's indulgence for a
15 moment.

16 BY MR. GROSE:

17 Q Just to kind of close the loop, you mentioned you did
18 not do the argument. Did you retire while Mr. Inman's
19 case was still pending?

20 A Yeah. This was the last capital appeal that I worked
21 on appellate defense, and I had retired before it came up
22 for argument.

23 MR. GROSE: Thank you. That's all the questions I
24 have.

25 THE COURT: Cross-examine.

1 MR. MITCHELL: May it please the Court, Your Honor.

2 CROSS EXAMINATION

3 BY MR. MITCHELL:

4 Q Good afternoon, Mr. Savitz. How are you?

5 A Good afternoon. I'm doing well.

6 Q Good. Thank you for hanging out with us. We
7 appreciate you being here.

8 A It's been fun. Thank you.

9 Q I just have a few questions for you.

10 I know you testified that you were involved in
11 Appellate Defense for quite a while, correct?

12 A Yes.

13 Q And so during that time, how did you stay abreast of
14 all of the current case law that came out, issues
15 affecting your defendants?

16 A I'm not sure that I did, actually. I mean, I read
17 the -- I still read the advance sheets. I mean, I read
18 the advance sheets every week, I read the U.S. Supreme
19 Court cases, I read the Fourth Circuit Court of Appeals
20 decisions. But once you've got that stovepipe outside of
21 that, I didn't keep up with everything that came out. I
22 mean, it's almost impossible to keep up with it all. If
23 it was an issue that I was looking at, then I would look
24 in, you know, other jurisdictions. But we mostly, our
25 research was -- and the nature of our Supreme Court was

1 they were more interested in the cases within our
2 jurisdictional timeline than other stuff, so I didn't keep
3 up with everything.

4 Q Now, in terms of this particular case, what was your
5 strategy once you got it?

6 A I thought that we would win because of the
7 prosecutorial misconduct. I mean, I thought it was
8 outrageous, and I felt certain that that would be -- I
9 just couldn't see how they could affirm a death sentence
10 with what had happened in this case. I thought we would
11 win on that issue. I was surprised when we didn't. So
12 that -- you know, I picked the issues. I mean, that was
13 going to be -- that was the big issue, the prosecutorial
14 misconduct. That was the talk of Mr. Dudek and everybody.
15 That was the one.

16 The other issue was the conditional guilty plea, you
17 know. That was just something that came to us. I think
18 Mr. Dudek and I, you know, talked about these issues. I
19 don't know that he did a lot of work on them, but that was
20 the other issue.

21 And the thing about the solicitor -- cross-examining
22 the solicitor, that was just part of the prosecutorial
23 misconduct. I mean, we raised -- I thought we would win
24 on the prosecutorial misconduct.

25 Q And so let me ask you, prior to you writing the brief

1 raising issues, did you consult with plea counsel
2 about ---

3 A I talked -- yeah, I did. I think we talked on the
4 telephone I don't know how many times, but they were --
5 they were -- I mean, they were interested in the case.
6 Because of the nature of the prosecutorial misconduct,
7 they stayed interested in the case. And like I say, I got
8 involved early on in the prosecutorial misconduct part of
9 it, and so I talked with, you know, Mr. Godfrey and talked
10 with the plea lawyers as well.

11 Q And so in Mr. Inman's application, he's alleging that
12 you were ineffective for two grounds, and so I just want
13 to take the first ground.

14 So he says that you were ineffective for not
15 appealing the trial court denying his request to plead
16 guilty and having his sentence determined by a jury ---

17 A Right.

18 Q --- which is violative of several amendments to the
19 Constitution.

20 A Right.

21 Q So, I guess, let me ask you, in reviewing the actual
22 -- well, I guess I should ask you this. What's your
23 knowledge of the case law pursuant to the death penalty
24 statute in South Carolina?

25 A As far as that issue goes ---

1 Q Yes.

2 A --- whether or not you can plead guilty, get jury
3 sentencing, my understanding, at the time, and I don't
4 know that it's changed, was that, you know, the only way
5 you get jury sentencing is by going through trial, and
6 that you don't get to plead guilty. And I don't remember
7 the names of the cases, but, I mean, there were at least
8 two cases that -- I mean, you couldn't plead guilty. You
9 just could not plead guilty and get jury sentencing.

10 Q Is it fair to say that it was a settled issue in
11 South Carolina?

12 A I thought that it was.

13 Q Are you familiar with State v. Downs? State v. Crisp?

14 A Crisp I might have represented, but I don't remember
15 what it was about.

16 Q Okay.

17 A I mean, this was all, you know, ten years ago. A lot
18 of these cases I just don't remember. But yeah. I mean,
19 I'm sure I was familiar with it at some time, you know, at
20 some point.

21 Q Is it fair to say that that wasn't a particular issue
22 that you wanted to brief in large part because it was a
23 settled issue in South Carolina?

24 A You know, if I could have -- if there was an argument
25 why that's unconstitutional, then I didn't see it at the

1 time. I don't see it now as I sit here. But that is not
2 to say that there is not -- you know, I might have a blind
3 spot and be wrong about that. I chose not to raise that
4 and instead, you know, pursued the idea that it was
5 settled law and that by suggesting otherwise, that the
6 judge had allowed the plea to become conditional. That
7 was the -- you know, that was the way I pursued it. I
8 didn't see it -- I didn't file a motion arguing against
9 precedent or anything like that because I didn't see that
10 we would have won that. Like I say, I may be -- you know,
11 I could be wrong.

12 Q Let me ask you, sitting here now in 2018, do you know
13 of any cases in South Carolina that says that that
14 statute's unconstitutional?

15 A You know, I haven't looked for any, but I don't know
16 of any.

17 Q Fair enough.

18 The second allegation in Mr. Inman's application is
19 that you were ineffective for not appealing Mr. Inman's
20 motion to continue his sentencing hearing so that he would
21 have sufficient time to obtain another mitigation expert.

22 A Right.

23 Q I believe that opposing counsel referenced page 649
24 where Mr. Bannister made a motion for a continuance.

25 A Right.

1 Q So you didn't appeal that particular issue. Sitting
2 here today, is that something that you potentially would
3 have appealed?

4 A As I sit here today, knowing that they were going to
5 not grant him a new sentencing based upon prosecutorial
6 misconduct, I would have to say that I would raise that
7 issue. And the reason is, this was the last capital case
8 that I worked on, I believe. The first capital case I
9 worked on in 1985 is a case called State vs. Jesse Keith
10 Brown. If you look it up -- that was Spartanburg. If you
11 look it up, they reversed on like a Fourth Amendment
12 issue, which is really not that good of an issue, and it
13 is not the real reason they reversed that case. The
14 reason they reversed that case was because the judge had
15 violated Mr. Brown's like Sixth Amendment rights, but they
16 didn't want to hold that.

17 Had I known that they would not punish the solicitor
18 for prosecutorial misconduct in this case, I probably
19 would have -- or I should have given them another option.
20 The only options they had were either pin it on the
21 solicitor or go with the first issue which we raised which
22 would have given him a whole new trial. I should have
23 given them like a third option, which would have been to
24 give him a resentencing based on something that was
25 relatively uncontroversial. So yeah. If I had to do it

1 over again, I'd raise that.

2 Q Let me ask you this. Since you said that you
3 potentially would brief that issue now, what level of
4 deference does appellate court give when they're reviewing
5 motions for a continuance?

6 A I mean, it's hard to win those. It's hard. I don't
7 know that I ever won one, but then again, I don't know
8 that I had a case with this degree of prosecutorial
9 misconduct in it in my 26 years of appellate defense.

10 Q Is it fair to say it had to be abuse of discretion or
11 something to that effect?

12 A Normally, yes.

13 Q Okay. And if you can, what constitutes an abuse of
14 discretion?

15 A There has to be no -- actually, I don't remember, but
16 there has to be no reasonable basis for the ruling, I
17 think. I mean, it's ---

18 Q So -- I apologize. So if there's an error of law,
19 would that constitute an abuse of discretion?

20 A I don't even remember. I don't know. I mean, I
21 think so. I believe that's right.

22 MR. MITCHELL: Beg the Court's indulgence, Your
23 Honor.

24 That's all the questions I have, Your Honor.

25 THE COURT: Redirect.

1 MR. GROSE: Just for the record, I'm not sure which
2 page number you referenced. I was looking at 1,263 as the
3 first page ---

4 MR. MITCHELL: I apologize. 649 of the transcript.

5 MR. GROSE: And I just wanted to clarify that.

6 REDIRECT EXAMINATION

7 BY MR. GROSE:

8 Q We're talking about two other issues today. Is there
9 anything mutually exclusive where you couldn't appeal the
10 mode of trial issue because you were appealing the other
11 three issues?

12 A No, no. I could have appealed any of the issues
13 we're talking about here today.

14 Q All right. So the same question, I think you've
15 already telegraphed the answer, but the continuance
16 motion, there's nothing -- no reason why you couldn't
17 appeal that along with the three that you did appeal.

18 A No, no. I could have raised any of the stuff that
19 we're talking about.

20 Q All right. And from an issue of deference to the
21 trial judge, if the trial judge had promised or had
22 instructed trial counsel to get another expert to replace
23 Dr. Loring ---

24 A Right.

25 Q --- would that have been an important thing to

1 include in a motion regarding the continuance?

2 A I'm not sure I understand your question.

3 Q Okay. Well, if the trial judge had said we're going
4 to take a break in trial ---

5 A Right.

6 Q --- and I want you to go get a witness to take the
7 place of Dr. Loring ---

8 A Right.

9 Q --- and then later on did not give trial counsel
10 enough time to do that ---

11 A Right.

12 Q --- would that be important factual background --
13 procedural background to put in an appeal?

14 A So he said, "Go get a witness," and then later on
15 down the road he says, "Oops, time's up"?

16 Q Right.

17 A And -- yes.

18 Q That would be something that would be important to
19 the appeal?

20 A Yes, yes.

21 Q Okay. With regard to you testified about the issue
22 of a guilty plea followed by jury sentencing to be a
23 settled issue in South Carolina ---

24 A I thought so.

25 Q All right. Do you know if there's any South Carolina

1 case that addresses that issue in the context of the
2 Blakely case?

3 A No. I mean, I don't know.

4 Q Okay. And even if a state court has decided an
5 issue, are there times that that issue can be raised in
6 Federal habeas to question whether or not the state court
7 either incorrectly or unreasonably applied Federal
8 precedents?

9 A Oh, yeah, yeah. Oh, yeah.

10 Q And in order to preserve that for Federal review, is
11 it fair to say that that has to be raised in state court
12 to then raise it in Federal Court?

13 A It has to be raised at trial or raised on appeal, and
14 then you can take it into Federal Court, yes.

15 MR. GROSE: Beg the Court's indulgence.

16 Thank you, Mr. Savitz. That's all I have. Before
17 you get up, let's see if they want to ask you something.

18 MR. MITCHELL: No recross, Your Honor.

19 THE COURT: All right. Very good. Thank you.

20 MR. GROSE: If it pleases the Court, I would recall
21 Dr. Maddox.

22 THE COURT: All right. Certainly.

23 Dr. Maddox, you do understand that you're still under
24 oath.

25 THE WITNESS: Yes, sir.

1 THE COURT: So you don't need be resworn. Very good.
2 Thank you, ma'am.

3 WHEREUPON,

4 DONNA MADDOX

5 After having been previously duly sworn, testified as
6 follows:

7 DIRECT EXAMINATION (Continued)

8 BY MR. GROSE:

9 Q And I appreciate your patience while we took
10 Mr. Savitz out of order.

11 Before I move on, I want to go back to the
12 biastophilia diagnosis for a minute. I think you
13 testified earlier that you had scored Jerry's risk from
14 the time that he was released from the Department of
15 Corrections, risk for reoffending.

16 A Yes.

17 Q Okay. Was there -- with knowing what you know now,
18 was there enough information available for the Department
19 of Corrections or their Department of Mental Health to
20 make a diagnosis and begin treatment?

21 A Yes.

22 Q And is that sort of a missed institutional
23 opportunity to treat Mr. Inman?

24 A In my opinion, it was. He was a highest risk back
25 then even before these last three rapes. Even back then

1 he would have been deemed in the highest risk category.

2 Q And if we assume for a minute that there may have
3 been some technical reason he didn't qualify for the SVP
4 program, you can still be diagnosed and treated within the
5 Department of Corrections.

6 A Oh, certainly. And I -- our South Carolina
7 Department of Corrections, I'm out of the loop now, but
8 they actually had a residential treatment program. Many
9 years ago, they had cognitive therapy groups called CSAR
10 [phonetic], but then they actually had a residential
11 treatment program that gave very good treatments to
12 offenders.

13 Q Okay. And before lunch we were talking about
14 treatment in general. And Jerry has a lot of trauma in
15 his background; is that right?

16 A Yes.

17 Q Okay. Is there a treatment that's available for
18 somebody that's experienced the type of trauma that he has
19 in his life?

20 A Yes.

21 Q And can you explain to the Court what that is?

22 A Sure. And it's actually even offered in sex offender
23 treatment too, if I can add. I know from doing the annual
24 evaluations with the sexually violent predators, Your
25 Honor, they actually, even their program, there are many

1 of them that have had abuse issues. And so sometimes it
2 can be a detriment to treatment because they don't want to
3 disclose or they have difficulty relating in group
4 settings, so they individualize the group treatment.

5 But yes. There's different treatments. One's called
6 supportive therapy, and what you do with that is you try
7 to decrease a person's anxiety and you work through the
8 difficulties that they're having. There is other --
9 there's cognitive-based therapies where you change the way
10 people think about how they view those abuse. So, for
11 example, it's real common if somebody that's been abused,
12 they may think that they deserve to have been abused.
13 They were a bad child. And so you work on the problems
14 that they have with their thinking errors and you try to
15 recorrect the way that they think.

16 And then the main thing that they do is you practice
17 what's called skills of distraction, and they're very
18 common therapies, believe it or not. But when persons are
19 having bad thoughts or blaming themselves, you teach them
20 how to, you know, change their mind to think of other
21 things. And so there's lots of ways that you can help
22 people cope who have been victims of abuse.

23 Q Okay. And this type of therapy can be provided
24 during an incarceration.

25 A Absolutely.

1 Q And from the legal side of things, we, a lot of
2 times, look at reasons why a court might impose a
3 particular sentence. And one of them is rehabilitation.
4 From your perspective, is there a way that this treatment
5 -- or does treatment relate to rehabilitation? Or can it?

6 A Geez. I think those are just different concepts. I
7 could tell you specifically, I think people with sexual
8 disorders can be treated, so I would consider that
9 rehabilitation. There may be a legal context to that, but
10 I see -- if somebody has a good prognosis or there's good
11 reasons to treat them, I would consider that a form of
12 rehabilitation.

13 Q And if you treat somebody and they learn how to deal
14 with their trauma symptoms, for example, does that help
15 them think better in the future?

16 A Absolutely. And the way that all relates together,
17 when you look at somebody that has a sexual disorder,
18 okay, and you look at whether they're going to reoffend or
19 not, there's two different kinds of risk factors we look
20 at. We look at things called static risk factors, and
21 those are things a person can't change. It's things like
22 his age, whether the victim was a stranger, how many times
23 they've been arrested before. Those are things a person
24 can never change, and so the only time those factors
25 change is if somebody gets older or perhaps if they get

1 out and they have a long-term relationship. So those are
2 risk factors that can't change.

3 Then there's a group of risk factors called dynamic
4 factors, and those are things about the person. So
5 they're things like poor problem-solving, dysfunctional
6 coping, hanging around with negative peer influences,
7 being what we call Machiavellian, meaning that you do
8 whatever you want as long as the ends justify the means.
9 So those are things that treatment is engaged in, and so
10 those are things that also apply to victims of sexual
11 abuse.

12 So there's a lot of the treatments actually kind of
13 cover each other. They're similar forms of treatment that
14 can be used in both instances, and those -- that's where
15 -- that's what the crux of a lot of the treatments are in
16 looking at the things about the individual that they can
17 change.

18 Q Okay. And so the crossover between the trauma and
19 the sexual disorder, some of the treatments are similar.

20 A Yes. And the other thing that's really important,
21 Mr. Grose, is when you've been abused, you don't develop
22 -- there's problems developing intimate relationships, and
23 that's a significant risk factor for people with sexual
24 disorders. So that's also where they cross over. That's
25 one of the static factors. And so there's a lot of

1 crossover in diagnosis and treatment and risk factors.

2 Q And through treatment, does it help people
3 understand, I guess, what's wrong with them from a medical
4 sense?

5 A Yes. And that's insight. That's what insight is is
6 when you understand that you have something wrong with you
7 and it's because something your brain's done, and that you
8 have behaviors and feelings associated with that, and you
9 begin to understand that and recognize that you need
10 treatment. That is insight.

11 Q Okay. And through treatment, is it possible to, I
12 guess, gain insight into all of these risk factors?

13 A Yes. The people in the sexually violent predator
14 unit, they have to tell you, every one. One of the things
15 we do when we do these evaluations, I see them -- I did
16 three in the last week. So, for example, the first thing
17 these guys do, they know every static risk offense, they
18 know every dynamic risk factor, they have gotten
19 treatments, they know what their treatment plans are for
20 them. So yes. That is very possible.

21 Q And so is it possible, even though somebody has
22 these dynamic and static risk factors, to influence
23 whether or not they'll reoffend one day?

24 A Yes.

25 Q And how does that come about?

1 A Well, what happens is there's static -- some of the
2 static risk factors decrease with age. So right now,
3 compared to when Mr. Inman got out of prison, he's aged,
4 he's gotten -- his age has become a protective factor.
5 But some of the other things that change are those dynamic
6 variables that you learn how to control your emotions, you
7 learn techniques to distract so you don't ever get to the
8 point where you're even beginning to entertain those urges
9 or those sorts of things. So yes.

10 Q And I think before lunch you had indicated that
11 Mr. Inman had a high IQ and the ability to understand and
12 participate in therapy?

13 A Yes.

14 Q Is it important -- when you're educating somebody or
15 doing treatment, is it important to educate them about
16 their illness, about the risk factors?

17 A Yes.

18 Q And I think in your deposition, you testified that
19 you want them to become an expert about their disorder?

20 A That's correct.

21 Q Can you explain what that means?

22 A Just similar to what I said. The people that have
23 been in this treatment program, they can tell you their
24 whole offending history, they understand all the
25 biopsychosocial factors that I discussed earlier, they

1 understand why they're biologically predisposed, they
2 understood what was happening to them mentally as they
3 offended, they understood all the triggers. They really
4 have -- they know what their patterns are and so they're
5 able to recognize those and not put themselves in those
6 situations.

7 Q As part of your report, it looks like you took into
8 account Mr. Inman's history of incarceration.

9 A Yes.

10 Q And why is that significant to know that?

11 A Well, I think one of his risk factors, he's got --
12 one of the risk factors he has is he's not been
13 emotionally intimate with anybody, Your Honor. If you
14 look at people that get in trouble again, one of the
15 factors they have is they've not lived with the person for
16 two years in an intimate relationship. And so for two
17 reasons, that's important. Number one, he had some
18 horrible self-esteem issues just from his childhood where
19 he felt like he wasn't worthy and no one would have wanted
20 him, but also he had been confined for his entire
21 adulthood, basically, up until that point, so he would not
22 have had an opportunity to even begin to develop positive
23 or healthy relationships that could have helped him.

24 Q And when his entire adulthood -- I mean, basically,
25 he's been -- since he was 17, he's only spent nine months

1 out of prison.

2 A That's my understanding. Correct.

3 Q Okay. Now, he didn't have any rapes while he was in
4 the Department of Corrections or the -- I mean Department
5 of Corrections in North Carolina or the Department of
6 Corrections in Florida, and then he had nine months after
7 he was released from Florida before this started again.
8 Is there any significance to that?

9 A Yes.

10 Q And can you explain what that is?

11 A Yes. Your Honor, we know this through research,
12 Dr. Abel and Dr. Bradford. It's common knowledge in
13 people that treat and assess people with sexual disorders.
14 When you are confined or you are under some kind of
15 supervision, your deviant drive goes away, and it's not
16 until you're out about a year that these urges come back.
17 And Mr. Inman had actually told me that for nine months,
18 he had no urges at all. In fact, his words to me was "I
19 thought I beat this." And then very suddenly, these urges
20 and this sexual arousal returned, and that's very
21 consistent with groups of people that suffer from these
22 illnesses. You usually have about a year of time before
23 those thoughts begin to come back. So that's very
24 consistent.

25 Q And when he said he was about -- he thought he had

1 beaten this, was he hopeful that he had beaten it?

2 A Yes.

3 Q Okay. And so the pattern in his case is typical of
4 the pattern for other people.

5 A It certainly is. It's consistent with the research.
6 Dr. Gene Abel did all of that research in 1986.

7 Q And now, the confinement apparently is something that
8 helps keep those urges under control; is that what you
9 said?

10 A It can. It depends on the person and it depends what
11 form of the illness is. So, for example, we had a client,
12 in fact, in Pickens county that had a foot fetish. And so
13 when he was imprisoned, it was horrible for him. He
14 killed himself because he knew that he was going to -- in
15 the Department of Corrections he would be touching
16 people's feet and he would be assaulted, and he actually
17 killed himself.

18 So it depends on what the illness is. But for
19 Mr. Inman, yes. I think being confined is protective for
20 him because he's not going to have access -- unsupervised
21 access to females.

22 Q And he has a history of that from the Department of
23 Corrections in Florida, the Department of Corrections in
24 North Carolina, and even his pretrial incarceration.

25 A A history of?

1 Q History of the confinement suppressing the urges.

2 A Yes.

3 Q Okay. And now, you know, the only sentencing options
4 in this case were life and death, so regardless, Mr. Inman
5 is going to be confined for the rest of his life. So that
6 protective factor is built in from now on, isn't it?

7 MS. BROWN: Objection. Calls for a legal conclusion.

8 BY MR. GROSE:

9 Q Do you think that Mr. ---

10 THE COURT: Excuse me.

11 MR. GROSE: I'm sorry.

12 THE COURT: You're probably right, but this is not a
13 jury, so -- and even juries are permitted to, what is it,
14 make their decision.

15 All right. I'll let the question stand, for what
16 it's worth.

17 BY MR. GROSE:

18 Q From a medical standpoint, will Mr. Inman's lifetime
19 incarceration be a protective factor?

20 A Yes.

21 Q Okay. One of the things in your report was you
22 diagnosed a personality disorder?

23 A Yes.

24 Q And is a personality disorder something that has
25 appeared in records that you've reviewed from the

1 Department of Corrections?

2 A Yes. He's had a long-standing diagnosis of various
3 personality disorders.

4 Q Okay. And what is a personality disorder?

5 A It means that a person consistently has maladaptive
6 functioning, that the way that they go about
7 problem-solving or relating to others, there's an
8 impairment in it that impairs their functioning.

9 Q And how do you go about -- how does a person get a
10 personality disorder?

11 A Well, you look at their lifetime. You look at their
12 development. And you usually don't diagnose personality
13 disorders until someone's 18. They wait until you've
14 developed, because, of course, your brain is still at that
15 point. But from 18 on, you look at their patterns of
16 functioning. Do they have impairments maybe with the law?
17 Do they have impairments in relationships with people? Do
18 they have a dysfunction? For example, a personality
19 disorder would be somebody that maybe got fired from every
20 job. So you look for patterns that, because of the way a
21 person acts, it causes them dysfunction.

22 Q And even though we don't diagnose those -- well, your
23 profession doesn't diagnose those until they're age 18,
24 are things that happen when that person is a child
25 relevant to whether or not they have a personality

1 disorder?

2 A Absolutely.

3 Q And can you explain that?

4 A Sure, sure. The best example I can give you, there
5 is a diagnosis called borderline personality. And almost
6 -- Your Honor, almost probably 100 percent of those
7 persons have been exposed to trauma during childhood.
8 Those are people that self-mutilate, they often frequent
9 the emergency rooms, they're suicidal, they may have cut
10 themselves, they're very impulsive. And almost all of
11 those, if you take those cases backwards, they have been
12 exposed to abuse as a child. They were either a victim of
13 abuse, they witnessed abuse.

14 So a lot of these personality, the criteria, you have
15 to go back in childhood and look at some traits. For
16 example, antisocial personality disorder, you'll see a
17 pattern, you'll look for some conduct during childhood
18 that somebody may have had.

19 So a lot of them have the criteria written out, but
20 certainly, your childhood development and the things you
21 went through are going to affect how you view the world as
22 an adult and how you relate to others.

23 Q Okay. And some of the things that happened to
24 children, they're not their choice when they're kids.

25 A I don't think there's hardly ever choices for them,

1 depending upon their age. Once they're 10, they have a
2 little bit more ability. But correct.

3 Q Now, when we're talking about personality disorders,
4 is it good to also look at those in the context of the
5 other diagnoses?

6 A Yes.

7 Q And are there times when, for example, a symptom that
8 might be a criteria for a personality disorder is also a
9 symptom for another mental illness?

10 A Absolutely.

11 Q All right. And in your line of work, how do you go
12 about looking at those things?

13 A As a physician, so, for example, if you have belly
14 pain, acute abdominal pain, there can be 15 different
15 causes for that. That's a symptom. So when you look at
16 behaviors during childhood, that's a symptom. And so if
17 someone's anxious, it could be there is abuse going on.
18 They might have an anxiety disorder. They could be
19 witnessing things.

20 And so you take each of those symptoms, and you have
21 to look at them in that biopsychosocial context I talked
22 about. You take the symptom, you look at what genetic
23 predisposition somebody may have, you look at their
24 environment and then things that are unique to them. So
25 yes. Those symptoms often cross over.

1 Q Okay. If somebody has a personality disorder
2 including -- or particularly antisocial personality
3 disorder, is that necessarily always fixed?

4 A No, no. People change over time. There's things
5 about them. The antisocial personality disorder, Your
6 Honor, that's an interesting one because it's got a lot
7 more specific criteria than the other personality
8 disorder, and for lots of reasons. When you label someone
9 with that diagnosis, that's not always -- sometimes it can
10 be prejudicial. And so the DSM has been very clear over
11 the years on what kinds of criteria you need to make that
12 diagnosis.

13 And what the issues are, some of the childhood
14 behaviors that you see in that disorder, they could be a
15 result of abuse. There are some crossover. There's other
16 things that can be contributing that have to be ruled out.

17 So sometimes the criteria themselves, they may be
18 attributable to other illnesses, but you can check the
19 block off. You know, to make that diagnosis, it's kind of
20 a checklist you can go down. So, for example, if you were
21 poor as a child and you stole bread every day and you rob
22 somebody of their lunch money to go get food, that would
23 be antisocial, although you may not have been doing that
24 to rob people. You may have been doing it out of
25 necessity. It doesn't look at why you did it. It just

1 matters that you did it.

2 And so those things do change over time. The past
3 behaviors don't, but your outlook and the reasons you do
4 things change.

5 Q And from a treatment standpoint, is it important to
6 consider these other mental illnesses in connection or
7 separately or at the same time you consider a personality
8 disorder?

9 A Yes.

10 Q And why is that?

11 A Well, it has a lot of -- a lot of significance. It
12 depends on treatment. So, for example, Mr. Inman, I had
13 diagnosed him with antisocial traits, and you have to. If
14 you look back at his history, he had other criminal acts.
15 There were many times, Your Honor, that he would rob. You
16 know, if he went in and he had raped a woman, he may have
17 taken things from there.

18 So there were other behaviors over time and in his
19 early adolescence where he was engaging in illegal
20 behaviors, but what's significance when you look at that,
21 even making that diagnosis, what he doesn't have, he has
22 not had a history of using, exploiting and manipulating
23 others, which is another symptom that you see of
24 antisocial. So it's very important to look at whether the
25 person has that or not. If they have that feature, they

1 usually don't do well in treatment. And so when I
2 mentioned the serial rapist I saw last week for the
3 Sexually Violent Predator Statute, I did not recommend him
4 for release because he uses, exploits and manipulates
5 people.

6 So it depends. Those things are important because
7 when you're treating them, you have to look at what
8 factors and to negotiate with that person, how to deal
9 with that person. So it's very important.

10 Q And so the criteria or the -- I'm probably not using
11 the right word, but the diagnostic criteria that's
12 applicable and not applicable to Mr. Inman also makes him
13 a good candidate for treatment.

14 A Yes. And Dr. Dwyer and Dr. Godfrey, Dr. Dwyer and I
15 specifically had conversations about that, and we were all
16 in agreement that he doesn't possess that feature of
17 sociopathy where we all felt like he was a good treatment
18 candidate.

19 Q All right. And I wanted to ask you about that, so I
20 appreciate you bringing up that. What -- sociopathy?

21 A Yes.

22 Q Sometimes I've heard it called psychopathy.

23 A Yes.

24 Q Is that the same thing?

25 A Yes.

1 And I need to tell you, those are not psychiatric
2 constructs. Those are jargon used sometimes in the sex
3 offender treatment area and also by a psychologist. I
4 don't go by those, but that was their words to me, so I
5 bring that up.

6 I don't -- there's a lot of research that will
7 differentiate, but I can just tell you, as a psychiatrist,
8 when you look at the symptoms of antisocial, the ones that
9 involve conning and using others, that's not a feature --
10 that's not characteristics that he has.

11 Q And that's the psychopathy ---

12 A Yes.

13 Q --- the lingo that we use.

14 A Yes.

15 Q And so that separates him from other people that
16 might have antisocial personality disorder or traits of
17 that disorder.

18 A Yes. And the best way I can describe that, you could
19 take a hundred people with antisocial personality
20 disorder. Not all of them are psychopathic. That's a
21 different -- it's a spectrum on that disorder, but not all
22 persons that meet that criteria have those
23 characteristics.

24 Q Okay. Depression, I think we started to talk about
25 that and it's crept into our conversations all day today.

1 Does Mr. Inman have a history of depression?

2 A Yes.

3 Q And does he still suffer from depression now?

4 A Yes.

5 Q And, you know, we've heard some -- that Mr. Inman
6 will sometimes speak derogatorily about himself.

7 A Continuously, yes. Each time I've seen him, even
8 when he's feeling well, there's usually something
9 self-deprecating that he will say.

10 Q And is that related to the depression?

11 A Yes.

12 Q And can you explain that for us, please.

13 A Yes. It's related to his depression and also his
14 guilt. He has very poor self-esteem. He -- I thought
15 Mr. Bannister did an accurate job of some of his
16 observations yesterday.

17 The way I would describe Mr. Inman, he appreciates
18 things that people try to do for him, but he doesn't feel
19 he's worthy. So, for example, one of his treatment issues
20 would be, you know, if you were trying to treat him, he
21 would still feel unworthy, he would feel like what he had
22 done was so bad that people should not waste their time
23 and energy treating him. So that's an example kind of
24 that he doesn't feel -- his self-esteem is poor, he
25 doesn't feel like he's worthy, he's got a lot of guilt

1 issues. And that's a symptom of depression, excessive
2 guilt. So he has a preoccupation with negative things.

3 Q And is that something you would try to treat?

4 A Yes.

5 Q And his ability to have insight into mental illness,
6 would that help in that treatment process?

7 A Oh, yes. Depression -- 80 percent of depressions get
8 better after a course of treatment. 50 percent of them
9 come back again, but they're very treatable.

10 Q And, you know, I asked Mr. Bannister yesterday about
11 funding that he got for treatment. Were you here when I
12 asked those questions?

13 A Yes.

14 Q And in Applicant's Exhibit Number 44, there's this --
15 which is a funding order, it says specifically the
16 defendant, Mr. Inman's upbringing, the pending charges,
17 his current isolated confinement and his background
18 regarding his religious beliefs all play in his mental
19 health and are affecting his attorney-client relationship.
20 Can mental illness enter into the attorney-client
21 relationship?

22 A Absolutely.

23 Q And generally, how does that come about or how does
24 that manifest itself?

25 A Well, sometimes the defendants and the attorneys have

1 different goals, and I think Mr. Downs was mentioned,
2 Junior Downs case. I did that evaluation. He clearly
3 wanted to die when his attorneys wanted him to live, and
4 he waived all of his appeals and was executed. So
5 sometimes depression, you may want things that you don't
6 want when you're not depressed, so it's not uncommon to be
7 preoccupied with death and suicide or death penalty sort
8 of things in these particular situations. And once the
9 depression is treated, those no longer are a focus.

10 Q And so when Mr. Bannister testified that what
11 Mr. Inman would say would be different on different days,
12 is that consistent with mental illness?

13 A Yes. And depression. That's right. And he still
14 has -- there's some days -- a lot of that -- some people
15 are that way, also, when you're ambivalent about a major
16 decision, you know. You go back and forth. And it can be
17 seen in mental illness, and also for the situation he's
18 in, it would be expected at times as well.

19 Q Okay. And in this, it talked about his current
20 isolated confinement. Can isolation have an effect on
21 somebody's mental health?

22 A Absolutely.

23 Q All right. And can you explain that?

24 A Sure. I've worked at the Department of Corrections.
25 I've worked, Your Honor, at Gilliam for four years, and it

1 was not uncommon we would often, in the Gilliam
2 Psychiatric Center, we would have persons that have been
3 in solitary confinement for long periods of time, and they
4 would even get psychotic with certain amounts of sensory
5 deprivation and they lose their ability to relate to
6 others.

7 Q And if someone has the mental illnesses that
8 Mr. Inman has, including depression, what effect can
9 solitary confinement have on him?

10 A Nothing positive. You have more time to think, you
11 lose track of day and night. It depends, you know, what
12 the lighting is and those sorts of things. You don't --
13 you may not be structured in your activities if you're in
14 your cell and there's nothing for you to do.

15 A lot of the treatments that we have, like if you
16 look in inpatient hospitals, they're designed with
17 positive ways to fill your time, positive things to do
18 with your thoughts. And so if you don't have those tools,
19 no one would thrive under that condition.

20 Q Okay. And what about the interaction with other
21 people?

22 A That's -- that's significant. That furthers
23 depression. We know that persons with schizophrenia and
24 persons with depression that are isolated don't do well.

25 Q I'm going to show you what's been marked as

1 Applicant's Exhibit Number 42. Did I ask for you to take
2 a look at that?

3 A Yes.

4 Q And what is that?

5 A Well, it says United States District Court, District
6 of South Carolina, Columbia Division, and it is a
7 complaint and demand for a jury trial for a number of
8 defendants on death row versus the South Carolina
9 Department of Corrections.

10 Q And is Mr. Inman one of the plaintiffs in that
11 lawsuit?

12 A He is.

13 Q And did you review that document?

14 A Most of it.

15 Q Most of it.

16 Did you review the part that talked about Mr. Inman
17 as a unique plaintiff in that case?

18 A Yes.

19 Q Okay. And it described some symptoms that he had.

20 MS. BROWN: Objection, Your Honor. Relevance and
21 testifying.

22 MR. GROSE: Your Honor, the Attorney General's Office
23 chose to put a portion of this document in front of you
24 through pleadings, specifically that Mr. Inman -- it was
25 in the pleadings that were sent to you regarding the

1 transportation issue. And specifically, they put in the
2 part that I'm asking about now. And it contains
3 information in there about ---

4 THE COURT: Are you saying that the file or this
5 would come under a ruling of completeness?

6 MR. GROSE: It would be a ruling of completeness. I
7 also need to explain in that document is
8 self-authenticating as a court record.

9 THE COURT: Ms. Brown?

10 MS. BROWN: It was originally brought up by the
11 applicant, Your Honor, and we included only one page
12 relevant to Mr. Inman to respond. The document that he is
13 attempting to reference and that he proposes be entered
14 into evidence is a compilation of allegations involving
15 people not involved in this particular action.

16 THE COURT: Well, but one of them that is involved in
17 this particular action is one of the moving parties, is he
18 not?

19 MS. BROWN: And only allegations, though, Your Honor.
20 There is no proof. If I understood correctly, he's
21 offering a ---

22 THE COURT: Well, did you submit, really, as a part
23 of your memorandum a portion of this document?

24 MS. BROWN: The allegations that Mr. Inman had, to
25 address the allegations the applicant submitted.

1 THE COURT: I understand. I understand. So you
2 vouch for its credibility. But that is not the Court
3 needs to decide it or not. And although I might regret
4 saying that, how many pages is that, Dr. Maddox? Just the
5 estimate is more than one.

6 THE WITNESS: 36.

7 MR. GROSE: Actually, 36 is the attachment. It's
8 more like 120.

9 THE WITNESS: 85.

10 THE COURT: All right. What I'm saying is I'm adding
11 to my burden by overruling your objection.

12 MR. GROSE: Thank you, Judge.

13 BY MR. GROSE:

14 Q And so does that complaint report some symptoms that
15 Mr. Inman was having?

16 A Yes. And very specifically, last when I saw him on
17 the 3rd of August a few weeks ago, one of his complaints
18 was he had not been getting some of his medications
19 regularly. And, in fact, I know the major there, and on
20 the way out of the appointment, I asked the major to
21 please put in for medical. He has some arthritis
22 conditions that he had not been getting his prescribed
23 medications. So very specifically he has talked with me
24 about that incident.

25 Q Okay. And you have evaluated a number of

1 individuals that have been sentenced to death; is that
2 correct?

3 A Yes.

4 Q And did you conduct evaluations at Lieber?

5 A Yes.

6 Q And did you see Mr. Inman when he was at Lieber?

7 A I did, yes.

8 Q Okay. And have you -- well, you just said you saw
9 Mr. Inman at Kirkland now that death row has been moved.

10 A Yes.

11 Q All right. And from your observations, between the
12 two institutions, are there differences in the conditions
13 of confinement?

14 A Yes.

15 Q And can you explain what you've observed?

16 MS. BROWN: Objection, Your Honor. Conditions of
17 confinement have nothing to do with conviction.

18 MR. GROSE: Conviction, it has to do with his ---

19 THE COURT: Excuse me. I think that one of the
20 considerations in sentencing is the ability to adapt to
21 confinement. Wrong?

22 MS. BROWN: No, sir. You're right about that. But
23 the actual conditions would be SCDC control, not a
24 characteristic of the defendant.

25 THE COURT: Well, again, I think that the ability of

1 the defendant to conform to whatever the conditions are
2 would be relevant, and I'm going to overrule your
3 objection.

4 MS. BROWN: Thank you, Your Honor.

5 MR. GROSE: Thank you, Judge.

6 BY MR. GROSE:

7 Q What have you observed is the difference?

8 A Well, the main thing is the custody level. I'm very
9 familiar with the Department of Corrections, and, Your
10 Honor, I'm very familiar with the physical facility that
11 is actually death row now. I worked at the Kirkland
12 campus for a number of years, and so the building where
13 they are literally housed now used to be super max. And
14 so the custody level at super max was very different than
15 the custody level of death row when it was at Lieber. So,
16 for example, death row at Lieber, I've actually literally
17 been in the bay area where the inmates were housed in the
18 past. I've been able to have contact visits with them.
19 At Lieber, they were not shackled. They were brought into
20 a conference room. There was a visitation room that they
21 used.

22 When you evaluate an inmate now that's on death row
23 at Kirkland, they use the same security standards that
24 they used when it was maximum security. They're
25 belly-chained, they're shackled, you're in a booth where

1 there is an officer on the other side and there are two
2 officers outside the door. So it's definitely more
3 secure. I've seen a difference there.

4 Q All right. And can the conditions of confinement
5 have an effect on somebody's mental health?

6 A Sure.

7 Q And can those effects also be treated?

8 A Yes.

9 Q Okay.

10 A And I'll give an example. Lee County, Your Honor,
11 there was a lot of difficulty there. Many of the safe
12 keepers were sent there, and I know the psychiatric
13 director at the Department of Corrections, she's done
14 wonderful things. She's gotten radios that have cranks
15 that can't be used as weapons. They've been developing --
16 I know that they've been working on developing some very
17 specific tools for the mentally ill to help them with
18 their time and those sort of things.

19 So yes, there are things they can do.

20 Q All right. And in that complaint, was there some
21 reference to scientific medical research about the effects
22 of solitary confinement on people?

23 A There probably was, but I didn't read that far.

24 MR. GROSE: All right. Thank you.

25 Beg the Court's indulgence for a moment.

1 BY MR. GROSE:

2 Q Now, earlier I know you used the term "guilty but
3 mentally ill." Did you also use the term "diminished
4 capacity"?

5 A Yes.

6 Q Okay. And, of course, the guilty but mentally ill is
7 also in our state statute, right?

8 A Yes.

9 Q Okay. And I think you testified that even in as
10 early as August of 2008, you needed to complete your
11 evaluation with regard to whether or not Mr. Inman met the
12 criteria for guilty but mentally ill.

13 A Yes.

14 Q Okay. And does he?

15 A No.

16 Q And you're able to say that now because of the
17 additional evaluations that have taken place?

18 A That's correct. And also further interview with him.

19 Q Okay.

20 A If I may explain.

21 Q Yes, yes.

22 A I base that opinion on Mr. Inman. I had suspicions.
23 I know what his illness is. I have documents from even
24 2006 where, in my opinion, his capacity was impaired, but
25 because he consistently and to this day will always state

1 "I have total control of my urges," so my opinion, he
2 knows what he feels. But that opinion, even though I have
3 suspicions that he's feigning well in that area, I had to
4 base on the statements that he's told me many times that
5 he had total control over his urges, although I doubt
6 that.

7 Q Okay. And when you say that you doubt that he had
8 total control over his urges, is that what causes you to
9 consider that as guilty but mentally ill as a possibility?

10 A Yes.

11 Q Okay. Now, there's the term "diminished capacity."
12 Are you familiar with that term?

13 A Yes.

14 Q All right. And we use that sometimes in the
15 courtroom, but is that a term -- medical term that you
16 use?

17 A No. But I've testified in North Carolina where that
18 is their standard, and so I've testified many times about
19 that issue. And what it is, it doesn't mean is there some
20 mental illness, some mental abnormality that impairs. It
21 doesn't have to totally impede your ability to conform
22 your conduct, but it impairs your conduct.

23 Q So is it fair to say that it's a different point on
24 the continuum than guilty but mentally ill?

25 A Yes. And in South Carolina, it's a statutory

1 mitigator.

2 Q Okay. That's what I was going to ask you. When you
3 say "statutory mitigator," that's in our death penalty
4 statute.

5 A Yes, sir.

6 Q And how they refer to it is not by those terms, but
7 they refer to it as a substantial impairment to either
8 understand the law or to conform your conduct to the
9 requirements of law.

10 A That's correct.

11 Q And you've been asked about that statutory mitigator
12 many times, I suspect.

13 A Yes.

14 Q And does Mr. Inman, based on your evaluation, meet
15 the criteria for that statutory mitigator?

16 A He does.

17 Q And can you explain why?

18 A Yes. Your Honor, again, you have to ask the person,
19 you know, they -- we can't -- we're not mind readers. And
20 I have grave suspicions, and I'm very comfortable in
21 issuing an opinion that his capacity to conform his
22 behavior was impaired. And I base that on a number of
23 things.

24 Mr. Inman, if you look at his behavior before, he had
25 gone nine months. It had been 20 years, according to his

1 report, since he had had sex, and he was out for nine
2 months and, by his report, had not had sexual
3 relationships with anyone. He reported to me that he had
4 not had any urges to rape women for that nine months as
5 well. So he had an opportunity, he told me he had a few
6 opportunities to meet women, there were a few women who
7 liked him, but he felt very unworthy of them and did not
8 have any kinds of relationships at all.

9 He reported to me, his words were "I thought I beat
10 this." So he was feeling good that he had been out nine
11 months, he didn't have any thoughts that were bothering
12 him, and then these thoughts came. So first of all, he
13 had the return of the thoughts.

14 The second thing that happened is he was drinking.
15 He was self-medicating and drinking probably because of
16 genetics as well, but he was drinking Jim Beam daily, and
17 he was also smoking some marijuana. He reported to me
18 drinking up to a quart of Jim Beam a day, so he was
19 drinking very heavily during this period of time.

20 And what happened is he raped the first woman. I may
21 have the order wrong and I apologize if I do. He had the
22 three rapes almost within about a week time. The one
23 woman he did not rape because she was on her menses and
24 had prayed with him. The second woman he -- I think the
25 Tennessee case may have been first, so he raped the woman,

1 then he had the attempted rape, and then he raped the
2 victim, Ms. Souers. So within that period of time, he was
3 acting on these urges very quickly, and he was trying to
4 control them by drinking. He was trying to medicate and
5 not act on those urges, so he was making attempts not to
6 act on them. The fact that he did not rape one woman at
7 that point in time, he was trying, I think, to avoid those
8 urges until they became so strong that he couldn't.

9 The problem is, though, again, he says, if you ask
10 him, he would testify to that today, he will say, "I had
11 total control over these urges, and I could have stopped
12 it if I wanted to." So because of that, I think this
13 illness impairs his capacity, but I don't think he meets
14 the criteria for lacking total capacity.

15 Q And would that also qualify as him being under the
16 influence of a mental or emotional disturbance?

17 A In my opinion, yes. The paraphilia and depression
18 and alcohol abuse, those are mental and emotional
19 disturbances.

20 Q Now -- and I meant to ask you about this earlier, but
21 when these crimes with Tiffany Souers were taking place,
22 did Mr. Inman disassociate?

23 A Yeah. What he described and what he tells me -- and
24 what disassociation, Your Honor, is, it means that your
25 body, when you're in a traumatic event, that your body has

1 the ability, you can hear it sometimes in people that are
2 coming out of anesthesia, they'll say they -- when they
3 were coming to, they saw themselves above their body and
4 they were witnessing perhaps a doctor performing CPR, an
5 anesthesiologist. So it's a cognitive thing your brain
6 can do where you can kind of observe, you can observe
7 something outside of your body. And he did report that
8 while he was choking her, that he felt he was viewing it
9 from above and watched in horror, were his words.

10 Q Watched in horror?

11 A Yes.

12 Q And what significance does the disassociation have as
13 far as your opinions and any mitigation?

14 A Well, disassociation occurs during a trauma, so even
15 -- and this sounds very strange, but even though he's the
16 perpetrator, it was traumatic. He reports to me that he
17 still has flashbacks. He sees her eyes, he sees her
18 pupils dilating when she was dying, and he has -- those
19 are visions that he has at times that are bothersome to
20 him and cause him anxiety. So he has some features. And
21 that is kind of covered in the trauma disorder that I
22 diagnosed him with.

23 People that disassociate or that can have that
24 phenomenon, many of them have been abused before, too, and
25 so he is at risk for that because of his prior history of

1 abuse as well.

2 Q When you have interacted with Mr. Inman, has he
3 accepted responsibility for his crimes?

4 A Yes. Always.

5 Q And has he demonstrated remorse?

6 A Always.

7 Q And has he cooperated and participated in your
8 evaluation?

9 A With me, always, yes.

10 Q And that was the case in 2008?

11 A Yes. In 2006, 2007, 2008, 2017 and 2018.

12 Q We were talking about confinement earlier as being
13 something that helps keeps the urges in check. Do you
14 remember that?

15 A Yes.

16 Q Okay. And with the fact that Mr. Inman is going to
17 spend the rest of his life in confinement, does that help
18 with regard to whether or not there would be any other
19 victims of his sexual disorder or him acting on that?

20 A Well, it's protective. You know, no one knows the
21 future. There's some people that do have sexual disorders
22 even within the correctional setting sometimes will have
23 -- the urges will be so strong, but -- certainly with
24 treatment, but it would lower his risk compared to being
25 in the community.

1 And I might add, at the time of his offense with the
2 woman in Tennessee, the woman in Alabama and Ms. Souers,
3 he was not on his antidepressant medication. His mother
4 had contacted -- she was trying to contact, I believe,
5 Mental Health, and she was very concerned that he was not
6 medicated for his depression at the time.

7 So depression is also involved in this because
8 depression, when you're not on your medicines, you become
9 more impulsive, and you're preoccupied with negative
10 things. And so that also has a role.

11 So I think with him being in the Department of
12 Corrections, his depression being treated, that that's a
13 protective factor for him.

14 Q I want to hand you what I believe is already in
15 evidence as Respondent's Exhibit Number 5 and ask you to
16 take a look at that.

17 A (Reviews exhibit) Okay.

18 Q Okay. Thank you for doing that.

19 And if you could turn to page 4 of that document.
20 I'm looking at the handwritten numbers on the bottom.

21 A And, Your Honor, this is a sentencing order from
22 Judge Miller.

23 THE COURT: Very good. Thank you.

24 BY MR. GROSE:

25 Q Thank you.

1 And the part that begins with the Section Number 2,
2 in the second paragraph of that, Judge Miller lists some
3 of the diagnoses that Dr. Price had. Do you see that?

4 A Yes.

5 Q Okay. And the first one that he listed was mood
6 disorders consisting of depression, bipolar, major
7 depression in the recurrent form, and major depression was
8 psychosis. Do you agree or disagree with that?

9 A Well, I agree that those were all prior diagnoses
10 that he had, and those were based on reviews of the
11 record, Your Honor. Those were from various psychiatrists
12 that had seen him while he was confined and had treated
13 him. So yes, I am in agreement those were the forms that
14 he had been diagnosed with in the past.

15 Q Okay. And that's more the historical diagnoses,
16 correct?

17 A Yes.

18 Q But you would agree with depression?

19 A Yes.

20 Q Okay. The second one is dissociative identity
21 disorder. Do you agree or disagree with that?

22 A I disagree.

23 Q Why is that?

24 A Dissociative identity disorders, Your Honor, those
25 used to be called multiple personality disorders. And

1 it's a recognized diagnosis, and it's present -- it's
2 indicated when somebody has been abused over a very long
3 period of time, usually horrific forms of abuse where
4 their personality, they develop distinct personalities. I
5 used to work in a multiple personality disorder unit back
6 in the '80s.

7 I disagree with that diagnosis totally because that
8 implies that when he chose -- this diagnosis would imply
9 that he chose to rape people and that it's a part of him
10 that's a very bad part of his personality, that it's a
11 sociopathic part of his personality that has no concern
12 for people and that he's got this split personality that
13 when he becomes violent, it's not -- he's not aware of it.
14 And he's totally aware. He just didn't know what it was.
15 He assumed that because he had those thoughts and acted on
16 those impulses, it was because he was a horrible person.

17 He did not know that there was a group of people with
18 the same disorder, that they have these urges. And
19 they're not volitional. Your behavior is. What you do
20 about them is volitional. But the fact that you have them
21 and the fact that that's your sexual preoccupation, that's
22 not a choice.

23 And so I think that diagnosis would lead one to
24 believe that there's a part of him that is this evil
25 person that goes and harms, and that's not my opinion at

1 all. I think he has a sexual disorder. I think it's
2 better described by the scientific research by the
3 evaluation. And there's a lot more science to prove these
4 things, and these are sexual disorders that are recognized
5 and treated.

6 Q And you mentioned the sociopathic portion. You and
7 Dr. Dwyer and Dr. Godfrey saw a lot of evidence that he
8 does not have that.

9 A That's correct.

10 Q Okay. And then Number 3 has the sexual paraphilia in
11 it.

12 A That's not a diagnosis.

13 Q All right. Can you explain that, why that ---

14 A Well, that's not a recognized diagnosis in the DSM.
15 It would have been paraphilia not otherwise specified or
16 it should have been indicated which form of paraphilia it
17 was. So that's not an Axis I diagnosis that's recognized.

18 Q All right. And so had you been asked to testify at
19 trial, would you have been able to give the proper
20 diagnosis at that time in 2008, 2009?

21 A Had we been allowed to continue, yes.

22 Q Yes, ma'am. Yes, ma'am.

23 A Yes.

24 Q And that would have been the biastophilia that you
25 talked about here today.

1 A Yes.

2 Q And a little bit further down that page, it
3 says, "Dr. Price also describes the defendant as a serial
4 rapist." Now, we've used that term today, but would you
5 have been able to put those terms into context had you
6 completed your evaluation and testified at the hearing?

7 A Absolutely. That was the layman's term, similar to
8 serial killer, and that has a totally different
9 implication than calling it the paraphilic disorder which
10 it is, yes.

11 Q Right. And so we slip into the slang sometimes even
12 in these types of proceedings, I guess.

13 A Yes. And those were some of the descriptions used
14 around that period of time, serial rape, but it's to be
15 distinguished from repeat rapist that are -- it's a very
16 different subset.

17 Q And distinguished from the rapists who don't have the
18 medical condition.

19 A That's correct.

20 Q Okay. And if you could flip over to page 7 of the
21 order, in that first paragraph, the first sentence says
22 that he's pled guilty and acknowledged the conduct, but
23 then it ends and says that he acknowledges that he cannot
24 be rehabilitated. And then if you look at the final
25 paragraph on that page where it spills over onto the next

1 page, it says that Jerry Buck Inman is a self-described
2 animal who has acknowledged that he cannot be
3 rehabilitated. And I know we talked earlier about the
4 difference between treatment and rehabilitation, but is
5 Jerry Buck Inman somebody who's capable of being treated?

6 A Absolutely. And that statement, that's with him not
7 knowing what his condition is. He doesn't have insight
8 when he says those things. He believes, and especially
9 after -- if he believed he had a dissociative identity
10 disorder, he would have believed at that time that part of
11 him was evil and that he would do this again without
12 proper education or treatment.

13 Q Okay. And so the information available to him plays
14 into his insight and how he self-describes himself.

15 A Certainly.

16 Q Is Jerry Inman an animal?

17 MS. BROWN: Objection. No legal basis.

18 THE COURT: Other than it's been in the record
19 somewhere that he referred to himself as such. I'm going
20 to permit the question just for an explanation, if any.

21 Go ahead.

22 THE WITNESS: I don't even know how to answer that.
23 I think if he is referring to himself is he a sociopath,
24 is he someone that has a personality structure that can't
25 improve with treatment, that's not true.

1 BY MR. GROSE:

2 Q And so with better education and insight and
3 treatment, might he view himself differently?

4 A Yes.

5 MR. GROSE: All right. Beg the Court's indulgence
6 for a moment.

7 Thank you, Your Honor. Thank you, Dr. Maddox.
8 Please answer any questions the State might have.

9 THE COURT: Cross-examination.

10 MS. BROWN: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MS. BROWN:

13 Q Good afternoon.

14 A Good afternoon.

15 Q We talked a whole lot today about what I think you
16 said is your specialty.

17 MS. BROWN: You need to excuse me, Your Honor. I
18 like to lean just a little bit over here.

19 THE COURT: Without any suggestion of otherwise
20 because I'm afraid I do that myself. If you'd like my
21 cane, I'd be more than happy to share it with you.

22 MS. BROWN: Thank you. I appreciate it.

23 BY MS. BROWN:

24 Q This was not an SVP trial.

25 A That's correct.

1 Q And I didn't hear anything about the facts, the
2 murder, and it was all part of sentencing, right?

3 A Yes.

4 Q And I know this may be a little tedious. If you'll
5 just bear with me for a little bit, I just want to make
6 sure that we get the time frame right so I can ask you
7 some questions.

8 A Certainly.

9 Q Now, on May 22, 2006, Mr. Inman sexually assaulted
10 someone, bound them up, sexually assaulted them and took
11 money.

12 A That's correct. That's the woman in Tennessee. And
13 he raped her in the presence of her child. I believe
14 there was a 2-year-old in the room during the commission
15 of that offense. And that was in Sevierville.

16 Q And he traveled.

17 A Yes.

18 Q And May 23, 2006, he attempted an assault but didn't.

19 A That's correct. I may not be sure on the date, but
20 that's right. That would be the woman that was in Alabama
21 that was on her menses, and that she told him that she was
22 on her menses and prayed with him, and he did not rape
23 her. He left.

24 Q But he did tie her up.

25 A Oh, yes.

1 Q And he put her on the bed.

2 A My understanding is yes. And his intent was to rape
3 her. Yes.

4 Q And he took \$250. And I believe the victim said from
5 church money, something she had had stored in the house
6 that he had taken before she got in.

7 A That's correct.

8 Part of what -- part of what he did, Ms. Brown, I
9 think he would go in to rob people and then have sex. And
10 I'm not sure if that's part of the antisocial part of him
11 or if that was part of the justification he used to get
12 into the home to attack the women. I'm not sure. You can
13 see that with sexual disorders. Sometimes that may be
14 part of the planning. But yes. And I think all -- and he
15 also had burglary charges against Ms. Souers and had tried
16 to take her credit card afterwards and use and tried to
17 get money.

18 Q And you told us that he gets these urges.

19 A Yes.

20 Q And the urges, you said, come from his sexual
21 disorder.

22 A Yes, ma'am.

23 Q And that's always going to be there?

24 A Yes, ma'am.

25 Q Okay. And so we've got it on the 22nd of a sexual

1 assault, the 23rd attempted sexual assault, and then
2 there's a skip to May 25th.

3 A Yes.

4 Q And sometime during the day, Mr. Inman saw Tiffany
5 Souers and said, "There's a potential victim."

6 A Correct.

7 Q But he did not enter that apartment until midnight --
8 after midnight ---

9 A Correct.

10 Q --- on the next day.

11 A Correct.

12 Q So he was controlling something at that time.

13 A Correct. He was able to put off those urges. That's
14 right. He was distracted. You're correct. Yes.

15 Q And after the murder, he left, and he went directly
16 to an ATM.

17 A Yes.

18 Q And tried to get money.

19 A Yes.

20 Q A couple of times.

21 A Yes.

22 And even -- I believe some of the pictures I saw, he
23 had actually concealed -- I think he had a bandanna or
24 there were attempts to conceal his identity during those
25 periods of time.

1 Q And took the sheets and some other things from
2 Ms. Tiffany's apartment.

3 A Yes. He tried to clean up. He -- according to what
4 he told Dr. Dwyer and myself, after he raped her, he made
5 her clean. He made -- he was trying to dispose of the
6 evidence of the sexual assault, and so a part of that
7 would be taking those sheets and trying to take evidence
8 as well, yes.

9 Q And some people would say that seems to be a very
10 deliberate course of action over multiple hours.

11 A Yes.

12 Q Now, with that background, when you're talking to
13 him, you're not -- are you talking to him as a possible
14 patient or are you talking to him to see, hmm, does he
15 deserve a sentence of a certain type?

16 A Oh, no. Neither. What I'm doing, and I do these --
17 I know this -- it's difficult, but I've seen so many
18 people with sexual disorders. My goal is to understand
19 that when you have a paraphilic disorder, it's very
20 difficult.

21 No one likes to talk about sex, even patients that
22 don't have sexual disorders. And one of the things we see
23 in medicine and psychiatry very frequently is that those
24 questions are not asked about. In fact, I could tell you
25 a lot of stories.

1 We didn't learn what sexual deviance was, Your Honor,
2 until we developed a PPG. And they tried to take normal
3 college males when the PPG first came out to learn what
4 normal sex was, and we found out there was a lot more
5 deviance that was actually normal, so we didn't know.

6 So when I do these evaluations, what I'm trying to do
7 is just get an accurate diagnosis. I have to get the
8 diagnosis first, and then you have to apply it if there's
9 any -- to the criminal standards that exist. So that's
10 really my goal is to just get an accurate diagnosis and
11 then if there's a statutory mitigator, or sometimes there
12 may not be, to apply that if it's there.

13 So my goal is not to treat him. That is not my role
14 at all. And it's to do an assessment.

15 So, for example, when the team asked me to see
16 Dr. Loring, that was a conflict. I try to stay free of
17 conflicts when possible, and they happen at times. But
18 when you have an opportunity -- so my goal there is just
19 to answer the issues for the Court.

20 Q Okay. Are you suggesting that let's say that there
21 wasn't a murder and this man is released, he goes into SVP
22 program, that one day he could get out?

23 MR. GROSE: Objection. Relevance, SVP program.

24 THE COURT: I'm going to permit the question.

25 THE WITNESS: Yeah. I can answer that.

1 It depends on the person. There was one serial
2 rapist, and I was actually against him being released. I
3 was the attorney general's witness in that one. I did not
4 want him released into the community.

5 I have seen one released. He did get into trouble
6 again. Judge Goodstein had done that case, and I know
7 through conversation with her, he had a minor charge. He
8 was videotaping having -- he was having sex with someone
9 and had a videotape camera in the closet while they were
10 having sexual relationships. I don't think he has been
11 charged again. I don't think that he's back in the
12 system.

13 So I've seen one that we would call it
14 semi-successful discharge. And then the only other one
15 I've seen is this male that I evaluated last week and will
16 not recommend.

17 So I think it depends on the person. It depends on
18 your age, it depends on your medical health, it depends on
19 your testosterone level, it depends if you've benefited
20 from treatment, it depends on your support group. So
21 basically, you would have to change to a degree that your
22 risk, you would be safe to be at large. So it's possible.
23 It's possible.

24 BY MS. BROWN:

25 Q If there was not a murder, right?

1 A Correct, correct.

2 Q But when you add the murder into it . . .

3 A That's a separate risk factor. That's right. It's
4 called nonsexualized violence. So that is a separate --
5 that would raise his risk. It would raise his risk
6 compared to had he not murdered someone.

7 Q Okay. Well, let me go back kind of to the beginning
8 where you came into the case for testimony at the
9 competency portion of the proceedings before the plea.

10 A Yes, yes.

11 Q Now, you testified at that point he's competent,
12 right?

13 A Yes.

14 Q And you testified he has history of depression.

15 A Yes.

16 Q And you had identified depression.

17 A Yes.

18 Q But you said in your opinion, that is not related to
19 his depression, this idea that he deserves to die.

20 A Correct.

21 Q Is that right?

22 A Yes. And what I meant by that, there are some people
23 -- for example, I think that was the issue in Junior Downs
24 as well. Some people have a depression, and they want to
25 die because their depression's not been treated. And what

1 I was trying to lay out for the Court is that even though
2 he's had depression, I did not feel that his decisions
3 were based on depression. It was based on his guilt and
4 some of the remorse he had, but I don't think it was from
5 -- he was being treated. Actually, at the time of that
6 hearing, he was on Sinequan. His depression was being
7 treated adequately. He had gone back to Pickens Detention
8 Center and he was receiving treatment there. So I felt
9 even though a decision to waive or to ask to be executed,
10 I did not feel like that was coming from a mental illness
11 but more just his volitional factors, so to speak.

12 Q And at that time, you had been seeing him for several
13 months.

14 A Yes.

15 Q And he had been consistent with that.

16 A Yes. With me. He may not have been with other
17 people, but with me he was always consistent.

18 Q Okay. And I think also at the competency proceeding,
19 you said, "He has a sexual disorder."

20 A Correct.

21 Q Now, is this the sexual disorder that you were
22 referring to?

23 A Yes.

24 Q This is your suspicion. And that's what you were
25 kind of telling the Court at that point, not in detail,

1 but sexual disorder.

2 A Correct.

3 Q And that, you had shared with Mr. Bannister.

4 A Yes.

5 Q Okay. And that ---

6 A Actually, I think he knew -- he knew of it, but we
7 actually didn't start the particular evaluation until
8 after those proceedings. I think on August 28th we saw
9 him. I may be -- I think it was a few weeks earlier that
10 we had the Blair hearing, and I testified that I would
11 need to see him. And I think we started that evaluation.
12 So it would -- at the time of the Blair hearing, we had
13 not -- Dr. Dwyer had not met with him yet nor I in that
14 capacity to look at his sexual disorder.

15 Q And biastophilia, if I've said that correctly ---

16 A Yes, ma'am.

17 Q --- is a sexual disorder.

18 A Yes.

19 Q Okay. And has that name always been attached to
20 sexual disorder?

21 A It was -- I'm pretty sure it was back when we did
22 this case, yes. I don't know if it always historically
23 has been, but it was available at that time.

24 Q But it's not listed in the DSM-V.

25 A That's correct. And I don't believe it was listed in

1 the DSM-IV, or the TR either.

2 Q So it's a way of describing a condition.

3 A Yes. And if you look at the DSM, it will say that
4 there are hundreds of other paraphilics and that they go
5 under this category. And that's correct. So it would
6 have been considered one of the rarer ones that -- not of
7 the traditional eight.

8 Q Okay. So, again, if I understood correctly, it's in
9 the DSM-V. It's paraphilic disorder.

10 A Unspecified paraphilic disorder.

11 Q There are specified ones.

12 A That's correct. That's correct.

13 Q Okay. Unspecified, why would it be unspecified?

14 A Excuse me. It's other.

15 Q I'm sorry. I was going right along with you.

16 A The DSM is very confusing.

17 Q Why is it other? Why is it not listed as an actual
18 condition that you can point to and say, "Here's the
19 definition"?

20 A Because they only include the eight. The eight would
21 be pedophilia, which is arousal to prepubescent children;
22 it would be sadism, which is arousal to pain and
23 suffering; it would be masochism, which is you're on the
24 victim end, you want pain or suffering, you want to be
25 beat or harmed during sexual relations; there's

1 transvestic fetishism, which is cross-dressing; there's a
2 fetishism, which is arousal to nonhuman objects like shoes
3 or garments or things like that; there is voyeurism, which
4 is peeping Tom; there's frotteurism. Frotteurism is
5 nonconsenting touching or rubbing of a person when they
6 don't know it. And then there would be exhibitionism,
7 which is exposing one's genitals. So those are the eight
8 traditional paraphilic disorders.

9 And so then the ninth, the ninth, there's two
10 different "other" categories now. And I hate to confuse
11 you. I'm sorry. The DSM did this to us.

12 So the other is for conditions that are rare. They
13 still meet the criteria for a paraphilic disorder, but
14 they're not those eight paraphilias. "Unspecified" means
15 that maybe you don't meet the full diagnostic criteria for
16 one of the traditional eight. So say, for example, if I
17 thought somebody had pedophilia but the victim was 12
18 years old and six months instead of 12 months, I could
19 write "unspecified" and put "pedophilia," that that's what
20 it's consistent with, but it doesn't meet the full
21 criteria.

22 Q Okay. So there are a lot of different names within
23 this "other" or "unspecified," either of those?

24 A Absolutely.

25 Q Is it a ballpark how many different names are in

1 there? 50?

2 A I would probably say -- I was reading today. I saw
3 about ten or so. There's probably many. I've never
4 counted, but there would be -- I can think of quite a few
5 people I have seen over the years: arousal to enemas,
6 drinking urine, arousal to feces, having sex with corpses,
7 having sex with animals. So yeah, there's a lot of
8 different categories.

9 Q Okay. And you said sexual sadism is one of the big
10 diagnosed categories.

11 A That's correct.

12 Q Okay. And I believe you've told us before at some
13 point, maybe not direct today, that the prevalence in a
14 sexually motivated homicide or a sadistic part or sexual
15 sadism is almost up to 70 percent?

16 A I don't recall saying that, but if I did -- that
17 wasn't me, but I ---

18 Q Is that about right? Does that sound right to you?

19 A I'm not sure. I'm sorry.

20 Q Is that why you would have thought sexual sadism in
21 this case because of the murder with the binding and with
22 the rope?

23 A Correct. And so what I had to look at was, was he
24 strangling her while he was having sex with her. Because
25 that would be -- that could qualify as a sexually sadistic

1 act, and those did not occur at the same time.

2 Q Okay. And that's by his report, right?

3 A Correct.

4 Q And you have to go by what he says since there are no
5 witnesses to the event.

6 A That's correct.

7 And I don't believe -- and I may be wrong, but I
8 don't recall hearing any testimony that would have
9 counteracted that. I don't know if anyone testified at
10 what time the strangling occurred in relationship to the
11 rape. I haven't heard any information otherwise.

12 Q And this may have been back when you were helping
13 with Mr. Bannister in the defense originally, but did you
14 see autopsy pictures?

15 A I did, yes. And I reviewed them again in preparation
16 for today as well.

17 Q And the bikini top was used.

18 A Yes. And it was garroted, yes.

19 Q And it was still on her throat.

20 A Correct.

21 Q So he left her there.

22 A Correct.

23 Q And it was not an eighth of an inch, not a fourth of
24 an inch, but almost a half inch, right?

25 A Yes. It was -- it was ---

1 Q In her throat.

2 A Yes.

3 Q Twisted so tight, still on.

4 A Yes.

5 Q And that would have been something you would have
6 considered.

7 A Absolutely. And that's why we needed to do the
8 evaluation because I was very concerned if that act
9 occurred with the rape, he would be a sexual sadist, and
10 then we would have to go -- we would have a very different
11 history.

12 Q Absent his telling you, he didn't do that.

13 A And absent any evidence from law enforcement or
14 pathologist or anybody else that would have given evidence
15 to the contrary, correct.

16 Q But even then you couldn't have diagnosed him with
17 sexual sadism, could you?

18 A No. But sexual sadism would have helped him.
19 Actually, it would have been more of a defense for him, so
20 it wasn't protective for him at all. Had he murdered her
21 as an act of this, that would have been consistent with
22 the paraphilic disorder. So it actually, it was not
23 protective for him to even say those things.

24 Q Okay. But it's generally three or more victims,
25 right?

1 A That's correct. You have to have a pattern.

2 Q And you said he's smart.

3 A Yes.

4 Q He understands a lot. He's not mentally retarded.
5 He's nowhere near mentally retarded.

6 A He is smart, but I would not say he understands a
7 lot.

8 Q Okay.

9 A He's intelligent, but he does not have insight into
10 his sexual disorder at all. And I don't think he
11 understands much of anything about these disorders because
12 he's not had treatment. But he's certainly intelligent.

13 Q And he disagrees with a lot of things that doctors
14 have to use to diagnose him. For example, the abuse,
15 things in his childhood he says "I don't remember" or he
16 disagrees things happened.

17 A Disagrees? I'm sorry. I just didn't -- I don't
18 think he disagreed about -- he just said -- tells me he
19 has -- he doesn't have memory of the childhood. So the
20 example I would give you, if you confronted him and said,
21 "Mr. Inman, Dr. Loring talked with your mother and she
22 said you were" -- and I asked him specifically, "Do you
23 recall any abuse by your father?"

24 He says, "No. I only remember bits and pieces of my
25 father." He describes one incident that he remembered

1 where his father was supposed to come and visit with him
2 in -- I think there was something bad happened. I can't
3 recall the details, but he really doesn't have a lot of --
4 he just doesn't report a lot of memories.

5 But I think what you have to do is you have put it in
6 context. They don't protect him. He's not -- he's not
7 doing things that help his case. He's doing things that
8 hurt his case, if anything. And so I give that a little
9 more credibility. I don't see him as trying to do this to
10 get out of trouble or to escape. I see him as doing the
11 opposite. I think sometimes he doesn't give us enough
12 information. But if he anticipates that it may help him
13 in some way, you have to pull that information out of him.

14 Q Actually, that's kind of what I wanted to pick up on
15 because I think you told us it's malingerer, but it's a
16 different type of malingerer. It's to say "I'm guilty."

17 A It's faking well. It's saying "I don't have these
18 symptoms," which many people with mental illness do. For
19 example, with schizophrenia, you try to confront them.
20 They're like, "I don't have these symptoms. I'm not --
21 I'm not psychotic." And so that's not uncommon with
22 people that have not been treated. They don't recognize
23 those symptoms of an illness.

24 And so I wouldn't say he's intentionally doing that.
25 He just doesn't see those things because he's not had

1 treatment.

2 Q Is it possible he just really recognizes he's become
3 very dangerous?

4 A I think at some level that's fair. I think that's
5 been a concern of his, yes. I think that's fair, and
6 that's been a factor for him. He would -- he would never
7 want to do that again. He's told me he doesn't want to
8 hurt anybody anymore. He doesn't want that to happen. So
9 that would be a factor.

10 Q And he doesn't have access to any victims when he's
11 by himself in SCDC.

12 A Correct.

13 Q Let me ask you a little bit more about that because
14 we've heard a lot of Mr. Inman's thought he wanted the
15 death penalty, he wants to be punished, he thinks he
16 deserves it. And we've just established, I believe, that
17 could be a recognition that he became very dangerous. I
18 mean, is there any doubt in your mind that he has a very
19 bad history of rape, but this is the only murder that
20 we're aware of?

21 A That's correct.

22 Q This is an escalation.

23 A Yes. I think that's fair to say, yes.

24 Q Binding is a common occurrence in all the rapes that
25 we're aware of, correct?

1 A Yes.

2 Q And a particular fashion.

3 A Yes.

4 Q I think Dr. Price actually went over that, the
5 binding and putting over the bed.

6 A Yes.

7 Q That's a trait. The murder was something different.

8 A Correct.

9 Q An escalation.

10 A Correct.

11 Q And that's dangerous when it gets to escalation,
12 isn't it?

13 A Certainly. And one doesn't know, and that's one of
14 the reasons we did the workup. Sometimes you can have
15 somebody that, say, for ten years they had biastophilia
16 and then maybe the next ten years, they begin to engage in
17 sadistic behaviors. And that's why I wanted that
18 evaluation. It was very important to make sure that this
19 was not an escalation into another paraphilic illness.

20 And it was mine and Dr. Dwyer's and Dr. Godfrey's opinion
21 that he did not meet that criteria, and that was not ---

22 Q But, now, in fairness, you were kind of limited
23 because we have him in SCDC. He doesn't have contact with
24 people.

25 A That's correct.

1 Q Okay. And you told us about Dr. Dwyer.

2 A Yes.

3 Q And he and you both have testified in SVP cases, and
4 I believe both of you for the State sometimes.

5 A Yes.

6 Q And both of you for the person being committed
7 sometimes.

8 A Actually, I think for me every time has been -- I've
9 been the court-appointed examiner, so I think I've only
10 testified one time where I was retained by the defense. I
11 historically now will not do any work in that area unless
12 I'm court-appointed because just so there's not conflict.
13 So actually, every time I've testified, it's been for the
14 State except for once.

15 Q Okay. Fair enough. And you do a report every time.

16 A Yes, ma'am.

17 Q And you told us you do that in your whole practice,
18 not just the SVP.

19 A Yes, ma'am.

20 Q And you also do testing.

21 A Yes.

22 Q And in this case, you've explained to us Dr. Dwyer
23 did the testing. But he wasn't allowed to do all the
24 testing you guys normally run for SVP reports, right?

25 A Yes and no. He wanted to do the PPG. Mr. Inman was

1 not comfortable, but Dr. Dwyer, we talked about it. He
2 felt comfortable enough that Mr. Inman had given enough
3 information that we felt he was forthcoming enough,
4 certainly report -- you know, giving us undetected rapes.
5 He didn't have to do that. And he gave a lot of details.
6 He was able to answer Dr. Dwyer's very intense
7 questioning, so we all felt like we were okay with that.
8 We would have liked it, yes. It would have been great to
9 have additional information.

10 Q I mean, it's something you would normally rely on in
11 making an opinion, correct?

12 A Yes. And I don't always. I'll tell you, in cases
13 where the person admits, I don't get a PPG. What we use
14 the PPG for is two things. You use it in people that you
15 think are denying offenses, and so a lot of times you can
16 -- and you don't use it to prove that they've done
17 something. You use it to confront them and say, "You said
18 you weren't aroused to children. Well, this PPG shows you
19 were. You'd better talk to us about it." So we kind of
20 use it as a tool to get people to admit to offenses.

21 And the other reason we use it is for treatment. If
22 you -- one of the treatment prognostic signs is if you
23 continue to have deviant arousal, you need more treatment.
24 One of the things we know is when your deviant arousal
25 goes away, that's a sign that treatment's working. So

1 it's used to confront people that are denying, and
2 Mr. Inman has never denied. In fact, he even told us more
3 than most people would under that circumstance.

4 Q Okay. But going back to I think a very specific
5 point that you told us about, if he had twisted that
6 tourniquet and murdered Tiffany at the time he was having
7 sex with her because he wanted to see her hurt ---

8 A Right.

9 Q --- wanted to see that pain, you can ask him
10 questions about whether he likes pain or he wanted to see
11 that pain while he was raping a woman and measured results
12 in a PPG.

13 A Yes.

14 Q So it would have been helpful to have it.

15 A Only if it showed -- only if it came positive. We
16 wouldn't know the results.

17 Q Fair enough. But then you could confront him and
18 then have an admission for sadism. So there are a couple
19 of more things that could possibly be done. Would you
20 agree with me?

21 A Certainly. I would have -- if I had my druthers, I
22 would have preferred he had a PPG.

23 Q I do want to ask you a little bit about the
24 information. You said you got information from Marti
25 Loring.

1 A Yes.

2 Q Are you saying that was information that you had when
3 you were working for Mr. Bannister?

4 A Yes. In 2006.

5 Q Okay. So you had that information about the mother
6 and that sort of thing.

7 A Yes. What I had from Dr. Loring, we had a telephone
8 conversation. I had taken the notes, and then I had the
9 statement that I think Mr. Grose introduced into -- as an
10 exhibit, that statement that she had written about her
11 later recollections.

12 Q Okay. And there was nothing surprising or
13 inconsistent you had to go back, modify what you knew.

14 A No.

15 Q Okay. All right. I don't know if you know this or
16 not, but there is a portion in the record where Dr. Loring
17 said, "Jerry Buck Inman consented to my doing mitigation
18 as much as I was able to do with only one condition, that
19 I show respect to his mother, which I intend to do." That
20 was something you mentioned earlier. He wants his mother
21 respected.

22 A Yes.

23 Q And has that been a consistent directive, so to
24 speak?

25 A No. Not a directive. He and I have never talked

1 about it.

2 But I will tell you the context of what I know. He
3 was very upset with Dr. Price. When I saw him many years
4 later, he was very upset, that he felt that Dr. Price had
5 characterized his mother as unfit, and that angered him
6 greatly.

7 Q Oh, okay.

8 A So that's the only context I have, and that's been in
9 the more recent evaluations.

10 Q Okay. And were you aware that Dr. Price had
11 testified about some of the things that the mother had
12 done, some of the abuse, younger? Were you aware of that?

13 A I didn't read his testimony, but I was aware from
14 Mr. Inman in the interview that he had said those things.

15 Q I've got you. Okay. And are you saying today after
16 your evaluation now that Mr. Inman still has urges to
17 rape?

18 A He does. He does report. He told me that there are
19 occasions that he'll have those thoughts and he quits
20 thinking about them. He'll distract himself, but
21 sometimes he does have those thoughts.

22 Q And he likes isolation. Is that part of controlling?

23 A I don't think he likes isolation. I think he's
24 gotten used to it, and he is uncomfortable around people.
25 I think he feels -- he feels socially awkward, he's not

1 had a lot of contact with people, he doesn't have a lot of
2 outlets because he's been confined. So I don't know how
3 much is a condition of him being confined and how much is
4 a condition that he just wants to be left alone and just
5 be to himself and have as little interaction as possible.

6 Q Now, you have read his medical records from other
7 institutions, and, of course, you told us that he didn't
8 cooperate with every test or you didn't get every test.
9 He hasn't cooperated with taking medication at all.

10 A Not recently. There's certainly been times, and
11 certainly before this crime even, his mother, I believe
12 she contacted Mental Health and was very worried because
13 he was not taking the antidepressants he had been
14 prescribed. There have been times in the past where he's
15 not been compliant.

16 Q And it's been documented over the years there are
17 times that he just -- well, if he's not taking the
18 medication to help control the urges, it's not going to
19 help control the urges, will it?

20 A It comes in a shot.

21 Q It comes in a shot.

22 A Yes.

23 Q And if he refuses the shot? Can he refuse the shot?

24 A Certainly.

25 Q Now, even if he has effective treatment for the

1 urges, there's still the matter of the robbery and the
2 murder. We can't divorce that background, and certainly
3 the circumstances of this particular crime because that
4 would be part of sentencing.

5 A Correct.

6 Q And there's nothing in the diagnosis that you're
7 telling us about that in any way affects the murder,
8 didn't cause the murder, didn't prevent the murder. The
9 murder is still there, right?

10 A Correct. That murder was not a result of mental
11 illness.

12 Q You'll be happy to know I'm passing a few pages I
13 think we've gone over.

14 And you told us about the term "serial rapist." That
15 was something that you can use, and you've used that term
16 today.

17 A Yes.

18 Q I mean, is it still a valid term?

19 A It's not -- it's not the psychiatric term.

20 Q Okay.

21 A It should be biastophilia. But I think a lot of lay
22 people refer to that as serial rape, just as voyeurism is
23 a psychiatric term, but people may say "peeping Tom," or
24 "exhibitionism," they may say "a flasher." So there's
25 some lay terminology.

1 Q And speaking of that, you didn't diagnose him with
2 voyeurism, but that's in his past, isn't it?

3 A Correct. And Dr. Dwyer, we also discussed that.
4 It's just not current. In his original diagnosis, I had
5 planned to diagnose that by history, but it's just not a
6 present -- it's not a present illness. But in my opinion,
7 he definitely, in adolescence, he was engaging in that
8 kind of behavior.

9 Q Okay. The DSM, we talked about that. I think we
10 discussed this particular disorder in the DSM. And that's
11 a guideline, right?

12 A Yes.

13 Q That's your guide.

14 A Yes.

15 Q But it's normally -- you normally go to it for your
16 guide, right?

17 A Absolutely.

18 Q That's your practice.

19 A Yes.

20 Q But clinical observations and clinical judgments,
21 those differ, right?

22 A Sure.

23 Q So same patient, you can have two very qualified
24 doctors have a different diagnosis?

25 A Absolutely.

1 The way I look at that, Ms. Brown, it's kind of like
2 it depends what part. Two people can look at an elephant,
3 and depending what your expertise is or what training
4 you've had or how long you've been in practice, you may
5 see two very different ends of it. And so it just depends
6 on what your training and your experience has been and
7 your education and those sort of things.

8 Q Okay. Now, to test your memory a bit, when you were
9 working with Mr. Bannister, you told him essentially you
10 thought there was that sexual disorder and you wanted to
11 go forward.

12 A Yes.

13 Q But at that point, you had already told him, too,
14 that Mr. Inman had what I will call undetected rapes.

15 A Yes.

16 Q And he was admitting to that.

17 A Yes.

18 Q And you had also told him maybe a little sexual
19 sadism there. You have to check it out.

20 A Correct.

21 Q It was not yet diagnosed.

22 A Correct.

23 Q So it was not yet written down.

24 A Correct. We wanted to rule it out, correct.

25 Q And I think you told us that you can understand why

1 some attorneys don't want the reports, but that's your
2 practice and you're going to do it.

3 A Correct. And that was really -- actually, as I
4 testified before, that was in response of what was going
5 on in Greenville County and these death penalty cases.
6 The sides were not sharing discovery, and so it made it
7 very difficult for me to do my job and try to help triers
8 of fact at least to give my opinion in an accurate way.
9 So that was the way that I decided to address that
10 problem.

11 Q And you do that across the board, capital,
12 noncapital ---

13 A Yes.

14 Q --- whatever it is.

15 A Yes.

16 Q And that protects your impression and your thoughts
17 at that point, too.

18 A Yes.

19 And that's the other thing. These cases often are
20 litigated later, and I had found earlier on when a defense
21 attorney may instruct me not to write a report, it was
22 very difficult years later when these cases came up. It
23 was hard to remember.

24 Q Okay. And I want to go back a little bit what you
25 were telling us. At that time, you thought antisocial

1 personality disorder.

2 A Yes.

3 Q And he's been diagnosed with that, right?

4 A Yes. And I've continued that diagnosis.

5 Q And rightfully so. We concentrate on Tiffany's
6 murder and the assault that she suffered. But he also
7 robbed a lot of people, took a lot of money, embezzled
8 money. All of that's in his background, and he
9 consistently took money from victims.

10 A Yes.

11 Q So that taking money is separate and apart as well
12 from any kind of sexual disorder.

13 A That's correct. And that's why it's included in his
14 diagnosis to take those things into account. That's
15 correct.

16 Q And just a couple of general questions. You don't
17 always give testimony when you're retained, right?

18 A No. As you can see in that case, I did not.
19 Certainly, there's many -- probably more times I'm
20 retained that I don't testify than when I'm retained and
21 testify.

22 Q Okay. They always tell you why you don't testify?

23 A No.

24 Q Okay.

25 A I've worked for Mr. Grose before on a death penalty

1 case and didn't testify. So it's just sometimes it
2 happens. And sometimes I know the reason, and sometimes I
3 don't.

4 Q May I ask you which case that was? You do not have
5 to answer that question.

6 A I believe this was the same judge in the case,
7 actually.

8 Q But I did want to ask you a little bit about writing
9 the report. You do share that with the attorneys when you
10 write it. I mean, it's not something you keep, right?

11 A Right. What I do is -- what the methodology I've
12 developed in death penalty cases is once the person is
13 found guilty -- now, so this case was a little bit
14 different, but once the person is found guilty and you
15 have the 24-hour cooling-off period, that is usually when
16 I disclose a report if I'm going to be testifying as a
17 mitigation expert. And I began doing that.

18 I was retained as a prosecution expert in the case of
19 Clint Northcutt by Donnie Myers, and what had happened is
20 prior to that, the experts were given these reports before
21 the person was even found guilty. And I felt like the
22 prosecutors were using that and they were having
23 information about a defendant that was probably not -- I
24 felt like it was not ethical. And so what I did was when
25 I was retained as an expert in that case, that's when I

1 began that methodology of I will turn the report over to
2 both sides after the person is found guilty in preparation
3 of mitigation testimony. So that's usually -- this case
4 was different because he was already found guilty. And so
5 what I was doing, I had begun a report because I figured,
6 at some point, I would be called to testify, but I never
7 finished it because I was not called.

8 Q Okay. And you were asked a few questions about the
9 separate SCDC action. The allegations, are you familiar
10 with the allegations?

11 A No. I just became familiar last week of those. And
12 I've read this document.

13 Now, there's a similar -- I'm very familiar. There's
14 a similar process going on in Arizona right now, and so I
15 am familiar with the movements across the country. And
16 that actually happened in Arizona. Their death row has
17 been moved to general population. There is a subset. So
18 I'm aware of some of that litigation. Not involved in any
19 of it.

20 Q So there's a possibility that even though a fact
21 finder, in this case the judge, sent somebody to death row
22 with the understanding he would be in a cell 23 hours a
23 day and contained, that may not be right?

24 MR. GROSE: Objection because that was not the
25 conditions on death row at the time Mr. Inman was

1 sentenced.

2 MS. BROWN: Your Honor, that actually was an argument
3 at the trial.

4 THE COURT: So your objection is it's not correct,
5 irrelevant or what?

6 MR. GROSE: She's testifying to facts that are not in
7 evidence. What she has characterized death row has been
8 in different states at different times, and when Mr. Inman
9 went there, it was at Lieber and there was a certain set
10 of conditions existed at that time, then there was a new
11 set of conditions that existed, and then there were a
12 third set of conditions that exist now.

13 THE COURT: Well, let me do this. I think the
14 testimony has been from this witness that it's a different
15 situation than it was at one time. So then I would ask
16 what the relevance is.

17 MS. BROWN: And we agree. We don't think the
18 conditions are relevant. I was just sort of bringing that
19 home because it was introduced on the direct that there
20 was some condition argument because of this lawsuit. So I
21 was just bringing that exact point, Your Honor. I don't
22 have a problem with that.

23 MR. GROSE: And what we did had to do with ---

24 THE COURT: Please, it's almost, what, after four,
25 4:20. Let's proceed. I'll tell you what. At 5:00 y'all

1 can all go out in the parking lot and settle the matter.

2 Very good.

3 MS. BROWN: Thank you, Your Honor.

4 BY MS. BROWN:

5 Q Let me ask you just a few questions. We went over
6 what a judge should consider, in your opinion, as
7 mitigation based on your testimony, right?

8 A No, ma'am. I would never tell a judge what to do. I
9 know there's mitigators that are ---

10 THE COURT: I beg your pardon?

11 THE WITNESS: I would never tell a judge what to do
12 on the stand -- on the stand.

13 BY MS. BROWN:

14 Q On the stand.

15 A But no. I'm aware there are statutory mitigators, so
16 those do not come from me. Those are legislated, and
17 those are -- they're written in law. I don't make those
18 up.

19 Q But you do give testimony that you think may support
20 a mitigator.

21 A Certainly. That's what my job is, sure. If there's
22 a mental illness or a mental disorder that falls under one
23 of those statutory mitigators, yes, I'm allowed to testify
24 whether it meets that or not. Certainly.

25 Q And that's what you wanted to do. You wanted to

1 express today that those mitigating factors could be
2 considered.

3 A Yes. And very specifically is that he had a sexual
4 disorder, a paraphilia that would have explained why he
5 had these rapes that were not brought to the judge's
6 attention and that, in my opinion, were so serious that
7 they affected his capacity to control his impulses very
8 specifically.

9 Q And now, some of the facts, the observations that you
10 have used for your opinion today actually contain facts or
11 observations that were not available in 2008 and 2009;
12 would that be correct?

13 A Yes. And that's because Mr. Bannister would not let
14 me obtain them.

15 Q And some of it is a change in the person, I believe
16 you said.

17 A Oh, yes. Not in terms of a sexual disorder, but his
18 personality structure, it has changed.

19 And I'm sorry, Your Honor. I don't mean to murky the
20 waters, but when I saw him during these proceedings in
21 2006 and 2007 and 2008, he was very avoidant. I saw him
22 as shy and reserved and thought that he got anxious around
23 people. But I think he's comfortable with that now, and
24 now I think it's more he doesn't need -- he doesn't seem
25 to want the interaction. People that are avoidant want to

1 interact with people, but they just get nervous around
2 them. I think now he's gotten to the point where he wants
3 to be left alone.

4 Q And his depression is under control.

5 A It's better. If it were my patient, I would be
6 treating him a lot more aggressively. And I'm not -- he's
7 not at a baseline I would have my patients at, but it is
8 being treated.

9 Q And may we say controlled?

10 A I think it's improved, yes.

11 Q Okay. And he's still consistent that he thinks he
12 deserves the punishment he received.

13 A No. Not -- no. Not now. Not more recently.

14 Q How has he changed?

15 A I think he's more whatever happens, happens. He's
16 not as insistent. I don't -- I think he is more amenable
17 to whatever justice is. Now, I've had to remind him a few
18 times to tell him that a judge or whoever the fact finder
19 is deserves the whole story and, you know, and that's not
20 fair to withhold things, and so that's usually how I can
21 get him to cooperate with me. I said we just -- you know,
22 you have to know the whole picture. That's not fair for
23 anybody to not know.

24 But no. He's not nearly as resistant. He still --
25 it's hard to get information from him. He doesn't want to

1 do anything, again, to exculpate himself. But he's --
2 he's not of the same mindset that he was in 2007, 2008.

3 Q And it's taken -- in his view, taken a long time to
4 go through the process.

5 A I don't know. I didn't ask him about that because
6 the competency wasn't really an issue now.

7 Q So the competency's never been an issue for you.

8 A Not for me.

9 Q And today it's not an issue.

10 A No.

11 Q And you trust what he tells you when he tells
12 anything about the murder, the facts of the murder and his
13 desires.

14 A I consider him a credible informant. I consider him
15 -- he gives more information than we had. If you look at
16 collateral sources of information, you usually take what
17 the patient says and you compare it. He gives more than
18 what the collateral information has. And then the things
19 that he says are not things that are always protective of
20 him. And so those are things that I look at and I
21 consider. So I would consider him, compared to the other
22 sex offenders that I've evaluated, much more credible in
23 reporting.

24 MS. BROWN: Thank you, Doctor. Appreciate your
25 patience, appreciate you being here.

1 THE WITNESS: Thank you.

2 MS. BROWN: No further questions, Your Honor.

3 MR. GROSE: And I just have a handful of questions.

4 REDIRECT EXAMINATION

5 BY MR. GROSE:

6 Q And I appreciate you separating out the avoidance and
7 the isolation from what you saw new in 2008 and 2009.
8 There was a question about, you know, not having all the
9 information about the biastophilia diagnosis in 2008 and
10 2009. And that's because you weren't allowed to complete
11 the evaluation.

12 A Correct.

13 Q If you were able to have completed the evaluation,
14 would you have had all that information prior to
15 sentencing?

16 A Yes.

17 Q And we had some testimony about the draft of your
18 report, Applicant's Exhibit Number 43. That was not
19 final, correct?

20 A That's correct.

21 Q And you couldn't finalize that report until you
22 completed your evaluation.

23 A That's correct.

24 Q And you couldn't fully advise the trial counsel team
25 until you completed the evaluation.

1 A That's correct.

2 Q And so it's fair to say that they did not have all
3 the information you could have obtained if you had been
4 allowed to complete your evaluation.

5 A That's correct.

6 MR. GROSE: And, Your Honor, I don't think that I
7 have moved 39, 40 and 43 into evidence. I would do that
8 at this time. 39 is her evaluation for this proceeding
9 8/8 of '18; 40 is Dr. Brawley's report; and 43 is the
10 incomplete evaluation from 2008.

11 THE COURT: All right. Any objection?

12 MS. BROWN: Your Honor, I believe 43 was offered
13 during Mr. Bannister's proceeding -- or testimony, and I
14 have no objection as something that he reviewed in making
15 his decision, 43.

16 40 is a report that was used by Dr. Maddox, I
17 believe, and she has referenced that, but it is not
18 admissible because it contains hearsay, Your Honor. 703
19 would not allow the admission of the evidence simply
20 because the doctor relied on that even -- well, it would
21 contain information that she did not state here in court.
22 So it's not cumulative, but it is hearsay, and there's no
23 basis for admissibility.

24 39, Your Honor, the evaluation from this year, it
25 would be cumulative to the court testimony. It contains

1 inadmissible hearsay from multiple layers, not what the
2 doctor has testified to here today as her impression but
3 impressions from others and reports ---

4 THE COURT: 39 was also a report by the doctor.

5 MR. GROSE: 39 is Dr. Maddox's report.

6 THE COURT: This is Dr. Maddox's report, 39.

7 MR. GROSE: It's her report, and it's dated
8 August 8th.

9 THE COURT: And it was done in conjunction with -- as
10 a result of her examination in preparation for trial?

11 MR. GROSE: Yes, sir.

12 THE COURT: Is that a normal thing that psychiatrists
13 do?

14 THE WITNESS: Yes, sir.

15 THE COURT: Regular course of business or practice?

16 THE WITNESS: Yes.

17 THE COURT: Overruled.

18 MS. BROWN: Your Honor, may I place just for the
19 record ---

20 THE COURT: Certainly.

21 MS. BROWN: --- our argument that it would be
22 cumulative, contains multiple layers of hearsay, improper
23 bolstering and vouching, particularly of the opinions of
24 the nontestifying doctors as to correctness or
25 completeness in their work, that it contains conclusions,

1 observations, and commentaries unrelated to the diagnosis,
2 and it contains comments on nonmedical care, nonmedical
3 comments in general. And most of it may be irrelevant to
4 this particular proceeding because a lot of it may have
5 come in through other sources.

6 We rely on Allegro Incorporated vs. Scully at 409
7 S.C. 392. It's a Court of Appeals opinion from 2014. The
8 Court there noted Rule 703 does not allow for the
9 admission of hearsay evidence because the expert used it
10 in the opinion. Also State vs. Jennings from 2011, a
11 Supreme Court case, 394 S.C. 473, finding error and
12 admitting written reports as they contain inadmissible
13 hearsay and improper vouching.

14 I do have copies of both of these cases that I could
15 hand up to the Court if the Court would be so inclined,
16 but I did want to make a full objection. And I appreciate
17 it.

18 THE COURT: Not at all. It's my pleasure.

19 Not to make too fine a point on the objections, but
20 they seem to be rather cumulative. I'm afraid that if I
21 eliminated all hearsay and every technical violation of
22 Rule 703, I probably would have been out of this courtroom
23 a lot earlier than we will be today. So I'm going to have
24 to overrule your objections to Applicant's Exhibit 39, 40
25 and 43, and they will be admitted into evidence.

1 (WHEREUPON, Applicant's Exhibit Numbers 39, 40 and 43 were
2 admitted into evidence.)

3 THE COURT: And if I have made a mistake, I'm sure
4 that somebody will remind me of it. Thank you.

5 MR. GROSE: Can I have a moment to confer with the
6 court reporter about exhibits?

7 THE COURT: Certainly.

8 (Pause in proceedings.)

9 MR. GROSE: The court reporter, Your Honor, tells me
10 that she did not make a note of 42 being admitted. My
11 recollection is you did admit it, but out of abundance of
12 caution ---

13 THE COURT: Well, let's just, out of an abundance of
14 caution, as well. All right. Any objection to 42? I
15 have no idea what it is.

16 MR. GROSE: It's the complaint in the death row
17 conditions lawsuit.

18 THE COURT: Oh, I'm sure it will be objected to, but
19 I'm going to overrule the objection.

20 MS. BROWN: Thank you, Your Honor.

21 (WHEREUPON, Applicant's Exhibit Number 42 was admitted
22 into evidence.)

23 MS. BROWN: It would be, Your Honor, for relevance.
24 Thank you.

25 THE COURT: I understand.

1 MR. GROSE: Can I have just a moment, please.

2 THE COURT: Certainly.

3 (Pause in proceedings.)

4 MR. GROSE: I don't have any more questions for
5 Dr. Maddox.

6 THE COURT: Oh, very good. I appreciate that. I'm
7 sure she does, too.

8 All right. Anything else from the applicant for the
9 day?

10 MR. GROSE: Well, I guess the first question is do
11 they want to examine her any more?

12 MS. BROWN: Unless you would like for me to recross,
13 no, sir.

14 THE COURT: I can't understand. I might go back and
15 revisit some of my rulings if that's what we're going to
16 do.

17 MR. GROSE: I would ask that Dr. Maddox be excused.

18 THE COURT: All right. Any objection?

19 MS. BROWN: None at all. And I thank Dr. Maddox.

20 THE COURT: Thank you all for your patience today.
21 Now. All right. Tomorrow ---

22 MR. GROSE: Actually, I do have one thing.

23 THE COURT: Oh, yes, sir.

24 MR. GROSE: We had mentioned earlier that we were
25 going to move the depositions of Donald Geary, Trina

1 Lucas, Michael Baker, Michael Bednarz, B-E-D-N-A-R-Z,
2 Tracy Meyers-Enderson, Alan Traylor, Roger Lindsay and
3 David Blake into evidence, and I would do that at this
4 time.

5 THE COURT: Any objection?

6 MS. BROWN: No, sir, Your Honor.

7 THE COURT: Very good.

8 MR. GROSE: And we can just mark these. And I'll put
9 the -- I'll open them. They're sealed. I'll open them
10 and mark.

11 THE COURT: Why don't you just mark the package, I
12 mean, each one, and I'll open them tomorrow.

13 MR. GROSE: Okay, okay. And we'll just put the
14 sticker on the outside.

15 THE COURT: Yeah. That's what I'm saying.

16 MR. GROSE: Okay. We'll do that, Your Honor.

17 THE COURT: That will be a nice way to contain them.

18 MR. GROSE: All right. Thank you.

19 THE COURT: Won't be smudged or anything.

20 MR. GROSE: And that would be all that we have for
21 today, Your Honor.

22 THE COURT: Very good.

23 (WHEREUPON, Applicant's Exhibit Numbers 47, 48, 49, 50,
24 51, 52, 53 and 54 were marked for identification and
25 admitted into evidence.)

(WHEREUPON, proceedings adjourned at 4:34 p.m., to be reconvened on Thursday, August 23, 2018.)

1 Thursday, August 23, 2018

2 (WHEREUPON, Applicant's Exhibit Number 55 was marked for
3 identification.)

4 (WHEREUPON, proceedings reconvened at 1:27 p.m.)

5 THE COURT: All right. We're back on the case of
6 Jerry Buck Inman, Number 5256.

7 Are y'all sure about that? I've got both the State
8 and, what is it, the applicant pleadings with the number
9 5226.

10 MS. HOLT: Sorry about that.

11 MS. BROWN: I think it was a mistake that we just
12 kept using the same caption, Your Honor.

13 THE COURT: All right. Maybe that was it. You got
14 it in the machine, so you just hit the button.

15 MS. BROWN: Yes, sir.

16 THE COURT: All right. Jerry Buck Inman vs. The
17 State of South Carolina, 2012-CP-39-918.

18 Anything from the applicant before we proceed?

19 MR. GROSE: Just very briefly, Your Honor. Yesterday
20 when we left off, we were prepared to mark the depositions
21 as exhibits. Those have been marked Applicant's 47
22 through 54. And we realized that ---

23 THE COURT: Now, y'all do have copies of the
24 depositions.

25 MR. GROSE: Yes, sir.

1 THE COURT: All right. So in other words, if the
2 Court is concerned about certain testimony or whatever and
3 not in session, I could request it of the parties?

4 MR. GROSE: Yes, sir.

5 THE COURT: Okay.

6 MR. GROSE: And also, our pleadings had referenced
7 pages 34, 35 and 81 of former Solicitor Ariail's
8 deposition, but we realized we didn't attach those. So to
9 complete the record, we've marked those as Applicant's
10 Exhibit 55.

11 THE COURT: Very good.

12 MR. GROSE: Thank you.

13 MS. BROWN: Your Honor, as far as -- we did agree to
14 the Atlanta depositions coming in. We did not discuss the
15 pages of Mr. Ariail's deposition.

16 THE COURT: Have you looked at them?

17 MS. BROWN: I have looked at the deposition, Your
18 Honor, and we have looked at those pages this morning.
19 And, Your Honor, normally, I would object because
20 Mr. Ariail is available and this is a discovery
21 deposition, but you do have discretion to accept it if --
22 and we have the ability to add pages. And if Your Honor
23 would be amenable to that ---

24 THE COURT: Certainly.

25 MS. BROWN: --- I believe that we would be

1 comfortable with 34 and 35 coming in if we had 36, 99 and
2 100.

3 MR. GROSE: No objection.

4 THE COURT: All right. Very good. Have you got
5 those prepared? Can I have them marked now?

6 MS. BROWN: Well, honestly, Your Honor, we didn't
7 discuss it yesterday, so this was new to us. I can ---

8 THE COURT: Do you have copies with you so that ---

9 MS. BROWN: If I may have a moment.

10 THE COURT: Certainly. All right. That's what we
11 want to do.

12 MR. GROSE: We've got copies.

13 MS. BROWN: Absolutely.

14 THE COURT: What we'll do, if it's all right, you can
15 amend the proposed exhibit at this time so they will be
16 under the -- since it's Mr. Ariail's deposition, it will
17 come in as one exhibit.

18 MS. BROWN: I would have no objection to that.

19 THE COURT: All right. We'll go off the record while
20 y'all do that.

21 MS. BROWN: Thank you, Your Honor.

22 (Pause in proceedings.)

23 THE COURT: All right. We're back on the record.

24 Mr. Grose?

25 MR. GROSE: The amended Exhibit 55 is now page 34,

1 35, 36, 81, 99 and 100 of Solicitor Ariail's deposition.

2 THE COURT: All right. Let's just address those
3 first. Any objection to admitting Applicant's Exhibit 55,
4 which contains pages 34 through 36 of Mr. Ariail's
5 deposition in addition to 81, 99 and 100? Either side,
6 Mr. Grose as well.

7 MR. GROSE: No objection.

8 THE COURT: Any objection, Ms. Brown?

9 MS. BROWN: No objection.

10 THE COURT: Very good.

11 MR. GROSE: I think you left out 35 when you read
12 that.

13 THE COURT: That's why I said 34 through 36.

14 MR. GROSE: Okay. Thank you.

15 THE COURT: But 35 [sic] is admitted.

16 (WHEREUPON, Applicant's Exhibit Number 55 was admitted
17 into evidence.)

18 THE COURT: All right. Let's go back. We have
19 Applicant's Exhibit Number 1, 2 and 3, a letter from
20 Mr. Inman, and the e-mails have not been admitted. I
21 think that those are the e-mails having to do with the
22 scheduling prior to ---

23 MR. GROSE: Well, and, you know, the letter was what
24 Mr. Inman asked us to deliver to the Court regarding his
25 desires about being here, and 2 and 3 related more to that

1 issue, not so much the evidence.

2 THE COURT: Well, I can see I think 3 is mine, which
3 is a little bit -- it doesn't have -- it has different
4 e-mails in it, but it all addresses pretrial or prehearing
5 arrangements. I just wanted to be sure the record ---

6 MR. GROSE: Was yours 3 or was yours Court's 1?

7 THE COURT: Oh, I think you may be right. Court's 1.
8 Your right. That's Court's 1, and it had to do with being
9 available, telephone numbers and everything else, which
10 were not, what is it, utilized.

11 All right. So now it brings us down to
12 Applicant's 1, 2 and 3. What does the State say?

13 MS. BROWN: If it's not offered by the applicant, we
14 would ask that it be made part of the record.

15 THE COURT: All right. Now what do you say,
16 Mr. Grose?

17 MR. GROSE: I think they're part of the record.

18 THE COURT: Well, that's just it. I think it is,
19 too, somewhere in the memorandums and the motions and
20 everything else. But what I would like to do is just go
21 ahead and get the complete record. So I'm going to note
22 that, what is it, Applicant's Exhibits 1, 2 and 3 are
23 admitted without objection, and Respondents 2, which
24 amends Applicant's 15, is admitted. Any objection?

25 MR. GROSE: What was Respondent's 2?

1 THE COURT: Isn't that what we just did? What is
2 Respondent's 2?

3 MR. GROSE: It's a set of e-mails that I think is
4 identical to one of our exhibits. We have no objection.

5 THE COURT: Any objection since it's your exhibit?

6 MS. BROWN: It's a bit duplicative, but I think
7 that's how it came in, so I think we should leave it as it
8 is.

9 THE COURT: Well, let's just not have a gap in the
10 thing unless it's necessary.

11 MS. BROWN: Yes, sir. I totally agree.

12 (WHEREUPON, Applicant's Exhibit Numbers 1, 2 and 3 and
13 Respondent's Exhibit Number 2 was admitted into evidence.)

14 THE COURT: That should make the record complete as
15 far as exhibits.

16 Now, anything before we take the first witness,
17 Mr. Grose?

18 MR. GROSE: No, sir. I think -- I don't know that
19 we've officially rested, but we would at this point.

20 THE COURT: All right. So the witnesses are from the
21 State.

22 MS. BROWN: Yes, Your Honor.

23 THE COURT: All right. Very good. Ms. Brown?

24 MS. BROWN: I believe Ms. Butterbaugh has the first
25 witness, Your Honor.

1 THE COURT: Very well. You may call your witness.

2 MS. BUTTERBAUGH: Thank you. Respondent would call
3 Mr. Symmes Culbertson.

4 WHEREUPON,

5 SYMMES CULBERTSON

6 After having been duly sworn, testified as follows:

7 THE CLERK: If you would, have a seat and state your
8 name for the record, please.

9 DIRECT EXAMINATION

10 BY MS. BUTTERBAUGH:

11 Q Good afternoon, Mr. Culbertson. How are you?

12 A Good afternoon.

13 Q And for the record, I just want to say thank you for
14 coming again this afternoon.

15 A Yes, ma'am.

16 THE WITNESS: Before we start, can I ask one question
17 of Your Honor?

18 THE COURT: Certainly.

19 THE WITNESS: Your Honor, as a named party in this
20 proceeding going forward today, I'm curious as to the
21 admission of evidence that just took place concerning
22 depositions of the solicitor Bob Ariail. I don't know if
23 I have any objection to them or not. I have no idea what
24 they are and I'm just curious since I am a named party and
25 I've not been provided -- I haven't had a chance to look

1 over reading that whether or not I, as a party, may have
2 some objections to that.

3 THE COURT: I mean, we do have the pages. They're
4 not the complete depositions.

5 THE WITNESS: Yes, sir I understand that. But ---

6 THE COURT: So you want copies?

7 THE WITNESS: Well, as I understood, this is a PCR
8 hearing today, postconviction relief hearing that alleges,
9 in part, that both myself and the other counsel appointed
10 to Mr. Inman for the purpose of the trial were ineffective
11 at some point. That's the purpose of the proceedings
12 today. And I'm just curious.

13 THE COURT: Just a moment. Is the attorney a named
14 party?

15 MR. GROSE: No, sir.

16 THE COURT: He's a witness. You've been summoned as
17 a witness, but you're not a party. Now, you could become
18 a party in a grievance, but then the applicant waives that
19 by statute.

20 Now, you are subject to being called as a witness in
21 as much as, what is it, ineffective assistance is one of
22 the grounds, I think. Well, I'm sure.

23 THE WITNESS: And I assume that also, Your Honor,
24 which is kind of what I'm questioning why there was
25 subsequent to trial and sentencing, Mr. Ariail made this

1 application, in part, alleging ineffective assistance of
2 counsel during the trial, and I was just curious.

3 THE COURT: No. Not Mr. Ariail.

4 THE WITNESS: I mean Mr. Inman.

5 But that's what I was curious about, why it was
6 necessary to amend the record today to submit his
7 testimony at a subpoena.

8 THE COURT: It's not Mr. Inman's testimony.

9 THE WITNESS: Mr. Ariail's.

10 THE COURT: Well, Mr. Ariail is also a witness, but
11 not a party.

12 THE WITNESS: Yes, sir.

13 THE COURT: The party is the State and the applicant.

14 THE WITNESS: Yes, sir.

15 THE COURT: Or the parties.

16 THE WITNESS: Yes, sir.

17 THE COURT: Are you ready to proceed?

18 THE WITNESS: Yes, sir. I am.

19 THE COURT: Very good. If you would, please, for the
20 record, give us your full name, spelling your last name.

21 THE WITNESS: My full name is Symmes Watkins
22 Culbertson. Culbertson is spelled C-U-L-B-E-R-T-S-O-N.

23 THE COURT: Thank you, sir.

24 THE WITNESS: And just to be clear, Symmes is spelled
25 S-Y-M-M-E-S.

1 THE COURT: I had it.

2 THE WITNESS: Yes, sir. I knew you did.

3 THE COURT: I know your family is very well known.

4 THE WITNESS: Thank you, sir.

5 THE COURT: All right. You may proceed.

6 MS. BUTTERBAUGH: Thank you.

7 BY MS. BUTTERBAUGH:

8 Q Mr. Culbertson, where do you currently practice law?

9 A Specifically in Greenville, South Carolina.

10 Q And are you in private practice? Are you with the
11 Public Defender's Office?

12 A At this point in time, I am on a part-time basis
13 through the Public Defender's Office. The office in
14 Greenville has a few what they call part-time attorneys,
15 and I am one of those.

16 THE COURT: Is it the same contract arrangement they
17 used to have?

18 THE WITNESS: I'm not sure what the arrangement was
19 before, Your Honor, but right now, those of us who are
20 quote, unquote, part-time attorneys of the PD's office are
21 paid a monthly sum for the services we help them with.

22 THE COURT: I've got you. Very well. I was just
23 curious why.

24 BY MS. BUTTERBAUGH:

25 Q How much criminal law experience do you have?

1 A I would say a pretty good bit.

2 Q And how many death penalty cases have you been
3 appointed in the past?

4 A One, two, three, four, five -- five -- Mr. Inman, I
5 believe, was my sixth.

6 Q And how did you come to be associated with this case?

7 A Well, the truth of the matter is that I was actually
8 in Pickens county on some other matters that I had to deal
9 with over here, required me to go by the jail here in
10 Pickens county. And while I was down at the jail for some
11 other people I was representing, I had an occasion to come
12 in contact with Mr. Inman. And at that time, he asked me,
13 you know, basically just kind of an off-handed
14 conversation, I ran into him, I said, "Do you understand
15 how much -- what's going on out there and what's about to
16 happen?"

17 And he says, "No, I don't. But if you're an
18 attorney, would you try to help me out some?" And I
19 answered "yes" to his question. So that's how I became
20 involved, basically, with Mr. Inman.

21 Q So it's fair to say that you've been involved with
22 Mr. Inman from kind of the very beginning of this?

23 A I would -- yes. I would say it's fair to say I have
24 been involved with Mr. Inman until -- at the time he was
25 in Pickens County Jail being arrested.

1 Q So from the beginning, you kind of developed a
2 relationship with Mr. Inman. Can you kind of describe
3 that a little bit for us?

4 A I think that's a fair way to put it. Yes. Just that
5 he and I met the first day he was brought to Pickens
6 county having been brought down here from his arrest in
7 Tennessee, and our relationship grew out of that. At
8 first it was probably one of a fellow who was desperate
9 for somebody to explain to him what was going on and try
10 to help him out, which is what I tried to do. Once he was
11 charged, it grew into one of me trying to advise a client
12 as to what they were facing, what the best course of
13 action would be.

14 Q And how long were you the single attorney on the
15 case?

16 A It's hard for me to recall the exact amount of time,
17 but I want to say probably a year, close to a year, if not
18 a little bit more where I was the only attorney
19 representing Mr. Inman. During that course of time, he
20 was served with death notice indicating that the State of
21 South Carolina intended to seek the death penalty against
22 him.

23 When that occurred, there was some questions about
24 who, what and where the attorneys were that were going to
25 be appointed to represent him. So at a certain point,

1 there was a hearing in which myself, Mr. Bannister,
2 Mr. Dejong, who is a public defender in Pickens county,
3 were appointed to represent Mr. Inman.

4 Q And once that team was kind of put together, what did
5 your role -- how does your role develop from there?

6 A Well, technically, this was under what I would call
7 the old law in South Carolina, at least the old law in
8 regards to the appointment of counsel in a death penalty
9 case. Under that -- under the statute at that time, the
10 Court saw fit to appoint myself and Mr. Bannister along
11 with Mr. Dejong, since he was the full-time public
12 defender here in Greenville for this indigent individual
13 who were appointed to represent Mr. Inman. There was some
14 discussion between the three of us as to actually who was
15 going to be lead counsel, and I believe the Court and the
16 three attorneys involved were of the opinion that
17 Mr. Bannister should be lead counsel, myself being second
18 chair, so to speak, and Mr. Dejong -- I'm not quite sure
19 how his designation would have been at that time, but he
20 was, in our opinion, also second counsel or also second
21 chair in the matter.

22 Q So is it fair to say that you kind of still
23 maintained that sort of relationship sort of role with
24 Mr. Inman?

25 A I'm not quite sure what you mean by that. But yes,

1 ma'am. I mean, my dealings with Mr. Inman, my connection
2 to him did not change because of that.

3 Q And so when you were still the -- so in that year
4 that you had represented him by yourself, that
5 relationship that you had with him kind of continued to
6 grow. Why do you think that he trusted you so much as
7 that client relationship kind of continued?

8 A I'm not sure I can answer that question. I mean, you
9 know, only Mr. Inman can truly speak to what his opinion
10 of me was and why it was he seemed to trust me and value
11 my opinion. I mean, I can't speak to that. He would know
12 that.

13 I can tell you that was my feeling, though, that he
14 trust me, believe me, and he was willing to accept my
15 advice.

16 Q So you started out preparing for a trial, correct?

17 A Well, I started out representing a gentleman who was
18 charged with murder. That was -- just like any other
19 client I had who was charged with a serious crime, my
20 attitude was like it is to all my other clients: do the
21 best I can to represent them to my fullest.

22 Q And when did he express to you and the team that he
23 wanted to plead guilty rather than go to trial?

24 A Well, at some point in time, I think it is fair to
25 say that Mr. Inman always expressed a desire to enter a

1 guilty plea, and I think that was because he saw that as a
2 way to alleviate whatever grief the Souers family was
3 under. Once the Solicitor's Office filed a notice seeking
4 the death penalty, his attitude changed a little, at least
5 I perceived it to change a little to the point where he
6 didn't want to just agree to be executed, so he expressed
7 a willingness to work with us in opposing the death
8 penalty.

9 Now, let me clarify. I'm sure I'm going to get it
10 here. Mr. Inman had expressed a desire to die. He was
11 tired of life, he was tired of the situation he was in.
12 You have to understand, he had basically been
13 incarcerated. A majority of his life was behind bars.
14 And I had several conversations with him both prior to
15 death notice being served and, obviously, after death
16 notice being served, and I will tell you that he expressed
17 -- he was tired of living incarcerated. It was a
18 miserable, inhuman type of existence. He basically wanted
19 that to end.

20 You have to understand, at the same time he would say
21 that, he would also indicate to me his fear of being put
22 to death by the State or by anybody, for that matter. I
23 think it's fair to say that I did not believe that
24 Mr. Inman wanted to die or wanted anybody else to kill him
25 to accomplish that goal, that -- you know, to put him to

1 death.

2 Q But when he expressed that desire to plead guilty,
3 when he talked about that, you did explain to him the
4 risks then inherent with that decision, correct?

5 A Yes, I did. I did. On many occasion, I did that.
6 And what I'm trying to relate is that Mr Inman truly felt
7 sorry for the Souers family and for the pain he had
8 inflicted upon them, and at a certain point I think in his
9 psyche, he thought he deserved to die for that. But what
10 I'm trying to tell you is, I mean, Jerry is an interesting
11 person. At the same time he would relate his desire to
12 relieve sorrow from the Souer family, he also would
13 indicate his unwillingness to have somebody -- to die.

14 Q So when he talked about pleading guilty, did he
15 understand the consequences of that in terms of, you know,
16 who would be sentencing him with jury versus judge
17 sentencing?

18 A Again, you're asking me to tell you what Mr. Inman
19 thought or what he understood, and I'm not sure I can
20 answer that question as stated.

21 Q Was that a discussion that you or Mr. Bannister or
22 the team had with him, I guess?

23 A Yes, yes. I had that. That or a similar type of
24 conversation with him on multiple occasions.

25 Q Okay. So your observations of Mr. Inman in these

1 conversations about the guilty plea, did he -- you know,
2 do you think that he understood, appeared to understand
3 what was going to happen when he got to the guilty plea?

4 A Again, that's a somewhat difficult question to
5 answer. I can only tell you what my perceptions were of
6 what Mr. Inman thought. And having spent time with him
7 and developing a rapport with him, I will tell you that I
8 believed him to want to do -- to truly -- let me put it
9 this way. I believe that he was truly sorry for what he
10 had done and that he was truly remorseful for the pain and
11 suffering that he had inflicted on the Souer family.

12 Having said that, I can also tell you that I believed
13 that although he stated he wanted to die for what he did,
14 I also believe that he did not want to be put to death for
15 what he had done. He did not want to die. He and I -- I
16 will tell you that he and I had several conversations
17 about death and dying, and it's my belief that Jerry did
18 not want to be forced to die.

19 Q And in your discussions with Mr. Inman, when you
20 talked about the process of what he was going -- you know,
21 by which he was going to be going through, if the judge
22 had refused to accept the guilty plea, would you have
23 waived a jury, do you think, and gone to a bench trial
24 type of situation?

25 MR. GROSE: Objection. Hypothetical.

1 THE COURT: Restate your question if you're talking
2 about trial strategy.

3 MS. BUTTERBAUGH: I guess that is kind of what
4 I'm ---

5 THE COURT: Restate your question not what he
6 believes the applicant would, but what he would do if the
7 Court did not accept the guilty plea.

8 BY MS. BUTTERBAUGH:

9 Q So when you guys discussed your strategy, were the
10 only two strategies going forward with a jury trial or
11 going forward with a guilty plea, or was there another
12 option that your team discussed?

13 A When this first started, there were only two options
14 available to us, either -- actually, yes, there were only
15 two options available, either a not guilty or proceed to
16 trial. This being -- because it was a death penalty case,
17 those were basically the only two options available to us
18 at the beginning of the process, so I'm not quite sure how
19 to answer your question.

20 Q Okay. Now, you mentioned the Souers family and how
21 sorry Jerry felt for the Souers family. What about his
22 own family? Did he mention his family?

23 A Yes, he did. And he mentioned his family, his mother
24 in particular. His sister saw him. And he was -- he
25 expressed his regret for the trouble and pain he forced

1 upon his own family also.

2 Q And when you discussed the mitigation case when you
3 realized that this was likely going to be a guilty plea,
4 moving onto mitigation and talking about his family, did
5 you guys discuss who might be testifying as mitigation
6 witnesses?

7 A Yeah. We tried to -- we tried to explain to Jerry
8 what we were doing and why it was necessary to try to put
9 together a life history, his life history and trying to
10 communicate with family and friends of his who might be of
11 assistance towards him during this proceeding. He was at
12 first reluctant to want us to do that. He certainly did
13 not want us to do anything that would bring sorrow or
14 shame or trouble to anybody on his family. Specifically,
15 he was concerned about his mother. But he expressed just
16 concern about the trouble this might be causing them.

17 Q And specific to his mother, was that a directive from
18 him that his mother not testify?

19 A Yeah. At certain points, Jerry was more willing than
20 not to have us -- I mean, he certainly, at the beginning,
21 did not want us to have any contact with his family. That
22 basically evolved over time to where he was comfortable
23 with us contacting various members of his family, and so I
24 had long conversations with him about who in his family we
25 could talk to and what we were going to be talking to them

1 about.

2 So his willingness to want us to do that kind of
3 waxed and waned through the whole proceeding. So there
4 was no -- the answer to that question would, in part,
5 depend on where Jerry's head was at the time he was asked
6 that question.

7 Q Now, there's been -- in his medical records and in
8 some of his mother's medical records, there is history of
9 mental illnesses and depression, and his mother
10 specifically with schizophrenia. There's some notes from
11 Marti Loring that his mother had expressed to her that she
12 had tried to kill him and that she'd also tried to
13 castrate him. Is that something that Jerry would have
14 wanted to come out at trial, do you think?

15 MR. GROSE: Objection. Speculation.

16 THE COURT: Restate your question to see if that had
17 ever been discussed.

18 BY MS. BUTTERBAUGH:

19 Q Is that something that had been discussed? Do you
20 recall hearing those -- hearing that?

21 A If you're asking me if I recall having seen
22 Dr. Loring's notes concerning what you just mentioned and
23 if I had conversations with her about what you just
24 stated, the answer to that would be yes, I did hear that
25 from Dr. Loring.

1 Q Do you recall if you had heard that from anyone else
2 in Jerry's life?

3 A I'm not sure today I recall. I'm not sure today my
4 answer would be correct. No. I don't recall having heard
5 that from anybody else in Jerry's life.

6 Q And Mr. Inman never mentioned that to you.

7 A Well, no. He never independently mentioned that to
8 us. Obviously, after we got that as part of Dr. Loring's
9 report, I mentioned that -- I asked him about that. And
10 honestly, sitting here today, I will tell you that I
11 believe Jerry was upset that we had heard that or knew
12 about that, but I honestly don't recall if he admitted to
13 knowing that or not.

14 Q Were there discussions with him about presenting that
15 evidence at trial?

16 A Oh, yes, yes. He was -- yes. There were -- yes. We
17 discussed that with him.

18 Q And what was his answer?

19 A He did not want us to present that at trial. In
20 fact, he didn't want us to present anything at trial that
21 touched upon or reflected upon his mother.

22 Q So moving on to the -- kind of reflective of
23 Dr. Loring, following the prosecutorial misconduct and
24 events sort of surrounding that, during the interim
25 between the first sentencing hearing and the second, did

1 anyone on the team speak with her during that interim, do
2 you recall?

3 A Between the first part of the sentencing hearing and
4 the second part of the sentencing hearing?

5 Q Yes, sir.

6 A Did anybody on the team speak with Jerry's mother?

7 Q No. I'm sorry. With Dr. Loring.

8 A Oh, oh, oh. I believe -- I'm sure we did. I would
9 have thought -- yeah. I'm pretty sure somebody did.

10 Q And did anyone speak with Mr. Godfrey, her attorney?

11 A Yes.

12 Q Do you know if Dr. Loring spoke with anyone when the
13 Georgia investigators tried to serve her with the
14 subpoena?

15 A Yes.

16 Q And who was that?

17 A I know she spoke with me.

18 Q And what did she tell you?

19 A She called me late one evening very fearful because
20 police were pounding her door trying to get in she
21 believed to arrest her, at that point.

22 Q And so she was there at the house?

23 A I'm not sure where she was. Like I said, she called
24 me on the phone, and I'm not sure where she was.

25 Q And what did you tell her to do?

1 A I told her that -- I told her two things: number
2 one, since -- that she probably needed to talk to her
3 attorney, that she get in touch with Mr. Godfrey, who I
4 believed had been appointed to represent her is somebody
5 she needed to get in touch with, and I also told her that
6 if it truly was -- if she was really at home and if she
7 knew it was the police that were looking for her, that she
8 should make herself available to the police. I believe
9 that's -- I'm trying to think back now. I believe that
10 was the substance of the conversation I had with her.

11 Q Did you have any conversation with Mr. Godfrey about
12 this conversation with Dr. Loring?

13 A Not that evening.

14 Q When did you have the conversation with him?

15 A I'm not sure I could tell you an exact time frame.
16 Any conversation I had with Mr. Godfrey about that
17 incident would have been a few days afterwards before I
18 was finally able to get in touch -- before Mr. Godfrey and
19 I were able to be in touch with one another and
20 communicated that. And I apologize. I just don't
21 remember exactly when it was following that event, but I
22 do know I talked to him briefly.

23 Q And in your opinion, do you think Judge Miller had
24 all of the facts surrounding this situation in Georgia?

25 A I have no idea what facts Judge Miller had at that

1 time.

2 Q And what about the South Carolina Supreme Court? Do
3 you think they had all the facts?

4 A I have no idea. And I don't mean this to be
5 flippant, but I have no idea what facts the South Carolina
6 Supreme Court is ever aware of.

7 Q And in general, do you think that the case that you
8 put forward to Judge Miller, do you think it was a
9 complete case?

10 A No, I don't. There were certainly things that we had
11 wished to address specifically in regards to sentencing
12 that we as a team felt prohibited from being able to
13 access.

14 Q What were some of those things, do you think?

15 A Well, specifically, as you know, there was this
16 question of mitigation and whether Dr. Loring was going to
17 be allowed to proceed to work with us and to testify for
18 us, and so we began a search for an additional mitigation
19 expert. We would have liked -- there were certain things
20 that we became aware of that we would have liked the
21 mitigation -- the new mitigation person to be able to
22 develop for us, and we felt we were barred, prohibited
23 from being able to do that.

24 Q In general, how would you characterize the work that
25 this team did for Mr. Inman?

1 A I think it was extraordinary. I certainly think that
2 Mr. Bannister and Mr. Dejong and several of the other
3 people who were working with us did outstanding work,
4 which I think both they and the bar should be proud of.

5 Q And so when you talk about not being able to continue
6 -- you know with that continuance and not getting that
7 continuance, what do you think specifically was left out?

8 A Well, let me put it this way. We are here today some
9 ten-plus years after the fact still arguing about these
10 issues, and had we been allowed the seven or nine months
11 we were asking for for a continuance at that time to
12 develop another mitigation expert and to be able to
13 properly present the evidence that we thought was out
14 there, I dare say that we wouldn't be sitting here
15 ten-plus years later arguing about that still.

16 Q And could you guys have asked, do you think, at the
17 hearing about the evidence when you had the chance to
18 cross-examine Dr. Loring? Could Mr. Bannister have asked
19 about that?

20 A I'm sorry. I'm not sure I understood your question.

21 Q So Mr. Bannister was given the opportunity at the
22 second sentencing hearing to cross-examine Dr. Loring
23 after Judge Miller questioned her as a court's witness.

24 A You're talking about after she had been threatened
25 and arrested?

1 Q Yes. And because you also had the opportunity to
2 tell him that she had called you, correct?

3 A I don't remember anybody asking me about it, to be
4 honest with you.

5 Q And then when Mr. Bannister cross-examined Dr. Loring
6 after Judge Miller did, could he have asked her questions
7 about this evidence that you're saying could have been and
8 should have been admitted?

9 A Are you asking me what Mr. Bannister could have done
10 at the trial?

11 Q Yes, sir.

12 A I'm not sure I can answer that question.

13 Q And anyone on the defense team could have.

14 A I'm sorry. Could I get you -- could you ask that
15 again? I'm not sure I follow you.

16 Q So anyone on the defense team could have asked
17 Dr. Loring during the cross-examination during the second
18 sentencing hearing what this evidence was and about the
19 evidence that you're saying now was not -- she did not get
20 to put into evidence and she did not get to testify to.

21 A And I'm sorry. I'm not trying to be obtuse up here.
22 I'm really not sure what you're asking me about.

23 Q So this evidence that now you're saying that here we
24 are ten years later and we're putting this -- you're
25 saying that there is evidence that should have gotten in

1 because there was a continuous motion made.

2 A Yes, ma'am.

3 Q Okay. So there's evidence that you believe should
4 have been admitted at the time of the second sentencing
5 hearing from Dr. Loring, correct?

6 A Again, I'm not quite sure what you're asking me, but
7 what I believe you're asking me is was there stuff we knew
8 about that we were not able to present at that first
9 hearing?

10 Q Yes.

11 A The answer to that would be -- we were involved in an
12 ongoing process to develop whatever evidence we thought
13 might be beneficial to Mr. Inman. We thought Dr. Loring
14 was capable of presenting some facts and some evidence
15 that she was not allowed to because of what happened at,
16 during and after the first hearing.

17 I can tell you that in our search for another -- or
18 for a subsequent mitigation person, expert, we became
19 aware of potentially some other beneficial information
20 that we thought might have been beneficial to Jerry. We
21 did not have the opportunity to develop that because we
22 didn't have the time to develop it.

23 Q And what was that that you think ---

24 A I'm not sure I can talk about that today.

25 Q And why not?

1 A Because it, number one, would be work product, and
2 number two, sitting here today having not looked at the
3 file in a long time, I just honestly don't know today.
4 You know, it's one of those things where I know there was
5 some stuff we were working on and that I know we would
6 have liked to further develop, but sitting here today, I
7 honestly don't remember what it was, and I maybe could go
8 back and start looking at the file again, try to re-create
9 all that. But sitting here today, I just don't recall.

10 MS. BUTTERBAUGH: One moment, Your Honor.

11 THE COURT: Certainly.

12 BY MS. BUTTERBAUGH:

13 Q So is the information that you're saying that
14 Dr. Loring left out, is it privileged or is it information
15 that you don't remember?

16 A I honestly don't remember what it was sitting here
17 today. Whether it was privileged for whatever reason or
18 not, I honestly don't remember. I'd love to be able to
19 answer that. I'd love to be able to tell you what it was.
20 I honestly don't recall.

21 Q So at the time when you knew that there was something
22 that Dr. Loring might be leaving out and the defense had
23 the opportunity to ask her about it during that second
24 sentencing hearing, you guys did not ask her about it,
25 correct?

1 A As I -- I'm sorry. I thought that was a question.

2 Q That was my question, yes.

3 A As I recall, Dr. Loring, at that second proceeding,
4 refused to testify.

5 Q No, sir. She testified first about what happened in
6 Georgia, and then she was called as a Court's witness and
7 testified about the mitigation. And then Mr. Bannister
8 cross-examined her, and then the State was allowed to
9 cross-examine her. So the defense team had an opportunity
10 to question her about all of her mitigation, the Court had
11 an opportunity to question her about the mitigation. So
12 that's my question to you today is, you had the
13 opportunity then when you did recall if there was
14 something she was leaving out and you did not take the
15 opportunity at that point to ask her about it.

16 A Your memory of what happened is a little different
17 than mine. And you're right. If we -- if we had -- I
18 honestly am not sure I can answer that question. I
19 honestly don't recall.

20 MS. BUTTERBAUGH: Okay. All right. Thank you, sir.

21 THE WITNESS: Yes, ma'am.

22 MS. BUTTERBAUGH: Thank you, Your Honor.

23 THE COURT: Cross-examine.

24 MR. GROSE: We appreciate your patience this week and
25 for being here, and we have no questions.

1 THE COURT: Very good.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: May he be excused?

4 MS. BUTTERBAUGH: Yes, sir. Thank you,
5 Mr. Culbertson.

6 THE COURT: Can we take a break? I've got an IT
7 problem.

8 (WHEREUPON, a recess is taken at 2:25 p.m.)

9 (WHEREUPON, proceedings reconvened at 2:34 PM.)

10 THE COURT: Is the applicant ready to proceed?

11 MS. HOLT: Yes, Your Honor.

12 MR. MITCHELL: We are, Your Honor.

13 THE COURT: Very good. All right. You may call your
14 next witness.

15 MR. MITCHELL: The State would call Mr. John Dejong
16 to the stand.

17 MS. HOLT: And I apologize, Your Honor. I didn't
18 mean to hold up the Court.

19 WHEREUPON,

20 JOHN DEJONG

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you, sir.

23 If you would, have a seat and state your name for the
24 record, please.

25 THE WITNESS: First name John, middle name William,

1 last name Dejong spelled D-E-J-O-N-G. It looks like
2 Dejong.

3 DIRECT EXAMINATION

4 BY MR. MITCHELL:

5 Q Mr. Dejong, how are you this afternoon?

6 A Pretty good.

7 Q Good. How long have you practiced law here in South
8 Carolina?

9 A I'm not good at math. Since May of 1975.

10 Q 1975.

11 And so how much of that time has been devoted to
12 criminal law?

13 A Probably 30 years.

14 Q 30 years?

15 A Yes, sir.

16 Q So turning our attention to this particular case, how
17 did you get involved?

18 A Rather interesting, but I'll try to be brief.

19 Initially, now Justice John Few summonsed me to his
20 chambers. I happened to be in Greenville. And he
21 appointed me on the spot there. Justice Few was then
22 later removed from the case, and Judge Miller was assigned
23 the case. Judge Miller -- I honestly don't remember if
24 Judge Few had already appointed Jim Bannister or not. I
25 do not recall that. A meeting with Judge Miller, he

1 appointed Jim Bannister as first seat for in terms of
2 communicating with the Court. And he said how we wanted
3 to work things out between -- betwixt us, he didn't care,
4 but that Jim would communicate with the Court.

5 Basically, he designated Mr. Culbertson as second
6 seat. Quite candidly, he was going to let me out, but I
7 reminded him of the statute. He said, "You're right. I
8 don't think I can let you out." So he appointed me of
9 counsel. I'm still trying to figure out what that means,
10 but that's what I was appointed, of counsel.

11 Q Fair enough. So you were public defender in Pickens
12 at the time, right?

13 A Yes, sir.

14 Q So by virtue of statute, you were ---

15 A Yes, sir.

16 Q Okay. So let me ask you, do you recall the initial
17 meeting you had with Mr. Inman at all?

18 A I think -- when Judge Few had called me to his
19 chambers, I think Mr. Inman was in Greenville. I went
20 back -- I went downstairs to the holding cell, talked to
21 him very, very briefly. And then they whisk him off, and
22 I don't know if I talked to him again until all counsel
23 was appointed. I don't -- I don't recall that I did, but
24 I may have. I don't know.

25 Q Okay. And I know you said you were kind of of

1 counsel. There were two other attorneys involved in the
2 case.

3 A Right.

4 Q Would all three of you guys meet with Mr. Inman
5 collectively or individually?

6 A There was a time or two I think when he was at Lee
7 all three of us went down to see him. Short of that, I
8 think probably the only time I was involved with
9 Mr. Bannister and Mr. Culbertson in speaking to Mr. Inman
10 is when we actually had a hearing here in the courthouse.
11 During the plea and the mitigation phase, we talked to him
12 there some.

13 Really, the agreement we -- the three of us had, as I
14 recall it, Mr. Culbertson had already established some
15 rapport with Mr. Inman, so he was going to be, for want of
16 a better term, the front man in dealing with Mr. Inman,
17 Mr. Bannister was going to pretty much take everything
18 else, and I was there to carry the bags.

19 Q Fair enough. So you had a somewhat limited role?

20 A I had a very limited role.

21 Q Fair enough. Fair enough. I guess let me ask you
22 this next question. You represented a lot of criminal
23 defendants, correct?

24 A I would say a lot. Yes, sir.

25 Q Is it fair to say that you would normally go over the

1 crimes that they were facing and the potential punishment
2 that they would face?

3 A Oh, sure.

4 Q So in this particular case, is that something that
5 you did or you were involved in conversations with
6 Mr. Inman?

7 A Personally, I did not do it. There may have -- I
8 don't know. When you get old like me, Mr. Mitchell, your
9 memory fades. But there may have been one time that we
10 got together with Mr. Inman. I don't recall that we went
11 over. It was more then of talking in terms of having a
12 jury trial or him pleading guilty and going into the
13 mitigation.

14 Q So before I get to that, let me ask you, and you may
15 not know, but do you know if Mr. Inman understood that he
16 could be -- obviously, he was served with the death
17 penalty -- or the death notice from the State, correct?

18 A Yes.

19 Q So he knew that he could be sentenced to death.

20 A I'm sorry. I didn't hear you.

21 Q So he knew that he could be sentenced to death by
22 virtue of that, correct?

23 A Oh, yeah.

24 Q Okay. Did he understand that he had an option of
25 pleading guilty or going the jury route? Do you know?

1 A I don't -- I never discussed that in depth with him,
2 so -- and how Mr. Bannister and Mr. Culbertson handled
3 that, I don't know. So I really can't answer that
4 question. Okay?

5 Q Fair enough. Did Mr. Inman ever relay to you that he
6 wanted to plead guilty?

7 A To me personally?

8 Q Yes. Or did you have any knowledge of it at all?

9 A He never relayed that to me personally.

10 Q Okay.

11 A I don't want to speculate as to what he shared with
12 Mr. Bannister and Mr. Culbertson outside of my presence.
13 I don't know.

14 Q Okay. So you just knew that he ultimately pled
15 guilty.

16 A Yes.

17 Q Okay. So you got to that route.

18 So I guess let me just ask you this. Pursuant to the
19 statute, when an inmate is served with a death penalty
20 notice, there's two available routes, right? You can
21 plead guilty to be sentenced by a judge, correct?

22 MR. GROSE: Objection. Calls for a legal conclusion.

23 MR. MITCHELL: He's a lawyer.

24 THE COURT: Wait a minute. Every case that is heard
25 by an appellate court you have two lawyers, at least.

1 Each one has an opinion as to what the law is. So let's
2 -- why don't we do this. First of all, do you have the
3 language of the statute with you?

4 MR. MITCHELL: I can pull it up.

5 THE COURT: Well, what I want to do is just find out
6 how he interprets that, and that would be his
7 interpretation. A lawyer is entitled to, what is it, an
8 interpretation.

9 THE WITNESS: I'll be happy to do that, Your Honor.

10 MR. MITCHELL: I can pull it up.

11 THE CLERK: Do you need a book?

12 THE COURT: I think I have it.

13 MR. MITCHELL: Do you?

14 THE COURT: Yeah. I had to pull it up myself.

15 All right. It's Section 16-3-20(B), and I've got it
16 highlighted and underlined.

17 MR. MITCHELL: May I approach, Your Honor?

18 THE COURT: Certainly.

19 BY MR. MITCHELL:

20 Q Take a look at that for me, Mr. Dejong.

21 A (Reviews document.)

22 THE COURT: You might ask him also if he's ever had
23 any experience with that particular provision of the law.

24 BY MR. MITCHELL:

25 Q So, Mr. Dejong, have you ever ---

1 THE COURT: No, no. Let him ---

2 THE WITNESS: Give me just a moment.

3 MR. MITCHELL: My apologies.

4 THE WITNESS: (Reviews document) Okay. And I just
5 read the pertinent part which His Honor had highlighted.

6 BY MR. MITCHELL:

7 Q Fair enough. So I guess let me back up one step.
8 Have you tried any death penalty cases before in South
9 Carolina?

10 A No. Got close, but we never -- death penalty got
11 taken off the table and we pled to life, so ---

12 Q Okay.

13 A So in terms of actually trying a death penalty case,
14 not to try to be short with you, no, I had never tried a
15 death penalty case before this.

16 Q But experience with dealing with clients who have
17 been served with notice.

18 A To some degree, yes.

19 Q So you've reviewed the statute now, correct?

20 A I have.

21 Q So based on your review of the statute, are there
22 options if a defendant pleads guilty or if he decides to
23 go to trial?

24 A Well, I would jump to the portion coming after "or."
25 Let me just start. "If trial by jury had been waived by

1 the defendant and the State," which that language is
2 fascinating, but I don't think that's where we are, "or if
3 the defendant pleaded guilty, the sentencing proceeding
4 must be conducted before the judge." And that's what was
5 discussed with Mr. Inman. I do know that. He had an
6 option of going to a jury trial with both a innocent-guilt
7 phase and then a mitigation phase, or we talked about if
8 he pled guilty, then he could not have a jury on the
9 mitigation phase as we understood the law.

10 Q I just want to make sure the record's clear that was
11 explained to Mr. Inman.

12 A Yes, sir.

13 Q Okay. So by virtue of him pleading guilty, he knew
14 that he would be sentenced by a judge.

15 A My understanding. I never heard that come over his
16 lips, but that's my understanding.

17 Q Fair enough. Fair enough. Let me ask you about
18 strategy or development of the case. I know you said that
19 you were of counsel in this particular case. Did you all,
20 as a defense team, ever do any type of mock jury or
21 anything to that effect?

22 A We did.

23 It wasn't -- I don't know what we called it,
24 actually. We brought some people in, basically shared
25 with them what the allegations of the case were, more to

1 see and judge their reaction than anything else. And
2 candidly, I think after we did that, it was pretty much
3 the consensus of the team that a jury trial was not
4 necessarily not in the best interest, but the allegations
5 we had to deal with would have been more than an uphill
6 battle in front of a jury.

7 Q I guess to follow up on that, let me ask you, what
8 information was presented to those participants in the
9 mock jury?

10 A I honestly don't recall. I was there. Mr. Bannister
11 and Mr. Culbertson did most of that. Actually, they did
12 all of it. I didn't do anything.

13 Q Fair enough. Were you involved in securing a
14 mitigation expert, Dr. Loring?

15 A No, I was not.

16 Q Ever had any communications with her at all?

17 A Probably during the course of the trial I had some
18 communications with her, but I don't think before trial I
19 did. Actually, I'm not sure if I would have known
20 Dr. Loring if I met her before the trial. I don't think I
21 would have.

22 Q Okay. Fair enough. Obviously, she -- well I guess I
23 should ask you, do you know if she's testified in any
24 other death penalty cases at all?

25 A Who? Dr. Loring?

1 Q Yes.

2 A Yes, she had. Quite a number, as I recall.

3 Q Okay. And prior to her testifying, do you know if
4 there was any type of strategy by the group in terms of
5 any issues that may come up with the solicitor?

6 A Well, again, if there was, I wasn't part of the
7 group that came up with the strategy. Let's put it that
8 way.

9 Q Fair enough. You said you weren't part of the group.
10 Were you aware of any type of strategy at all?

11 A I can't say that I am -- I was or even am.

12 Q Fair enough. You were here for Mr. Culbertson's
13 testimony earlier, correct, just a few minutes ago?

14 A Uh-huh.

15 Q And you heard him testify that some information was
16 left out from the mitigation.

17 A I heard Mr. Culbertson testify to that, yes.

18 Q What is your assessment of that? Are you in
19 agreement with ---

20 MR. GROSE: Objection. Pitting witnesses.

21 THE COURT: Restate your question.

22 MR. MITCHELL: Absolutely, Judge.

23 BY MR. MITCHELL:

24 Q Do you believe that information was left out?

25 A Again, I know this probably sounds ridiculous, but I

1 really didn't know what the mitigation specialist,
2 Dr. Loring, had before we went to the trial. So in terms
3 of anything being left out, I can't personally say that I
4 was or was not.

5 I know there were -- obviously, and I'm sure
6 everybody -- well, I haven't, but the transcript, there
7 were a lot of issues with Dr. Loring. I guess we finally
8 got that resolved, but I never talked to Dr. Loring before
9 she took the witness stand the first time.

10 Q Okay. Well, let me ask you this. You were there for
11 both portions of the sentencing hearing, correct?

12 A Yes, sir.

13 Q And so you saw all the witnesses testify, correct?

14 A Yes, sir.

15 Q Did Mr. Inman's sister testify?

16 A I'm sorry?

17 Q Mr. Inman's sister testify?

18 A I believe she did.

19 Q Okay. And also Dr. Price, correct?

20 A I believe he did.

21 Q And I know it's been a long time ago, so if you don't
22 know the answer, that's quite okay. Do you recall if
23 information about Mr, Inman's -- his growth from childhood
24 to his adulthood came in through his sister? Or did she
25 testify to anything in regards to that?

1 A I do not recall that.

2 Q What about Dr. Price?

3 A I don't recall that.

4 MR. MITCHELL: Fair enough. Beg the Court's
5 indulgence, Your Honor.

6 THE COURT: Certainly.

7 BY MR. MITCHELL:

8 Q Let me ask you, were you aware of Dr. Loring
9 contacting any member of the defense team?

10 A Of Dr. Loring contacting who?

11 Q Any member of the defense team when she was in
12 Georgia at all.

13 A No.

14 Q So no knowledge of anything in that regard?

15 A No.

16 Q Okay.

17 A I can't say it did or did not happen. I just didn't
18 have any knowledge of it.

19 MR. MITCHELL: Okay. Fair enough.

20 Judge, that's all the questions I have for this
21 witness.

22 THE COURT: Cross-examine.

23 MR. GROSE: Thank you, Your Honor. If I could have a
24 moment please.

25 THE COURT: Sure.

CROSS EXAMINATION

BY MR. GROSE:

Q At the time when Judge Miller was making the decisions about appointments, you were the public defender for Pickens County.

A Yes, sir.

Q And you had a lot of cases pending at the time.

A Yes, sir.

Q And do you recall Judge Miller recognizing that during the appointment hearing?

A He did. And in candor, maybe I shouldn't say, but I think that's one reason he wanted to let me out of this capital case.

Q Because he was interested in the welfare of your clients as well as the welfare of Mr. Inman.

A Yes, sir.

Q Okay. Now, I'm going to show you what's been previously entered into evidence as Applicant's Exhibit Number 7. And I realize that's kind of a long document. Can you take a look at that?

A (Reviews exhibit) It is rather lengthy.

Q It is rather lengthy.

A I am somewhat familiar with this one being prepared. I have looked at it very, very hurriedly.

Q Okay. All right. Were you involved -- and what this

1 is, is this just a motion and memorandum to determine mode
2 of trial?

3 A Correct.

4 Q All right. And were you involved in any of the legal
5 research that went into this pleading?

6 A No, sir. I was not.

7 Q And so you would have to defer to Mr. Bannister
8 regarding the preparation of this pleading.

9 A Yes, sir.

10 Q And the research that went into the pleading.

11 A Yes, sir.

12 Q And the conversations that he had with Jerry Inman
13 about this pleading.

14 A Yes, sir.

15 Q And the efforts that he made in order to preserve
16 this issue for appellate review.

17 A Yes, sir. I observed some of those, but not through
18 that document as such.

19 Q And he was -- he being Mr. Bannister was quite
20 thorough in preparing the issue regarding the mode of
21 trial for appellate review, wasn't he?

22 A Very much so.

23 MR. GROSE: That's all the questions I have. Thank
24 you for being here today.

25 THE COURT: Redirect?

1 MR. MITCHELL: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MITCHELL:

4 Q Mr. Dejong, did Mr. Inman understand that he could
5 have a jury trial?

6 MR. GROSE: Objection. Calls for speculation.

7 THE COURT: Well, actually, it's sort of a violation
8 of the Rules of Civil Procedure. Was that brought out on
9 cross-examination?

10 MR. GROSE: I don't think it was. Just that
11 document. Beyond the scope.

12 THE COURT: Well, since it wasn't raised, I'll permit
13 the question limited. You can answer it, if you would.

14 THE WITNESS: What was the question?

15 BY MR. MITCHELL:

16 Q Was Mr. Inman aware that he could waive his right to
17 a jury trial?

18 A I believe he was, yes.

19 MR. MITCHELL: Okay. And just a follow-up on that
20 question, if I can, Your Honor.

21 BY MR. MITCHELL:

22 Q If a defendant waives a jury trial, what are the
23 options?

24 A Are you talking under the statute we discussed
25 earlier?

1 Q Yes, sir.

2 A Well, the options are sentencing is left to the
3 judge, as I read the statute.

4 Q So there could be a bench trial or he could plead
5 guilty, right, before you get to the sentencing part of
6 it?

7 A Yeah. I guess technically, you could have tried the
8 innocent-guilty phase before the judge at a bench trial,
9 but that's not exactly where we were, as I recall.

10 MR. MITCHELL: Thank you.

11 RECROSS EXAMINATION

12 BY MR. GROSE:

13 Q And just to follow that, you've not researched the
14 constitutionality of the statute in the manner that
15 Mr. Bannister did in preparing that exhibit I showed you,
16 have you?

17 A I'm sorry, Mr. Grose. I didn't quite catch all that.

18 THE COURT: Come forward.

19 BY MR. GROSE:

20 Q With regard to researching the constitutionality of
21 South Carolina's judge sentencing death penalty procedure,
22 you've not research that in the same manner that
23 Mr. Bannister did to prepare Applicant's Exhibit No. 7.

24 A I couldn't even come close to what Mr. Bannister did.

25 MR. GROSE: Thank you. That's all I have.

1 MR. MITCHELL: Your Honor, I ask that this witness be
2 excused.

3 MR. GROSE: No objection.

4 THE COURT: All right. Without objection, you may be
5 excused.

6 THE WITNESS: After this long week, am I really
7 excused from that subpoena? Thank you, Your Honor.

8 THE COURT: They have one more question.

9 All right. You may call your next witness.

10 MS. BROWN: Your Honor, we have no other witnesses,
11 but we do have a proffer of the questions that we would
12 have asked Mr. Inman had he agreed to transportation and
13 we could have called him in our case.

14 THE COURT: Just the questions.

15 MS. BROWN: Yes, sir.

16 THE COURT: Not the answers.

17 MS. BROWN: Correct. Because we want the questions
18 in there as we had discussed because of the adverse
19 inference, which he was advised there could be an adverse
20 inference if he failed to testify.

21 THE COURT: What do you say about that, Mr. Grose?

22 MR. GROSE: I haven't seen the proffer.

23 THE COURT: Well, let's see what it is.

24 Well, let's go off the record, and you take some time
25 to consider the proffer -- or the request, and be prepared

1 to either agree to it or tell me why not.

2 MR. GROSE: Yes, sir.

3 THE COURT: And so we'll stand at ease to the call of
4 the parties.

5 (WHEREUPON, a recess is taken at 3:00 p.m.)

6 MR. GROSE: We have no objection to them proffering
7 that. We don't want our lack of objecting to the proffer
8 to be construed as whether or not they had a right to call
9 Mr. Inman as a witness or not. That's a separate legal
10 conclusion.

11 THE COURT: Very well. Any objection to his lack of
12 an objection or want of an objection?

13 MS. BROWN: No objection to the lack of objection,
14 Your Honor.

15 THE COURT: All right. Let's say want of an
16 objection. I've always liked to use that phrase.

17 MS. BROWN: Yes, sir.

18 Proffer of the questions that we would have proposed
19 to the applicant, Jerry Buck Inman ---

20 MR. GROSE: I thought we were just going to put the
21 document into the record as an exhibit.

22 THE COURT: Very well. That's going to get us to a
23 point that, what is it, I can read, if that's what you're
24 concerned about. But that is going to be a part of the
25 record, so I will consider it along with the other

1 exhibits as well as information contained in the record.

2 MS. BROWN: And I don't mind offering the written
3 document, which probably would be easier on Your Honor.
4 But I wondered if I could read it into the record so it
5 would be part of the transcript.

6 THE COURT: How many pages are we talking about?

7 MS. BROWN: Two full pages and a little bit on the
8 third.

9 THE COURT: Will you be bound by your reading of the
10 document as compared to the wording of the document, in
11 other words, if you misstate something, or would you be
12 more comfortable relying on the printed questions?

13 MS. BROWN: Either ---

14 THE COURT: I'm just asking. I can tell you that I
15 can read something that is in print and many times miss
16 something, and I always tell juries, you know, you need to
17 be concerned about, what is it, the testimony. Of course,
18 if somebody either inserts a word or leaves out a word, it
19 can change a meaning entirely.

20 And always use the word "not." You think you hear
21 the testimony, and the testimony claimed the not, or did
22 it not? So, I mean, that's why I just say I would suggest
23 if you've got something in writing that you are
24 comfortable with, it's been looked at, edited and all the
25 other, I would probably go with that because I'm not going