

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Sep 23 2020

On Petition for Writ of Certiorari to Court of Common Pleas

CAPITAL PCR ACTION

S.C. SUPREME COURT

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 8 OF 10**

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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.

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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 You will see attached to the renewed motion for
2 recusal of the Thirteenth Circuit Solicitor's Office --

3 THE COURT: Hang on for one second.

4 (Pause.)

5 THE COURT: Mr. Bannister --

6 MR. BANNISTER: Yes, Your Honor.

7 THE COURT: -- before you proceed on your motion, I'd
8 ask you to come up and sign and date the motion.

9 MR. BANNISTER: I'm sorry. I've had a number of -- I
10 thought I had taken care of that.

11 THE COURT: I've got a copy. So I'll just put --

12 MR. BANNISTER: I apologize, Your Honor.

13 THE COURT: That's all right.

14 Go ahead now.

15 MR. BANNISTER: I'll check and make sure the other
16 ones aren't the same.

17 THE COURT: All right.

18 MR. BANNISTER: Your Honor, if you recall, when I
19 made the oral motion for mistrial, I said that one of the
20 things that I needed time to investigate and one of the
21 things that I needed time to get whatever documents and
22 information was out there was a case that bore striking
23 similarities to this case. And that case was State v.
24 Michael Laney.

25 It was a capital case in which Solicitor Ariail and

 ORIGINAL

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Edward W. Miller, Circuit Court Judge

RECEIVED

MAR 16 2011

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JERRY BUCK INMAN,

APPELLANT

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1 Deputy Strom -- Deputy Solicitor Strom were involved.
2 It's was a case where a Defendant's expert was on the
3 stand and issues regarding the licensing statutes in South
4 Carolina pursuant to Title 40 were raised, a reference was
5 made at trial in front of the witness to the criminal
6 penalties of that statute.

7 In that case, like this case, the proceedings were --
8 came to a halt. During the time period between when Laney
9 was halted, after that issue had been raised, until the
10 time when that case was, ultimately, resolved, there was a
11 letter that went to that expert witness attempting to
12 illicit more testimony. But, in any event, prior to the
13 final hearing in State v. Michael Laney, there was a
14 number of meetings and some memorandums sent from the
15 Solicitor's Office to the Defense attorneys who were
16 representing Michael Laney. And those memorandums,
17 specifically, dealt with the motion by the Defense, at
18 that time, regarding prosecutorial misconduct in State v.
19 Laney.

20 Now, those memos, without going into what was said
21 exactly, refer to "we." It, also, refers to "Bob,"
22 specifically. I believe that "we" and I believe that that
23 reference to "Bob" are Deputy Solicitor Strom and
24 Solicitor -- Mr. Ariail. As a result, I believe that they
25 are, in fact, material witnesses to what was going on

1 around that particular memo.

2 So I think as a result of the fact that they are
3 witnesses, based on the documents and evidence that we've
4 been able to obtain, that their office, at a minimum,
5 ought to be recused as a result of that.

6 That's my motion.

7 THE COURT: Well, Mr. Bannister, that would be a
8 serious -- I don't know if sanction is the right word.
9 And, I mean, you've said "I believe" and "I think." And,
10 I mean, it sounds like grassy knoll stuff. Before I'd
11 even consider it, you know, it's going to have to be more
12 than conjecture on the part of an adversary.

13 MR. BANNISTER: Well, that's the -- that is in
14 part -- I guess one of the reasons I'm bringing it up
15 right now, because it, certainly, has the potential to
16 create another issue in this case going forward. I mean,
17 it's clear that the Solicitor can't serve two masters, in
18 this instance, both be a witness and be the lawyer in the
19 case. In fact, that's one of the reasons that we filed
20 our other motion, which I'll go ahead and -- I want to
21 make sure it's signed.

22 (Pause.)

23 MR. BANNISTER: And that is a motion to determine the
24 role of Solicitor Ariail and the Prosecution team.

25 Judge, in that motion, I point out that we're

1 prepared to call a number of witnesses who can describe
2 the events around the Laney case and the memo that
3 resulted in the Laney case. I anticipate those witnesses
4 will be testifying as to their interpretation of the memo,
5 the meetings that they had with Solicitor Ariail, and what
6 that meant to Laney and to the case.

7 Furthermore, they'll be testifying that certain
8 handwriting that's on those memos is not any member of the
9 Defense team. And we believe that's going to be Deputy
10 Solicitor Strom's handwriting. And I'm prepared to go
11 forward without the Solicitor or members of the
12 prosecution team being called as witnesses. I'm prepared
13 to go forward and not have them as witnesses. But there's
14 got to be a determination on the front end as to what role
15 they're going to play. Because if they are going to,
16 eventually, be witnesses, they're my first witness. If
17 they're not, then fine. But they need to remain lawyers
18 throughout the case.

19 And I cite, Judge, two cases, one of which is State
20 v. Lee, which says very, specifically, it's not the usual
21 practice, but if a solicitor is going to become a witness,
22 then he's got to recuse himself from the trial of the
23 case. And then I, also, cite to State v. Capps, which
24 deals with the ethics of being both a witness and a lawyer
25 and, basically, says you just can't do it.

1 What I want to avoid, Judge, is a situation where we
2 put up a strong case of intentional prosecutorial
3 misconduct and then either by assertions of, well, I'm an
4 officer of the Court, or by the Solicitor calling Deputy
5 Solicitor Strom, or vice versa, or both, we end up in
6 violation of this particular -- these cases.

7 And to put a Constitutional underpinning to the
8 motions, Judge, again, this issue is literally a life or
9 death issue for the Defendant. We believe that it's a
10 strong enough showing on prosecutorial misconduct to
11 warrant the imposition of the double-jeopardy clause and
12 life without parole.

13 So to get a factual record --

14 THE COURT: So your position is that Mr. Ariail
15 committed misconduct to goad you into moving for a
16 mistrial, and that, as a result, double jeopardy attaches
17 and --

18 MR. BANNISTER: That's correct.

19 THE COURT: All right. Go ahead. I'm sorry to
20 interrupt.

21 MR. BANNISTER: Judge, we've got -- I mean, I think
22 that's a -- I mean, that's my last motion. And I think
23 we'll get into it at some point. But I'm just -- let me
24 state, for the record, what the Constitutional rights are
25 as I believe it relates to these two motions, either a

1 motion to recuse or a motion to determine the Solicitor's
2 role here immediately.

3 If what we believe is correct and it could result in
4 life without parole, then we are entitled under the Eighth
5 Amendment to put that evidence before the Court.
6 Furthermore, you've got the Sixth Amendment right to
7 compulsory process and cross-examination. And if the
8 Solicitor's Office tries to put in evidence like that,
9 then we would object based on those rights.

10 THE COURT: Anything else?

11 MR. BANNISTER: Judge, I think, finally, I have a
12 motion, again, which was previously submitted to the
13 Solicitor, but I've got copies just in case, to suspend
14 the proceedings at this point. And I think primarily that
15 is with relation to this Georgia issue that we've got and
16 creating a factual record for that.

17 Furthermore, I think we all need to be able to take a
18 step back and get an idea as to how we're going to proceed
19 so that we can be prepared for what's going to happen
20 next. I mean, obviously, we've got Dr. Loring here, you
21 know, and -- and I need to know what role is the Solicitor
22 going to take. Are you going to allow us to have him as a
23 witness? Is that going to require recusal?

24 I mean, there's a lot of things, I think, that need
25 to be taken into account before we get into the final push

1 to determine the motion for misconduct and double
2 jeopardy.

3 So I'm asking the Court for some ruling on these
4 matters today.

5 THE COURT: Well, in some document that you handed to
6 me, you accused him of a crime. And, based on that, if I
7 made him a witness, why wouldn't he get up and claim the
8 Fifth Amendment?

9 MR. BANNISTER: If he did, we'd have to deal with it.

10 THE COURT: Well, you're not going to have to because
11 I'm not going to recuse the Solicitor -- well, before I
12 say that, maybe he wants to be recused.

13 Solicitor, anything you want to say? Do y'all have
14 any response?

15 MR. ARIAIL: Yes, we do.

16 Just to get the record -- the response -- well, let
17 me see which ones he's filed. Motion to suspend
18 proceedings.

19 Let me hand up to the Court our response, which,
20 also, attaches to it. And I'll get the Clerk to staple
21 that.

22 The affidavit of Mr. Geary and the basis of their
23 motion is the alleged involvement somehow of the
24 Solicitor's Office in the Georgia service of the
25 out-of-state subpoena. And that will be our response on

1 that issue.

2 Then we do not have a response -- we have not
3 prepared a response on his motion for recusal, which he
4 just handed to us -- I mean -- or excuse me -- for
5 determining the role of the Solicitor and the prosecution
6 team. As to the recusal motion, let me hand this up,
7 also.

8 Now, Your Honor, I can say that when we filed this
9 response, now that he's filed his motion, that doesn't
10 fully address -- the draft of the motion that was sent to
11 us did not talk about Laney. It focused -- the motion
12 focused solely on the Georgia proceedings.

13 So, therefore, this response has in it the affidavit
14 of Mr. Geary. And it does not relate to the Laney issue
15 that he's raised.

16 THE COURT: Well --

17 MR. ARIAIL: And I haven't had a chance to look at
18 the case law that he's talking about. But I do not see
19 wherein there's a conflict with the Solicitor representing
20 the State in the case of State v. Inman as an active case
21 of guilt and sentencing, as opposed to being a witness
22 about what happened in a prior case. It's totally
23 unconnected, totally unrelated.

24 So I'm not sure where the conflict would lie. But be
25 it as it may, if it does arise, it does arise. I'm fully

1 prepared to factually respond to all of this stuff with
2 appropriate witnesses. And I don't think it's necessary
3 for us to be witnesses to present our case. And I'm not
4 heading in that direction. And I, certainly, don't want
5 to be recused, not at this late date.

6 THE COURT: All right. Well, Mr. Bannister, I'm not
7 going to -- just based on your motion and what you've put
8 up so far, I'm not going to recuse him. I don't think
9 there are grounds to do it.

10 You've alleged prior -- you've made -- you've talked
11 about what you intend to do. And that doesn't give me a
12 basis to relieve an attorney.

13 MR. BANNISTER: I think I've, also, said, Judge, that
14 if there's a potential that the Solicitor is going to be a
15 witness, then I intend to call him as my first witness.

16 THE COURT: Well --

17 MR. BANNISTER: So, you know, I --

18 THE COURT: Mr. Bannister, we're all aware of the
19 rules. He is not a witness. He is an advocate in this
20 case.

21 So I guess what you're asking me to do is limit what
22 it is he can -- information he can present to the Court.

23 Is that not your alternative?

24 MR. BANNISTER: I'm saying either he is a witness or
25 not for his purposes in this prosecutorial --

1 THE COURT: Well, he's not. He's not a witness.

2 MR. BANNISTER: If he's saying he's not, then that's
3 fine.

4 THE COURT: Okay. This whole thing is based on a
5 statement made by the Solicitor on September 10th, during
6 the voir dire of Dr. Marti Loring. It was an
7 inappropriate comment. It resulted in a seven-month delay.

8 Even if it's characterized as misconduct, where is
9 the prejudice?

10 (There was no response.)

11 THE COURT: So let's move forward and that's what
12 you're going to put witnesses up to show. Because I told
13 you I'd give you a chance to put up evidence --

14 MR. BANNISTER: Right.

15 THE COURT: -- to put a foundation under your
16 mistrial motion.

17 So let's proceed.

18 MR. BANNISTER: Thank you, Your Honor.

19 Then let me go ahead and formally file the renewed
20 motion for mistrial. This is a motion to impose life
21 without parole, and memorandum in support thereof. This,
22 again, is a -- I've given the Solicitor, at least, a rough
23 draft as early as I could this past week.

24 THE COURT: Okay.

25 MR. BANNISTER: This is the official version.

1 All right. Judge, the Defense would call John
2 Mauldin as the first witness.

3 THE COURT: Come around, Mr. Mauldin.

4 THE CLERK: If you would, place your left hand on the
5 Bible and raise your right.

6 WHEREUPON,

7 JOHN MAULDIN,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you, sir.

10 You may be seated.

11 DIRECT EXAMINATION

12 BY MR. BANNISTER:

13 Q Mr. Mauldin, if I may, let me take you back in time
14 to the State v. Michael Laney trial. And would I be
15 correct in saying that there were some hearings that took
16 place in that case on April 12th, 2007?

17 A Yes.

18 Q And Michael Laney was a defendant who had been served
19 with a death notice; is that correct?

20 A He had been previously convicted and sentenced to
21 death, remanded for resentencing, and the State had
22 expressed their intention to seek the death penalty, once
23 again, in the resentencing. That's where it was
24 procedurally.

25 Q And so, much like where we are today, you were in a

1 sentencing-only proceeding with Michael Laney?

2 A That's where we were headed, yes.

3 Q And were there some issues that had come up that you
4 had raised with regard to how that case proceeded?

5 A The question was whether or -- the question that had
6 to be litigated with whether or not Michael Laney was
7 retarded. Because there had been an intervening U.S.
8 Supreme Court case that prohibited the death penalty in
9 the case of retarded defendants. So that issue had to be
10 litigated in the process of moving toward a sentencing.

11 Q All right. And that Supreme Court case was Atkins,
12 the case that you're referring to?

13 A Yes.

14 Q So there was going to be an Atkins hearing?

15 A That's right.

16 Q And the issue at that hearing was going to be whether
17 or not the Defendant was mentally retarded?

18 A Yes.

19 Q And would that have been, potentially, a dispositive
20 issue for the case?

21 A It would have been dispositive had the Court held
22 that he was mentally retarded. If the Court had held he
23 was not, based upon the pre-trial hearing, then the matter
24 would proceed to a normal sentencing hearing where the
25 issue of retardation would have been submitted to the

1 jury, and it could have been considered.

2 Q With regards to mental retardation, how did you
3 intend to present evidence of Michael Laney's mental
4 retardation?

5 A Well, we contacted a witness regarding the
6 retardation issue and had that witness work up the case
7 for retardation.

8 Q And who was that witness?

9 A Dr. Caroline Everington.

10 Q And did Dr. Everington, eventually, appear at the
11 April 12th, 2007, Atkins hearing?

12 A She did.

13 Q And, if you can, to the best of your recollection,
14 can you describe what happened?

15 A The witness was called. She was -- her direct
16 examination -- well, she was, first of all, qualified as
17 an expert in that -- in the area of retardation. The
18 Court held that she was an expert.

19 And then she was allowed, of course, to offer an
20 opinion regarding her findings with regard to Michael
21 Laney. The direct examination was concluded. And then
22 the State was given an opportunity to cross-examine her.

23 Q All right. To the best of your recollection, what
24 did the State do during that cross-examination?

25 A The -- and I will say, quite candidly, that,

1 obviously, the transcript of that hearing is the best
2 evidence of what happened. I mean, it's been a couple of
3 years now.

4 But, at the beginning of the cross-examination,
5 questions were asked of the witness about her familiarity
6 with a certain statute regarding the practicing of
7 psychology and so forth. And then there was a dialogue
8 between the Solicitor and the Court regarding that
9 situation. And that was at the beginning of her
10 cross-examination.

11 MR. BANNISTER: Let me have this marked.

12 Your Honor, I'm having a partial transcript of record
13 of the State v. Michael Laney -- this is the April 12th,
14 2007, hearing where the direct examination has concluded,
15 and Solicitor Ariail is beginning his cross-examination.

16 MR. ARIAIL: What pages are you marking?

17 MR. BANNISTER: I am marking -- this is in Exhibit A
18 of my memorandum. But, specifically, it's a partial
19 transcript and the pages are Page 28 through -- I'm sorry.
20 It's Page 28, Page 57, 58, 105, 106, 107, and 108.

21 (WHEREUPON, Defendant's Exhibit No. 35 was marked for
22 identification only.)

23 BY MR. BANNISTER:

24 Q If I could, Mr. Mauldin, could I have you just review
25 briefly that transcript?

1 MR. BANNISTER: I would like to have this marked.

2 (WHEREUPON, Defendant's Exhibit No. 36 was marked for
3 identification only.)

4 THE WITNESS: I've perused it. Obviously, I
5 haven't -- but I have it here.

6 BY MR. BANNISTER:

7 Q All right. Well, refer to it if it helps refresh
8 your recollection since you have referred to it.

9 MR. BANNISTER: And, Judge, at this point, I would
10 move the transcript -- or, at least, the portions I've
11 provided into evidence. I mean, they're part of my
12 motion.

13 Is there any objection?

14 MR. ARIAIL: No.

15 THE COURT: No objection.

16 MR. BANNISTER: Thank you.

17 MR. ARIAIL: Just as to completeness. We may
18 supplement that.

19 THE COURT: Yes. That's fine.

20 (WHEREUPON, Defendant's Exhibit No. 35 was admitted
21 into evidence.)

22 BY MR. BANNISTER:

23 Q So, Mr. Mauldin, the section you're referring to, was
24 it a licensing section, Title 40-55-50?

25 A The transcript cites 40-55-55 on Page 106 of this

1 exhibit that you've handed me.

2 Q That's correct. You corrected me.

3 Thank you.

4 A Well, and I would not have been able to correct you
5 if it hadn't been written right here on the paper.

6 Q And was that the statute the Solicitor based his
7 objection to Dr. Everington on?

8 A Well, that was the one that was cited in these
9 questions.

10 Q Okay. And, to your recollection, were -- did the
11 Solicitor make specific note that that statute carried
12 criminal penalties?

13 A Yes.

14 Q Did he do that at the hearing -- at the Atkins
15 hearing in front of Dr. Everington?

16 A Yes.

17 Q So this was not prior to his cross-examination
18 outside her presence?

19 A No. This was -- we took -- after the direct
20 examination, we took a break. And in looking at
21 this page -- this transcript, it looks like it must have
22 been like the lunch break.

23 Yeah. The first question of the Solicitor was, Over
24 the lunch break, I had asked that you review. So,
25 apparently, there was a lunch break. And then when we

1 came back, the very first question from the Solicitor was
2 regarding this statute. And it cited at 40-55-50 for
3 definitions, and 40-55-55 for penalties.

4 Q All right. At some point, did Dr. Everington
5 conclude her testimony at that hearing?

6 A Yes, she did.

7 Q All right. And did the -- based on your involvement
8 in the case, at that point, did the reference to a
9 criminal statute and how that might implicate
10 Dr. Everington's testimony have an adverse impact on your
11 case and Dr. Everington, in particular?

12 A Well, it -- I mean, obviously, we -- this was not a
13 matter that had been taken up at any time prior to that --
14 what is reflected in the transcript.

15 So we had to determine the impact. Because she would
16 have to have testified in front of the jury at a later
17 occasion. And it -- in our view, as the Defense
18 representing Mr. Laney, it had an extraordinarily adverse
19 effect regarding her involvement in the case.

20 Q In what way?

21 A Well, I mean, it was a very extraordinary experience.
22 The witness -- if you'll look at the transcript, the
23 witness was advised of criminal penalties that were,
24 potentially, being violated. It was cited that it was a
25 felony. It was cited that it carried a prison -- a

1 potential prison sentence and a substantial fine. And
2 this was while she was on the witness stand.

3 And it was necessary, at least, from our point of
4 view, to file a subsequent motion. And I've got a copy of
5 it. We filed it within a matter of days regarding whether
6 the conduct constituted prosecutorial misconduct for
7 threatening a witness.

8 Q All right. Let me hand you what's been marked as
9 Defendant's Exhibit No. 36.

10 MR. BANNISTER: And this would be at Tab B of the
11 memorandum, Your Honor.

12 BY MR. BANNISTER:

13 Q And I'll ask you if that is the motion that you're
14 referring to?

15 A This -- yeah. This is the initial motion that we
16 made four days -- the morning -- at 8:29 on the morning of
17 April 16th, 2007, we filed this motion.

18 Q And, if you would, just summarize, what was the --
19 were the issues that you raised and the relief you were
20 requesting in that motion?

21 A Well, the position that we took was, first of all,
22 that Dr. Everington was an expert in that particular
23 field, that her conduct had not violated a statute, and
24 that the Solicitor had exceeded proper bounds when he
25 had -- what we classified as improperly threatened the

1 Defense witness for the purpose of intimidating the
2 witness and denying the witness due process -- I mean,
3 denying the Defendant due process. That was the essential
4 elements of the motion that was filed on April the 16th.

5 And it's a -- it was filed in the Greenville County
6 Clerk's Office, so.

7 Q Any question that there are cases cited within that
8 memorandum and the motion dealing with the Defendant's
9 Constitutional rights as it related to a Prosecutor's
10 intimidation of a witness?

11 A Well, I mean -- and the motion itself, which is
12 Defendant's Exhibit No. 36, from a substantive point of
13 view, it speaks for itself regarding case authority and
14 rules of professional conduct.

15 Q Well, I guess, what I'm really asking is, there was
16 some research done to underpin the motion --

17 A Yes.

18 Q -- with a basis --

19 A Yes. We attempted to support the motion with
20 authority.

21 Q And did you, also, raise ethical issues of what the
22 Solicitor had done?

23 A The -- and the question was what?

24 Q And did you, also, raise ethical issues with the way
25 in which the Solicitor had handled that issue?

1 A The second heading regarding the conduct of the
2 Prosecutor relates to the rules of professional conduct
3 and, specifically, the rules regarding the activity of the
4 Prosecutor.

5 Q And do you recall, specifically, what it was
6 about what he had done that was the basis for the
7 complaint?

8 A The -- and I don't know if this is responsive. But
9 the conduct was, from our view, an effort -- see, the
10 witness was -- if Judge Welmaker had agreed at the first
11 hearing, as a matter of law, on a legal determination that
12 Mr. Laney was retarded, then the case would, essentially,
13 have been over. That would have ended the case.

14 Had the Court ruled that the Defendant, Mr. Laney,
15 was not retarded, in his view, having heard the testimony
16 of the witnesses, then the matter would have gone to a
17 second hearing. So the witness would have, essentially,
18 needed to testify a second time.

19 And it was our impression that the efforts of the
20 Prosecutor, in that particular situation, was to
21 intimidate or threaten the witness so that she would be
22 reluctant to participate in any subsequent hearing. And
23 that really was the essence of what we were trying to
24 convince the Court. And that such a situation would have
25 resulted in a denial of due process to the Defendant and

1 his sentencing proceeding.

2 Q And, as I understand it, also, part of the issue that
3 you raised was the way in which the Solicitor had asked
4 the questions of Dr. Everington? And I'm looking at
5 Page -- well, they're not numbered. But I'm on about Page
6 5 of your motion to quash the death notice, based on
7 prosecutorial misconduct.

8 A The -- and I'm not -- would you repeat the question?
9 I'm not real sure what --

10 Q I'm asking you, wasn't there an issue with the fact
11 that the way the Solicitor had asked the questions of
12 Dr. Everington was part of the ethical violation that you
13 were alleging?

14 A Well, the -- again, what I'll have to say,
15 Mr. Bannister, is that the transcript that I've been
16 handed and the motion that we, subsequently, filed, what
17 we asserted constituted misconduct, that the misconduct
18 was supported by the transcript, and the authorities were
19 cited in the motion. And that the result was that the
20 effectiveness of the witness, at a subsequent hearing,
21 would be effected by having been threatened or intimidated
22 at the pre-trial hearing. And that's kind of the essence
23 of what we were complaining about.

24 (WHEREUPON, Defendant's Exhibit No. 37 was marked for
25 identification only.)

1 BY MR. BANNISTER:

2 Q At some point, after having filed your motion, did
3 you receive a response from the State?

4 A They -- yes, sir.

5 MR. BANNISTER: And, Your Honor, at this time, I'd
6 move in the motion itself as an exhibit. Again, it's at
7 Tab B in my memorandum.

8 THE COURT: Any objection?

9 MS. STROM: May I see it?

10 MR. BANNISTER: It's Defendant's Exhibit No. 36.

11 MS. STROM: And that's your motion?

12 MR. BANNISTER: No. This is --

13 THE COURT: It's the Defense motion in the Laney
14 case.

15 MR. BANNISTER: Filed by Mr. Mauldin.

16 MS. STROM: And that's your Tab B?

17 MR. BANNISTER: That's my Tab B, yes.

18 MS. STROM: No objection.

19 THE COURT: Okay. Without objection.

20 (WHEREUPON, Defendant's Exhibit No. 36 was admitted
21 into evidence.)

22 BY MR. BANNISTER:

23 Q Now, let me let you look at Defendant's Exhibit No.
24 37, which is the State's memorandum in opposition to
25 Mr. Mauldin's motion in Laney.

1 Mr. Mauldin, do you remember receiving that?

2 A Yes.

3 Q And I'm sorry. What's it been marked as?
4 Defendant's Exhibit?

5 A Defendant's Exhibit No. 37.

6 Q All right. In that -- between the time that you
7 filed your motion and the State filed their response, do
8 you recall, specifically, there being any communications
9 with the Solicitor's Office about negotiating the Laney
10 case?

11 A All right. This is between the filing of Defendant's
12 Exhibit No. 36 and the receipt of Defendant's Exhibit
13 No. 37?

14 Q Yes.

15 A I can -- I guess I can say, in a general way, that we
16 were always attempting to negotiate a resolution. It was
17 always on the front burner, as far as I was concerned.

18 Now, whether or not there was a specific
19 communication or contact between the Solicitor, Deputy
20 Solicitor, or anybody else and me or co-counsel between
21 those dates, I can't really -- I don't have any
22 references, but we may very well have been talking.

23 Q Was there anything in the State's memorandum that
24 made you feel like the position you had taken in your
25 initial motion was weak or was not, in fact, the correct

1 assertion of the law and the ethics rules that apply?

2 A Well, we, obviously, had a serious disagreement as to
3 the law, the applicability of the statute. And,
4 obviously, they were not agreeing that they had committed
5 misconduct. So there was, clearly, a dispute.

6 Q Well, sometimes -- obviously, countervail authority
7 will be presented, which may make you question your
8 position. Did you feel like that had been done when the
9 State responded?

10 A We were still very -- we were convinced about the
11 strength of the position that we had taken.

12 Q And did you, in fact, file a reply memorandum to the
13 State's response?

14 A We did.

15 MR. BANNISTER: I would like to have this marked.

16 (WHEREUPON, Defendant's Exhibit Nos. 38 and 39 were
17 marked for identification only.)

18 BY MR. BANNISTER:

19 Q I'm going to let you take a look at what's been
20 marked as Defendant's Exhibit No. 38. And while you're
21 looking at that --

22 MR. BANNISTER: Judge, if I could move into evidence
23 Defendant's Exhibit No. 37.

24 THE COURT: Any objection?

25 MR. ARIAIL: Defendant's Exhibit No. 37 is our

1 response?

2 THE COURT: Your response.

3 And then he's going to move as Defendant's Exhibit
4 No. 38 the reply memorandum.

5 Do y'all have an objection to either one of those?

6 MR. ARIAIL: No.

7 THE COURT: All right. They're both in evidence.

8 (WHEREUPON, Defendant's Exhibit Nos. 37 and 38 were
9 admitted into evidence.)

10 THE WITNESS: This Defendant's Exhibit No. 38 is the
11 Defendant's reply memorandum filed on May the 21st.

12 BY MR. BANNISTER:

13 Q All right. And just to summarize. At that point,
14 you were, again, raising the same issues that you had
15 raised before?

16 A Right.

17 Q And asserting the same misconduct and ethical
18 problems as there was before?

19 A Yeah. And I don't recall the Court requiring that.
20 But the -- what we felt like was it was an appropriate
21 response to their response to our pleading. So it -- you
22 know, it was like they -- we filed a motion. They denied
23 it. And we filed, essentially, a reply.

24 MR. BANNISTER: Your Honor, I would move into
25 evidence Defendant's Exhibit No. 38, and ask Mr. Mauldin

1 to take a look at Defendant's Exhibit No. 39.

2 THE COURT: We've already put Defendant's Exhibit
3 No. 38 into evidence.

4 BY MR. BANNISTER:

5 Q Mr. Mauldin, are you familiar with what I've handed
6 you marked as Defendant's Exhibit No. 39?

7 A Yes, sir.

8 Q Can you just briefly describe what that is?

9 A This is a letter that was dated August the 13th. It
10 was received by our office on August the 13th, at 4:30
11 p.m. So it was -- our office and the Solicitor's Office
12 is in the same building. So there's a lot of hand
13 delivery.

14 Apparently, this was a hand-delivered copy of a
15 letter from Mr. Ariail to our witness, Dr. Everington.
16 And it showed a copy to me, Attorney for the
17 Defendant.

18 THE COURT: And that was in 2007, Mr. Mauldin?

19 THE WITNESS: Yes, sir, August the 13th, 2007.

20 THE COURT: Thank you, sir.

21 BY MR. BANNISTER:

22 Q And what impact did that have on Dr. Everington?

23 MR. ARIAIL: I object.

24 THE COURT: Sustained.

25 MR. BANNISTER: Let me rephrase the question.

1 BY MR. BANNISTER:

2 Q What problems did that create for you in terms of the
3 presentation of the Laney case?

4 A Well, the interpretation of this letter was that it
5 was another effort to effect the willingness of
6 Dr. Everington to participate in a subsequent hearing.
7 The Judge, Judge Welmaker, had not ruled. The matter on
8 April the 12th had been taken under advisement.

9 So the matter was still pending. The case was,
10 clearly, moving toward some sort of sentencing trial,
11 essentially, in the event the Judge denied our Atkins
12 request. So all of that was pending. The motion that we
13 had made in April and the additional documents that have
14 been identified as Defendant's Exhibit Nos. 38, 37, and 36
15 were all still pending.

16 So we took the position that this was an additional
17 effort by the Prosecution to effect the willingness and
18 the effect of the testimony of our witness.

19 Q And what, specifically, were you dealing with that
20 that letter was requesting?

21 A Well -- and the contents of the letter, obviously,
22 will speak for themselves. But, immediately, my response
23 to the copy of the letter was that the word "some" -- in
24 the letter, the word "some," S-O-M-E, was underlined. And
25 we concluded that that was, obviously, for emphasis. And

1 what it did was it meant that the things that were listed
2 were not necessarily all the Prosecution wanted to meet
3 the witness about.

4 And, obviously, this issue of commission of a felony
5 and potential penalties was still on the table. It was
6 still laying out there. So we felt like this was an
7 effort to further intimidate our witness.

8 MR. BANNISTER: Judge, at this point, I would move
9 Defendant's Exhibit No. 39 into evidence.

10 THE COURT: Any objection?

11 MR. ARIAIL: None.

12 THE COURT: Okay.

13 (WHEREUPON, Defendant's Exhibit No. 39 was admitted
14 into evidence.)

15 BY MR. BANNISTER:

16 Q Did you have the occasion after the letter that
17 was -- that now is in evidence -- the letter that the
18 Solicitor sent was sent to Dr. Everington, I assume, as
19 well?

20 A Yeah. The letter was addressed to Dr. Everington
21 dated August the 13th. And this is Defendant's Exhibit
22 No. 39. So we just assumed that it was sent through the
23 mail to her. It was delivered to us the day it was dated.

24 Q Did it generate a number of conversations, without
25 going into what was said, between you, Dr. Everington, and

1 co-counsel, the Defense team?

2 A There were numerous conversations about that
3 situation.

4 Q And what were your impressions about Dr. Everington's
5 ability to be an unimpeded witness for you in the upcoming
6 hearing in the Laney case?

7 MR. ARIAIL: I would object, Your Honor, to what his
8 impressions were.

9 THE COURT: Well, I think it's a proper question.
10 But how is it relevant here?

11 MR. BANNISTER: It's relevant to show what impact the
12 Solicitor's letter had on the Defendant's case in Laney.

13 THE COURT: On his state of mind, on his counsel's
14 state of mind.

15 And how is that relevant in this case?

16 MR. BANNISTER: Well, it's going to tie into the next
17 motion that was filed and, therefore, what notice the
18 Solicitor was on after this motion was filed.

19 THE COURT: Well, you can ask him what he did as a
20 result of the -- but I don't see how counsel in the Laney
21 case and what his state of mind has to do with --

22 MR. BANNISTER: All right. Well, let me -- I'll
23 just -- I'll come back to it. Let me do this first.

24 Let me get this marked as a Defendant's Exhibit,
25 please.

1 (WHEREUPON, Defendant's Exhibit No. 40 was marked for
2 identification only.)

3 BY MR. BANNISTER:

4 Q Mr. Mauldin, let me let you take a look at what's
5 been marked as Defendant's Exhibit No. 40.

6 MR. BANNISTER: And I'll tell the Court that that is
7 Exhibit N. It is contained in the unbound exhibits that
8 are at the back of the memorandum that I filed.

9 BY MR. BANNISTER:

10 Q And, Mr. Mauldin, have you had a chance to review
11 that?

12 A Yes.

13 Q All right. And what is that?

14 A This is a renewal of our motion to quash the death
15 notice in Laney as a result of the conduct of the
16 Prosecutor. And it was dated August the 27th, which was
17 two weeks after we had gotten this letter.

18 It, also, attached the letter as the exhibit and
19 referred to it as -- given the previous conduct of the
20 Solicitor, it represented another attempt to intimidate
21 the witness.

22 MR. BANNISTER: Your Honor, at this time, I'd move
23 Defendant's Exhibit No. 40 into evidence.

24 MR. ARIAIL: No objection.

25 THE COURT: Without objection.

1 (WHEREUPON, Defendant's Exhibit No. 40 was admitted
2 into evidence.)

3 BY MR. BANNISTER:

4 Q Was the renewal a direct response to the letter that
5 Solicitor Ariail had filed -- had sent to your witness?

6 A It was.

7 Q And, in the motion to quash, did you make specific
8 reference to the fact that that letter was being perceived
9 as continued harassment and intimidation of your witness?

10 A Yes. Paragraph three of the motion refers to the
11 letter as an exhibit and -- well, refers to the letter and
12 what we interpret as a continuing effort to influence the
13 witness.

14 Q All right. And, again, the date on that was August
15 27th of 2007?

16 A The date of the renewal of the motion --

17 Q Yes, Defendant's Exhibit No. 40.

18 A -- was August 27th. And that was -- August the 27th,
19 at 4:00 -- 4:05 in the afternoon is the date of the
20 Clerk's stamp.

21 Q At some point, after having filed renewal of your
22 motion to quash, did you receive communications from the
23 Solicitor's Office requesting a meeting?

24 A Yeah.

25 Q All right. Tell me about that.

1 A Pardon me?

2 Q Would you tell me about that?

3 A The -- August the 28th, the next day, was Tuesday.
4 And we did receive communication regarding getting
5 together on the -- in the Laney case. And this was -- you
6 know, and let me say there was -- as far as I was
7 concerned, there was an absolute, as there always is, open
8 invitation to meet and discuss the case.

9 So we did receive communication on the morning of
10 August 28th, about getting together about Laney.

11 Q And, to the best of your recollection, is that the
12 first moment at which, potentially, at least, there
13 seemed to be some traction about a resolution in the Laney
14 case?

15 A The --

16 Q In other words, had the environment changed?

17 A Well, it -- certainly, it was a pretty contentious
18 environment, if I could say. And it was difficult. I
19 mean, we were all under a tremendous amount of pressure.
20 And there was -- on the morning of the 28th, there was
21 movement to attempt to try to work the case out. And we,
22 obviously, welcomed that.

23 Q Was it your impression that that movement was a
24 direct --

25 MR. ARIAIL: Objection.

1 BY MR. BANNISTER:

2 Q -- result of your motions --

3 MR. ARIAIL: Objection.

4 THE COURT: Wait a minute. Let him finish his
5 question.

6 Go ahead. Finish your question.

7 BY MR. BANNISTER:

8 Q Was it your impression that that movement was a
9 direct result of the motions that you had filed as a
10 result of the issue with Dr. Everington?

11 THE COURT: All right. Do you have an objection?

12 MR. ARIAIL: I withdraw the objection. Let him
13 answer it.

14 THE WITNESS: You know, it wasn't cited. When the
15 meeting was set up, it wasn't cited as the reason.

16 So, you know, I can form an opinion. But I suspect I
17 would not be -- it would not be appropriate for me to say
18 what my opinion was. I know what I felt like had
19 happened, but.

20 In other words, Mr. Bannister, when communication
21 about the meeting -- and I can't, specifically, recall
22 exactly who I talked to or whether -- you know, at what
23 time of day. I just know that the morning of the 28th,
24 there was significant movement regarding the resolution of
25 that case.

1 The Defense, Mr. Tessier and I, believed that, you
2 know, obviously, the filing the day before may very well
3 have had an effect on the resolution of that case. And we
4 were operating on that assumption.

5 BY MR. BANNISTER:

6 Q What time did the meeting take place?

7 A I can't recall that. It would have been -- it was a
8 meeting that involved Mr. Tessier, who was co-counsel. It
9 involved Mr. Carl Muller, who was a partner in the law
10 firm that Mr. Tessier works in. It involved the
11 Solicitor, the Deputy Solicitor. It -- I can't recall
12 exactly what time of day it was.

13 But it -- there was a subsequent meeting the same day
14 with the Judge about moving in the direction that we felt
15 like we were going to make sure he was comfortable with
16 it. And so there were -- it was one of, at least, two
17 meetings that day.

18 Q And, to the best of your recollection, what was the
19 subject of the meeting, the first one, at least?

20 A The meeting, as best I can recall, the Prosecutor had
21 prepared a -- essentially, what I will describe as just a
22 memorandum or a list of issues or matters that needed to
23 be addressed in the Laney situation in order for the Laney
24 case to be resolved without a trial. That was the -- that
25 was clearly -- and we were more than happy to review it

1 and start trying to work for a resolution.

2 MR. BANNISTER: I would like to have this marked.

3 (WHEREUPON, Defendant's Exhibit No. 41 was marked for
4 identification only.)

5 BY MR. BANNISTER:

6 Q Mr. Mauldin, let me show you what's been marked as
7 Defendant's Exhibit No. 41, and ask you what that is?

8 A This is what would have been the first of two
9 documents. And this is what I characterized a moment ago
10 as a memorandum or a list. It's titled "The Resolution of
11 the Michael Laney Case."

12 Q Any question that that list -- that memorandum,
13 Defendant's Exhibit No. 41, was not produced by any member
14 of the Defense team?

15 A No. This was something that was internal. It was
16 something that we were seated around a table and it was
17 prepared by someone with the Prosecution.

18 Q And so Solicitor Ariail was present and Deputy
19 Solicitor Strom were both present when you got handed this
20 memo?

21 A Yeah. The best I can recall, both were present when
22 we were talking about issues and trying to work the case
23 out.

24 MR. BANNISTER: Your Honor, at this time, I would
25 move Defendant's Exhibit No. 41 into evidence. It's at

1 Tab F.

2 MR. ARIAIL: No objection.

3 (WHEREUPON, Defendant's Exhibit No. 41 was admitted
4 into evidence.)

5 BY MR. BANNISTER:

6 Q Mr. Mauldin, Defendant's Exhibit No. 41 has --
7 appears to have 13 bullet points. And, at various places,
8 it refers to "we." Who did you understand that "we" to
9 be?

10 A Well, without going through sentence by sentence, I
11 would simply say that "we" would refer to the State. The
12 "we" would be the State. We did not prepare this.

13 Q And who in particular?

14 A They're referring to themselves in the first person.

15 Q And we're talking about Solicitor Ariail and Deputy
16 Solicitor Strom?

17 A Right. Yeah.

18 Q All right. If you will, go down to bullet point #9,
19 and read that. And then explain to me how that came
20 about.

21 A All right. I've read #9.

22 Q All right. #9 says, Have the Judge rule that with
23 regards to mental retardation, he considered the testimony
24 of Dr. Everington in making his decision, but further
25 finds that under Section 40-55-50, Dr. Everington is

1 violating that statute when she renders a diagnosis of
2 mental retardation.

3 The 40-55 statutes are referring to, I assume, the
4 licensing provisions that the Solicitor had raised at the
5 Atkins hearing?

6 A Right.

7 Q And this was a request from the Solicitor's Office to
8 get you to agree to a finding that her conduct had been in
9 violation of the statute? Is that how you interpreted it?

10 A Well -- and I guess the use of the term "request" is
11 a little curious. There were a number -- there were 13
12 listed matters, and this was one of them. And the --
13 it -- when we were looking at it, that was the position of
14 the State on that particular matter. And my position was,
15 no, that that was not where we could go. We could not
16 have that and work the case out.

17 Q And why not?

18 A Why not? Well, because, one --

19 MR. ARIAIL: Your Honor, I would object to that. Why
20 not is not relevant.

21 MR. BANNISTER: It is, Your Honor. Because the
22 discussion --

23 THE COURT: Wait a minute.

24 Has he been -- he has not been seated as an expert
25 witness. You're asking him to give an opinion about -- a

1 legal opinion; am I correct about that?

2 MR. BANNISTER: No, no. What I'm --

3 THE COURT: Well, then rephrase your question.

4 MR. BANNISTER: I'm asking him -- all right. Let me
5 rephrase it.

6 BY MR. BANNISTER:

7 Q What concerns did you express to the Solicitor and to
8 Deputy Strom about item #9?

9 A The concern I had was that we took the clear position
10 that she was not in violation of the statute, that that
11 just simply was not the truth. And we felt for future
12 defendants, for future clients, that that statute was not
13 applicable, and that -- we just -- I felt that it was just
14 wrong for a Judge to rule that she had violated that
15 statute, not only in her case for her sake, but for the
16 sake of my client in that case and for future clients.

17 I just simply thought that was just absolutely wrong
18 to do that. And I think that the Prosecution realized
19 that we took that position. I mean, we had filed papers
20 and --

21 Q So do you have any reason to believe that you didn't
22 express the feelings that you've just described here
23 today?

24 A I don't think there was any question that my feelings
25 were very clearly known about that.

1 Q All right. Is that your handwriting where it says,
2 No, on Defendant's Exhibit No. 41?

3 A Is that what?

4 Q Is that your handwriting?

5 A No.

6 Q All right. If you will, go to item #10 on
7 Defendant's Exhibit No. 41. It says, A finding by the
8 Court that there was no prosecutorial misconduct. And
9 then it says in parenthesis and all caps, Bob maybe does
10 not want this.

11 Were there discussions about item #10 either at this
12 first meeting or subsequent meetings with the Solicitor?

13 A Was there a discussion?

14 Q Yes. Did you --

15 A There was a discussion.

16 Q Okay. And what did you express to them about this
17 item #10? What did you tell them?

18 A There was, obviously, a serious disagreement
19 regarding the conduct, regarding the handling of that
20 witness, and the citing of the statute, along with the
21 penalty. We took a pretty hard line position on it. And
22 the Solicitor, also, took a pretty hard line position.

23 And when we were -- the discussion about the finding
24 of no prosecutorial misconduct, there was strong hesitancy
25 to have that aired or even heard. Clearly, the best

1 approach was to -- if we could work the case out would
2 simply be to withdraw the motions. And that's,
3 essentially, what the handwriting indicates, that during
4 the meeting, it was determined that there would just be --
5 and the words are, "just withdraw motions," which was,
6 clearly, the best solution. So there wouldn't be any
7 testimony. There wouldn't be any, you know, contest about
8 it. We would just withdraw the motions.

9 Q And would a finding, as proposed here in item 10,
10 have required some airing -- some hearing to take place
11 where evidence was placed on the record?

12 A Well, obviously, if the motions that were all pending
13 had, actually, been heard, there would have been either
14 testimony, or argument of counsel, or both regarding
15 whether or not the conduct was of such a nature as to be
16 considered prosecutorial misconduct. I mean, and that --
17 and, you know, I mean, I didn't want that. I didn't want
18 to do that, you know. I had no interest in it.

19 Q Was there any interest on the other side for that?

20 A Well, I don't think they wanted to do it either. I
21 mean, it was like, this way you lose, that way you lose.
22 I mean, there were no -- if we could work the case out
23 regarding the disposition of the Laney matter, then we
24 didn't have to have that matter heard, as far as I was
25 concerned. I was representing Mr. Laney.

1 So where it says, "Just withdraw the motions," that,
2 clearly, in my view, as his counsel, was a resolution that
3 was in his best interest. It did not result in what I
4 would have considered very uncomfortable courtroom work.
5 It would not involve -- you know, so I just felt that was
6 the best resolution.

7 Q Did you make it clear to the Solicitor and Deputy
8 Strom that there was going to be no finding, unless you
9 were provided an opportunity to be fully heard on the
10 issue?

11 A That's the reason why they were withdrawn. I mean,
12 we were pretty much at a stalemate.

13 Q All right. Subsequent to the stalemate, at that
14 point, was there another proposal memorialized in writing
15 presented to you?

16 A Right.

17 THE COURT: Let me interrupt.

18 Mr. Bannister, how long do you intend to go on with
19 this witness?

20 MR. BANNISTER: Judge, I think we've got, at least,
21 about another 30 minutes worth of testimony.

22 THE COURT: All right. Well, it's 10 or 12 after
23 1:00. We're going to break now. And we'll go to lunch.

24 I would instruct the witness not to talk about your
25 testimony.

1 I'll see everybody back at 2:15.

2 (WHEREUPON, a lunch break was taken.)

3 (WHEREUPON, Defendant's Exhibit Nos. 42, 43, 44, and
4 45 were marked for identification only.)

5 THE COURT: Are you ready?

6 MR. BANNISTER: Yes, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q Mr. Mauldin, if you will, can you pull up Defendant's
10 Exhibit No. 41? I think it's -- it should be the one
11 right on top there.

12 We were talking about this memorandum that you had
13 submitted to you by the Solicitor's Office sometime during
14 this meeting that you're having on the 28th of August,
15 2007, just to remind us all of where we were.

16 THE COURT: I thought you had gone on to the next
17 one.

18 MR. BANNISTER: I have one last question on this one,
19 Judge.

20 BY MR. BANNISTER:

21 Q Where it says, No, just withdraw the motions, in
22 handwriting, is that your handwriting?

23 A No, it's not.

24 Q All right. Let me let you take a look at what's been
25 marked as Defendant's Exhibit No. 42, and ask you to

1 review that, and ask you if that is the second memorandum
2 you received on August 28th?

3 A This is the second memorandum. I am -- your question
4 contained the date and that, certainly, is not absolutely
5 clear to me. But I know that this is the -- this
6 memorandum was, essentially, the result of us discussing
7 the contents of Defendant's Exhibit No. 41.

8 We talked about Defendant's Exhibit No. 41. And then
9 Defendant's Exhibit No. 42, actually, makes the
10 modifications that, you know, reflected where we were
11 headed. And that, once again, was not prepared by us. So
12 I'm not real sure about the actual date it was prepared.

13 Q All right. At some point, either on the 28th or
14 thereafter, but, certainly, before the 30th, you got this
15 memorandum?

16 A Yes.

17 Q And it came from the Solicitor's Office?

18 A Yeah. We were -- it was provided to us through the
19 Solicitor's Office, the best I can recall.

20 MR. BANNISTER: All right. I move Defendant's
21 Exhibit No. 42 into evidence.

22 MR. ARIAIL: No objection.

23 THE COURT: Okay.

24 (WHEREUPON, Defendant's Exhibit No. 42 was admitted
25 into evidence.)

1 BY MR. BANNISTER:

2 Q Down at item #9 on the bullet list on Defendant's
3 Exhibit No. 42, it says, Defense withdraws both motions
4 for prosecutorial misconduct. And which two motions was
5 that referring to?

6 A The reference would have been to the April motion
7 that we filed after Dr. Everington testified, and the
8 August 27th afternoon motion where we renewed our request
9 for misconduct.

10 Q All right. And the withdrawal of those motions then,
11 that was part of what was becoming a negotiated plea for
12 life without parole?

13 A Well, I think that really -- the language is not
14 exactly right. It really wasn't -- there wasn't a plea.
15 It was not a plea. The conviction had been affirmed and
16 where the posture of the case was is there needed to be a
17 sentence imposed. And it really didn't involve any
18 colloquy with the Defendant about plea rights, if you
19 will.

20 It was just a matter of imposition of a sentence.
21 And it was going to be either life without parole or
22 death. That was where it was.

23 So, in trying to get there, this Defendant's Exhibit
24 No. 42 is part of that process that last couple of days.

25 Q All right. And how do you get there once you're in

1 the sentencing phase in the Laney case? In other words,
2 how do you get to the ultimate sentence, if you're going
3 to work something out?

4 A Do you mean what steps did we have to take?

5 Q Yes.

6 A The first thing we -- well, and, actually, the
7 contents of the memorandum, essentially, made either
8 direct or indirect reference to what I'm describing for
9 the most part. But we had to have a finding by the Court
10 that the Defendant, Mr. Laney, was, actually, competent to
11 be sentenced. That had been raised.

12 We needed to have a determination by the Court that
13 he was not mentally retarded or, at least, some
14 disposition of that issue. That issue, actually, was
15 still -- if I'm not mistaken -- I'm trying to recall. But
16 I believe that issue was kind of still out there and had
17 never been, actually, ruled on, I don't think, at that
18 point.

19 And then there would have to be a withdrawal of the
20 notice to seek by the State. That's what we -- those were
21 the doors that we felt like we had to get through. And,
22 of course, the prosecutorial misconduct motions were still
23 pending. So withdrawal of those motions, essentially, was
24 one of the steps. And that's kind of the sequence.

25 Q All right. So the last two you just mentioned, to

1 make sure I'm clear, is the withdrawal of the notice of
2 intent to seek death and withdrawal of the motions for
3 prosecutorial misconduct were part of the resolution of
4 the Laney case that was being discussed at this time?

5 A The best I can recall, that's an accurate description
6 of what we went through.

7 Q And as part of how it was being discussed and the
8 sequence of that, it was -- well, am I correct in saying
9 that the notice for death was going to be withdrawn, that
10 would moot the prosecutorial misconduct motions and then
11 they would be withdrawn?

12 MR. ARIAIL: Your Honor, he's testifying. I object.

13 THE COURT: Go ahead.

14 Let's pick up the pace a little bit.

15 MR. BANNISTER: I'm trying.

16 THE COURT: Okay.

17 THE WITNESS: The -- yeah. And the essence, I think,
18 of the question is, I think the two things had to happen
19 in that order. There had to be withdrawal of the death
20 notice and then a withdrawal of our prosecutorial
21 misconduct motions. And that would kind of move us to the
22 point where the Judge could then consider sentences.

23 BY MR. BANNISTER:

24 Q And, to the best of your recollection, is that what
25 happened, ultimately, on August the 30th, 2007, when there

1 was the final resolution of Laney?

2 A Yeah. And, again, I testified earlier today that
3 whatever the transcript, actually, reflects, I would have
4 no dispute about. But what I recall happening is what I
5 just described to you.

6 Q I'm handing you Defendant's Exhibit No. 44. That is
7 the Laney transcript from August 30th --

8 A No. That's not what this is.

9 Q I'm sorry. You're correct.

10 I'm handing you Defendant's Exhibit No. 43, which
11 should be the transcript of the August 30th Michael Laney
12 final hearing.

13 A That's what this appears to be.

14 MR. BANNISTER: Judge, I would move that transcript
15 into evidence.

16 MR. ARIAIL: No objection.

17 (WHEREUPON, Defendant's Exhibit No. 43 was admitted
18 into evidence.)

19 BY MR. BANNISTER:

20 Q Mr. Mauldin, to the extent that that transcript
21 reflects that the notice of intent to seek death was
22 withdrawn and then you withdrew your motions for
23 prosecutorial misconduct, do you have any reason to refute
24 what's in the transcript?

25 A No. That would be my recollection.

1 Q All right. Mr. Mauldin, I'm going to change subjects
2 for just a moment and ask you, were you familiar with the
3 case of State v. David Edens and Jennifer Holloway?

4 A I was.

5 Q And was that a capital case that you were a defense
6 attorney involved in?

7 A I was involved in that.

8 Q And that took place roughly June 26th, 2006?

9 A Summer of 2006. I'm not real sure of the exact date.

10 Q Do you recall whether or not Dr. Marti Loring was
11 called as an expert witness in that case?

12 A She was called by the attorneys for the co-defendant.
13 It was a joint trial of two co-defendants. And
14 Dr. Loring, if I recall correctly, did testify during the
15 sentencing phase on behalf of the co-defendant.

16 Q And, to the best of your recollection, Solicitor
17 Ariail and Deputy Solicitor Strom, were they the ones
18 prosecuting -- part of the Prosecution team in that case?

19 A Yes.

20 Q And when Dr. Loring took the stand, do you recall any
21 issue about her licensing coming up in that case?

22 A No.

23 MR. BANNISTER: Your Honor, I would, at this time,
24 like to offer into evidence Defendant's Exhibit No. 45,
25 which is a transcript of -- a portion of the transcript of

1 that record that we're referring to.

2 MR. ARIAIL: What portion?

3 THE COURT: To prove a negative?

4 MR. BANNISTER: Yes. To prove that what he's
5 testified to is, in fact, exactly what happened.

6 MS. STROM: What exhibit number?

7 MR. BANNISTER: It is my -- in the tabs, it is --

8 MS. STROM: I've got it in the tab.

9 What exhibit are you offering?

10 MR. BANNISTER: Tab J. It's Defendant's Exhibit
11 No. 45.

12 THE COURT: Any objection?

13 MR. ARIAIL: None.

14 THE COURT: Okay.

15 (WHEREUPON, Defendant's Exhibit No. 45 was admitted
16 into evidence.)

17 BY MR. BANNISTER:

18 Q And, Mr. Mauldin, would you deny -- well, I'm sorry.
19 Do you recall that what Solicitor Ariail's voir dire was
20 of Dr. Marti Loring with regard to her qualifications was
21 no voir dire?

22 A I don't have any specific recollection. To the
23 extent you asked me a moment ago if the question of this
24 statute came up, I don't recall that. But I don't -- I
25 don't, actually, have recollection of what he asked her.

1 MR. BANNISTER: Your Honor, I think that's all the
2 questions I have for Mr. Mauldin.

3 THE COURT: All right. I'm not going to prohibit
4 Solicitor Ariail from cross-examining Mr. Mauldin.

5 MR. ARIAIL: I don't think I'll intimidate him.

6 THE COURT: Well, I don't know.

7 CROSS-EXAMINATION

8 BY MR. ARIAIL:

9 Q Just go back a little bit, Mr. Mauldin. Starting
10 with the point that Mr. Bannister started off with, the
11 testimony of Dr. Everington in the Laney case. What was
12 the overarching issue in the Laney case? What was the
13 crux, the very core of the Defense?

14 A It was a resentencing only. So there were no
15 guilt/innocence issues. And the -- I guess the primary
16 issue going into the preparation of that case would have
17 been whether or not the Atkins decision was going to
18 effect the State's right to seek the death penalty of
19 Mr. Laney at all. I think that would have been the
20 primary beginning point.

21 Q Mental retardation?

22 A Mental retardation pursuant to Atkins was an issue
23 that -- actually, it had never been fully litigated in
24 South Carolina. Because it was a relatively new issue.

25 Q And can we all agree here that Michael Laney was a

1 classic case of a defense that was -- had numerous,
2 numerous mental issues?

3 A Whether he as an individual did?

4 Q Yes.

5 A I think we could agree to that.

6 Q All right. And that those mental issues ranged from
7 competency to mental retardation?

8 A Right -- well, yeah, to varying -- in varying
9 degrees, right.

10 Q All right. Well, I mean, you put up a witness who
11 testified he was mentally retarded?

12 A Right.

13 Q And that would exempt him from being -- given the
14 death penalty?

15 A Under Atkins, that's right.

16 Q And then you put up evidence or had available to you
17 and did file a motion that he was not competent to be
18 sentenced?

19 A Right.

20 Q All right. So you had evidence of his lack of
21 competency?

22 A That's true. That was an effort we were attempting
23 to make. That's right.

24 Q So that was the -- that was really the heart and sole
25 of what you were trying to do to get him a life sentence

1 was to establish those mental issues?

2 A And I will say, just with a slight caveat, not to the
3 exclusion of anything else. But that was the headline
4 focus in that case as we began developing his
5 resentencing.

6 Q Well, let me take it a little further. You,
7 certainly, didn't start off preparing that Defense that
8 you were going to get him a life sentence on some
9 prosecutorial misconduct motion?

10 A No.

11 Q All right. So the focus of your defense -- now, as
12 you go along, you pick up other defenses?

13 A Right.

14 Q Anything you can pick to get a life sentence, you're
15 going to pick it up and put it in there?

16 A Right.

17 Q We've had this discussion a number of times.

18 A Right.

19 Q All right. Now, Dr. Everington, if you look at her
20 transcript -- do you have it? I think it was -- I don't
21 have his numbers, but it was the first page toward the
22 end.

23 It's starting on Page 105.

24 A I'm looking at Defendant's Exhibit No. 35. And there
25 are -- it's not all --

1 Q Defendant's Exhibit No. 35, that's correct. It's a
2 partial transcript. Just look at Page 105.

3 A All right, sir.

4 Q I'm starting the cross-examination. At that point,
5 Dr. Everington had been qualified as an expert in the
6 field of mental retardation.

7 A And I can't recall exactly what the specified
8 qualification as an expert was, but it would, certainly,
9 have included mental retardation.

10 Q She was special education --

11 A Right.

12 Q -- and mental retardation?

13 A Right.

14 Q That was your expert?

15 A Right.

16 Q And she was qualified by the Court and had testified
17 on direct examination?

18 A Right.

19 Q Fully?

20 A And Mr. Tessier, actually, conducted the --

21 Q He conducted the examination. And she went through
22 all of the evidence and all of the testimony regarding
23 mental retardation without objection, and without any kind
24 of interruption of any significance?

25 A Well, yeah. I don't have the transcript, but she had

1 testified in full on direct.

2 Q All right. And she was testifying as an expert in
3 the field of special education and mental retardation?

4 A Well -- and I can't -- you know, when she was offered
5 as an expert, the Judge would have accepted her
6 qualifications. And whatever the transcript says about
7 what she was qualified for, I would accept the transcript.
8 I mean, I, certainly, wouldn't take any issue with what
9 you just described.

10 Q Well, let me see if I can get it right.

11 A And it might be in these pages.

12 Q Well, in any event, I'll go forward.

13 When she testified, she started testifying on Page --
14 I brought out -- and on Page 105, she had been talking in
15 her testimony about interpreting IQ tests.

16 A Whatever the transcript says. I -- yeah.

17 Q Do you not have a -- I mean, you don't have a
18 recollection of it?

19 A I don't have -- I've got a very -- I've got in
20 Defendant's Exhibit No. 35 selected pages. And in answer
21 to your question about whether I have, actually, direct
22 recollection of the specific things she testified to, I
23 will say that I do not.

24 Q Okay.

25 A I do not have a specific recollection of exactly what

1 she said.

2 Q On Page 105 and 106, Dr. Everington and I begin a
3 conversation. And I asked her, Are you a licensed
4 psychologist?

5 A Yeah, on Line 17, right.

6 Q She says, No, I'm not. I stated that in direct. No,
7 I am not a licensed psychologist.

8 And then I asked her if she was familiar with the
9 provisions of South Carolina law that regulate licensing
10 of psychologists. She said, No.

11 Then I asked her -- read her a couple of things. And
12 then I read her the code sections -- okay -- down through
13 106. And, at the bottom of 106, do you see there where it
14 says, Mr. Ariail?

15 A Yes, sir.

16 Q I said, Your Honor, I am going to urge the Court to
17 review this statute. Because I believe what we have --
18 regardless of her characterization, I believe this conduct
19 of hers in testifying in regard to the statute,
20 specifically, prohibits the administration of testing, the
21 interpretation of testing, and the testifying in regard to
22 the testing that she's administered. And I go on to
23 explain, It's got criminal penalties associated with it.

24 And then I stated, Before I go any further with this
25 witness, you haven't qualified her as an expert. I think

1 we've got a legal issue that she is not a licensed
2 psychologist within this section. And to go forward even
3 further, I believe, would be in violation of the law.

4 And I'm addressing this to the Court; correct, all to
5 Your Honor?

6 A The -- back on Line 22 on Page 106 off of Defendant's
7 Exhibit No. 35, you preface your comments with the word,
8 Your Honor.

9 Q All right.

10 A To the extent that indicates that you are addressing
11 the Court -- she was in the witness box at that point.

12 Q Correct.

13 A And it was just like you're questioning me, I mean,
14 you began to make references to the Court.

15 Q But at the -- on 107, after my admonition or colloquy
16 with the Court, or monologue, whatever you want to call
17 it, the Court responded to me; correct?

18 It says, All right. Is what you're asking,
19 Mr. Ariail -- do you see that?

20 A Yes.

21 Q All right. My question to you is this, the objection
22 to Dr. Everington's testimony was not to her qualification
23 as an expert witness in the field of mental retardation
24 and special education?

25 A You had entered no objection to that when she was

1 offered as a witness, if that's --

2 Q I think I said on 106 -- 107, at the top, The
3 statute, specifically, prohibits the administration of
4 testing, the interpretation of testing, and the testifying
5 in regard to testing.

6 That was my concern regarding the licensing statute.
7 And the licensing statute says that only a licensed
8 psychologist could do that testimony?

9 A I don't know. I mean, I will assure you I'm,
10 certainly, not an expert in that area. So I can tell you
11 I don't know.

12 Q Well, you don't need to be an expert to understand
13 what my objection was. It was to her testifying regarding
14 testing, not about testifying about mental retardation --

15 A Well --

16 Q -- correct?

17 A The clear impression that I got indirectly -- and, of
18 course, Mr. Tessier can testify since it was his witness
19 who was being cross-examined about what his impression
20 was. I, certainly, recall it being the same -- was that
21 the witness was being threatened with having, literally,
22 being in violation of that statute right at that moment.

23 Q And my question to the Court was, Should I go further
24 because she may be violating a statute?

25 A And whatever the transcript says. I mean, all I know

1 is that it was our impression that our witness -- it was
2 very clear, whether it was addressed to the Court or to
3 her, in her presence while she was on the witness stand
4 and having already testified -- she had already testified
5 on direct examination in full, there was an allegation
6 that she was violating a statute right at that moment,
7 whether it was the testing beforehand or the testifying
8 then was -- I mean, I didn't even know what you were
9 talking about, quite frankly.

10 Q In fact, you responded on Page -- or Mr. Tessier
11 responded on 108, he says -- the Court says to him,
12 Mr. Mauldin, Mr. Tessier, I'll be glad to hear from you on
13 that. And Mr. Tessier responds, Your Honor, I haven't
14 looked at the statute. Y'all didn't even know about the
15 statute, did you?

16 A Well, if your question is did John Mauldin know about
17 the statute? I have never given it the first thought,
18 quite frankly.

19 Q And, obviously, Mr. Tessier's response on Page 108
20 was, I haven't looked at the statute.

21 A Well, and I'll -- he'll have to speak for himself.
22 But it says, I haven't looked at the statute. I can,
23 certainly, do so. He has not said anything that sounds
24 remotely -- and then it -- what I have is the end. That's
25 the last page. So I'm not real sure what --

1 Q But, at that point, we began -- and you are at a
2 disadvantage and I can give you the rest of that, which
3 I'll introduce later.

4 But the colloquy between the Judge, the witness, you,
5 Mr. Tessier, and me that proceeded was one involving
6 whether or not she should be cross-examined any further by
7 me. And the Judge, eventually, concluded, All right, I'll
8 allow the cross-examination to continue for the purposes
9 of expediting the hearing. And we will address that issue
10 once we have had an opportunity to study the statute in
11 more detail.

12 A And that I believe -- yeah. And it was something,
13 quite frankly, Mr. Ariail, that just -- I was completely
14 taken by surprise. I didn't know what you were talking
15 about. But we -- if I may, it still remains that as the
16 Defense, Mr. Tessier and I believed that our witness was
17 being threatened. That's just -- that's what we,
18 subsequently, raised in our motions.

19 Q Okay. Now, that was on April the 12th. Sometime
20 thereafter or shortly thereafter -- I don't remember the
21 exact date -- excuse me, the 16th. That was on the 12th.
22 On the 16th, the case was to begin, the trial. That was a
23 Monday.

24 A April the 16th?

25 Q Well, let me refresh your memory.

1 A Okay.

2 Q At 10 minutes till 2:00 on April the 16th, what did
3 you do?

4 A At 10 -- well, I'll have to look back and see if --

5 Q Well, let me tell you what you did and --

6 MR. BANNISTER: Judge, I'm going to interpose an
7 objection. The Solicitor is, certainly, allowed to
8 refresh Mr. Mauldin's recollection. But I don't believe
9 he's doing so in a proper manner. I object. I object to
10 the form of the question to the extent it is a question.
11 And I object to what he's trying to do.

12 MR. ARIAIL: Let me just ask him directly.

13 BY MR. ARIAIL:

14 Q On -- at 10 minutes till 2:00, did you walk into the
15 Court and hand to the State and to the Judge a motion that
16 your client was not competent to be sentenced and ask the
17 Court to continue the case?

18 A May I answer?

19 Q Sure.

20 A When -- if that was the day the jury had been
21 summoned, and if that was when the jury selection was to
22 begin on the sentencing, whatever Monday, or otherwise
23 date, that was -- I did that very thing.

24 Q Just to refresh your memory. There's a copy of the
25 transcript, April 16th.

1 A And I'll be glad to look at it and look through it.
2 But I'll take your word for it. If that was the date that
3 the jury was summoned to the courthouse, then what we did
4 was we submitted the issue of whether the Defendant was
5 competent to be sentenced on the day that we were going to
6 begin jury selection.

7 Q And we sent the jury home, all 400 of them -- 200
8 that appeared, and began to wrangle that afternoon about
9 setting up a mental competency evaluation; is that fair?

10 A Whatever day that was, there was some wrangling, yes.

11 Q So by -- in that four-day period, we had a motion
12 that -- a hearing that he was mentally retarded, and then
13 we had a motion to have him evaluated because he was not
14 competent to be sentenced?

15 A And we, also, had filed our motion regarding
16 misconduct that prior to the jury -- that was --

17 Q Well, I didn't ask you about that. But go ahead, if
18 you want to interject that again.

19 A But I was looking in the -- it was that morning.

20 Q All right. Now, after we got those two mental health
21 issues involved, you then, with Mr. Bannister, did some
22 date stating about the notes -- memorandum.

23 Where are those?

24 All right. I'm going to let you look. I won't have
25 the numbers because I don't have them written down. But

1 let's take a look at those numbers. The first one, I
2 think, is the early one. It says -- it's got 13 points on
3 it?

4 A Right. That's Defendant's Exhibit No. 41.

5 Q And Defendant's Exhibit No. 41, according to it --
6 and I'll paraphrase and you correct me if I'm wrong. But
7 you said that this occurred on the -- this meeting
8 occurred on August the 28th. You're pretty specific about
9 that?

10 A Yes -- well, yes, sir. It occurred between 4:00 on
11 the 27th and the 30th. And, in looking back trying to
12 reconstruct that, we concluded that it was on the 28th.

13 Q All right. Let me ask you if you've ever seen these
14 notes?

15 A I don't recall ever seeing that. I don't -- I've
16 never seen that.

17 Q Let me ask you, before -- and I'll give a copy of
18 this to Mr. Bannister. And I'll pass one up to the Court.

19 Let me ask you if you remember --

20 A Could I get a copy?

21 Q You know, I don't enjoy this any more than you do.
22 But I didn't ask to be here. And you didn't ask to be
23 here.

24 MR. BANNISTER: Your Honor, before he proceeds, let
25 me just --

1 THE COURT: All right. No editorializing. Just ask
2 questions and be professional.

3 MR. ARIAIL: I apologize, Your Honor.

4 MR. BANNISTER: And an objection to the document. At
5 this point, it's not in evidence. I know you're not --
6 you're the jury and the Judge and you've got to --

7 THE COURT: I won't look at it.

8 What's your objection?

9 MR. ARIAIL: I don't have an objection.

10 MR. BANNISTER: It hasn't been introduced into
11 evidence. I mean, we're getting ready to talk about a
12 document that --

13 THE COURT: Are you going to introduce it?

14 MR. ARIAIL: I'm planning on introducing it. I want
15 to see if he can introduce it. I'm going to try to give
16 him the background and see if he can. If he can't, I'll
17 produce another witness.

18 BY MR. ARIAIL:

19 Q Did you and Mr. Tessier have a meeting with Mr. Carl
20 Muller shortly after you filed your first memorandum or
21 motion for prosecutorial misconduct?

22 A This would have been April --

23 Q May.

24 A The first motion was April the 16th at 8:00 something
25 in the morning.

1 Q So sometime late April, early May?

2 A I will tell you that we met many times with
3 Mr. Muller. So I suspect so, but I can't tell you for
4 sure whether or not it was during that time.

5 Q In one of those meetings, did you or Mr. Tessier, or
6 both of you, discuss with Mr. Muller taking a proposal to
7 the Solicitor's Office to try to resolve the Laney matter
8 prior to -- as that reflects prior to the mental health
9 evaluation being scheduled by the Court, the one that you
10 had asked for on April 16th?

11 A Okay. Let me make sure I understand the question.

12 Q Okay.

13 A Did Mr. Tessier and I meet with Carl Muller prior to
14 April the 16th?

15 Q No. I don't know when you met with him. Did you
16 meet with him to discuss bringing a proposal to the State
17 after April 16th?

18 A Well, without even looking at this, I would,
19 certainly, say we probably did. We probably did. Because
20 we were doing what we could to attempt to get the matter
21 resolved. And he was, to some extent, in the loop, if you
22 will. Because Mr. Tessier practices law with him.

23 Q And he's a friend of mine?

24 A That's right, exactly. And we were --

25 Q And you knew he had access to me?

1 A We were trying to have access. That's right.

2 Q All right. Now, look at that and see if you
3 remember -- if that refreshes your memory of things you
4 and Mr. Tessier may have talked about with Carl Muller
5 about proposing to the State before the mental health
6 evaluation was scheduled?

7 A I will say -- and just doing everything I can to
8 answer your question that as I look at these points, we,
9 in that process, would have been willing to do all of
10 that.

11 So I cannot deny that such a meeting would have
12 occurred. I just don't know whether a meeting occurred.
13 But I would, certainly, have loved to have had one. And I
14 would have talked about those very points during a
15 meeting.

16 MR. ARIAIL: We'll reserve showing this to Your Honor
17 until such time as --

18 MR. BANNISTER: At this time, I've had a chance to
19 look at it. I withdraw my objection. It can come into
20 evidence, as far as we're concerned.

21 THE COURT: Do you want to put it in now?

22 MR. ARIAIL: Well, let me --

23 THE WITNESS: And before you -- could you hand me
24 back that copy, because that's going to be hard to read?

25 THE COURT: There you go. You can look at that one.

1 Have you had a chance to mark it?

2 MR. ARIAIL: No. I'm sorry.

3 It's State's Exhibit No. 25.

4 (WHEREUPON, State's Exhibit No. 25 was marked for
5 identification and admitted into evidence.)

6 BY MR. ARIAIL:

7 Q And the proposal is detailed on there. It says,
8 Postpone the Laney evaluation with the Department of
9 Mental Health for several weeks. So this, obviously, had
10 to be in -- sometime in late April or May?

11 A It would have to have been after April the 16th.

12 Q Correct. And before the evaluation was scheduled?

13 A Right. I'm not sure when that date was when he was,
14 actually, evaluated.

15 Q And then the Public Defender is going to withdraw all
16 motions, memorandums, and statements relating to fairness
17 of the proceedings?

18 A Right.

19 Q And the Solicitor is to withdraw the death notice?

20 A Right.

21 Q And Judge Welmaker to find Laney retarded based on
22 evidence already in the record?

23 A Right.

24 Q And then Laney be evaluated -- or be sentenced to --
25 Judge Welmaker to sentence him to life without parole and

1 he is to be evaluated by the Department of Mental Health
2 to affirm competency. And then you were going to withdraw
3 your competency motion?

4 A Right.

5 Q What did we do with that?

6 A What did we do?

7 Q What -- did you hear a response back from Mr. Muller?
8 Do you recall hearing a response back from Mr. Muller?

9 A In all fairness, I don't recall exactly when he would
10 have gone to you with this. I think we've got it that it
11 was after April the 16th, but before the evaluation,
12 actually, took place.

13 So, with that window in mind, I know that Carl's
14 efforts -- and there seems to me like there were more than
15 one -- were just simply not successful.

16 Q In fact, would you disagree with the notes down there
17 signed by the initials "BS," Betty Strom, that we met with
18 family and they did not want to do this at this time?

19 A I have no way of disagreeing with that. I don't know
20 that. I don't have knowledge of that.

21 Q So the initial -- according to State's Exhibit
22 No. 25, the initial proposal to withdraw the death notice
23 and to withdraw your memorandum seeking to hold -- seeking
24 misconduct -- prosecutorial misconduct was broached on
25 behalf of the Defense of -- or you have no reason to deny

1 that?

2 A Well, and I will only take one exception to that. #2
3 on State's Exhibit No. 25 says, The Defendant withdraws
4 all motions, memorandums, and statements relating to
5 fairness of proceedings. I -- that would have included
6 the prosecutorial misconduct allegations. And we were,
7 quite candidly, prepared to do that pretty much at any
8 time, assuming we got our life sentence.

9 Q I don't want to belabor the point. But you asked and
10 we rejected?

11 A Through Mr. Muller, who -- I told him -- and if I
12 could just be -- I mean, I'm going to be as honest as I
13 can be. I told him just anything he could do to help us.
14 And I don't know how many times he talked to you, how many
15 times he begged you on our behalf. But every one of them
16 were on our behalf, I will say that.

17 Q Now, in your testimony to -- on direct to
18 Mr. Bannister, you talked about the second motion for
19 prosecutorial misconduct being filed, and that immediately
20 thereafter -- I believe it was on the 27th, you said. The
21 second motion was filed on the 27th of August. Do you
22 agree?

23 A That's right.

24 Q All right. Now, do you remember, just off the top of
25 your head, when this case had been reset for trial?

1 A It was within a week or two of that time frame. It
2 was like the -- wasn't it the first week -- in fact, isn't
3 the first Monday of September a holiday?

4 Q Yeah, September 6th.

5 A Is a holiday every year; right?

6 Q I don't know.

7 A Because I believe that the -- that this thing was set
8 to start on a Tuesday. And I don't know what date that
9 would have been.

10 Q Well, sometime shortly after that motion?

11 A Right.

12 Q All right. Now, it's your testimony based on what
13 you -- I'm assuming what I heard that you told
14 Mr. Bannister that from the -- when you got that second
15 motion filed, you got a call from us?

16 A I -- and, you know, I'm not -- I know that we did not
17 make a call.

18 Q Okay.

19 A But --

20 Q We -- I gathered your sense of your testimony was we
21 came running beating both doors down to get a meeting with
22 you about these -- the second filing of this motion. And
23 that, in the process, we concluded this horrific case in
24 two days?

25 MR. BANNISTER: Objection.

1 THE COURT: Yes. Sustained.

2 You're testifying..

3 BY MR. ARIAIL:

4 Q We concluded all the process that needed to be done
5 within two days and did it on the 30th. All right.

6 That's what I heard you testify to; is that, essentially,
7 correct?

8 A All right. Let me see if I can --

9 Q All right. Well, I'm going to go back and I want you
10 to look at --

11 MR. BANNISTER: Wait a minute.

12 Judge, he's allowed to answer the question.

13 THE COURT: Let him answer the question.

14 MR. BANNISTER: He's trying to answer the question.

15 MR. ARIAIL: I'm sorry. I thought he had.

16 THE WITNESS: Okay. The case that you have described
17 and that we are now becoming more and more familiar with
18 by the minute was pretty complicated. And it had some
19 issues.

20 When we filed the motion for prosecutorial misconduct
21 on August the 27th, it was our intention to attempt, to
22 the extent we could, to force the Judge to rule. We were
23 going to put all the pressure we could to try to get a
24 hearing. And I think that nobody wanted that hearing any
25 more than anybody wanted this one we're having today.

1 So it just crystallized, at least, in our view. It
2 just crystallized the case so that somebody was going to
3 have to come up with something, or it was not going to be
4 a very pleasant experience. And so when the
5 communications came the next day about a meeting, we did
6 not find that surprising.

7 BY MR. ARIAIL:

8 Q All right. You've got Exhibit No. 41 there?

9 A Yes.

10 Q State's Exhibit No. 41 -- excuse me, Defendant's
11 Exhibit No. 41 is your long form that's got the 13 things
12 listed on them?

13 A Right.

14 Q All right. Let's go down and go to where
15 Mr. Bannister started off. On #9, it's got, This one has
16 some concern by Mauldin?

17 A Yes.

18 Q All right. Would common sense tell you that before
19 that document was typed that somebody who typed this
20 document had a conversation with you of some type and knew
21 that you had concerns about that point?

22 A I think there are only two reasonable conclusions
23 from that. One would have been some communication where I
24 had said, No, or it had been concluded by the positions we
25 had been taking all along that it would be of concern to

1 me. In other words, that was a -- that was pretty much a
2 tough -- that was a -- that was something that we weren't
3 going to do and we had made no bones about it. We were
4 not going to do that.

5 Now, so -- now, I don't -- you know, if you say,
6 Would that have been a deal breaker? I don't know that I
7 would go that far.

8 Q Well, that's not my question. My question is,
9 doesn't this document, by common sense, convey to you that
10 there had been some sort of communication prior to this
11 document ever being typed and there was a note made about
12 that particular provision?

13 A I think that's fair. That is one of -- like I say,
14 that's one of two conclusions. And I, certainly, would --
15 there were communications flying everywhere.

16 Q And #10, likewise, A finding by the Court that there
17 was no prosecutorial misconduct (Bob maybe does not want
18 this).

19 So, obviously, somebody who prepared this had had a
20 communication with Bob.

21 A That's fair.

22 Q Okay. So this, by common sense, was some progression
23 of something that had -- communication that had occurred
24 previously; is that a fair statement?

25 A Yes. And it's very difficult to, actually, set a

1 lock time span. It could have been late in the afternoon
2 of the 27th when some communications were flying, early
3 morning hours of the 28th. I don't know when this
4 document was, actually, prepared.

5 Q All right. Well, I'm going to help you with that a
6 little bit.

7 A Okay.

8 Q Because I agree it's hard for you to figure that out
9 on cold notice. Let me show you what is -- and I'll hand
10 one up to the Court. We can make this an exhibit, if we
11 have to. But I think I'll just make a point with it.

12 The order -- this is an order from Judge Welmaker in
13 Laney dated August the 20th, in which he rules there is no
14 issue of mental retardation. That's what this order is.
15 So my question to you would be, why would we be talking
16 about #9 on the 28th of August, unless you just got the
17 wrong date?

18 A The -- and I don't know. I mean, I don't know. This
19 is --

20 Q Well, Judge Welmaker had ruled, John, on mental
21 retardation. That wasn't -- it says, Have the Judge rule.
22 Well, he's already ruled.

23 A Well, and, like I say, I can't explain that. In
24 these cases, legal issues just do not go away. And so to
25 the extent -- I know that the Judge -- when we stood up --

1 and let me give you a -- try to answer it. When we stood
2 up on April the 16th, that afternoon, and put out the
3 competency of the Defendant to be sentenced as an issue
4 and needing -- claiming he was not competent, we had
5 withheld that motion because we were waiting on the Judge
6 to rule on the retardation issue.

7 In other words, we thought he'd rule any -- we
8 thought he was going to rule the day of the hearing, but
9 he did not. He took it under advisement. We, actually,
10 were getting ready to pick a jury and we still didn't know
11 if it was retardation or not. So we felt like we had to
12 stop it. And we did.

13 Now, what you've handed me is an order of August the
14 20th of 2007. I've got no reason to dispute that. But
15 all I'm telling you is, when we filed the second motion of
16 prosecutorial misconduct on August the 27th, a week after
17 this, we felt that the retardation issue was still an
18 issue in that case. And we were going to take exception.

19 The -- and let me tell you just in a nutshell why.
20 The finding by the Judge -- and I'll be glad to review
21 this order -- was not necessarily dispositive of the
22 issue. This was his ruling in a pre-trial bench-only
23 hearing. The jury, in the sentencing, was going to hear
24 the same evidence and get to make the same choice about
25 whether Atkins barred the death penalty.

1 So we thought it was still an issue. And it really
2 was. This was a preliminary finding by the Judge. It was
3 not finally dispositive in our view.

4 Q Going back to #9. Preliminarily or not, it wasn't an
5 issue when we were talking about withdrawing the death
6 notice. Do you agree with that? It had been decided.

7 A Repeat that. I'm sorry.

8 Q It was not an issue when we were talking about
9 withdrawing the death notice. It had been decided. And,
10 as far as this case was concerned, if the death notice was
11 withdrawn, that was going to be the law of the case?

12 A Well -- and let me respond. Look at #9 and look at
13 the language. It doesn't say that he would or would not
14 find retardation, which is what this order of August the
15 20th says. Look at the words.

16 It says, Have Judge rule that with regard to mental
17 retardation, he considered the testimony of Dr. Everington
18 in making his decision -- which would have been already
19 made in making his decision -- But further finds that
20 she's in violation of the statute. And that is what we
21 simply were not going to agree to, that that was a
22 violation of that statute.

23 So it's not inconsistent with the timing here, if
24 you'll just read #9's language.

25 Q That's your interpretation --

1 A Yes.

2 Q -- on this witness stand?

3 A Yes.

4 Q Okay. And you've read the order where he does say in
5 the order he's considered the testimony of Dr. Everington?

6 A I just -- if you want me to read it, I will.

7 Q No. I don't want you to read it. It's a matter --
8 we'll make it an exhibit. We'll make it a State's Exhibit
9 and I don't need you to agree with theses things. I'm
10 just pointing them out to you.

11 A Yes, sir

12 (WHEREUPON, State's Exhibit No. 26 was marked for
13 identification and admitted into evidence.)

14 BY MR. ARIAIL:

15 Q If I told you that I didn't have a meeting with you
16 on the 28th --

17 MR. BANNISTER: Judge, I'm going to object to the
18 form of that question.

19 THE COURT: There you go testifying again.

20 MR. ARIAIL: I'm not testifying. I'm asking him --

21 BY MR. ARIAIL:

22 Q If I were to show you that I did not have a meeting
23 with you on the 28th, would you have any way, that you
24 know of, that you would dispute that?

25 A I will tell you --

1 MR. BANNISTER: I'm going to object to the form of
2 that question again.

3 THE COURT: All right. You can answer it.

4 And then I'm going to have a little discussion.

5 THE WITNESS: The -- I will tell you, Mr. Ariail,
6 that in trying to reconstruct the events of a couple of
7 years ago, we looked at these memoranda, Defendant's
8 Exhibit Nos. 41 and 42. And one thing was absolutely
9 clear, that was that the memoranda had to have been
10 prepared after August the 27th at 4:00. Because that's
11 when we filed the motion and the -- both memoranda talk
12 about motions for prosecutorial misconduct. So we know
13 that had to be -- it had to be after 4:00 on the 27th.

14 Then we tried to figure out, between that time and
15 when he was sentenced on the 30th, when could it have
16 been. I consulted with Mr. Tessier, who was required to
17 submit time records regarding the -- his activity as
18 co-counsel. And it was determined by the two of us that
19 those -- that it did occur sometime during the day on the
20 28th. And we couldn't figure out whether it was morning
21 or afternoon. But we did figure out it had to have been
22 on the 28th of August.

23 THE COURT: All right. We are not here to try the
24 Laney case. Mr. Bannister has filed a motion for a
25 mistrial. He has alleged prosecutorial misconduct. He

1 is, by introducing this evidence in the Laney case,
2 attempting to show that the Solicitor knew about this
3 issue and he had been formerly -- I presume he's trying to
4 show that he had formerly been ruled against on this
5 issue. And we're going to limit it to that. We are not
6 going through all this stuff. We're not trying the Edens
7 and Holloway case or the Laney case.

8 So if you want to -- Mr. Bannister, I believe you are
9 trying to show deliberate prosecutorial misconduct. Limit
10 these issues to that. And we are going to move on. This
11 is way far afield.

12 MR. ARIAIL: All right. Then I'll limit my last two
13 questions to that.

14 BY MR. ARIAIL:

15 Q Were the motions for prosecutorial misconduct ever
16 scheduled for a hearing?

17 A No.

18 Q Were they ever ruled on by a Judge?

19 A No.

20 Q And were they withdrawn?

21 A They were.

22 Q And when were they withdrawn?

23 A I think --

24 Q In the transcript -- you have a copy of the
25 transcript.

1 A All right. Hang on. Hang on one moment.

2 Q Was it before or after the death notice was
3 withdrawn?

4 A If you'll just give me one minute.

5 In answer to the question, Defendant's Exhibit
6 No. 43, regarding the proceeding that occurred on August
7 the 30th of 2007, on Page 37, the State withdrew the
8 notice to seek the death penalty. On Page 38, I withdrew
9 the two motions for prosecutorial misconduct.

10 Q So they were withdrawn after the death notice was
11 withdrawn?

12 A That's right.

13 Q And what was the reason stated, on the record, for
14 the withdrawal of the death notice?

15 A In a nutshell, it was the victim's family.

16 Q The victim's family?

17 A That's what you stated on the record.

18 Q Endless litigation of the mental health issues?

19 A Well, I'll just say that it's on Page 37, Line 18
20 through Page 38, Line 14. And it refers to the victim's
21 family, essentially.

22 Q Page 38. You referred to 38; correct?

23 A Yes.

24 MR. ARIAIL: I have no other questions.

25 THE COURT: Very limited redirect.

1 MR. BANNISTER: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. BANNISTER:

4 Q Having reviewed the transcript, was what happened at
5 the -- or the final proceeding in Laney, was that in
6 lockstep with what the memorandum reflects of the
7 resolution in the Michael Laney case, Defendant's Exhibit
8 No. 42?

9 A Yes, sir.

10 MR. BANNISTER: No further questions.

11 THE COURT: All right. Thank you, Mr. Mauldin.

12 THE WITNESS: This was never -- that's that order.

13 THE COURT: Yes.

14 It was introduced, I believe, wasn't it?

15 THE COURT REPORTER: Yes, sir.

16 THE COURT: Thank you, Mr. Mauldin.

17 Can we release Mr. Mauldin from subpoena? He's got
18 work to do.

19 MR. BANNISTER: Yes, sir.

20 THE COURT: All right. You're released.

21 Thank you, Mr. Mauldin.

22 THE WITNESS: Thank you.

23 MR. BANNISTER: Your Honor, I call Troy Tessier
24 briefly.

25 THE COURT: We're not reploting the same ground.

1 MR. BANNISTER: No, sir.

2 THE CLERK: Place your left hand on the Bible and
3 raise your right hand.

4 WHEREUPON,

5 TROY TESSIER,

6 after first having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. BANNISTER:

9 Q Mr. Tessier, if you would, just state your name for
10 the record.

11 A Yes, sir. Troy Tessier.

12 Q And I think we all know this, but your involvement
13 with the Michael Laney case was as a defense attorney as
14 co-counsel with Mr. Mauldin?

15 A That's correct.

16 Q All right. If you would, I want to turn your
17 attention to late April of 2007, and ask you to look at
18 Defendant's Exhibit -- let's see. I think they're
19 Defendant's Exhibit Nos. 40 and 41 -- I'm sorry. They're
20 Defendant's Exhibit Nos. 41 and 42.

21 Okay. Are you familiar with those? They're
22 entitled, The Resolution of the Michael Laney Case.

23 A I am, but only because I saw these in advance of this
24 hearing today.

25 Q Okay.

1 A I did not recall having received them contemporaneously
2 is what I'm trying to say.

3 Q All right. Understood. Was there -- do you recall
4 the August 27th, 2007, renewal of the motion for
5 prosecutorial misconduct?

6 A Yes.

7 Q And were you the attorney who was in charge of
8 putting together the legal research for that motion?

9 A I would say that is correct as to that, and the prior
10 motions for prosecutorial misconduct.

11 Q Okay. Turning to those for just a second. Were you,
12 also, in receipt, at some point, of the State's response
13 to the Defendant's motion for prosecutorial misconduct,
14 initially?

15 A Yes.

16 Q And had you been doing the research on the issue of
17 prosecutorial misconduct, due process violations, and
18 ethical misconduct?

19 A Had I been? Yes.

20 Q And, in the State's response, was there any citations
21 that you were aware of or ethical rules or opinions that
22 the State cited to, other than the ones that you had cited
23 in support of your position?

24 A Without reviewing them again, I can't be certain.
25 But my recollection is that there were no new authorities

1 cited by the State.

2 Q Do you have an independent recollection of a meeting
3 that took place around or about August 27th, 2007, between
4 you, John Mauldin, and members from the Solicitor's
5 Office?

6 A I remember there were a number of meetings at
7 different times. But the one I think you're talking
8 about, I do recall. And it included Carl Muller as well.

9 Q And was the issue of resolving the Laney case with
10 finality the primary issue in that meeting?

11 A I would say so, yes.

12 Q Okay. Was the issue of prosecutorial misconduct
13 brought up at that meeting, the motions that had been
14 filed?

15 A I believe so, yes.

16 Q And how to resolve them?

17 A Right. It was sort of a meeting to reach a global
18 resolution of the matter.

19 Q Okay. Which would have included those motions --

20 A Included those pending motions.

21 Q All right. And it would have included -- because
22 there was no alternative -- having them to withdraw the
23 death penalty?

24 A Correct. We would not have accepted anything else.
25 That's what we were looking for. And what we would have

1 done to get it was whatever we could think of to do.

2 Q And did you review your time sheets to see when that
3 meeting took place?

4 A I did.

5 Q And did it take place, according to your time sheets,
6 August 28th, 2007?

7 A Yes.

8 Q All right. Looking at the memos again, there is some
9 handwriting on Defendant's Exhibit No. 41. Is that your
10 handwriting?

11 A No, it's not.

12 Q Okay. And State's Exhibit -- well, are you familiar
13 with whose handwriting it is?

14 A I really don't recognize that handwriting.

15 Q All right. And with regards to State's Exhibit
16 No. 25, I'm just going to show you the copy I got handed,
17 so don't take the time finding it. Is your handwriting on
18 that exhibit at any place?

19 A No.

20 MR. BANNISTER: Judge, just one moment.

21 (Pause.)

22 MR. BANNISTER: I don't have any further questions
23 for Mr. Tessier.

24 THE COURT: Any cross?

25 MR. ARIAIL: Just one thing. I know I -- but I've

1 got a record to build. This is my reputation they're
2 talking about.

3 THE COURT: I want you to have full and fair
4 opportunity.

5 CROSS-EXAMINATION

6 BY MR. ARIAIL:

7 Q The meeting on the 28th, Mr. Tessier, I want to go
8 back and remind you about it, specifically. That was the
9 meeting that I was so infuriated with you two that I
10 dragged you in my office with Mr. Mauldin; isn't that
11 right?

12 MR. BANNISTER: Judge, I object to the form of the
13 question --

14 MR. ARIAIL: No, no. Let him -- I want him to --

15 THE COURT: Wait a minute.

16 Mr. Ariail, you can't testify. You can ask him what
17 he remembers. You're --

18 MR. ARIAIL: Okay.

19 BY MR. ARIAIL:

20 Q Let me ask you if I was infuriated?

21 A Well, I don't know you as well as some do. But I
22 would say that my impression was you were not happy with
23 me or Mr. Mauldin.

24 Q And I was unhappy -- do you remember the reason I
25 told you I was unhappy?

1 MR. BANNISTER: Judge, I'm going to object to that.
2 That's -- if he's going to get into that, it's a
3 backhanded way for him to testify to what he said.

4 THE COURT: He can testify to what he knows.

5 MR. BANNISTER: I'm sorry. It's a backhanded way for
6 the Solicitor to testify to what he said --

7 THE COURT: Well, I'm going to allow it over your
8 objection.

9 Go ahead.

10 MR. BANNISTER: Thank you.

11 THE COURT: Go ahead, Mr. Tessier.

12 THE WITNESS: My impression was that you were not
13 happy about the -- among other things -- it wasn't just
14 that, but the filing of the motion -- the renewal of the
15 motion of prosecutorial misconduct, among other things.
16 And I would say if I were --

17 BY MR. ARIAIL:

18 Q Because?

19 A Because -- do you mean why I thought you were upset?

20 Q Why I told you I was upset.

21 A I don't recall, specifically, if you said why you
22 were upset. I'm just giving you my impression, which was
23 that my impression was that you were not happy with us, at
24 least, in part, due to the fact that we had just renewed
25 the motion for prosecutorial misconduct.

1 Q Do you remember me telling you and Mr. Mauldin that
2 these types of motions made it almost impossible to get a
3 victim's family to agree to a life sentence, and that they
4 shouldn't be filed unless they were serious, and that you
5 made my job of reaching the goal wanted very difficult?
6 Do you recall that?

7 MR. BANNISTER: Same objection, Your Honor.

8 THE COURT: Well, he just asked whether or not he
9 remembers Mr. Ariail saying those things.

10 THE WITNESS: I can't say I remember that,
11 specifically, being said. I do remember you saying
12 something about Mr. Mauldin needing a --

13 BY MR. ARIAIL:

14 Q Political advisor?

15 A -- political advisor, yes.

16 Q Thank you.

17 And that was the meeting that you got time sheets for
18 on the 28th?

19 A That is correct.

20 MR. ARIAIL: No more questions.

21 THE COURT: All right. Anything else?

22 MR. BANNISTER: No follow-up.

23 THE COURT: Can we cut him loose from subpoena?

24 MR. BANNISTER: Yes, Your Honor.

25 THE COURT: Any objection from the State?

1 MR. ARIAIL: None.

2 THE COURT: Thank you, sir.

3 MR. BANNISTER: Your Honor, we would call Susan
4 Allen.

5 THE CLERK: Place your left hand on the Bible and
6 raise your right hand.

7 WHEREUPON,

8 SUSAN ALLEN,

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BANNISTER:

12 Q If you would, Ms. Allen, please, state your name for
13 the record.

14 A Susan Allen.

15 Q All right. And, if you would, tell us where you
16 reside and what you do for a living?

17 A I live in Simpsonville, South Carolina. And I teach
18 at Greenville Tech.

19 Q And how long have you been there?

20 A At Greenville Tech?

21 Q Yes.

22 A About seven years.

23 Q Okay. And I want to direct your attention back to on
24 or about the neighborhood of June of 2006. Did you
25 receive notice from the Clerk of Court for the Thirteenth

1 Circuit, Greenville County, in particular?

2 A I did.

3 Q And that notice was to attend -- potentially, be a
4 witness -- I'm sorry -- not a witness, but a juror?

5 A Yes.

6 Q And that was for the Edens and Holloway case?

7 A Yes, it was.

8 Q And you, subsequently, were, ultimately, selected as
9 a member of that jury; is that correct?

10 A Yes.

11 Q Okay. And I want to stay away from, as much as
12 possible, anything that would have to do with,
13 potentially, the deliberations that took place. So let me
14 know if I cross over into that area first, please.

15 But, obviously, you were there for the entire trial
16 of Edens and Holloway?

17 A I was.

18 Q And you participated in the deliberations and,
19 ultimately, were one of the jurors that rendered some sort
20 of a --

21 A Yes.

22 Q Okay. The issue in that case, both of the Defendants
23 were convicted and found guilty; correct?

24 A Correct.

25 Q All right. During the sentencing -- I'm sorry.

1 During the deliberation of the sentencing portion of that
2 case, do you recall whether or not the jury was given
3 testimony for a second time of a Dr. Marti Loring?

4 A I do remember that.

5 Q Okay. Without going into why, would it be fair to
6 say that that was an important issue --

7 MR. ARIAIL: I'm going to object, Your Honor. He's
8 getting into deliberations.

9 And, secondly, it wouldn't matter what the jury
10 wanted to hear it for. The issue is my state of mind and
11 what impact it had on me. So unless she has some
12 information that I knew what they wanted it for or the
13 fact that they wanted it, then I would object.

14 THE COURT: Where are you going with this?

15 MR. BANNISTER: Judge, ultimately, Ms. Allen was
16 invited to a dinner by the Solicitor's Office four to six
17 weeks after the conclusion of the Edens and Holloway
18 trial. The --

19 THE COURT: Wait a minute.

20 MR. BANNISTER: -- only evidence --

21 THE COURT: Just a minute.

22 (Pause.)

23 THE COURT: You know, Mr. Bannister, I don't have the
24 cases in front of me, but you're in -- you know, we do not
25 go back and ask jurors to second guess themselves.

1 MR. BANNISTER: And I agree wholeheartedly.

2 THE COURT: Well, you -- it appears to me to be
3 exactly what you're doing.

4 MR. BANNISTER: Well, I'll tell you what, I'll
5 withdraw the last question and let me ask it differently.

6 BY MR. BANNISTER:

7 Q Was there anything -- any other evidence that you
8 recall, specifically, requesting -- I'm sorry -- that you
9 recall the jury, specifically, requesting having read back
10 to them, other than what was submitted --

11 MR. ARIAIL: I'm going to object, Your Honor.

12 THE COURT: I'm going to sustain it. That's part of
13 the record.

14 MR. ARIAIL: Yeah.

15 THE COURT: I mean, if it's in the record that they
16 had Dr. Loring's testimony played back to them, then I'll
17 take judicial notice of that.

18 Is that correct?

19 MR. ARIAIL: No. It's not correct.

20 Well, I'll tell you what I'll do. I'll hand up to
21 the Court the exact question that the jury asked and that
22 the Judge played the testimony -- I don't know what
23 testimony was played. I'm sure --

24 MR. BANNISTER: That's fine.

25 THE COURT: Well, he agrees with that. That's fine.

1 We'll do it that way.

2 MR. ARIAIL: It will be their questions.

3 THE COURT: Okay.

4 MR. ARIAIL: Signed by their foreman.

5 THE COURT: All right.

6 MR. BANNISTER: That's sufficient.

7 BY MR. BANNISTER:

8 Q Ms. Allen, after that case had concluded, at some
9 point in time, did you receive an invitation from the
10 Thirteenth Circuit Solicitor's Office?

11 A Yes, I did.

12 Q And what's just a rough time frame after the
13 conclusion of that verdict for that case?

14 A It was probably a month to six weeks after the
15 conclusion of the trial.

16 Q And do you recall, specifically, what that invitation
17 was?

18 A For dinner.

19 Q And where was that supposed to be?

20 A Stax Peppermill in Greenville.

21 Q And what was your impression, at that time, of what
22 that was going to be about?

23 A I really didn't have a clue. I kind of assumed it
24 was just a thank you for, you know, putting your life on
25 hold for two weeks and being sequestered and doing your

1 civic duty. I didn't know. I was curious.

2 Q All right. Did you attend the dinner?

3 A I did.

4 Q And was your impression, after having attended the
5 dinner, different than the one you had when you went?

6 A Yes, it was.

7 Q Who was present at the dinner, the best you can
8 recall?

9 A There were several other jurors, not all of them
10 attended, but Mr. Ariail, Ms. Strom, and Walt Wilkins were
11 there.

12 Q Okay. And did the issue -- did issues regarding the
13 jury's deliberations come up during the conversations at
14 that dinner?

15 A Yes, they did.

16 Q Okay. And were any of those conversations directed
17 or participated in by Solicitor Ariail and Deputy
18 Solicitor Strom?

19 A Yes, they were.

20 Q Okay. And how did you take their inquiries into
21 those deliberations?

22 A I took it to be they wanted to know what had
23 influenced us the most, as a jury, in not giving them the
24 death penalty. And what they had done to -- wrong or what
25 they had done right. They were just picking our brains to

1 kind of get a general idea of how to better do it next
2 time.

3 Q And did you get any impression that Solicitor Ariail,
4 in particular, was upset about that -- the way that had
5 been resolved?

6 A Yes, I did.

7 MR. BANNISTER: No further questions.

8 THE COURT: Any cross?

9 MR. ARIAIL: Your Honor, these are the two --

10 THE COURT: Well, show them to opposing counsel, if
11 you're going to intend to introduce them, if these are the
12 documents that you referred to.

13 MR. ARIAIL: Well, they're matters of public record.

14 THE COURT: Are these the questions that were asked?

15 MR. ARIAIL: Yeah. It came out of the Clerk's
16 Office.

17 THE COURT: All right.

18 MR. ARIAIL: That's one, and that's the second.

19 THE COURT: Now, these have previous exhibit markers
20 on them.

21 Mr. Bannister, are these the documents that you agree
22 to allow to be introduced?

23 MR. BANNISTER: Yes. I have no reason to doubt
24 the Solicitor.

25 THE COURT: All right. Then I'm going to hand these

1 down to the court reporter and ask her to mark them as
2 State's Exhibit -- whatever, State's Exhibit No. 26 and
3 27.

4 What is it?

5 THE COURT REPORTER: State's Exhibit Nos. 27 and 28.

6 THE COURT: State's Exhibit Nos. 27 and 28.

7 (WHEREUPON, State's Exhibit Nos. 27 and 28 were
8 marked for identification and admitted into
9 evidence.)

10 THE COURT: Mr. Ariail.

11 MR. ARIAIL: I was going to have that letter marked.

12 (WHEREUPON, State's Exhibit No. 29 was marked for
13 identification only.)

14 CROSS-EXAMINATION

15 BY MR. ARIAIL:

16 Q You were Mrs. McLaughlin at the time?

17 A I was.

18 Q Is that the letter that you received from me
19 regarding a dinner meeting?

20 A I assume so. It looks --

21 Q Do you remember that?

22 A I don't remember the letter, specifically, but it's
23 got my name on it.

24 Q Okay. And down there next to the last paragraph, it
25 says -- talks to you about, Maybe you didn't reach a

1 unanimous verdict. We would like to encourage each of you
2 to attend.

3 A Uh-huh.

4 Q This is not challenging ones decision, but rather to
5 understand how we can improve our Court presentation?

6 A Uh-huh.

7 Q That was in the letter?

8 A Yes.

9 Q And then it says, As you're aware from Judge Hayes
10 instructions, there's no obligation upon you to accept or
11 respond to the questionnaire or --

12 THE COURT: Let me interrupt you.

13 Have you consented to allow this to be marked as an
14 exhibit?

15 It's being published in the record. You haven't
16 interjected an objection.

17 MR. BANNISTER: Yes, if he finishes his question, I
18 do, yes. I mean, she hasn't identified it. She says she
19 doesn't remember it. So I object to it.

20 THE COURT: Mr. Ariail, I mean --

21 MR. ARIAIL: That's fine. We'll withdraw it. I'll
22 put it in with somebody else.

23 THE COURT: All right.

24 MR. ARIAIL: That's all I have.

25 THE COURT: Thank you very much.

1 And I want to thank you for your service in the other
2 case.

3 THE WITNESS: Thank you.

4 You're welcome.

5 THE COURT: May she be released from subpoena?

6 MR. BANNISTER: Yes, Your Honor.

7 MR. ARIAIL: Yes, sir.

8 THE COURT: We've been going an hour and a half.
9 How is everyone doing?

10 (There was no response.)

11 THE COURT: Some of the older members of the crowd
12 want to take a break. So we'll take a 10-minute -- a
13 15-minute break.

14 (WHEREUPON, a break was taken.)

15 THE COURT: What else have we got?

16 MR. BANNISTER: Your Honor, during the break, I was
17 reminded that there are a number of exhibits that I have
18 not moved into evidence. Specifically, they are the
19 exhibits that come from the Court records in Georgia
20 regarding the out-of-state subpoena for Dr. Loring. My
21 recollection is they are Defendant's Exhibit Nos. 32, 33,
22 and 34. To the extent I did not move Defendant's Exhibit
23 Nos. 32, 33, and 34 into evidence, I would do so at this
24 time.

25 THE COURT: I don't believe there's any objection.

1 MR. BANNISTER: Your Honor, also --

2 THE COURT: Is there an objection?

3 MS. STROM: Just one second, Your Honor.

4 THE COURT: Okay.

5 MR. ARIAIL: I can't speak on that issue.

6 THE COURT: Well, show him those documents.

7 MR. ARIAIL: No. You told me I couldn't, it's hers.

8 THE COURT: No. I said you couldn't examine
9 Dr. Loring. But that will be fine, we'll let Ms. Strom
10 handle this.

11 (Pause.)

12 MS. STROM: Your Honor, I stated, at the time, I had
13 no objection.

14 THE COURT: No objection. They're moved in.

15 (WHEREUPON, Defendant's Exhibit Nos. 32, 33, and 34
16 were admitted into evidence.)

17 MR. BANNISTER: All right. Judge, and the last thing
18 is, I had attached, as Exhibit I, a transcript of the
19 Jeffery Motts case. It's my understanding that this
20 transcript covers the voir dire, again, of -- by the
21 Solicitor of Dr. Loring, her qualifications as an expert
22 in that case from November 26th, 2007.

23 We would be offering it for the purposes of showing
24 that this issue was not raised at that time. Dr. Loring
25 is here. And to the extent you need me to have her on the

1 stand to introduce the transcript, I'll bring her in. But
2 the way we've been --

3 THE COURT: Anything you all want to say? I mean,
4 it's an official Court transcript.

5 MR. ARIAIL: No objection.

6 THE COURT: I can take judicial notice of it. So
7 it's --

8 MR. ARIAIL: Okay.

9 THE COURT: I'll allow you to introduce it.

10 MR. BANNISTER: All right. And I would ask that that
11 be introduced as Defendant's Exhibit No. 44.

12 (WHEREUPON, Defendant's Exhibit No. 44 was admitted
13 into evidence.)

14 MR. BANNISTER: Judge, with that, I can release
15 Dr. Loring as -- to the extent you asked me -- I didn't
16 get her here. But to the extent that you had asked me if
17 I wanted her around, one, I don't need her for purposes of
18 the prosecutorial misconduct issue; two, I don't believe
19 that her testimony, potentially, as an expert witness,
20 would meet the requirements for the Defendant or myself,
21 as his counsel, with regards to his mitigation.

22 THE COURT: Well, I just -- I mean, there's been all
23 this talk about how she doesn't think she's up to speed
24 and all that. But I just -- I had an e-mail from
25 Mr. Godfrey on the morning of April 16th, before --

1 apparently, before -- according to her testimony, before
2 she was aware of any South Carolina subpoena, in which
3 Mr. Godfrey said that she will testify without any fear or
4 apprehension. I have talked with her at length about
5 this. And the e-mail to me was dated April 16, 2009, at
6 11:12 a.m.

7 So, having said that -- however -- and, as I said in
8 my e-mail, the presentation of your evidence is up to you,
9 as long as it's relevant and competent.

10 MR. BANNISTER: And I'm just stating, for the record,
11 I believe her responses to the questions about what
12 happened in Georgia and being up to the level of being
13 prepared and comfortable with what she was going to do was
14 impacted by that. And so I'm just stating, for the
15 record, those are my reasons and my basis for saying I
16 don't believe she can be a participant for the Defendant's
17 mitigation in this case.

18 THE COURT: Well --

19 MR. BANNISTER: And so we have no further need for
20 her.

21 THE COURT: All right. And I just -- it's my
22 impression that -- I mean, she didn't -- there are no
23 specifics, in the record, about why she wouldn't be up to
24 speed or what her apprehension would be.

25 So that may be your position that she's not up to

1 speed. But she's a professional. I don't know how many
2 of these cases she's done. I think she does it pretty
3 much on a regular basis. And I found her to be very
4 professional. But, again, it is your choice as to what
5 evidence you want to present.

6 So, with that, she's not in the courtroom, though,
7 neither is Mr. Godfrey, so.

8 There he is.

9 All right. Mr. Godfrey, thank Dr. Loring very much.

10 MR. GODFREY: Thank you.

11 THE COURT: And thank you.

12 MR. ARIAIL: Your Honor, could I just be heard on
13 that for a minute?

14 THE COURT: All right.

15 MR. ARIAIL: For the same reason we asked for the
16 out-of-state subpoena to bring her here, I believe that
17 still exists. They have not yet -- well, there's two
18 issues out there. One is the issue of Dr. Loring not
19 testifying in an effort to preserve the prosecutorial
20 misconduct or Governmental interference. Because if she
21 has -- or if she does testify, clearly, that issue, under
22 the law, is negated.

23 So if Mr. Bannister's strategy, as a lawyer, whatever
24 it may be, is to try to preserve that and then, secondly,
25 if the witness that is going -- or that you mentioned the

1 other day that's going to be her replacement is not ready
2 or, as he put in his brief or his memorandum, is not
3 capable of covering the subject to the degree that
4 Dr. Loring could -- he's already said that. So those two
5 issues are out in regard to the follow-up or substitute
6 witness.

7 I think that that, before you release her, you should
8 be satisfied, number one, that the Defendant himself, who
9 is going to be the one dealing with this, as to the
10 outcome, and, number two, that the Court itself and the
11 record, as a whole, is protected from a self-made
12 post-conviction relief issue. Because if he elects as a
13 matter not to call her and then Mr. Inman later determines
14 that he thinks that was misconduct, or incompetence by his
15 lawyer, when she's available and here and perfectly able
16 to testify -- she can maybe identify some areas she's not
17 quite up to and we could -- if she thinks that's a
18 problem, but decorum and composure are not normally things
19 that once she got into her delivery would -- I would think
20 would have a big effect.

21 So I see those as issues just looming out there. And
22 that's why we asked for her to be brought here to protect
23 this record and this Defendant against what may be being
24 developed.

25 So I would ask you to inquire of the Defendant and

1 make sure he understands what's going on and he's in
2 agreement with it. We're not going to create a
3 post-conviction relief issue and -- that they decided this
4 is a matter of strategy and put an end to it.

5 THE COURT: Mr. Bannister, it's been seven months
6 since we adjourned this hearing. Is your -- and I'm
7 not going to -- I don't know what your strategy is. I
8 don't know what your social historian -- what you intend
9 to get out of your social historian. But this case is
10 going forward this week.

11 MR. BANNISTER: Judge, if I might, because I want
12 to -- if I hear what you're telling me, it is that I'm now
13 being put in the choice of either --

14 THE COURT: No, sir.

15 Mr. Bannister, this case -- this has been going on
16 for a long time. I am not putting you in that position,
17 except to tell you we're going forward with the case.
18 Now, you've got -- I don't know the degree of preparedness
19 of the new social historian.

20 But I don't want Mr. Inman to be prejudiced because I
21 think it's accurately stated that the Defense benefits in
22 an appellate -- could benefit in an appellate review from
23 not having Dr. Loring testify. And if your other
24 historian is not ready to go forward, then there is the
25 potential for a post-conviction relief issue. But I can't

1 make you call Dr. Loring so -- but I think you need to
2 examine what it is you're doing.

3 MR. BANNISTER: I have. And I really -- at this
4 point, all I'm asking is I want the opportunity to be
5 heard on my arguments as to why I believe that the
6 Solicitor's characterization of where we are is
7 inaccurate, and why his characterization of our alleged
8 strategy is inaccurate, and why -- what we're being asked
9 to do is --

10 THE COURT: Well, both sides -- and I don't know that
11 y'all have this case. Y'all have cited a lot of cases and
12 sent me a lot of paper. United States v. Golding was
13 decided February 17, 1999, Fourth Circuit Court of
14 Appeals. Among other things, the Court holds that the
15 Defendant, supported by an affidavit, paints a picture of
16 a sinister threat, while the Government maintains via its
17 own proffer that the prosecutrix merely offered a friendly
18 warning. Other circumstances shed light on the issue.
19 And contrary to the Government's proffer, this was not a
20 general recognition. And it, also, was not the sinister
21 threat.

22 So you all are espousing your positions. And I will
23 issue a ruling as to how this case will proceed.

24 So having said that, Dr. Loring is here. She's ready
25 to go. I will address the issue of the comments made by

1 the Solicitor in due course. But --

2 MR. BANNISTER: Your Honor --

3 THE COURT: What I'm -- we're not going to set this
4 case up for failure.

5 MR. BANNISTER: Your Honor, I am -- Defense counsel
6 is not calling Dr. Loring as a witness.

7 Now, my reasons for that I'll state on the record.
8 But, at this point, I'm still not done presenting the
9 evidence I have for the prosecutorial misconduct. I still
10 don't have a ruling on that. Whether or not --

11 THE COURT: All right. Well, Mr. Godfrey --

12 MR. BANNISTER: We get to that is --

13 THE COURT: -- just ask Dr. Loring to stay.

14 Okay. We'll just proceed and finish this up. And
15 then we'll make a determination about what to do.

16 MR. BANNISTER: Your Honor, at this point, it would
17 be my intent to call, not only Solicitor Ariail as a
18 witness, but, also, Deputy Solicitor Strom as a witness.

19 The record in the case has got a number of places
20 where it is clear that their testimony makes them material
21 witnesses as to, ultimately, when they got notice about
22 the issues of prosecutorial misconduct, what they knew
23 about it, the issues about why they didn't raise this
24 issue with Dr. Loring in, at least, one trial post the
25 Dr. Everington issue coming up, and what they did to avail

1 themselves of what, apparently, this Court has ruled on
2 April 14th, is a clear indication in the law that it was
3 an improper issue to raise, and that the statute -- the
4 licensing statute is inapplicable in this situation.

5 So, were I being permitted, I would call Solicitor
6 Ariail as my next witness, followed by Deputy Solicitor
7 Strom. And then if there are any other individuals of the
8 Prosecution team who are -- who come up as a result of the
9 interrogation of those two witnesses, I would anticipate
10 calling them as well.

11 THE COURT: Well, I'm going to deny your motion.
12 In your renewed motion for mistrial, on Page 11, you state
13 that when the jury began to deliberate the sentence to be
14 imposed, they requested testimony from Dr. Loring to be
15 read to them as part of their deliberations. This was the
16 only request for evidence made by the jury during their
17 deliberations. That is an incorrect statement of what
18 went on.

19 And that is what you are basing your -- you want to
20 call him as a witness to get his state of mind because of
21 that; am I correct?

22 MR. BANNISTER: Only partly.

23 THE COURT: Well, I'm not going to -- he is -- I'm
24 not going to grant your motion to recuse them as advocates
25 and make them become witnesses in this case.

1 MR. BANNISTER: All right. For the record, let me
2 just state that I believe that that impacts my client's
3 Sixth Amendment right for compulsory process,
4 interrogation of witnesses, his Fourteenth Amendment to
5 due process, and his Sixth and Fourteenth Amendment
6 ability to present a complete defense.

7 Thank you.

8 THE COURT: State v. Lyles decided on June 6th of
9 2008, 665 S.E.2d 201, says that, Few rights are more
10 fundamental than that of an accused to present witnesses
11 in his own defense. However, in the exercise of this
12 right to present a defense, the accused, as is required of
13 the State, must comply with established rules of procedure
14 and evidence designed to assure both fairness and
15 reliability in the ascertainment of guilt and innocence.
16 The right to present a defense is not unlimited, but must
17 bow to accommodate other legitimate interests in the
18 criminal trial process.

19 All right. Next witness.

20 MR. BANNISTER: I would call Desa Ballard.

21 THE CLERK: Please raise your right hand and place
22 your left on the Bible.

23 WHEREUPON,

24 DESA BALLARD,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BANNISTER:

Q Please state your name for the record.

A Desa Ballard.

Q Ms. Ballard, if you would, where are you from and what do you do for a living?

A I live in Chapin, South Carolina. I practice law. I have an office in West Columbia. I've been a member of the South Carolina Bar for 25 years.

Q And do you have any particular expertise as it relates to this case?

A I concentrate my practice in the area of legal ethics and professional responsibility. I represent lawyers in disciplinary matters and in matters similar to that. I, also, represent other licensed professionals, doctors, engineers, psychologists, other people before LLR in licensing proceedings. Approximately 70 percent of my practice is in legal ethics and issues related to lawyer conduct and misconduct.

Q Have you ever been qualified as an expert as it relates to ethics and their application to lawyers conduct or misconduct?

A Yes.

Q And is that in Courts in the State of South Carolina?

A Yes.

1 Q And have you had an opportunity to review certain
2 documents and other things regarding Solicitor Ariail and
3 his staff and his conduct in this case as it relates to
4 Dr. Loring?

5 A Yes. I've reviewed quite a bit of material.

6 Q Okay. And, having reviewed that material, do you
7 believe that you are in a position to offer any opinions
8 regarding the ethics of that conduct?

9 A Yes, I am.

10 MR. BANNISTER: Your Honor, at this time, I would
11 offer her as an expert in the field of ethics, especially
12 as it relates to lawyers in the State of South Carolina
13 and with professional ethics.

14 THE COURT: Any voir dire?

15 MR. ARIAIL: No.

16 I have no voir dire, but I would reserve it until
17 after the time she's testified, and ask her questions a
18 little deeper into education --

19 THE COURT: Well, I know. But are you consenting to
20 her being qualified as an expert?

21 MR. ARIAIL: Sure -- well, I'm not consenting. I'm
22 just -- he's offering her --

23 THE COURT: Well, do you object?

24 MR. ARIAIL: No.

25 THE COURT: All right. Well, Ms. Ballard, do you

1 serve on any South Carolina Bar committees?

2 THE WITNESS: Yes, sir.

3 I am a former chairman of the Professional
4 Responsibility Committee of the South Carolina Bar. I'm a
5 former chairman of the ethics and professionalism section
6 of the South Carolina Trial Lawyers Association. I'm a
7 member of the American Bar Association Ethics Center for
8 Professional Responsibility. I'm a member of the South
9 Carolina Association for Ethics Counsel. I am a former
10 member of the Ethics Advisory Committee. I am -- gosh. I
11 have so many different things I'm members of, all of which
12 have to do with ethics and professional responsibility.

13 THE COURT: Okay. I'm going to -- without objection.
14 Go ahead.

15 MR. BANNISTER: Thank you.

16 BY MR. BANNISTER:

17 Q All right. Let me go ahead and ask you. What
18 would -- well, what have you reviewed to reach these
19 opinions?

20 A I reviewed a number of filings in the State v. Laney
21 matter. I started with the Supreme Court's reversal of
22 the Laney death sentence in 2006, and then read several
23 subsequent transcripts in the Laney proceeding.

24 I read an excerpt of the Edens and Holloway
25 transcript where Dr. Loring was qualified as an expert

1 witness and allowed to testify by Solicitor Ariail.

2 I reviewed the motion for disqualification -- or
3 excuse me, motion to quash the death notice that was filed
4 on April 16th, 2007, by Mr. Mauldin in the Laney case. I
5 reviewed Solicitor Ariail's response and his memo in
6 opposition dated April 24th, 2007.

7 I reviewed Mr. Mauldin's reply memorandum in the
8 Laney case dated 5-21-07, Mr. Ariail's letter to
9 Dr. Everington, the date of that was 8-13-07. I -- the
10 subsequent motion, the Laney supplemental motion to quash
11 the death notice based on prosecutorial misconduct dated
12 August 27th, 2007. I believe it was the entire transcript
13 that I reviewed of the Laney proceedings on 8-30-07.

14 I, also, reviewed the two memoranda that have been
15 marked. They're undated. But they've been marked as
16 Defendant's Exhibit Nos. 41 and 42 that, apparently, were
17 discussed during a meeting among counsel and the Solicitor
18 on August 28th, 2007.

19 I've reviewed a portion of the transcript in the
20 State v. Jeffery Motts where Dr. Loring testified. And
21 I've reviewed the entire transcript of the proceedings of
22 September 10th and 11th, 2008, in this case.

23 Today, obviously, I saw some additional evidence. I
24 saw the State's Exhibit No. 25 introduced into evidence.
25 And, of course, I've looked at a lot of applicable ethics

1 authorities in cases as well.

2 Q And have you been present in the courtroom since we
3 started this hearings this morning?

4 A I think I was the first one here, yes.

5 Q Okay. And is that, potentially, going to form some
6 of the basis for your opinions?

7 A Yes. I wanted to hear some of the testimony about
8 what went on in the Laney case.

9 Q All right. That's what you looked at to form your
10 opinions. What are your opinions as it relates to the
11 Solicitor and his conduct in both Laney and this
12 particular case?

13 A In my opinion, Solicitor Ariail has violated a number
14 of rules of professional responsibility in connection with
15 his examination of Dr. Loring, which occurred in September
16 of 2008. Those rules include Rule 3.4-E and F, Rule 4.4,
17 and Rule 8.4-C and E.

18 It is particularly relevant in my analysis that the
19 Laney proceedings occurred in 2007. The motions were
20 filed citing the Williams case and the Needs case, the
21 South Carolina cases that talk about intimidation of a
22 witness and make it very clear that it is misconduct to
23 intimidate a witness on behalf of the Defense.

24 Those motions were filed in the Laney case. If
25 Mr. Ariail was not previously aware of what the law was in

1 that area, he, certainly, became aware. In his response,
2 he cited both cases, State v. Walker and State v. Needs,
3 both of which, of course, say that it is a Constitutional
4 violation to intimidate a Defense witness in a criminal
5 case.

6 So if he wasn't aware before then, he, certainly, was
7 aware at the time of the Laney case that questioning such
8 as the type he engaged in with Dr. Loring in September of
9 this past year was improper. And it appears to me, based
10 on the documents that I have reviewed, that there was a
11 negotiated deal in the Laney case to withdraw the death
12 notice in exchange for withdrawing the motion for
13 prosecutorial misconduct. He negotiated a way -- an
14 adjudicatory finding of whether or not he had engaged in
15 misconduct.

16 Then after having dodged that bullet, he did it again
17 in this case.

18 Q All right. As with regards to Dr. Loring and Laney,
19 if you would, let's go back to Dr. Loring. And you said
20 that he violated Rule 3.4-E and F, Rule 4.4, and Rule
21 8.4 --

22 A Yes.

23 Q -- C and E?

24 A Yes.

25 Q Would you explain those rules and why you concluded

1 what you concluded?

2 A Sure. South Carolina, as all states, have adopted a
3 version somewhat intact somewhat with their own
4 modifications of the American Bar Association Code of
5 Professional Responsibility. South Carolina's most recent
6 adoption was in 2005. The South Carolina Ethics Rules for
7 Attorneys are contained in Rule 407 of the Supreme Court
8 rules.

9 Rule 3.4 -- I said E, but I meant A. 3.4-A is a
10 prohibition on lawyers, not just prosecutors, but lawyers,
11 in general, are prohibited from unlawfully obstructing
12 evidence for -- of another party. I'm trying to turn to
13 it. A lawyer shall not unlawfully obstruct another
14 parties access to evidence or other material having
15 potential evidentiary value. The questioning by Solicitor
16 Ariail of Dr. Loring in September, clearly, intimidated
17 her and made her unwilling to testify at that proceeding.

18 3.4-F, A lawyer shall not request a person, other
19 than a client, to refrain from voluntarily giving relevant
20 information to another party with certain exceptions that
21 are not relevant here. Clearly, in my opinion, based on
22 the evidence that I've reviewed and based on the
23 Solicitor's knowledge from the Laney case, and his
24 apparent dissatisfaction with the outcome of the Edens and
25 Holloway case, it appears that he intentionally sought to

1 intimidate Dr. Loring. Dr. Loring, apparently, was a very
2 effective witness in the Edens and Holloway case and -- or
3 so he found out when he went to dinner with Ms. Allen and
4 the other jurors. And he didn't want her to testify in
5 this case. So he intimidated her accordingly and here we
6 are.

7 Q All right. With relation to -- and was that -- that
8 was Rule 4.4 or 3.4?

9 A Excuse me. That was Rule 3.4-A and Rule 3.4-F.

10 He violated Rule 4.4, which is a prohibition on
11 harassing witnesses. In representing a client, a lawyer
12 shall not use means that have no substantial purpose,
13 other than to embarrass or burden a third person.
14 Obviously, his intent to intimidate Dr. Loring violated
15 that rule as well.

16 And Rule 8.4-A and 8.4-E -- let me turn to those.
17 8.4-A is, It is professional misconduct for a lawyer to
18 violate or attempt to violate the rules of professional
19 conduct. And F is to engage in conduct that is
20 prejudicial to the administration of justice.

21 If Solicitor Ariail had done the research, he would
22 have understood very clearly that the section that he was
23 questioning Dr. Loring about had no applicability
24 whatsoever to these circumstances. She, clearly, was
25 intimidated as evidenced by -- even after he granted her

1 immunity from testifying in this case and she invoked the
2 Fifth Amendment in this case. And the Judge explained to
3 her she didn't have the right to invoke the Fifth
4 Amendment in this case. She still refused to testify.

5 Q With regard to 8.4, specifically, does that, in the
6 comments, reference the ABA guidelines on the
7 prosecutorial function?

8 A It does. One of the best sources, Mr. Bannister, of
9 ethics for Prosecutors is the -- let me turn to it --
10 National Center For Prosecution Ethics, which is,
11 actually, housed in Columbia, South Carolina. And it
12 refers to a number of other standards that are applicable
13 to determinate the appropriate conduct of a Prosecutor.
14 There are the model rules, which I've already mentioned.
15 The ABA standards for criminal justice and the National
16 District Attorney's Association Prosecution Standards, all
17 of which focus on the point that it is the duty of a
18 Prosecutor to see that justice is done, not necessarily to
19 obtain a conviction.

20 The cases that are summarized at the National Center
21 of Prosecution Ethics make it clear that a solicitor is
22 held to a higher standard than other lawyers, because he
23 represents the sovereign and -- whereas you and I are
24 subject to a certain rule of ethics, his standard is much
25 higher. Because he is acting and speaking on behalf of

1 the State, all of us.

2 Q And does -- Rule 8.4 of our rules, does it guide a
3 Prosecutor or a solicitor in our state to make himself
4 aware of the ABA guidelines on the prosecutorial function?
5 Is that one of the purposes of having it in the comment?

6 A It is. And, actually, the ABA Standards on
7 Prosecution Standards, also, contains a Section 3 -- I'm
8 looking for it -- 3.1-2-E. It's the duty of a Prosecutor
9 to know the rules of ethics and the applicable law of his
10 jurisdiction. And, obviously, it was his duty at the time
11 of the Laney case, but more so now to know what State v.
12 Walker and State v. Needs say about the improper
13 intimidation of witnesses.

14 Q You're saying "Walker," but I think you mean
15 Williams.

16 A I'm sorry. Yes, Williams.

17 Q Okay. Is there a particular ABA standard of
18 prosecutorial function that deals with the examination of
19 witnesses?

20 A There is.

21 Q And is that implicated in this case?

22 A It is. That section is 3-5.7. And that indicates
23 that an examination of a witness must be done fairly
24 and -- so as not to intimidate a witness. And, clearly,
25 that was done here.

1 Q Any other rules that you can point to? Have we
2 covered the ones that you believe were violated by the
3 conduct here?

4 A Well, I think it's important to know that overall
5 that all of these standards talk about the Solicitor being
6 a minister of justice. 3-1.2(b), The Prosecutor is a
7 minister of justice and his duty is to see that justice is
8 done, not necessarily to obtain a conviction.

9 There are United States Supreme Court cases from as
10 far back as 1935, that was Burger v. United States. It,
11 actually, says, if I may quote, While a solicitor may
12 strike hard blows, he is not at liberty to strike foul
13 blows. And most of the standards that have evolved since
14 that U.S. Supreme Court case in 1935, essentially, say the
15 same thing. He's got to play by the rules. He's got to
16 play fair. He can't intimidate witnesses.

17 And in this situation, of course, what our Supreme
18 Court and what the United States Supreme Court has said is
19 that it would be a violation of a Defendant's due process
20 rights not to be able to call the witnesses who are their
21 witnesses of choice, or witnesses that have evidence
22 relevant to their case.

23 Q As an expert in the field of ethics, what do you
24 believe would have been the Solicitor's obligations after
25 the issues got raised in Laney about this licensing

1 statute, but before he made any statements to the Court in
2 the Inman case in September about these licensing issues?
3 What would have been his obligations to know more about
4 the prosecutorial -- I'm sorry -- the due process
5 violation and the ethics violation?

6 A Well, obviously, once -- if he wasn't already on
7 notice before the Laney case, once he was on notice in the
8 Laney case of the applicable law, he was under an
9 obligation to familiarize himself with that law and take
10 whatever steps he could take not to engage in this conduct
11 a second time.

12 If he felt compelled to raise the issue, as a matter
13 of professionalism, it should have been raised, certainly,
14 not in the presence of Dr. Loring. It should have been a
15 motion to the Court outside the hearing of Dr. Loring, so
16 that she would not be intimidated by the question that was
17 being asked of her. The way it was done was uncalled for.

18 Q And would you have expected, in your opinion, the
19 Solicitor to have reviewed the basis for the objection and
20 to have availed himself of the information regarding due
21 process or potential due process violations?

22 A It's fairly easy to find. Yes, I would have expected
23 him to avail himself of that.

24 Q And with regards to the objection or the issue on
25 licensing itself, in your opinion, how hard was it to

1 conclude that that's inapplicable to Dr. Loring and her
2 proposed expert testimony?

3 A Dr. Loring's lawyer wrote a letter to -- or
4 communicated somehow with Sharon Dantzler, who is the
5 deputy general counsel at LLR, and inquired. And
6 Ms. Dantzler answered the question that LLR does not
7 prosecute civilly or criminally people who come in from
8 out of state and testify in South Carolina. And
9 Dr. Loring testified earlier today that that letter gave
10 her -- I forget what her words were, but it made her feel
11 much better about it.

12 That's only part of the question. As I read the
13 transcript of the proceedings that occurred in September,
14 the Solicitor said several times that he could grant her
15 immunity from testifying in this case, but he couldn't
16 grant her immunity for the testimony that she had already
17 given. And it was interesting the way he did it. Because
18 he first asked her if she had, in fact, performed some
19 evaluations in South Carolina. So he questioned her to
20 find out if she had, in fact, carried out her profession
21 in South Carolina.

22 What LLR's letter answers is that they don't
23 prosecute witnesses for testifying. He was -- they were,
24 apparently, not asked the question of whether or not
25 prosecution would occur for, actually, having performed

1 psychological or social work testing in South Carolina.

2 So I think -- you know, the South Carolina Supreme
3 Court sua sponte vacated a rule that was promulgated by
4 the Board of Medical Examiners that prohibited doctors
5 from out of state coming into South Carolina and
6 testifying. And they said, clearly, that is an issue
7 of -- that is not appropriate for determination by the
8 executive branch of government. And that would apply here
9 as well.

10 Q You were present while testimony was taken from
11 Dr. Loring regarding what happened in Georgia on April
12 16th, 17th, and thereafter. In your opinion, if the
13 Solicitor's Office was involved in any way with how the
14 rule nisi, the motions from the chief assistant DA in
15 Georgia, and the order, ultimately, requiring the arrest
16 of Dr. Loring, would it be your opinion that that would be
17 improper?

18 MR. ARIAIL: Judge, I would object. Number one,
19 there's no factual basis for that underlying -- his
20 underlying opinion or the factual basis for the opinion
21 would be if we were involved. And he has no proof we were
22 involved, not in this record.

23 MR. BANNISTER: Well, that's --

24 MR. ARIAIL: Otherwise, it's a hypothetical.

25 MR. BANNISTER: And it is a hypothetical. And it

1 underlines the fact that we don't have that proof and we
2 seek to get it.

3 THE COURT: So you're asking a hypothetical question?

4 MR. BANNISTER: A hypothetical is all I can do.

5 THE COURT: Okay.

6 THE WITNESS: If the evidence reflected that
7 Solicitor Ariail and/or his office was involved in the way
8 in which the proceedings occurred in Georgia, that would
9 be a further -- that would be further evidence of
10 intimidation of Dr. Loring, in my opinion.

11 MR. BANNISTER: Just one moment, Your Honor.

12 (Pause.)

13 MR. BANNISTER: I don't have anything further, Your
14 Honor.

15 THE COURT: All right. Mr. Ariail.

16 MR. ARIAIL: Your Honor, could we just take just a
17 minute to compare notes?

18 THE COURT: Just stand at ease.

19 (Pause.)

20 MR. ARIAIL: Your Honor, can I step outside briefly?

21 THE COURT: Why don't we take a 10-minute break.

22 Ms. Ballard, you may step down. Don't talk about
23 your testimony.

24 (WHEREUPON, a break was taken.)

25 MR. ARIAIL: Are you ready, Your Honor?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. ARIAIL:

4 Q Ms. Ballard, just a few questions. In your
5 testimony, you made the statement that, If Mr. Ariail had
6 researched the law, he would have known that these
7 questions were improper. What was the basis of that
8 conclusion?

9 A The series of cases beginning in 1935 from the United
10 States Supreme Court, as well as the cases from the South
11 Carolina Supreme Court in 1997 and 1998 make it very clear
12 that a Prosecutor cannot, within the bounds of ethics,
13 intimidate a witness that the Defense seeks to call.

14 The Williams case, actually, was a situation where
15 the -- I believe it was an investigator for the
16 Solicitor's Office told the defense counsel that they
17 couldn't even speak to a witness without the Prosecutor's
18 office being present. And the South Carolina Supreme
19 Court said that that was, basically, intolerable conduct
20 by a Prosecutor.

21 Q Are you familiar with the cases that deal with
22 questioning witnesses regarding their licensing?

23 A I'm sorry.

24 Q Are you familiar with the cases of this state that
25 deal with the witness being questioned about whether or

1 not they're licensed?

2 A The only case I'm familiar with, specifically, on
3 that is the Haynesworth case where Professor Gregory Adams
4 was not qualified as an expert witness because he was not
5 licensed to practice law in South Carolina. And the
6 Supreme Court reversed that.

7 Q And are you familiar with the case of Fields v. J.
8 Haynes Waters Builders, Inc. that was decided by our
9 Supreme Court in February 2008 on that issue?

10 A Apparently not.

11 Q Do you believe that it would have been of benefit to
12 you in reaching your various conclusions, some of which
13 you stated was a conclusion of an apparent dissatisfaction
14 with the Edens and Holloway verdict and intentionally
15 wanted to prevent Dr. Loring from testifying -- that it
16 would have been of benefit to you to talk with me or
17 members of my staff that worked on those cases?

18 A It wasn't necessary.

19 Q It wasn't necessary. That wouldn't shed any light on
20 anything?

21 A Well, I didn't think it was necessary for my
22 conclusions, no, sir.

23 Q So you formed your conclusions and you didn't think
24 the intentions -- in forming intentions of another persons
25 actions that it wouldn't be of any benefit to you to talk

1 to the other person.

2 A I'd love to know what you have to say about it. But
3 I didn't attempt to contact you, no.

4 Q Would it have been of any benefit to you in forming
5 your opinion to know what my or my staff's response would
6 have been? That's the only question.

7 A I don't think so.

8 Q What our position was would be of no benefit to
9 you -- what our reasons were, what we may have to say,
10 what facts we may have that you're not privy to, none of
11 that would have been of any benefit to you?

12 A I didn't need that to form my opinion, no, sir.

13 Q You formed your opinion without that?

14 A I didn't need it.

15 Q Okay. You didn't need it. Did you form the opinion
16 also -- and I think you testified to this that Dr. Loring
17 was intimidated?

18 A That wasn't an opinion. That was a factual statement
19 in the transcript from September 10th and 11th, 2008.

20 Q All right. And are you aware of the case of the
21 State v. Andres Torres from the County of Spartanburg,
22 October 22nd, 2008?

23 A I'm not, not off the top of my head.

24 Q Would it change your opinion or have any influence on
25 your testimony to know that Dr. Loring testified in that

1 case some five weeks after she claimed she was intimidated
2 from testifying in this case because she had been asked
3 about her licensing?

4 A No. That would not change my opinion. The
5 misconduct had already been engaged in. Whatever
6 rehabilitation that may have occurred afterwards is
7 irrelevant to your misconduct.

8 Q Whatever what?

9 A Rehabilitation or the letter that she got from LLR
10 that made her feel better, none of that mattered. You
11 still engaged in misconduct.

12 Q What letter are you talking about that she got? Are
13 you talking about the letter that she got this past April?

14 A Yes. The letter that she got from --

15 Q I'm talking about February. She testified in --
16 excuse me, October of last year. She wouldn't have had
17 that letter then.

18 A No. It doesn't matter that she, subsequently,
19 reached a level of comfort. She was, clearly, intimidated
20 by your questions in September of last year. I don't care
21 if she testified today, you still engaged in misconduct
22 when you asked that question.

23 Q You stated that one of your opinions was that I was
24 on notice that the questions that I asked of
25 Dr. Everington were improper?

1 A Yes.

2 Q All right. Well, before I give you that -- would it
3 influence your opinion if you had a -- had communication
4 from the State Psychology Board making a statement
5 regarding the conduct of Dr. Everington?

6 A Would it change my opinion?

7 Q Would it influence or have any effect on your
8 opinion, or would it be like my talking to you, it
9 wouldn't really change your opinion?

10 A It would not change my opinion. As you know, the
11 Board of Medical Examiners issued an order saying that
12 doctors from out of state can't testify in South Carolina
13 unless they're licensed here. And the Supreme Court
14 reversed that. The Board doesn't have the final say.

15 Q Okay. Well, if the Board's letter didn't have
16 anything to do with that subject, but had to do with the
17 subject of whether or not Dr. Everington was practicing
18 psychology, would that make any difference to you?

19 A In terms of whether or not you were on notice that a
20 question like that would intimidate someone, no, that
21 would make no difference.

22 Q Okay. And you testified that I intentionally wanted
23 to prevent her from testifying after the apparent -- my
24 apparent dissatisfaction with the Edens and Holloway
25 verdict?

1 A That was my conclusion, based on the chronology of
2 events and the testimony of Ms. Allen.

3 Q And what is your chronology of events that you're
4 referring to?

5 A As I went through it before, the Laney death sentence
6 was reversed in March of 2006. The Edens and Holloway
7 trial occurred in June of 2006. And it's my understanding
8 that a life in prison sentence was imposed, rather than
9 the death penalty that you were seeking.

10 You then in April challenged Dr. Everington in the
11 Laney hearing. In April and October -- excuse me, in
12 April and August, motions were filed seeking to quash the
13 death notice in the Laney case as a result of your
14 misconduct in that case.

15 On or about October 30th of 2007, a deal was cut
16 whereby the -- you withdrew your notice of intention to
17 seek the death penalty in exchange for, among other
18 things, the Defendant's attorneys withdrawing their motion
19 for prosecutorial misconduct.

20 Q That's your interpretation of that?

21 A That is my interpretation. It's pretty clear, yeah.
22 And then there's the Motts transcript, of course. And
23 then your questioning of Dr. Loring in September of last
24 year.

25 Q All right. And are you aware that she testified in

1 the Motts case?

2 A Yes, actually, I am. And you did not raise that
3 issue in the Motts trial. That was November 26th, of '07.

4 Q And what verdict did the jury return in the Motts
5 case?

6 A I have no idea.

7 Q Let me tell you, if this would change your opinion or
8 influence your conclusion. The Motts trial, that occurred
9 after the Edens and Holloway that Dr. Loring testified
10 without objection, the jury returned a verdict of death.
11 Would that influence your decision at all?

12 A I would think it would strengthen it. It seems that
13 if --

14 Q You think it would strengthen it?

15 A No. I don't think it would strengthen it.

16 Q No. I don't think you mean that either.

17 A No.

18 Q Let me ask you --

19 A No. It wouldn't change my opinion, though. Because,
20 I mean, my point is, Mr. Ariail, you engaged in misconduct
21 by intimidating a witness. You're not allowed to do that.
22 That violated the Defendant's due process rights. End of
23 story.

24 Q And that's your opinion and you're not going to
25 listen to any of the facts; right?

1 A I've read all the facts --

2 Q The fact that Motts occurred afterwards, would it or
3 would it not, Ms. Ballard, impact your testimony? Your
4 theory is that I was so inflamed over the death sentence
5 not being imposed in Jim Cockman's death case that somehow
6 I began on a path to intentionally -- you said
7 intentionally prevent her from testifying. Yet, the very
8 next case that she appeared in, I allowed her to testify
9 and made no objection, and the jury gave the death
10 sentence.

11 A Okay. I'll accept your testimony.

12 Q Now, that's why I asked you earlier if it would have
13 benefitted you to have had conversations with me or my
14 staff regarding things. And you said, no, it would not --

15 A No, it would not.

16 Q All right. Would it -- would having someone explain
17 to you the correct chronology of events have changed that?

18 A I have the correct chronology of events. You added
19 some additional elements to it, none of which changed my
20 opinion.

21 Q Okay. Along the lines that -- along the lines that
22 your theory that you espoused that I was so intent on
23 preventing the testimony of Dr. Loring that I tried to
24 intimidate her --

25 A No. I said you did intimidate her. I didn't say you

1 tried. I said you did.

2 Q I'm going to show you a couple of documents that are
3 captioned "Juror Questionnaire." And just so you'll
4 understand what these are, these are questionnaires that
5 my office sends to jurors anonymously for them to fill out
6 questions --

7 MR. BANNISTER: Judge, I'm going to object. He's
8 testifying again. And I object to the relevance of juror
9 questionnaires as it relates to Ms. Ballard's testimony.

10 THE COURT: Well, let's see where he's going.

11 BY MR. ARIAIL:

12 Q Read the juror response to #11 on that one.

13 MR. BANNISTER: Your Honor, I object to that. It's
14 not in evidence. And if he's asking her to read that out
15 loud, then I object.

16 THE COURT: No, he hasn't. He's just asked her to
17 read it.

18 THE WITNESS: (The witness complied.)

19 BY MR. ARIAIL:

20 Q If that comment were in regard to Dr. Loring's
21 testimony in State v. Motts, would that have any impact on
22 your conclusion that I was somehow trying to prevent her
23 testimony?

24 A No.

25 Q It wouldn't have any impact?

1 A No.

2 MR. BANNISTER: Your Honor, may I see the document?

3 THE COURT: Yes.

4 Let him see a copy of it, Solicitor.

5 MR. ARIAIL: Okay.

6 BY MR. ARIAIL:

7 Q And the same with this one, #11?

8 A No. It would not change my opinion.

9 Q Would it influence your opinion?

10 A No.

11 Q Okay. It wouldn't influence it.

12 A You have two jurors who didn't like Dr. Loring.

13 Q You had two jurors who didn't like Dr. Loring.

14 All right. Well, my point there is, if we had -- if
15 I was aware that we had jurors who didn't like Dr. Loring,
16 why would I be so hell bent to keep her off the witness
17 stand?

18 A I don't know. You'd have to answer that question.

19 Q But you said it wouldn't be of any benefit for you to
20 talk to me.

21 A Not in forming my opinions, no. The evidence is very
22 clear, based on what I have reviewed.

23 MR. ARIAIL: That's all I have, Your Honor.

24 THE COURT: All right. Any redirect?

25 MR. BANNISTER: Your Honor, I don't believe there is.

1 THE COURT: Okay. Can we release her from subpoena?

2 MR. BANNISTER: Yes. She can be excused.

3 THE COURT: Thank you, Ms. Ballard.

4 THE WITNESS: Thank you.

5 MR. BANNISTER: Well, actually, Judge, let me just --
6 at this point, that would conclude, I believe, my
7 presentation of the witnesses that I have subpoenaed here
8 to Court on the prosecutorial misconduct issue.

9 I still -- were they available, I would be calling
10 witnesses from Georgia, Don Geary, whoever the
11 investigator was that left Dr. Loring the message, and any
12 other members of the Georgia DA, the Deputy Sheriff's
13 Office, and Dr. Loring's neighbors to shed more light on
14 what exactly happened in Georgia and, therefore, what roll
15 the Solicitor played in how those documents got filed. As
16 has been pointed out, I don't know what their role was,
17 because we don't have any evidence that we can get here
18 right now to produce that.

19 So I would move to suspend the proceedings, at this
20 point, allow me to get those witnesses from Georgia, or to
21 give me some mechanism by which to get them here sooner
22 than following through with an out-of-state witness
23 subpoena. I mean, I didn't become aware of that issue
24 until Friday of last week.

25 THE COURT: Anything you want to say?

1 MR. ARIAIL: No, sir.

2 THE COURT: Well, I'm not going to suspend the
3 proceedings. We're going to go forward. I don't think
4 that those -- that the conduct in Georgia bears on this
5 issue. Dr. Loring was going to come anyway. I'm not
6 going to recuse them as advocates and make them witnesses
7 in the case.

8 MR. BANNISTER: I understand your ruling. And let me
9 just proffer for the evidence that if provided the
10 opportunity to investigate the witnesses in Georgia, I
11 believe we could establish a link between Georgia and the
12 Solicitor's Office.

13 Furthermore, I can't put the witnesses up from the
14 Solicitor's Office to go the other direction. So I
15 proffer the same thing on that side, based primarily in
16 part on the fact that there were representations made to
17 Ms. Linda Hunter at or sometime before 10:12 a.m. on the
18 16th, the Judge in Georgia, that Marti Loring was a flight
19 risk and that she had been evading service when, in fact,
20 she could not have been because the rule nisi wasn't filed
21 until 10:12 a.m. And that information couldn't have come
22 from anybody but the Thirteenth Circuit Solicitor's
23 Office.

24 THE COURT: Well, that's a -- that is your
25 assumption. And I haven't seen any -- it may turn out to

1 be correct. It may turn out to be complete fantasy. But
2 that -- and that may be the subject of another action.
3 That's not part of this case.

4 So you'll just have to --

5 MR. BANNISTER: You're not going to give me time to
6 get it and --

7 THE COURT: No. I'm not suspending this hearing
8 again for that.

9 MR. BANNISTER: That's fine. I understand your
10 ruling.

11 THE COURT: Okay.

12 MR. BANNISTER: Your Honor --

13 THE COURT: Well, let me see if they have something
14 they want to put up.

15 MR. BANNISTER: Well, that's what I was going to ask.

16 THE COURT: Okay.

17 MR. BANNISTER: And my purpose --

18 THE COURT: They're done presenting their testimony
19 to support their motions. Is there anything you want to
20 put up?

21 MR. ARIAIL: Their case is closed?

22 THE COURT: Well, the case isn't closed. This is the
23 testimony that they've -- the evidence they've put up to
24 support the motions they filed --

25 MR. ARIAIL: That's what I mean. As to that part of

1 their case?

2 THE COURT: That's my understanding.

3 MR. BANNISTER: The other evidence I want to put up,
4 I can't.

5 THE COURT: Okay. Well, do you have anything you
6 want to put up, Solicitor?

7 MR. ARIAIL: I would like to put up -- and then break
8 and then tell you in the morning if I've got anything
9 else. But I would like to enter into the record the
10 transcript of Dr. Loring -- the certified copy of the
11 transcript from Dr. Loring's testimony from October 22nd,
12 2008, in Spartanburg County, South Carolina, in the case
13 of State v. Andres Torres.

14 THE COURT: Just for my benefit, what kind of case
15 was it? What did she testify to? I mean, she could have
16 been a fact witness for all I know.

17 MR. ARIAIL: My understanding -- I had Mr. Gowdy here
18 earlier. But it was a death penalty case in which she
19 testified as a social historian.

20 THE COURT: Okay. Any objection?

21 MR. BANNISTER: No, sir.

22 MR. ARIAIL: As to whether we will have any
23 witnesses, I would like to ask the Court if I could have
24 until in the morning to recollect my notes and then advise
25 you.

1 THE COURT: All right.

2 MR. ARIAIL: I mean, I can --

3 THE COURT: It's after 5:00.

4 What else do you have? You're going to go forward
5 with the rest of the mitigation?

6 MR. BANNISTER: Well, Judge, if we're -- no, sir.

7 I had a motion that I was -- at the conclusion of
8 whatever you give us your ruling on the motion for
9 prosecutorial misconduct, whatever you give us
10 subsequently, because we believe you're going to grant
11 that. Your ruling on the motion to bar further
12 proceedings based on double jeopardy, we think that Your
13 Honor would grant that as well. That would end the case
14 with the imposition of a life without parole sentence.

15 THE COURT: Well, hypothetically speaking, let's say
16 that you're wrong. What else do you have to put up?

17 MR. BANNISTER: At that point, Your Honor, which I --
18 if that's where we ended up, assuming the Solicitor's
19 witnesses are fairly short tomorrow, then I would move the
20 Court for a continuance to give us the opportunity to
21 complete our mitigation with our new social historian.

22 THE COURT: Is there anything else that you have to
23 put up?

24 MR. BANNISTER: Not after that, no, Your Honor.

25 THE COURT: Mr. Bannister, I am not going to continue

1 the case. And Dr. Loring is still here. I'll tell you, I
2 will order Mr. Ariail out of the courtroom during her
3 examination. I will have her suffer no intimidation. But
4 this case has been dragging on and we're going to come to
5 a conclusion.

6 MR. BANNISTER: Your Honor, it's almost 5:15 and
7 we've been going pretty hard today. I would ask that you
8 permit me to make my argument before you, ultimately,
9 decide on whether or not to continue the case. And I
10 think that's appropriate after we get through the
11 conclusion of the prosecutorial misconduct.

12 But I can tell Your Honor that I believe I stand on
13 pretty firm ground with regards to the case law. My
14 understanding of what my duties are is that we're not
15 going to be calling Dr. Loring. I just want an
16 opportunity to be heard on that. If that's going to
17 impact the Defendant's case, then I just need to be heard
18 on it.

19 THE COURT: Okay. Well, Mr. Godfrey, please, inform
20 Dr. Loring that I would request her to be back tomorrow.
21 And if she has a problem with that, I'll be happy to issue
22 an order to that effect.

23 Is she okay with coming back?

24 MR. GODFREY: Yes, sir.

25 THE COURT: And, hopefully, we'll be able to resolve

1 her presence early.

2 So thank you very much.

3 MS. STROM: And, Your Honor, for the record, the copy
4 of the transcript from the Andres Torres case was served
5 on the Defendant on Friday.

6 If there's any reason you don't have it, let me know.
7 I've got another copy of it.

8 MR. BANNISTER: I've got it.

9 MS. STROM: I just wanted that to be clear that he
10 was previously served with it.

11 THE COURT: Yes. I've got it. I have a copy, too.

12 MS. STROM: Thank you, Your Honor.

13 THE COURT: All right. We'll suspend. See you in
14 the morning at 9:30.

15 (WHEREUPON, State's Exhibit No. 30 was marked for
16 identification and admitted into evidence.)

17 (WHEREUPON, the proceedings were concluded at
18 approximately 5:13 p.m., to be reconvened on
19 Tuesday, April 21, 2009.)
20
21
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24
25

TUESDAY APRIL 21, 2009

1 THE COURT: Are we ready to proceed?

2 MR. ARIAIL: Yes, sir.

3 MR. BANNISTER: Yes, sir.

4 THE COURT: Anything else from the Defense?

5 MR. BANNISTER: No, Your Honor.

6 THE COURT: Mr. Ariail?

7 MR. ARIAIL: Nothing from the State.

8 THE COURT: All right. Anything y'all want to tell
9 me?

10 MR. BANNISTER: No, sir.

11 THE COURT: Okay. Well, on the -- with respect to
12 Dr. Loring, you asked me to wait. So I've waited.

13 MR. BANNISTER: Well, I recall telling you I didn't
14 anticipate calling her. So I -- we're still at that
15 place. We're not going to call her as a witness.

16 THE COURT: Well, is your other witness fully
17 prepared?

18 MR. BANNISTER: No.

19 And that's the subject of a motion I intended to file
20 today, if we're going to get into that at this point.

21 THE COURT: Speak -- I can't hear you. What?

22 MR. BANNISTER: I said, I intend -- I've got that
23 motion. And I intend to file that this morning. But I'm
24 just trying to see where we are.
25

1 Have you ruled on the motion for prosecutorial
2 misconduct at this point?

3 THE COURT: No, I have not.

4 MR. BANNISTER: Okay.

5 THE COURT: And I am considering what to do with
6 Dr. Loring. I'm considering calling her as a Court's
7 witness.

8 MR. ARIAIL: Your Honor, in that posture, we would,
9 certainly, urge you to do that.

10 THE COURT: Thank you.

11 Now, I'll tell you, Mr. Bannister, you've asked me
12 to -- your client has pled guilty and asked the Court to
13 be the sole fact finder in this matter.

14 MR. BANNISTER: That's correct.

15 THE COURT: And she was your first choice. I believe
16 that she can testify without fear.

17 And, Mr. Godfrey, do you know if she was going over
18 her material on this subject last night?

19 MR. GODFREY: Yes, sir. She has gone over the
20 material.

21 THE COURT: Okay. If I'm not mistaken, she told me
22 that she had spent seven or eight hours getting ready for
23 the hearing over the weekend, and another couple of hours
24 last night. That would come up to nine or 10 hours. I
25 don't know how many hours she spent last night. But I'll

1 tell you we've reviewed her time sheets from -- prior to
2 the September hearing and she spent slightly more time
3 than that preparing the first time around. This would be
4 the second time around. I wouldn't anticipate she would
5 need as much time.

6 MR. GODFREY: May it please the Court?

7 I believe she said yesterday on the stand that she
8 had reviewed the file for four or five hours. I know that
9 she has reviewed the file some yesterday and, I'm sure,
10 last night.

11 THE COURT: Okay.

12 MR. GODFREY: She has her charts and her pictures
13 here. And she told me this morning -- since we did talk
14 about the fact that she might be called as a State's
15 witness, she told me that she --

16 THE COURT: No, sir. She's not going to be called as
17 a State's witness.

18 MR. GODFREY: I'm sorry. A Court's witness.

19 THE COURT: Okay.

20 MR. GODFREY: She did tell me that she felt like she
21 was protected by the Court.

22 THE COURT: Okay. Thank you, Mr. Godfrey.

23 I appreciate that. She will be.

24 Well, with respect to --

25 How do you want -- Mr. Bannister, what are you

1 looking for? What kind of ruling are you looking for?

2 MR. BANNISTER: Well, I've made a motion that the
3 case be mistried as a result of the prosecutorial
4 misconduct. I did that on September the 11th. I believed
5 then, and I believe now, that that was the appropriate
6 time to grant a mistrial.

7 My recollection of the record was that I would be
8 permitted to supplement my motion for prosecutorial
9 misconduct and motion for mistrial, which I have attempted
10 in good faith to do at the proceedings as they restarted
11 this week.

12 I still believe that there would be relevant evidence
13 with relation to what happened in Georgia, and that the
14 Solicitor and members of his office would be relevant
15 witnesses to my motion for prosecutorial misconduct. But
16 having said that and understanding that I'm not going to
17 be permitted to put that into the record, we've presented
18 all the evidence that we have available to us at this
19 time.

20 Part of the motion for mistrial includes a request
21 that the Court declare that the Defendant's Fifth
22 Amendment right under the -- well, the double-jeopardy
23 clause, the Fifth Amendment would be -- would require
24 imposition of a life without parole sentence, and the
25 suspension of these proceedings and prosecution any

1 further. That is based on the information that we
2 presented in Court, the procedural posture of the case,
3 and the memorandum that I filed in conjunction with my
4 motion.

5 So I'm asking for two forms of relief. I'm asking
6 for the mistrial to be granted. And then I'm asking for
7 imposition of life without parole. And the Constitutional
8 bases for those two requests are contained in my
9 memorandum.

10 THE COURT: All right. I don't want to go forward
11 without giving the State a chance to respond.

12 Is there anything you want to say?

13 MS. STROM: Your Honor, very briefly, I will file
14 with the Court what we had drafted and given to counsel on
15 Friday, which is the State's motion to dismiss the
16 Defendant's renewed mistrial motion.

17 Your Honor, I didn't feel it was appropriate to file
18 it until after he had, actually, filed his renewed motion.
19 But, essentially -- and I will be very brief on this, Your
20 Honor.

21 In our brief and in our response to the Defendant's
22 motion, we cite the Court to State v. Fields. And, Your
23 Honor, I know that you have said on this record that you
24 believe, and that it is your ruling, that Solicitor
25 Ariail's questions that he posed to Dr. Loring were

1 improper. And I'm not trying to argue against what you
2 have stated in this Court. But I did want to point the
3 Court to State v. Fields, which talked about the fact that
4 Baggerly, which has said that it is not the sole
5 disqualifying piece of evidence to be considered in
6 qualifications, that the Court in Fields went on to say
7 that the Court should look at everything, including
8 statutory requirements.

9 Further, in Fields, Your Honor, the Court held that
10 it was proper for the trial court, at that time, to even
11 charge the jury as to the statutory requirements of a
12 licensing in that case. But, Your Honor, I understand,
13 again, that you have made your ruling that the questions
14 were improper. We submit there's a disagreement as to
15 whether they were proper or improper.

16 Be that as it may, just as you said earlier, what is
17 the prejudice? The witness is here, available to testify,
18 and has stated she is willing to testify, to the best of
19 her ability. We submit that that goes to show that there
20 has been no intimidation, no attempt to keep this witness
21 off the stand.

22 A mere six weeks after the September -- the recess in
23 September, she testified in a very similar capacity in
24 Spartanburg, South Carolina, in a capital case. And we
25 submit further, Your Honor, that that goes on to show that

1 the witness was not intimidated. She was not threatened.
2 And, furthermore, Your Honor, again, it all comes back to
3 this witness is here and willing to testify. She says she
4 is ready to testify, to the best of her ability. And
5 that's all we can ask of any witness is to be able to
6 testify to the best of their ability.

7 And, finally, Your Honor, with the fact of this being
8 a bench trial and not a matter in front of a jury, we feel
9 that the Court is presumed to be able to differentiate and
10 separate anything that the Court feels was improper and
11 separate that from its fact-finding mission.

12 So, therefore, we submit that the motion for mistrial
13 should be dismissed, should be denied, and we be allowed
14 to go forward with this case.

15 THE COURT: All right. Well, with respect to the
16 double-jeopardy motion, that requires that the State have
17 deliberately goaded the Defense into requesting a
18 mistrial. I'm going to deny that. I don't find that
19 exists in this case.

20 I am -- I understand the State's position with
21 respect to the Fields case. But I think they're missing
22 the point. There's no question that whether or not a
23 witness offered in the capacity as an expert, whether or
24 not they are licensed in a particular state is of
25 significance with respect to determining whether or not

1 they should be qualified under Rule 701, I think, or 702.
2 I can't remember. And that is an important consideration
3 for a judge and a jury to make, if a jury was seated.

4 However, the fact that the Solicitor brought up
5 criminal sanctions, in my opinion, is inappropriate. It
6 was immediately addressed and immediately resolved, in my
7 mind, with the grant of immunity by the Prosecutor.

8 It's my opinion that based on the administrative
9 order of the Supreme Court, 2006-08-24-01, which suspended
10 not the Board of Medical Examiners rule, but Act #385 of
11 2006 of the state legislature with respect to licensing
12 requirements from medical doctors is analogous exactly to
13 this situation. The Baggerly case speaks to it, and the
14 Fields case.

15 There is no criminal conduct on behalf of a witness
16 who comes here for -- of a person who comes here for the
17 sole purpose of testifying as a witness. They are not
18 setting themselves up to practice whatever the respective
19 profession might be.

20 So there's a big distinction. And, in the Court's
21 order, which I don't have right in front of me, they talk
22 about the Court under the Constitution -- I believe it's
23 Article 5 and I don't remember the section number -- has
24 the authority and the power to administer justice in this
25 state. And they suspended the act of the legislature for

1 those reasons.

2 So I find that the comments were inappropriate. A
3 lot of paper and memorandum have been submitted to the
4 Court. We've done a lot of research on our own. We
5 are -- I am relying on the United States v. Golding, which
6 is found in 168 F.3d 700. It is a Fourth Circuit case.
7 It reads, The test for reversible prosecutorial
8 misconduct, generally, has two components. One, the
9 Prosecutor's remarks and conduct must, in fact, have been
10 improper. Well, I found that those remarks were improper.
11 And, two, Such remarks or conduct must have prejudicially
12 effected the Defendant's substantial rights so as to
13 deprive the Defendant of a fair trial.

14 Now, if this had been a jury trial in September,
15 there may have been a different result. But I am, in
16 fact, the fact finder, as well as sitting in my capacity
17 as the Judge. I didn't ask for this. I didn't want it.
18 But that's where I sit. And I don't find that there is --
19 that the Defendant's rights are prejudicially effected by
20 the remarks or the conduct of the Prosecutor.

21 The events in Georgia may be the subject of another
22 action at a later day. But they are not part and parcel
23 of this case. Dr. Loring was prepared to come testify
24 prior to any of that occurring. And she is prepared now
25 from -- I understand from her attorney to do just that.

1 In my capacity as a fact finder, I am interested in
2 hearing everything from all parties connected with this
3 matter that might bear on my decision. I don't find --
4 while I know what the Defense is trying to do in their
5 excellent and thorough presentation zealously advocated,
6 but I don't find that they connect the dots to raise this
7 issue to deliberate prosecutorial misconduct.

8 And I would say to the Solicitor that the comments
9 that he made, while to all of us who sit in the courtroom
10 and spend a lot of time in the courtroom, we don't --
11 well, I think we lose touch with or lose sight of just how
12 powerful and intimidating what appear to be simple
13 comments might be to a layperson, so.

14 And I think that the decisions of the Courts have
15 recognized that when sometimes in the heat of battle,
16 trial attorneys may lose sight of it.

17 So I think that covers your motion.

18 MR. BANNISTER: Judge, just with -- for the record,
19 with regards now that the motion has been denied, let me
20 just say that I tie that motion with the original request
21 we had back when he pled guilty to jury trial sentencing.
22 And I believe that the prejudice would be inherent in the
23 fact that had we had a jury trial, it would have been a
24 mistrial. And because we didn't have a jury trial and it
25 turned out not to be a mistrial, it puts us in a

1 procedural posture that is the -- that would be a
2 prejudice to the original motion that we filed. And I
3 just need to tie those together.

4 THE COURT: Okay. I understand that's what you
5 intend to do. I do want to say that, you know, you can't
6 state as a fact something that is just an assumption or
7 speculative with respect to what the result might have
8 been were we under different circumstances. But I
9 understand that's your position.

10 MR. BANNISTER: Your Honor, at this time, I have a
11 motion for continuance in order to allow us more time to
12 prepare the mitigation evidence. And in support of that
13 motion, I've attached a number of affidavits. And if I
14 may have brief argument on that.

15 Your Honor, the position that we were in back on
16 September the 11th, 2008, as I understood it, when
17 Dr. Loring took the Fifth Amendment, was that the Court
18 was giving us the option, at that time, to either try to
19 fix the problem with Dr. Loring or to find another social
20 historian to serve as a mitigation expert. There was --
21 the proceedings were suspended. And there was -- there
22 were a number of weeks during which I felt like that we
23 ought to spend some time exploring a potential resolution
24 of the case. We did. We were unable to resolve the case.

25 At that point in time, which would have been roughly

1 October or so, I began to spend some serious time trying
2 to determine, was there a way to fix the problem, as I
3 perceived it, from Dr. Loring asserting the Fifth
4 Amendment? What I knew, at that time, which had not come
5 out to the Court in the testimony, was that Dr. Loring had
6 not only performed clinical social work type of activities
7 in the Thirteenth Circuit, but, also, in other
8 jurisdictions and other states.

9 And in looking at the argument that the Solicitor had
10 made, I felt that until the South Carolina Supreme Court
11 spoke with authority on that issue, despite my feeling
12 that it was a red herring and was a meritless issue to
13 raise to begin with, Dr. Loring's Fifth Amendment
14 privilege would go beyond my view of what that -- the
15 merits of the argument and only the South Carolina Supreme
16 Court could, ultimately, state whether or not the
17 licensing statute did, in fact, apply to what she had done
18 and her attempt to testify as an expert. That did not
19 happen overnight. That conclusion that I sought to reach
20 took roughly a month or so.

21 It was at that point that I began to look, as the
22 Court had suggested and had encouraged me to do, strongly
23 suggested, to find another social historian or mitigation
24 expert to speak on behalf of the Defendant. There were
25 statements made at the conclusion of the September 11th

1 hearing that finding a mitigation expert that there were a
2 number of them across the State, and that that would not
3 be a difficult issue and that we should be able to get one.

4 I have been a participant in two capital cases and
5 sort of somewhat in a third one. So I took that at face
6 value and attempted to find the names of mitigation
7 experts in the state who potentially could handle this
8 case for us. In doing that, I consulted with a number of
9 lawyers, whom I considered to be sufficiently well versed
10 in capital litigation, to point me in the direction of a
11 number of people that I could approach about getting
12 involved in this case.

13 If you recall, Judge, the issue, again, was whether
14 or not somebody was a licensed clinical social worker. I
15 felt like, based on the information I had about the
16 Defendant and his family, that I was going to have to have
17 a licensed clinical social worker to serve as my
18 mitigation expert in order to avoid the same issues we had
19 run into on September 11th. Regardless of whether or not
20 that had limited the field of potential mitigation
21 experts, ultimately, I only got three names from the
22 lawyers that I talked to of who could potentially handle
23 this case.

24 Out of those three people, one was -- I was informed
25 had medical issues that made it impossible for her to be

1 involved in the case. The second one flat told me, no,
2 she was not interested in getting involved in a case that
3 involved the types of allegations that were in this case,
4 which left a third. And the only expert I had left on my
5 list of people to call was Jan Vogelsang.

6 Now, I cannot, off the top of my head, remember the
7 date that I sought ex parte funding for Jan Vogelsang, but
8 I can --

9 THE COURT: January.

10 MR. BANNISTER: January.

11 That was the first time that I was able to --

12 THE COURT: January 2nd.

13 MR. BANNISTER: January 2nd.

14 Thank you.

15 THE COURT: That is the date that I signed the order.

16 MR. BANNISTER: So that expert has had less than four
17 months to try to get ready for a case that took us
18 approximately a year and a half of preparation for the
19 mitigation side of the case.

20 She informed me, at the time, that she had a number
21 of other cases that were imminently ready to go to trial,
22 and that she couldn't in good conscious put my case in
23 front of those. And I respected that. But that was my
24 last resort.

25 Fast-forward to April the 14th of this year when we

1 were back on the record. I informed the Court, as I felt
2 like I was required to do so by the order, to say, look,
3 we've tried, but we can't be ready for the 20th.

4 Now, whether I was correct or not in relying in good
5 faith or in believing that we were going to be given
6 sufficient time, even though that might be a significant
7 amount of time, to be prepared, if I misread that, then
8 that's my fault. But I believe that where we were headed
9 next was to finish the prosecutorial misconduct, put the
10 evidence in the case, and allow Your Honor to rule. And
11 then we would be looking at a period of time to get -- at
12 least, if I couldn't be ready by the 20th, then we would
13 then have a period of time to come back and present the
14 mitigation in the most forceful and comprehensive way that
15 we could. And it just couldn't happen by April the 20th.
16 It couldn't. We still believe --

17 THE COURT: Are you telling me you understood that we
18 were just going to come today -- or this week and do half
19 of it?

20 MR. BANNISTER: Judge, when I -- if you look at the
21 transcript, what it says is --

22 THE COURT: Mr. Bannister, outside of the transcript,
23 we've had discussions. There's no question that this was
24 going -- we were going to proceed with this case today.

25 MR. BANNISTER: No question we were --

1 THE COURT: According to the affidavit you have
2 submitted from your new social worker, she can't testify
3 until the first quarter of 2010.

4 MR. BANNISTER: And that would be within the ABA
5 guidelines of what it takes for a mitigation expert to get
6 ready.

7 THE COURT: Well, I'll tell you what --

8 MR. BANNISTER: We may be able to change that, but --

9 THE COURT: I'll tell you what we'll do. Dr. Loring
10 is prepared to testify. She has done all the work. She's
11 been on the case for a long time. I, certainly -- in my
12 capacity, I want to hear from her. And what I will do --
13 I don't know how -- you were prepared to go in September.
14 You were going in September.

15 MR. BANNISTER: Yes, sir.

16 THE COURT: I don't know how much more work you would
17 have to do to get ready. But I'm prepared to break for
18 the day and give you today, and even tomorrow, to meet
19 with Dr. Loring and prepare her testimony to present in
20 this Court.

21 And I will tell you right now, I will not allow the
22 Prosecutors in any way to intimidate her. I will protect
23 the sanctity of her status on the stand. And I'm not
24 going to limit their cross-examination. But they're not
25 going to get into anything that might threaten her

1 improperly.

2 So I will -- we'll adjourn. This week, we're going
3 to finish the case. We're going to get the testimony up
4 this week. And if you want to put Dr. Vogelsang up as
5 well to testify to whatever she wants to testify to -- I
6 don't guess -- she's a PhD. But that's fine, too. I'll
7 give you that opportunity to get ready to present the case
8 today. This case needs to be finished.

9 MR. BANNISTER: Your Honor, I need a ruling on my
10 motion for a continuance. I've made the motion. I think
11 I've supported it. And I need a ruling on that motion.
12 I'm hearing, I think, that you're telling me that's denied.

13 THE COURT: What I'm telling you is that I will give
14 you an opportunity -- I'll break for you to meet with
15 Dr. Loring. As a matter of fact, we will do that. And
16 you can make a decision whether or not you want to talk to
17 her or not. I'm going to give you that opportunity. She
18 is prepared. She was prepared to go forward in September.
19 She is prepared to go forward today.

20 Now, we're not going to create an issue out of thin
21 air. So we will be adjourned until tomorrow morning at
22 10:00.

23 (WHEREUPON, the proceedings were concluded at
24 approximately 10:20 a.m., to be reconvened on
25 Wednesday, April 22, 2009.)

1 WEDNESDAY, APRIL 22, 2009

2 THE COURT: Are we ready to go?

3 MR. BANNISTER: Your Honor, I would call Ken
4 McArthur.

5 THE COURT: Who?

6 MR. BANNISTER: Ken McArthur.

7 THE COURT: All right.

8 THE CLERK: Sir, if you will, place your left hand on
9 the Bible and raise your right.

10 WHEREUPON,

11 KENNETH MCARTHUR,

12 after first having been duly sworn, testified as follows:

13 THE CLERK: Thank you, sir.

14 Have a seat.

15 If you would, please, state your name.

16 THE WITNESS: Kenneth McArthur.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BANNISTER:

20 Q Mr. McArthur, tell me how you're related to Jerry
21 Inman.

22 A He's my stepson.

23 Q Do you consider him your son, though?

24 A Yes. He was four years old when I met his mother.

25 Q And you are still married to his mother?

1 A Yes, sir.

2 Q And her name is "Vera"?

3 A Yes.

4 Q Were you present during the trial in September?

5 A Yes, sir.

6 Q Was that a stressful time for you and for Vera?

7 A Yes. It was stressful for her, and I, and everybody
8 involved, I believe.

9 Q And that was, in part, because of the potential
10 sentence that could be imposed?

11 A Yes.

12 Q During the roughly seven months that this case has
13 been on hold, has that been a stressful time for you and
14 Vera?

15 A Yes. It's stressful. She was hospitalized in
16 January for five days.

17 Q Do you believe that was part of the stress that y'all
18 have been under?

19 A Yes.

20 Q Is that because you and Vera love Jerry?

21 A Right.

22 Q And is that partly, also, because you enjoy having
23 the opportunity to see Jerry here in prison in Pickens?

24 A Yes.

25 MR. BANNISTER: Judge, I don't believe I have any

1 further questions for Mr. McArthur.

2 THE COURT: All right. Any questions?

3 MR. ARIAIL: No, Your Honor.

4 THE COURT: All right. Thank you, Mr. McArthur.

5 You can step down.

6 Thank you, sir.

7 THE WITNESS: Yes, sir.

8 MR. BANNISTER: Your Honor, at this point, based on
9 the previous motions, both oral and written, that we've
10 made, the issues that we've raised in there, I don't
11 believe it would be in our client's best interest to call
12 any further witnesses for mitigation.

13 So that would close our mitigation case.

14 THE COURT: All right. Well, I'm going to call
15 Dr. Loring. I think she would aid the fact finder, me, I
16 guess, in the determination of the resolution of this
17 case.

18 And I want to put in the record that she was the
19 number one choice for the social historian in this case,
20 and that the Defense has had no contact with her since
21 September. That's what was represented in the Court. She
22 was rehabilitated. She's up here, despite the fact that
23 she failed to testify in September because of the -- her
24 feelings of intimidation, which I did rule was
25 prosecutorial misconduct, but did not arise to the level

1 requiring mistrial or reversal because of the lack of
2 prejudice, which is cured in part by her presence --
3 voluntary presence today.

4 So I think it's necessary to put her up to ensure
5 that these claims of due process violation are put to
6 rest. So I'm going to call her as a witness.

7 Mr. Godfrey.

8 MR. GODFREY: I beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. BANNISTER: Your Honor, if I may, I believe the
11 rule -- Rule 614 would give us the opportunity to be heard
12 on that.

13 Would I be permitted to be heard on that?

14 THE COURT: Sure.

15 MR. BANNISTER: Judge, the rule is referenced,
16 specifically, in Riddle v. State. In Riddle v. State, it
17 deals with Rule 614. And the cite to that is 314 S.C. 1.
18 And that's a 1994 case. And it says, While a decision as
19 to whether to call a Court's witness is within the
20 discretion of the trial court, such discretion should be
21 exercised only after conducting a hearing outside the
22 presence and only if the prerequisites of State v.
23 Anderson have been met.

24 State v. Anderson is a 1991 case cited at 304 S.C.
25 551. It lists four prerequisites for a prospective

1 Court's witness. Number one, The Prosecution must be
2 unwilling to vouch for the veracity or integrity of the
3 witness. You probably have satisfied that here, Your
4 Honor. But, number two, There must be a close
5 relationship between the accused and the potential Court's
6 witness, i.e., accomplices, family members, etc. Number
7 three, There must be evidence that the prospective witness
8 was an eyewitness to the transaction upon which the
9 Prosecution is based, gave a sworn statement concerning
10 pertinent facts and the statement has been contradicted,
11 or it is probable that it will be contradicted. And,
12 number four, The testimony of the witness to relate must
13 be material such that without the testimony a miscarriage
14 of justice would likely result.

15 I submit to Your Honor, based on the record and the
16 Court, that those four prerequisites have not been made.
17 And, if you would permit me, at this moment, I would renew
18 my prior motions, both oral and written. I would renew
19 the --

20 THE COURT: Which motions?

21 MR. BANNISTER: All of the motions that we have filed
22 that relate to Dr. Loring.

23 And, Judge, if you want me to, I'll go through each
24 one of them individually --

25 THE COURT: No. You just said, Your motions. You

1 have filed a lot of motions, Mr. Bannister.

2 MR. BANNISTER: Yes, Your Honor.

3 And to the extent that the case in Torrence requires
4 me to renew that motion and state the Constitutional
5 grounds, I'm attempting to do that to preserve the issues.

6 So let me say that those motions include our initial
7 motion for jury trial sentencing after a guilty plea, our
8 motion for prosecutorial misconduct, our motion under the
9 double-jeopardy clause, the motions that we filed relating
10 to Dr. Loring and the process by which she -- her
11 appearance was obtained, the procedure that we have
12 currently --

13 THE COURT: She is up here voluntarily, Mr. Bannister.

14 MR. BANNISTER: The Eighth Amendment, the Fourteenth
15 Amendment, the Sixth Amendment, right to counsel, right to
16 cross-examine, right to compulsory process, due process,
17 right to present a complete defense, and a complete
18 mitigation.

19 Thank you.

20 THE COURT: The first thing I'd like to do is to note
21 that in the notes of Rule 614 of the South Carolina Rules
22 of Procedure, it states that, The formulation of this rule
23 differs from the rule established in State v. Anderson.

24 The second thing I'd like to bring up is that the
25 Defense did not contact Dr. Loring. In January, it was

1 the first time -- that is three months after the
2 suspension of the case -- that I saw a request for funds
3 to get a new social historian. At that time, I'm
4 presuming that the Defense was made aware that it would be
5 another year from that date before their new expert would
6 be ready to testify. The Court was never informed of
7 that. Being aware of that, I presume -- I'm presuming
8 this. Being aware of that, the Defense did not recontact
9 Dr. Loring to determine whether or not she could be
10 rehabilitated and if she would come testify.

11 It leads me to the conclusion that counsel for the
12 Defendant is more interested in pursuing the misconduct
13 issue than in presenting a full defense. And as a
14 result -- the assertion that due process is violated is
15 disingenuous. Because defense counsel has perpetrated the
16 failure to prepare for the social history.

17 Having said that, I'm going to call -- ask Dr. Loring
18 to come around and take the stand.

19 MR. BANNISTER: For the record, I take exception to
20 your ruling and note my objection.

21 THE COURT: Go ahead and get organized, Dr. Loring.
22 We're going to ask you to retake the oath.

23 THE WITNESS: Certainly.

24 THE CLERK: Put your left hand on the Bible and raise
25 your right.

1 WHEREUPON,

2 MARTI LORING, PhD,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you, ma'am.

5 State your name, please, for the record.

6 THE WITNESS: Dr. Marti Loring.

7 EXAMINATION

8 BY THE COURT:

9 Q Dr. Loring, these are -- the circumstances are a bit
10 unusual. And the first thing I want to ask you is whether
11 you would be more comfortable if I requested or ordered
12 Solicitor Ariail to exit the courtroom? Would you be more
13 comfortable?

14 I don't want you to feel any form of intimidation.
15 I'm not going to -- he's not going to be the one who would
16 examine you on behalf of the State. And if you would
17 prefer that he not be present in the courtroom, we'll do
18 it that way, or however you would feel most comfortable.

19 A No, sir. I don't feel that's necessary.

20 But thank you, Your Honor.

21 Q Okay. Now, Dr. Loring, I have previously qualified
22 you as an expert. But, for the record today, I would ask
23 that you, please, state your educational background and
24 your qualifications to the Court.

25 A I'm a social worker and a sociologist. I got my

1 Bachelors Degree at Vassar College in Poughkeepsie, New
2 York. I went on and got my Masters in Social Work at Bryn
3 Mawr outside of Philadelphia, Pennsylvania. I,
4 subsequently, after a period out in the field, got a
5 Doctorate Degree from Emory University in Atlanta,
6 Georgia, in sociology with a major in social psychology.

7 I'm, currently, director of the Center for Mental
8 Health and Human Development in Atlanta. I have taught at
9 a number of colleges in and around the Atlanta area. I've
10 done some seminars and lectures across the country in the
11 areas of trauma, abuse, and anything related to those.

12 THE COURT: Does anybody want to ask any questions
13 about Dr. Loring's qualifications?

14 THE WITNESS: I forgot. I've done some writing and
15 edited, too. I'm sorry, Your Honor.

16 THE COURT: All right. Thank you.

17 Anything from the Defense?

18 MR. BANNISTER: No, Your Honor.

19 THE COURT: Anything from the State?

20 MS. STROM: No, Your Honor.

21 THE COURT: Then any objection to qualifying her as
22 an expert in social -- in the field of social history,
23 trauma, and abuse?

24 MS. STROM: No, sir.

25 MR. BANNISTER: Your Honor, as long as I can be

1 preserved on the record with a running objection for the
2 other issues that we've raised, no, sir.

3 THE COURT: I'm asking you whether or not you object
4 to her being qualified as an expert. That's the only
5 question I asked.

6 MR. BANNISTER: I understand.

7 And I'm not -- this is uncharted water for me. And
8 I'm just saying to the extent that that would potentially
9 waive the issues I've raised, I'm asking to be preserved
10 with those issues. If that's understood, then, no, I
11 don't have any objections.

12 BY THE COURT:

13 Q Dr. Loring, it's been a while since I have conducted
14 examination of a witness. So I'm going to ask you, if you
15 would, to tell us what you were retained to do. And, as a
16 result of that, what -- just give us sort of an overview
17 of what you have done before you get into any of your
18 specific findings.

19 A Yes, sir. I was asked to do a social history about
20 the life and the family of Mr. Jerry Buck Inman.

21 Q Okay. And, as a result of being asked to do that,
22 did you -- what steps did you undertake to accomplish that
23 task?

24 A I interviewed Jerry Buck Inman. I interviewed family
25 members. I reviewed records, consulted with members of

1 the Defense team. And I consulted with research in the
2 areas of abuse and trauma.

3 Q Okay. And, now, you have not been involved in the
4 case since -- I guess you've -- have you had adequate
5 time -- I know you can never have enough. But have you
6 had adequate time to prepare for your testimony today
7 going through your prior work?

8 A Yes, Your Honor, I've had time. There are some
9 things I haven't had that I needed. But the time -- you
10 know, Your Honor, in all honesty, I thought I was off the
11 case.

12 Q Right.

13 A Thus, in a normal situation, I would be preparing for
14 months, not just myself studying over things, but
15 interacting with the investigator, attorney, the family
16 members. So, in a sense, I have, certainly, reviewed my
17 material since the time I found out I might testify.

18 Q Okay.

19 A What I haven't had the time or the opportunity to do
20 would be to interview the family -- re-interview family
21 members, the Defendant, and consult with the Defense team
22 members, who would be helpful to me.

23 Q Okay.

24 A May I read you a comment on that that I --

25 Q Yes, ma'am. I want to give you an opportunity to put

1 any caveat on the record.

2 Please go ahead.

3 A Thank you, Your Honor.

4 Q Okay.

5 A Your Honor, I believe that I am not at risk
6 testifying, thanks to Your Honor and to my excellent
7 attorney, Attorney Bill Godfrey. And I'm, certainly,
8 willing to testify and to do my very best. But I'm
9 worried and anxious that I have not received attorney
10 guidance for six months, have not seen Mr. Inman for that
11 period of time, nor have I re-interviewed his family
12 members for the last six months.

13 And, to be accurate, Your Honor, I, certainly, placed
14 two or three calls to his stepfather, Ken, and to his
15 mother, and to his sister, Denise, to inquire after their
16 well-being, their health. But I had no discussion of the
17 case with them because I thought I was off the case.

18 Had I known that I was still on the case, Your Honor,
19 I would have been sure to have done these three things so
20 I wouldn't leave out important information when I
21 testified. When I get to the chart that I'm going to show
22 you, at #8, I'm going to apologize to you because there is
23 some important information that I don't have --

24 Q Okay.

25 A -- as a result of what I've just talked about. And

1 thank you for the opportunity to share that with you.

2 I've thought it over long and hard and wanted to be sure
3 to share that with you.

4 Q Okay. Thank you.

5 A My pleasure.

6 Q All right. We will keep that in mind as you testify.

7 A Thank you, Your Honor.

8 Q All right. Please relate to me in a fashion that
9 you're most comfortable with what you're -- what you
10 discovered and the efforts you've taken.

11 A Thank you, Your Honor.

12 May I --

13 MR. BANNISTER: Your Honor, may I just -- I need to
14 place an objection on the record, I think, at this point,
15 again. I want my objections to be ongoing as to how this
16 witness was procured, the process by which we're going
17 into, and the fact that she's a Court's witness. I
18 understand she's going to be answering questions. I just
19 need my objections to run with the answers so I don't have
20 to keep standing up every question you ask.

21 THE COURT: All right.

22 MR. BANNISTER: Thank you.

23 BY THE COURT:

24 Q Go ahead, Dr. Loring.

25 Thank you.

1 A Your Honor, may I have your permission to move over
2 to where the stand is with --

3 Q Yes, ma'am. Just make sure you keep your voice up,
4 if you could.

5 A Yes, Your Honor.

6 Your Honor, I want to be sure both Mr. Inman and
7 yourself can see this.

8 Can you see this?

9 Q I can see it, yes, ma'am.

10 THE COURT: Mr. Inman, are you able to see it?

11 DEFENDANT INMAN: Yes, sir.

12 BY THE COURT:

13 Q Okay.

14 A Am I speaking loudly enough, Your Honor?

15 Q Yes, ma'am. And I think if you don't, we'll give you
16 a signal.

17 A Thank you.

18 Q Okay.

19 A Your Honor, as I believe you well know, this is a
20 genogram. And a genogram is based on interviews with --
21 it can be based on interviews with family members and
22 collateral witnesses. It can, also, be based on documents
23 that are reviewed, documents including everything from
24 medical histories to prison records, school records to any
25 kind of document that can give insight as to the important

1 people, their personality, their problems, and their
2 interaction with each other.

3 Your Honor, the colors on this genogram, which I'll
4 be speaking of, reflect the problems that various
5 individuals struggle with both in terms of solid colors
6 and outlines. So I'll be referring to that.

7 Q Okay.

8 A The lines in between the individuals refer to
9 interaction between them. And different types of lines
10 refer to different types of interaction. I'll be speaking
11 about that as well.

12 Q Okay.

13 A Squares often refer to men, circles to women, and X's
14 to individuals who are deceased within those circles or
15 squares.

16 Your Honor, I'm looking now at the box that refers to
17 Jerry Buck Inman with 1970 when he was born. And, Your
18 Honor, will notice that it is filled with yellow. Yellow
19 in terms of this particular genogram refers to alcoholism.
20 Mr. Inman has struggled with alcohol problems during his
21 life, as has his biological father, Jerry, as has his
22 grandfather, William Buck. Also struggling with alcohol
23 and alcoholism is Mr. Inman's maternal grandfather.

24 Now, I'm going to stop for just a moment, Your Honor,
25 and give us a bit of an orientation, as I talk about these

1 individuals. We have Jerry Buck Inman here. And I'm
2 beginning to talk about his father, Jerry. And then
3 you'll see across here, his mother, Vera. And then across
4 from her, his stepfather, Ken.

5 Now, Your Honor, I'm referring to him as his
6 stepfather, Ken, to be sure to make a difference between
7 stepfather, Ken, and biological father, Jerry. But if the
8 truth be known, Ken is every bit a father to Jerry and
9 they are -- they love each other very much. So I ask to
10 be excused to even use the term "stepfather," but it will
11 differentiate the two.

12 We see Jerry's sister, Denise. Her father is Clinton
13 and her mother is Vera. We see her former husband, Randy,
14 which would be Jerry's brother-in-law. And Denise's two
15 children, Nicholas and Ashley. Your Honor, up above, you
16 see the family of Jerry's grandfather on his father's
17 side. And you see the family of Jerry's grandfather on
18 his mother's side with his aunts and uncles. That is his
19 mother's brothers and sisters. And you see the deceased
20 grandmother there.

21 You see across from his stepfather, Ken, Ken's former
22 wife, Anna, and the children of Ken and Anna across here,
23 as well as a couple of their children. And these are the
24 stepbrothers and stepsisters of Jerry Buck Inman with whom
25 he grew up with.

1 Q Okay.

2 A I have here the dogs, which sometimes animals are on
3 a genogram, sometimes they're not. And, in this case,
4 they are. Because Jerry Buck Inman moved so much during
5 his childhood, he didn't form many, if any, friendships at
6 all. So the only people he had to relate to, Your Honor,
7 were his family and the dogs, which he's reported to have
8 loved a great deal. And they are part of the violence
9 which you will find he witnessed in his life, the demise
10 of his dogs and the way that they were killed.

11 So I'm now -- having done that, kind of an
12 orientation for us, Your Honor, I'm now back looking at
13 the boxes that are filled in yellow indicating alcoholism
14 for Jerry, his father, and grandfather on the paternal
15 side, his father's father, and Jerry's grandfather on his
16 mother's side, on Vera's side.

17 We, also, see that his stepfather, Ken, struggled
18 with alcoholism during his early years when Jerry was a
19 child. And to Ken's credit, Ken tried to throw off
20 alcoholism, went back to it, and then threw it off for
21 good during the '90's. So we find that he no longer
22 struggles with that and has overcome it. We, also, see
23 that alcoholism extends over to Ken's daughter, Brenda, by
24 family reports, and Ken's grandson, Kevin. And they've
25 struggled to overcome it as well.

1 Your Honor, you see that there is a green border
2 around Jerry Buck Inman's square. On this chart, the
3 green border indicates mental illness so that Mr. Inman
4 has been diagnosed with mental illness, major depression
5 with psychotic features. His father, Jerry, was diagnosed
6 with mental illness as well. And he was hospitalized in a
7 hospital for the criminally insane. He left the family,
8 as you'll see with the next chart I'll show you a
9 timeline, when Jerry was a young child to be admitted to
10 this hospital for the criminally insane.

11 Your Honor, Jerry's mother, Vera, also, has been
12 diagnosed with mental illness. Jerry Buck Inman consented
13 to my doing mitigation, as much as I was able to do, with
14 only one condition, that I show respect to his mother,
15 which I intend to do. I would say to you that she is a
16 very loving and gracious woman, who through her whole life
17 after Jerry was born with all of her potential, did her
18 best to look after Jerry, to be considerate of him, and to
19 protect him in every way she was able. And he is very
20 devoted to her with good cause.

21 I would say that she struggled with great handicaps,
22 Your Honor, through no fault of her own whatsoever. And
23 then handicaps included hospitalizations. They included
24 such diagnoses as depression, schizophrenia, and hearing
25 voices of reference. Your Honor, voices of reference

1 refer to voices that someone who's very disturbed hears
2 within their own head. They're not real. And some of
3 these voices told her to kill herself. We're, certainly,
4 very glad she's alive today. But she has struggled with
5 very severe mental illness, which is well documented in
6 the many records that the excellent investigator was able
7 to get for me, and I was able to review. There were a lot
8 of records for that.

9 Okay. Your Honor, now, where you see a small square
10 with a strip of red, it indicates criminal history. So we
11 know that Mr. Inman has a criminal history, as does his
12 father. In addition to that, his nephew, that is his
13 sister, Denise's, son, Nicholas, also, has a very minor
14 criminal history. He threatened a teacher once and was
15 put in jail as a lesson. And Nicholas is very important,
16 because he's someone who Mr. Inman has attached to and
17 attempted to teach, to mentor, and to keep from getting in
18 any further trouble. Nicholas, also, struggled with --
19 excuse me.

20 Your Honor, Jerry's stepbrother, Bill, also, has a
21 criminal history as a pedophile. And that will become
22 important as we talk in terms of the impact he had on
23 Jerry Buck Inman.

24 Now, you'll see with Nicholas, Jerry's nephew, a plus
25 in the smallest box. And the plus indicates struggling

1 with drugs. And Nicholas has struggled with drugs. And,
2 once again, Mr. Inman has tried to help him. He once
3 caught Nicholas huffing gasoline, which Mr. Inman did
4 himself as a child, and brought Nicholas to his mother and
5 made him confess to what he had done so the mother could
6 stop it. I don't believe Nicholas has gotten into any
7 further trouble with Mr. Inman's attempts to help him.

8 We know that -- and we'll see on the time chart,
9 which you'll see in a few moments, Your Honor, that
10 Mr. Inman himself struggles with drugs and really has
11 since childhood when he began medicating to try to cope
12 with his depression. He has had a drug problem. And his
13 father, Jerry, also, had a drug problem. We see that
14 Bill, the stepbrother, Andy, the stepbrother, and Kevin,
15 his nephew, also, have drug problems.

16 And, Your Honor, one of the reasons we do a genogram
17 is because the research shows us that as far as alcoholism
18 and drug addiction and drug problems that we often find
19 this in families in clusters. And, sadly, one reason, as
20 with Mr. Inman, is that stepbrothers, stepsisters,
21 brothers, and sisters who are addicted themselves often,
22 as in Jerry Inman's case, give drugs to the child. That
23 is -- Jerry was given drugs by his stepsister and alcohol
24 by a stepbrother at such a young age. By some reports, it
25 was nine, others reported it as 12. And people reported

1 it as being excessive at 14 years old in Jerry Buck
2 Inman's life.

3 Your Honor, I mentioned to you these lines that I
4 would explain. The double line where both of the lines
5 are squiggly, that is used to indicate sexual abuse. And,
6 sadly, we have two people who are sexually abusing Denise,
7 Jerry's sister. The first person was the grandfather on
8 the father's side sexually abused Denise, not in the
9 presence of Jerry Buck Inman.

10 However, Jerry's biological father, Jerry, sexually
11 abused Denise in the presence of Jerry Buck Inman. Jerry
12 and Denise shared a room. They had bunk beds. And there
13 was a ritualistic sexual abuse that would occur. We call
14 it ritualistic, Your Honor, because it is even more
15 emotionally disturbing to the children. It starts off
16 with step one, and then step two, et cetera, up to the
17 point where the sexual abuse, actually, occurs.

18 And our research has showed us -- shown us that the
19 childrens anxiety and terror begins when the first steps
20 are occurring. And then when the sexual abuse, actually,
21 occurs, they often disassociate or feel like they're not
22 really there. They feel like they're off watching it
23 happen as a form of trauma.

24 In this case, it was described to me that the father,
25 Jerry, would collect the two children, Jerry Buck Inman

1 and his sister, Denise, from playing outside. He would
2 lead them into the room where they slept and would say,
3 Come on it's time to go inside now. He would shut the --
4 close the blinds, would ask them both to get into bed, and
5 remind them that they better not cry or he would tell
6 their mother that they were bad children, all those being
7 steps of the ritual. Then he would get on Denise's bed,
8 tie her hands, blindfold her, and either sodomize her or
9 vaginally rape her.

10 Denise reported to me that she once looked up from
11 the bottom bunk and saw Jerry Buck Inman looking down. He
12 was very young. He may have been three or a little older
13 than three years old at that point.

14 It is reported then that the father, Jerry, would
15 then either reach up or climb up to Jerry's bed. And it
16 is thought that he -- there are indicators that he
17 sexually abused Jerry as well. These indicators were
18 observed by the mother, Vera. But with her own severe
19 mental illness, they were not recognized for what was
20 happening at that time it is believed. We, also, have
21 indicators that Jerry was sexually abused by his
22 stepbrother, Bill, who was later imprisoned as a
23 pedophile.

24 Your Honor, the one squiggly line here -- for
25 example, the line that goes from Jerry, the biological

1 father, to Vera, Mr. Inman's mother, indicates physical
2 abuse. Also, there's a line that goes from the father,
3 Jerry, to Jerry Buck Inman in terms of physical abuse. So
4 Jerry grew up for the first couple of years of his life
5 with his father emotionally and physically abusing his
6 mother and physically abusing him.

7 At one point, we'll see on the chart that comes next
8 that Jerry cried all the time. And one of the types of
9 physical abuse that his father showed toward Jerry was
10 that, at one point, when Jerry was two months old, he was
11 crying, as usual -- he cried all the time -- and the
12 father, Jerry, hit the son, Jerry, with such force on top
13 of his diaper that he hit him at two months old for
14 crying, and that the mother, Vera, reported that when she
15 took off the diaper, there was a red hand print because of
16 the force of the hit. And when the father, Jerry, kept on
17 hitting, the two-month-old kept on crying. So he kept
18 hitting -- hit harder for crying further. So that
19 accounts -- that is one example of the physical abuse, the
20 line that goes between Jerry, the father, and Jerry, the
21 son.

22 Your Honor, where you see red, it is an indicator of
23 violence. For example, you see up here, Vera -- Jerry's
24 mother, Vera, and her father, Jerry's grandfather, has
25 red. He killed a member of the family. We see that

1 Jerry's uncle, A.W., is filled with red. He would fly
2 into rages and family members would scatter to avoid
3 having chairs thrown at them or being harmed.

4 Jerry describes verbal violence, that is verbal
5 fighting between his mother and Ken while Jerry was a
6 child. Ken never hit Vera. He never hit Jerry in any
7 way. When Ken would feel he was going into a rage, he
8 would excuse himself and leave.

9 Jerry's sister, Denise, was married to Randy. She's
10 now divorced from him. That's what these lines mean, Your
11 Honor, the dotted line with kind of an upside down equal
12 sign describes an estrangement, in this case, a divorce.
13 But Randy was physically abusive towards Denise, who
14 escaped one night with her two children when she thought
15 that she was going to be killed.

16 Your Honor, I'm looking at the chart. I haven't had
17 the opportunity to go over this with the legal team. So
18 I'm thinking that -- hoping that anything isn't forgotten.

19 I am looking at the green lines, which go from Jerry
20 Buck Inman to his mother, who he's very close to and whom
21 he loves very much. They're lines of closeness and
22 connectiveness. We have those lines from Jerry to Ken,
23 his stepfather, with whom he's very close, to Nicholas,
24 who Jerry is now the mentor and coach of. He helps -- to
25 my last knowledge, he has helped keep Nicholas out of

1 further trouble.

2 We, also, have that closeness between Jerry and his
3 grandfather on his mother's side where -- and that is very
4 important. Because you'll see on the timeline, Your
5 Honor, that when the grandfather died a rather -- a
6 terribly unfortunate death, that is when Jerry went down
7 even further in terms of his own mental health.

8 So having looked at this chart on the genogram, I'd
9 like now to turn with Your Honor, if I may, to the
10 timeline.

11 Q Okay.

12 A Your Honor, this timeline is put together in a
13 similar way as the genogram. And that is, interviews --
14 it can be put together through interviews with family
15 members, collateral witnesses. It can be based on the
16 review of documents as well. And there were a lot of
17 documents gathered that were helpful. So it's entitled
18 "Jerry Buck Inman Timeline," and numbered from 1 to 15.

19 #1, Jerry's father was exposed to Agent Orange in
20 Vietnam and exposed to violence during the Vietnam War.
21 So that he returned to America, he would fly into these
22 rages. I gave you an example of when, as a two-month-old,
23 Jerry would cry and his father would beat him, supposedly,
24 until he stopped crying. But the more he beat Jerry Buck
25 Inman, the more he cried. And there would be other rages

1 he would go into as well. For example, he would go into
2 rages with his wife, Vera.

3 #2, Jerry was born 12-19-1970. And he didn't seem to
4 be like other children. He cried continuously.

5 Your Honor, may I go back to where I was sitting to
6 get out some pictures?

7 Q Sure. Yes, ma'am.

8 A Thank you.

9 May I hand Your Honor a picture?

10 Q Yes, ma'am.

11 A Thank you.

12 I've handed Your Honor a picture of Jerry Buck Inman
13 as a child. He couldn't be more than several months old.
14 He's in a swing that you'd normally associate with fun.
15 Someone is there pushing him, it would appear. And he's
16 crying. That's how people -- various relatives with whom
17 I spoke described him. He was always crying.

18 Q Okay.

19 A So his mother, Vera, took him to the doctor. And no
20 one could figure out why he was always crying.

21 Q All right. Let me interrupt you for one second.

22 THE COURT: Just to get organized, I'm going to ask
23 that the genogram chart be marked as a Court's Exhibit,
24 that the time line chart be marked as a Court's Exhibit,
25 and these photographs as well, so we can identify them.

1 So if you'll give us just a second, and let those get
2 marked. If you would, bring those -- if you would, bring
3 both up here.

4 MS. STROM: And, Your Honor, if she has any other
5 photographs, can we see them collectively so we don't have
6 to --

7 THE COURT: Yes.

8 If you would, go ahead and show these to the parties
9 and let them examine them to see if they have any
10 objection to the introduction of any of these documents.

11 (Pause.)

12 MS. STROM: No objection, Your Honor.

13 THE COURT: Just a second so we can get these marked.

14 THE WITNESS: Certainly.

15 (WHEREUPON, Court's Exhibit Nos. 4, 5, 6, 7, 8, and 9
16 were marked for identification and admitted into
17 evidence.)

18 BY THE COURT:

19 Q Okay. Yes, ma'am.

20 Thank you.

21 You may continue.

22 A Thank you, Your Honor.

23 I'm going to hand to you, Your Honor, the picture of
24 Jerry Buck Inman as a child being swung, it would appear,
25 and still miserable and crying.

1 Q All right.

2 A #3, I talked about a little earlier, during those
3 first few years, Jerry witnessing the sexual abuse of his
4 father toward his sister, and he appeared to have been
5 abused by the father himself. That is, Your Honor, there
6 were indicators that he was sexually abused.

7 #4, during those three years -- or, actually, over
8 three years that his father was there in the home with
9 them, some of the hits that his father would deliver would
10 hit Jerry open-hand and close-fisted in the head. And
11 Mr. Jerry Inman would complain of headaches. He would
12 hold his head and he would beat his head on the floor.
13 His mother and others would have to pull him up from
14 beating his head.

15 #5, in 1972, while playing unattended out in the
16 backyard, Jerry spilled bleach and is described as having
17 burned his privates. That's his sister's term for the
18 bleach having burned Jerry. And his mother was aroused
19 from some of the struggles with mental illness that she
20 was experiencing. And he was hosed down, but received no
21 medical attention. Apparently, there were burns around
22 the genital area, but no medical attention obtained.

23 #6, his mother left in 1973. Vera left his father,
24 Jerry, after that spanking I mentioned, one of many I
25 might add that were reported to me where Jerry was spanked

1 so hard that the red imprint of a hand went through the
2 diaper. However, she did return, as is the case with many
3 battered women, as Your Honor knows.

4 #7, Jerry had seizures. He would stare straight
5 ahead. He would shake. His entire body would shake. As
6 a young child into his school years, he was given
7 phenobarbital and other medicine. And it's described --
8 it was described to me that children would make fun of him
9 having these seizures. Because he looked very unusual
10 staring straight ahead, and then his eyes would blink, and
11 then he would fall to the ground.

12 There is a school record I reviewed where they said
13 that if he looks at all ill or gets a temperature, you
14 know, be certain to give him phenobarbital. Because
15 that's when his seizures most frequently occurred. They
16 could have occurred at other times, however, as well.

17 #8, in 1980, Jerry Buck Inman witnessed a string of
18 violent events. In one event, there was a fight where two
19 dogs pulled a cat apart. He was described as looking at
20 it transfixed with tears coming down his eyes. Your
21 Honor, that wasn't the only event. That was one of a
22 couple.

23 And I need to apologize to the Court. Because I
24 didn't think I was a witness in the case until recently, I
25 didn't have an opportunity to go back and re-interview

1 family members. I couldn't find in my notes what those
2 other violent events that he witnessed were. And when I
3 did find out I was going to be a witness, I was not able
4 to interview his mother, because she's ill at this time.

5 Q All right.

6 A Nor was I able to consult with the Defense team,
7 including the investigator, to find that out as I normally
8 would in a normal case.

9 Q Okay.

10 A I think that's a very important bit of information --
11 not a bit, a very important couple of pieces of
12 information. And I'm very sorry not to have that to share
13 with the Court.

14 Q All right. I'll keep that in mind.

15 Thank you.

16 A Okay. I'm usually effective and comprehensive. And
17 I apologize for that not being the case.

18 Q No apology necessary.

19 A Thank you, Your Honor.

20 #9, in 1981, Jerry burned -- his leg was burned from
21 a motorcycle pipe when he had a motorcycle accident.
22 Let's see. In 1981, he would be about 11. He burned his
23 leg from a motorcycle accident. And there was a fall
24 against a tool box where his leg -- another leg was cut.
25 And I'm sure, because of this, his mom, Vera's, depression

1 and auditory hallucinations, various mental health issues,
2 he received no medical attention for either of those
3 injuries at age about 11.

4 Your Honor, I have different accounts of when his
5 drug use started. That is, when his members of his family
6 gave him drugs and gave him alcohol. Some report it as
7 early as nine. Others observed it around 1981. And it
8 was observed a little later down, you'll see, at about 14
9 to be in excess.

10 It was seen as a kind of self-medication in that he
11 didn't seem to look quite as depressed when he took some
12 of these drugs. And they ranged. It started with pot.
13 It went on to cocaine. He huffed gas. He tried LSD. It
14 had the appearance that when one stopped helping with his
15 depression, he went to another.

16 #11, 1984 to 1986, he was exposed to a sexually
17 abusive stepbrother. Now, at the time this chart was
18 made, those were the dates that were reported. However,
19 there were later reports that came in that he was exposed
20 to the stepbrother, who was later convicted as a
21 pedophile, younger than age 14, more like about age seven
22 and age eight.

23 And, Your Honor, I'm holding in my hand now, first,
24 one picture and handing it over to you of -- and in this,
25 Jerry is five years old and has red hair with a smile. In

1 the next picture, he's posing at a store with a native
2 American with the head gear, the tribal costume. And the
3 gentleman has his arm around Jerry. And Jerry has a smile
4 as well. Among the many pictures I looked through, those
5 were the two I found where Jerry had a smile. The rest
6 were all of him looking depressed. And I noted that
7 because it was age five and six and the later reports of
8 when he was exposed to the stepbrother was starting
9 approximately age seven. And that's when there are no
10 further reports of or pictures of Jerry with any degree of
11 smiling or happiness.

12 I would add, Your Honor, that much of this
13 information came from sources other than Jerry Buck Inman,
14 who describes himself as having a poor memory. He doesn't
15 remember a lot of the things that happened to him. Other
16 family members who observed or school records were more --
17 or prison records had more information in them.

18 Your Honor, one of the indicators of child sexual
19 abuse is playing with fire. The minute a young child of
20 seven or eight begins, not just experimenting, but going
21 further than that with matches, we often want to eliminate
22 that there's any kind of sexual abuse going on, especially
23 if there's someone who has tendencies towards being a
24 pedophile in the family. And Jerry was noted at about age
25 seven or eight as beginning to play with matches, and then

1 setting a fire to the mattress of the stepbrother who was
2 later convicted of being a pedophile. And no one was
3 harmed at that time.

4 Going back to 11. In 1984 through 1986, when Jerry
5 was 14 going on 15, alcohol was given to him by a
6 stepbrother.

7 And then later, in #12, in 1985, when he was 15, his
8 stepsister, Cindy, told me that she took him to parties,
9 gave him alcohol, and then she describes herself as having
10 abandoned him to get married.

11 When Jerry was 15, in addition to that, his beloved
12 grandfather, whom he shared a room with, William Askew,
13 had a painful and bloody death with throat cancer. This
14 seemed to be one of the few people who Jerry felt close
15 with. They shared a room and watched movies, John Wayne
16 movies, and talked together. And Jerry blamed himself and
17 felt guilty for his grandfather's death. His family
18 wasn't quite sure why since it was throat cancer. So, of
19 course, Jerry had nothing to do with that.

20 But Jerry had difficulty visiting him, the
21 grandfather, in the hospital because there would be this
22 projectile vomiting where the blood would come up. It was
23 very alarming. And it was very difficult for Jerry, as a
24 15-year-old, to witness. But Jerry somehow felt he should
25 have visited him more than he did.

1 #13, Your Honor, Jerry Buck Inman spent most of his
2 life in prison. There were thefts and other kinds of
3 behaviors that led him to prison. The family reported
4 that at about age 15, the death of his grandfather and the
5 encouragement of the use of alcohol by his stepbrother and
6 stepsister seemed to be sort of the final blows in the
7 life of Jerry Buck Inman in the sense that he -- they
8 described him as going downhill. Whereas before, when he
9 would be staring off into space, they could clap their
10 hands, or stand in front of him, look right in his eyes,
11 and get him back to paying attention.

12 But once these things happened at age 15, they -- the
13 family described him as staring off into space and they
14 couldn't get him back, get his attention back. They would
15 have to wait until whatever was happening in his head was
16 over. And then, he could attend to them.

17 The last picture, Your Honor, is a picture of Jerry
18 Buck Inman with his stepfather, Ken, during this period of
19 1986 or shortly thereafter, between 1986 and 1989 in
20 prison. And he has the grim expression that was later
21 noticed to be on his face.

22 Your Honor, something that came in a little later was
23 that when Jerry was 11 and 12, he seemed to be asking for
24 help. But his mother, because of her problems, wasn't
25 able to hear that. One of the neighbors once brought him

1 home and described him as looking in a window in the
2 neighbor's house. And so, unfortunately, rather than
3 therapy, what happened is his windows to his room were
4 nailed shut so he couldn't get out at night.

5 Your Honor, during the life that Jerry Buck Inman
6 spent in prison, I'm aware of a number of suicide
7 attempts. That's #13 and 14. He tried to cut his wrists.
8 He tried to cut his neck. He swallowed razor wire. And
9 he was diagnosed as having a major depression with
10 psychotic features.

11 #15, in September of 2005, Mr. Inman was released
12 from prison and spent nine months out of prison before the
13 tragedy. And he was described by the family as anxious
14 and lost during that period of time, that he would try to
15 get a job and couldn't seem to hold it. He would attempt
16 to relate to women. He didn't seem able to do that. He
17 appeared depressed. He would disappear for periods of
18 time and then turn up again.

19 The one thing, during that time, that he seemed to be
20 able to do was to mentor Nicholas. He stopped Nicholas,
21 his nephew, his sister Denise's son, from huffing gas.
22 And he tried to get him on the right track. Once
23 Mr. Inman was in prison again, he corresponded with
24 Nicholas about the threat to the teacher that I mentioned.
25 And to my last hearing, my last information is that

1 because Nicholas is described as idolizing his uncle,
2 Jerry, he seems to be trying to keep on the right track at
3 this point. I'm not aware of any further difficulty. But
4 that Mr. Inman tries to keep it that way at any rate.

5 And that is the timeline, Your Honor.

6 Q All right. Thank you.

7 A You're welcome.

8 Shall I come back and sit down, Your Honor?

9 Q Yes, ma'am.

10 A Shall I leave these here, Your Honor?

11 Q Yes, ma'am. That would be fine.

12 A Yes, Your Honor.

13 Q All right. Is that the limit of your knowledge and
14 testimony in this matter, or do you have any opinions that
15 you'd like to express or anything else that you think is
16 important to tell me?

17 MR. BANNISTER: Your Honor, at this point, I'd just
18 interpose, again, my previous objections, but, also, to
19 the extent this is getting into what would have previously
20 been -- previously have been attorney-work product.

21 I would --

22 THE COURT: Well, I will not allow her to do that.
23 And you have a continuing objection.

24 BY THE COURT:

25 Q So don't talk about what you -- anything you talked

1 about with the attorneys. But is there anything else that
2 you think you need to tell me?

3 A (There was no response.)

4 Q If there's not, that's fine. But whatever you --

5 A Yes, Your Honor, there is.

6 Q Okay.

7 A And I myself am struggling to figure out the
8 difference between what I think I just heard was
9 attorney-work product and the more I would like to tell
10 you. And I'm sure I should be able to figure it out.

11 Q Okay. I'll tell you what let's do, Dr. Loring.
12 Let's -- we'll take a break. And I'll allow you to confer
13 with Mr. Godfrey. He may be able to give you some advice
14 along those lines. And we'll come back in about 15
15 minutes.

16 A Okay. Thank you, Your Honor.

17 Q Thank you very much.

18 THE COURT: We'll be in recess for about 15 minutes.

19 (WHEREUPON, a break was taken.)

20 BY THE COURT:

21 Q Dr. Loring, have you had ample time to speak with
22 your attorney?

23 A Yes, sir.

24 Q Okay. And what else do you think that you need to
25 tell me?

1 A Your Honor, there are two halves of what I'd like to
2 say to you.

3 Q Okay.

4 A The first half is, as a trauma expert who's focussing
5 on mitigation as a specialist in social history today,
6 Jerry Buck Inman's early history has been very important
7 for me to learn about. That is, family has revealed to
8 me, as a child, him being in trance-like states.
9 Sometimes they would find him in the morning lying by the
10 back door, instead of in his bed, with no idea how he got
11 there. Other times, they'd find him staring off into
12 space. Sometimes they were able to bring him back to
13 them, sometimes they were not.

14 Sometimes during the times he was abused by his
15 father, that's how he would be, staring into space.
16 Sometimes after those times and other times, he would then
17 behave in ways that he would later seem to be unaware of.
18 He couldn't remember what the family had told him he had
19 done.

20 Your Honor, this early history seems to be related
21 and consistent with the later history in the life of Jerry
22 Buck Inman where others -- not myself, Your Honor, but
23 others have diagnosed him as bipolar, having major
24 depression with psychotic features. Those are often the
25 early childhood histories of people who are later

1 diagnosed with those kinds of mental illnesses, Your
2 Honor.

3 That is the first half of what I wanted to share with
4 you.

5 Q Okay.

6 A The second half, Your Honor, is my additional
7 opinions are interwoven with consultations with the
8 Defense team. They seem to be attorney-work product. And
9 as such, Your Honor, I think I'm not allowed to share
10 those additional opinions for that reason.

11 Q Okay. Did you speak with -- can I just ask you. Did
12 you have communication with the Defense team about this
13 issue?

14 A No, sir, I did not.

15 THE COURT: Well, is there some -- I'll ask the
16 lawyers for the Defendant, is there some issue here that
17 would prevent her from expressing these opinions? Do you
18 need to discuss it with Dr. Loring and Mr. Godfrey, or
19 not?

20 MR. BANNISTER: Your Honor, with all due respect, I
21 believe that there -- that what she would be potentially
22 getting into next would, in fact, be what she has
23 described as attorney-work product. Based on the prior
24 arguments that we've made and the record that we,
25 currently, have, I still believe it's in my client's best

1 interest that I should not participate in asking her any
2 questions or illiciting those opinions.

3 Let me add that part of the very, very difficult
4 situation that I am in, at this point, is that we're being
5 asked to unscramble the egg in a way. I mean, there
6 are -- well, let me just put it this way. My prior
7 objection, I restate that objection and we stand on that.

8 MR. GODFREY: May it please the Court?

9 THE COURT: Yes, sir, Mr. Godfrey.

10 MR. GODFREY: Just for clarity purposes --

11 THE COURT: Okay.

12 MR. GODFREY: -- I will tell you that I advised
13 Dr. Loring that she should not give any opinion today that
14 is based solely upon her conversations with the Defense
15 team or any member of the Defense team. If it was an
16 opinion that they had from their conversation with Jerry
17 Buck Inman or from any member of the family, if it was an
18 opinion that they relayed to her and she has no
19 independent documentation records or interviews of her own
20 regarding that particular issue, I told her I thought it
21 would be safer if she stayed away from it.

22 THE COURT: All right. Thank you, Mr. Godfrey.

23 I don't mean to cut the State out of the loop.

24 Is there anything you want to tell us --

25 MS. STROM: Not --

1 THE COURT: -- about this issue?

2 MS. STROM: Not on that issue. I would like an
3 opportunity to briefly cross.

4 THE COURT: Sure.

5 I'm just -- I'm deeply concerned that there is -- I'm
6 not getting all the information, because of some form of
7 legal gamesmanship. Dr. Loring was released because of
8 the intimidation issue. It was my opinion then and it's
9 my opinion now that it was not -- that the comments -- the
10 improper comments made by the Prosecutor with respect to
11 criminal prosecution of the licensing statute, based on
12 all the other law precedent in this state, that there was
13 no valid claim to the Fifth Amendment.

14 In an effort to try and be conciliatory, we adjourned
15 the case. I was going to cut Dr. Loring loose at that
16 time. But I think the record reflects that I did not do
17 that so that the Defense would have an opportunity to go
18 back and approach her to determine whether or not she
19 could testify. The Defense made no effort to do that.

20 And, again, I reiterate, Dr. Loring was the first
21 choice. I would reiterate that the Defendant's motion for
22 mistrial is based almost exclusively on their reliance on
23 Dr. Loring's testimony and her expertise that they alleged
24 and assert in their motion that was so significant that it
25 caused the Prosecutor to make those statements.

1 Now, I think that's a quantum leap. But that is the
2 position of the Defense team. I think the fact that
3 Dr. Loring has come back voluntarily and is testifying --

4 Which I wholeheartedly congratulate you on, and I
5 deeply appreciate.

6 -- and the fact that her testimony is being limited
7 by the Defense team to try and preserve that motion is
8 just disingenuous.

9 But having said that, I will turn it over for
10 examination, first, by the Defense and then by the State.

11 MR. BANNISTER: Your Honor, note my exception to that
12 ruling and objection for the record.

13 THE COURT: I'm sure that you do.

14 CROSS-EXAMINATION

15 BY MR. BANNISTER:

16 Q Dr. Loring, is it unusual, in your experience, for
17 things to change as trial approaches in terms of information
18 that's coming in and information about the family?

19 A Would you help me understand what you mean by
20 "change," sir?

21 Q Well, you've been out of the case for the last seven
22 months. Would it be uncommon in that period of time for
23 new information to be available and for new documents,
24 whatever, to be part of what you would want to take a look
25 at?

1 A No, sir. That would not be uncommon.

2 Q And would it be important in rendering opinions and
3 presenting a full factual record to the Court to be
4 provided with all that information to you?

5 A Yes, sir. I like to have all the information that I
6 can.

7 Q All right. And if -- now, you're areas of expertise
8 put you in a position where you often offer opinion
9 testimony; correct?

10 A Sir?

11 Q I said, your areas of expertise often put you in a
12 position where you offer opinion testimony outside of just
13 the social history; correct?

14 A Yes, sir.

15 Q All right. And if, in a case, you have a defendant
16 and the Government has compiled a psychological profile of
17 that Defendant, would that be the kind of information you
18 would want to have in reaching an opinion?

19 A If who has created that profile, sir?

20 Q The Government.

21 A The Government?

22 Q Yes.

23 A Yes, sir. I would like to see that.

24 Q Okay. And did you ever review a psychological
25 profile created by the Government in this case?

1 A Not to my recollection.

2 MR. BANNISTER: Your Honor, I don't have any further
3 questions.

4 And let me just state, for the record, reaffirming my
5 prior positions on the other motions that I do not believe
6 it's in the client's best interest to continue the
7 examination of this witness. That's based on my prior
8 motions for jury trial sentencing, prosecutorial
9 misconduct, double jeopardy, motion to recuse the
10 Solicitor, call the Solicitor as a witness, suspend the
11 proceedings, compel attendance of the out-of-state
12 witnesses for the Defendant -- that would be the Georgia
13 people -- the process by which Dr. Loring's attendance was
14 obtained, objections to the Court calling Dr. Loring as a
15 witness, the process by which Dr. Loring has been made a
16 witness, and the examination. All of those issues being
17 underpinned by the Defendant's Sixth Amendment right to
18 counsel, right to compulsory process, right to confront
19 witnesses, his Fourth Amendment right to due process, his
20 Sixth and Fourteenth Amendment construed together to
21 present a complete defense, and his Eighth Amendment Right
22 to present mitigation.

23 As I said before, I would add, at this point, Your
24 Honor, that when prosecutorial misconduct infects a case
25 to such an extent that the fundamental fairness is

1 implicated, which with all due respect we believe is the
2 case here, then it's incumbent upon me to move for a
3 mistrial again. If that's not granted, then to, once
4 again, renew my motion for a continuance.

5 Thank you.

6 THE COURT: As I have earlier ruled, I found that
7 Mr. Ariail's comments -- inappropriate comments
8 constituted prosecutorial misconduct. I found,
9 specifically, that they did not rise to the level of
10 deliberate intentional prosecutorial misconduct, which
11 would -- under the case of Quattlebaum that everyone is
12 familiar with. And I found that they did not -- they were
13 not intentionally -- they did not intentionally goad the
14 Defense into moving for a mistrial such that the
15 double-jeopardy clause would be activated.

16 I found that under the Golding case that the remarks
17 of the Prosecutor did not prejudicially effect the
18 Defendant's substantial rights to the degree that they
19 deprived him of a fair trial.

20 And, in any event, the Defense counsel now is
21 participating in the limitation of this evidence that they
22 intended to offer, which contributes to any Constitutional
23 violation that might exist.

24 All right. State's turn.

25 MS. STROM: Briefly, Your Honor.

CROSS-EXAMINATION

1
2 BY MS. STROM:

3 Q Good afternoon Dr. Loring.

4 A Good afternoon.

5 Q I did want to go over a couple of things with regards
6 to your genogram, which is Court's Exhibit No. 4, and your
7 timeline, which is Court's Exhibit No. 5.

8 A Yes, ma'am.

9 Q These -- the genogram and the timeline, they were
10 prepared by you; correct, or by your staff with your
11 approval?

12 A By me, that's correct, ma'am.

13 Q Okay. And these were prepared back in September
14 because you -- were you going to use these in September
15 when you testified -- when you were going to testify?

16 A Yes, ma'am.

17 Q Okay. I guess what I'm getting to is, you didn't
18 prepare these overnight thinking you were going to testify
19 this morning. These were prepared back long ago when you
20 thought you were going to be testifying in September?

21 A Yes, ma'am.

22 Q Okay. And just so that we are all clear. This is
23 what you would have testified to in September, what's on
24 these charts?

25 A Let me think about that for just a moment.

1 Q Okay.

2 A Yes, ma'am.

3 Q Okay. And I know it sounds like I'm all over the
4 place. But I did want to just ask for completeness, you
5 had spoken earlier when you were going over the genogram
6 that it's -- maybe "unusual" is my term, but you have
7 pets, dogs down here?

8 A Yes, ma'am.

9 Q And you said you would get to that later?

10 A Yes, ma'am.

11 Q I did not recall you getting to that later, except an
12 incident involving two dogs sort of ripping a cat apart.
13 Were there other incidents regarding the dogs?

14 A Yes, ma'am.

15 Thank you for the opportunity, because I, clearly,
16 overlooked that. So thank you so much for asking that.

17 Q Yes, ma'am.

18 A And the answer to your question is that the
19 biological father of Jerry Buck Inman, Jerry, killed his
20 animals. He killed his -- two of the dogs that are on
21 there. And, in one case, a dog mysteriously disappeared
22 and no one knew what happened to it, though everyone
23 suspected the father of killing it.

24 And with the second dog, the father grabbed the dog
25 and took it out to the woods and then came back in and

1 said in Jerry's presence -- Jerry being approximately
2 three or a little over three at that point -- that the
3 father -- the father said that he, indeed, had just killed
4 the dog. I killed that dog. Jerry has no recollection of
5 this. His sister recollects it very clearly.

6 The third dog that's on there is a dog that Jerry
7 Buck Inman found starving in his neighborhood and brought
8 home and nursed back to health, feeding it, and all. And
9 then he gave it to a neighbor when he found -- Jerry Buck
10 Inman was going to have to go to prison, so he turned the
11 dog over to a neighbor to care for.

12 So thank you for helping me with that omission.

13 Q And I just wanted to make sure that everything
14 else -- that's what I had noticed that had not been
15 discussed on the chart.

16 A You are correct.

17 Q But you have covered everything else?

18 A Yes, you are correct.

19 Q I just wanted to make sure.

20 And, Dr. Loring, what I'm gathering from your
21 testimony today through all of this is that,
22 unfortunately, Jerry Buck Inman experienced a very bad
23 childhood. He had -- he was exposed to violence, sexual
24 abuse, loss; correct?

25 A Yes, ma'am.

1 Q And I guess, also, unfortunately, Jerry Buck Inman is
2 not the only child who has ever suffered at the hands of
3 this type of abuse and this type of childhood; correct?

4 A There, certainly, are children who have been abused,
5 yes, ma'am.

6 Q Okay.

7 A I'm not sure -- I myself have not encountered quite
8 that -- this complex series of abuses with no therapeutic
9 intervention or community intervention that I can just
10 think of at this moment. But, certainly, other children
11 have been abused, that is correct, yes, ma'am.

12 Q And to varying degrees, some less severe, some more
13 severe; correct?

14 A I would think that would be correct, also, yes,
15 ma'am.

16 Q I guess what I'm getting to, Dr. Loring, is everyone's
17 childhood effects them in some way or the other; correct?

18 A I think that's true, yes, ma'am.

19 Q But, ultimately, as adults, you make choices. You
20 make good choices. You make bad choices. You make
21 mediocre choices. We all do that; correct?

22 A No, ma'am. And that's really a very key issue that
23 you've raised. I think it's important that we raise
24 children where they do that very thing, where they make
25 choices, and think over their choices, and take

1 responsibility for their choices.

2 In the childhood -- and I was a social historian. So
3 I covered it up to a given point and then I was to stop
4 and someone else took over.

5 Q Oh, okay.

6 A At some point, you know, prior to the tragedy is when
7 I was covering it, though without any intense coverage
8 during the prison time, just any particularly important
9 features. And one of the things that I noticed about
10 Jerry Buck Inman was that because of his sexual abuse,
11 there appeared to be many times that his family commented
12 about him being in kind of a daze or doing things that he
13 wouldn't recall afterwards.

14 So that when people are in -- have this history of
15 trauma or, for that matter, experience a trauma at some
16 point, one of the things that that trauma can do is to
17 take away the very ability that you're talking about that
18 we want people to have. Since trauma can, throughout
19 childhood or at a later point, effect that kind of
20 cognitive ability that a person is supposed to think about
21 and problem-solve and, certainly, make choices about the
22 way they treat others.

23 Q So when you were doing your social history of Jerry
24 Buck Inman, did you review the records involving his
25 criminal activity?

1 A I --

2 Q Do you need me to be more specific?

3 A I'm trying to say, yes, ma'am, and, no, ma'am, at the
4 same time.

5 Q Okay.

6 A I reviewed some of them. I was primarily asked to --
7 I have to be careful. I primarily -- in other words, I'm
8 not supposed to talk about strategy or work product. I'm
9 just -- so maybe I can talk about what I did and maybe
10 you'll know -- let's see.

11 Q How about if I ask you, specifically, about specific
12 incidents and you can tell me if you reviewed that and if
13 that effected your genogram and your timeline? That way
14 you don't have to guess which ones and try to reveal
15 something. Okay.

16 A Either that or I'll just share with you that my focus
17 was on any diagnoses that were made, any behaviors that
18 were psychiatrically based, psychosocially based,
19 mitigation based, historically based, like, for example,
20 suicide attempts, that kind of thing. That was my primary
21 focus.

22 Q And those suicide events you talked about occurring
23 while he was in prison --

24 A Yes, ma'am.

25 Q -- did you, also, review any records regarding a

1 sexual assault that he was convicted of while he was in
2 prison?

3 A Yes, ma'am.

4 Q You did review that?

5 A Yes, ma'am.

6 Q And did you review the incidents or the records --

7 A Excuse me. I don't know if he was convicted of or
8 accused. I don't remember that.

9 Q You don't remember that?

10 A I don't remember that.

11 Q Okay. But you did review the records and were aware
12 of the assault -- of the sexual assault?

13 A Of the alleged assault, yes, ma'am.

14 Q And were you aware and did you review the records
15 involving the sexual assault of Suzanne Clavel back in
16 1987 where he broke into her home, tied her up, tied up
17 her roommate --

18 MR. BANNISTER: Judge, I'm going to object to the
19 commentary she is inserting into her question.

20 THE COURT: All right. Just see if she -- the
21 assault of Suzanne Clavel.

22 BY MS. STROM:

23 Q Back in 1987?

24 A I believe that I did.

25 Q You did review that?

1 A I believe so.

2 Q And the incident which occurred on May 22nd, 2006, up
3 in Tennessee involving the assault on Jessica Gann?

4 A I'm going to answer this with humility. I think the
5 answer is, yes, ma'am. And I answer you without the
6 benefit of having the usual help in reviewing for a case
7 that I would normally have from members of the Defense
8 team, or the Prosecution team, whoever I was working with.
9 So without that kind of help, I think, humbly, the answer
10 is, yes, ma'am.

11 Q Let me ask it this way. When -- you were saying
12 earlier that you had -- you did a social history up to a
13 point and then you stopped. Where did you stop?

14 A I continued through some of the prison records where
15 there were psychosocial or historical features that
16 related to the childhood. So I continued throughout the
17 prison records where the suicide attempts were taking
18 place. I think that like in 1989 I have down there, I
19 reviewed those records.

20 Q But once he got out of prison in 2005, did you look
21 at any records after that involving other criminal
22 activity, including the murder of Tiffany Souers?

23 A I believe the answer to that is, no, ma'am.

24 Q And that would not have been important to you in
25 making your assessment?

1 A The answer to that question is, clearly, a matter of
2 strategy in regard to what I was told by the Defense team.

3 THE COURT: Okay. Well, don't go there then.

4 THE WITNESS: Okay.

5 MS. STROM: Your Honor, I have no further questions
6 of this witness.

7 THE WITNESS: Thank you, ma'am.

8 THE COURT: Anything else?

9 MS. STROM: Your Honor, may we take something up --
10 instead of releasing her, may we take something up very
11 quickly outside of her presence?

12 THE COURT: Yes.

13 But, first, let me see if the Defense has any other
14 questions.

15 MS. STROM: Yes, sir.

16 MR. BANNISTER: None, Your Honor.

17 THE COURT: All right.

18 MS. STROM: It won't take two minutes.

19 THE COURT: Dr. Loring, I can't let you go yet.
20 If -- would you mind -- Mr. Godfrey will escort you to the
21 hall. We've got some legal matter that they want to
22 discuss with me.

23 I want to thank you for your presence and for your
24 presentation today. I appreciate all your patience and
25 hard work.

1 Thank you.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Yes, ma'am.

4 (WHEREUPON, Dr. Marti Loring exited the courtroom.)

5 THE COURT: Ms. Strom -- well, wait a minute let the
6 door close.

7 (Pause.)

8 THE COURT: Okay.

9 MS. STROM: And I really haven't thought this
10 through. It was just something that came to me at this
11 point. But if there's some concern about her revealing
12 any type of work product to which we would not be entitled
13 to, if it's something that you think you need to take up
14 with her outside our presence, the State is willing to
15 step out, Your Honor. And I just -- you know, I'm just
16 trying to think of every way if there's something we could
17 offer to the Court. So I throw that out to you.

18 THE COURT: Thank you very much.

19 Would that make any difference to you, Mr. Bannister?

20 MR. BANNISTER: No, sir, Your Honor. I don't believe
21 it would.

22 THE COURT: I didn't think so.

23 MS. STROM: I just wanted to offer.

24 THE COURT: Anything else anybody can think of that
25 we need from Dr. Loring?

1 (There was no response.)

2 THE COURT: Mr. Godfrey, if you would, please,
3 communicate to her that she is released. She's not under
4 subpoena.

5 But thank you -- again, give her our thanks.

6 MR. GODFREY: And may it please the Court?

7 One housekeeping matter.

8 THE COURT: Yes, sir.

9 MR. GODFREY: A lot of things were said on Monday
10 about what happened in Georgia. I'm only concerned about
11 one thing. When I talked to the Georgia attorney, I
12 talked with the District Attorney's Office in Atlanta,
13 they wanted someone from the State to call them and let
14 them know that she did appear and -- so they could do more
15 than just stand down their warrant, so they could recall
16 or dismiss their warrant. And I just want to make sure,
17 on the record, that that is part of the record and that is
18 done.

19 THE COURT: Okay. If you'll obtain a phone number,
20 I'll call the judicial officer involved.

21 MR. GODFREY: Thank you, Judge.

22 THE COURT: Thank you, Mr. Godfrey.

23 All right. Anything else?

24 MR. BANNISTER: Judge, one final thing. And I had
25 intended to address this yesterday, but we got out of here

1 before I could get to it. In preparing for yesterday, I
2 came across a transcript that appears to be from a show
3 that was aired in 2006. And of particular importance, in
4 that, Mr. Ariail stated on this video clip that the
5 murder -- and he's talking about, at that point, I assume,
6 somebody that had not been -- they didn't have Mr. Inman
7 in custody.

8 He said, The murder has become a heavy burden for
9 this offender. And, in likelihood, it is all consuming to
10 him at this time. Then he goes on to say, He will likely
11 exhibit changes in eating habits, sleeping habits,
12 consumption of alcohol, drugs. He may isolate himself and
13 try to isolate himself from friends. And I'm paraphrasing
14 somewhat here. That has all the hallmarks of a
15 psychological profile that was put together for the
16 Government.

17 Now, I have -- I haven't had forever, because
18 yesterday was a busy day for me. But I don't believe that
19 we have ever been provided with a copy of that
20 psychological profile. And I have to say that, you know,
21 given the case we were attempting to put together in
22 September and here, the fact that the murder is a heavy
23 burden on this offender, being Mr. Inman, and it's all
24 consuming to him, at this time, is, clearly, mitigation.
25 And we would have been entitled to it under Brady and

1 Kyles. And it hasn't been provided. So I think we need
2 to get into that, at least, momentarily.

3 THE COURT: All right. You're into it.

4 Have y'all got a psychological profile, or do you --
5 I mean, let me hear -- I'll hear the State on that.

6 MR. ARIAIL: Can I see this quote?

7 MR. BANNISTER: Uh-huh.

8 MR. ARIAIL: May I have a chance to read this?

9 THE COURT: Sure.

10 I'll tell you what let's do. Why don't we break for
11 lunch and come back at --

12 Is an hour long enough, a quarter till 2:00?

13 Is that long enough for the Defense?

14 MR. BANNISTER: Yes, sir, Your Honor.

15 THE COURT: Is that long enough for the State?

16 MS. STROM: Yes, sir.

17 THE COURT: We'll break until a quarter till 2:00.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: I think we have one issue to deal with.

20 MR. ARIAIL: Your Honor, at the break or before the
21 break, Mr. Bannister handed to me a multi-paged document.
22 It took a while for me to figure out what it is and
23 what -- it's got a cover sheet. It's something that's
24 been sent to him. And it's a transcript of a television
25 program of Nancy Grace on June the 6th of 2006.

1 And as I went through it, it is -- it comes into --
2 it comes on the air at the time, which was Tuesday, June
3 6th, which was the day that Chief Stewart and I announced
4 the CODIS match of the DNA on Mr. Inman. And we were
5 announcing that to the public. And, previously, Chief
6 Gibbs from Central had asked me for various reasons, which
7 I won't go into -- but he asked me to handle the press
8 aspect of the investigation leading up to any arrests.
9 And those were taking place in Greenville County. And
10 this was a news conference that I was announcing, along
11 with Chief Stewart, who the suspect that was being picked
12 up for this crime was.

13 As a part -- and this goes on for quite some time. I
14 don't know if you ever watch her program. But it -- there
15 are cut-ins and cut-outs. They bring people in, and bring
16 people out. And then they go back and forth and they pick
17 up old quotes.

18 And, in this particular one, they picked up an old
19 quote from either Thursday or Friday of the week before.
20 And that quote, I'll read to you, it's at the bottom of
21 this, Ariail is quoted saying, Investigators believe it is
22 very likely that others saw him or saw something
23 significant during the time of the murder in the apartment
24 complex or around the apartment complex. They may not
25 have recognized it at the time as being significant. But

1 the people who were in the area that night, those people
2 are urged to contact investigators and give them whatever
3 information they may have as to people they saw in the
4 area and automobiles and vehicles that they saw.

5 And the quote -- the part that he was interested in,
6 The murder has become a heavy burden for this offender.
7 And, in likelihood, it is all consuming to him at this
8 time. He will likely exhibit changes in his eating
9 habits, his sleeping habits, his consumption of alcohol
10 and drugs. He may try to isolate himself from his family.
11 He may try to isolate himself from his friends. He may
12 cancel plans and appointments without notice. He may be
13 absent from classes or work, or may be avoiding all
14 instances of that type altogether. That was a quote
15 attributed to me. And I did make that quote.

16 The quote arose from a press release, which was part
17 of a news conference on either Thursday or Friday. I have
18 a copy of my notes. And how this came into existence was
19 Chief Gibbs contacted SLED and requested from Senior Agent
20 Michael Prodan a media release notes advisory. And the --
21 what that was -- what that turned out to be was
22 suggestions from Mr. Prodan as to what types of things --
23 what types of information the press releases should
24 contain so that the press could be used as a conduit to
25 get information to the public about what they should be

1 looking for, what types of behavior they may be looking
2 for.

3 Mr. Prodan prepared these media release notes. It
4 starts off with things as simple as this, Always be
5 positive, stress that the investigation is continuing and
6 will not let up until the suspect is identified, blah,
7 blah, blah. And part of that was brought to me and I put
8 together, in conjunction with Chief Gibbs and others, a
9 news conference -- a press release where we went through a
10 number of things.

11 And, in this news conference, we released the picture
12 of the car at the ATM. We had confirmed, at that time,
13 the style of that car from GM, General Motors, in Detroit
14 and what type of vehicle it was. And we talked about a
15 number of different aspects. And the purpose of these was
16 to generate call-in's from the public.

17 There was no profile. There was only these suggested
18 statements. And all of these suggested statements were
19 published in a news release released to the public and
20 stated on the open airs, the television as -- and wherever
21 else. And I have a copy of both the -- my press release,
22 and what we released to the press, and a copy of Prodan's,
23 which is pretty much -- I say pretty much, 99 percent of
24 it we just copied.

25 We did delete one portion out of there. He

1 speculated -- I say speculated. He said that he -- "he"
2 being the offender -- may, also, have engaged in window
3 peeping, trespassing on property, and some other things.
4 We elected to delete that, rather than excite the
5 community that we had a Peeping Tom or somebody sneaking
6 around. Because we didn't have any evidence of that.

7 So that's -- that is what that is. And it's been in
8 the public domain since 2006. And I assume that's where
9 he got this from -- or the person who gave it to him.

10 And I can state, for the record, we never developed a
11 profile with anyone from SLED or law enforcement.
12 Obviously, the focus was on analyzing that DNA that we had
13 that we knew was hard evidence.

14 THE COURT: All right.

15 MR. BANNISTER: So if I understand correctly what the
16 Solicitor is representing to the Court is that he didn't
17 have any profile from the Government, and this is just
18 something that Mr. Prodan put together. I'm just trying
19 to make sure I understand where we are, because it
20 reads --

21 THE COURT: Well, I think we heard the same thing.

22 MR. BANNISTER: All right. Well, to the extent then
23 that Mr. Prodan represents Brady and Kyles material that I
24 would have been entitled to, then I would just note my
25 objection, for the record, that we have not been -- we

1 were not provided with the information of where that came
2 from. And I believe that given the presentation we've
3 tried to make of our mitigation that that would have been
4 helpful to have for our experts in their crisis testimony,
5 and any expert testimony we would have been able to
6 illicit on mitigation.

7 Thank you.

8 THE COURT: All right. I don't see how those dots
9 connect either. But you're protected in the record.

10 MR. ARIAIL: Just for the record, this was done
11 before Jerry Buck Inman was even a suspect. And I
12 would -- I can't say it with specificity right now, but if
13 I could leave the record open for supplementation, I
14 believe these files were offered for review. Our whole
15 case file was offered for review to the Defense. And had
16 they come, this would have been a part of our file. But I
17 don't have the -- I'll have to get the documents where we
18 transferred or -- transferred those discovery documents to
19 them to confirm that.

20 THE COURT: Well, I don't intend to hold the record
21 open, so.

22 MR. ARIAIL: Well, we won't -- I'll just say it was
23 done before Jerry Buck Inman became a suspect.

24 THE COURT: All right. Anything else?

25 MR. BANNISTER: Not on that issue, Your Honor.

1 THE COURT: Well, anything else?

2 MR. BANNISTER: Your Honor, at this point, let me
3 state, for the record, we're closing our case on
4 mitigation. Let me, also, state that in doing so, we
5 reaffirm our positions that we've tried to maintain
6 throughout the trial. And based on Torrence, let me just
7 go through them and list them one more time.

8 We reaffirm our position and our arguments the
9 evidence in the case regarding our motion for jury trial
10 sentencing, for prosecutorial misconduct, double jeopardy,
11 recusing the Solicitor, the motion to seek to call the
12 Solicitor as a witness, our motion to suspend the
13 proceeding, our motion to compel the attendance of the
14 out-of-state witnesses from Georgia, the process by which
15 Dr. Loring's attendance was obtained, objections to the
16 Court calling Dr. Loring as a witness, the process by
17 which Dr. Loring was made a witness and she was examined,
18 also, our motion in regards to the Fourteenth Amendment
19 fundamental due process that the actions have infected the
20 case to such an extent that fundamental fairness is
21 impacted.

22 I renew my motion for a mistrial and my motion for a
23 continuance. And all of that is based on the
24 Constitutional provisions, Sixth Amendment right to
25 counsel, right to compulsory process, right to confront

1 witnesses, the Fourteenth Amendment right to due process,
2 Sixth and Fourteenth Amendment right to present a complete
3 defense, and the Eighth Amendment right to present
4 mitigation.

5 Thank you, Your Honor.

6 THE COURT: All right. The rulings are all the same.

7 MR. ARIAIL: Nothing else.

8 THE COURT: Okay. The fact finder is ready to hear
9 your closing comments.

10 CLOSING ARGUMENTS

11 MR. ARIAIL: Thank you, Your Honor.

12 Let me first tell you that addressing you as the
13 Court, I gave some thought to that. That's somewhat
14 awkward to give you closing argument in the nature of
15 stating to a jury, because you know what the facts are.
16 You've listened. You understand, as a Judge, the
17 difference between what you can listen to and what you
18 can't.

19 But, in thinking about it, I realized it's been a
20 long time since the trial and the penalty phase. And
21 during the delay, I will have to confess that I lost some
22 of my focus on the circumstances of this crime. I lost
23 some of my focus on Tiffany Souers and who she is, and who
24 she was, and what we've presented to the Court. So I
25 think it's important for us to review those things where

1 you're charged with making a decision as to the
2 appropriate punishment. Because we need to get
3 reacquainted with Tiffany Souers. We need to get
4 reacquainted with Jerry Buck Inman. And we need to get
5 reacquainted with the circumstances of this crime.

6 The only decision you have left, obviously, is to
7 decide what the punishment is. But, first, as a
8 procedural matter, you've got to decide what -- rule on
9 the aggravating circumstances. And we submitted to you
10 three, murder in the commission of kidnapping, murder in
11 the commission of criminal sexual conduct, and murder in
12 the commission of burglary.

13 Before you can go forward to consider the life
14 sentence or the death sentence, you must first make a
15 finding as to one or all of those being in existence. If
16 you find any one or all, you can proceed to determine the
17 appropriate sentence. And we have submitted that we have
18 factually established all three of those in the record.

19 The State has triggered these proceedings by asking
20 for the death penalty and by serving the death notice.
21 It's a tough decision for you to have to make,
22 particularly, all alone without the assistance of others
23 to reason with you as a jury. But it was a tough decision
24 for me to have to ask you. But, as you are aware,
25 responsible people make tough decisions all the time. And

1 the process of law that we have in this state makes you
2 responsible for that tough decision.

3 The burden of discerning the proper sentence requires
4 some careful review of the circumstances of the crime and
5 the characteristics of the offender. The law requires
6 careful and thoughtful consideration of the offender's
7 life and his characteristics. It requires review of the
8 nature of the crime and the circumstances surrounding it.
9 And it's not enjoyable for me to have to ask you or
10 anybody, a jury to boot, to impose the death penalty, but
11 it is necessary.

12 Remember, we are here because of the acts of Jerry
13 Buck Inman. He brought us here. They may suggest that
14 the Solicitor brought us here since it's my decision to
15 request the death penalty, but it is his responsibility.
16 He brought us here. They may suggest that the Solicitor
17 is not satisfied with a life sentence. And I can tell you
18 and I will argue to you that I am not. They may suggest
19 that I want the death penalty. And I do. Because I
20 believe that it is the appropriate sentence for this crime
21 and for this man with his character and his background.

22 And why is the death penalty the appropriate
23 punishment? That's a fair question for you to ask of me
24 and make me respond in an appropriate fashion. And I can
25 only summarize to you this, having done this for a number

1 of years now, there are mean and evil people in this world
2 who do not deserve to continue to live with the rest of
3 us, regardless of how confined they may be. The law
4 limits the State's right to seek the death penalty to a
5 very few circumstances involving murder. But where it is
6 available, it is available for mean and evil people who
7 continue to commit atrocious acts of repeated violence and
8 murder on other innocent people. The death penalty is
9 designed for the worst of the worst, those whose behavior
10 sets them apart even from the rest of the criminal world.
11 Jerry Buck Inman, and this murder, and his prior behavior
12 makes this one of those cases where the death penalty
13 should be applied.

14 Punishment with the death penalty is about
15 accountability and responsibility for choices made. Jerry
16 Buck Inman had a choice on May the 26th of 2006. He could
17 rape and kill Tiffany Souers, or he could let her live.
18 He had that choice.

19 So we are here because Jerry Buck Inman made a very
20 bad choice. It was an intentional and a willful choice.
21 He showed us he could choose when he chose not to rape
22 Beth Bates Patterson in Alabama. He showed us he could
23 choose when he did not kill Jessica Gann in Tennessee,
24 when he raped her. He showed us he could choose when he
25 did not harm Ms. Gann's daughter in Tennessee. He showed

1 us he could choose when he did not murder Suzanne Clavel
2 in Florida, when he raped her. And he showed us he could
3 choose when he chose to kidnap, rape, and murder Tiffany
4 Souers. He made the intentional and calculated choice to
5 kill and rape again, even after he had been severely
6 punished for his previous bad choice of raping Suzanne
7 Clavel. His punishment should reflect the degree and the
8 magnitude of that choice.

9 Bad decisions and bad judgment have consequences.
10 But intentional and repeated malicious acts of murder and
11 rape should have more severe consequences. We must hold
12 people accountable to the more severe punishment when
13 their acts, in conjunction with their prior conduct, are
14 so atrocious as to justify the most severe punishment.

15 Jerry Buck Inman has the ability to make choices. He
16 knows right from wrong. Dr. Schwartz-Watts confirmed
17 that. He chose evil. He chose brutality. He chose
18 unnecessary killing. Punishment should reflect
19 accountability for that choice. He tries to escape full
20 accountability by suggesting the Florida Department of
21 Corrections is to blame. He tries to escape full
22 accountability by suggesting his childhood is to blame.
23 He tries to escape full accountability by suggesting, in
24 his defense, his genetics are to blame.

25 I have considerable sympathy. And I'm sure we all

1 have considerable sympathy for Defendant Inman and the
2 circumstances that he finds himself in. Nevertheless,
3 while the background of his life sheds some understanding,
4 it does not excuse or mitigate his long-standing pattern
5 for repeated rape, murder, and violence. Defendant Inman
6 cannot hide from the violence that he has caused to
7 surround his life.

8 He may suggest you give life as an act of mercy.
9 It's natural to want to have mercy. And I'm sure they
10 will argue to you about mercy. Mercy is human nature.
11 But mercy is not automatic. Otherwise, you would never
12 have a death penalty. Keep in mind this when you're
13 analyzing their request for mercy. Mercy is something you
14 receive that you do not deserve. I would suggest that you
15 focus on justice, which is receiving the punishment that
16 you do deserve. Justice is what this process is all
17 about.

18 What punishment does the Defendant deserve? If you
19 want to give him mercy, that is your right under the law.
20 But I submit to you, and the State of South Carolina
21 submits to you, Tiffany Souers deserves justice. This is
22 her day in Court, too. It's not just Mr. Inman's day.
23 Her life was senselessly cut short. And justice is what
24 she deserves. We don't forget her just because she's not
25 here.

1 What is justice for the hands-on choking Mr. Inman
2 inflicted on Tiffany Souers? And what is justice for the
3 minutes of fear that Tiffany Souers endured while she
4 helplessly felt her life slipping away from her? What is
5 the justice for a man who has committed four rapes and one
6 murder in 37 years of his life? If they ask you for
7 mercy, ask them to show you one shred or piece of evidence
8 or any reason why he deserves mercy, rather of justice.

9 The Florida Department of Corrections did not form
10 the intent to kill Tiffany Souers by choking, Jerry Buck
11 Inman did. His parents did not put a bathing suit top
12 around Tiffany Souers neck and twist it so tight that he
13 indented her neck by three inches, Jerry Buck Inman did
14 that. His genetics and bad childhood didn't tie Tiffany
15 Souers up, Jerry Buck Inman did.

16 He must be held fully accountable for his acts, not
17 watered down by blaming others. We must measure the
18 extent of the culpability and determine the proper
19 punishment. The greater the extent of culpability, the
20 more severe the punishment. Remember, as I said earlier,
21 the worst of the worst. That is what the death penalty is
22 for.

23 After you have found that the aggravating
24 circumstance is proven beyond a reasonable doubt, life
25 imprisonment is the least, the minimum of the two

1 punishments the law allows in this case. Does this case
2 deserve the least, the minimum penalty, or the more
3 severe?

4 Let's review the extent and degree of culpability of
5 Mr. Inman as we put forth to you the facts of this case
6 back in September. He destroyed the life of Tiffany
7 Souers. She was a beautiful young girl just beginning her
8 adult life. She was full of life, always laughing and
9 enjoying people, helping her friends, and reaching out to
10 anyone in need, even perfect strangers. She was a
11 dedicated student with a future of endless possibilities.

12 But because of his actions, she will no longer be
13 able to guide her little sister or be a big sister to both
14 her siblings. Her engineering career will never be
15 realized. The bridges she would have built both literally
16 and those among people are forever lost. Tiffany was like
17 an inadamant object to Jerry Buck Inman. And he is a
18 hands-on predator. She fought him. She wouldn't consent
19 like the others. And, for that, he killed her.

20 He is a close in and he is a personal killer. He
21 choked Tiffany watching her very life drain from her body
22 repeatedly twisting around her neck, waiting on her to
23 quit struggling. And he said, I knew she was dead when
24 she quit struggling. He left and went and tried to take
25 her money out of her college kids bank account, and then

1 back to Tennessee, life as usual.

2 They suggest to you, and this is what you'll hear,
3 give him life in prison. It's a harsher sentence. He
4 will suffer each day because he hates prison. Mr. Aiken
5 said the prison can control him, if he's put in a solitary
6 cell 23 hours a day in super max. But we can't guarantee
7 that. We can't guarantee he won't be out in the general
8 population. And he sexually assaulted while he was in
9 prison in North Carolina.

10 But all that misses the point of why we are here and
11 why you are making this decision. It's not what is the
12 least and easiest thing we can do to him, not what will
13 cause him to suffer the most, it's not to dole out a
14 punishment that he wants or does not want. It's about the
15 appropriate punishment. It's about shaping the punishment
16 to fit the extent of the crime and the character of the
17 Defendant.

18 They can't just argue he had a bad childhood and bad
19 parents and get the minimum sentence. Surely, there is
20 more punishment in a case like this than that. His
21 conduct in this case and before it deserves more than the
22 minimum sentence. His commission of four rapes and one
23 murder in the course of 37 years deserves more than the
24 minimum sentence.

25 Defendant Inman's life has been characterized by a

1 continuous pattern of violence. He resumed his life of
2 crime and total disregard for others within nine months of
3 being released from prison after serving 19 years for the
4 rape of Suzanne Clavel. He does not deserve the minimum
5 sentence.

6 Prison -- the Defense presented testimony that he can
7 function in prison and that the South Carolina Department
8 of Corrections can handle him. But prison has not changed
9 Jerry Buck Inman. He spent 19 years in prison. Sending
10 him back won't change him any further. Sure, you and I
11 may think going to prison for life is a serious
12 punishment, and anybody listening to this case would think
13 that's serious, but not for Jerry Buck Inman. He's
14 already been in prison for 19 years, plus jail time in
15 this case since 2006. He's been in prison virtually all
16 of his adult life. And he's exhibited no change. He's
17 been there. He knows the rules. He knows the structure.
18 He knows how it works. So sending him there on a life
19 sentence will have absolutely no effect on him.

20 Dr. Price summed it up best in testifying for the
21 Defense when he said, He is a lost soul and he can't be
22 fixed. I believe the record is so clear on that point
23 that we all could have agreed to that. Dr. Price said he
24 suffered a mental condition at the time. But that doesn't
25 mean he's entitled to a minimum sentence. It is evidence

1 to consider as mitigation, but it doesn't excuse.

2 In the big picture of this case and this Defendant,
3 the mitigation is washed away in the tide of aggravating
4 evidence. The mitigation is a way to attempt to gloss
5 over the fact that he is a serial rapist who has now
6 murdered -- brutally murdered, and we need to sentence him
7 appropriately. The death penalty is the only punishment
8 that will have any impact or meaning for this Defendant.
9 He is a self-described animal who wants death, who says he
10 deserves death. The concept of a fair sentence includes
11 consideration of many factors, such as the seriousness of
12 the crime, the culpability of the Defendant, the
13 characteristics of the Defendant, the need for protection
14 of society, the need for punishment, and accountability.

15 Discerning the proper sentence in a case in which the
16 death penalty is sought is especially painful and
17 agonizing. It is commonly accepted, though, that the
18 death penalty is one to be hesitantly and cautiously
19 imposed. Because this ultimate penalty is reserved, as I
20 said earlier, for the worst of the worse. Jerry Buck
21 Inman regrettably falls within this small group of
22 predators whose existence has been defined by violence and
23 callous disregard for the safety of others and society and
24 the rights of those who live with him.

25 While the decision may be painful, I trust your

1 careful review leads you to firmly conclude that the
2 murder of Tiffany Souers, and the prior bad acts, and the
3 characteristics of Jerry Buck Inman warrant the penalty of
4 death.

5 Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 MR. BANNISTER: Your Honor, I believe Mr. Inman has a
8 right to address the Court. And he chooses to exercise
9 that right. And I'd ask that you hear from him at this
10 time.

11 THE COURT: Yes, sir.

12 DEFENDANT INMAN: Your Honor, it's been said that
13 it's believed I may have been molested as a child, which
14 is not true. It has, also, been said that I had a bad
15 childhood, but there's millions of others who have had a
16 lot worse than I have and not done the things that I've
17 done.

18 I've been incarcerated well over half my life. I've
19 shown by my actions, both in and out of prison, that I
20 can't be rehabilitated. Twice during my last
21 incarceration, I escaped. I've shown that I was capable
22 of that.

23 I don't say any of this to be disrespectful. But,
24 Your Honor, in all reality, there's really only one viable
25 sentence to impose for someone like me. And I ask that

1 you impose that sentence.

2 THE COURT: Thank you, Mr. Inman.

3 Mr. Bannister.

4 MR. BANNISTER: Thank you, Your Honor.

5 The law says that there's two different sentences you
6 can impose, one is called life without parole, the other
7 one is called death. I suggest to you that both of those
8 terms, in this case, are really [inaudible]. And the
9 reason I say that is because, once Mr. Inman entered his
10 plea of guilty, death in prison became a foregone
11 conclusion. What we're really talking about now and the
12 only issue that you have before you is, how is he going to
13 die, and when is he going to die?

14 The coroner who spoke back in September, if you
15 recall, Your Honor, he testified that in South Carolina,
16 when a person dies, a death certificate is issued. There
17 is a blank on that death certificate that says, Manner of
18 death. There are five choices, that he testified to, that
19 are answers that can go in that blank where it says,
20 Manner of death. They are all one word choices and they
21 are as follows: Homicide, suicide, natural causes,
22 accident, and unknown. I have listed those in the order
23 that I think is the most likely order of what would be the
24 probabilities for Jerry Buck Inman's death certificate to
25 read one day. Homicide, first; suicide is a very close

1 second; natural causes and accident being distant third
2 and fourth; unknown virtually impossible.

3 Taking the law of South Carolina as it applies in
4 capital litigation and the two choices that you have,
5 there are two possibilities for the death certificate that
6 says homicide for Jerry Buck Inman. One of those is it
7 could say, homicide, if you sign the death warrant for his
8 execution. The other is that it could say, homicide, if
9 he dies by the hands of somebody else in prison. Suicide
10 being second is self-explanatory. And I'll remind the
11 Court of the number of occasions of which we have records
12 that Mr. Inman did, in fact, make suicide attempts.

13 The law of the State of South Carolina says that you
14 can chose whether or not to sign the death warrant based
15 on anything you've heard in the record, whether it's
16 mitigation or not, or based on nothing that you've heard
17 in the record and just your own personal moral judgment as
18 to whether or not the death warrant should be signed. The
19 Solicitor has called that mercy.

20 The definition of mercy, in this case, is like a lot
21 of things that we've been trying to deal with, it's a bit
22 of a conundrum. What is mercy in this case? What is not
23 mercy in this case?

24 Let me talk about what is mercy, I think. One of the
25 best selling books that's out there has three quotes that

1 I think are probably applicable, Thou shalt not kill,
2 that's mercy. You have heard it said an eye for an eye, a
3 tooth for a tooth. But I say to you, do not resist evil.
4 If your brother strikes you, turn the other cheek. That
5 is mercy. The debt you owe to all is love. That is
6 mercy.

7 With that application of mercy, I would say that that
8 definition does honor to Tiffany Souers and the life that
9 she led. It says that the most heinous act you could
10 imagine was not enough to put out her life, that mercy in
11 that sentence says that the goodness and the grace with
12 which Tiffany Souers treated other people, those who
13 potentially didn't deserve it, could manifest itself in
14 this courtroom and transcend the punishment that any human
15 standard would require that you impose.

16 Mercy, in this case, also, brings finality, Your
17 Honor. And I think the lawyers and Your Honor know how
18 that can have value. Will Inman's execution bring
19 closure? How could it? His execution will never erase
20 completely the hurt that he's caused, the wounds that he's
21 inflicted, and the life that he took. And that's because
22 he cannot erase the life that he took just by taking her
23 life. Tiffany Souers will, I'm convinced, live on in the
24 hearts of those that she touched, in her family and
25 friends. Her death certificate reads, Homicide. And it

1 shouldn't.

2 With a death warrant that results in the death
3 certificate for Jerry Buck Inman that reads, Homicide,
4 that will conclude a chapter in the story of Tiffany
5 Souers. And somehow it just feels wrong for her to have
6 any part, as innocent as it is, in a death certificate
7 that represents the intentional taking of another human
8 being's life. And that's the funny thing about grace,
9 Your Honor, is that it's not reserved for those who earn
10 it. As illogic as it sounds, it wouldn't be grace if it
11 was.

12 The truth about grace is that, on occasion, it can
13 be -- it can only reach its most fruitful place if it's
14 accepted by those who deserve it the least, the worst of
15 the worst. Because those people understand the debt that
16 they owe. Some examples of that include, in the ancient
17 world, a fellow named Saul of Tarsus. On a dirt road
18 headed to Damascus, grace touched him. He wrote about it.
19 King James, ultimately, translated that into English. And
20 people today are still touched by the letters that he
21 wrote. He's changing lives right now.

22 John Newton, one of the new worlds most notorious
23 slave traders, who was personally responsible for the
24 torture and death of hundreds of individuals, human
25 beings, touched by grace in a storm at sea. He wrote a

1 song about it. It's sung even today. It has been since
2 1779, and is still impacting lives.

3 Carla Fay Tucker, the pickaxe murderer of Debra
4 Thornton. In giving her confession to that murder, she
5 said that she felt sexual pleasure in taking that victim's
6 life. In the 14 years that it took to execute her, grace
7 touched her. And in that time that she had left, she used
8 that time to help other people, to write books and
9 instruction manuals for ministers in the prison system so
10 that they could understand what it was like to be in
11 prison and how to reach people that were in that
12 position.

13 Perhaps all this sounds a little too preachy, maybe
14 it is. I'm sure there are people in this courtroom right
15 now who would say that Jerry Buck Inman was born evil and
16 cannot change. He himself has said so. This man, if you
17 can call him that, has forfeited any right that he would
18 have to ask for pity, mercy, grace from this Court. Give
19 to him the pity, mercy, and grace that he gave to Tiffany
20 Souers when he took her life. And, again, by any human
21 standard, I'd say I agree.

22 So let me talk for a minute about what is not mercy
23 in this case. And I'll come back to the 19 years he's
24 spent in jail. Seven suicide attempts. That's better
25 than one every three years. He's been in jail almost

1 three years. If he continues this pattern, you can
2 expect another suicide attempt in the next two to six
3 months.

4 Imagine, as Dr. Price has said, as the Solicitor has
5 said, he lives under this burden of the murder that he
6 committed, the things he's done. It's all consuming. He
7 wakes up with that every day. Now, here's the calculation
8 that he would have to make. Today, I wake up and I know
9 potentially that I could live another 40 years. Is today
10 worthwhile to live through so that I can be there tomorrow
11 to make the same decision? Is the pain, the guilt, what I
12 feel inside of me, is that worthwhile? Maybe today is the
13 day I take my life. He's going to have to deal with that
14 every single day from now until the death certificate is
15 filled in. That, I suggest, is not mercy.

16 Add to that the fact that, as Jim Aiken pointed out,
17 Jerry Buck Inman stands -- he's a marked man. I think
18 those were the words that Jim Aiken used. He's making his
19 bones. He has personified himself, tattooed himself in a
20 way to represent that he belongs to a gang that he doesn't
21 belong to. What does that mean for him in prison? Well,
22 that means that if he were in the population, as the
23 Solicitor suggested he could be, that he will then be the
24 subject, potentially, of a -- as a marked man of being
25 killed by those other gang members. And why? One,

1 because to pretend to be a member of that gang, and to not
2 be, shows disrespect for that gang. And if you'll recall
3 that testimony, that gang then has to make sure that that
4 symbol that Mr. Inman represents is taken out.

5 Furthermore, he is a sexual offender, which as crazy
6 as it sounds, the gang that he says he's affiliated with
7 or that he pretends to be affiliated with, views sexual
8 offenses as the lowest of the low. So he's a marked man
9 for two reasons.

10 What does that mean for Mr. Inman every single day?
11 It means that every single day, he wakes up and he deals
12 with, is today the day that somebody is going to get me?
13 Is today the day that I'm going to be attacked? And think
14 about what that, potentially, means in terms of what he's
15 fearful of. He's fearful of not a needle going into his
16 arm and being put to sleep, but attacked with some object
17 sharpened down, a shank, something of that nature. How do
18 you know it's going to work? He may suffer the attack and
19 still be around. That death would be brutal and it would
20 be painful. And the fear of that painful and brutal death
21 or an attack on top of attack is something that he would
22 have to live with day after day, never knowing. That is
23 not mercy, I submit to you.

24 If you sign the death warrant, Your Honor, you are
25 giving him the power to alleviate the two fears that drive

1 him the most, when will I die and how will I die? When
2 will I die? He knows, believe me, he knows that once he
3 has that death warrant, he then has the power to pull the
4 plug on any other proceedings and proceed to the execution
5 chamber. And he gets to then make the decision about when
6 that is going to happen, to some degree. That alleviates
7 the thoughts that he goes through of how much longer do I
8 have to endure this pain and hurt, the guilt that I feel,
9 the remorse, the fear that I have? How do I die?

10 Well, he knows, as we all do, that a needle will be
11 stuck into his arm and that he will be put to sleep. That
12 takes away the fear, both mentally and physically, that he
13 could die a brutal and painful death in prison. Mentally,
14 he knows that that's what will happen. But, physically,
15 on death row, he's removed, physically removed from the
16 threat that the general prison population and the gangs
17 he's so scared of would, ultimately, cause him.

18 Your Honor, I have to say that on this score,
19 punishment should reflect the magnitude of this crime. I
20 agree. Justice is receiving the punishment he deserves, I
21 agree. The greater the culpability, the greater the
22 punishment, I agree. And by saying that, I ask you,
23 Judge, do not give him what he wants. It's too easy.

24 Thank you.

25 THE COURT: All right. We'll, be at ease.

1 (WHEREUPON, the proceedings were recessed at
2 approximately 3:30 p.m., and reconvened at
3 approximately 4:49 p.m.)

4 THE COURT: All right. Mr. Inman, I neglected to do
5 a couple of procedural things that I need to take care of.
6 The first of which is to discuss with you your right to
7 testify. And, before I do that, if I could ask you to
8 stand and raise your right hand as best you can.

9 WHEREUPON,

10 JERRY BUCK INMAN,
11 after first having been duly sworn, testified as follows:

12 THE COURT: Okay. Thank you.

13 You can put your hand down.

14 I guess you recognize that you're represented by
15 three excellent attorneys. And I'm sure they have talked
16 to you about this, but do you understand that you have an
17 absolute Constitutional right to testify in your own
18 behalf in this proceeding?

19 DEFENDANT INMAN: Yes, sir.

20 THE COURT: And, of course, if you do that, then you
21 would be subject to their examination and you would be
22 subject to the State's cross-examination. And we have --
23 and I'll take the blame for it. I kind of skipped that
24 part.

25 But I want to tell you that you -- at this time, if

1 you tell me now that you want to testify, then we will
2 reconvene this hearing and allow you your right to
3 testify.

4 DEFENDANT INMAN: I have no wish to testify.

5 THE COURT: Okay. And have you had enough time to
6 discuss that with your attorneys?

7 DEFENDANT INMAN: Yes, sir.

8 We discussed that earlier today.

9 THE COURT: Okay. And has anyone in any way forced
10 you or coerced you, threatened you, or promised you
11 anything to get you to give that right up?

12 DEFENDANT INMAN: No, sir.

13 THE COURT: This is your decision?

14 DEFENDANT INMAN: Yes, sir.

15 THE COURT: And do you have any questions you want to
16 ask me about that issue?

17 DEFENDANT INMAN: No, sir.

18 THE COURT: Okay. Is there anything else you want to
19 tell me?

20 DEFENDANT INMAN: No, sir.

21 THE COURT: All right. Thank you, Mr. Inman. Thank
22 you very much.

23 And the other thing I neglected to do, although I've
24 kind of gleaned that this was -- is what you would be
25 asking about.

1 Anyway, I would ask the Defense to specify exactly
2 what statutory mitigators you would like me to address?

3 MR. BANNISTER: That would be statute mitigators #2,
4 #6, and #7.

5 THE COURT: Okay. Is there anything else?

6 MR. BANNISTER: Nothing from the Defense, Your Honor.

7 THE COURT: Anything from the State?

8 MS. STROM: Just one second, Your Honor.

9 THE COURT: All right.

10 (Pause.)

11 MS. STROM: No objection to those, and nothing else,
12 Your Honor.

13 THE COURT: All right. Thank you.

14 Please be at ease.

15 (WHEREUPON, the proceedings were recessed at
16 approximately 4:53 p.m., and reconvened at
17 approximately 6:23 p.m.)

18 DECISION OF THE COURT

19 THE COURT: All right. I've reached my decision and
20 I intend to announce it by publishing a written order,
21 which I have prepared.

22 This is the State of South Carolina v. Jerry Buck
23 Inman --

24 MS. STROM: Your Honor, I apologize for interrupting.

25 I believe, under state law, the Defendant has a right

1 to allocution before the imposition of sentence.

2 THE COURT: Okay. Thank you very much. I appreciate
3 that.

4 Mr. Inman, you have a right to talk to me before I
5 impose sentence. Do you want to do that?

6 I understand you may want to address me after the
7 imposition of sentence.

8 DEFENDANT INMAN: Yes, sir.

9 THE COURT: I'll give you that right, too. But if
10 you want to, I'll let you talk now, whatever you want to
11 do.

12 Do you want to wait?

13 DEFENDANT INMAN: I'll wait, Your Honor.

14 THE COURT: Okay. This sentencing order concerns
15 indictments #2006-GS-39-2222, #2006-GS-39-2223,
16 #2006-GS-39-2224, and #2006-GS-39-2225. The Pickens
17 County Grand Jury indicted the Defendant on November 8th
18 of 2006, on charges of murder, burglary in the first
19 degree, criminal sexual conduct in the first degree, and
20 kidnapping.

21 Pursuant to South Carolina Code of Law Section
22 16-3-26(a), the State timely filed -- timely notified the
23 Defendant that it intended to seek the death penalty for
24 the murder charge on August 22, 2006. I was assigned this
25 case by order of the Chief Justice of the South Carolina

1 Supreme Court dated March 13, 2007.

2 On August 19, 2008, this Court conducted a competency
3 hearing pursuant to South Carolina Code of Law Section
4 44-23-410 and State v. Blair found at 275 S.C. 529. The
5 Court found the Defendant competent to stand trial. This
6 case was scheduled for a jury trial to commence on
7 September 8th, 2008.

8 On August 19, 2008, the Defendant pled guilty to
9 murder, burglary in the first degree, criminal sexual
10 conduct in the first degree, and kidnapping. On September
11 11th through September 8th -- excuse me, on September 8th
12 through September 11th, 2008, this Court commenced a
13 non-jury sentencing proceeding as a result of the guilty
14 plea. On September 11, 2008, the sentencing proceeding
15 was adjourned and continued as a result of the Defense
16 witness, Dr. Marti Loring, claiming protection under the
17 Fifth Amendment of the Unites States Constitution and
18 refusing to testify after comments made by the Solicitor,
19 which the witness construed as intimidating. The hearing
20 was resumed on April 20, 2009, and the presentation of all
21 legal issues and testimony were concluded on April 22,
22 2009.

23 South Carolina Code of Law Section 16-3-20 provides,
24 in part, that a person who is convicted of or pleads
25 guilty to murder must be punished by death, by

1 imprisonment for life, or by a mandatory minimum term of
2 imprisonment for 30 years. For purposes of this statute,
3 life imprisonment means until death of the offender
4 without the possibility of parole. No person sentenced to
5 life imprisonment pursuant to this statute is eligible for
6 parole, community supervision, or any early release
7 program, nor is the person eligible to receive any work
8 credits, education credits, good conduct credits, or any
9 other credits that would reduce the mandatory life
10 imprisonment.

11 When the State seeks the death penalty, upon
12 conviction or adjudication of guilt of a Defendant of
13 murder, the Court is required to conduct a separate
14 sentencing proceeding. In such a proceeding, if a
15 statutory aggravating circumstance is found beyond a
16 reasonable doubt, the Defendant must be sentenced to
17 either death or life imprisonment. If no statutory
18 aggravating circumstance is found, the Defendant must be
19 sentenced to either life imprisonment or a mandatory
20 minimum term of imprisonment for 30 years.

21 In cases like the present case where the Defendant,
22 in the guilt phase, waives his right to a trial by jury
23 and pleads guilty, the sentencing proceeding must, also,
24 be conducted without the benefit of a jury, and the
25 sentencing decision is to be made by a judge.

1 In the sentencing proceeding, the Judge shall hear
2 additional evidence in extenuation, mitigation, or
3 aggravation of the punishment. And the law requires the
4 Judge to consider mitigating and extenuating circumstances
5 authorized or allowed by law, as well as certain
6 enumerated statutory, aggravating, and mitigating
7 circumstances, which may be supported by the evidence
8 pursuant to South Carolina Code of Law Section 16-3-20
9 Subsection C. The Judge is required to examine the
10 evidence to determine the existence of the statutory
11 aggravating circumstance or circumstances, unless, at
12 least, one of the statutory aggravating circumstances
13 enumerated in this section is found beyond a reasonable
14 doubt, the death penalty must not be imposed.

15 With respect to the aggravating circumstances,
16 pursuant to South Carolina Code of Law Section 16-3-20, I
17 have carefully considered the evidence presented at the
18 sentencing proceeding and make the following findings
19 concerning the existence of statutory aggravating
20 circumstances, I find the State has proven beyond a
21 reasonable doubt that the Defendant committed the murder
22 for which he is charged while in the commission of the
23 crimes of kidnapping, burglary in the first degree, and
24 criminal sexual conduct in the first degree.

25 The circumstances surrounding the murder of Tiffany

1 Souers are savage, brutal, and unconscionable. I find
2 that the State has proven beyond a reasonable doubt that
3 Tiffany Souers home was broken into in the nighttime by
4 the Defendant constituting burglary in the first degree,
5 that she was held against her will constituting
6 kidnapping, and that she was the victim of a forcible rape
7 constituting criminal sexual conduct in the first degree,
8 and that she was, subsequently, choked by the Defendant
9 until she died constituting murder. Having proven the
10 charge of murder accompanied by three statutory
11 aggravating circumstances, the State is entitled to seek
12 the death penalty for the Defendant.

13 Now, pursuant to South Carolina Code of Law Section
14 16-3-20, I have carefully considered the evidence
15 presented at the sentencing proceeding and make the
16 following findings concerning the existence of statutory
17 mitigating circumstances. With respect to the first
18 statutory mitigating circumstance, the Defendant does have
19 a significant history of prior criminal convictions
20 involving the use of violence against another person and
21 is, therefore, unable to avail himself of this mitigating
22 factor.

23 Number two, the murder was committed while the
24 Defendant was under the influence of mental or emotional
25 disturbance. It is apparent that the Defendant has and

1 continues to suffer from serious several -- serious and
2 several mental and emotional disturbances. The Defendant
3 makes no attempt to claim he was not criminally
4 responsible for the murder of Tiffany Souers. However,
5 there is clear evidence that the Defendant suffers from
6 numerous and long-standing mental health disorders.

7 The Defendants's witness, Dr. David Price, was
8 qualified as an expert in the fields of forensic
9 psychology, clinical psychology, and neuropsychology.
10 Dr. Price testified that the Defendant had been diagnosed
11 with three Axis One disorders, mood disorders consisting
12 of depression, bipolar, major depression in the recurrent
13 form, and major depression with psychosis. Number two,
14 dissociative identity disorder. And, number three, sexual
15 paraphilia.

16 The Defendant, also, suffers from the Axis Two
17 disorder of personality disorder with schizophrenia. Some
18 of the effects of these diseases on the Defendant,
19 according to this expert's testimony, were impulsivity,
20 irritability, aggressiveness, agitation, and poor
21 thinking, a profound impairment of ability to function in
22 daily life, bad decisions, flat affect, slow speech,
23 introvert behavior, not forthcoming about himself, and an
24 inability to engage in normal heterosexual relationships.
25 Dr. Price, also, describes the Defendant as a serial

1 rapist.

2 The Defendant has, also, attempted to commit suicide
3 on seven separate occasions, including cutting his wrists
4 on two occasions, cutting his jugular vein, starvation,
5 cutting his antecubital vein, and swallowing two six-inch
6 strands of barbed wire. Dr. Price is a nationally
7 recognized expert on mental health malingering. And he
8 opines that the Defendant is not a malingerer.

9 This Defendant was sexually abused as a young child.
10 And Dr. Price testified that the circumstance of this
11 offense and several other of Mr. Inman's offenses mimic
12 the sexual abuse which he suffered as a child.

13 Mr. Inman tries to minimize his mental illness and
14 refuses to acknowledge the physical and sexual abuse he
15 suffered at the hands of his parents. Mr. Inman's ability
16 to conform his conduct to the requirements of the law is
17 substantially impaired. On cross-examination, Dr. Price
18 testified that Mr. Inman has the ability to make choices
19 to conform to the requirements of the law, as evidenced by
20 some of his conduct relating to other victims of his
21 offenses who testified at this hearing.

22 Again, I stress that the Defendant does not claim his
23 disorders excused him from criminal responsibility for his
24 actions, but may have contributed to them for purposes of
25 sentencing only.

1 With respect to the third statutory mitigating
2 circumstance, there is no evidence the victim was a
3 participant in the Defendant's conduct or consented to the
4 act.

5 Number four, there is no evidence of the
6 participation of accomplice -- of an accomplice in this
7 murder. And the Defendant's participation was not
8 relatively minor.

9 Number five, there was no evidence presented that the
10 Defendant acted under duress or under the domination of
11 another person.

12 Number six, as stated above, the capacity of the
13 Defendant to appreciate the criminality of his conduct and
14 to conform his conduct to the requirements of law was
15 impaired at the time of the crime due to mental and
16 emotional disturbances, but it did not rise to the level
17 of excusing criminal responsibility. The Defendant was 35
18 years old at the time of the crime and his mental acuity
19 is described as average.

20 Number eight, there is no evidence that the Defendant
21 was provoked by the victim in committing the murder.

22 Number nine, as stated above, the Defendant was over
23 the age of 18 at the time of the crime.

24 And number 10, the Defendant showed no signs of
25 mental retardation at the time of the crime with mental

1 retardation meaning significantly subaverage general
2 intellectual functioning existing concurrently with
3 deficits in adaptive behavior and manifested during the
4 developmental period.

5 Turning to non-statutory mitigation, I have carefully
6 considered all the evidence. The Defendant, through
7 excellent and well prepared counsel, presented compelling
8 mitigation evidence. There is evidence in the record that
9 the Defendant has suffered a great amount of trauma in his
10 life. He was exposed to violence and sexual abuse at a
11 very early age. He was exposed to violence at an early
12 age by witnessing the sexual abuse of his sister and
13 experiencing physical and sexual abuse from both his
14 biological father and from his older stepbrother. He was
15 sexualized at a young age and has had a history of deviant
16 sexual activity. He has a substance abuse problem that
17 has an apparent genetic component and is, also,
18 exacerbated by his underlying mental disorders. And the
19 mental disorders are documented above.

20 The Defendant admitted his guilt to the crime early
21 in this criminal investigation. He made numerous
22 confessions to law enforcement beginning on the day of his
23 arrest, June 26, 2006, in which he confessed to murdering
24 Tiffany Souers.

25 The Defendant has pled guilty and has acknowledged

1 the brutality of his conduct and, also, acknowledges that
2 he cannot be rehabilitated. As Dr. Price has described
3 Mr. Inman, he grew up in prison, he is a person with a bad
4 genetic loading of inherited mental disorders who's
5 formative environment did him no favors. He was described
6 as a lost soul who will remain lost. This Court views
7 Mr. Inman as a tortured soul whose inner-demons will never
8 leave him.

9 I have considerable sympathy for Mr. Inman and the
10 lamentable circumstances of his early life, a person with
11 no opportunity to escape his tragic circumstances.
12 However, his background lends itself to an understanding
13 of who he has become. It does not excuse his
14 long-standing pattern of violence and his sexually
15 predatory conduct.

16 As stated above, the State has proven beyond a
17 reasonable doubt the existence of more than one
18 aggravating circumstance accompanying the commission of
19 the murder of Tiffany Souers. This crime was horrific and
20 was perpetrated upon one of societies most valuable
21 citizens, a young woman full of life, energy and vitality,
22 love for her family, and with a passion for life and for
23 people, whose own life was marked by her good deeds and
24 generosity to others.

25 Jerry Buck Inman is a self-described animal who has

1 acknowledged that he cannot be rehabilitated. The concept
2 of a fair sentence includes consideration of many factors,
3 such as the seriousness of the crime, the culpability of
4 the offender, characteristics of the offender, need for
5 protection of society, need for punishment and
6 accountability.

7 Determining the proper sentence in a case in which
8 the death penalty is sought is especially painful and
9 agonizing. The death penalty is the ultimate sentence,
10 which is to be imposed only in the worst cases and only
11 after serious deliberate and careful consideration.
12 Regrettably, Jerry Buck Inman falls within a small group
13 of deviant predators who exhibit in their conduct a
14 callous disregard for society and the rights and safety of
15 others.

16 While this has been one of the hardest decisions of
17 my life, I am firmly convinced that the murder and rape of
18 Tiffany Souers and the characteristics of Jerry Buck Inman
19 warrant the penalty of death. I have carefully considered
20 all relevant facts and circumstances, including the
21 existence of statutory aggravating circumstance, as well
22 as statutory and non-statutory mitigating circumstances.
23 My verdict is not the result of passion, prejudice, or any
24 other arbitrary circumstance.

25 It is, therefore, the judgment and sentence of this

1 Court that the Defendant, Jerry Buck Inman, be remanded to
2 the South Carolina Department of Corrections henceforth to
3 be kept in close and safe confinement until the 27th day
4 of July, 2009. Upon which day, between the hours of 6:00
5 p.m. and 6:00 a.m. on July 27th, of -- excuse me, July
6 28th of 2009, or upon an order of execution issued by the
7 South Carolina Supreme Court, the Defendant, Jerry Buck
8 Inman, shall suffer death by electrocution or by lethal
9 injection in the manner prescribed by law.

10 Mr. Inman, may God have mercy on your soul.

11 Therefore, it is ordered, adjudged, and decreed that
12 for indictment 2006-GS-39-2225, the murder of Tiffany
13 Souers, you, Jerry Buck Inman, are sentenced to death.

14 That for indictment 2006-GS-39-2222, burglary in the
15 first degree, you, Jerry Buck Inman, are committed to the
16 Department of Corrections for a period of 30 years to run
17 consecutive to the sentence imposed above.

18 That for indictment 2006-39-2223, criminal sexual
19 conduct in the first degree, you, Jerry Buck Inman, are
20 committed to the Department of Corrections for a period of
21 30 years to run consecutive to the sentence imposed above.

22 That for the indictment 2006-GS-39-2224, kidnapping,
23 pursuant to South Carolina Code Section 16-3-1910, and
24 because you have been sentenced for murder, this Court may
25 not impose a sentence for the crime of kidnapping. It is

1 so ordered.

2 Mr. Inman, I'll be happy to hear from you, sir.

3 DEFENDANT INMAN: Your Honor, I'd like to let the --
4 I know the Souers family isn't here today. There's no
5 excuses for any of the things I've done. There's nothing
6 I can say that will ease any of the pain I've caused them.
7 I'm just sorry for taking their daughter and their sister
8 away from them.

9 THE COURT: All right. Thank you, sir.

10 MR. BANNISTER: Judge, at this time, I anticipate
11 filing, within the time period required, a motion for
12 reconsideration and a motion for new trial. But I'd like
13 the Court's permission to put my thoughts together in a
14 written form and submit that.

15 THE COURT: Yes, sir.

16 10 days?

17 MR. BANNISTER: If I need more time, I'll let you
18 know.

19 THE COURT: Anything from the State?

20 MR. ARIAIL: No, sir.

21 THE COURT: All right. Thank you all very much.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

CERTIFICATE OF REPORTER

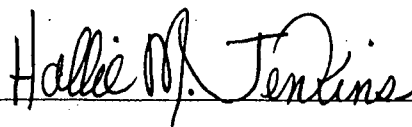
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 20th, 21st, and 22nd days of April, 2009.

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

September 14, 2009



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
	)
COUNTY OF PICKENS	) Case No(s) : 06-GS-23-2222;
	) 06-GS-23-2223;
State of South Carolina,	) 06-GS-23-2224;
	) 06-GS-23-2225
Plaintiff,	)
	)
-VS-	) TRANSCRIPT OF RECORD
	)
Jerry Buck Inman,	)
	)
Defendant.	)

January 08, 2007
Pickens, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

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

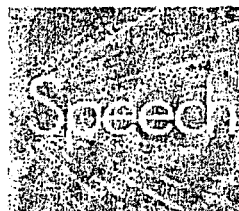
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produced via



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Motions 4

Certificate of Reporter 9

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

STATE'S EXHIBITS

S-1	DNA analysis	4	
S-2	Property release forms.	4	

DEFENSE EXHIBITS

(No exhibits offered.)

COURT'S EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 and 2 are marked for identification purposes.)

THE COURT: Are y'all ready to have Mr. Inman brought in?

MR. DEJONG: Ready from the defense, Your Honor.

THE COURT: Bring him in please.

(WHEREUPON, the Defendant is escorted into the courtroom.)

THE COURT: Solicitor.

MR. ARIAIL: Your Honor, the State has filed, uh, two motions requesting, uh, relief in three different areas. First, let me advise the Court that I have talked personally with the Souers family also I'm dealing personally with their attorney Mr. Tom O'Toole who is St. Louis. They are aware of this hearing. They do not elect to be here for reasons that I explained to them that it wasn't necessary. They are fully aware of what was going on. I told them I would call them when it was over.

What we requested was a right to take a swab and do a current DNA analysis on the Defendant and request for a set of negative case prints

1 from the Defendant. It's my understanding the
2 defense has agreed to both of those request. We
3 have arranged for a forensic technician to be
4 available at the detention center here in Pickens
5 to obtain those items before Mr. Inman is
6 returned to Lee Correctional Institute.

7 We also requested the release of certain
8 personal property of Tiffany Souers, one being a
9 ring that she was wearing and also a necklace
10 that she was wearing that had a cross pendant on
11 it. It's my understanding the defense has agreed
12 to allow the release of those items back to Mrs.
13 Souers family.

14 The third item we request the release of
15 property is the computer of Tiffany Souers which
16 SLED has analyzed and determined as far as the
17 prosecution has no evidentiary value. We wanted
18 to return that to the Souers family. The defense
19 has requested that they have a right to have it
20 viewed and analyzed by their own expert over a
21 period of 90 days. We have agreed to that. At the
22 expiration of that 90 days, we would then return
23 it to the Souers family. We will prepare an order
24 confirming that agreement and submit it to Your
25 Honor.

1 **THE COURT:** Mr. Dejong, is that consistent
2 with what you understand the agreement to be?

3 **MR. DEJONG:** It is, Your Honor.

4 **THE COURT:** And as far as the fingerprints
5 and the DNA samples, of course, you are familiar
6 with all the procedural safeguards that exist not
7 only under the United States Constitution but
8 also under State law that Mr. Inman has. And you,
9 I suppose, concede that if the Solicitor was put
10 to the task of proving probable cause and proving
11 the other foundational requirements for getting
12 that evidence, that they would be able to meet
13 that burden?

14 **MR. DEJONG:** We would concede that they
15 would be able to meet the burden of showing
16 probable cause, Your Honor.

17 **THE COURT:** All right. Then is there
18 anything further for us to deal with today?

19 **MR. ARIAIL:** The only additional thing,
20 Your Honor, we did submit an affidavit of Agent
21 Gambrell that's in the file regarding the
22 probable cause basis for this.

23 **THE COURT:** All right.

24 **MR. DEJONG:** The only thing I would ask,
25 Your Honor, I'm not sure. I may have, I did not

1 see that affidavit in my file. I'm not raising an
2 issue on that but I would ask to be furnished a
3 copy of that affidavit, Your Honor.

4 (WHEREUPON, the Solicitor passes a form to
5 Mr. Dejong.)

6 MR. DEJONG: Thank you, Mr. Solicitor.

7 THE COURT: All right. Unless there is
8 something further that either side wants to take
9 up, we will be in recess.

10 MR. ARIAIL: Thank you, Your Honor.

11 MR. DEJONG: Nothing on behalf of the
12 defense, Your Honor. Thank you.

13 MRS. WALSH: I do have a proposed order for
14 the DNA sample and the major case prints which
15 counsel has reviewed. I would like to submit
16 that.

17 THE COURT: Pass it up please.

18 MR. DEJONG: I have reviewed it, Your
19 Honor. The only thing and I think it probably
20 goes without saying that we would reserve any
21 objections until the time of trial with the
22 exception of the taking of the samples.

23 (WHEREUPON, there is a pause.)

24 THE COURT: All right. That's it?

25 MR. DEJONG: Thank you, Your Honor.

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MR. ARIAIL: Thank you, Judge.

(END OF PROCEEDING)

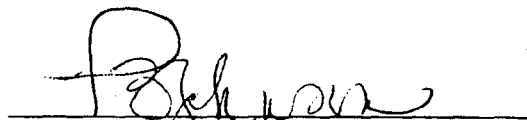
CERTIFICATE

9

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Greenville, South Carolina, on this 10th
9 day of October, 2009.

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

12
13 October 10, 2009

14
15
16 

17 Teresa B. Johnson

18 Official Court Reporter
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22
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STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) COURT OF GENERAL SESSIONS
2006-GS-39-2222-2225

ORIGINAL

STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
JERRY BUCK INMAN)
DEFENDANT)

April 16, 2007
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, Judge.

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

ROBERT M. ARIAIL, ESQ.
BETTY S. STROM, ESQ.
Attorneys for the Plaintiff

SYMMES W. CULBERTSON, ESQ.
JAMES W. BANNISTER, ESQ.
JOHN W. DEJONG, ESQ.
Attorneys for the Defendant

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APRIL HERRON
Official Court Reporter

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1 THE COURT: How are y'all doing?

2 MR. BANNISTER: Good, thanks.

3 THE COURT: Mr. Ariail, you're standing, what you
4 want you to...

5 MR. ARIAIL: I'm being respectful to the Court, Your
6 Honor.

7 THE COURT: Okay.

8 MR. ARIAIL: I don't have anything to say just...

9 MR. BANNISTER: That would be unusual, Your Honor.

10 THE COURT: Yeah. All right, well we're here in the
11 case of the State vs. Jerry Buck Inman. And by Order of
12 the Supreme Court dated March 13th, '07, I was given
13 exclusive jurisdiction to hear and dispose of the case.
14 And by Order of the Supreme Court, March 21st, '07, I have
15 been specifically directed to reconsider the January 30th
16 Order appointing counsel, which is what the main purpose
17 of the hearing today.

18 All right, Mr. Bannister.

19 MR. BANNISTER: Thank you, Judge. I think our
20 position would be that we would like Mr. Culbertson to be
21 appointed. We've submitted affidavits under seal that
22 deal with attorney/client privilege information. But it's
23 our group decision that it would aide in the judicial
24 economy of the case in order to bring this case to
25 conclusion faster if Mr. Culbertson remained. He has

1 established an attorney/client relationship and the
2 affidavit's to that effect.

3 THE COURT: All right. Anything else?

4 MR. BANNISTER: No, sir, Your Honor. Unless you have
5 any questions.

6 THE COURT: All right. For the record, first I want
7 to point out that counsel for the defense has submitted
8 and it's filed in the record this date, a waiver of right
9 to be present in the courtroom on April 16th, 2007.
10 Signed by Mr. Inman. So he is not present in the
11 courtroom. And he has waived his right to be here.

12 All right, does the State have a position with
13 respect to appoint of counsel? This was actually with
14 respect to everybody who's been appointed, Mr. Bannister.

15 MR. BANNISTER: Yes, sir, Your Honor. And I'd be
16 remised in saying that we all believe that Mr. Culbertson
17 is imminently qualified to handle a death penalty case.

18 THE COURT: All right. What about you and
19 Mr. DeJong? I'm here to review the Order of January 30th.

20 MR. BANNISTER: Judge, we'll be happy to stay in if
21 you so choose.

22 THE COURT: Okay.

23 Mr. Ariail, I'm sorry.

24 MR. ARIAIL: I think our only position -- well
25 two-fold. Number one, the statute specifically refers to

1 the appointment of two attorneys. Which I'm sure you're
2 aware of. The second aspect which gives me some concern
3 is that the appointment of three attorneys to be paid from
4 the indigent defense funds of the State, number one, puts
5 an inordinate burden on that fund. It's not anticipated,
6 at least by the statute as I read it. And secondly, from
7 the position of the State and primarily the position of
8 the public, it concerns me that Mr. Inman would be
9 designated as some sort of special defendant that would be
10 entitled to have three lawyers appointed by the State or
11 by the Court and paid by the State when such has not been
12 the pattern of the Court's previously.

13 And my concern is one of not only representing the
14 State but also in representing the victim's in this case,
15 that somehow Mr. Inman would be given preferential
16 treatment in comparison to previous appointments and
17 previous death penalty cases. I've never been in a death
18 penalty case where a defendant has had three appointed
19 counsel. I don't think the statute contemplates that, I
20 don't know if the budget contemplates that. So I would
21 think that our position would be to bring those matters to
22 the Court's attention.

23 THE COURT: All right, I appreciate that. This case
24 is sort of an unusual posture because of its history. I
25 would point out that Mr. DeJong, while the statute refers

1 to public defender and a private attorney being appointed
2 to represent a citizen in Mr. Inman's position, I would
3 point out that Mr. DeJong is the sole public defender in
4 Pickens County. And I believe he has an active caseload
5 of in excess of 900 cases.

6 Am I correct, Mr. DeJong?

7 MR. DEJONG: I would probably say close to active
8 warrants, Your Honor, not necessary 900 bodies; yes, sir.

9 THE COURT: All right. I have a deep concern that if
10 I am -- I'm certainly going to take two attorneys in this
11 case and it's my concern that if it was Mr. DeJong and one
12 other attorney that that might seriously impact the
13 criminal docket in Pickens County. Also, my understanding
14 of the situation in my review of the file, indicates that
15 all three attorneys have been actively involved in this
16 case up to this point. I intend to keep Mr. Bannister
17 involved in the trial. He's involved in it. I intend to
18 keep -- I'm going to appoint all three of them.

19 I don't think that that is singling out this
20 defendant or any kind of special treatment. I think it's
21 circumstances leading up to this situation and the fact
22 that Mr. Culbertson has developed a relationship with
23 Mr. Inman that might be certainly very beneficial to his
24 involvement in the case. I think all three attorneys
25 bring something to the table. And I don't think it's

1 going to seriously impair the Solicitor's ability to
2 present their case. Even though there are three.

3 I will ask, however, because this is unusual, that
4 any filings of any motions from the defense, come through
5 one of the representatives. So you don't have things
6 coming from all over, from all three offices. And, of
7 course, other than that I'm not going to get involved in
8 how you all handle your case. Because of the situation,
9 I'm going to look to Mr. Bannister as the lead counsel in
10 this matter. And we'll get an Order out to that effect.

11 Now a couple other things that I want to address. I
12 don't know if y'all have any other issues that you want to
13 talk about. One is that there is Judge Few's Order
14 regarding dissemination of information that will remain in
15 effect. I've reviewed it, I don't think it needs to be
16 modified. I think it's an excellent Order and it's going
17 to remain in full force and effect. And I guess then the
18 next thing I'd ask is a timeline in this case. Where are
19 we?

20 MR. ARIAIL: Well, the timeline as we had projected
21 earlier on was February of next year. That took into
22 consideration the -- my conversations with the Souers'
23 family. Their desires to allow some time to past. The
24 fact that we have been delayed somewhat by getting the
25 counsel issue solved. And now that that is resolved we

1 will be able to provide, although technically it's not
2 discovery, it's our policy that we will provide lead
3 counsel with the entire State's file. We are almost in a
4 posture to do that. As, Your Honor, is aware we're
5 starting a death penalty trial this afternoon that will
6 last probably a couple of weeks. I anticipate that
7 following that trial we'll be able to provide them with a
8 full copy of the State's file. And our goal with our
9 schedule of other cases is to set this in February.

10 And I think we provided to Judge Few a letter. Our
11 recollection that I provided a tentative timeline letter
12 to each one of the Judge's assigned to all the death
13 penalty cases in the 13th Circuit sort of laying out where
14 those timelines were. And February was when we originally
15 projected and that's our goal now. Barring any objection
16 from the defense or problem. But that would give us nine
17 months, I guess.

18 THE COURT: Okay.

19 MR. ARIAIL: We haven't set a specific -- we haven't
20 gotten so specific yet as to set a week but probably not a
21 bad idea at some point to get together and go ahead and
22 set that week so you can get clearance on your schedule.
23 And the rest of us can too.

24 THE COURT: Okay. All right, we don't have to do
25 that in a public forum but y'all understand that's what...

1 MR. BANNISTER: We do, Judge. Obviously, we've got
2 some issues on our side that we need to resolve before
3 we'll know whether or not that's a reasonable trial date
4 for us. So we just want to be sure we're a part of that
5 process.

6 THE COURT: Well, if you -- when can you analyze that
7 and get back to us?

8 MR. BANNISTER: Well I think we're looking at the
9 next three or four weeks we should have a pretty good idea
10 of what our target date would be. I'm not saying that
11 February's not impossible, we don't know yet. But we
12 will.

13 THE COURT: All right, let's kind of aim for early
14 part of next year.

15 All right, anything else?

16 MR. ARIAIL: Nothing further from the State, Your
17 Honor.

18 THE COURT: All right, I appreciate y'all being here
19 on such a short notice. Thank you, very much.

20 MR. BANNISTER: Thank you, Judge. Your Honor, would
21 you like for me to--

22 THE COURT: Yeah, prepare a short Order, please.

23 (WHEREUPON, the proceedings were concluded.)

24

25

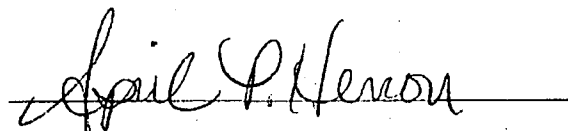
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the
Thirteen Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the Court of General Sessions
for Pickens County, South Carolina, on the 16th day of
April, 2007.

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

December 6, 2009


APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS

2006-GS-39-2222

2006-GS-39-2223

2006-GS-39-2224

2006-GS-39-2225

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

JERRY BUCK INMAN,)

DEFENDANT.)

ORIGINAL

September 14, 2007

Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

ROBERT M. ARIAIL, ESQ.

Solicitor

BETTY C. STROM, ESQ.

Deputy Solicitor

JAMES W. BANNISTER, ESQ.

JOHN W. DEJONG, ESQ.

SYMMES W. CULBERTSON, ESQ.

Attorneys for the Defendant

HOLLIE M. JENKINS

Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: Mr. Bannister, you're the moving party
3 here.

4 What do you want to address.

5 MR. BANNISTER: Thank you, Your Honor.

6 We've got a number of motions that are before the
7 Court. But I would suspect that the first one is our
8 motion to close the -- these hearings or this proceeding
9 to the public.

10 THE COURT: Okay.

11 MR. BANNISTER: It would make the most sense to
12 address that one first.

13 THE COURT: All right.

14 MR. BANNISTER: Your Honor, we filed that motion
15 primarily in conjunction with a motion that was filed
16 under seal to determine the mode of trial.

17 And just to be clear with the Court, the other
18 motions that are currently pending, we have no problem
19 with allowing the public to be part of those motions. But
20 because of the particular nature of what we're going to
21 have to discuss in this motion to determine the mode of
22 trial, we believe that that part of what we do today needs
23 to be closed to the public and, in particular, the media.

24 Judge, that motion is based primarily on the
25 Defendant's Constitutional right, his Sixth Amendment

1 right, to empanel an impartial jury. This case has
2 already received local, state, and national media
3 attention, and to that extent has already impacted our
4 ability in the future to impanel an impartial jury.

5 The motion to determine mode of trial was filed under
6 seal primarily because it's going to be dealing with a
7 number of -- I don't know how to put it in any other way,
8 but provocative issues that the public otherwise probably
9 would not be entitled to hear coming from the Defendant.
10 It would be -- some of it might be attorney-client
11 privilege, some of it would be trial strategy. But
12 because of the nature of that motion, we're put in a
13 position where we've got to discuss that here on the
14 record. I think the State is going to have to be able to
15 respond to that.

16 The impact of discussing those issues, we anticipate
17 will be immediate. It will be pervasive. And we believe
18 that the impact that it would create will be without an
19 adequate cure, even considering our ability to voir dire
20 potential jurors in the future.

21 Your Honor, I point you to a United States Supreme
22 Court case which was addressing the conflict that is
23 inherent in these situations between the press' Second
24 Amendment right and a Defendant's Sixth Amendment right
25 for an impartial jury.

1 And in that -- and it's the case I've cited in the
2 motion, Nebraska Press Association v. Stewart. It's a
3 1976 case. In that case, the Court said, specifically,
4 "Closing pre-trial proceedings with the consent of the
5 Defendant when required is also recommended in guidelines
6 that have emerged from various studies." And then it
7 cites to a study from the American Bar Association, a
8 project for standards for criminal justice, fair trial,
9 and free speech. I think this case presents that set of
10 circumstances that would require the closing of this
11 pre-trial hearing on this particular issue.

12 Judge, what I am also concerned about is that because
13 we believe the impact of the discussions we'll have will
14 be immediate and will be pervasive -- and we also are
15 looking at the potential of a trial starting as early as
16 March of 2008. That compressed time frame increases the
17 likelihood that what happens here today, if it's left open
18 to the public, will permeate what we're going to be doing
19 up there. And I think, ultimately, if these proceedings
20 are left open, we will all be in a position that we regret
21 that decision later on when we are trying to get jurors
22 that can be impartial to make the decisions that they're
23 going to have to make.

24 That's, in essence, that argument, Judge. And I
25 guess to proceed forward, I guess -- I've got a number of

1 other motions that I -- but we ought to address those
2 maybe after you've made a decision.

3 THE COURT: Okay. Solicitor.

4 MR. ARIAIL: I respond to set forth that we don't
5 really have a position, other than to urge the Court to be
6 aware of the Supreme Court of this state.

7 I share Mr. Bannister's concern about the publicity
8 and the difficulty that it will present us at the time of
9 trial to select a jury. But under our law, our Supreme
10 Court has clearly stated that is not a grounds for closing
11 a hearing. And, most recently, I was involved in the most
12 recent case in which the Supreme Court made it very clear
13 that they would not tolerate that sort of proceeding,
14 particularly, in the absence of the right of the press to
15 be heard.

16 So I think, in response, the answer that the State
17 can best give is that, although it may present us some
18 difficulty, I don't think there's a real legal basis to
19 close these proceedings.

20 THE COURT: Thank you very much.

21 And I see a -- that the press has a spokesperson
22 here.

23 Mr. Bender.

24 MR. BENDER: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. BENDER: I'm Jay Bender here on behalf of the
2 Greenville News.

3 And I, at this time, would move under the authority
4 of Ex Parte Hearst-Argyle to allow the newspaper to
5 intervene to oppose the motion to close the hearing. I
6 have provided to your clerk a copy of the decision by the
7 Supreme Court of South Carolina in Ex Parte Hearst-Argyle.

8 I'll give you one, Mr. Bannister.

9 I thought it was interesting in the Defendant's
10 motion to close pre-trial proceedings, there's not one
11 case that has been cited that has South Carolina law or
12 current Constitutional authority cited. Nebraska Press
13 Association was, in fact, reversed by the United States
14 Supreme Court. It was a prior restraint. It wasn't a
15 court-closing case.

16 But Hearst-Argyle makes it clear under South
17 Carolina's Constitutional provision of Article 1 Section 8
18 that all courts are public. And since 1983, in Greenville
19 County, where the first case was heard, Stinely v. Lollis,
20 through Hearst-Argyle, which was decided in late -- or the
21 middle of 2006, there has never been a case in South
22 Carolina that has upheld a court closing.

23 We have a very strong principle that courts are to be
24 public. It's in our Constitution. And what the Supreme
25 Court said in Hearst-Argyle, I think, has application

1 here, certainly, that voir dire is the preferred method of
2 ensuring that a defendant has a fair trial. Excluding the
3 public and the press from a proceeding is not the basis to
4 secure the Defendant's Sixth Amendment rights.

5 I think the Solicitor points out what is obvious. It
6 may be difficult in the context of this particular crime
7 in this particular setting to chose a jury. But that
8 alone is not sufficient to overcome the public's
9 Constitutional right of access.

10 The Supreme Court of the United States in Richmond
11 Newspapers v. Virginia pointed out that it is the public's
12 ability to attend a trial that gives the public the
13 confidence that the system is working. And in those cases
14 where there's been a particularly heinous crime and an
15 outcome, it gives the public an opportunity to see that
16 the system has worked, regardless of the outcome.

17 And I think it's important here that the public's
18 right of access to this proceeding and all proceedings in
19 this case go forward unfettered by a possibility, which is
20 not sufficient, that there might be some harm to the
21 Defendant's fair trial right.

22 What Hearst-Argyle says and what the First Amendment
23 decisions of the United States Supreme Court says, There
24 has to be a demonstration of a substantial probability of
25 irreparable harm to the Defendant's fair trial right that

1 cannot be cured in any other way. And, as the Supreme
2 Court of South Carolina said, Voir dire is the mechanism.
3 There are other mechanisms available, a continuance and a
4 change of venue, and now in South Carolina, a change of
5 venire.

6 So I think that just to stand up to say, we think
7 it's going to prejudice the Defendant's fair trial right
8 is insufficient under South Carolina authority. For those
9 reasons, I would ask you to deny the Defendant's motion.

10 Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 I think we ought to make it clear, Mr. Bannister, you
13 are not seeking to exclude the press on all issues, it's
14 on one specific motion which is under seal; correct?

15 MR. BANNISTER: That is correct, Your Honor.

16 And that is how we believe we have narrowly tailored
17 our request per the guidelines of the South Carolina and
18 United States Supreme Court.

19 THE COURT: Well, I'm familiar with the motion that
20 you're referring to. It is a sensitive issue. I'm not
21 sure that even if it -- when it is disseminated, if it's
22 disseminated, that it would prejudice your client as
23 significantly as you think. But that's -- you know, of
24 course, that remains to be seen. Nobody has a crystal
25 ball. And I think the law in South Carolina is pretty

1 clear that we favor strenuously open courtrooms and access
2 to the public and the media in our trial system.

3 So while being very sensitive to your concerns with
4 these issues, I think that the precedence in South
5 Carolina outweighs what you're worried about and that we
6 will -- if the outcome in the press occurs that you fear,
7 then we will make every effort to ensure that your
8 client's rights are protected and that we will obtain a
9 jury of fair and impartial jurors.

10 So I am going to deny your motion to close the
11 hearing on this issue.

12 MR. BANNISTER: And, Judge, just for the record, let
13 me note my objection and note that it is a Constitutional
14 objection based on the Sixth Amendment. And we do feel
15 like that in this case -- this particular case and given
16 the nature of the motions we've got to address that it
17 satisfies the weighing of balances.

18 I mean, you've got to -- obviously, there's a tension
19 between the Second Amendment right that the press has and
20 the Sixth Amendment right the Defendant has. And it will
21 be our position that the Sixth Amendment outweighs that in
22 this particular situation. But I understand your ruling.

23 THE COURT: Okay. And your exception is noted for
24 the record.

25 MR. BANNISTER: All right.

1 THE COURT: Mr. Bender, thank you for your
2 appearance.

3 MR. BENDER: Thank you, Your Honor.

4 THE COURT: I would -- I just note that I anticipate
5 that our press will -- and media coverage will be
6 responsible and sensitive to the issues that form the
7 basis for our judicial system. And I would expect that
8 they would be respectful of ensuring a fair trial. I
9 would think that that would be in their best interest as
10 well.

11 MR. BENDER: I'm confident they'll do that, Your
12 Honor.

13 Thank you.

14 THE COURT: Thank you.

15 All right. Mr. Bannister.

16 MR. BANNISTER: Thank you, Your Honor.

17 THE COURT: Having said that, I think, at this time,
18 we will unseal your motion.

19 MR. BANNISTER: Right.

20 And I'll get to -- let me go -- we've got a number of
21 motions that I think we, at least, have an agreement in
22 principle on. And if I could --

23 THE COURT: Before we even do that, let me --

24 MR. BANNISTER: I'm sorry.

25 THE COURT: -- let me just say this. I am appointed

1 by the Supreme Court to handle this case. The case is in
2 Pickens County. A number of motions were recently filed.
3 I have not been over to Pickens County. I've been
4 traveling and engaged in other court matters and have not
5 had an opportunity to go through the file. I went through
6 the file this morning. I'm very grateful to the Clerk's
7 Office in Pickens that they sent a representative over
8 with the file.

9 There was some concern. And I read in the newspaper
10 about this being some kind of secret proceeding. This is
11 not secret. I don't think anybody intended to make this
12 case secret. It will not be secret in the future. But
13 there were some motions. These motions and the
14 Solicitor's responses to those motions were out of an
15 abundance of caution by the Clerk over in Pickens
16 County -- and I lay no blame on her -- they were sealed
17 and not open to the press when they probably should --
18 they should not have been sealed. There's no probability
19 about it. But it was an understandable mistake. She
20 erred on the side of caution.

21 So I just want it to be known that those are not
22 under seal. And the one that was under seal will no
23 longer be under seal.

24 All right. Thank you, Mr. Bannister.

25 MR. BANNISTER: Thank you, Judge.

1 And, again, I think there are a number of motions
2 that we have made that we have -- the Solicitor's Office
3 and our Defense team have, at least, an agreement in
4 principle.

5 And, if I could, I'd like to just run through those
6 right quick so we can dispense with them.

7 THE COURT: Yes, sir.

8 MR. BANNISTER: One of the first motions that we
9 filed, Judge, was to declare this case a life without
10 parole case.

11 As Your Honor is aware, for some period of time, the
12 jurisprudence of South Carolina said that jury's were not
13 entitled to know that a defendant in a capital case, if
14 sentenced to life, would never be eligible for parole. In
15 other words, they were not to be informed that a
16 defendant -- in essence, there was only two choices, die
17 in prison or die by virtue of execution. Our motion was
18 to declare this case a life without parole and make it
19 clear to a jury, if and when we get to that point, that,
20 in fact, there are only two decisions, die in jail or be
21 executed by the State.

22 Now, the specific language that we instruct whoever
23 our fact finder is --

24 THE COURT: Well, Mr. Bannister, there's got to be a
25 finding of guilt first.

1 But go ahead.

2 MR. BANNISTER: I agree.

3 But, ultimately, if that is -- if that occurs and
4 then we're in that position, I think the language we can
5 talk about later. But, in principle, it appears to me
6 from the Solicitor's response that they are in agreement
7 that this is, in fact, potentially a life without parole
8 case.

9 THE COURT: Okay.

10 MR. BANNISTER: Have I stated that correctly?

11 MR. ARIAIL: We are in agreement.

12 The law -- statute provides that. I don't know that
13 we have to be in agreement. I think the law provides that
14 the jury will be advised during voir dire that this -- the
15 two sentences available are life in prison without parole,
16 or death by choice of execution, or lethal injection.

17 MR. BANNISTER: Judge, another one of the motions
18 that the Solicitor has agreed to is, we asked that the
19 Solicitor be required to respond in writing to any of the
20 motions that we file. They have done so thus far and have
21 indicated in their response to that motion that they will
22 continue to do so.

23 So I think we have an agreement on that one.

24 MR. ARIAIL: And I think our response is that that's
25 a mutual agreement. We will also be filing motions that

1 we expect them to respond to. And we do that in every
2 case and always have.

3 So I would address a point about that later when we
4 get down to the motion that has been under seal.

5 THE COURT: Okay. Well, do you --

6 MR. ARIAIL: But we do have an agreement on that one.

7 THE COURT: Are you in agreement with that,
8 Mr. Bannister? Is this quid pro quo or are you --

9 MR. BANNISTER: Certainly.

10 THE COURT: -- because I don't --

11 MR. BANNISTER: Certainly.

12 We don't -- I mean, we can respond in writing to
13 their motions as well.

14 THE COURT: Okay.

15 MR. BANNISTER: But I don't anticipate we would want
16 to approach it in any different form or fashion.

17 THE COURT: All right.

18 MR. BANNISTER: Judge, we've also requested that we
19 be provided with any supplemental reports that come to the
20 Solicitor's Office on this particular case as we go
21 forward. I can represent to the Court that thus far,
22 we -- it has been indicated to us by the State that we
23 have been provided their entire file, and they intend to
24 continue to provide that to us.

25 So for purposes of that motion, I think we have an

1 agreement on the record as well.

2 MR. ARIAIL: We do.

3 And let me put that on the record. It's our policy
4 in this circuit that a defendant in any case involving the
5 death penalty being sought by the State will be provided
6 the State's entire file. Now, that doesn't mean that they
7 have it all now, because there are still some portions of
8 it that have not come in. But as soon as they -- and
9 these deal with final analysis scientific reports and that
10 sort of thing. But as soon as those come in, we will give
11 those -- produce our entire file to them.

12 THE COURT: All right. And I believe that's in the
13 State's interest to do that as quickly as possible so
14 that --

15 MR. ARIAIL: Well, we -- I'm sorry. I mislead the
16 Court.

17 We've already produced 99 percent of it. They have
18 all of our file and have had it for sometime. There are a
19 few little odds and ends that will come in hereafter that
20 we'll produce to them.

21 THE COURT: And I'm sure you'll do that expeditiously
22 when you receive them --

23 MR. ARIAIL: Sure.

24 THE COURT: -- because you're interested in a timely
25 disposition of this matter.

1 MR. BANNISTER: And, Judge, finally, the motion that
2 I think we have an agreement on as well is, we filed a
3 motion, in essence, to prohibit the placing of either an
4 undercover officer or informant with the Defendant or
5 putting a confidential informant in the cell with the
6 Defendant in order to obtain statements from him that
7 might later be used to his detriment. I believe they have
8 indicated they have an agreement that they are not
9 intending nor will they do something of that nature.

10 THE COURT: Okay. I believe their response was --

11 MR. ARIAIL: Never have, never will.

12 THE COURT: All right. Now, if I remember the
13 response, though, they don't -- they're not going to be --
14 that does not -- they're not agreeing that that would
15 exclude some voluntary statement made by your client to
16 another person. I mean --

17 MR. BANNISTER: I don't think our motion encompasses
18 that. But, obviously, if that becomes an issue, we don't
19 want to be prejudiced in terms of our position on
20 something of that nature.

21 THE COURT: All right.

22 MR. BANNISTER: Judge, finally -- well, two more
23 motions that I think will be pretty quick.

24 We have also filed a motion to be provided with any
25 information that the Solicitor's Office receives, contact

1 from the public about this case. That motion is based
2 primarily with an eye towards, ultimately, selecting a
3 jury. It would be incumbent on us to know if there's
4 somebody in the public that has expressed an opinion
5 either about guilt or about sentence. If that person ends
6 up on our jury panel, we need to know what that
7 information is.

8 In reading the State's response, it appears that they
9 are opposed to that. It may be that this motion isn't
10 quite moot yet since we haven't gotten to that point and
11 it's a ways down the road, but --

12 THE COURT: You mean ripe.

13 MR. BANNISTER: Ripe. I'm sorry. I said "moot." I
14 meant ripe.

15 But if Your Honor wants to address that now, we,
16 certainly, can. But I'm just telling you that I think
17 it's probably one that we could wait and leave for another
18 day.

19 THE COURT: Well, you know, when we come to jury
20 selection, those jurors are going to be placed under oath.
21 And those -- and I -- depending on how this matter
22 progresses and plays out, you know, I intend to allow
23 pretty wide voir dire to make sure that we get a fair and
24 impartial jury. And if some juror has made some comment,
25 I anticipate the Solicitor would tell the Court and

1 opposing counsel about it.

2 Am I correct, Solicitor?

3 MR. ARIAIL: You're correct.

4 And, you know, this motion is made in every case --
5 or has been made in the 12 death penalty cases I've tried.
6 And my standard response is that I don't know -- I
7 couldn't possibly quantify or specify the number of people
8 who have made comments to me about any particular case.
9 And my office is a large office with 110 employees. And I
10 don't know who's made comments to who in the office.

11 My standard position on this is, if we have a juror
12 and we know of any response that that person has made, any
13 comment, we would advise the Court before that juror is
14 placed under voir dire. And, obviously, if I know
15 something personally -- we will solicit the office when we
16 get the jury list. When it's pulled, we will solicit the
17 office for anyone who has had contact with any of these
18 people so that we can represent that to the Court.

19 But for me to try to quantify who has said what would
20 be impossible.

21 THE COURT: All right.

22 MR. BANNISTER: And, Judge, my only response to that
23 would be that, you know, we're dealing with Pickens, which
24 is a smaller community here in the State. And for our
25 purposes, it's not only to see whether or not we have got

1 a juror who may have made a particular statement to the
2 Solicitor's Office, but also whether or not that could be
3 their spouse, their brother. And the only way for us to
4 have the time to see whether or not there is potentially a
5 close family relationship between somebody who has made a
6 statement and somebody who is potentially a juror is to
7 have that in enough time to see if we can put that
8 together.

9 THE COURT: Well, Mr. Ariail, do you keep a log on
10 people who contact your office and make comments on cases?

11 MR. ARIAIL: No, sir.

12 THE COURT: I don't know that I can require them to
13 do that. And that would be sort of an onerous burden to
14 do that.

15 But, certainly, you all -- if you receive something
16 in writing from a potential -- or from a citizen about a
17 case, do you keep -- hang on to that?

18 MR. ARIAIL: Judge, I receive a lot of comments
19 from -- mostly negative from citizens who are upset with
20 the judicial system or my office in some way. We do -- I
21 would say if we receive a comment regarding a specific
22 case, the answer would be, yes, that we would file that in
23 the file.

24 Now, I don't know that if someone else in my office
25 received that comment -- I assume the comment would come

1 to me most likely over the Internet through e-mail.
2 That's how I normally get them. And as far as I'm aware,
3 there's never been a communication by either written
4 letter or e-mail to me regarding this case or any feeling
5 of a person -- a particular person regarding it.

6 If that were the case, we would have provided it or
7 we would have put it in a file. And I assume it would
8 have been copied. But I can't -- I just don't know who
9 may have said things orally that I don't keep a record of.

10 THE COURT: Right. I understand that.

11 But you all -- if you've got something in writing
12 from somebody, you probably keep it.

13 MR. ARIAIL: Yes, sir.

14 THE COURT: Well, we'll just deal with that issue
15 when it -- later on. I'm not going to make a ruling on
16 that motion at this time.

17 MR. BANNISTER: Thank you, Your Honor.

18 The motion that we have a disagreement on that -- is
19 to seal the visitation log. Obviously, Mr. Inman is
20 incarcerated and will remain so until we get to a point
21 that his case is reached. As I understand the function of
22 where he's incarcerated, there is a log that any visitor
23 going into the jail has got to sign in. It keeps a record
24 of the date that they go in to see him. It keeps a record
25 of who they are. And it keeps a record of how long they

1 are there with him.

2 Judge, we filed a motion to seal that visitation log
3 so that that information is not available to anyone else,
4 at least, in order to keep that issue under wraps. If
5 there became some reason later on, if the State had some
6 compelling reason, we could deal with it then.

7 But we want to seal the log going forward now
8 primarily because it puts us in a bit of a tough
9 situation. We are potentially putting out there
10 information that would not be available in the
11 run-of-the-mill criminal case where a defendant is out on
12 bond. In other words, it's a position -- that log
13 requires us to create information and disseminate it that
14 we wouldn't otherwise have to do. And the simple way to
15 eliminate that prejudice is to seal that log so that
16 nobody has access to it.

17 I am unaware of any case so far where that has not --
18 that motion has not been granted. But to the extent that
19 I need to put some sort of basis for that, I think it's --
20 I think it goes towards the due process of not having to
21 reveal attorney-client privilege, work product, that sort
22 of thing to anyone else that has particularly to do with
23 his strategy in his case.

24 Thank you.

25 THE COURT: All right. Mr. Ariail.

1 MR. ARIAIL: I know you're going to grant that. It's
2 always granted. I don't necessarily agree with it.

3 But there are two caveats. Number one, the visitors
4 log is, obviously, open. It has been open. And we have
5 access to it and have accessed it on this case and other
6 cases. So up until this point, we've accessed that. We
7 don't have a -- we consent that from this point forward,
8 we -- you're going to grant the motion and we won't access
9 it.

10 But, secondly, the other caveat is, at the time of
11 trial, I would like to reserve the right to have access to
12 that log in the case of an expert witness and his or her
13 testimony regarding visitation of the Defendant and the
14 number of times that they have seen this person in --
15 visited and the amount of time they've spent with them.
16 That would be a source of some information potentially for
17 cross-examination.

18 THE COURT: All right. The only thing that concerns
19 me is that there's no representative here from the --
20 legal representative from the Pickens jail who can speak
21 on behalf of any security issues or anything in that
22 regard.

23 But I'm going to grant the motion and allow a
24 representative from the Pickens County Detention Center to
25 voice any concerns or objections that they might have if

1 they need to at a later time. But, otherwise, I will
2 grant that motion.

3 Okay. And Mr. Ariail has indicated that he's not
4 going to attempt to access it, so.

5 MR. BANNISTER: Thank you.

6 That brings us then, Judge, to probably what is the
7 meatiest motion that we have before Your Honor. This is
8 the one that was filed under seal.

9 THE COURT: Yes, sir.

10 MR. BANNISTER: It's the motion to determine the mode
11 of trial.

12 THE COURT: Okay.

13 MR. BANNISTER: So let me go ahead and say, Judge,
14 that I've reserved my objections that I made prior, based
15 on the public being here and being part of that. I don't
16 want to waive those, but I've got to get into it at this
17 point.

18 THE COURT: Absolutely. You're protected.

19 MR. BANNISTER: Judge, in a nutshell, the Defendant
20 wants to plead guilty. He has a strong desire to
21 acknowledge his guilt in both the formal legal sense and
22 in the moral sense. He wants to accept responsibility for
23 what he has done, regardless of what the ultimate sentence
24 will or will not be. The only way he can adequately show
25 the remorse he feels and acknowledge the moral guilt that

1 he is dealing with now is to stand at the bar and admit to
2 the elements of the indictment, and to have Your Honor
3 accept that guilty plea and formally acknowledge that.

4 He also, as a subset of that, wants to alleviate what
5 he sees would be the cruel impact that the media attention
6 in this case has already had, that impact that it would
7 have on the -- both the Souers family and his own family.
8 He also wants to avoid what he would consider to be the
9 spectacle and charade of a guilt-phase proceeding. In
10 other words, he wants to plead guilty.

11 Judge, the issue that that creates for us at this
12 point is, what happens next? Once we've walked through
13 the door of a guilty plea, what is on the other side of
14 that? And the issue that has been building in South
15 Carolina and in the federal courts is, does a defendant
16 have a separate right to a jury trial sentencing?

17 For reasons I'll get into in much more detail in a
18 minute, a defendant does. A defendant has two separate
19 trial rights, the right to a trial during a sentencing --
20 I'm sorry -- during a guilt phase. It is not until after
21 that guilt is established that he then has a right to a
22 trial for the sentencing phase.

23 The problem -- and I'll point -- the trout in the
24 milk in this case, the thing you cannot get rid of --

25 THE COURT: I've never heard that expression before,

1 Mr. Bannister.

2 MR. BANNISTER: Well, it's the only one I can think
3 of that really captures just how bad it spoils what's
4 going forward. I mean, this issue will follow --

5 THE COURT: That you could put in a legal document.

6 MR. BANNISTER: Right.

7 This issue will follow this case from this point
8 forward. Literally, no matter what we do after the guilty
9 plea, if we don't get this issue resolved correctly, it
10 has a substantial likelihood of raising its head one year,
11 two years, three years, however many years down the road
12 as the case proceeds through the judicial system.

13 And, Judge, if you'll permit me, I brought my little
14 easel here to write on.

15 THE COURT: All right.

16 MR. BANNISTER: It primarily helps me to keep my mind
17 straight on this because it does get -- can get
18 complicated.

19 But the statute that -- and the portion of the
20 statute that is primarily at issue says that if the
21 Defendant pleads guilty, then what you've got is the
22 sentencing proceeding must be conducted before the Judge.
23 And it's that language that Your Honor is going to have to
24 interpret for us to determine how we go forward from this
25 point. Assuming that we get through the guilty plea, this

1 is what kicks in.

2 Judge, I am going to submit to you that there are two
3 ways to interpret this statutory language. And the cases
4 that most recently from our South Carolina Supreme Court
5 have interpreted this statutory language, under my
6 interpretation, under what I would -- what I say is the
7 correct interpretation, I am telling you that I believe
8 this statute is not necessarily Unconstitutional on its
9 face.

10 I'm also telling you that I think you can read the
11 two cases, State v. Downs and State v. Crisp, which I've
12 cited in my brief, as holding that a defendant does, in
13 fact, have a right to a trial at the guilt phase and a
14 right to a trial at the sentencing phase. And, therefore,
15 based on what Crisp and Downs are saying, the Defendant
16 has both those jury trial rights. The way you can read
17 this statute is this, sentencing before the Judge -- every
18 single sentencing that takes place in South Carolina in a
19 capital case is before the Judge, whether it's a guilty
20 plea or a not-guilty plea, whether you've got a trial by
21 jury or you don't have a trial by jury. You play a role
22 in that either way.

23 Look at the statute. The statute says that the jury
24 recommends the sentence of life or death. It's then your
25 position to impose that sentence. All be it mandatory,

1 certainly, but it's still you, Your Honor, that imposes
2 the sentence.

3 Then there's a separate portion of the statute that
4 says that after the fact finder makes the determination of
5 life or death, there's an independent review by you, as
6 the Judge, to determine whether or not and if the death
7 penalty is imposed, whether or not that death penalty is
8 warranted under the evidence of the case and was not a
9 result of prejudice, passion, or any other arbitrary
10 factors.

11 So what I am suggesting is that this statute can be
12 read in a Constitutional way by saying that when the
13 statute says if a defendant pleads guilty, sentencing has
14 to be before the Judge. That sentencing can take whatever
15 form is appropriate, whether that be a jury trial or
16 whether that be a Judge only. In other words, it's not
17 mandatory judge-only sentencing after a guilty plea.

18 And you can read that in conjunction with State v.
19 Downs and State v. Crisp, which is saying in a note,
20 specifically, in those two cases, the defendants waive not
21 only their right to a trial at the guilt phase, but also
22 waive their right to a trial at the sentencing phase.
23 Those two cases are a recognition of advances in the law
24 regarding the right to a trial in a capital case.

25 Judge, the other interpretation of this statute and

1 the one, as I understand it, that the State will be
2 putting forward, based on their written response to our
3 motion, I submit to you is an Unconstitutional reading of
4 the statute and is not reconcilable with State v. Downs
5 and State v. Crisp, which is telling you that the
6 Defendant has both a right at the sentencing phase and at
7 the jury trial phase for a jury trial.

8 There are two cases that were decided before State v.
9 Downs and State v. Crisp. Those two cases I will,
10 candidly, concede indicate that we have in South Carolina
11 a mandatory judge-only sentencing after a guilty plea.
12 But those cases were decided before we had the U.S.
13 Supreme Court precedent handed down starting with
14 Apprendi, going to Ring, and then following through with
15 Blakely. I'd like to go ahead and address where we --
16 where I think we end up, if we take -- if Your Honor buys
17 into the State's interpretation of this portion of the
18 statute.

19 The Defendant has two separate rights in this case to
20 a jury trial. He also has another right to present
21 mitigation during the sentencing phase of his trial. And,
22 Judge, logically, it works like this, you've got a
23 Fourteenth and a Sixth Amendment right, as a defendant, to
24 present a complete defense. As part of that complete
25 defense, you've got an Eighth Amendment right to present

1 any and all mitigation.

2 Now, the definition of mitigation is broad. It has a
3 long history of jurisprudence in the United States Supreme
4 Court and in South Carolina. A guilty plea is mitigation.
5 It is the essence of mitigation. It's hard for me to
6 state in a better fashion than the South Carolina Supreme
7 Court does. I'm quoting from State v. Brower, "For those
8 that plead guilty, that fact itself is a Constitutionally
9 permissible consideration in sentencing, a consideration
10 that is not present when one is found guilty by a jury."

11 In explaining that position, the Supreme Court said,
12 "Guilty pleas are recognized as a significant step towards
13 rehabilitation, a genuine admission of guilt may properly
14 result in a lighter sentence than would be appropriate for
15 an intransigent and unrepentant malefactor. A plea of
16 guilty can be and frequently is considered in sentencing."

17 Guilty pleas are mitigation every day across the
18 State in the courtroom --

19 THE COURT: Let me interrupt you --

20 MR. BANNISTER: Yes, sir.

21 THE COURT: -- and ask you if it's, in fact, the
22 guilty plea itself, the procedural legal mechanism, or is
23 it the acceptance of responsibility, showing of remorse,
24 admission of involvement in the offense?

25 MR. BANNISTER: Judge --

1 THE COURT: Are those two not distinguishable?

2 MR. BANNISTER: Well, I think that the guilty plea is
3 what captures the showing of remorse, the public
4 acknowledgement of guilt, and the acceptance of the moral
5 responsibility.

6 There's no other procedure in the law that we have
7 that does that like the guilty plea does.

8 THE COURT: Well, let me ask you this. And I,
9 certainly -- while you have made this assertion, if your
10 client were ever to make the assertion that you have
11 spoken about, would that not, in effect, be the same thing
12 and have the same impact, acknowledgment of culpability
13 and acceptance of responsibility?

14 Just because you go through a legal procedure, does
15 that -- I mean, there are plenty of people who go through
16 the same legal procedure who show no remorse and accept no
17 responsibility.

18 Am I correct?

19 MR. BANNISTER: Let me see if I follow you to make
20 sure I understand your question. You're saying that there
21 are people who will tender a guilty plea that show no
22 remorse and show no --

23 THE COURT: Mr. Bannister, I know you've represented
24 a lot of people who have pled guilty and said --

25 MR. BANNISTER: I have.

1 THE COURT: -- I didn't do it or I wasn't the bad
2 one.

3 So what I'm trying to do is distinguish between the
4 acceptance of responsibility, the demonstration of
5 remorse, and the fact that there is a procedural legal
6 function.

7 MR. BANNISTER: You don't get to that point until he
8 can get in front of you and say, I'm pleading guilty, and
9 then have the opportunity to explain what it is that he's
10 feeling and saying, and then judge from that whether or
11 not he is truly, in fact, remorseful, repentant, and
12 accepts his responsibility.

13 THE COURT: Okay. Go ahead.

14 I'm sorry to interrupt you.

15 MR. BANNISTER: That sort of encompasses that set of
16 rights that I'm talking about, this right to present
17 mitigation. It's part of the defense.

18 And I'll say also that I've said in the brief that it
19 has been -- presenting the guilty plea as mitigation in a
20 capital sentencing proceeding is not only recognized as a
21 valid strategy for a defendant to take, it also is
22 supported by the empirical data that has been compiled
23 from the Capital Jury Project, which primarily relied on
24 data from capital jurors here in South Carolina who had
25 participated in a death penalty case.

1 So it is substantial in terms of -- all of that says
2 it's substantial, the guilty plea and its impact on how a
3 jury, ultimately, views the choice between death in prison
4 or death by execution.

5 On the other hand, you've got a completely separate
6 set of rights that deal with the Sixth Amendment -- the
7 Defendant's Sixth Amendment right to a jury trial. There
8 are two of those. There is the right to the trial at the
9 guilt phase. There is the right to the trial at the
10 sentencing phase.

11 The interpretation that has currently been put
12 forward across the State about how we do judge -- I'm
13 sorry -- sentencing after a guilty plea works to the
14 detriment of every defendant that's out there that has to
15 be put in this predicament. Because the Defendant can't
16 exercise both his right to a jury trial -- or the
17 sentencing phase of the trial and his right to present his
18 guilty plea as mitigation. And it is the fact that you
19 can't, as a defendant, exercise both of those rights that
20 makes that interpretation, whether it's the interpretation
21 of the statute or whether it's the case law that
22 interprets the statute, whichever, it's that
23 interpretation that makes -- that is Unconstitutional.

24 You can't be placed, as a defendant, in a catch-22
25 between two Constitutional rights that could be exercised

1 in harmony one with the other. I'll give you an example.
2 It happens all the time. You've got a defendant. He gets
3 arrested -- he gets pulled over on the side of the road.
4 There is a search. Drugs are found in the car. The
5 Defendant comes into court and he wants to do two things.
6 He wants to get on the stand and contest that the search
7 and the seizure of his car and the drugs was a violation
8 of his Fourth Amendment right. But when the jury comes
9 in, he doesn't want to have to say anything. And he
10 doesn't want what he says on the stand about why the
11 search and seizure was violative of his Fourth Amendment
12 rights to then be published to the jury as an admission of
13 guilt.

14 He's got two different Constitutional rights, his
15 Fourth Amendment right to be free of search and seizure
16 warrantless and his right, in the Fifth Amendment, not to
17 have to incriminate himself. How do we resolve that
18 conflict? The Defendant gets to get on the stand outside
19 the presence of the jury and testify to what happened.
20 The Judge then decides whether or not the Fourth Amendment
21 was violated. Then if the trial proceeds, the Defendant
22 can sit at the defense table, say nothing, and the jury is
23 never instructed that he admitted his guilt during the
24 suppression hearing that took place before. That is how
25 the law deals with these kinds of issues.

1 THE COURT: Well, that's not exactly -- and that's
2 sort of a reversal of what you're arguing. In that
3 instance, the jury trial goes first and the sentencing
4 comes second without a jury.

5 I mean, is that --

6 MR. BANNISTER: In that scenario, a jury is always
7 going to have to find the Defendant guilty. I'm saying
8 that the Defendant has got two Constitutional rights in
9 that hypothetical I've put before you. And --

10 THE COURT: Well, you're -- but I think you're
11 assuming that the only mitigation that your -- a client in
12 the position that you are describing, the only mitigation
13 he can show is that he pled guilty.

14 And what I'm asking you is, isn't the guilty plea
15 just a demonstration of his remorse and acceptance of
16 responsibility?

17 MR. BANNISTER: It is not -- it is a demonstration of
18 remorse and acceptance of responsibility, but it is not
19 just that. It is viewed in a different context than if he
20 just in the middle of -- I mean, if it just came out
21 during testimony or something like that. I mean, it's
22 part of the procedure. It's part of the way of letting
23 the jury know that we're not going to play this game
24 about, did you do it or did you not do it? We're finished
25 with that. We accept responsibility for that.

1 THE COURT: Well -- all right. Go ahead.

2 MR. BANNISTER: I was going to say that the other
3 cases -- the other states that have dealt with this issue,
4 really, you can draw a line between them. You've got the
5 United States Supreme Court decision in Blakely, which has
6 been dealing with this. What happens to issues of fact
7 that have to be decided after a guilty plea that only
8 impact sentencing?

9 Blakely was the first case to take up this issue
10 after a guilty plea. And what Blakely said was, look, the
11 Defendant pled guilty to the underlying crime, but that
12 indictment doesn't authorize the sentence that was
13 ultimately imposed. And, furthermore, the Defendant, if
14 he chooses, can waive the right to a trial for the
15 underlying crime, but demand a trial for the fact finding
16 necessary to impose whatever enhanced sentence there may
17 be out there.

18 The bottom line is this, the guilty plea doesn't
19 change the fact that a defendant has a right to demand any
20 further fact finding that's going to take place be done
21 before a jury. The cases in the other states, who have
22 looked at this issue that we're talking about right now,
23 fall pre-Blakely decision and post-Blakely decision.

24 The pre-Blakely cases all said, with one exception,
25 that, you know, the guilty plea waives everything. You're

1 done at that point. We're going to let the Judge make
2 whatever decisions after that. One exception was
3 Louisiana which said, We believe that infringes on the
4 Eighth Amendment right to mitigation in a capital
5 sentencing case.

6 The other cases post-Blakely, South Dakota and
7 Colorado, all say that the problem you've got -- the trout
8 in the milk is the Eighth Amendment gives the Defendant a
9 right to put up mitigation. And by telling him he's
10 waived -- I'm sorry -- by telling him that when he puts
11 himself in a position to claim that mitigation that
12 somehow he has waived his right to have the jury consider
13 it, it's not a waiver. It's a forfeiture. And you can't
14 let that happen. That makes that interpretation of the
15 statute Unconstitutional.

16 The correct interpretation, and the one that needs to
17 happen in this case, is we need to be in a position where
18 this Defendant can exercise all of the rights that he has
19 or waive them as he so chooses. What we have asked the
20 Court to permit him to do is to plead guilty. And then
21 proceed to the sentencing phase of the trial, pick a jury,
22 and have them make the fact finding necessary to determine
23 whether there's an aggravator, necessary to determine
24 whether there are any statutory mitigating circumstances,
25 make the fact finding of whether there are other

1 mitigators, other factors, and make the fact finding the
2 weighing, if you will, of those aggravators versus those
3 mitigators to come to the ultimate conclusion. That's his
4 right. And that's how we want to proceed at trial.

5 To deny us that, in effect, denies us due process.
6 And I'll tell you, Judge, what really puts this clearly
7 before you, if we were two streets over in the federal
8 courthouse, the United States code over there says, in
9 particular, that you shall -- "A Judge shall conduct a
10 separate sentencing hearing to determine the punishment
11 imposed. The hearing shall be conducted before a jury
12 impaneled for the purpose of the hearing if the Defendant
13 was convicted upon a plea of guilty."

14 That statute is post-Blakely. That statute
15 encompasses what the United States Supreme Court has said
16 are the federal Constitutional rights. And the fact that
17 I can -- that this Defendant could do that over in the
18 federal courthouse but can't do it here highlights the
19 fact that this is a Fifth Amendment-Fourth Amendment due
20 process issue that just isn't going to go away.

21 Thank you.

22 THE COURT: Well, you don't have a specific case on
23 this issue; is that correct?

24 MR. BANNISTER: From the State of South Carolina, no.

25 THE COURT: From the United States Supreme Court?

1 MR. BANNISTER: Well, obviously, Ring dealt with a
2 capital sentencing proceeding. Ring -- prior to Ring,
3 Apprendi had been carving out exceptions for capital
4 sentencing proceedings. In other words, for a period of
5 time, every fact that had to be determined for a
6 defendant's sentencing only was going to go before a jury,
7 unless you were a capital defendant and the issue was life
8 or death.

9 So, finally, when the United States Supreme Court
10 decided Ring, they eliminated that exception and said the
11 logic of that just does not work. If you're going to have
12 to have a jury to decide, you know, whether or not you
13 possessed a firearm and that enhances your sentence, you,
14 certainly, get a jury to decide whether or not there's an
15 aggravator, and how that mitigator fits in, and whether or
16 not you get life or death.

17 Ring applied the separate right to a jury trial to
18 capital sentencing. I don't believe that Ring left open
19 the issue of what happens if you plead guilty. But to the
20 extent that it did, if it did, Blakely decided that.
21 Although, Blakely was not a capital sentencing case. If
22 you read Blakely, you will see that Justice Scalia is
23 discussing the fact that defendants have a right now.
24 They can contest some of the Prosecutor's case. They can
25 contest all of it. They can contest only the sentencing

1 and not the pre-trial guilt -- I'm sorry -- not the
2 elements of the guilt. They have that choice. And they
3 can pick and choose which one they will assert and which
4 one they will waive.

5 So when you asked me, is there a case on point, I
6 think reading Blakely and Ring, you've got precedent for
7 this Court. But, also, I would point you to the state
8 courts decisions in both Colorado and the ones I've cited
9 from South Dakota and Louisiana that say the same thing,
10 in essence.

11 THE COURT: Thank you very much.

12 Solicitor.

13 MR. ARIAIL: I said earlier I wanted to address the
14 part about the responses, and I would like to do that
15 first, where we were talking about filing written
16 responses.

17 I know the Court wants to encourage all of us to play
18 nicely together in the same sand box. And we need to do
19 that. But you can tell this is a pretty -- or a fairly
20 beefy argument that -- all that's been addressed in a
21 number of different forms. But when we get it all
22 together, it's something that takes a little time. The
23 motion was filed back on September -- excuse me -- August
24 17th.

25 Yesterday, I received a 25-page memorandum that was

1 chopped full of other citations that weren't in the
2 motion. That makes it difficult to spend a whole day
3 tracking down -- not that we're not able to do it. But
4 that's really not the way I understood we were going to
5 play the game. If we're going to have the responses, then
6 we ought to do them at the same time. That is, file the
7 motion, file the memorandum, and we file our response and
8 we file our memorandum.

9 So what I'm doing today is laboring -- rather than
10 asking for a delay, laboring a little bit. I don't have a
11 nice fancy memorandum. But I do have some bullet points
12 that I would like to hand up to the Court just to follow
13 along that are somewhat in response.

14 The first point that I want to make is, I think what
15 we're arguing about here is an issue that's been reversed
16 in an effort to achieve a goal that is not achievable
17 under our law. The Defense argues that he's entitled to a
18 jury trial on the sentencing aspect of his case. And he
19 cites numerous cases, Blakely being the most recent United
20 States Supreme Court case, but Ring, Apprendi, and all the
21 others that have come from the United States Supreme Court
22 that deal with judge fact finding, a judge adding
23 additional punishment based on a judge finding facts,
24 which the Constitution, according to the United States
25 Supreme Court, deems to be inappropriate.

1 But this Defendant does have the absolute unbridled
2 Constitutional statutory right to have a jury determine
3 the issue of sentencing. That's what our law gives him.
4 And he has it right now. So there's no reason to argue
5 that he somehow is denied the right to a trial by jury on
6 the issue of sentencing. He has that. It's -- and if we
7 maintain the same procedure that we have maintained since
8 the death penalty was reinstated and has been approved
9 numerous times by our Supreme Court and the United States
10 Supreme Court, that is exactly what's going to happen. 12
11 people are going to be impaneled and sit in that box and
12 determine what the appropriate sentence is. So he's not
13 denied that right.

14 What we're really talking about here is an issue in
15 reverse to make it appear that he is denied that right.
16 He has that right to go forward right now. We're going to
17 have a trial. And he can enter his evidence and present
18 it to a jury. But what he's really arguing about is his
19 right to plead guilty. And that is where we should focus
20 the issue here.

21 What is the Defendant's right to plead guilty? There
22 has been no argument about that. There is an assumption
23 that he has the right to plead guilty. And that's simply
24 not the law. There are three cases that are out and I
25 cite them in here, Singer v. United States, State v.

1 Burgin, and State v. Kerr, which are two South Carolina
2 Supreme Court cases, that make it clear on these points.

3 First, trial by jury is the preferred mode of
4 disposing of issues of fact under our Constitution. That
5 is a premier point under our Constitution, not judge fact
6 finding. And that's what these cases talk about. This
7 Defendant has the right to have a trial -- a jury trial on
8 the issues of fact.

9 Compelling a defendant in a criminal case to undergo
10 a jury trial against his will is not contrary to the right
11 of a fair trial or to due process. Because the end result
12 is that the Defendant is simply subject to trial by an
13 impartial jury, which is his Constitutionally protected
14 right.

15 Thirdly, the right to plead guilty is not a
16 Constitutionally guaranteed right. And these cases hold
17 that -- are specifically on that point.

18 And, lastly, a defendant can only plead guilty if the
19 State and the Court consent and the Court accepts it. So
20 he has no right to plead guilty. And if you address the
21 issue in proper sequence, starting with his right to plead
22 guilty, you're going to have to cross a number of lines.
23 Number one, we're going to have to consent. Number two,
24 you're going to have to consent. And, as you are well
25 aware, in numerous cases even where we consent, you don't

1 consent. And you will send a defendant away and not
2 accept his guilty plea on the basis of the terms.

3 The State has neither consented to this, nor have
4 you. And so also there has been no guilty plea tendered
5 or attempt to tender a guilty plea except through a motion
6 by counsel, which I submit is not appropriate to raise the
7 issue to the level of decision by the Court. In other
8 words, it's not right. It may become right if he stands
9 up there and, actually, enters a guilty plea. But it's
10 not right now. Because he can't get to that podium to
11 plead guilty without first getting my consent. And he has
12 no Constitutional right to step up there without my
13 consent or the State's consent, my consent in this case.

14 What I'd like to do also just to respond to a couple
15 of the points about mitigation, I think Your Honor hit it
16 right on the head. The act of a guilty plea is not in
17 itself mitigation. The acceptance of responsibility is
18 what is the mitigation. And in this format that South
19 Carolina has, a defendant has the opening statement before
20 the jury that his attorney can simply state to the jury --
21 and it's happened in cases that I've tried -- our
22 defendant -- our client does not contest guilt, our client
23 acknowledges his guilt, and communicate that to the jury.

24 The Defendant has an opportunity at the close of the
25 fact portion of the trial or phase of that case to stand

1 up and tell the jury the same thing, I don't contest
2 guilt, I admit my guilt.

3 But, as Your Honor knows, for mitigation to have any
4 meaningful impact, it has to be done before the fact
5 finder. A guilty plea to you with a jury not in the
6 courtroom is meaningless. Because, as you observed,
7 people plead guilty for a lot of different reasons, but,
8 generally, remorse is not one of them. It is maybe
9 remorse that the police caught him. And it's remorse that
10 the State is going to prove him guilty.

11 THE COURT: Well, Mr. Ariail, that's a pretty jaded
12 view of the -- of human nature.

13 MR. ARIAIL: Well, I have a jaded view of that.

14 And I think it's being asserted here that this
15 Defendant may argue to the Court, through his counsel,
16 that he's got remorse. But that -- as you acknowledged
17 and you pointed out, the only way to really find that out
18 is for the Defendant to stand up and you to examine him
19 and see if he really does have remorse.

20 That applies -- so a guilty plea before you would be
21 meaningless. He needs to go through the process of
22 standing in front of that jury and the process given to
23 him, and say, I'm guilty. I acknowledge my guilt. I know
24 you can prove it. And I'm going to step aside on that
25 issue and let it go forward.

1 Secondly, if we adopted the process that is advocated
2 by the Defense in this case, that is, there would be a
3 plea of guilty and then a trial of sentencing before a
4 jury, we would encounter numerous, numerous problems. The
5 first problem would be there would be a limitation on what
6 the State could, actually, produce as evidence. Arguably,
7 the Defense could say, we've already admitted that point.
8 So, therefore, you can't produce evidence on an issue
9 that's already been admitted in court, because it's not an
10 issue in controversy. Therefore, the jury would never get
11 the full circumstances of the case. They could never be
12 told what the full circumstances of the murder were
13 because of the fact that the Defendant had already
14 acknowledged he was guilty of the murder and its attendant
15 circumstances, which would be the aggravators.

16 The jury has to be able to hear that evidence for
17 aggravation. And if we would only be limited to
18 presenting a very simple statement to the jury, he's pled
19 guilty to this, and this, and this, and based on that
20 admission of guilt, now, you're only -- you're responsible
21 for finding the aggravating factors to determine the
22 sentence, they would never be able to have the full impact
23 of the evidence.

24 And I know that argument would come. Because it
25 would be the logical extension of saying, there's no

1 reason to go into that. And that's why the process that
2 we have is set up the way it is to allow a fact finder,
3 the jury, to hear everything, all the circumstances of the
4 case, all of the remorse, all of the mitigation,
5 everything, and then they make the determination.

6 Also, what I've -- I caution Your Honor to read the
7 cases that our Supreme Court has held. There have been
8 three cases in which a judge did exactly what they're
9 asking you to do. And our Supreme Court has reversed that
10 on all three occasions. Because they are asking you to
11 accept a conditional guilty plea.

12 And a conditional -- if we were to consent to it, it
13 would be a conditional guilty plea. It would be a
14 conditional plea in that, I'm going to plead guilty if you
15 give me a jury trial. And the Supreme Court has reversed
16 that in three different cases where it occurred. The
17 Judge took the guilty plea, and then impaneled a jury, and
18 the jury determined the facts, and rendered a sentence.
19 The Supreme Court reversed it in all three saying that was
20 a conditional guilty plea, a defendant to plead guilty
21 must enter an unconditional guilty plea in which he says,
22 I am guilty.

23 And the basis of that holding is simple. And that is
24 for him to enter a guilty plea under -- and be granted a
25 procedure that is not present in our law is an

1 impermissible inducement to that guilty plea. And,
2 therefore, the Court says it cannot be used by a court in
3 this state to allow a defendant to plead guilty because it
4 overcomes, or potentially overcomes, or can overcome his
5 free will as a result and his voluntariness based upon the
6 fact that it is an impermissible inducement to plead
7 guilty.

8 I believe that -- not being able to fully respond
9 with a full memo, I think I've made my notes, but I'll
10 check with counsel, because she usually has something.

11 (Pause.)

12 MR. ARIAIL: We got it Wednesday afternoon at 4:00,
13 she says. It wasn't yesterday.

14 THE COURT: All right.

15 MR. ARIAIL: Thank you.

16 THE COURT: Mr. Bannister, reply?

17 MR. BANNISTER: I don't think that I have said that
18 the Defendant in South -- that a defendant in South
19 Carolina has a general right to plead guilty. But to take
20 that and then move from there that the Defendant doesn't
21 have a right to present a guilty plea as mitigation
22 doesn't recognize the unique situation that capital cases
23 represent, you know. We're so used to thinking of the
24 run-of-the-mill criminal case. It's a trial. And then
25 there's a verdict. And then there's a sentence that only

1 the Judge puts into place.

2 But in a capital case, it's completely different.
3 Because you've, actually, got two completely separate
4 trials that take place involving completely separate
5 issues. And so the right to plead guilty is not -- that's
6 a misstatement of the argument. It's a right --

7 THE COURT: Well, Mr. Bannister I think you're sort
8 of overstating that. If they were two entirely separate
9 proceedings without being conjoined in some fashion, you
10 could have two separate jury's. But that's not --

11 MR. BANNISTER: Which there's a court in Arizona that
12 said that's what we're going to do.

13 THE COURT: Well, isn't that west of the Mississippi
14 River?

15 MR. BANNISTER: It is.

16 Maybe that's not good law here, Judge.

17 THE COURT: All right.

18 MR. BANNISTER: I was a little bit shocked to hear
19 the State say that it has to consent to the guilty plea.
20 I can't really believe that the State would take the
21 position that Your Honor couldn't take a guilty plea and
22 save the taxpayers of Pickens County the hundreds of
23 thousands of dollars it would take to go through a
24 guilt-phase trial.

25 And then to follow it up by saying -- or tacitly

1 admitting that the reason we need the guilt-phase trial is
2 because we need to get to the jury all the evidence that
3 would be irrelevant to the sentencing determination of
4 aggravation versus mitigation. It's just -- let me put it
5 this way. You've got the first trial is the guilt phase.
6 You've got the second one is the sentencing. We want the
7 plea of guilty, which we think we have an Eighth Amendment
8 right to present at the sentencing phase.

9 The statute, if you interpret it the way the
10 Solicitor has suggested, we say Unconstitutionally cuts us
11 off. But, now, separate and apart from that, the
12 Solicitor is saying, I have a right to cut you off as well
13 by saying, I'm not going to let you plead guilty. That's
14 two separate Constitutional issues that I think need to be
15 clear on the record for our standpoint.

16 THE COURT: Mr. Bannister.

17 MR. BANNISTER: Yes, sir.

18 THE COURT: You can present -- I mean, it goes back
19 to what I spoke about before that the true issue in
20 mitigation is the acceptance of responsibility and showing
21 of remorse, not some legal procedural -- all be it very
22 important -- issue of a guilty plea. And a logical
23 extension of what you're telling me is that it ought to be
24 mitigation that a defendant who pleads guilty is saving
25 money for the county. I mean, that's not an issue. That

1 is not an issue.

2 MR. BANNISTER: That's a practical application of it.

3 But the heart of the legal argument, Your Honor, is
4 that -- and I, actually, like the idea the Solicitor put
5 forward, we impanel the jury and then let the Defendant
6 come in here, plead guilty, and then we let the jury hear
7 it, and then we let the jury make a decision. I'm for
8 that.

9 THE COURT: Well, you know, it is expensive to have a
10 capital case. But if that is the will of the community,
11 then they're going to pay for it. If not, the amount of
12 money involved is not an issue in any single capital case.
13 So I'm not -- I'm sorry. That's not -- that doesn't carry
14 any weight with me.

15 MR. BANNISTER: The conditional -- the categorization
16 of a plea to guilt on the elements of the crime and then a
17 subsequent demand for a jury trial at sentencing, to
18 categorize that as a conditional plea, I think, is
19 misleading or, at least, is inviting the Court down what
20 is an Unconstitutional path.

21 Here is why, take the standard guilty pleas that we
22 have in this courtroom every week. When that defendant
23 stands up and pleads guilty, he waives a number of rights.
24 All of those rights apply prior to the entry of a verdict
25 of guilt. That defendant, however, does not waive the

1 right to contest the sentence that you, ultimately, give
2 him. That defendant does not waive the right to appeal
3 both the guilty plea and the sentence, either or. It does
4 not waive the right of the Defendant to challenge later on
5 in a post-conviction relief action the fact that he pled
6 guilty, the advice he got from counsel. And it doesn't
7 deny -- it doesn't waive the right of a defendant to file
8 a habeas petition in federal court. Because all of those
9 rights attach after you walk through the door of a guilty
10 plea.

11 It's the same thing in this case. After the guilty
12 plea here, it's not until then that a right, if you rule
13 that the Defendant had one to demand a jury trial for
14 sentencing, is going to attach. And it's at that point
15 that he either gets the jury trial or there needs to be a
16 separate waiver of that right for the sentencing phase.
17 And that's the problem with calling this a conditional
18 plea.

19 The two -- the three cases that the Solicitor is
20 citing to you all were prior to this United States Supreme
21 Court interpretation of the Sixth Amendment that said
22 you've got this right. If you look at those cases, you'll
23 see that the basis was, you don't have a jury trial right
24 in the sentencing phase. And, therefore, to condition
25 your plea on getting something that you don't have, that's

1 a conditional plea.

2 Another example of what's really a conditional plea
3 is what they do in federal court. Again, back to my --
4 the hypothetical of the Defendant who gets pulled over on
5 the side of the road and they find drugs. He contests the
6 search and seizure of his vehicle and the drugs. He can
7 still plead guilty, preserve that issue to take up on
8 appeal in the hopes that they'll find his Fourth Amendment
9 rights were violated and vacate the sentence.

10 THE COURT: Well, let me turn that back on you.
11 Chapter 3 E 1.1 of the Sentencing Guidelines allows
12 someone to go to trial in federal court and contest an
13 issue, perhaps a search and seizure issue or some other
14 issue relating to guilt, and still accept responsibility
15 and show genuine remorse, and under the advisory federal
16 sentencing guidelines receive a reduction for acceptance
17 of responsibility.

18 MR. BANNISTER: If that were sufficient in a capital
19 case, then I don't think you would have --

20 THE COURT: Well, we don't need to talk about -- what
21 I'm pointing out to you is, let's talk about capital
22 cases. I mean, we can --

23 MR. BANNISTER: Okay. The federal courthouse, I've
24 got a right to plead guilty --

25 THE COURT: A statutory right.

1 MR. BANNISTER: -- and demand a jury. But based on
2 the interpretations -- the Supreme Court's interpretation
3 of the Sixth Amendment right to a trial --

4 THE COURT: All right. Mr. Bannister, your argument
5 has been --

6 MR. ARIAIL: Your Honor, I failed to hand up the
7 cases that support our --

8 THE COURT: Okay.

9 MR. ARIAIL: -- memorandum. They weren't attached
10 and I was going to give a copy to Mr. Bannister and the
11 Defense as well.

12 THE COURT: Thank you very much.

13 MR. ARIAIL: Thank you.

14 THE COURT: Mr. Bannister, with respect to your
15 argument, it is cogent. It is well thought out. It is --
16 I don't know if creative is the right word. But it is,
17 certainly, a fine argument. But I believe it is an
18 argument that perhaps is best addressed by a court that
19 is -- might have the final say in a matter like this.

20 I am -- I feel constrained by the existing case law
21 in South Carolina and the statutes to deny your motion.

22 MR. BANNISTER: And, Judge, I guess that puts us at
23 the point where, you know, what are we going to do next?
24 I mean, my client is still intending to tender a guilty
25 plea.

1 THE COURT: Well, I think that's going to be an issue
2 for another day.

3 MR. BANNISTER: Okay.

4 THE COURT: What do you -- what do we need to talk
5 about?

6 MR. BANNISTER: Well, I didn't know whether you
7 wanted to proceed directly now or whether you -- well,
8 actually, it would be better, I think, probably and the
9 safest course would be to, at least, let us talk to our
10 client for a moment and explain your decision. But if you
11 want us to reschedule it, then, I mean, we can, but.

12 THE COURT: Well, I don't think that -- I don't know
13 that the Solicitor would be prepared to go forward today.
14 And I'm pretty sure that I'm not. I think you need to
15 discuss it.

16 MR. BANNISTER: Okay.

17 THE COURT: There's been a lot of meat on the bone or
18 pizza in the box in this hearing. So I think you need to
19 talk to your client. And if we need to set another
20 hearing to address some other issues which have been
21 raised in this proceeding, we'll do it.

22 I want to tell you all that I don't know what's going
23 to happen with the case. But the trial date that we have
24 discussed previously of March 14th is still the projected
25 trial date. So Pickens County on March 14th and March

1 21st, I believe.

2 Solicitor, is that not what you have on your --

3 MR. ARIAIL: I was thinking the 10th.

4 MR. BANNISTER: That's what I was thinking, Your
5 Honor.

6 THE COURT: Okay. I might have the dates wrong.

7 MR. BANNISTER: The 10th and 17th, I think.

8 THE COURT: The 10th and 17th.

9 MR. ARIAIL: Yeah. That's what I have.

10 THE COURT: All right. Is there anything else that
11 we need to address at this time?

12 MR. BANNISTER: Not at the moment, Your Honor.

13 THE COURT: Anything from the State?

14 MR. ARIAIL: Well, I think that we're overlooking --
15 I don't think the State is ready to call this case for
16 trial. So I don't know that we could have -- even have a
17 proceeding if the Defendant is -- as I understand it, the
18 case is going to be called the 10th of March.

19 THE COURT: Correct.

20 I think also your client -- I mean, you know, there
21 apparently is more evidence that's being developed. And,
22 certainly, I think the entire case has to be developed
23 before your client can enter an intelligent plea, if
24 that's what he decides he wants to do. I don't know what
25 he wants to do.

1 MR. BANNISTER: Judge, I'll just say, based on my
2 client's desires, I felt compelled to put that before you
3 at this point.

4 THE COURT: Okay.

5 MR. BANNISTER: So I understand what you're telling
6 us. And I'll explain it to him. And we'll then file
7 whatever motions need to be filed post-this hearing.

8 THE COURT: All right. Very good.

9 Thank you, gentlemen. Thank you very much.

10 MR. BANNISTER: Thank you, Your Honor.

11 MR. ARIAIL: Thank you, Judge.

12 MS. STROM: Your Honor --

13 THE COURT: Hang on. Hang on:

14 Yes, ma'am.

15 MS. STROM: Do you want one of us to prepare a
16 written order based on this, or are you going to do that?

17 THE COURT: Why don't you all send us a proposed
18 order.

19 MS. STROM: Okay.

20 THE COURT: And provide it to opposing counsel or
21 both of you can prepare proposed orders, whatever you want
22 to do. And provide them to opposing counsel and then
23 provide it to me. And then we'll have it executed and
24 filed.

25 *****END OF TRANSCRIPT OF RECORD*****

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 14th day of September, 2007.

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

September 14, 2009

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS

2006-GS-39-2222

2006-GS-39-2223

2006-GS-39-2224

2006-GS-39-2225

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

JERRY BUCK INMAN,)
DEFENDANT.)

ORIGINAL

May 8, 2008
Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

ROBERT M. ARIAIL, ESQ.

Solicitor

BETTY C. STROM, ESQ.

Deputy Solicitor

JAMES W. BANNISTER, ESQ.

JOHN W. DEJONG, ESQ.

SYMME W. CULBERTSON, ESQ.

Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Defendant's Exhibits)		
D-1	Survey.....	14.....	14

All Exhibits were retained by the Clerk of Court for
Pickens County.

P R O C E E D I N G S

1
2 THE COURT: We're here on State v. Jerry Buck Inman.
3 I believe the Defense has a couple of motions they'd like
4 to address.

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

6 If I could, just for clarification, we've captioned
7 the motion, currently, before the Court as a motion for
8 change of venue. In the memorandum I submitted to the
9 Court, we've referenced two of South Carolina's code
10 sections, Section 17-21-80 and Section 17-21-85.

11 Judge, in looking back at both of those sections, if
12 I understand them correctly, where we are in the state of
13 the law with those, under Section 80 is considered the
14 change of venue where, if you were to grant that, we, as I
15 see it, must move the case to a county within the same
16 circuit, which would be -- the only option we'd have would
17 be Greenville.

18 We've, also, asked for relief under Section 17-21-85,
19 which gives you the ability to select a jury from another
20 county. That selection is not limited in anyway. It can
21 be any other county. But bring that jury here and have
22 them try the case.

23 So where we are as -- on the Defendant's motion is,
24 I -- we are asking for relief under Section 17-21-85, not
25 necessarily Section 80. In our view, relief under Section

1 80 is really no relief at all. So, to that extent, we
2 withdraw that part of our motion. We just want -- we're
3 asking for an alternate jury.

4 I think where we are at this point -- and you can
5 correct me if I'm wrong. But considering that we have not
6 sent out the jury questionnaire and we haven't, actually,
7 had any questioning of the jury venire, the status, as I
8 understand it, is we're here to determine whether or not
9 there is a presumption of prejudice that would warrant
10 Your Honor invoking Section 85 and going ahead and start
11 talking about which county are we going to be drawing a
12 jury from.

13 The basis for our motion to say is that we're already
14 in a position that you can presume prejudice. And that
15 prejudice would be the Defendant's right to have an
16 impartial jury selected for the trial of this case and
17 would be -- and we set this out in the affidavit -- the
18 thorough and repeated news accounts in the media, both
19 print and on TV, and on the Internet that -- about this
20 case. And not only about this case, but about the
21 Defendant's confession, about the facts of the crime
22 itself that have -- what little facts have been released
23 at this point. And, also, with regards to the previous
24 hearing we had where we attempted to plead guilty, but
25 were not allowed to do so. That media coverage has been

1 pervasive on both a local level, a statewide level, and a
2 national coverage.

3 Judge, in a status conference -- an informal status
4 conference we had, we discussed getting a group to take
5 a -- I guess a political-type survey of residents of
6 Greenville and Pickens County. The name of the group that
7 was going to do that was the Felker Group. They were,
8 actually, asked to do that by the Solicitor's Office. We
9 agreed to that procedure. That information has come back.

10 We think that provides a statistical basis for asking
11 that you consider that -- we've reached a point in this
12 case where a presumption of prejudice has attached. In
13 essence, what that survey came back and said was that
14 we've got a significant problem with people who, one, have
15 knowledge of the case, little, some, or a lot. Two, we've
16 got a problem with people who have already formed strong
17 opinions about which way they would go in the case. And,
18 three, we've got people who have formed an opinion to such
19 an extent that they would be unable to set aside that
20 opinion, despite instructions from the Court to the
21 contrary.

22 Obviously, there are cases where even when you get to
23 questioning jury venire individuals that even though they
24 make statements that they would be able to set aside what
25 they know that the Court has to view that with some

1 skepticism. And I think we've reached a point in this
2 case already.

3 My concern is, you know, we are interested in trying
4 this case in September. That's, currently, the date we've
5 got set. We've got a significant jury questionnaire
6 that's -- that we're anticipating going out to these
7 potential jury members. We've got to get that back.
8 We've got to have time to look at it and go over it. If
9 we stay here in Pickens, we run a high likelihood that
10 when the questionnaires come back, we find that the
11 statistics are even worse than what we're seeing from the
12 polling data.

13 THE COURT: What are you basing that on?

14 MR. BANNISTER: Well, Judge, if -- first off, this is
15 a small community. You've got Tiffany Souers who is over
16 at Clemson, which is right next door. And this has
17 gotten -- this case has gotten a significant amount of
18 media coverage.

19 THE COURT: Well, I understand you -- do you have any
20 empirical data or anything to show me? I mean, are you
21 going to submit any --

22 MR. BANNISTER: In terms of what the actual media
23 coverage is, or are you talking about -- we've submitted
24 the report that came from the pollsters about what --

25 THE COURT: I understand.

1 MR. BANNISTER: Okay.

2 THE COURT: But you said that there's been all this
3 pervasive and thorough media coverage. I think you've got
4 to do more than just say that.

5 MR. BANNISTER: Well, as -- I guess I see this as
6 round one.

7 THE COURT: Okay.

8 MR. BANNISTER: I think we're in a position where,
9 based on that survey, Your Honor can say, We've reached a
10 point where we've got close to 70 percent of the people
11 saying they know something about this case. Starting out
12 from that point and going forward, we're going to have
13 every single person that we've got in here that we're
14 going to have to go through that colloquy with.

15 I think if we go ahead and move to another county
16 that's a little further out and away from the scene of the
17 crime, then we move away from that knowledge of the crime
18 and we'd get -- maybe those numbers would come down
19 significantly. I think that shortens not only our jury
20 selection, but if we do that now, we avoid having to send
21 out the questionnaire twice. That's our position.

22 THE COURT: All right. I presume, before you sit
23 down, that when you say this is round one, you -- are you
24 going to submit and make a Court's Exhibit any of this --
25 these things that you've referred to?

1 MR. BANNISTER: Judge, let me say we don't want this
2 motion to be viewed as cutting us off from raising this
3 issue again --

4 THE COURT: Oh, no. This will be ongoing, right.

5 MR. BANNISTER: I see it as a point where we've got a
6 presumption of prejudice. What we've submitted up to this
7 point is the poll that has been done of potential jurors.
8 The coverage is going to continue from today forward.

9 So, really, my anticipation was to be able to put
10 that together when we get much closer to -- if we don't --
11 I'm sorry. If the motion is not granted today, if we're
12 back, as I anticipate -- if it wasn't granted today, we
13 would, at least, get to the point where we have the jury
14 questionnaires. I think that would be a better time to be
15 able to give you a full-blown view of what all the media
16 coverage has been.

17 I mean, you know, I can tell you, at this point,
18 we're running at 42,700 hits for Tiffany Souers on a
19 Google search, and 117,455 on a search of Jerry Buck
20 Inman. Obviously, we don't know if those are all about
21 this Tiffany Souers and this Jerry Buck Inman. But you
22 can take judicial notice of the fact that that's how many
23 are coming up on that -- on those hits. But, anyway,
24 Judge, that's where we are right now.

25 THE COURT: All right. Well, I'm not going to take

1 judicial notice of that. I don't know -- I haven't seen
2 the numbers. I don't know where those numbers came from.
3 I don't know the reliability or the authenticity of those
4 things.

5 MR. BANNISTER: That's right.

6 THE COURT: I understand what you're saying. But I'm
7 not sure that's something I can rely on in making a
8 decision.

9 MR. BANNISTER: Well, I'll speak to that further.
10 That's all I have at this point.

11 THE COURT: All right. Ms. Strom.

12 MS. STROM: May it please the Court, Your Honor?

13 First of all, the State's position is we think that
14 the evidence produced here today is totally inadequate to
15 support a change of venue. I agree that there has been
16 media coverage as there is in a lot of what we would
17 consider high profile cases. But I would submit to you
18 that it's no more than what's been in other cases within
19 this circuit.

20 I think everyone here is well aware of the case of
21 State v. David Edens and Jennifer Holloway over in
22 Greenville County involving Jim Cockman. That got a lot
23 of local coverage and a lot of national coverage. We were
24 still able to seat a fair and impartial jury in that case,
25 one, in fact, which came back hung and the Defendants were

1 not imposed the death penalty in that case. Another
2 example is the State v. Joseph Sheppard tried back in
3 1997. It had extensive coverage. And, again, in that
4 case, we were able to seat a fair and impartial jury.

5 And then I cite, also, the State v. Christopher
6 Williams over in Greenville County had a lot of coverage.
7 And, in that case, we, also, conducted a survey very
8 similar to the one that we conducted in this case. And
9 the numbers regarding knowledge of the case and having
10 formed an opinion were, actually, a little -- slightly
11 higher than in this case.

12 Mr. Bannister was talking about we had nearly 70
13 percent of people with knowledge. Well, actually, in
14 Pickens County -- and His Honor has a copy of the
15 survey -- it was 62 percent of the population surveyed
16 that had knowledge in Pickens County, and 61 percent in
17 Greenville. The -- in Pickens County, it was only 39
18 percent of the people had formed an opinion. In
19 Greenville County, that was only 34 percent. And, as far
20 as being able to put their opinion aside, in Pickens
21 County, it was 66 percent, and 72 percent in Greenville
22 County.

23 And, Your Honor, I'd submit that that is the number
24 we need to be focused on. Because, as the Court is well
25 aware, mere knowledge of publicity, mere -- having

1 knowledge of the events of the crime do not disqualify
2 jurors. We have to go to that next step to see if that
3 person is so tainted that they cannot put their opinions
4 aside and decide the case solely on the evidence
5 presented. And I submit to you that the numbers from this
6 survey show you that we, at least, have to attempt to voir
7 dire the jury. Because there is a very strong possibility
8 and a very strong probability that we will be able to get
9 a fair and impartial jury in this case.

10 I do want to point out that Defense counsel eluded to
11 or referenced 17-21-85 as to an alternative jury. That,
12 also, requires a determination by the Court that an
13 unbiased jury cannot be selected in the county in which
14 the crime occurred. So the standard has not changed
15 simply because it's an alternative jury versus moving the
16 case from one county to another.

17 And, finally, Your Honor, I want to point out that
18 Defense counsel talked about the presumption of prejudice.
19 State v. Truesdale, which is a 1982 case, and the cite is
20 296 S.E.2d 528. In that case, the Defense counsel
21 produced a survey. And the reasoning for producing that
22 survey was to raise a presumption of prejudice that would
23 obviate any subsequent voir dire of perspective jurors.
24 The Court held, South Carolina has no per se rule of
25 presumptive prejudice. And this Court declines to adopt

1 one.

2 So I submit that the record presented today, Your
3 Honor, is inadequate to base a change of venue. And we
4 would respectfully request that you deny his motion.

5 THE COURT: Okay. Anything in reply?

6 MR. BANNISTER: Judge, just to reiterate that we see
7 this as the first step to see whether or not there's a
8 presumption of prejudice. If we get past here, then,
9 obviously, we would want to revisit this later on down the
10 line, especially if we got questionnaires back. And then,
11 of course, again, once we get into the questioning, if
12 that's where we end up, I wouldn't want to be precluded
13 from raising it at that time.

14 THE COURT: Okay. Well, I appreciate the efforts
15 that counsel has made when they retained this group to do
16 this trial awareness survey. And a couple of things I'd
17 mention about it is, I think we could draw an analogy to
18 the events that are going on on a national scale today.
19 They -- if you went with the surveys, then we wouldn't
20 ever have to have an election. And, as we've all seen,
21 things change, immense change. And so we don't rely on
22 surveys to make that final call.

23 And the second thing is I -- all it is is a survey.
24 And if it's accurate, which I presume that each side has
25 implicitly accepted the accuracy of it, there's still a

1 large number of people who are -- who would be acceptable
2 jurors just based on this survey.

3 So, based on that, I'm not going to grant your motion
4 at this time. I agree with you, and I'm sure the State
5 does as well. Everyone involved in the case is interested
6 in obtaining a fair and impartial jury. And we're going
7 to do everything that we possibly can to do that.

8 But, at this time, I'm going to deny your motion.
9 And we will accept any other information you want to
10 submit. I don't know if you plan on submitting a folder
11 with all the newspaper articles or if you are going to
12 reference the number of times it's been shown on
13 television or radio. I don't know how you're going to do
14 it. But you -- of course, you understand all your
15 assertions that that's been the case are not evidence, so.

16 All right. That moves us to the second motion.

17 MS. STROM: Your Honor, before we go to the second
18 motion, you have a copy of the results of the survey and I
19 would presume that that would be a part of the record. If
20 not, I would ask that it be made a part of the record.

21 MR. BANNISTER: I think I submitted it with the
22 motion as an exhibit, Your Honor.

23 MS. STROM: Just as long as it's a part of the record.

24 THE COURT: Okay. We'll go through the file and make
25 sure it's in the file.

1 Do you have a copy of it?

2 THE COURT REPORTER: No, sir.

3 THE COURT: I will -- I'll tell you what, we will --
4 I'll give this copy that I have to the court reporter.
5 She'll mark it as an exhibit and then I will -- after the
6 hearing, we'll make a copy so I can keep it in the file,
7 just out of an abundance of caution.

8 MR. BANNISTER: To the extent that I need to, I'd
9 move it into evidence at this point.

10 THE COURT: All right.

11 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
12 identification and admitted into evidence.)

13 MR. BANNISTER: Judge, I had submitted a proposed
14 jury questionnaire to both the Solicitor's Office and to
15 Your Honor. That proposed questionnaire, I think, is
16 approximately 15 pages. And, in response to that, the
17 Solicitor's Office submitted their proposed jury
18 questionnaire. I got that yesterday.

19 In speaking with the Solicitor, she and I had
20 discussed -- I think we both would like the opportunity to
21 sit down and see what questions we can agree on, and what
22 questions we absolutely have a disagreement on so that we
23 can narrow those down. And instead of going through the
24 thing from start to finish, we can come back and say,
25 these are the ones we have a question about, let me

1 present why I think we need to be able to ask them, let
2 her oppose it, if we get there, and maybe we can work
3 something out. But, in any event, I think that's where we
4 are. And I'm hoping we can get something done the first
5 part of next week on it.

6 THE COURT: All right.

7 MS. STROM: Yes, Your Honor.

8 I did file our response to his submission of his
9 questionnaire and submitted an alternative questionnaire.
10 Obviously, I do have great concerns with the questionnaire
11 that he has proposed. And he has my reasons for that in
12 my response. And I would be glad to meet with him and go
13 over that. And, if there are ones we cannot agree on,
14 then we can come back before the Court at a later time.
15 But I think we need to do that pretty quickly.

16 THE COURT: Right.

17 Mr. Bannister, have you examined the proposed
18 questionnaire from the State?

19 MR. BANNISTER: I have.

20 THE COURT: Do you have objections?

21 MR. BANNISTER: My concerns are as grave as hers.

22 THE COURT: Okay. Well, you know, this is -- we're
23 not reinventing the wheel here. And there have been a
24 number of these surveys that have been done. I'd like it
25 to be as thorough as possible within the confines of the

1 law. I'm not going to --

2 I tell you, Mr. Bannister, I appreciate your concerns
3 and understand your requests on the factual recitation
4 that you put in there. But that's -- I'll tell you right
5 now, I will not allow that to go out. So y'all can -- if
6 that helps, you can start from there.

7 MR. BANNISTER: Thank you, Your Honor.

8 THE COURT: And I'll be happy to meet with y'all in
9 chambers when you -- however you want to do it. We need
10 to get this done as quickly as possible. This case is
11 going to put a burden on the Clerk's Office over here.
12 And they're going to need as much time as we can possibly
13 give them. Because this is going to be a significant
14 amount of work for them. So we need to get it out and get
15 it back as quickly as we can.

16 MR. BANNISTER: That's fine, Your Honor.

17 THE COURT: All right.

18 MS. STROM: And if it will help Mr. Bannister, I have
19 already marked each and every question that I have an
20 objection to. And I'll be able to give that to him very
21 quickly.

22 THE COURT: All right. Well, let's -- why don't we
23 put a deadline on it.

24 How long do you think it would take you to --

25 MR. BANNISTER: Well, really, I think it's -- I guess

1 depending on when you could have time for us. If you've
2 got time next week, I'll make sure we've gotten together
3 and done what we can for -- towards getting it resolved.
4 I mean, I'm anxious to get it out the door myself.

5 THE COURT: Okay. Tuesday? It's a chambers-week
6 next week, but we've got the judges conference, so.

7 MS. STROM: We have a conference at the first of the
8 week, Your Honor. We will be returning on Thursday. But
9 I can get with him -- I mean, like I said, I can get with
10 him right after this to let him know which ones I object to.

11 THE COURT: Okay. Well, when do you want to meet?

12 I'd love to get it done next week. If you're
13 comfortable with y'all meeting and give it to me. And I
14 can make -- I'll just make the decision, if you want.

15 MR. BANNISTER: I guess without knowing really what
16 I'm getting into as far as to say what kind of response
17 I'd need to make to it. So if there's going to be a
18 problem with next week, then I'll let you know.

19 MS. STROM: I can come back.

20 THE COURT: Okay. Well, we'll get it resolved.
21 We'll get it figured out.

22 What -- anything else we need to talk about?

23 MR. BANNISTER: Not at this time, Your Honor.

24 THE COURT: Thank you, everybody. *

25 *****END OF TRANSCRIPT OF RECORD*****

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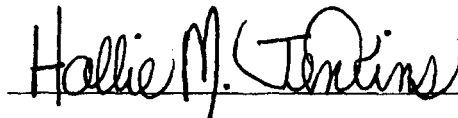
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 8th day of May, 2008.

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

September 14, 2009



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS

2006-GS-39-2222

2006-GS-39-2223

2006-GS-39-2224

2006-GS-39-2225

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

JERRY BUCK INMAN,)

DEFENDANT.)

ORIGINAL

July 18, 2008

Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

ROBERT M. ARIAIL, ESQ.

Solicitor

BETTY C. STROM, ESQ.

Deputy Solicitor

JAMES W. BANNISTER, ESQ.

SYMMES W. CULBERTSON, ESQ.

Attorneys for the Defendant

HOLLIE M. JENKINS

Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: I'm here on -- I guess the Defendant
3 would be the moving party in this matter?

4 MR. BANNISTER: That's correct, Your Honor.

5 THE COURT: Okay. First of all, your client is not
6 here.

7 Do you waive his presence?

8 MR. BANNISTER: He does. And I'm informed that I
9 have a signed waiver that we're, currently, clocking in
10 with the Pickens County Clerk.

11 THE COURT: All right.

12 MR. BANNISTER: Judge, this is fairly simple. There
13 was a gag order issued in this case. We need for Your
14 Honor to clarify the gag order to make it clear that
15 witnesses, potential witnesses, and experts are not
16 prohibited from speaking with members of the Defense team
17 or the attorneys involved in the case.

18 We've had a number of witnesses that have told us
19 that they're not allowed to speak with us because of the
20 gag order. And we just need to clarify that. I would
21 state the basis for our motion is State v. Williams, which
22 is 485 S.E.2d 99, that's a 1997 Supreme Court case, and
23 State v. Bennet where the exact relief I am requesting was
24 granted, and that's 493 S.E.2d 845. That's a 1997 South
25 Carolina Supreme Court case as well.

1 Thank you.

2 THE COURT: All right. Mr. Solicitor.

3 (There was no response.)

4 THE COURT: Well, apparently, they don't have a
5 response, so I guess --

6 MR. ARIAIL: I'm trying to figure out what the issue
7 is. The covered people defined under the order are law
8 enforcement agencies and they are -- law enforcement
9 agencies and employees. And they're prohibited from
10 making public statements. Those agencies are the Pickens
11 County Sheriff's Office, South Carolina Law Enforcement
12 Division, Central Police Department, Clemson Police
13 Department, University Police Department, any law
14 enforcement agency from the State of Tennessee, which
15 has worked or is working on the investigation of the
16 case.

17 It applies to counsel for the Defendant. That's not
18 an issue. It applies to any employee of the people or
19 entities listed above, and it shall be the responsibility
20 of the people and the heads of the agencies listed above
21 to ensure that their employees are aware of and comply
22 with the terms of the order.

23 We're talking about public comment. Now, we're not
24 talking private comment. That's law enforcement agencies
25 of Tennessee. The Solicitor represents these agencies and

1 the heads of those agencies are agents of the State of
2 South Carolina. As such, the Solicitor represents that
3 these agencies are subject to the power of this Court.
4 The purpose of that was because the people in Tennessee
5 were making public comments.

6 Now, I don't see where there's any issue. And that's
7 why we asked for the hearing. It says, No covered person
8 may file or in any way publicly release any documents,
9 except as, specifically, provided below. No covered
10 person will make any public comment or publicly release
11 any information. This does not apply privately.

12 I know for a fact they've interviewed one witness,
13 the chief deputy who made the arrest of Mr. Inman in
14 Tennessee. And I know they've interviewed the expert
15 witness for the State, Dr. Christiansen, who performed the
16 autopsy.

17 So I just don't -- other than his representations, I
18 don't see where there's an issue, number one. I don't see
19 why you need to change the gag order. By changing the gag
20 order, you are implicitly saying that something has
21 happened that we don't have any facts to show that it
22 happened. Now, if he's got a showing that witness Jones
23 will not talk to him because he says this gag order
24 prohibits it, then that might be something else. But
25 until we have that, I would think the gag order should

1 stay in current form as it, clearly, doesn't apply to
2 witnesses.

3 THE COURT: Mr. Bannister, are you having -- do you
4 have --

5 MR. BANNISTER: Well, what I'm hearing the Solicitor
6 say is, I agree, it doesn't apply to witnesses. And,
7 therefore, I suggest that we put an I consent on the
8 proposed order and let the Solicitor sign off on it. And
9 this issue will be put to rest.

10 THE COURT: Well, what he is asking and what I'm
11 inquiring of you is whether or not you've had specific
12 refusals to talk about the case with the Defense team from
13 prosecution witnesses based on the gag order?

14 MR. BANNISTER: I can represent to the Court that,
15 yes, we've had specific refusals to speak to us with the
16 gag order being the referenced document as to why.

17 THE COURT: All right. Mr. Solicitor, anything? I
18 mean, is there any language of this proposed order that
19 you find offensive?

20 MR. ARIAIL: I haven't read the proposed order.

21 THE COURT: Here.

22 MR. BANNISTER: He's got it.

23 THE COURT: He's got it. Okay.

24 (Pause.)

25 MR. ARIAIL: Yes. I would strongly disagree.

1 I mean, Judge, what we're having happen here, this
2 order would be handed to a witness, if you were a lay
3 witness, and that witness would say -- or somebody could
4 say to that witness, the Judge is ordering you to talk to
5 me. And that is not the law. They have a right to talk
6 to them if they want. They have a right not to talk to
7 them. We instruct all of our witnesses that they have a
8 right to talk to Defense counsel or any agent of Defense
9 counsel, and they have a right not to. But it's their
10 decision.

11 This clarification -- and this is where I was going
12 with this. The clarification changes the onus of the
13 order and it may appear to the Court -- that the Court is
14 ordering a witness to talk with these people. And that is
15 not appropriate.

16 We can clarify the order and say it does not prohibit
17 a witness from talking, but that a witness is not
18 compelled to talk. And it's a witnesses decision as to
19 whether or not they want to talk. But I can see somebody
20 walking in with this order and saying, okay, I've got an
21 order from the Judge and you've got to talk to me. The
22 guy says, I don't want to talk to you. The Judge says you
23 have to. That's not the law.

24 So we would object to this order. I wouldn't object
25 to an order that says there's some concern that the prior

1 order is not clear. You're not prohibited by the prior
2 order from talking, if you wish to. You're not obligated
3 to do so. But if you wish to, you can.

4 THE COURT: Mr. Bannister, what's wrong with that?
5 To me, that's --

6 MR. BANNISTER: Judge, I mean, the order says you're
7 not prohibited from speaking to Defense counsel and
8 they're not prohibited from speaking to you. I don't
9 think it says anywhere in there that you're required to
10 speak to Defense counsel or members of our team. I mean,
11 in essence, it's exactly what the Solicitor has said. I
12 mean, if you want to add some language in there, just tell
13 me what you want to add and we can discuss it.

14 THE COURT: Well, it's not so much adding language as
15 it's -- I presume the Solicitor is referring to the second
16 sentence.

17 And then, also -- I mean, an order to clarify the gag
18 order should just be that it has been brought to the
19 Court's attention that there may be confusion with respect
20 to the parameters of the gag order. The Court would issue
21 this order to clarify those terms -- the terms of that
22 order. Therefore, it's shown that the -- none of the
23 provisions in the previously issued -- whatever the date
24 of the gag order -- prohibit a witness from speaking to
25 the Defense team or, I guess, you know, you could -- or

1 prevent the Defense team from speaking to the witnesses.

2 I mean, it just needs to -- I think it's sort of two
3 adversarial teams advocating their positions. I think the
4 language is not inappropriate as they would advance it.
5 But I do -- I'll tell you what. Just let me -- I'll write
6 one that will be -- hopefully, be neutral. And that
7 way -- and I'll send it to you before I sign it. And if
8 y'all have got some input on it, I'll be happy to --

9 MR. ARIAL: Our position is we don't want to stop
10 them from talking to people.

11 THE COURT: All right.

12 MR. ARIAL: But we don't want anybody not to talk to
13 them that wants to. We just don't want to force anybody
14 that doesn't want to.

15 THE COURT: And I think their position would be that
16 they don't want some witness to hold up the gag order and
17 say, well, we can't talk to you because of the gag order.

18 MR. BANNISTER: That's correct.

19 MR. ARIAIL: I don't have a problem with that.

20 THE COURT: All right. Well, we'll do that.

21 Now, let me -- everybody is aware of the July 30th
22 hearing date?

23 MS. STROM: I just hadn't told him.

24 THE COURT: Okay.

25 (Pause.)

1 THE COURT: We're going to do that in Pickens?

2 MR. BANNISTER: Yes, sir.

3 MR. ARIAIL: I think so.

4 THE COURT: And, also, I want to inform you that the
5 questionnaires are beginning to arrive in the Clerk's
6 Office. So I guess we ought to talk about how they're
7 disseminated.

8 MR. BANNISTER: I would like to be able to get them
9 as they come in, instead of --

10 THE COURT: Well, I'm not -- you know, it's kind of
11 hard for me to put an onus on the Clerk's Office over
12 there -- the staff is short -- for them to every time it
13 comes in that they provide it to you. They would,
14 certainly, cooperate and they will provide those to you.

15 MR. BANNISTER: My thought was that if we were
16 allowed -- you know, we could go up there and say, okay,
17 let's see what you've got, and then figure out which ones
18 we don't have, and run off copies. We could probably do
19 it in Mr. DeJong's office, if the Clerk's Office doesn't
20 want to run us a copy.

21 THE COURT: Well, the Clerk's Office over here runs
22 copies for everybody.

23 MR. ARIAIL: Right.

24 THE COURT: And that's what I'm going to propose that
25 we do. I'm not going to ask for a separate copy unless

1 there is one that becomes an issue. I don't want to
2 have -- there's no reason for me to have a separate copy,
3 unless there's an issue.

4 The ones that I anticipate that I will be looking at
5 would be the ones who have special requests or requests to
6 be removed from the panel. And we will have to
7 periodically from time to time discuss those.

8 Is a one week -- every Friday?

9 MR. BANNISTER: That's fine.

10 THE COURT: All right. I'll just tell the Clerk's
11 Office to have copies available, if Friday is good.

12 If you want them -- would you like it twice a week,
13 or once a week, or what do you want?

14 MR. BANNISTER: I think once a week is fine.

15 THE COURT: Is that good with the Solicitor?

16 MR. ARIAIL: Yes.

17 THE COURT: Okay. We'll tell them then to provide
18 those and have those ready on Fridays.

19 MR. ARIAIL: For each of us?

20 THE COURT: Yes, copies for each.

21 MR. ARIAIL: And the original would stay there?

22 THE COURT: Stay in Pickens.

23 MR. ARIAIL: We're not going to be going down there
24 and having people take the originals out and go copy them.

25 THE COURT: These are not -- this is not for public

1 dissemination.

2 MR. ARIAIL: Good.

3 MR. CULBERTSON: And the only other clarification I
4 would ask for Your Honor is, specifically, what time on
5 Friday? I don't want to have to send somebody over there
6 at 5:00 every Friday afternoon and --

7 THE COURT: Knowing your penchant for punctuality,
8 Mr. Culbertson --

9 MR. CULBERTSON: I was here on time, Your Honor.

10 THE COURT: -- what time would you all like to have
11 them available? 3:00?

12 MR. CULBERTSON: That's fine.

13 THE COURT: 3:00?

14 MR. ARIAIL: Whatever is comfortable with them.

15 THE COURT: Hopefully, they'll have the mail by 3:00
16 and they can get the copies.

17 Are there any other issues that we need to address at
18 this time that you all can think of?

19 MR. BANNISTER: No, Judge.

20 With regards to the order you're going to draft, I'm
21 anticipating that you would expect a response from us
22 before the end of the day today.

23 THE COURT: Yes.

24 MR. BANNISTER: That way, we can get it done sooner,
25 rather than later.

1 THE COURT: Right.

2 What's the date of the gag order?

3 Do you have it?

4 MR. ARIAIL: August 15, 2006, filed August 17th.

5 (Pause.)

6 THE COURT: We'll get something -- do you want me to
7 e-mail it to you? We'll e-mail it to you this morning.

8 MR. BANNISTER: That will be fine.

9 MR. ARIAIL: That's fine.

10 THE COURT: Anything else?

11 (There was no response.)

12 THE COURT: Thank you very much.

13 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 18th day of July, 2008.

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

September 14, 2009

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
JERRY BUCK INMAN,)
)
DEFENDANT.)
_____)

2006-GS-39-2222 - 2225

TRANSCRIPT OF RECORD

JULY 30, 2008
PICKENS, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

ROBERT M. ARIAIL, 13TH CIRCUIT SOLICITOR
BETTY C. STROM, DEPUTY SOLICITOR

ATTORNEYS FOR DEFENDANT:

JAMES W. BANNISTER, ESQUIRE
SYMMES W. CULBERTSON, ESQUIRE
JOHN W. DeJONG, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

CERTIFICATE OF REPORTER

44

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 THE COURT: MR. BANNISTER.

2 MR. BANNISTER: THANK YOU, YOUR HONOR. JIM BANNISTER
3 HERE ON BEHALF OF THE DEFENDANT, JERRY OWEN, I MEAN, JERRY
4 INMAN.

5 YOUR HONOR, OBVIOUSLY WE'RE HERE BECAUSE WE FILED A
6 NUMBER OF MOTIONS. AND BEFORE I GET INTO THOSE MOTIONS
7 THERE'S SOMETHING I NEED TO INFORM THE COURT ABOUT. I'VE
8 TOLD THE SOLICITOR INFORMALLY, LET ME PUT IT ON THE
9 RECORD, THAT MAY IMPACT HOW YOU DETERMINE SOME OF THESE
10 MOTIONS OR WHETHER OR NOT THEY ARE, IN FACT, NECESSARY TO
11 DECIDE TODAY.

12 AS YOU'LL RECALL AT ONE OF OUR PREVIOUS HEARINGS WE
13 PUT FORWARD THE PROPOSITION THAT IN A DEATH PENALTY CASE A
14 CAPITAL DEFENDANT HAS THREE POTENTIAL ALTERNATIVES. ONE
15 WOULD BE TO PROCEED WITH A JURY TRIAL/JURY SENTENCING.
16 THE OTHER WOULD BE A GUILTY PLEA/JUDGE SENTENCING. AND
17 THEN WE PROPOSE THAT THERE WAS A THIRD OPTION. AND THAT
18 WAS TO HAVE A GUILTY PLEA AND A JURY SENTENCING.

19 OBVIOUSLY, THE RECORD SPEAKS FOR ITSELF, BUT THE
20 THIRD OPTION WAS DETERMINED NOT TO BE AVAILABLE TO US,
21 WHICH LEAVES TWO, A JURY TRIAL/JURY SENTENCING, GUILTY
22 PLEA OR JUDGE SENTENCING. SINCE THAT HEARING WE HAVE BEEN
23 IN DISCUSSIONS WITH MR. INMAN, THE ENTIRE DEFENSE TEAM,
24 AND HE HAS INDICATED TO US THAT HE STILL WISHES TO TENDER
25 HIS GUILTY PLEA.

1 I BELIEVE THAT'S GOING TO ENTAIL A NUMBER OF LEGAL
2 ISSUES THAT WE ARE GOING TO HAVE TO GO THROUGH TO
3 DETERMINE WHETHER THE COURT WOULD ACCEPT THE PLEA. BUT I
4 WANTED TO LET THE COURT KNOW THAT WE WOULD LIKE TO PICK A
5 DATE, PREFERABLY SOMETIME PRIOR TO SEPTEMBER THE 8TH WHERE
6 WE COULD GO THROUGH THESE ISSUES FORMALLY, TENDER HIS
7 GUILTY PLEA.

8 AND THEN WHERE WE GO FROM THERE, WE WOULD HAVE ENOUGH
9 TIME BETWEEN THAT DATE AND THE BEGINNING OF TRIAL ON
10 SEPTEMBER THE 8TH. IF WE DIDN'T NEED THE JURY, WE COULD
11 EXCUSE THEM. IF WE STILL NEEDED THEM, THEN THEY WOULD BE
12 THERE, AND WE WOULD STILL BE PREPARED TO GO FORWARD AT
13 THAT TIME.

14 SO I GUESS MY REQUEST AT THIS POINT IS PLEASE
15 CONSIDER A DATE MAYBE LATE AUGUST, LAST WEEK OF AUGUST
16 WHERE WE COULD HAVE THAT HEARING. AND THEN I THINK THAT
17 WOULD BE A SUBSTANTIAL HEARING, BUT WE NEED TO SEE WHERE
18 WE GET AT THE END OF THAT AND HAVE ENOUGH TIME TO PREPARE
19 FOR -- HOW THAT'S GOING TO IMPACT THE ACTUAL TRIAL OF THE
20 CASE.

21 THE COURT: ALL RIGHT. ANYTHING FROM THE SOLICITOR?

22 MR. ARIAIL: NO, YOUR HONOR.

23 THE COURT: I DON'T CARRY A LITTLE POCKET CALENDAR
24 ANYMORE 'CAUSE I GOT THIS COMPUTER, BUT I DON'T KNOW HOW
25 TO WORK IT. SO ...

1 (PAUSE)

2 THE COURT: WELL, I WOULD SUGGEST AUGUST 26TH.

3 MR. BANNISTER: AND THAT -- WHAT DAY OF THE WEEK IS
4 THAT, YOUR HONOR?

5 THE COURT: THAT IS A TUESDAY.

6 MR. BANNISTER: I THINK THAT WOULD BE FINE WITH US,
7 YOUR HONOR.

8 MR. ARIAIL: THOUGHT I HAD A PLEA CALENDAR, BUT I
9 DON'T.

10 THE COURT: THAT'S THE LAST TUESDAY IN AUGUST.

11 MR. ARIAIL: THAT'S WHAT?

12 THE COURT: THE LAST TUESDAY IN AUGUST.

13 MR. ARIAIL: I THINK THAT LOOKS GOOD FOR ME.

14 THE COURT: ALL RIGHT. WHY DON'T WE SAY AT 10:30 IN
15 THE MORNING? HOW IS THAT?

16 MR. ARIAIL: (AFFIRMATIVE NOD).

17 MR. BANNISTER: THAT'LL BE FINE, YOUR HONOR.

18 THE COURT: ALL RIGHT.

19 MR. BANNISTER: WITH THAT SAID, YOUR HONOR, IF I MAY,
20 I'LL PROCEED TO THE MOTIONS THAT WE FILED ON BEHALF OF THE
21 DEFENDANT.

22 THE FIRST ONE I WOULD LIKE TO ADDRESS WAS OUR MOTION
23 TO REQUIRE THE STATE TO NOTIFY THE DEFENDANT OF THE
24 SPECIFIC AGGRAVATION. YOUR HONOR, AT THE TIME I FILED
25 THAT MOTION, WHICH WAS JULY THE 11TH, AT THAT POINT I HAD

1 NOT RECEIVED ANY INFORMATION ABOUT WHAT WOULD BE THE
2 AGGRAVATION THE STATE INTENDED TO PRODUCE AT THE
3 DEFENDANT'S TRIAL.

4 SINCE THAT TIME I'VE RECEIVED A -- I'VE RECEIVED A
5 LIST OF ITEMS THAT THE STATE INTENDS TO USE AS
6 AGGRAVATION. AND FURTHERMORE, I'VE ALSO, IN THEIR
7 RESPONSE, YOUR HONOR, THEY CITE TO STATE VERSUS PLATH FOR
8 THE PROPOSITION THAT WHEN THE STATE PROVIDES THE ENTIRE
9 FILE TO THE DEFENDANT, THEN NOTICE OF AGGRAVATION IS
10 SATISFIED.

11 AT THIS POINT I DON'T HAVE ANY OBJECTION TO THE
12 NOTICE OF AGGRAVATION THAT HAS BEEN FILED TO THIS POINT.
13 BUT BASED ON THE FACT THAT PART OF THE BASIS FOR SAYING
14 WE'VE BEEN GIVEN NOTICE OF AGGRAVATION, I'D LIKE TO AT
15 LEAST EXPLORE THE OPPORTUNITY TO MAKE SURE THAT OUR FILE
16 HAS EVERYTHING THAT THE SOLICITOR'S FILE HAS IN IT.

17 AND I DO THAT FOR TWO REASONS. ONE, IT'S A
18 SUBSTANTIAL FILE. SO THERE'S ALWAYS THE POSSIBILITY THAT
19 INADVERTENTLY SOME DOCUMENTS DIDN'T GET COPIED WHEN IT WAS
20 GOING THROUGH THE MACHINE. BUT ALSO FROM OUR STANDPOINT,
21 THE DEFENSE TEAM, THE FILE ITSELF HAS BEEN IN A NUMBER OF
22 PLACES BECAUSE OF SOME OF THE ISSUES REGARDING COUNSEL AND
23 LEAD COUNSEL AND THAT SORT OF THING.

24 SO JUST FOR MY OWN SATISFACTION I'D LIKE TO SEE IF
25 THE STATE WOULDN'T HAVE -- WOULDN'T CONSENT TO SETTING A

1 MUTUALLY CONVENIENT TIME FOR SOMEBODY FROM THE DEFENSE
2 TEAM TO SIT DOWN AND JUST MAKE SURE WE'VE GOT EVERYTHING
3 RELEVANT TO THEIR FILE.

4 THE COURT: SOLICITOR, YOU HAVE ANY OBJECTION TO
5 DOING THAT?

6 MR. ARIAIL: I DON'T HAVE ANY OBJECTION BECAUSE I'M
7 SURE WE'VE ALREADY DONE IT. IT'S JUST A PRACTICAL
8 COMPLICATED EVENT AS TO HOW WE WOULD GO ABOUT IT. I
9 ASSUME WE CAN FIGURE OUT SOME WAY TO DO THAT. THE
10 PROBLEM'S GOING TO BE THAT NOW OUR FILE HAS GOT WORK-
11 PRODUCT IN IT ALSO.

12 THE COURT: WELL, I DON'T THINK HE'S SUGGESTING ---

13 MR. ARIAIL: I UNDERSTAND THAT. IT'S JUST -- IT
14 MEANS WE'D HAVE TO GO BACK AND BACK OUT, I THINK. ALL
15 RIGHT. I THINK WHAT WE CAN DO, MELITA GRAHAM, MY
16 PARALEGAL, CAN MEET WITH ANYBODY, AND THEY CAN GO OVER THE
17 FILE. WE KEEP IT IN A SEPARATE SECURE LOCATION FOR
18 EVERYTHING WE GIVE TO THEM SO THAT IF WE EVER HAVE A
19 QUESTION ABOUT THAT THEY CAN GO THROUGH THAT.

20 THE COURT: ALL RIGHT. YOU WANT TO JUST ARRANGE A
21 ...

22 MR. BANNISTER: YES, SIR. I THINK ---

23 THE COURT: DATE AND TIME ---

24 MR. BANNISTER: --- WE CAN ARRANGE THAT BETWEEN MY
25 OFFICE AND THE SOLICITOR'S OFFICE.

1 THE COURT: OKAY.

2 MR. BANNISTER: I DON'T SEE THAT AS A PROBLEM.

3 THE COURT: ALL RIGHT.

4 MR. ARIAIL: LET ME SAY ONE THING ON THAT. THERE IS
5 SOMETHING WE NEED TO TALK ABOUT TODAY. AND MR. BANNISTER
6 AND I HAVE DISCUSSED IT. THE EVIDENCE THAT THEY WANTED,
7 WE TURNED OVER TO THE DEFENSE FOR THEM TO FORWARD TO
8 VARIOUS EXPERTS THAT THEY WANTED. THAT EVIDENCE IS NOT
9 BACK. SO WE DON'T HAVE THAT YET. HE BELIEVES HE'LL HAVE
10 IT BACK BY FRIDAY. AND WE WOULD NEED TO THEN PUT THAT
11 BACK IN THE APPROPRIATE EVIDENCE LOCATION FOR THEM TO LOOK
12 AT THAT.

13 ALSO I JUST WANTED -- IN THE EVENT WE ENCOUNTER SOME
14 PROBLEM IN GETTING THAT EVIDENCE BACK I WANTED TO ALERT
15 THE COURT BECAUSE WE MAY NEED TO COME BACK TO GET SOME
16 ASSISTANCE FROM YOU IF THAT BECOMES A PROBLEM IN GETTING
17 IT BACK TIMELY.

18 THE COURT: ALL RIGHT.

19 MR. BANNISTER: JUDGE, THE NEXT MOTION I'D LIKE TO
20 ADDRESS IS THE MOTION IN LIMINE REGARDING THE GRAPHIC
21 PHOTOGRAPHIC EVIDENCE. WHAT WE'VE BEEN PROVIDED TODAY
22 INCLUDES CRIME SCENE PHOTOS.

23 IN THOSE PHOTOS THERE ARE BASICALLY TWO SETS OF
24 PHOTOS. ONE SET OF PHOTOS INCLUDES THE CRIME SCENE
25 WITHOUT ANY PICTURES OF THE VICTIM. THE OTHER SET OF

1 PHOTOS WOULD INCLUDE FAIRLY GRAPHIC PICTURES OF THE
2 VICTIM. SHE'S IN VARIOUS STATES OF UNDRESS. AND
3 OBVIOUSLY THEY'RE VERY -- THEY'RE VERY DIFFICULT PICTURES
4 TO VIEW.

5 BUT WHAT I HAVE -- WHAT I'M SEEING FROM THE RESPONSE
6 OF THE SOLICITOR IS -- I'M SORRY, AND THERE ALSO ARE
7 AUTOPSY PHOTOS. NOW I HAVE SEEN THE AUTOPSY PHOTOS, BUT
8 HAVE NOT BEEN PROVIDED WITH A COPY OF THOSE.

9 THUS FAR I'VE BEEN TOLD THAT THE SOLICITOR'S OFFICE
10 DOES NOT ANTICIPATE PUTTING IN ANY AUTOPSY PHOTOS. SO
11 THAT ISSUE APPARENTLY IS NOT GOING TO BE BEFORE THE COURT
12 ON WHETHER THOSE SHOULD COME IN OR NOT. THEY'RE JUST NOT
13 GOING TO TRY TO INTRODUCE THEM.

14 I'VE ALSO BEEN TOLD THAT WE WILL BE NOTIFIED AS TO
15 WHICH PICTURES THE STATE INTENDS TO INTRODUCE THAT WOULD
16 POTENTIALLY INCLUDE THE CRIME SCENE PHOTOS THAT ALSO HAVE
17 THE VICTIM IN THE PHOTO. I'M NOT OPPOSED TO HOLDING OFF
18 ON HAVING A JUDICIAL DETERMINATION OF WHICH PHOTOS COME IN
19 OR NOT ONCE THEY'VE CULLED OUT THE ONES THEY'RE NOT GOING
20 TO USE.

21 BUT WHAT I AM CONCERNED ABOUT IS I THINK WE NEED TO
22 -- AND I THINK WE CAN, AGAIN, WORK THIS OUT. BUT WE NEED
23 A DEADLINE ON WHEN WE'RE GOING TO DO THAT SO THAT I CAN
24 THEN -- INSTEAD OF WASTING THE TIME OF GOING THROUGH ALL
25 THE PHOTOS TODAY, WHICH I'M PREPARED TO DO, I'D LIKE TO

1 HAVE ENOUGH TIME TO SAY, OKAY, THESE ARE THE FOUR, FIVE,
2 TWO, ONE, WHATEVER, AND THESE ARE OUR OBJECTIONS.

3 SO I'D LIKE TO SUGGEST IN THE NEXT TWO WEEKS WE GET
4 TOGETHER AND SAY, WITH THE SOLICITOR, Y'ALL NOTIFY ME
5 WHICH ONES YOU'RE GOING TO INTRODUCE OR TEND TO INTRODUCE,
6 AND THEN I CAN MAKE A SPECIFIC OBJECTION TO ANY OR ALL OF
7 THEM.

8 MR. ARIAIL: AND WE DON'T HAVE AN OBJECTION ---

9 THE COURT: OKAY.

10 MR. ARIAIL: THE DEADLINE IS THE ONLY CONCERN. AND
11 SINCE WE'RE GOING TO COME BACK ON AUGUST THE 26TH, THAT
12 SEEMS TO BE SORT OF A GOOD DAY TO TAKE THAT UP. WE'LL
13 MAKE EVERY EFFORT TO GET TO HIM THE PHOTOGRAPHS THAT WE
14 IDENTIFY THAT WE BELIEVE WE'RE GOING TO USE.

15 AS TO THE AUTOPSY, HE'S CORRECT. WE DON'T INTEND TO
16 USE AUTOPSY PHOTOGRAPHS. NOW THE ONLY CAVEAT I WOULD
17 BRING TO THAT IS THAT IF DURING THE COURSE OF CROSS
18 EXAMINATION THE PATHOLOGIST WERE CALLED UPON TO JUSTIFY
19 SOME FINDING, ET CETERA, HE MAY WANT TO REFER TO THOSE
20 PHOTOGRAPHS TO BACK IT UP. SO WE DON'T INTEND TO PUT THEM
21 IN AS PART OF THE CASE IN CHIEF, BUT IF IT BECAME AN ISSUE
22 AS TO THAT WE MIGHT WANT TO FALL BACK ON THAT.

23 THE COURT: OKAY. WELL, THERE'S NOT GOING TO BE AN
24 ORDER ABOUT WHAT EVIDENCE IS IN AND WHAT'S NOT. THIS IS
25 BY AGREEMENT, IS THAT CORRECT?

1 MR. BANNISTER: AT THIS POINT, JUDGE, LET ME SAY THAT
2 AUGUST THE 26TH IS SUFFICIENT IF THEY GIVE US NOTICE
3 BEFORE THEN SO WE CAN COME IN AND HAVE A HEARING ON
4 WHETHER THE PHOTOS SHOULD COME IN, THAT'LL BE FINE.
5 AUGUST THE 26TH, THAT SUITS ME. I'LL JUST -- I GUESS THIS
6 MOTION WILL JUST BE HELD IN ABEYANCE UNTIL WE'VE HAD A
7 CHANCE TO SEE WHAT PHOTOS THEY WANT TO INTRODUCE.

8 I'D LIKE TO, AGAIN, STATE ON THE RECORD I DON'T HAVE
9 THE AUTOPSY PHOTOS. SO IF THERE'S ANY CHANCE THOSE COULD
10 COME IN, I NEED TO GET A COPY OF THOSE.

11 MR. ARIAIL: WELL, WE DO -- YOU DO HAVE THEM.
12 THEY'RE ON A DISK.

13 MR. BANNISTER: OKAY. WELL, I'LL GO BACK ---

14 MR. ARIAIL: THERE'S A DISK OF ALL THOSE. IF THEY
15 DON'T HAVE THE DISK, WE'LL PROVIDE THEM WITH A COPY OF THE
16 DISK. BUT THEY'RE ON -- THEY AREN'T PRINTED, THEY'RE ON A
17 DISK.

18 MR. BANNISTER: UNDERSTOOD. THANK YOU, YOUR HONOR.

19 JUDGE, THE NEXT MOTION THAT THE DEFENSE HAD WAS A
20 MOTION TO PROHIBIT THE INTRODUCTION OF DEFENDANT'S PRIOR
21 CONVICTIONS AS NON-STATUTORY AGGRAVATION.

22 YOUR HONOR, AS I UNDERSTAND IT THERE ARE A NUMBER OF
23 PRIOR CONVICTIONS ON THE DEFENDANT'S RECORD, BUT TWO OF
24 THEM IN PARTICULAR ARE -- HE HAS A CRIMINAL SEXUAL CONDUCT
25 CHARGE THAT EMANATES OUT OF NORTH CAROLINA. THERE'S A

1 CRIMINAL SEXUAL CONDUCT CHARGE THAT COMES FROM FLORIDA.

2 THE BASIS OF MY ARGUMENT IS THE STATUTORY LANGUAGE OF
3 SECTION 16-3-20 SUBSECTION (C), WHICH SPECIFICALLY STATES
4 THAT THE JUDGE SHALL CONSIDER OR HE SHALL INCLUDE
5 INSTRUCTIONS TO THE JURY FOR IT TO CONSIDER MITIGATING
6 CIRCUMSTANCES THAT ARE AUTHORIZED OR ALLOWED BY LAW. AND
7 THEN IT SAYS, AND STATUTORY AGGRAVATORS AND STATUTORY
8 MITIGATORS.

9 CRIMINAL STATUTES ARE TO BE STRICTLY CONSTRUED
10 AGAINST THE STATE. IT WOULD BE OUR POSITION THAT STRICTLY
11 CONSTRUING THAT STATUTE AGAINST THE STATE WOULD LIMIT THE
12 STATE TO PRESENTING THOSE AGGRAVATORS THAT ARE LISTED IN
13 SUBSECTION (C) (A) UNDER 16-3-20.

14 YOUR HONOR, I'D HAVE TO SAY THOUGH AS AN OFFICER OF
15 THE COURT THAT I AM AWARE OF STATE VERSUS PLATH. THAT
16 CASE HAS BEEN CITED FOR THE PROPOSITION THAT PRIOR
17 CONVICTIONS COME IN AND THAT THEY COME IN UNDER -- THAT
18 THEY'RE APPROPRIATE DURING THE SENTENCING PHASE OF A
19 CAPITAL TRIAL.

20 BUT, JUDGE, AS YOU KNOW, ISSUES THAT AREN'T RAISED AT
21 THIS POINT MAY ULTIMATELY BE DEEMED WAIVED. SO I WANT TO
22 PUT ON THE RECORD THAT I BELIEVE THE STATUTE, IF YOU
23 STRICTLY CONSTRUE IT, WOULD PROHIBIT THE INTRODUCTION OF
24 ANYTHING OTHER THAN THE AGGRAVATORS THAT ARE LISTED.

25 I ALSO WOULD POINT OUT, AND IF YOU READ PLATH YOU SEE

1 THAT THEY ARE TALKING ABOUT PRIOR CONVICTIONS, BUT THE
2 PRIOR CONVICTIONS IN PLATH ARE COMING IN IN A RE-
3 SENTENCING HEARING. THAT CASE IS ACTUALLY DECIDED UNDER
4 SECTION 16-3-25, WHICH GOVERNS RE-SENTENCING IN CAPITAL
5 TRIALS.

6 AND THE CONVICTIONS THEMSELVES INITIALLY CAME IN
7 DURING THE TRIAL OF MR. PLATH WHEN HE TOOK THE STAND
8 DURING THE TRIAL PHASE. THOSE PRIOR CONVICTIONS WERE USED
9 TO IMPEACH HIM AND FOR OTHER PURPOSES. SO THEY WERE
10 ALREADY IN THE CASE. AND ULTIMATELY THE DECISION THAT WAS
11 HANDED DOWN IN THE REPORTED CASE WAS SAYING UNDER THE RE-
12 SENTENCING STATUTE, WE BELIEVE THOSE PRIOR CONVICTIONS
13 COME IN.

14 SO TO THE EXTENT THAT THIS ISSUE HAS NOT SPECIFICALLY
15 BEEN ADDRESSED AT THE STAGE OF THE PROCEEDINGS WE ARE IN
16 RIGHT NOW, I SIMPLY PUT BEFORE THE JUDGE THAT THAT
17 SUBSECTION (C), CONSTRUING IT STRICTLY, BASICALLY SAYS THE
18 ONLY AGGRAVATION THAT CAN COME IN IS THAT WHICH IS SET OUT
19 IN THE STATUTE.

20 THE COURT: ALL RIGHT.

21 MR. BANNISTER: THANK YOU.

22 MR. ARIAIL: YOUR HONOR, WE RELY ON OUR RESPONSE, THE
23 WRITTEN RESPONSE AS SETTING FORTH THE LAW. I WOULD POINT
24 YOU TO A PARTICULAR CASE WE HAVE CITED, STATE VERSUS
25 SKIPPER, WHICH IS IN PARAGRAPH FOUR.

1 IT SAYS -- THE PARTICULAR LANGUAGE OF SKIPPER SAYS IN
2 A CASE WITH AGGRAVATING CIRCUMSTANCES OF CRIMINAL SEXUAL
3 CONDUCT THE STATE WAS ENTITLED TO INTRODUCE DETAILS OF
4 PRIOR RAPE WHICH RESULTED IN CONVICTION IN ORDER TO SHOW
5 THE CHARACTERISTICS OF THE DEFENDANT.

6 SO IT'S OUR POSITION THAT ANY -- IF THERE ARE PRIOR
7 CONVICTIONS AND THEY'RE DEEMED ADMISSIBLE BY THE COURT,
8 THE CIRCUMSTANCES OF THOSE PRIOR CONVICTIONS, THE FACT OF
9 THEM AND THE CIRCUMSTANCES OF THOSE CRIMES ARE OBVIOUSLY
10 ADMISSIBLE IN A SENTENCING PROCEEDING.

11 THAT IS -- AT LEAST THAT'S MY UNDERSTANDING OF WHAT A
12 SENTENCING PROCEEDING IS. IT'S THE COURT OR THE JURY TO
13 COME TO UNDERSTAND THE FULL NATURE OF THE CRIME, THE
14 BACKGROUND OF THE DEFENDANT, HIS CHARACTER,
15 CHARACTERISTICS. THOSE THINGS THAT WOULD ALLOW A
16 SENTENCING BODY TO TAILOR A SENTENCE BETWEEN LIFE AND
17 DEATH THAT WOULD BE APPROPRIATE. TO EXCLUDE EVIDENCE
18 OTHER THAN THE STATUTORY AGGRAVATING CIRCUMSTANCES WOULD
19 MAKE THAT PARTICULAR PROCEEDING ALMOST MEANINGLESS.

20 THE COURT: ALL RIGHT. ANYTHING?

21 MR. BANNISTER: JUDGE, I ONLY JUST WANT TO ADD THAT I
22 CERTAINLY DON'T WANT TO PREJUDICE MYSELF WITH REGARD TO
23 ANY 403 ISSUES. I GUESS I'M TALKING ABOUT INITIALLY THE
24 ADMISSIBILITY OF THIS EVIDENCE. BUT OBVIOUSLY ONCE IT'S
25 DEEMED, ASSUMING IT'S DEEMED ADMISSIBLE, THEN WE'RE GOING

1 TO NEED TO ALSO GO THROUGH A WEIGHING TO DETERMINE WHETHER
2 IT'S UNDULY PREJUDICIAL IN A TYPICAL 403 ANALYSIS.

3 I THINK THAT'S GOING TO BECOME MORE OF AN ISSUE AS WE
4 SORT OF PROCEED THROUGH SOME OF THESE OTHER ISSUES THAT I
5 FILED MOTIONS ON. BUT I JUST WANT TO SAY THAT I DON'T
6 WANT TO BE PREJUDICED WITH REGARD TO RAISING AN OBJECTION
7 TO THAT, ON THAT BASIS.

8 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING. AND AT
9 THIS POINT, IN THIS EARLY STAGE OF THE PROCEEDINGS, I
10 WOULD BE INCLINED TO ALLOW THAT EVIDENCE. BUT, OF COURSE,
11 IT WILL BE -- IT WILL BE ADDRESSED AT A LATER TIME AT THE
12 -- AS WE PROGRESS THROUGH THE PROCEEDING. OKAY.

13 MR. BANNISTER: YOUR HONOR, WITH THAT THEN, LET ME
14 MOVE TO OUR MOTION TO PROHIBIT THE INTRODUCTION OF
15 UNADJUDICATED CRIMINAL CONDUCT.

16 AND, JUDGE, JUST TO BE ABSOLUTELY CERTAIN THAT I'M
17 CLEAR ON THIS, WHAT I'M TALKING ABOUT AT THIS POINT,
18 AGAIN, IS THE -- ASSUMING WE'RE AT A SENTENCING PHASE OF
19 THIS CAPITAL TRIAL, BASED ON THE INFORMATION THAT THE
20 SOLICITOR'S OFFICE HAS PROVIDED TO ME, I SEE THAT THERE
21 ARE AT LEAST TWO UNADJUDICATED CRIMES THAT ARE PRESENT IN
22 THE MATERIALS I'VE BEEN GIVEN. ONE OF THEM INVOLVES A
23 CRIMINAL SEXUAL CONDUCT CHARGE FROM TENNESSEE. THE OTHER
24 INVOLVES AN ATTEMPTED CRIMINAL SEXUAL CONDUCT CHARGE OR
25 ITS EQUIVALENT OUT OF ALABAMA.

1 ANTICIPATING THAT THE SOLICITOR INTENDS TO INTRODUCE
2 EVIDENCE OF BOTH OF THOSE, AT THIS POINT, PENDING CRIMES,
3 THAT IS WHAT THIS MOTION IS GEARED TOWARDS. IF YOU
4 UNDERSTAND WHAT I MEAN BY ---

5 THE COURT: CORRECT.

6 MR. BANNISTER: --- THE PROCEDURE WHERE I EXPECT THAT
7 THIS WILL BECOME AN ISSUE. JUDGE, THERE ARE A NUMBER OF
8 -- THERE ARE A NUMBER OF PROBLEMS WITH UNADJUDICATED
9 CRIMES EVEN IN THE CONTEXT OF A SENTENCING PROCEEDING.
10 BUT LET ME JUST START BY SAYING THAT THE -- THE STATE HAS
11 CITED THREE CASES FOR THE PROPOSITION THAT THIS IS
12 APPROPRIATE EVIDENCE AT A SENTENCING PROCEEDING.

13 I SUSPECT THAT THE FIRST CASE THAT'S CITED MAY BE
14 JUST A CLERICAL ERROR 'CAUSE I CAN'T FOR THE LIFE OF ME
15 FIGURE OUT WHAT THAT CASE HAS TO DO WITH THIS PARTICULAR
16 ISSUE. I'VE READ IT AND I JUST DON'T -- SOMEONE WILL HAVE
17 TO GIVE ME A LITTLE BETTER UNDERSTANDING OF WHAT IT HAS TO
18 DO WITH THIS CASE.

19 BUT STATE VERSUS GASKINS IS THE OTHER CASE THAT THE
20 STATE CITES FOR THE PROPOSITION THAT UNADJUDICATED
21 CRIMINAL CONDUCT IS APPROPRIATE AT THE SENTENCING
22 PROCEEDING. AND, YOUR HONOR, IF YOU GIVE A CLOSE READING
23 OF THAT CASE WHAT YOU FIND IS THAT COUNSEL IN THAT CASE
24 APPARENTLY OBJECTED TO AND ASKED FOR A CURATIVE
25 INSTRUCTION ABOUT UNADJUDICATED CRIMINAL CONDUCT THAT CAME

1 IN DURING THE TRIAL OF THE SENTENCING PHASE OF THE CASE.

2 AND WHAT THE APPELLATE COURT SAYS WHEN THE RECORD
3 SHOWS THAT OBJECTIONABLE EVIDENCE WAS EITHER DISALLOWED OR
4 STRUCK OUT BY A MOTION AND THE JURY INSTRUCTED TO
5 DISREGARD IT, THE APPELLANT CANNOT COMPLAIN.

6 SO WHAT HAPPENED APPARENTLY IN GASKINS IS THE
7 APPELLATE COURT IS SAYING, YOU'RE RIGHT, THAT
8 UNADJUDICATED CRIMINAL CONDUCT, THE FACT THAT SOME OF IT
9 GOT -- CAME IN OR THAT THE JURY HEARD IT, THE JUDGE TOLD
10 THEM THAT WAS NOT TO BE CONSIDERED, STRUCK IT FROM THE
11 RECORD, AND YOU DON'T HAVE A POSITION TO COMPLAIN. WELL,
12 WHAT THAT MEANS IS THAT IT, IN FACT, WAS INAPPROPRIATE TO
13 ALLOW THAT INTO EVIDENCE.

14 THE OTHER CASE THAT IS CITED FOR THE PROPOSITION THAT
15 UNADJUDICATED CRIMINAL CONDUCT SHOULD COME IN IS STATE
16 VERSUS HOWARD. IN THAT CASE THE -- IT'S A BIT COMPLICATED
17 FROM A FACTUAL STANDPOINT, BUT I GUESS THE ESSENCE OF THE
18 CASE IS THAT THE -- THERE WAS A CONFESSION FROM TWO CO-
19 DEFENDANTS. IT INCLUDED A LOT OF CRIMINAL CONDUCT. IT
20 INCLUDED CRIMINAL CONDUCT BEYOND WHAT THEY WERE ON TRIAL
21 FOR IN THE DEATH PENALTY CASE.

22 THE CONFESSIONS CAME IN DURING THE TRIAL PHASE OF THE
23 CASE. THERE WERE A NUMBER OF OBJECTIONS THAT WERE MADE TO
24 THE CONFESSIONS COMING IN. AND THEY WERE SORT OF THE
25 STANDARD OBJECTIONS TO A CONFESSION YOU WOULD EXPECT AT

1 THE TRIAL PHASE.

2 THEY SAID THERE WAS NO PROOF OF THE *CORPUS DELICTI* OF
3 THE CRIME OTHER THAN THE CONFESSION. THEY SAID THAT THEIR
4 5TH AMENDMENT HAD BEEN VIOLATED AND, THEREFORE, THE
5 CONFESSION SHOULD NOT COME IN. THEY ALLEGED THAT THEIR
6 6TH AMENDMENT RIGHT TO COUNSEL AT THE TIME OF THE
7 CONFESSION HAD BEEN VIOLATED AND, THEREFORE, IT SHOULD NOT
8 COME IN.

9 THEY ALSO ALLEGED THAT THEY HAD BEEN GIVEN PROMISES
10 OF LENIENCY IN ORDER TO INDUCE THE CONFESSION AND,
11 THEREFORE, IT SHOULD HAVE BEEN SUPPRESSED UNDER JACKSON V.
12 DENNO. FINALLY, THEY ALSO ALLEGED THEY HAD BEEN DEPRIVED
13 OF THEIR RIGHT TO HAVE TWO ATTORNEYS UNDER THE DEATH
14 PENALTY STATUTE WHEN THE CONFESSION WAS BROUGHT IN AT THE
15 TRIAL PHASE.

16 THE EXACT SAME OBJECTIONS WERE MADE WHEN THE
17 CONFESSIONS CAME IN DURING THE SENTENCING PHASE. AND THE
18 APPELLATE COURT DEALT WITH THOSE SORT OF SUMMARILY BY
19 SAYING THE TRIAL JUDGE ALLOWED INTO EVIDENCE CONFESSIONS
20 OF APPROXIMATELY SEVENTY OTHER ARMED ROBBERIES AND THE
21 MURDER OF ANOTHER VICTIM BY SUFFOCATION.

22 HE ARGUES THESE CONFESSIONS SHOULD HAVE BEEN
23 SUPPRESSED ON THE SAME GROUNDS RAISED IN THE ALLEGATIONS
24 OF GUILT PHASE ERROR. SO I DON'T BELIEVE THAT THAT CASE
25 IS GOING TO BE APPROPRIATE OR ADDRESS THE ISSUES THAT I'M

1 RAISING HERE ABOUT THESE PARTICULAR UNADJUDICATED CRIMES.

2 FACTUALLY THERE'S A SIGNIFICANT DIFFERENCE, YOUR
3 HONOR. IN THIS CASE WE DON'T HAVE ONE CONFESSION THAT
4 ENCOMPASSES A NUMBER OF DIFFERENT CRIMES. BASED ON THE
5 INFORMATION I HAVE YOU HAVE A CONFESSION TO THE CRIME HERE
6 IN SOUTH CAROLINA, TIFFANY SOUERS' CASE.

7 YOU HAVE A SEPARATE CONFESSION THAT DEALS WITH THE
8 TENNESSEE CASE. AND YOU HAVE A SEPARATE CONFESSION THAT
9 DEALS WITH THE ALABAMA CASE. AS AN ASIDE, NONE OF THE
10 CONFESSIONS ARE SIGNED, BUT THEY'RE CERTAINLY GIVEN AT
11 DIFFERENT POINTS IN TIME. AND THEY ARE DELINEATED IN
12 TERMS OF WHAT THE WRITTEN CONFESSION WOULD HAVE BEEN HAD
13 IT BEEN SIGNED.

14 ON TOP OF THAT, THESE CRIMES, I BELIEVE ARE ONLY
15 RELEVANT, IF FOR ANYTHING, TO THE DEFENDANT'S CHARACTER.
16 IF YOU TAKE A CLOSE LOOK AT THE CASES THAT INVOLVE PRIOR
17 UNADJUDICATED CONDUCT WHAT YOU FIND IS THAT WHEN IT COMES
18 INTO EVIDENCE IN A SENTENCING PHASE OF THE TRIAL IT'S
19 GENERALLY COMING IN FOR SOME OTHER PURPOSE. IT'S THE RES
20 GESTAE OF THE CRIME.

21 YOUR HONOR, I WAS INVOLVED IN STATE VERSUS JOHN
22 WOODS. THAT WAS A DEATH PENALTY CASE THAT WAS TRIED A
23 NUMBER OF YEARS AGO. IN THAT CASE A TROOPER WAS SHOT BY
24 THE DEFENDANT. AND THEN THERE WAS A CHASE THAT ENSUED
25 THAT WENT ACROSS A COUPLE OF THE COUNTIES, A NUMBER OF

1 SHOTS WERE FIRED BACK AND FORTH BETWEEN DEPUTY SHERIFFS
2 AND THE DEFENDANT IN THAT CASE.

3 THAT INFORMATION ULTIMATELY CAME IN. ACTUALLY IT
4 CAME IN DURING THE TRIAL PHASE, BUT IT PROBABLY WOULD HAVE
5 COME IN DURING THE SENTENCING AS WELL. BUT IT CAME IN FOR
6 A NUMBER OF DIFFERENT REASONS OTHER THAN THE CHARACTER OF
7 THE DEFENDANT. IT CAME IN TO SHOW THAT IN FACT THE
8 DEFENDANT WAS THE RIGHT PERSON. I MEAN, THERE WAS A
9 CHASE. THEY HAD TO TIE HIM TO THE INITIAL CRIME OF THE
10 TROOPER. IT CAME IN ALSO BECAUSE IT ALL HAPPENED WITHIN
11 ONE DAY. I MEAN, IT WAS ALL PART OF THE SAME CRIME.

12 THIS CASE IS DIFFERENT FROM THAT ONE AND THE OTHER
13 CITED CASES ABOUT PRIOR UNADJUDICATED CONDUCT BECAUSE THIS
14 CASE WOULD REPRESENT -- WOULD REALLY, I GUESS, TEE UP THE
15 ISSUE ABOUT WHETHER OR NOT A PRIOR UNADJUDICATED CRIME CAN
16 BE USED SOLELY FOR THE PURPOSE OF DEMONSTRATING THE
17 DEFENDANT'S CHARACTER.

18 HERE'S THE PROBLEMS THAT IT CREATES AND WHY I'VE
19 CITED TO DUE PROCESS AND FUNDAMENTAL FAIRNESS AS REASONS
20 WHY IT SHOULD NOT COME IN. YOUR HONOR'S PROBABLY AWARE OF
21 THE CAPITAL JURY PROJECT. THAT WAS A FEDERALLY FUNDED
22 RESEARCH PROJECT THAT WAS PRIMARILY BASED ON JURORS THAT
23 SAT IN CAPITAL CASES HERE IN SOUTH CAROLINA. AND IT WAS
24 AN ATTEMPT TO GET AT WHAT IS IMPORTANT TO JURORS, WHY
25 THEY'RE MAKING THE DECISIONS THEY DO WHEN THEY'RE DECIDING

1 BETWEEN LIFE OR DEATH IN THE SENTENCING CASE.

2 AND ONE OF THE STRONGEST CONCLUSIONS THAT CAME OUT OF
3 THAT CAPITAL JURY PROJECT, AND I'VE CITED THIS IN AT LEAST
4 ONE OF MY PRIOR MEMORANDUMS, WAS THAT THE DECISION OF
5 WHETHER OR NOT TO EXERCISE MERCY AND GIVE SOMEONE LIFE OR
6 TO IMPOSE THE DEATH PENALTY OFTEN TURNS ON WHETHER THE
7 DEFENDANT HAS EXPRESSED REMORSE AND HAS EXPRESSED
8 ACCEPTANCE OF RESPONSIBILITY. REMORSE AND ACCEPTANCE OF
9 RESPONSIBILITY ARE TYPICAL 8TH AMENDMENT MITIGATION THAT A
10 DEFENDANT CERTAINLY HAS AN OPPORTUNITY TO PUT IN AT THE
11 SENTENCING PHASE IF HE CHOOSES.

12 THE PROBLEM IN A CASE WHERE YOU'VE GOT UNADJUDICATED
13 CRIMINAL CONDUCT IS THE DEFENDANT ALSO HAS A 5TH AMENDMENT
14 RIGHT TO NOT INCRIMINATE HIMSELF REGARDING, IN THIS CASE,
15 THE TENNESSEE CHARGES AND THE ALABAMA CHARGES. HE
16 FURTHERMORE HAS A 6TH AMENDMENT RIGHT TO A JURY TRIAL ON
17 THOSE CHARGES AND A 14TH AMENDMENT DUE PROCESS RIGHT TO
18 EXERCISE HIS CONSTITUTIONAL RIGHTS DURING THOSE TRIALS
19 ASSUMING THEY'RE ULTIMATELY HELD.

20 THE POSITION HE IS THEN IN IN A SITUATION IN THE
21 SENTENCING PHASE OF THE TRIAL IS THAT NOW HE'S GOT A
22 CATCH-22. DO I EXERCISE MY 8TH AMENDMENT AND PUT BEFORE
23 THE SENTENCING, EITHER THE JURY OR THE JUDGE, THE FACT
24 THAT I ACCEPT RESPONSIBILITY FOR THESE CRIMES AND I'M
25 REMORSEFUL FOR THESE CRIMES AND THEREBY WAIVE MY 5TH

1 AMENDMENT AND ULTIMATELY MY 6TH AND 14TH AMENDMENT RIGHTS
2 TO HAVE THE CRIMES TRIED IN COURT IN TENNESSEE AND
3 ALABAMA?

4 OR DO I REMAIN SILENT AND EXERCISE MY 5TH, 6TH AND
5 14TH AMENDMENT RIGHTS AND NOT SAY ANYTHING ABOUT THOSE
6 CRIMES CONTESTING TO THE EXTENT I CAN IN A SENTENCING
7 PROCEEDING AND THEREBY WAIVE MY 8TH AMENDMENT RIGHT TO
8 PRESENT THE MITIGATION THAT I WOULD ACCEPT RESPONSIBILITY
9 FOR THEM AND REMORSEFUL FOR WHAT HAPPENED? THAT PUTS A
10 DIFFERENT CONSTITUTIONAL DIMENSION ON WHETHER THE PRIOR
11 UNADJUDICATED CRIMES SHOULD COME IN.

12 ON TOP OF THAT YOU HAVE THE ISSUE OF GETTING OVER THE
13 INITIAL THRESHOLD OF PROOF AS TO WHETHER OR NOT THEY COME
14 IN IN THE FIRST PLACE. AS I UNDERSTAND THE LAW THE COURT
15 WOULD HAVE TO CONDUCT SOME SORT OF HEARING TO DETERMINE
16 WHETHER OR NOT THERE'S ENOUGH EVIDENCE TO CONSIDER THIS
17 DEFENDANT AND THOSE UNADJUDICATED CRIMES. IN OTHER WORDS,
18 IS THERE ENOUGH THERE TO SAY THAT HE, IN FACT, DID THESE
19 CRIMES?

20 WELL, IN TENNESSEE THE VICTIM, AS I UNDERSTAND IT,
21 SHE PICKED SOMEONE DIFFERENT OUT OF A PHOTOGRAPHIC LINE-
22 UP. SO THAT WOULD OBVIOUSLY BE AN ISSUE FOR US ON THAT.
23 I'M NOT CERTAIN WHAT THE DNA EVIDENCE IS OUT OF TENNESSEE,
24 BUT BY THE TIME THE TENNESSEE CASE, IF THERE IS DNA
25 EVIDENCE, AND I BELIEVE THERE IS IN THAT CASE, THEY

1 ALREADY HAD MR. INMAN IN CUSTODY, AND CROSS CONTAMINATION
2 BECOMES A BIG ISSUE AT THAT POINT.

3 THE ALABAMA CASE, THERE ARE A NUMBER OF INDIVIDUALS
4 THAT APPARENTLY WERE PERSONS OF INTEREST. THEY'VE GOT
5 PICTURES OF OTHER PEOPLE. SO -- AND I DON'T BELIEVE
6 THERE'S ANY PHYSICAL EVIDENCE FROM ALABAMA. BUT THOSE ARE
7 ALL GOING TO BE ISSUES IF WE EVEN GET TO THE POINT WHERE
8 YOUR HONOR WOULD BE WILLING TO CONSIDER ALLOWING THIS
9 EVIDENCE TO COME IN DURING THE SENTENCING PHASE.

10 ASSUMING WE GET PAST THE CONSTITUTIONAL ISSUES AND
11 JUST THE BASIC EVIDENTIARY ISSUES, I THINK AT THAT POINT
12 WE ALSO HAVE A VERY SERIOUS ISSUE ABOUT WHETHER OR NOT
13 RULE 403 COMES INTO PLAY AT THAT POINT AND PROHIBITS THE
14 INTRODUCTION OF THIS -- OF THIS EVIDENCE.

15 JUDGE, UNDER 403, OBVIOUSLY, ALTHOUGH RELEVANT,
16 EVIDENCE MAY BE EXCLUDED IF ITS PROBATIVE VALUE IS
17 SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR
18 PREJUDICE. IN LOOKING AT THE FUNDAMENTAL FAIRNESS AND
19 WHETHER OR NOT A RULE 403 ANALYSIS SHOULD KICK IN -- I'M
20 CITING TO STATE VERSUS FLETCHER HERE. THIS IS A 609 SE 2D
21 572 2005 CASE. UNFAIR PREJUDICE MEANS AN UNDUE TENDENCY
22 TO SUGGEST A DECISION ON AN IMPROPER BASIS COMMONLY,
23 THOUGH NOT NECESSARILY, AN EMOTIONAL ONE.

24 IF THE PRIOR ADJUDICATED, I'M SORRY, IF THE PRIOR
25 CONVICTIONS COME IN, YOU'VE GOT AT LEAST TWO CRIMINAL

1 SEXUAL CONDUCT CASES THERE. THEN YOU'RE TALKING ABOUT TWO
2 MORE CRIMINAL SEXUAL CONDUCT CASES, ONE FROM TENNESSEE,
3 THE UNADJUDICATED ONES, AND THE ATTEMPTED DOWN IN ALABAMA.

4 THE TENNESSEE CASE INVOLVES THE MOTHER OF A CHILD.
5 THE CRIME ALLEGED OCCURS IN FRONT OF HER, I DON'T WANT TO
6 SAY INFANT, BUT TODDLER CHILD, TWO, THREE YEAR OLD CHILD.
7 NOW WE'RE GOING TO HAVE A REAL SERIOUS ISSUE AT THAT POINT
8 AS TO WHETHER OR NOT 403 SHOULD PROHIBIT THAT FROM COMING
9 IN AT ALL. I WOULD SUGGEST TO YOU RIGHT NOW BASED ON THE
10 FACE OF WHAT IS OUT THERE ON THAT CRIME THAT IT SHOULD
11 NOT.

12 BUT ANYWAY, I THINK AT THIS POINT YOUR HONOR COULD
13 RULE AND BE ON FIRM GROUND THAT THAT EVIDENCE DOESN'T COME
14 IN SIMPLY BASED ON THE FACT IT'S NOT APPROPRIATE AT
15 SENTENCING PHASE. IT'S NOT 8TH AMENDMENT -- IT'S NOT
16 APPROPRIATE UNDER THE 8TH AMENDMENT FOR IT TO COME IN
17 'CAUSE IT'S NOT -- IT'S NOT A CONVICTION. THAT'S THE
18 BASIS OF MY ARGUMENT. THANK YOU.

19 THE COURT: ALL RIGHT. THAT'S JUST THE BASIC PART OF
20 IT? MR. ARIAIL.

21 MR. ARIAIL: YOU KNOW, IT'S ALWAYS HOW YOU PHRASE THE
22 QUESTION IS HOW YOU'RE GOING TO GET THE ANSWER.

23 UNADJUDICATED CRIMINAL CONDUCT IS THE WAY IT'S
24 CHARACTERIZED BY THE DEFENSE, BUT WHAT IT REALLY IS IS
25 ADMITTED CONDUCT. IF IT'S ANYTHING, IT'S ADMITTED CONDUCT

1 ON BEHALF OF THE DEFENDANT. SO WE'RE TALKING ABOUT
2 CONDUCT OF A DEFENDANT THAT HE'S ADMITTED.

3 WE'RE NOT TALKING ABOUT HAVING A MINI TRIAL ABOUT
4 SOMETHING AND PROVING SOME COLLATERAL ISSUE. WE'RE
5 TALKING ABOUT WHERE A DEFENDANT HAS ADMITTED TO CERTAIN
6 CIRCUMSTANCES WHICH ANY FACT-FINDER WOULD THINK IS
7 RELEVANT TO TAILORING A SENTENCE BETWEEN LIFE AND DEATH.

8 SO IT DOES HAVE SOME 403 ASPECTS IN THAT YOU'RE GOING
9 TO HAVE TO -- YOU'RE GOING TO HAVE TO LOOK AT THE EVIDENCE
10 THAT COMES IN AND THEN YOU'RE GOING TO HAVE TO DETERMINE
11 WHAT ASPECTS OF THE EVIDENCE YOU THINK MAY BE RELEVANT,
12 WHAT ASPECTS YOU THINK MAY BE RELEVANT BUT SO HIGHLY
13 PREJUDICIAL THAT COULDN'T COME IN.

14 BUT THE FACT THAT IT IS ADMITTED CONDUCT IS DIFFERENT
15 THAN A CIRCUMSTANCE IN WHICH THE STATE WAS TRYING TO PROVE
16 SAY THROUGH A LINE-UP IDENTIFICATION OR SOMETHING OF THAT.
17 YOU HAVE -- THAT MAKES -- THE RELIABILITY OF THIS EVIDENCE
18 BEARS ON ITS ADMISSIBILITY AND ITS ABILITY TO BE USED BY A
19 FACT-FINDER.

20 SO I THINK WHEN YOU GET TO THAT STAGE, AND A LOT OF
21 WHAT THE FACTS THAT HAVE BEEN TALKED ABOUT TODAY ARE NOT
22 NECESSARILY THE FACTS THE STATE IS GOING TO PRESENT. BUT
23 WHEN AND IF WE GET TO A STAGE WHERE THE CONDUCT OF THE
24 DEFENDANT BECOMES RELEVANT AND WE ESTABLISH OR MOVE TO
25 ESTABLISH HIS ADMISSION OF THAT CONDUCT, THEN THE COURT

1 COULD EASILY WEIGH THAT TO DETERMINE WHETHER OR NOT YOU
2 BELIEVE IT'S APPROPRIATE FOR IT TO COME IN.

3 BUT I THINK THAT'S A CIRCUMSTANCE THAT YOU CAN'T MAKE
4 A RULING AT THIS POINT JUST CARTE BLANCHE THAT WE'RE NOT
5 ABLE TO BRING IN OTHER CONDUCT OF THE DEFENDANT 'CAUSE I
6 THINK THE LAW IS CLEAR, HIS CONDUCT BOTH PRIOR TO AND
7 SUBSEQUENT TO THE COMMISSION OF THIS CRIME IS RELEVANT.

8 NOW THAT DOESN'T MEAN IT'S ADMISSIBLE, BUT IT IS
9 RELEVANT BECAUSE THE ISSUE IS WHO IS THIS PERSON? WHAT
10 PUNISHMENT DOES HE DESERVE BASED ON WHERE HE'S BEEN IN HIS
11 LIFE AND WHERE HE'S HEADED? AND THOSE ARE THE THINGS THAT
12 YOU AS -- YOU OR A JURY AS THE SENTENCING BODY WOULD NEED
13 TO MAKE AN INTELLIGENT SENTENCE.

14 SO I WOULD SUBMIT WHEN AND IF WE GET TO THAT PHASE
15 YOU'D HAVE A BALANCING TEST TO DETERMINE IF YOU BELIEVE
16 IT'S ADMISSIBLE. NOT THAT IT'S RELEVANT, BUT IS IT
17 ADMISSIBLE UNDER ALL OTHER ISSUES THAT HE'S RAISED?

18 **THE COURT:** ALL RIGHT. ANYTHING?

19 **MR. BANNISTER:** JUDGE, JUST ONE LAST THING THAT I
20 WOULD ADD FOR YOUR CONSIDERATION IS PUTTING THAT INTO THE
21 SENTENCING PHASE OF THIS CASE POTENTIALLY OPENS UP A
22 PANDORA'S BOX OF WHAT HAPPENS NEXT. I MEAN, THE
23 ASSUMPTION HERE IS THAT, YOU KNOW, IF IT'S -- THE
24 ASSUMPTION IS THAT THE PRIOR UNADJUDICATED CRIMINAL
25 CONDUCT HAS, IN FACT, BEEN PERPETRATED BY THE DEFENDANT

1 AND IS, IN FACT, WHAT IS ALLEGED IN THE, I GUESS, THE
2 INDICTMENTS THAT ARE PENDING IN TENNESSEE AND ALABAMA.

3 BUT -- AND AS I THINK HAS HAPPENED IN AT LEAST ONE
4 OTHER REPORTED CASE, ONCE THE TRIAL OF THOSE CASES TAKES
5 PLACE THINGS MAY CHANGE. IT MAY BE THAT IT TURNS OUT THAT
6 THE PERSON SHE IDENTIFIED IN TENNESSEE INITIALLY IS, IN
7 FACT, THE PERPETRATOR.

8 AND IF -- NOW I'M JUST GIVING YOU A HYPOTHETICAL.

9 THE COURT: OKAY.

10 MR. BANNISTER: BUT IF SOMETHING LIKE THAT HAPPENS,
11 IF THERE IS A SEA CHANGE IN WHAT THE ANTICIPATED FACTS
12 ARE, THEN THAT IS GOING TO INFECT US AT WHATEVER PROCESS
13 WE ARE IN AT THAT POINT.

14 IN OTHER WORDS, IF WE'RE DONE WITH OUR CASE, AND HE'S
15 BEEN SENTENCED TO WHATEVER HE'S BEEN SENTENCED TO, BUT
16 THAT EVIDENCE HAS COME IN, AND SUDDENLY IN TENNESSEE
17 SOMETHING HAPPENS, SHAKES OUT THERE'S A NOT GUILTY VERDICT
18 OR SOMEBODY CONFESSES OR IT GETS REDUCED, I MEAN, THE
19 CHARGE JUST SIMPLY GETS REDUCED TO SOMETHING LESS THAN
20 WHAT IT IS, THAT IS GOING TO HAVE AN IMPACT ON THIS CASE
21 AT A LATER STAGE. AND I JUST -- I THINK IT'S -- I THINK
22 THAT SHOULD GO INTO YOUR CALCULATION OF WHETHER IT COMES
23 IN OR NOT DURING THIS CASE.

24 THE COURT: WELL, ARE YOU SUGGESTING THAT I NEED TO
25 MAKE A RULING ON THESE ISSUES NOW?

1 MR. BANNISTER: I THINK YOU COULD.

2 THE COURT: WELL, I DON'T ---

3 MR. BANNISTER: I THINK YOU'RE IN A POSITION TO SAY
4 AT THIS POINT, IF YOU TAKE A CLOSE LOOK AT WHAT THE CASE
5 LAW SAYS, I MEAN, AND TAKE A LOOK AT GASKINS 'CAUSE IT
6 SAYS IT WAS -- WHAT THE APPELLATE COURT IS SAYING IN THERE
7 IS, YEAH, THE JUDGE STRUCK IT, YOU CAN'T COMPLAIN ABOUT
8 IT. IT WAS INAPPROPRIATE.

9 SO I THINK YOU COULD TAKE THE POSITION RIGHT NOW THAT
10 IT'S -- PRIOR UNADJUDICATED CRIMINAL CONDUCT IS
11 INAPPROPRIATE FOR THIS CASE, PERIOD. IT'S NOT A
12 CONVICTION. THEREFORE, IT DOESN'T COME IN.

13 THE COURT: OKAY. WELL, I'M NOT GOING TO DO THAT. I
14 THINK IT'S -- I NEED TO HEAR WHAT -- I DON'T KNOW WHAT
15 THEY INTEND TO OFFER. THEY HAVEN'T SAID THAT YET. SO ...

16 MR. BANNISTER: WELL, BUT AREN'T I ENTITLED TO KNOW
17 THAT? I MEAN, I'VE BEEN TOLD THAT I -- THE FILE IS WHAT
18 THE -- PUTS ME ON NOTICE OF WHAT THE STATUTORY AGGRAVATORS
19 ARE GOING TO BE. AND THE NOTICE OF AGGRAVATION I GOT THAT
20 WAS JUST DELINEATED ONE THROUGH EIGHT OR NINE, WHATEVER IT
21 WAS, THIS WAS ONE OF THOSE ISSUES THAT THEY RAISED. SO, I
22 MEAN, I DON'T THINK IT'S LIKE THEY'RE NOT GOING TO
23 INTRODUCE IT, YOUR HONOR. I MEAN ...

24 THE COURT: WELL, I DON'T KNOW WHAT UNADJUDICATED
25 CONDUCT THEY INTEND TO INTRODUCE. YOU'RE ASKING ME FOR A

1 BLANKET RULING TO DISALLOW THAT. AND I, AT THIS TIME,
2 WILL DENY IT.

3 MR. BANNISTER: THE TENNESSEE WARRANTS AND THE
4 ALABAMA WARRANTS, THOSE TWO ISSUES. THAT'S WHAT I'M
5 SPECIFICALLY REFERRING TO.

6 THE COURT: OKAY. AND YOU ALL HAVE BEEN THROUGH THE
7 FILE. I HAVE NOT. I DON'T KNOW -- YOU'RE REFERENCING ALL
8 THESE THINGS, AND I'VE NEVER SEEN IT. SO AT THIS POINT I
9 AM NOT GOING TO MAKE A RULING ON THAT ISSUE WITHOUT HAVING
10 A LITTLE MORE INFORMATION ON IT. SO AT THIS TIME IT'S
11 DENIED. AND YOU'RE NOT PROHIBITED FROM RAISING THAT ISSUE
12 AT A LATER TIME.

13 MR. BANNISTER: ALL RIGHT. THANK YOU, YOUR HONOR.

14 THE COURT: ALL RIGHT.

15 MR. BANNISTER: YOUR HONOR, THE NEXT MOTION THAT WE
16 FILED WAS A MOTION PROHIBITING VICTIM IMPACT EVIDENCE FROM
17 VICTIMS OF PRIOR CRIMES.

18 I HAVE BEEN INFORMED -- WELL, WHAT I WAS GETTING AT
19 IS, AGAIN, DURING THE SENTENCING PHASE OF THE TRIAL,
20 ANTICIPATING THAT THE PRIOR CRIMINAL RECORD WAS GOING TO
21 COME IN WE DID NOT WANT TO GET INTO THE VICTIMS OF THOSE
22 PRIOR CRIMES COMING IN AND TESTIFYING TO THINGS THAT ARE
23 TYPICALLY OF A VICTIM IMPACT NATURE. THAT IS, THIS IS HOW
24 IT'S AFFECTED ME SINCE THE DATE THAT THE CRIME OCCURRED,
25 YOU KNOW, I HAVE NIGHTMARES, THINGS OF THAT NATURE.

1 THE RESPONSE I GOT WAS THAT THE STATE AGREES THAT
2 THEY DO NOT INTEND TO INTRODUCE VICTIM IMPACT EVIDENCE
3 FROM THE VICTIMS OF THE PRIOR CRIMES. AND OBVIOUSLY WE'RE
4 NOT TALKING ABOUT VICTIMS OF THIS CRIME. TO THE EXTENT
5 THAT THE UNADJUDICATED CRIMINAL CONDUCT MAY COME IN DURING
6 THE SENTENCING PHASE, I WOULD AMEND MY MOTION TO INCLUDE
7 VICTIM IMPACT FROM THE VICTIMS IN TENNESSEE AND ALABAMA AS
8 WELL.

9 THE COURT: ON WHAT BASIS ARE YOU ...

10 MR. BANNISTER: WELL, THAT'S NOT APPROPRIATE FOR THE
11 SENTENCING PHASE. I MEAN, IF YOU'RE GETTING AT THE --
12 VICTIM IMPACT EVIDENCE IS DESIGNED TO, IF I READ THE CASE
13 LAW CORRECTLY, IS TO PUT A FACE ON THE VICTIM OF THIS
14 CRIME, THE ONE HE'S CHARGED WITH HERE IN PICKENS, SOUTH
15 CAROLINA.

16 I'M NOT TALKING ABOUT THAT. I'M TALKING ABOUT THE
17 VICTIMS OF THE OTHER CRIMES. NOT THE FACTS OF THE CASE OR
18 THE FACTS OF WHAT HAPPENED, BUT ---

19 THE COURT: WELL, HOW ABOUT AS IT RELATES TO YOUR
20 CLIENT'S CHARACTER?

21 MR. BANNISTER: WELL, ---

22 THE COURT: I DON'T MEAN TO STEAL THE STATE'S
23 THUNDER, BUT I PRESUME THAT'S WHAT -- WHY THEY WOULD
24 INTEND TO INTRODUCE IT.

25 MR. BANNISTER: WELL, THEY DON'T. I MEAN, I THINK --

1 THEY'VE AGREED THEY'RE NOT GOING TO. SO I THINK WE'VE
2 ACTUALLY ---

3 THE COURT: THAT'S ...

4 MR. BANNISTER: THE ONLY THING I HAVEN'T GOTTEN IS --
5 BECAUSE I DIDN'T FILE THE MOTION TO INCLUDE THE
6 UNADJUDICATED CRIMINAL CONDUCT, I GUESS I'M SAYING IF THEY
7 AGREE THEY'RE NOT GOING TO INTRODUCE VICTIM IMPACT FROM
8 THE PRIOR CONVICTIONS, I WANT TO SEE IF THEY'LL AGREE THAT
9 THAT'S GOING TO BE THE CASE FOR THE UNADJUDICATED CRIMES.

10 THE COURT: HE'S ASKING A QUESTION, I THINK,
11 SOLICITOR.

12 MR. ARIAIL: I THINK -- WE DO NOT INTEND TO -- LET ME
13 STATE THE ISSUE AS I UNDERSTAND IT. THE VICTIM --
14 ASSUMING THERE IS A VICTIM OF A PRIOR CRIME OR A VICTIM OF
15 SOME PRIOR UNADJUDICATED CONDUCT, OUR POSITION WOULD BE
16 THAT WE CAN -- WE WOULD PRESENT THE VICTIM TO RELATE THE
17 FACTS AND CIRCUMSTANCES OF THE CONDUCT OR THE FACTS AND
18 CIRCUMSTANCES OF THE PRIOR ADJUDICATED CRIME.

19 WE WOULD NOT RELATE SUCH EXISTENCE, SUCH FACTS AS THE
20 IMPACT THAT HAS HAD ON THIS PARTICULAR VICTIM, SAY FOR
21 EXAMPLE THAT SHE HAS -- UNDERGOING NIGHTMARES OR HAD
22 NIGHTMARES EVER SINCE THIS TOOK PLACE, MENTAL COUNSELING,
23 MENTAL HEALTH COUNSELING AS A RESULT OF THAT, UNABLE TO
24 WORK, THINGS OF THAT NATURE AND HOW IT MAY HAVE IMPACTED
25 HER FAMILY. WE DO NOT INTEND TO GO INTO THOSE COLLATERAL

1 ISSUES ON ANYTHING OTHER THAN THE VICTIM OF THIS
2 PARTICULAR CASE.

3 THE COURT: ALL RIGHT.

4 MR. ARIAIL: SO WITH THAT WE CAN AGREE SO LONG AS
5 IT'S NOT CONSTRUED AS WE'RE AGREEING THAT WE'RE NOT GOING
6 INTO THOSE PARTICULAR CONDUCT.

7 THE COURT: I'M NOT SURE HE'S SAYING THAT HE'S NOT
8 GOING TO INTRODUCE IT, BUT HE'S NOT GOING TO INTRODUCE IT
9 FOR THE PURPOSE OF INTRODUCING VICTIM IMPACT EVIDENCE.

10 MR. BANNISTER: WELL, I'M NOT SURE WHAT IT WOULD BE
11 RELEVANT TO OTHER THAN THAT, BUT AT THIS POINT I'M HEARING
12 THAT HE'S CONSENTING TO MY MOTION. SO I'M ---

13 THE COURT: I DON'T KNOW. LET'S FIND OUT. ARE YOU
14 CONSENTING TO THAT MOTION?

15 MR. ARIAIL: AS LONG -- AS FAR AS IT APPLIES TO
16 VICTIM IMPACT EVIDENCE WE CAN CONSENT WE'RE NOT GOING TO
17 ADMIT VICTIM IMPACT EVIDENCE..

18 THE COURT: OKAY. BUT YOU ARE NOT CONSENTING THAT
19 YOU MIGHT NOT ...

20 MR. ARIAIL: INTRODUCE THE EVIDENCE.

21 THE COURT: PRODUCE A VICTIM OF AN ADJUDICATED CRIME,
22 IS THAT RIGHT?

23 MR. ARIAIL: AND AN UNADJUDICATED CONDUCT ALSO, BUT
24 ONLY AS TO THE FACTS OF THE CONDUCT ITSELF.

25 THE COURT: OKAY.

1 MR. BANNISTER: I UNDERSTAND WHAT HE'S SAYING. I
2 THINK THAT'S ---

3 MR. ARIAIL: I THINK HE UNDERSTANDS WHAT I'M SAYING.

4 MR. BANNISTER: THAT WAS WHAT MY MOTION WAS INTENDED
5 TO GET AT.

6 THE COURT: OKAY. ALL RIGHT.

7 MR. ARIAIL: I'M VERY ACCOMMODATING.

8 MR. BANNISTER: I APPRECIATE THAT.

9 JUDGE, THE NEXT MOTION WAS MY MOTION TO PROHIBIT
10 CAMERAS IN THE COURT.

11 THE COURT: WHEN?

12 MR. BANNISTER: GUESS I WAS A LITTLE LATE FILING
13 THAT, BUT ---

14 THE COURT: FOR THIS HEARING, YOU MEAN?

15 MR. BANNISTER: YES. IN ANY EVENT, JUDGE, IT'S CLEAR
16 UNDER RULE 605 THAT YOU CERTAINLY HAVE THE DISCRETION TO
17 PROHIBIT THE NEWS -- NOT -- SHOULD SAY CAMERAS FROM THE
18 COURTROOM. THAT'S THE WAY I THINK OF IT. AND I WOULD
19 CERTAINLY ASK THAT YOU DO THAT.

20 I MEAN, THIS CASE IS -- ALL YOU GOT TO DO IS LOOK
21 OVER YOUR SHOULDER AND YOU CAN SEE WHAT KIND OF MEDIA
22 ATTENTION IT GENERATES. I'M NOT SAYING THAT THE PRESS
23 SHOULD BE EXCLUDED FROM THE COURTROOM. I'M JUST SAYING
24 THAT THE CAMERAS CREATE A DIFFERENT ISSUE.

25 AND I SUSPECT THAT'S GOING TO BE THE SAME FOR BOTH

1 THE DEFENSE CASE IN MITIGATION AND ON, YOU KNOW, WHATEVER
2 EVIDENCE WE PRESENT AND FOR THE SOLICITOR. I MEAN, WE'VE
3 GOT SOME -- SOME OF OUR WITNESSES WOULD BE VERY SENSITIVE
4 TO THE MEDIA ATTENTION. SOME OF OUR WITNESSES ARE NOT
5 WITNESSES THAT HAVE EVER TESTIFIED IN COURT BEFORE. IT
6 WOULD BE VERY INTIMIDATING FOR THEM, MAYBE TALKING ABOUT
7 THINGS THAT ARE VERY PERSONAL IN NATURE.

8 THE COURT: LET ME INTERRUPT YOU FOR A SECOND.

9 MR. BANNISTER: YEAH.

10 THE COURT: ARE YOU FAMILIAR WITH MY ORDER REGARDING
11 MEDIA COVERAGE WHICH WAS DATED SEPTEMBER 14TH, 2007 AND
12 FILED WITH THE PICKENS COUNTY CLERK OF COURT ON SEPTEMBER
13 14TH OF 2007? HAVE YOU SEEN THAT?

14 MR. BANNISTER: YES, SIR.

15 THE COURT: ALL RIGHT. AND I WOULD INFORM YOU AT
16 THIS TIME THAT I UNDERSTAND EVERY MEMBER OF THE MEDIA
17 THAT'S IN THE COURTROOM TODAY HAS GOTTEN A COPY OF THIS.
18 ADDITIONALLY, THEY HAVE ACKNOWLEDGED THAT THEY'VE GOTTEN A
19 COPY AND THAT THEY'RE FAMILIAR WITH THE REQUIREMENTS OF
20 RULE 605. DOES THAT ADDRESS ANY OF YOUR CONCERNS?

21 MR. BANNISTER: JUDGE, IT'S -- I CANNOT REMEMBER
22 WHETHER YOU HAVE PROHIBITED THEM FROM ---

23 THE COURT: WELL, THEY'RE NOT ALLOWED -- THE RULE
24 DOES NOT ALLOW THEM TO FILM JURORS.

25 MR. BANNISTER: I'M NOT TALKING ABOUT THE JURORS.

1 I'M TALKING ABOUT -- I'M MORE CONCERNED ABOUT WITNESSES.

2 THE COURT: WELL, IS THAT NOT SOMETHING THAT'S GOT TO
3 BE TAKEN CARE OF ON A CASE BY CASE BASIS?

4 MR. BANNISTER: WELL, IT MAY BE. I MEAN, I THINK
5 YOU'VE GOT THE AUTHORITY TO PROHIBIT THE CAMERAS FROM THE
6 COURTROOM FROM START TO FINISH. I MEAN, ASSUMING WE GET
7 TO A JURY, THEN THERE'S ALWAYS THE POTENTIAL THAT, YOU
8 KNOW, THAT COULD MEAN SOMETHING TO SOMEBODY ON THE JURY IF
9 THEY GET A CHANCE TO SEE IT ON TV.

10 I MEAN, OBVIOUSLY THERE'S GOING TO BE STUFF ON THE TV
11 REGARDLESS OF WHETHER THE CAMERAS ARE HERE OR NOT. BUT TO
12 THE EXTENT THAT THAT'S AN ADDED LAYER OF PROTECTION FOR
13 US, I'M ASKING YOU TO EXERCISE IT.

14 ON THE OTHER HAND, I KNOW THAT THERE ARE GOING TO BE
15 SOME WITNESSES, I WOULD ASSUME THE SOLICITOR'S OFFICE
16 WOULD BE SENSITIVE TO THE VICTIM'S FAMILY. WE HAVE SOME
17 OF OUR OWN WITNESSES THAT WE WOULD ON A CASE BY CASE,
18 WITNESS BY WITNESS BASIS, WE'RE GOING TO BE ASKING YOU TO
19 EXCLUDE THE CAMERAS FOR CERTAIN PEOPLE.

20 THE COURT: WELL, I DON'T THINK I CAN MAKE A RULING
21 AT THIS TIME. I'M GLAD YOU PUT ME ON NOTICE ABOUT THAT
22 THAT THERE MIGHT BE ISSUES WITH RESPECT TO A PARTICULAR
23 WITNESS, BUT I DON'T THINK I CAN MAKE A RULING UNTIL I SEE
24 THAT WITNESS.

25 MR. BANNISTER: WELL, YOU COULD SAY THAT THE CAMERAS

1 ARE PROHIBITED FROM BEING THERE FROM START TO FINISH. AND
2 THEN IT'S A MOOT POINT.

3 THE COURT: OKAY. WELL, I HAVEN'T CHANGED MY MIND
4 SINCE THE LAST TIME I RULED ON THAT.

5 MR. BANNISTER: WELL, I JUST THOUGHT I'D TRY, JUDGE.

6 JUDGE, MOTION TO SCHEDULE A JACKSON V. DENNO HEARING,
7 THERE ARE -- WELL, AT LEAST WITH REGARDS TO THE CASE HERE,
8 THERE'S A CONFESSION THAT'S GOING TO BE AT ISSUE.

9 WITH REGARDS TO THE UNADJUDICATED CRIMES IN TENNESSEE
10 AND ALABAMA, TO THE EXTENT THAT THEY COME IN, THERE'S --
11 WE NEED TO HAVE A HEARING ON THAT. AND I'M ASKED THAT WE
12 SCHEDULE THAT PRIOR TO THE START OF THE TRIAL.

13 THE COURT: WHEN DO YOU PROPOSE THAT WE DO THAT?

14 MR. BANNISTER: WELL, I DON'T THINK WE COULD GET IT
15 ALL DONE ON -- WELL, MAYBE WE COULD GET IT ALL DONE ON THE
16 26TH. BUT THAT WOULD BE AN AWFUL LOT TO TRY TO CRAM INTO
17 ONE DAY, BUT MAYBE WE CAN. I MEAN, I DON'T KNOW HOW MANY
18 WITNESSES THEY'VE GOT. I ASSUME IT'S PROBABLY JUST TWO OR
19 THREE.

20 (PAUSE)

21 THE COURT: I'M UNABLE TO GET ON-LINE TO CHECK MY
22 CALENDAR TO SEE EXACTLY WHERE I'M GOING TO BE. SO I CAN'T
23 ANSWER THAT QUESTION.

24 MR. BANNISTER: WELL, I GUESS MY MOTION'S JUST HELD
25 IN ABEYANCE?

1 THE COURT: WELL, HANG ON. LET'S SEE -- WE HAVE SOME
2 TECHNICAL PROBLEMS UP HERE.

3 MR. BANNISTER: OKAY.

4 MR. ARIAIL: COULD I RESPOND JUST A LITTLE BIT ON
5 THAT?

6 THE COURT: SURE. YEAH.

7 MR. ARIAIL: THE JACKSON V. DENNO HEARING IN ANY
8 TRIAL WOULD CONCERN THE ADMISSIBILITY OF A STATEMENT MADE
9 BY THE DEFENDANT WHETHER IT BE CONSTRUED AS A CONFESSION,
10 ADMISSION, WHATEVER, A STATEMENT, A CUSTODIAL STATEMENT.

11 IT WOULD BE THE STATE'S POSITION THAT TO HAVE A
12 HEARING PRIOR TO THE SELECTION OF A JURY AND THE
13 EMPANELING, NOT EMPANELING, BUT THE SELECTION OF A JURY
14 AND THE SEQUESTRATION OF THAT JURY WOULD POTENTIALLY
15 RENDER THE ABILITY TO GET OR OBTAIN A JURY IMPOSSIBLE
16 BECAUSE OF THE NATURE OF THE SUBSTANCE OF WHAT IS GOING TO
17 BE PUBLICIZED IN REGARD TO THE STATEMENT.

18 SO IT WOULD BE THE STATE'S POSITION THAT IF THE CASE
19 PROCEEDS TO A DISPOSITION BY A JURY THAT WE PICK THE JURY,
20 SEQUESTER THE JURY AND THEN HOLD THE JACKSON V. DENNO.
21 THAT IS THE -- THAT IS THE PROCEDURE THAT I HAVE URGED ON
22 COURTS IN THE PRIOR THIRTEEN CASES I'VE -- DEATH PENALTY
23 CASES I'VE TRIED. AND IT SEEMS TO WORK.

24 TO DO OTHERWISE, I WOULD URGE THE COURT, WITHOUT
25 GETTING INTO SPECIFICS, WOULD MAKE THE POTENTIAL OF

1 GETTING AN UNBIASED JURY VERY, VERY DIFFICULT. VERY
2 DIFFICULT.

3 MR. BANNISTER: OF COURSE, JUDGE, THE WHOLE ISSUE
4 BECOMES MOOT IF YOU ACCEPT HIS GUILTY PLEA ON AUGUST THE
5 26TH. I MEAN, WE'RE SORT OF PAST THAT POINT. SO ---

6 THE COURT: ALL RIGHT. WELL, WHY DON'T WE CROSS THAT
7 BRIDGE WHEN WE COME TO IT THEN?

8 MR. ARIAIL: OKAY.

9 THE COURT: WE'LL TRY TO -- WELL, WE'LL ADDRESS THAT
10 ISSUE IF IT COMES UP. IF AND WHEN IT COMES UP. ALL
11 RIGHT.

12 MR. BANNISTER: YOUR HONOR, THE ONLY OTHER MOTION I
13 HAD WAS TO SCHEDULE THIS HEARING. AND SINCE WE'RE HERE,
14 THAT GOT GRANTED. SO THOSE WERE THE ONLY MOTIONS THAT I
15 HAD FILED FOR TODAY'S HEARING.

16 THE COURT: ALL RIGHT. ANYTHING THE STATE NEEDS TO
17 ADDRESS AT THIS TIME?

18 MR. ARIAIL: YES, YOUR HONOR. WE HAVE -- WE HAVE
19 SEVERAL MOTIONS THAT WE FILED THAT WE SERVED, I BELIEVE,
20 FRIDAY. AND THEY HAVE -- MR. BANNISTER'S NOT HAD TIME TO
21 RESPOND. AND WE UNDERSTAND THAT.

22 ONE IS THE MOTION TO BE NOTIFIED -- THE DEFENSE TO
23 NOTIFY THE COURT IF THERE'S ANY INTENT TO RAISE THE ISSUE
24 OF MENTAL RETARDATION ON BEHALF OF THE DEFENDANT.

25 THE SECOND IS A MOTION TO PRODUCE UNDERLYING DATA OF

1 EXPERT TESTIMONY PRIOR TO THE TRIAL.

2 AND THE THIRD IS THE STATE'S MOTION FOR THE DEFENDANT
3 TO SUBMIT A WITNESS LIST TO THE COURT FOR PURPOSES OF VOIR
4 DIRE.

5 AND THE FOURTH WOULD BE A MOTION TO PROHIBIT STAKING
6 OUT OF JURORS THROUGH THE PROCESS OF QUESTIONING DURING
7 VOIR DIRE.

8 I WOULD LIKE IF WE'RE GOING TO SCHEDULE ANOTHER
9 PROCEEDING ON THE 26TH TO BE PREPARED TO DISPOSE OF THOSE
10 MOTIONS. AND A NUMBER OF THOSE, OF COURSE, CAN -- LET'S
11 SEE. TWO OF THOSE CAN BE DISPENSED WITH DEPENDING UPON
12 WHAT THE ULTIMATE SENTENCING BODY IS DETERMINED TO BE IN
13 THIS CASE. BUT THOSE ARE -- THOSE ARE OUTSTANDING.

14 THERE ARE ALSO -- I TALKED TO YOU ABOUT THE ISSUE OF
15 GETTING THE EVIDENCE BACK IN CASE WE HAVE A PROBLEM LATER.

16 AND THERE ARE A NUMBER OF OTHER, WHAT I WOULD CALL
17 ANCILLARY ISSUES, JUST DEALING WITH CONDUCT AT THE TRIAL
18 THAT I THINK WE OUGHT TO HAVE A DISCUSSION AMONGST US.
19 DOESN'T NEED TO BE A PUBLIC HEARING. JUST DEALING WITH
20 THE TRIAL, HOW WE'RE GOING TO CONDUCT THE TRIAL, HOURS OF
21 OPERATION, THAT SORT OF THING.

22 THE COURT: ALL RIGHT. ARE YOU PREPARED TO RESPOND
23 TO ANY OF THOSE MOTIONS?

24 MR. BANNISTER: JUDGE, I CAN SAY WITH REGARDS TO THE
25 MENTAL RETARDATION THAT WE DON'T ANTICIPATE THAT BEING AN

1 ISSUE IN THE CASE, BUT I'D LIKE TO PUT TOGETHER AT LEAST A
2 FORMAL RESPONSE.

3 THE COURT: OKAY.

4 MR. BANNISTER: SO ---

5 MR. ARIAIL: YEAH, WE DON'T OBJECT TO THAT. HE NEEDS
6 TIME. A COUPLE OF THESE ARE RIGHT SUBSTANTIAL MOTIONS
7 THAT HE PROBABLY NEEDS TO RESPOND TO.

8 MR. BANNISTER: CAN I HAVE JUST A MOMENT, YOUR HONOR?

9 THE COURT: YEAH. SURE.

10 (PAUSE)

11 MR. BANNISTER: THANK YOU, JUDGE. WE DON'T HAVE
12 ANYTHING FURTHER AT THIS POINT.

13 THE COURT: ALL RIGHT. WELL, LET ME ASK YOU TWO TO
14 COME UP HERE FOR JUST A SECOND. LET ME ...

15 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE
16 RECORD)

17 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE?

18 MR. BANNISTER: NOTHING FROM THE DEFENDANT, YOUR
19 HONOR.

20 MR. ARIAIL: NOTHING FROM THE STATE, YOUR HONOR.

21 THE COURT: THE ONLY OTHER THING I -- LOOKING AT THIS
22 CALENDAR, THE WEEK OF AUGUST 18TH, IF MY MEMORY SERVES ME
23 CORRECTLY, IS A CHAMBERS WEEK. AND I THINK THAT MIGHT BE
24 A BETTER TIME TO DO THIS.

25 THE NEXT WEEK I'M HOLDING COURT, GENERAL SESSIONS

1 COURT IN GREENVILLE. SO WE'D HAVE TO SHUT DOWN COURT FOR
2 A DAY OVER THERE TO HANDLE THIS. HOW DOES THE 18TH SOUND?

3 (PAUSE)

4 THE COURT: IF NOT, I MEAN, WE CAN DO IT THE 26TH IF
5 EVERYBODY'S GOOD WITH THAT. I'M JUST -- TOSS THAT OUT FOR
6 YOU.

7 MR. ARIAIL: THE 18TH IS A MONDAY?

8 THE COURT: I'M SORRY, THE 19TH. 19TH, WHICH IS A
9 TUESDAY.

10 MR. ARIAIL: I THINK THAT'S FINE -- THAT'S FINE WITH
11 ME. THE ONLY CONFLICT YOU HAVE OVER HERE WOULD BE THE
12 GRAND JURY MEETS THAT DAY.

13 THE COURT: WELL, THEY DON'T MEET IN HERE.

14 MR. ARIAIL: NO.

15 MR. BANNISTER: JUDGE, RIGHT NOW I THINK THE 19TH
16 WOULD BE ACCEPTABLE, BUT I'VE GOT TO -- I'VE GOT TO TALK
17 TO AT LEAST ONE WITNESS TO SEE IF THAT'S GOING TO BE OKAY.

18 THE COURT: OKAY. WELL, Y'ALL -- CAN YOU LET ME KNOW
19 SOMETHING THIS WEEK?

20 MR. BANNISTER: CERTAINLY. AS SOON AS I GET IN TOUCH
21 WITH MY ---

22 THE COURT: ALL RIGHT. WE'VE GOT IT SET FOR THE
23 26TH, BUT IF THE 19TH WILL WORK, IT MAY BE MORE
24 CONVENIENT.

25 MR. BANNISTER: CERTAINLY.

1 THE COURT: ALL RIGHT?

2 MR. BANNISTER: OKAY. THANK YOU.

3 THE COURT: OKAY. ALL RIGHT. WE'LL BE ADJOURNED.

4 (HEARING ENDED AT 11:22 AM)

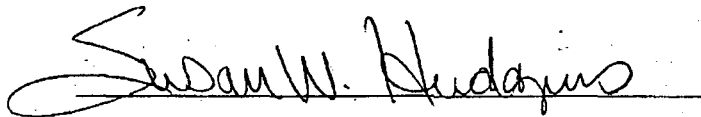
5 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE
4 OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
5 A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
6 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
7 TRIAL/HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL,
8 IN THE CIRCUIT COURT FOR PICKENS COUNTY, SOUTH CAROLINA,
9 ON THE 30TH DAY OF JULY 2008.

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

12 SEPTEMBER 15, 2009
13
14

15 
16

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS

2006-GS-39-2222

2006-GS-39-2223

2006-GS-39-2224

2006-GS-39-2225

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

JERRY BUCK INMAN,)

DEFENDANT.)

ORIGINAL

August 19, 2008

Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

ROBERT M. ARIAIL, ESQ.

Solicitor

BETTY C. STROM, ESQ.

Deputy Solicitor

JAMES W. BANNISTER, ESQ.

JOHN W. DEJONG, ESQ.

SYMMES W. CULBERTSON, ESQ.

Attorneys for the Defendant

HOLLIE M. JENKINS

Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	Photo.....	3.....	3
S-2	Photo.....	3.....	3
S-3	Diagram.....	3.....	3
S-4	Photo.....	3.....	3
S-5	Photo.....	3.....	3
S-6	Photo.....	3.....	3
S-7	Photo.....	3.....	3
S-8	Admonition and Waiver-Jefferson County Sheriff's Department.....	3.....	3
S-9	Statement of Jerry Inman.....	3.....	3
S-10	SLED Miranda Rights.....	3.....	3
S-11	Voluntary Statement of Jerry Inman.....	3.....	3
	(Defendant's Exhibits)		
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	(Court's Exhibits)		
C-1	Summary of Facts Supporting Charges Against Jerry Inman.....	51.....	51

All Exhibits were retained by the Clerk of Court for
Pickens County.

1 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
2 8, 9, 10, and 11 were marked for identification
3 and admitted into evidence.)

4 THE COURT: Yes, Mr. Ariail.

5 MR. ARIAIL: Your Honor, Counsel for Mr. Inman has
6 indicated to the State that he wishes to enter a plea of
7 guilty on the four indictments pending in Pickens County.
8 He has submitted to us and signed a sentencing sheet.

9 So, based on that, we will call the four cases.
10 They're indictment numbers 2006-2222, which is an
11 indictment for burglary in the first degree; indictment
12 2006-2223, that is an amended indictment for criminal
13 sexual conduct in the first degree; 2006 -- indictment
14 2224, an indictment for kidnapping; and indictment
15 2006-2225, an indictment for murder.

16 And I'll hand these up to the Court with the
17 sentencing sheets.

18 THE COURT: All right. Thank you.

19 Mr. Bannister.

20 MR. BANNISTER: That's correct, Your Honor.

21 Mr. Inman seeks to tender his guilty plea. And I
22 think, if I understand the procedure correctly, at this
23 time, we're prepared to call Ms. Donna Schwartz-Watts --
24 Dr. Schwartz-Watts for the purposes of the Blair hearing,
25 which I'm assuming you would like to hear first.

1 THE COURT: Yes, sir. That would be fine.

2 THE CLERK: Please raise your right hand and place
3 your left hand on the Bible.

4 WHEREUPON,

5 DONNA MARIE SCHWARTZ-WATTS, M.D.,
6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 Please state your full name for the record.

9 THE WITNESS: Sure. Donna Marie Schwartz-Watts,
10 S-C-H-W-A-R-T-Z hyphen W-A-T-T-S.

11 MR. CULBERTSON: Your Honor --

12 THE COURT: Mr. Culbertson.

13 DIRECT EXAMINATION

14 BY MR. CULBERTSON

15 Q Ms. Schwartz-Watts -- Doctor, I understand you had a
16 little problem this morning.

17 A Yes.

18 Q You're okay today?

19 A Yes, I am.

20 Thank you.

21 Q I understand that you have on several occasions had
22 an opportunity to meet with Mr. Jerry Buck Inman; is that
23 correct?

24 A Yes.

25 Q And the purpose of those meetings was for what?

1 A Basically, I had been retained by you, initially, to
2 conduct evaluations on Mr. Inman to see if his mental
3 state -- whether he was fit --

4 (Loud noise in courtroom.)

5 THE COURT: Excuse us.

6 Thank you.

7 Go ahead, Mr. Culbertson.

8 BY MR. CULBERTSON:

9 Q Go ahead.

10 A Yes, to assess his mental state as it related to his
11 charges, and, also, to assess his capacity to assist you.

12 Q Okay. And how many times have you met with him?

13 A As of today, six times.

14 Q And do you recall where those meetings occurred?

15 A Yes. I've seen Mr. Buck -- Mr. Buck Inman when he
16 was at Lee County Correctional Institute. I've, also,
17 seen him at the Pickens County Detention Center. And
18 he's, also, been to my office in Columbia at the
19 University of South Carolina School of Medicine.

20 Q And do you feel that those meetings -- those
21 occasions that you've met with him have been enough to be
22 able to form an opinion as to both his competency and his
23 mental status today?

24 A Yes.

25 Q And what is your opinion of those conditions today?

1 A It's my opinion that Mr. Inman is competent to
2 understand these proceedings. He has the capacity to
3 assist you and his other attorneys in his defense. And
4 it's my opinion he's always been of that mental state. He
5 clearly knows what he's doing. He is -- I've watched him,
6 actually, work with you and some of his other attorneys.
7 And it's my opinion that he has a rational and factual
8 understanding of these proceedings and he can assist in
9 his defense.

10 Q No question he knows what he's doing, no question he
11 knows what's in front of him today, and no question about
12 what his desires are in regards to the issues he faces in
13 the courtroom today?

14 A That's correct.

15 Q All right. I noticed that you've prepared a written
16 report. And I don't know if you have a copy of it with
17 you or not. But I'm going to reference that on occasions
18 as we go through it today.

19 A Sure.

20 Q Okay. I notice that the first thing you talked about
21 in your report is that there is a history of mental health
22 questions in Mr. Inman's life. And, if you would, please,
23 ma'am, just tell me what you mean by that and what that
24 entails, and what, if any, effect that has on his ability
25 to comprehend what's going on today.

1 A Okay. Mr. Inman had previously been confined in the
2 North Carolina Department of Corrections and, also, the
3 Florida Department of Corrections. And while he was an
4 inmate there, over the years, he has received various
5 forms of mental health treatment.

6 His main diagnosis over the years had been a mood
7 disorder. He has been treated off and on for depression.
8 And he's been on many medications for depression. And, in
9 fact, he has been prescribed antidepressant medication
10 while he's been at the Pickens County Detention Center.
11 And he is on that medication today.

12 So he has a long history of mood disorders and
13 treatment for depression.

14 Q All right. Are there any other diagnoses that either
15 you yourself have made or that other medical personnel
16 have made in regard to Mr. Inman's mental health status?

17 A Yes. And I'm still in that process. He, certainly,
18 has a sexual disorder. And that's based on his history
19 and, certainly, the present crimes with which he's
20 charged. But, at this point, he, also, has a chronic
21 low-grade mood disorder. But I'm going to need to assess
22 him one more time before his upcoming proceedings.

23 Q All right. And have you had an occasion to explore
24 or examine any sort of family history of mental disorders?

25 A Yes. Both his mother and biological father have

1 histories of illness. His mother -- and I was able to
2 review her psychiatric records. She carries a diagnosis
3 of schizoaffective disorder, which is a form of a mood
4 disorder, but it's, also, characterized by having a
5 thought disorder as well. So his mother is moderately
6 ill.

7 His father had a history. Although, I've only
8 seen -- the only records I've seen, at this point, have
9 been that he was in Vietnam and there were some questions
10 that he may have had some post-traumatic stress disorder
11 secondary to his experiences in the military.

12 Q And so the -- I'm assuming that having realized that
13 there's a family history of some issues, that heightened
14 your concern or your awareness of what might exist in
15 Mr. Inman's life today?

16 A Absolutely.

17 Q All right. And did that effect your decision and
18 your diagnosis in any manner?

19 A No. Mental illnesses do run in families, especially
20 mood disorders. They have a genetic component. And he
21 seems to have some of the mood disorder, but, certainly,
22 not nearly as severely ill as his mother is.

23 And right now, in fact, as of today, this is the best
24 mental state he's had. This is the best mood I've seen
25 him in. And he looks well.

1 Q And what do you attribute that to?

2 A A number of things. He's on antidepressant
3 medication. He's on a medication called Sinaquan, which
4 he takes in the morning and at night. I think in the
5 detention center -- he's adjusted better in the detention
6 center than he did when he was being housed at the
7 Department of Corrections. He has better access to
8 medical care and those sorts of things. And then the fact
9 that he's, finally, getting to plead to these charges,
10 which he has wanted to do from the first time I ever
11 evaluated him.

12 Q All right. So it's your understanding that
13 Mr. Inman, from the first day you saw him up until and
14 including today, has expressed a desire to enter a guilty
15 plea to the charges that he faces here in Pickens County?

16 A Absolutely.

17 Q And he expressed that opinion again today?

18 A Yes.

19 Q And do you have any question as to his competency or
20 ability to understand what it is he's entering a plea to?

21 A No.

22 Q All right. Have you talked to him about that today?

23 A Yes.

24 Q And what do you think -- what did that conversation
25 lead you to believe about today?

1 A That he absolutely knows what he is doing. He wishes
2 to plead guilty to these charges.

3 Q Doctor, you, also, mentioned, in looking at your
4 report, that there was some historical examination you had
5 done about Mr. Inman, some of it dating back to his early
6 childhood years, three or four. You made a mention of
7 some types of seizures that he suffered at that time.
8 And, if you could, please, ma'am, tell me a little bit
9 about what those seizures were and how, if any way, it
10 effects his ability to make a decision today?

11 A Certainly. Mr. Inman, when he was a child, was
12 diagnosed with febrile seizures. And he was, actually, on
13 an anticonvulsant, Phenobarbital, in grade-school years.
14 And those totally remitted. He's on no medications for
15 seizures. And there's no evidence that he has a seizure
16 disorder.

17 Q Okay. Anything else that you and Mr. Inman talked
18 about today that needs to be related to the Court today?

19 THE WITNESS: Well, I think, Your Honor, you need to
20 know Mr. Inman has always been very clear to me that his
21 wishes are to receive death, that he deserves to die for
22 what he's done. And I've taken that into consideration as
23 well. You worry with someone that has a history of
24 depression. But, in my opinion, that is not related to
25 his depression at all. His depression is well. And

1 these -- he has consistently stated that to me.

2 MR. CULBERTSON: Thank you, Doctor.

3 MR. ARIAIL: Your Honor, we have, of course, worked
4 with Dr. Schwartz-Watts on numerous occasions. She's been
5 in a number of proceedings of this nature. We know she is
6 qualified as an expert in this field. And had we been
7 requested, we would stipulate her qualifications as an
8 expert to testify.

9 THE COURT: All right.

10 MR. ARIAIL: No further questions.

11 THE COURT: And I am going to qualify her as an
12 expert in the field.

13 Doctor, I want to ask you, I understand that you were
14 in an automobile accident today?

15 THE WITNESS: I wish I could be that glamorous, Your
16 Honor. I was leaving for court this morning at 6:00 a.m.
17 and went to get some folders out of my car and the trunk
18 hit me in the head. And I could say I was, certainly,
19 rendered semi-conscious for a period of time. And I have
20 three or four staples in my head. I went to the emergency
21 room.

22 THE COURT: Okay. But you are -- and I've known you
23 for a number of years. You appear to me to be in
24 absolute -- you're fine without knowing the level of pain
25 or anything. But you're in good condition today?

1 THE WITNESS: Absolutely. And I had one Motrin.
2 They gave me a Motrin in the emergency room. And I'm fine
3 and pretty clear. They just ask that I have a driver.
4 And I'm perfectly clear.

5 THE COURT: All right. Thank you very much.
6 Can you tell me the dosage of the medication Sinaquan
7 that Mr. Inman is on?

8 THE WITNESS: Yes, sir. He's on 50 milligrams in the
9 morning, and 150 milligrams at night.

10 THE COURT: And can you tell me the effect of the
11 medication and the impact that that medication has
12 generally, just for the record?

13 THE WITNESS: Yes.

14 It's one of the older antidepressants. And Mr. Inman
15 takes it because it helps him sleep better. One of his
16 symptoms is he has difficulty sleeping. And so the night
17 dosage is larger. It's 150 milligrams to assist with his
18 sleep. The lower dose in the morning just decreases
19 anxiety. And, overall, the effect is to improve his mood.

20 THE COURT: And just -- I'm not sure if it was
21 brought -- this was brought out. But you have just
22 finished meeting with Mr. Inman; is that correct?

23 THE WITNESS: Yes, sir.

24 I spent about 30 minutes with him before the hearing
25 today.

1 THE COURT: And that meeting, also, plays a part of
2 the basis for your opinion that you've stated in court
3 today?

4 THE WITNESS: Absolutely.

5 THE COURT: Anything else?

6 MR. CULBERTSON: Just briefly, Your Honor.

7 FURTHER DIRECT EXAMINATION

8 BY MR. CULBERTSON:

9 Q Doctor, I understand that you have the opinion that
10 you need to evaluate Mr. Inman, at least, one more time
11 before any sentencing hearing takes place; is that
12 correct?

13 A Correct.

14 MR. CULBERTSON: And, also, I've got a copy of the
15 report that she prepared. I'm going to hand that up to
16 the Court and ask that it be marked as an exhibit and be
17 made a part of the record. I've already given a copy to
18 the Solicitor's Office.

19 MR. ARIAIL: I don't have any objection for the
20 purposes of this hearing.

21 THE COURT: Okay.

22 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
23 identification and admitted into evidence.)

24 MR. CULBERTSON: Thank you, Doctor.

25 THE COURT: Anything from the State?

1 MR. ARIAL: No.

2 THE COURT: There's no question in your mind that
3 Mr. Inman is competent?

4 THE WITNESS: No question, Your Honor.

5 I've seen him over periods beginning in September of
6 2006 and through today. And he, clearly, knows what he's
7 doing.

8 THE COURT: Thank you very much, Doctor.
9 We appreciate the efforts you made to be here.
10 Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Anything else on that issue?

13 MR. CULBERTSON: Not for the purposes of the Blair
14 hearing, Your Honor.

15 THE COURT: All right. Then let's ask Mr. Inman to
16 come around.

17 MR. BANNISTER: Your Honor, do you want him to
18 approach the podium for this, or just do it from here?
19 How would you like it -- where do you want us?

20 THE COURT: Come on around.

21 MR. BANNISTER: Thank you.

22 THE COURT: All right. Mr. Inman, how are you doing?

23 DEFENDANT INMAN: Fine.

24 THE COURT: I'm going to ask you to raise your right
25 hand as best you can.

1 WHEREUPON,

2 JERRY BUCK INMAN,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 THE COURT: All right. Mr. Inman, if you would,
6 please, sir, tell me how old you are.

7 DEFENDANT INMAN: 37.

8 THE COURT: Okay. And what is the highest grade that
9 you finished in school?

10 DEFENDANT INMAN: I finished the eighth grade.

11 THE COURT: Okay. And can you read and write?

12 DEFENDANT INMAN: Yes, sir.

13 THE COURT: All right. And what type of work have
14 you done in your life?

15 DEFENDANT INMAN: Construction.

16 THE COURT: I'm sorry. I couldn't --

17 DEFENDANT INMAN: Construction.

18 THE COURT: Construction. Okay. Are you married?

19 DEFENDANT INMAN: No.

20 THE COURT: Do you have any children?

21 DEFENDANT INMAN: No.

22 THE COURT: And you have been in jail continuously --
23 Since when, Solicitor?

24 MR. ARIAIL: June the 5th of 2006.

25 THE COURT: All right.

1 MR. ARIAIL: June the 6th, excuse me, June 6th.

2 THE COURT: Now, Mr. Inman, in the last 24 hours,
3 have you had any drugs, alcohol, or medication?

4 DEFENDANT INMAN: Just medication.

5 THE COURT: All right. And is it the medication
6 Sinaquan?

7 DEFENDANT INMAN: Yes, sir.

8 THE COURT: Have you had the dosage that
9 Dr. Schwartz-Watts has testified that you've had?

10 DEFENDANT INMAN: Yes, sir.

11 THE COURT: All right. Does that impair your ability
12 to understand what's going on today?

13 DEFENDANT INMAN: No.

14 THE COURT: Have you ever been treated -- or, if you
15 would, tell me about any treatment that you may have had
16 for the abuse of alcohol, drugs, mental illness, or
17 emotional problems.

18 DEFENDANT INMAN: NA and AA while I was in prison.

19 THE COURT: Okay.

20 DEFENDANT INMAN: A psychologist while I was in
21 prison.

22 THE COURT: But, today, do you feel that you are
23 clear-headed?

24 DEFENDANT INMAN: Yes, sir.

25 THE COURT: Do you know what's going on?

1 DEFENDANT INMAN: Yes, sir.

2 THE COURT: And, in your own words, would you tell me
3 what it is that you're here to do?

4 DEFENDANT INMAN: To enter a guilty plea.

5 THE COURT: Okay. Mr. Bannister, do you have any
6 question about your client's competence?

7 MR. BANNISTER: I do not, Your Honor.

8 THE COURT: Well, Mr. Inman, I'm going to tell you
9 that you're up here on indictment 06-2225, which alleges
10 that you did in Pickens County on or about May 26th of
11 2006, unlawfully and with malice aforethought kill Tiffany
12 Souers by means of strangulation, and that Tiffany Souers
13 died as a proximate result thereof.

14 Now, this case -- the penalty for this is either life
15 in prison, which means life in prison, exactly what it
16 says, or death.

17 Do you understand that?

18 DEFENDANT INMAN: Yes, sir.

19 THE COURT: All right. You're, also, up here on
20 indictment 06-2224. And it alleges that you did in
21 Pickens County on or about May 26th of 2006, unlawfully
22 seize, abduct, confine, inveigle, decoy, or carry away
23 Tiffany Souers without the authority of law. And this
24 carries 30 years in prison.

25 Do you understand that?

1 DEFENDANT INMAN: Yes, sir.

2 THE COURT: Now, I would, also, tell you that if the
3 penalty that the fact finder hands down were to be death
4 that you would not receive a sentence on that case.

5 Do you understand that?

6 DEFENDANT INMAN: Yes, sir.

7 THE COURT: You're, also, up here on indictment
8 06-2223. And it alleges you did in Pickens County on or
9 about May 26th of 2006, engage in a sexual battery with
10 Tiffany Souers and used aggravated force to accomplish the
11 sexual battery. And CSC in the first degree carries up to
12 30 years in prison.

13 Do you understand that?

14 DEFENDANT INMAN: Yes, sir.

15 THE COURT: And, finally, I would tell you that
16 you're up here on 06-2222. And it alleges that you did in
17 Pickens County on or about May 26th of 2006, willfully and
18 unlawfully enter the dwelling of Tiffany Souers located at
19 [REDACTED] in Central, South Carolina, without
20 consent and with the intent to commit a crime therein, and
21 the entering did occur during the nighttime. This carries
22 from 15 years up to life in prison.

23 Do you understand that?

24 DEFENDANT INMAN: Yes, sir.

25 THE COURT: And I want to tell you that each one of

1 these cases is classified under the South Carolina law as
2 a most serious offense and a violent offense. And what
3 those classifications mean are that if you're convicted of
4 two or more most serious offenses that the -- you are
5 eligible for life in prison without parole, and the same
6 with violent. It means that you will not be eligible for
7 parole under those offenses.

8 Do you understand that?

9 DEFENDANT INMAN: Yes, sir.

10 THE COURT: All right. Now, understanding the nature
11 of the charges against you and the maximum possible
12 punishment, how do you want to plead?

13 DEFENDANT INMAN: Guilty.

14 THE COURT: All right. Has anybody forced you in any
15 way, or coerced you, threatened you, promised you anything
16 to get you to plead guilty?

17 DEFENDANT INMAN: No.

18 THE COURT: I want to tell you that the South
19 Carolina law, Code of Laws, provides that in a capital
20 case, a case where the State is seeking the death penalty,
21 that you are entitled to a number of rights, all of those
22 rights which are afforded against every criminal
23 defendant, but, also, a number of additional rights.

24 Do you understand that?

25 DEFENDANT INMAN: Yes, sir.

1 THE COURT: That it would be a bifurcated proceeding
2 with a jury that would hear the guilt phase and, also, the
3 same jury would hear then, if a guilty verdict was
4 returned, they would hear the sentencing phase and make a
5 decision about that.

6 Do you understand that?

7 DEFENDANT INMAN: Yes, sir.

8 THE COURT: Do you understand that if you enter a
9 plea of guilty that you waive and give up your right to a
10 jury trial to have a jury decide the guilt phase? And, by
11 doing that, you give up your right to have a jury decide
12 the sentencing phase.

13 Do you understand that?

14 MR. BANNISTER: Do you understand that?

15 DEFENDANT INMAN: Yes, sir.

16 THE COURT: Okay. And do you understand that you
17 could impanel a jury, and that you could get in front of
18 that jury in the guilt phase and admit your guilt and have
19 that jury decide your sentence?

20 Do you understand that?

21 MR. BANNISTER: Judge, I would object to that
22 question, the way it's asked. I don't believe he's got
23 that right, if I'm understanding it the way you're asking
24 it.

25 THE COURT: Well, I don't want to be -- make it

1 confusing.

2 But if you were to impanel a jury in the guilt phase,
3 you could testify and admit to your guilt in front of that
4 jury and have that jury then in a sentencing phase
5 sentence you.

6 Do you understand that?

7 DEFENDANT INMAN: Yes, sir.

8 THE COURT: Okay. And do you --

9 MR. BANNISTER: Judge --

10 THE COURT: -- understand by doing that that you give
11 up that right?

12 Yes, sir, Mr. Bannister.

13 MR. BANNISTER: Judge, I need to, I guess, at least,
14 put on the record, at this point, that in March, we raised
15 the issue that the Defendant sought to enter a guilty
16 plea, as he's doing today, and then proceed to a jury
17 trial sentencing. And we believe that that was an option
18 that he should be entitled based on the fact of his Sixth
19 Amendment right to a jury trial, his Eighth Amendment
20 right to present mitigation, and his Fourteenth Amendment
21 right to present a complete defense.

22 You determined, prior to this proceeding, that he did
23 not have that option. I believe that that issue has been
24 preserved for review. But to the extent that I need to
25 state it again for the record, I'm saying that we raised

1 that issue and we believe it's part of this case no matter
2 what going forward. But that's been part of my
3 explanation to him about where we go.

4 So, with that on the record, go ahead.

5 THE COURT: Well, I want to tell you, Mr. Inman,
6 that, in South Carolina, we do not have conditional guilty
7 pleas. And the law is very clear about that. Whether or
8 not this issue is preserved for appeal is not something
9 that I will address, and I have no control over it.

10 Do you understand that?

11 DEFENDANT INMAN: Yes, sir.

12 THE COURT: All right. Now, and I would tell you
13 that there are -- I have no -- and I don't have an opinion
14 about whether or not what your attorney claims -- what he
15 thinks about the preservation of that issue for appeal is.
16 But I can tell you that the law is very clear. There are
17 no conditional pleas. And if you enter a plea of guilty,
18 you can't do it on a condition.

19 Do you understand that?

20 You can't hold something out in abeyance by entering
21 this guilty plea.

22 Do you understand that?

23 DEFENDANT INMAN: Yes, sir.

24 THE COURT: All right.

25 MR. BANNISTER: And, Judge, I guess what I want to

1 say is, I want to be sure that there's a clear distinction
2 on the record between what you're asking him to waive,
3 which is his ability to stand up in front of a jury and
4 tell them he's guilty versus going through a formal guilty
5 plea and then proceeding to a jury trial having entered
6 the guilty plea. He cannot do that. But I think the way
7 the question was worded to him, it sounded like that was
8 an option. And it's simply not. I mean --

9 THE COURT: Well, I don't want to get into confusing
10 semantics. But if you enter this plea and I accept it,
11 you are giving up your right to have a jury impaneled.

12 And let me tell you, there are significant rights
13 which attach to the selection of a jury in a capital case.
14 And part of that is already in place. A lengthy and
15 comprehensive juror questionnaire has been sent to
16 potential jurors. That has been provided to your counsel
17 and to the State. They are able to learn many things
18 about jurors. And, additionally, at the time, if you were
19 to go forward with a jury trial, you and the State would
20 have an opportunity to individually question potential
21 jurors to make a -- to find out information about whether
22 or not they could follow the law and be impartial in your
23 case.

24 Do you understand that?

25 DEFENDANT INMAN: Yes, sir.

1 THE COURT: And if you enter this plea and I accept
2 this plea, you are giving that right up.

3 Do you understand that?

4 DEFENDANT INMAN: Yes, sir.

5 THE COURT: All right. And are you doing this of
6 your own free will?

7 DEFENDANT INMAN: Yes, sir.

8 THE COURT: Okay. Has anybody -- this is what you
9 want to do?

10 DEFENDANT INMAN: Yes..

11 THE COURT: It's not at someone elses suggestion; is
12 that correct?

13 DEFENDANT INMAN: Yes, sir.

14 THE COURT: It is at someone elses suggestion?

15 DEFENDANT INMAN: No. I mean, that's correct.

16 THE COURT: All right. And understanding all that --
17 Is there something else you want to say,
18 Mr. Bannister? I didn't know if --

19 MR. BANNISTER: No, just when you get to the -- I'll
20 raise my hand.

21 THE COURT: Okay. Now, I, also, want you to know
22 that every person charged with a crime in our country is
23 presumed innocent unless and until the State, who always
24 has the burden of proof, can prove that person guilty
25 beyond any reasonable doubt. And these are rights at a

1 jury trial.

2 Do you understand that?

3 DEFENDANT INMAN: Yes, sir.

4 THE COURT: The burden is always on the State. Every
5 person charged with a crime in this country has an
6 absolute right to confront and cross-examine the witnesses
7 and the evidence that the State would put up against that
8 person accused of the crime. They would have a right to
9 use the subpoena power of the state to compel in court all
10 relevant and competent evidence in your defense. You
11 could put up defenses, or you could remain silent. And
12 your silence could not -- and could never be held against
13 you. And you can never be compelled to incriminate
14 yourself.

15 Do you understand all of those rights?

16 DEFENDANT INMAN: Yes, sir.

17 THE COURT: Additionally, you are going to be giving
18 up your right to challenge, in the guilt phase, the
19 Constitutional propriety of any evidence that's been
20 seized or any evidence that's been -- or any statement
21 that you've made.

22 Do you understand that?

23 DEFENDANT INMAN: Yes, sir.

24 THE COURT: Understanding all of those rights,
25 understanding the nature of the charge against you, do you

1 still want to enter this plea of guilty to all four
2 charges?

3 DEFENDANT INMAN: Yes, sir.

4 THE COURT: Are you guilty?

5 DEFENDANT INMAN: Yes, sir.

6 THE COURT: Now, are you totally and completely
7 satisfied with the representation that you have received
8 from your attorneys?

9 DEFENDANT INMAN: Yes, sir.

10 THE COURT: Have you met with them as many times as
11 you think is necessary?

12 DEFENDANT INMAN: Yes, sir.

13 THE COURT: Have you met with them as often as you
14 think is necessary?

15 DEFENDANT INMAN: Yes, sir.

16 THE COURT: Have you understood your talks with them?

17 DEFENDANT INMAN: Yes, sir.

18 THE COURT: Do you need more time with them?

19 DEFENDANT INMAN: No.

20 THE COURT: Do you have any complaints that you want
21 to make against them?

22 DEFENDANT INMAN: No.

23 THE COURT: Have they done everything that you think
24 is necessary or reasonable to adequately prepare your
25 defense in this case?

1 DEFENDANT INMAN: Yes.

2 THE COURT: Have they done anything which you think
3 was inappropriate?

4 DEFENDANT INMAN: No.

5 THE COURT: So are you totally satisfied with them?

6 DEFENDANT INMAN: Yes.

7 THE COURT: And do you have any complaints that you
8 want to make against anybody else with respect to the
9 charges against you, and that would include law
10 enforcement, the Solicitor's Office, anybody?

11 DEFENDANT INMAN: No.

12 THE COURT: And have you had enough time to review
13 the evidence that the State has against you?

14 DEFENDANT INMAN: Yes, sir.

15 THE COURT: All right. At this time, I'm going to
16 ask the State to give us a -- to give me a recitation of
17 the facts that they would prove at trial. So I want you
18 to listen to it. Because when it's done, I'm going to
19 want to know if you disagree with any of the things that
20 they've presented.

21 MR. ARIAIL: Your Honor, what we would like to do
22 is -- the State would like to -- I've got a packet I'd
23 like to hand up to you that is the stipulated facts that
24 we've done with Defense Counsel. And then I would like to
25 review it on the video as we go through it, because it has

1 some exhibits I'd like the Court to review. And we've
2 given them copies of it. They've looked at it ahead of
3 time.

4 THE COURT: Mr. Bannister, and, Mr. Inman, you can
5 sit down, I guess.

6 MR. BANNISTER: Thank you, Your Honor.

7 MR. ARIAIL: Your Honor, I'm going to hand up to the
8 Court a document of 12 pages entitled "Summary of Facts
9 Supporting All Charges Against Jerry Buck Inman" relating
10 to these four indictments. It's been signed by Mr. Inman,
11 Mr. Bannister, and myself. And attached to it are 11
12 exhibits that we have marked. I want to review those as
13 we go forward and present a substantial factual basis.

14 THE COURT: All right.

15 MR. ARIAIL: Your Honor, on May 25th of 2006, Tiffany
16 Marie Souers was a rising junior engineering student at
17 Clemson University. She lived at The Reserve apartment
18 complex in Central, South Carolina, unit 118-CC in Pickens
19 County. The apartment complex was, in essence, an
20 off-campus Clemson University complex designed for housing
21 of students in a dormitory style, but it was an apartment
22 complex. This was a downstairs corner unit with four
23 bedrooms.

24 On May the 25th, Tiffany was staying in the apartment
25 by herself as her roommates were gone for various reasons.

1 Sometime during the day on May 25th, the Defendant, Jerry
2 Buck Inman, who hereinafter will be referred to as
3 "Inman," drove by the apartment unit and saw Tiffany on
4 the outside porch on the side of the unit.

5 The unit is set up -- this is the side of it. She
6 lived in the downstairs unit. As you can see, it's got a
7 porch rail. On this side where we're standing is the
8 parking lot for that particular unit. And then on the
9 right-hand side, we'll go around the building and review
10 the front entrance. The -- as you can see, the front of
11 the unit is in the bottom right. That would have been the
12 entrance to the unit to the front. The side on the
13 right -- on the left, excuse me, is where Mr. Inman
14 entered the unit.

15 That evening, Tiffany, accompanied by two of her
16 friends, Erica Cooler and Anna Janiec, went to a
17 restaurant known as Sine Qua Non where their friend, Emily
18 Raines, was working. Around 11:00 p.m., Tiffany returned
19 home when Erica dropped her off and she went into her
20 unit. At 11:20 p.m., she answered a text message from her
21 friend, Travis Braznell, but did not respond to a later
22 text from Travis at 12:52 a.m.

23 By his own admission, around 1:00 a.m. on May 26th,
24 Inman entered Tiffany's apartment by climbing over the
25 porch rail where he had seen her standing earlier in the

1 day and entered through the patio door. He then went into
2 Tiffany's room where she was sleeping. And we've got a
3 diagram. The diagram is set up. On the left-hand side,
4 you'll see the hinged door. The hinged door is the door
5 in which it goes out on to the small patio. He entered
6 there and came into the living room, made a right-hand
7 turn into the bedroom, and that bedroom on the front right
8 is where Tiffany was asleep at the time. He came in here
9 and went down here. And this is the bedroom in which she
10 was asleep. The other three bedrooms weren't occupied at
11 that time.

12 He woke her and covered her mouth with his hand, and
13 a struggle ensued. He, eventually, bound her hands and
14 began to look for her pocketbook, wallet, including
15 driver's license, car keys, ATM card, and other items of
16 value. All this time, Inman was questioning Tiffany about
17 the location of these items. After locating these items,
18 he proceeded to sexually assault her and kill her by
19 tightening a bikini bathing top -- bathing suit top around
20 her neck to the extent that she died. Inman then left the
21 apartment the same way he entered.

22 He drove his 1990 Chevrolet Blazer truck to the Sun
23 Trust Bank at 1051 Tiger Boulevard in Clemson, South
24 Carolina, and attempted to use Tiffany's ATM card four
25 different times at 3:22 a.m. Eastern Standard time, 3:29

1 a.m. Eastern Standard time, 3:31 a.m. Eastern Standard
2 time, and 3:32 a.m. Eastern Standard time. All attempts
3 failed because he entered the wrong PIN number.

4 He then drove to Wachovia Bank at 955 Tiger
5 Boulevard, Clemson, South Carolina, where he attempted to
6 use Tiffany's ATM card on two occasions, 3:37 a.m. Eastern
7 Standard time and 3:38 a.m. Eastern Standard time. Those
8 attempts failed, also, because the wrong PIN number was
9 used.

10 Photographs were obtained from these machines showing
11 an individual whose face and head are covered with
12 bandannas attempting to use the machine at the times
13 listed. There's the first photograph that was captured at
14 3:36 on that clock with the credit card in his hand, and
15 the next one shortly after that with the bandannas over
16 his head. Also captured in these photographs is a portion
17 of a truck. The first is captured as the -- a portion of
18 the grill of the truck. And the next is the hood and the
19 windshield. Those were all from the ATM. The truck's
20 body style was identified by Mr. Donald Floyd, the senior
21 project engineer at General Motors, as either a Chevrolet
22 Blazer or a GMC Jimmy with a model year between 1982 and
23 1994.

24 Inman then drove to his home in Tennessee the morning
25 of May the 26th, 2006, discarding the items he had taken

1 from Tiffany's apartment as he drove. Ms. Souers driver's
2 license that Inman discarded was found by
3 Mr. James Lindsay on Highway 76 between Clemson and
4 Anderson.

5 On May 26th, 2006, at approximately 1:30 p.m.,
6 Tiffany's body was found by one of her roommates, who was
7 returning keys to the unit for use of someone who would be
8 subleasing during the summer. Her body was found
9 partially clad on the floor of her bedroom. Law
10 enforcement was notified and the Central police responded.

11 The South Carolina Law Enforcement Division, SLED,
12 was requested to send its forensic team to process the
13 crime scene for evidence. Extensive processing of the
14 scene occurred that day and into the early morning hours
15 of May 27th. Additional crime processing occurred over
16 the next several days as the apartment remained in the
17 custody and control of SLED and the Central Police
18 Department.

19 Ultimately, of particular evidentiary importance was
20 the removal of a large section of carpet from Tiffany's
21 bedroom, which was sent to the SLED lab for further
22 testing under controlled conditions. This was done at the
23 direction of SLED Captain Jeff Stephens.

24 Tiffany's body was transported to Greenville Memorial
25 Hospital where an autopsy was conducted by forensic

1 pathologist Dr. Eric Christensen. Dr. Christensen made
2 several findings as follows: First, Tiffany Souers death
3 was a homicide resulting from asphyxia to ligature
4 strangulation. In non-medical terms, the ligature was the
5 bikini top. And it was twisted so tightly around her neck
6 that blood flow to her brain was cut off killing her.
7 Second, Dr. Christensen found that Tiffany's hands and
8 wrists bore signs that were consistent with her being
9 restrained during a struggle. Third, Dr. Christensen
10 found evidence that she had suffered traumatic sexual
11 intercourse.

12 Based upon that finding, he used a sexual assault
13 collection kit in an effort to preserve any potential
14 evidence. Of particular evidentiary importance in this
15 kit were vaginal swabs which were forwarded to the SLED
16 crime lab for further analysis.

17 After Tiffany's body was discovered, a massive law
18 enforcement effort to locate the perpetrator was
19 undertaken by agencies in both Pickens and Greenville
20 County under the direction and leadership of SLED. This
21 included following up on hundreds of leads and tips,
22 untold interviews, and the collection of any evidence that
23 may be of benefit, as the entire Clemson University campus
24 was traumatized by this event. However, other than the
25 ATM photographs, the carpet cuttings, and the vaginal

1 swabs, no other piece of evidence leading to an identified
2 suspect was immediately developed.

3 The SLED lab processed the carpet that came from --
4 excuse me, from Tiffany Souers bedroom and found two areas
5 of semen stain. These were cut from the carpet and
6 forwarded to the DNA section for further processing by
7 Adrienne Riley, a forensic serology and DNA analyst. She
8 was able to develop a DNA profile from the sperm fraction
9 of the semen on the carpet. This profile was submitted
10 for comparison to CODIS, which is the Combined DNA Index
11 System, which is a national data base for profile storage
12 on various individuals.

13 Also, the SLED lab processed the vaginal swabs
14 collected by Dr. Christensen at autopsy and determined the
15 presence of semen. These were then forwarded to the DNA
16 section of the lab for further processing by Ms. Riley.
17 She was able to develop a DNA profile from the semen on
18 the vaginal swabs. This profile matched the DNA profile
19 developed from the sperm fraction of the semen on the
20 carpet cuttings.

21 On or about June the 5th, 2006, SLED received a
22 response from CODIS that a match had been found to the DNA
23 profile submitted. There was a match to two profiles in
24 the data base, one submitted by the State of North
25 Carolina and one submitted by the State of Florida. Both

1 of these matches belonged to the Defendant, Jerry Buck
2 Inman.

3 SLED immediately began a nationwide information
4 search to locate Inman. And it was determined that he
5 was, currently, living in Dandridge, Tennessee. The
6 Tennessee Bureau of Investigation was notified and
7 requested to locate and arrest Inman. Warrants for
8 Inman's arrest had, at that time, been secured by SLED.
9 This was based upon the DNA match and the CODIS hit.

10 Chief Deputy G.W. "Bud" McCoig of the Tennessee
11 County Sheriff's -- excuse me, the Jefferson County
12 Tennessee Sheriff's Department was notified by TBI, that's
13 the Tennessee Bureau of Investigation, of the need to
14 locate Mr. Inman. Chief Deputy McCoig and TBI Agent Mike
15 Hannon began their efforts to locate Inman around 4:30 in
16 the afternoon on June the 6th, 2006.

17 They, eventually, split up with Mr. Hannon watching
18 the house of Inman's sister and Chief Deputy McCoig
19 stationed at Inman's parent home. Inman returned to his
20 parents home shortly after 11:30 p.m. And upon seeing
21 Chief Deputy McCoig's vehicle, Inman drove away for about
22 a half a mile when he stopped at approximately 11:45 p.m.
23 on June the 6th, 2006. Inman was taken into custody by
24 Chief Deputy McCoig without further incident.

25 At 11:47 p.m. on June the 6th, Chief Deputy McCoig

1 verbally advised Inman of his Miranda rights as they sat
2 in McCoig's vehicle on the side of the road. Inman was
3 then briefly interviewed by Chief Deputy McCoig and Inman
4 admitted to the crimes of murder, criminal sexual conduct,
5 burglary, and kidnapping of Tiffany Souers in Pickens
6 County, Central, South Carolina, on May 26th, 2006.

7 Chief Deputy McCoig then transported Inman to the
8 Jefferson County Sheriff's Department where they met with
9 TBI Agent Mike Hannon for the purpose of obtaining a
10 written statement from Inman. Agent Hannon, at 12:30 a.m.
11 on June the 7th, 2006, fully advised Inman of his Miranda
12 rights by using a written form, and Inman signed the
13 rights form and waived his rights and agreed to give a
14 statement to Agent Hannon.

15 The rights and waiver form are marked as State's
16 Exhibit No. 8. And that's a copy of the form. At the
17 bottom, you'll see Mr. Inman's signature, place is
18 Jefferson County Jail, and the date is June 7th, the time
19 is 12:30 a.m. And it's witnessed by both Chief Deputy
20 McCoig, as well as Mike Hannon of TBI. And then
21 Mr. Hannon's social security -- I mean, Mr. Inman's social
22 security number and the date of graduation or
23 accomplishment in education, and the ninth grade was
24 listed.

25 Agent Hannon interviewed Inman and produced a written

1 statement, which was handwritten by Agent Hannon based
2 upon what Inman told him. The statement was then reviewed
3 by Agent Hannon with Inman. Following their review, Agent
4 Hannon asked Inman if he would sign the statement, and he
5 responded, No. A copy of the statement is marked as
6 State's Exhibit No. 9, and it's presented to the Court for
7 review.

8 It reads as follows: I went to South Carolina about
9 two weeks ago. I don't remember the exact date. I was
10 just driving. I ended up somewhere around Clemson. I did
11 not know the victim. I just saw her on the balcony of her
12 apartment early in the evening. I drove around for a
13 while until I thought she was asleep. I parked behind her
14 apartment. Her apartment was on the bottom floor.

15 I climbed over the rail. The door heading to her
16 apartment was unlocked. I entered the apartment and found
17 her bedroom. I found the victim asleep in her bed -- in
18 her bedroom. I woke the victim. She was startled. I
19 tied her hands behind her. I did not go there to kill
20 her. I don't want to talk about the sex part, but I did
21 have sex with her.

22 I went and found -- no, excuse me. I used an item I
23 found in her room to tie her up. I did not have
24 anything -- something else, I'm not sure what that says.
25 I knew the victim could recognize me. When I knew the

1 victim was dead, I went out the same way I came in. When
2 I left her apartment, I drove back to 1712 Junior Williams
3 Road in Dandridge.

4 Before I left her apartment, I took some things from
5 her apartment. I took two credit cards. I don't know
6 what kind of cards. I tried to use one of the cards at a
7 bank. I was not able to use the card, so I threw it away
8 somewhere along the interstate on my way home. I did not
9 know the name on the card. I know the girl in the
10 apartment's name was Tiffany Souers. I saw it on the news
11 here in Tennessee.

12 The clothes I wore while I was in Tiffany's apartment
13 are in my car. I wore the shoes I have on now. I did not
14 take any other item, except the credit cards. I knew
15 Tiffany was dead because she stopped struggling. I held
16 my hand over her mouth. I strangled her with a bathing
17 suit top, the top of a bathing suit. And then that's
18 witnessed by Deputy McCoig.

19 Thereafter, SLED Agents Jeff Kindley and Gene Donohue
20 arrived at the Jefferson County Sheriff's Department for
21 the purpose of interviewing and obtaining a statement from
22 Inman concerning the murder of Tiffany Souers. Agent
23 Kindley advised Inman of his Constitutional rights
24 beginning at 3:52 a.m. on June the 7th, 2006, and Inman
25 agreed to waive those rights and talk to Agents Kindley

1 and Donohue as is evidenced by his signature on the SLED
2 Waiver of Rights form, which is State's Exhibit No. 10.
3 There are also -- you can see Mr. Inman's signature on the
4 bottom right with Agents Kindley and Donohue as the
5 witnesses and going through the full recitation of rights
6 form. That's -- and the initials on the side of each one
7 indicates it's been read to him.

8 Agent Donohue, in the presence of Agent Kindley, then
9 took a statement from Inman. In this statement, Inman,
10 again, admitted to the murder, kidnapping, burglary, and
11 criminal sexual conduct of Tiffany Souers on May 26, 2006,
12 in Central, South Carolina. This statement is marked
13 State's Exhibit No. 11, and is submitted to the Court for
14 review.

15 I live with my cousin, Derrick Adams, in Tennessee.
16 I was not adjusting well to being out of jail. So I
17 decided to get away. I started driving in my car through
18 Chattanooga, Georgia, North Carolina, and South Carolina.
19 I ended up around Clemson about two weeks ago. I had run
20 out of money so I was looking for something to rob.

21 I drove around some apartment complexes. I parked in
22 the back of one of the apartment complexes and got out to
23 try some doors. The first one I tried was open. I went
24 in the back door after I hopped over the rail. No lights
25 were on and I went in. I went in to the living room and

1 then turned right into the bedroom.

2 After that, I went into a bedroom and a girl was
3 sleeping there. I put my hand over her mouth and woke her
4 up. She started fighting me and we wrestled. I tied her
5 up with a piece of clothing behind her back. I asked her
6 if she had any money, and she said, No. I asked her for
7 her purse and she took her wallet out. I got her credit
8 card and asked her for her PIN and she told me, but I
9 forgot it. After that, I had sex with her. And then I
10 killed her. I took her bed sheets, her wallet, her car
11 keys, and went out the back door. I put some bandannas
12 over my face and went to the ATM to get some money, but
13 couldn't get any.

14 I then left and went back to Tennessee. I had seen a
15 girl on the apartment balcony where I went in earlier in
16 the day. But when I went back at 1:00 a.m. -- or 1:30
17 a.m., I don't think any -- I didn't think anyone was
18 there. I didn't mean for anyone to get hurt. I was just
19 looking for some money.

20 Inman was asked by Agent Donohue if he wanted to sign
21 the statement. He said, No, we still have to go to court.
22 And his refusal to sign was noted on the signature line of
23 the statement form by Agent Donohue, which is State's
24 Exhibit No. 11.

25 Thereafter, Inman was returned to Pickens County,

1 South Carolina for processing. Deputy Tony Robinson of
2 the Pickens County Sheriff's Office obtained DNA samples
3 from Inman for the purpose of DNA analysis. These samples
4 were submitted to Adrienne Riley of the SLED lab who
5 developed a DNA profile from them. This known DNA profile
6 of Jerry Buck Inman was compared by Ms. Riley with the DNA
7 profiles that were developed from the vaginal swabs and
8 the carpet cuttings.

9 Ms. Riley concluded that the DNA profile developed
10 from the semen on the vaginal swabs and the sperm fraction
11 from the carpet cuttings matches Jerry Buck Inman. The
12 probability of randomly selecting an unrelated individual
13 having a DNA profile matching the semen on these items is
14 approximately one in 240 quadrillion.

15 And, as we handed up to Your Honor, those facts are
16 stipulated.

17 THE COURT: All right. Come on back around.

18 Now, Mr. Inman, you have heard the recitation of the
19 facts. And that was pretty much read pretty close to
20 verbatim from this document.

21 I want to show you the last page of this document and
22 ask you if you recognize that signature on the top -- it
23 will be on your top right?

24 DEFENDANT INMAN: Yes, sir.

25 THE COURT: Is that your signature?

1 DEFENDANT INMAN: Yes, sir.

2 THE COURT: Now, do you understand that a stipulation
3 of facts, it means that the persons who stipulate to those
4 facts agree that they are true and correct?

5 Do you understand that?

6 DEFENDANT INMAN: Yes, sir.

7 THE COURT: Is that your understanding of the facts
8 that are documented in this document?

9 DEFENDANT INMAN: Yes, sir.

10 THE COURT: Is there anything that has been related
11 to me that you disagree with?

12 DEFENDANT INMAN: No.

13 THE COURT: I just want to -- do you understand that
14 if I accept this plea, you are giving up your right to
15 have a jury make this determination on your sentence with
16 respect to the murder case?

17 Do you understand that?

18 DEFENDANT INMAN: Yes.

19 THE COURT: And --

20 MR. BANNISTER: Judge, for the record, since we're
21 going back into the jury trial rights, let me just say
22 again that we previously made a motion --

23 THE COURT: It's well documented and I --

24 MR. BANNISTER: I think that I have to restate it,
25 though, just for the record.

1 THE COURT: All right. Go ahead.

2 MR. BANNISTER: He's been put in a position where
3 he's got to make a choice between Constitutional
4 provisions, one is the Fourteenth Amendment, Sixth
5 Amendment, and Eighth Amendment right to present a
6 complete defense, which would include the mitigation of
7 his guilty plea. The other is the right to a jury trial
8 and have a sentencer determine what sentence he would
9 receive. He has to choose between those two.

10 We say the choice itself is Unconstitutional. And
11 we -- I'm just stating that again for the record. You've
12 already decided that that's not the case. And I just want
13 to make sure it is preserved.

14 Thank you, Your Honor.

15 THE COURT: Now, again, Mr. Inman, let me tell you
16 that the law in South Carolina is clear that there are no
17 conditional guilty pleas.

18 Do you understand that?

19 DEFENDANT INMAN: Yes, sir.

20 THE COURT: And whether or not that issue is
21 preserved for appeal is not for me to decide.

22 Do you understand that?

23 DEFENDANT INMAN: Yes, sir.

24 THE COURT: An Appellate Court will make that
25 determination, the Supreme Court of the State of South

1 Carolina.

2 Do you understand that?

3 DEFENDANT INMAN: Yes, sir.

4 THE COURT: But you understand that a jury's verdict
5 would have to be unanimous.

6 Do you understand that?

7 DEFENDANT INMAN: Yes, sir.

8 THE COURT: All 12 persons on the jury would have to
9 agree to a verdict.

10 Do you understand that?

11 DEFENDANT INMAN: Yes, sir.

12 THE COURT: And you understand that if one of the 12
13 people couldn't make up their mind that the law would
14 require that the sentence would be life.

15 Do you understand that?

16 DEFENDANT INMAN: Yes, sir.

17 THE COURT: And you're giving that right up and
18 you're requesting that the Court be the fact finder and
19 the determiner of the sentence; is that right?

20 DEFENDANT INMAN: Yes.

21 THE COURT: Has anybody made any promise, prediction,
22 or prophesy to you about what they think my sentence might
23 be?

24 DEFENDANT INMAN: No, sir.

25 THE COURT: And I want to tell you right now that

1 this is the first time I've been exposed to these facts,
2 and that I have not made up my mind, and that I will
3 listen fairly and impartially to everything that's
4 presented to me.

5 Do you understand that?

6 DEFENDANT INMAN: Yes, sir.

7 THE COURT: But, at the same time, you don't get the
8 right to send me a questionnaire, and you don't get the
9 right to question me the way you would jurors.

10 Do you understand that?

11 DEFENDANT INMAN: Yes, sir.

12 THE COURT: And you still want to go forward?

13 DEFENDANT INMAN: Yes, sir.

14 THE COURT: Is there any other questions that should
15 be propounded to Mr. Inman, at this time, that anyone can
16 think of?

17 MR. ARIAIL: The only thing I would suggest, Your
18 Honor, I would like to put on the record from the State's
19 perspective -- and I think based on the current events
20 taking place in some related cases -- the Court has made
21 no indication to the State of any -- any indication as to
22 which sentence would be appropriate. Therefore, it is our
23 understanding that we are moving forward with the Court
24 able to conclude to impose either sentence available based
25 upon what your determination of the facts is.

1 THE COURT: All right. Do you understand what he
2 just said?

3 DEFENDANT INMAN: Yes, sir.

4 THE COURT: Is there any other questions that need to
5 be propounded that you can think of, Mr. Bannister?

6 MR. BANNISTER: No, sir, Your Honor.

7 THE COURT: Mr. Inman, do you have any questions you
8 want to ask of me?

9 DEFENDANT INMAN: No.

10 THE COURT: All right. Well, I'm going to accept
11 this plea to these four cases as being freely,
12 voluntarily, and intelligently made with the advice of
13 three very competent attorneys with whom Mr. Inman states
14 he is well satisfied. And I find there is a substantial
15 factual basis for the plea.

16 The case remains in the posture of having a
17 bifurcated sentencing hearing. And we will proceed with
18 that beginning on September 8th, the date that the trial
19 was scheduled to start.

20 Anything else? Anything further?

21 MR. BANNISTER: No, Your Honor.

22 THE COURT: All right. And do we need to do anything
23 to accommodate Dr. Schwartz-Watts interview with your
24 client so that we're ready to go on the 8th?

25 MR. BANNISTER: No, sir, Your Honor.

1 THE COURT: Anything from the State that we can do?

2 (Pause.)

3 MR. ARIAIL: I think just for the record, Ms. Strom
4 and I are concerned that Mr. Bannister's injection of this
5 statement either makes this a conditional plea or it,
6 certainly, borders on making this a conditional plea,
7 which if that is the case, then we're not going to ever be
8 able to correct that here and after today. It's going to
9 have an impact from here on out.

10 I would like the Court to direct to Mr. Inman,
11 specifically, the question, does he understand by waiving
12 and giving up those rights that he is, also, from your
13 perspective, the law's perspective, waiving the right to
14 be tried by a jury in the sentencing phase?

15 MR. BANNISTER: I absolutely object to that question.

16 THE COURT: Well, Mr. Bannister, that's an issue that
17 I think -- I believe I have asked, but maybe not as
18 directly as the State has requested.

19 MR. BANNISTER: Well, that's saying the condition
20 here is that he give up an appellate right that he would
21 have. Every defendant that appears in court still has the
22 right to appeal his guilty plea. And so --

23 THE COURT: And that's absolutely correct.

24 MR. BANNISTER: So the condition that they're asking
25 to put on there is one from the State, that is that he

1 give up rights that he would normally otherwise have.

2 THE COURT: That is not what they're saying. But
3 what the law --

4 And, Mr. Inman, I direct this to you. Because in the
5 end, you get advice from your attorneys. But this
6 decision is yours. I don't -- the law is clear in South
7 Carolina that you cannot enter a conditional guilty plea,
8 which means you cannot plead guilty and reserve some issue
9 with respect to the guilt phase for the Appellate Courts
10 to rule on.

11 Mr. Bannister may disagree with me.

12 MR. BANNISTER: And I want to state, for the record,
13 that I do.

14 THE COURT: Okay.

15 MR. BANNISTER: And I have advised him that I believe
16 this issue is preserved and will survive the guilty plea.

17 THE COURT: Mr. Inman, I want to tell you that we
18 disagree on that with respect to that, that by your
19 entering this plea that it has -- I believe -- and, of
20 course, I'm not the final word on this issue, because the
21 Supreme Court will be the final word. But I believe that
22 you're giving up that right, so.

23 And I'll ask you again, because if you want --

24 MR. BANNISTER: I'm sorry, Your Honor. Are you
25 giving him -- I mean, I just have to object. Because I

1 think, at this point, what you are doing is giving your
2 opinion about what an Appellate Court might do. And I
3 think that's entirely inappropriate. I mean, I object
4 to -- I don't think you can give him an opinion about what
5 an Appellate Court might do with that issue.

6 THE COURT: Mr. Bannister, I've tried to be very
7 plain that I don't have an opinion about what they would
8 do.

9 But I want to tell you, Mr. Inman, and this --
10 without arguing legal semantics with you, South Carolina,
11 clearly, states that they do not allow conditional guilty
12 pleas. So if there is some question in your mind, I
13 would -- about this issue, I would urge -- I would allow
14 you to withdraw your plea at this time. And we've got the
15 jury coming. We can go forward with that. You can handle
16 it in that fashion.

17 I just want -- Mr. Bannister may be convinced that
18 he's got an appellate issue. And I don't know whether he
19 does or not. But I'm telling you I believe the law in
20 South Carolina is clear that guilty pleas are
21 unconditional.

22 MR. BANNISTER: I guess -- what is the condition,
23 though, that you're telling him that the -- what is the
24 conditional part of this plea?

25 I mean, he has unconditionally entered his guilty

1 plea. We're having an argument with -- I guess the three
2 of us are trying to decide whether the issue I've
3 raised -- or that we've raised prior to this is or is not
4 appealable. I'm trying to see what -- what is the
5 condition exactly that you're asking him to give up?

6 In general, I agree with you. He can't have a
7 conditional guilty plea. But what, specifically, is the
8 condition that he is presently --

9 THE COURT: Mr. Bannister, I'm not going to get into
10 a legal argument with you on the record about this issue.
11 Your client has entered the plea. I don't want him to do
12 it -- I want him to be aware that you cannot reserve -- I
13 mean, you can go over the law with him about what the
14 Courts review when they look at guilty pleas.

15 MR. BANNISTER: That's right.

16 And I think that's my province, which is why I have
17 this --

18 THE COURT: Well, if this is a big issue, then I'm
19 about to not accept the plea.

20 MR. BANNISTER: Well, all I can tell you is that I
21 believe he's entered an unconditional plea at this point.
22 And I'm having a hard time seeing what is the condition
23 that he's put on. I mean, I agree with you that it's --
24 that he cannot enter a conditional plea. So on that,
25 we're all in agreement.

1 THE COURT: Well, Mr. Inman, clearly, there is some
2 disagreement about the preservation of this issue that
3 your attorneys have raised. I'm not involved in it. And
4 I don't have an opinion about it. Whether or not
5 Mr. Bannister can do that successfully is something that
6 the Supreme Court will answer. The State does not believe
7 that he can. He believes that he can.

8 But I don't want you -- I want your plea to be --
9 you've got to understand it's unconditional, that you
10 enter that, and whether or not that happens on appeal is
11 really of no concern here. I want your plea to not be
12 dependent on that issue.

13 So I'd ask you now, is your plea predicated on that
14 issue? Is it dependent on that issue?

15 MR. BANNISTER: If you want a moment, we can talk.

16 DEFENDANT INMAN: We need to talk.

17 MR. BANNISTER: Let me speak with him, Judge. We
18 need to take a break.

19 THE COURT: All right. We'll take about a 15-minute
20 recess.

21 (WHEREUPON, a break was taken.)

22 (WHEREUPON, Court's Exhibit No. 1 was marked for
23 identification and admitted into evidence.)

24 THE COURT: Mr. Bannister.

25 MR. BANNISTER: We're ready to proceed.

1 THE COURT: Okay. Well, do you want to continue on,
2 Mr. Inman?

3 DEFENDANT INMAN: Yes, sir.

4 THE COURT: And while this may not be a -- all I'm
5 trying to determine is that your entry of this plea is not
6 based on or predicated on some issue that you think you
7 might prevail on or might not prevail on in an Appellate
8 Court.

9 Do you understand what I'm saying to you?

10 DEFENDANT INMAN: Yes, sir.

11 THE COURT: That the only basis for the plea should
12 be you're knowing -- your knowledge of your rights,
13 intelligent nature of your plea, your ability to
14 understand what's going on, and your admission to the
15 facts that you believe the State could prove against you.
16 And whether or not you can prevail on an appellate issue
17 should have nothing to do with your entry of this plea.

18 Do you understand that?

19 DEFENDANT INMAN: Yes, sir.

20 THE COURT: Okay. So whether or not you're
21 successful or not successful at some higher court on some
22 issue that might be raised should have nothing to do with
23 why you're entering this plea.

24 Is that clear?

25 DEFENDANT INMAN: Yes.

1 THE COURT: All right. So tell me, in your own
2 words, if you would, sir, why are you entering this plea?

3 DEFENDANT INMAN: I just want to enter the plea and
4 get it over with, just go on from here with the sentencing
5 phase.

6 THE COURT: All right. Do you have any questions you
7 want to ask me about any of your rights?

8 DEFENDANT INMAN: No. ,

9 THE COURT: And you have had enough time to speak
10 with your attorneys about the issue of the jury trial
11 versus a guilty plea; is that correct?

12 DEFENDANT INMAN: Yes.

13 THE COURT: Do you think you fully comprehend and
14 understand all the differences?

15 DEFENDANT INMAN: Yes.

16 THE COURT: And this is what you want to do?

17 DEFENDANT INMAN: Yes, sir.

18 THE COURT: All right. Mr. Bannister, anything else?

19 MR. BANNISTER: No, sir.

20 THE COURT: Anything from the State?

21 MR. ARIAIL: No.

22 THE COURT: Then I am accepting your plea as being
23 knowingly, intelligently, and voluntarily made with the
24 advice of three very competent attorneys who have worked
25 very hard up to this point, and I know will continue to do

1 so.

2 And we will set your -- the second phase of this case
3 for September 8th, and we'll proceed at that time.

4 Thank you very much.

5 MR. BANNISTER: Your Honor, we do have -- I'm
6 sorry -- one other issue.

7 THE COURT: All right.

8 MR. BANNISTER: It doesn't have anything to do with
9 the plea. Can I have just a moment, just two seconds?

10 THE COURT: Okay.

11 MR. ARIAIL: And we have a couple of related motions.

12 THE COURT: All right.

13 (Pause.)

14 MR. BANNISTER: Your Honor, we have a problem. And
15 I'm not sure how far it's going to go. But, apparently,
16 when we came into the courtroom, initially, this morning
17 and were setting up, the mics at our table were on.

18 Now, that's -- normally, they can be on and you can
19 hear them through the PA system. But what was different
20 this morning, apparently, is that the mics were hooked
21 into some sort of live feed that is on the Internet. My
22 office has called and told me that we need to be aware
23 that conversations that were taking place at our table
24 were live and on the air, and that that was being
25 disseminated across the Internet.

1 I need to state for the record a couple of things.
2 First off, there were a number of conversations between
3 myself and co-counsel -- between myself and co-counsels
4 Mr. DeJong and Mr. Culbertson that involved not only
5 attorney-client privilege, but attorney work product. I
6 don't know to what level that has gotten out. I don't
7 know where it goes, you know. And, frankly, we were
8 unaware that that was being recorded in any way, shape, or
9 form. But that is an issue that we need to address. And
10 I just wanted to give Your Honor a heads-up on that.

11 THE COURT: All right.

12 MR. BANNISTER: You know, first off, I wasn't aware
13 we were going to be a live feed on the Internet. But I'd
14 like to know, is it anywhere else? Obviously, that's
15 pretty much everywhere. But, you know, if that includes
16 the Solicitor's Office or the Solicitors over there, then
17 they've heard things that we've been talking about and
18 then we're right in the middle of an issue that's just
19 like State v. Quattlebaum; maybe unintentionally so, but
20 that is where we are.

21 THE COURT: All right. Mr. Ariail.

22 MR. ARIAIL: I don't know about any live feed. I
23 mean, I know the live feed was on. I brought it to your
24 attention.

25 THE COURT: Yes, you did.

1 MR. ARIAIL: It, certainly, doesn't have anything to
2 do with the Solicitor's Office.

3 THE COURT: Well, he's not saying that you're
4 responsible for that.

5 MR. BANNISTER: No, I'm not.

6 THE COURT: What he's saying is that --

7 MR. ARIAIL: Well, he said Quattlebaum. When he said
8 Quattlebaum --

9 THE COURT: Now, wait a minute. Don't --

10 MR. ARIAIL: Okay.

11 THE COURT: He's saying that your office may be privy
12 and may have heard discussions that are privileged.

13 MR. ARIAIL: Could have.

14 THE COURT: Okay. So what I would do now and order
15 that if someone in your office has been listening to the
16 feed that I would, at this time, prohibit you or any other
17 member of your team involved in this case from discussing
18 what was -- what they may or may not have heard over the
19 Internet. Okay. If that works to some prejudice, let me
20 know.

21 But, first of all, what I'd like to do is find out --
22 and I don't know how --

23 MR. ARIAIL: Let me just say this. He's been talking
24 all morning. Let me have a say.

25 THE COURT: All right.

1 MR. ARIAIL: How in the world did I all of the sudden
2 and my office become the focus of some wrongdoing?

3 THE COURT: No --

4 MR. ARIAIL: And, Judge, now, you're saying in here
5 in front of all this media and he's thrown this out here
6 after we got the first --

7 MR. BANNISTER: I'm not throwing it out at the
8 Solicitor, Your Honor. I'm saying it's out there --

9 THE COURT: Wait. Wait --

10 MR. ARIAIL: It -- the first thing I'd like to say is
11 I have no idea, other than my secretary called and said,
12 There's a live feed coming over the Internet and somebody
13 is talking about Mary Francis Hartman and David Hartman,
14 who were until recently -- David still is -- employees of
15 my office.

16 I then stepped up to the bailiff and your law clerk
17 and said, Somewhere there's a feed going out here that
18 they're hearing our conversations. She then called me
19 later and said, Somebody is up here talking about
20 Dr. Donna Schwartz-Watts and asking her question -- be
21 sure and ask her a question. Well, that's Mr. Culbertson.
22 And I told him before he went up there, I said, There's a
23 live feed over there. Do not go over there and talk. He
24 disregarded that instruction, went over there and talked
25 right to them about Dr. Schwartz-Watts.

1 So those are the only two things that we have heard
2 that occurred over there.

3 THE COURT: Okay. And --

4 MR. ARIAIL: And I will report -- I'll ask
5 Ms. Pickett, my secretary, if there was anything else she
6 heard. I will report that back. If there is something
7 else she heard that is coming from that microphone -- I
8 don't think it was coming from that microphone. I don't
9 think it was coming from this microphone. I think it was
10 coming from that television camera and however they've got
11 that set up.

12 But, anyway, be that as it may, I'll then report back
13 to the Court and then we can simply say, I don't have it.
14 But if I do have it or she's got it and knows something, I
15 will tell you. We will not in any way involve ourselves
16 in those discussions. We don't need to involve ourselves
17 in those discussions and we wouldn't.

18 THE COURT: Okay. And I'll let you --

19 Just a second, Mr. Bannister.

20 MR. BANNISTER: Okay.

21 THE COURT: But I don't think we -- all I'm trying to
22 do is to prevent any --

23 MR. ARIAIL: I understand.

24 THE COURT: -- issue about violation of attorney-client
25 privilege. So what I'm going to ask you to do and

1 instruct you to do is not to talk to anybody who may have
2 listened --

3 MR. ARIAIL: Yes, sir.

4 THE COURT: -- until we can -- and, perhaps, if you
5 could inquire, has anybody listened to the feed, and ask,
6 perhaps, your office, send an e-mail or however you want
7 to do it, did anyone hear any communication from the
8 Defense team? And if they did, just -- you know, nobody
9 is at fault --

10 MR. ARIAIL: I understand.

11 THE COURT: And then I, perhaps -- if you'll provide
12 me with a list, then I can speak with them. And then I
13 just ask you not -- and instruct you all not to talk to
14 them about that.

15 MR. ARIAIL: That's fine.

16 THE COURT: All right. Go ahead, Mr. Bannister.

17 MR. BANNISTER: I am not acquiescing to that being
18 sufficient to --

19 THE COURT: Well, I'm not asking you to.

20 MR. BANNISTER: So I just want it to be understood
21 that I may have other objections or things we want to do
22 to preserve the record. And I don't want to be precluded
23 from that.

24 Thank you.

25 THE COURT: And you -- this is an adversarial

1 process. And I know you will advocate for your client.

2 And I'm going to instruct the media, and put on the
3 record right now, that every media person in this room has
4 signed an acknowledgement that they received an order --
5 my order dated September 14, 2007, and filed in the
6 Pickens County Clerk of Court's Office on September 14th
7 of 2007. And I would tell them -- and they've all said
8 and acknowledged that they have read this order.

9 Paragraph eight says, Any television camera or
10 recording equipment that is permitted in the courtroom
11 shall be turned on and operating only while the Court is
12 in session. Paragraph 10: Coverage of the proceedings
13 shall be subject to the continuing supervision of this
14 Court. No coverage shall take place within the courtroom,
15 whether during recesses or at any other time, when court
16 is not in session.

17 And I will instruct the media now that they had
18 better review that order. Because violation of the order
19 could arise to contempt of court. We're going to protect
20 the proceedings and the sanctity of this proceeding.

21 All right. Is there anything else before we go?

22 (There was no response.)

23 THE COURT: We've got these other issues, I take it.

24 MR. BANNISTER: Yes, sir.

25 THE COURT: Then let's do it.

1 MR. BANNISTER: And that's all from us on that issue
2 at this time.

3 THE COURT: Okay.

4 MR. BANNISTER: We don't have any other. I mean --

5 THE COURT: All right. From the State?

6 MS. STROM: Your Honor, briefly, we have one motion,
7 which I filed upon Defense Counsel on the return of
8 evidence. Earlier in this proceeding, they had certain
9 items of evidence. They retrieved them from the property
10 and evidence room for independent testing or for whatever
11 use they deemed appropriate.

12 I have spoken with Mr. Bannister and I know that he
13 is working on getting that back. It is my
14 understanding --

15 And, Mr. Bannister, please, correct me if I misstate
16 this.

17 -- that he believes that he will have it back
18 Wednesday -- tomorrow. And, if not, he would consent to
19 an order to have it returned.

20 MR. BANNISTER: That's absolutely correct. We'll get
21 it back to them.

22 THE COURT: All right. Very good.

23 All right. See you all --

24 Well, Mr. Ariail.

25 MR. ARIAIL: We have their motion to have the

1 Defendant appointed as co-counsel. And we have responded
2 to that. We object to that. And we object to it on two
3 grounds. First, as a legal ground that we set forth in
4 our motion -- response to the motion in that he has
5 appointed counsel. There is no provision for a hybrid
6 system in this state. He's either -- he has appointed
7 counsel or he represents himself, one or the other, with
8 the advice of a counsel sitting at the table with him to
9 advise him. But there's no procedure for appointed
10 counsel and then the Defendant to be counsel.

11 Also, in this case, from a very practical standpoint,
12 it's anticipated that a substantial part of the penalty
13 phase will relate to victims of other crimes. And these
14 are victims of other personal crimes that would be on the
15 witness stand, who would be then subject to
16 cross-examination by the Defendant himself, which we
17 submit would be an intolerable situation to put a victim
18 of this type of crime in that situation.

19 THE COURT: All right. Well, you all -- do you want
20 to raise that motion? I don't know if you're --

21 MR. BANNISTER: Your Honor, in light of the fact that
22 we have entered the plea and you've accepted it, with the
23 Court's permission, I'd rather withdraw it now and let me
24 renew it later if it turns out we need to do that. But I
25 just haven't had a chance to talk to him about the

1 ramifications of what that would be now that we're just in
2 the sentencing phase.

3 As a practical matter, he's going to have the
4 statutory right to address Your Honor at, at least, two
5 different points. And, now, that you are the fact finder,
6 that may make a little difference for our position.

7 THE COURT: He's not pursuing it at this time.

8 MR. ARIAIL: Okay. Then that's fine. We'll consent
9 to that.

10 THE COURT: All right.

11 MR. ARIAIL: We have filed a motion and they have
12 responded regarding having notice if they intended to
13 raise mental retardation. They have responded. And I
14 think Dr. Schwartz-Watts has testified -- or Mr. Bannister
15 stated they do not intend to raise the issue of mental
16 retardation.

17 MR. BANNISTER: That's correct.

18 MR. ARIAIL: And then last is our motion to require
19 the production of underlying data from experts, and the
20 intensity of that is not quite as strong due to Your Honor
21 being the fact finder. But it is still within your
22 purview to order an earlier disclosure of underlying facts
23 by experts so that we could have some meaningful
24 cross-examination and not just throw the proceedings into
25 a totally delayed situation. And that's the subject of

1 that motion, so we could have them somewhat earlier in the
2 proceeding.

3 MR. BANNISTER: Your Honor, we objected to that. And
4 I think our response was sufficient. But just let me
5 reiterate that their legal position would be unique were
6 you to grant that relief that they are requesting.

7 THE COURT: Well, let me -- I'll take a look at that.
8 And I'll get back with you on that.

9 MR. BANNISTER: Thank you.

10 THE COURT: All right. Anything else?

11 MR. ARIAIL: I believe that's it, Your Honor.

12 MS. STROM: Nothing else from the State.

13 THE COURT: All right. We'll be adjourned.

14 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

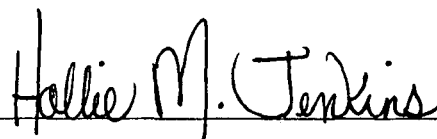
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 19th day of August, 2008.

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

September 14, 2009



Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 JERRY BUCK INMAN,)
)
 DEFENDANT.)
 _____)

2006-GS-39-2222 - 2225

TRANSCRIPT OF RECORD

AUGUST 27, 2008
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

ROBERT M. ARIALL, 13TH CIRCUIT SOLICITOR
BETTY C. STROM, DEPUTY SOLICITOR

ATTORNEYS FOR DEFENDANT:

JAMES W. BANNISTER, ESQUIRE
SYMMES W. CULBERTSON, ESQUIRE
JOHN W. DeJONG, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 THE COURT: THANKS. PLEASE BE SEATED. I'M GOING TO
2 ASK THAT ALL THE PHOTOGRAPHERS AND OTHER MEDIA SIT UP HERE
3 IN THE JURY BOX, PLEASE.

4 (PAUSE)

5 THE COURT: ALL RIGHT, MR. BANNISTER.

6 MR. BANNISTER: THANK YOU, YOUR HONOR. FOR THE
7 RECORD, BY WAY OF BACKGROUND, AS YOU'LL RECALL ON AUGUST
8 THE 19TH WE WERE IN PICKENS IN COURT FOR ENTRY OF THE
9 GUILTY PLEA OF MR. INMAN. YOU ALSO RECALL, YOUR HONOR,
10 THAT DR. WATTS, WHO WAS OUR WITNESS FOR THE BLAIR HEARING,
11 SUFFERED AN INJURY TO HER HEAD REQUIRING AN EMERGENCY ROOM
12 VISIT AND DELAYED OUR COURT PROCEEDINGS BY A NUMBER OF
13 HOURS, I THINK ROUGHLY ABOUT FOUR IF MY RECOLLECTION IS
14 CORRECT.

15 WHAT HAPPENED APPARENTLY WAS DURING THAT TIME BETWEEN
16 WHEN THE COURT PROCEEDING WAS -- WERE PLANNED TO START AND
17 WHEN THEY ACTUALLY STARTED THERE WERE AT TIMES EITHER
18 VIDEO, BUT AT ALL TIMES AUDIO OF DISSEMINATION OF WHAT WAS
19 BEING SAID IN THE COURTROOM. THAT WAS COMING ACROSS
20 APPARENTLY SOME OF THE BROADCAST MEDIA'S MICROPHONES OR
21 THROUGH THE SOUND SYSTEM IN THE COURT. I DON'T REALLY
22 KNOW WHICH.

23 BUT IT WAS BEING SENT VIA THE INTERNET TO A LIVE FEED
24 FOR ANYBODY WHO IN THE PUBLIC OR OTHERWISE WANTED TO CLICK
25 ON THAT SITE AND WATCH THOSE PROCEEDINGS. THEY COULD,

1 ONE, AT TIMES SEE WHAT WAS GOING ON IN THE COURT WHILE IN
2 SESSION.

3 AND, TWO, APPARENTLY COULD HEAR A NUMBER OF
4 CONVERSATIONS THAT WERE TO THE EXTENT THAT IT INVOLVED OUR
5 CO-COUNSEL'S PRIVILEGED COMMUNICATIONS, BUT CERTAINLY
6 CONVERSATIONS THROUGHOUT THE COURT. THAT WAS A CLEAR
7 BREACH OF THE ORDER THAT YOU ISSUED ABOUT HOW THE MEDIA
8 WAS TO CONDUCT ITSELF IN YOUR COURT.

9 AT THAT TIME IT IS MY UNDERSTANDING THAT YOU PLACED
10 OR YOU PUT THE SOLICITOR'S OFFICE ON NOTICE THAT ANYBODY
11 WITH THE SOLICITOR'S OFFICE WHO MAY HAVE POTENTIALLY HEARD
12 MYSELF OR OUR CO-COUNSEL SPEAKING, THAT THEY WERE TO BE
13 WALLED OFF FROM FURTHER CONTACT WITH THE SOLICITORS AND
14 OTHER INDIVIDUALS WHO ARE INVOLVED IN THE COURTROOM WITH
15 THE CASE. AND I MAY BE MISSPEAKING HERE A LITTLE BIT, BUT
16 THAT'S MY MEMORY TO THE BEST I CAN.

17 SINCE THAT HEARING, OF COURSE, WE'VE BEEN GETTING
18 READY FOR OUR SENTENCING PROCEEDING, WHICH IS SET TO START
19 ON SEPTEMBER THE 8TH. THE TIME AVAILABLE TO US TO PURSUE
20 THIS ISSUE HAS BEEN LIMITED IN A SIGNIFICANT SENSE BECAUSE
21 OF THE FACT THAT WE ARE TRYING TO GET PREPARED IS WHY I
22 FILED A NUMBER OF MOTIONS. AND THOSE ARE BASED UPON WHAT
23 LITTLE BIT OF INVESTIGATION WE'VE BEEN ABLE TO DO.

24 SPEAKING WITH FAMILY MEMBERS WHO WERE INTERESTED IN
25 WATCHING THE PROCEEDINGS, SPEAKING WITH STAFF AT OUR

1 OFFICES THAT WERE INTERESTED IN WATCHING THE PROCEEDINGS,
2 WHAT WE CAN SAY WITH CERTAINTY IS THIS, THAT THERE WAS AT
3 TIMES VIDEO FEED WHEN THE COURT WAS NOT IN SESSION. THERE
4 WERE -- THERE WAS A CONSTANT FEED OF THE -- OF AUDIO THAT
5 BOTH MR. DeJONG'S AND CERTAINLY MR. CULBERTSON'S VOICES
6 WERE RECOGNIZED BY THOSE PEOPLE WERE WHO LISTENING.

7 A LOT OF THEM OBVIOUSLY WERE WORKING AND WERE
8 SOMEWHAT DISTRACTED. SO WE DON'T HAVE SPECIFICALLY WHAT
9 WAS SAID. AND EVEN IF WE DID, I DON'T THINK IT'S
10 APPROPRIATE TO PUT THAT INTO AN AFFIDAVIT UNTIL WE PUT
11 SPECIFIC PARAMETERS AROUND THAT BECAUSE WE'VE GOT A
12 PROBLEM NOW, POTENTIALLY OF CONSTITUTIONAL PROPORTION.

13 WHAT I DID WAS I FILED A NUMBER OF MOTIONS SEEKING,
14 INITIALLY AT LEAST, TO CREATE A RECORD. I THINK BEFORE
15 THIS COURT CAN ACT AND BEFORE WE CAN BE PUT TO BEING ABLE
16 TO SAY WHAT ISSUES WE THINK WE NEED TO TAKE UP TO PROTECT
17 OUR CLIENT IS WE NEED TO KNOW WHAT WAS DISSEMINATED, IN
18 PARTICULAR, WHAT WAS SAID BY DEFENSE COUNSEL, ASSUMING
19 THAT ANYTHING WAS SAID AND THAT IT WAS, IN FACT,
20 TRANSMITTED, WHO POTENTIALLY HEARD THAT IN THE SOLICITOR'S
21 OFFICE OR OTHERWISE THAT MIGHT IMPACT OUR CASE OR OUR
22 CLIENT'S 6TH AMENDMENT RIGHT TO COUNSEL. AND THEN WE CAN
23 DETERMINE HOW TO ADDRESS A PREJUDICE, IF THERE IS ANY.

24 I ISSUED SUBPOENAS TO BOTH WYFF 4, WHO WAS THE
25 BROADCAST MEDIA THAT I UNDERSTAND THAT PUT THE LIVE FEED

1 ON THEIR WEBSITE. I ALSO ISSUED SOME SUBPOENAS TO THE
2 SOLICITOR'S OFFICE JUST SEEKING INITIALLY TO PRESERVE
3 WHATEVER EVIDENCE WAS AVAILABLE.

4 SPECIFICALLY I ASKED NEWS CENTER 4 TO HOLD ONTO ANY
5 TAPES, AUDIO, VIDEO, WHATEVER THEY HAVE IN THE UNREDACTED,
6 UNEDITED FORM SO THAT WE HOPEFULLY WOULD BE ABLE TO GIVE
7 THAT TO THE COURT FOR SOME SORT OF REVIEW. IF NOTHING
8 ELSE, JUST TO PUT IT ON THE RECORD, CREATE A TRANSCRIPT,
9 SOMETHING SO THAT WE'LL KNOW WHAT, IN FACT, WAS PUT OUT
10 THERE.

11 I ASKED THE SOLICITOR'S OFFICE, BECAUSE I THINK THE
12 TIMING OF WHEN THEY FOUND OUT AND WHAT POTENTIALLY OTHER
13 MEMBERS OF THE SOLICITOR'S OFFICE HEARD, I ASKED THEM TO
14 PRESERVE ANY TEXT MESSAGES THAT THEY WOULD HAVE AS I
15 THOUGHT THAT WOULD BE A GOOD SOURCE OF INFORMATION GOING
16 FORWARD.

17 BUT BASICALLY I THINK THE FIRST STEP IS TO PRESERVE
18 WHAT EVIDENCE WE CAN SO THAT THE RECORD IS COMPLETE AS
19 THIS CASE GOES FORWARD. AND TO THAT EXTENT I HAD FILED A
20 MOTION ASKING YOUR HONOR TO INITIATE AN INVESTIGATION, AND
21 OBVIOUSLY IT WOULD BE YOUR DECISION, BUT, YOU KNOW, I
22 WOULD SUGGEST SLED. LET THEM COME IN AND DO THE
23 INVESTIGATION SO THAT WE COULD HAVE A THIRD PARTY THAT'S
24 NOT ASSOCIATED WITH MY OFFICE OR WITH THE SOLICITOR'S
25 OFFICE CONDUCT AN INVESTIGATION AND KNOW HOW FAR THIS

1 THING WENT.

2 BARRING THAT THEN, IF IT'S OUR DUTY AS COUNSEL FOR
3 THE DEFENDANT TO CREATE THE RECORD, THEN WE'RE GOING TO
4 NEED MORE TIME BECAUSE WE JUST DON'T HAVE THE RESOURCES TO
5 DO THAT AND BE PREPARED BY SEPTEMBER THE 8TH.

6 I HAVE BEEN INFORMED BY MR. LIGHTSEY, WHO'S HERE ON
7 BEHALF OF NEWS CENTER 4, WYFF, THAT UNFORTUNATELY THEY DO
8 NOT HAVE ANY RECORDING OF WHAT WAS DISSEMINATED LIVE. SO
9 IT MAKES IT MORE INCUMBENT, I THINK, ON THE COURT TO BE
10 ABLE TO PRESERVE THE RECORD TO GET SOMETHING -- AND I
11 DON'T MIND CONDUCTING IT MYSELF. I MEAN, WE CAN BRING
12 WITNESSES IN HERE. YOU KNOW, WE CAN SPEND THE TIME AND
13 EFFORT TO SEE HOW FAR IT GOES, BUT WE NEED TO GET IT DONE.
14 AND I'VE MADE THAT MOTION ON THE DEFENDANT'S DUE PROCESS
15 RIGHTS AND HIS 6TH AMENDMENT RIGHT.

16 YOUR HONOR, I'VE ALSO MADE -- I'VE ALSO MADE A MOTION
17 TO BAR THE MEDIA FROM, AT LEAST THE BROADCAST MEDIA, FROM
18 BEING HERE IN THE COURT FOR A FUTURE HEARING. AND I'M
19 GOING TO SAY FOR THE RECORD, WHEN WE WALKED IN HERE BEFORE
20 YOUR HONOR WAS HERE THERE WERE AT LEAST TWO VIDEO CAMERAS
21 THAT WERE ON 'CAUSE YOU COULD SEE THE VIDEO ON THE SIDE OF
22 THE CAMERA SHOWING DEFENSE COUNSEL TABLE. THERE WERE A
23 NUMBER OF PICTURES THAT WERE TAKEN BEFORE YOUR HONOR CAME
24 IN HERE.

25 AND SO I JUST THINK THERE IS A SERIOUS DISCONNECT

1 BETWEEN WHAT YOUR ORDER STATES AND WHAT THE UNDERSTANDING
2 IS ON BEHALF OF THE BROADCAST MEDIA. AND SO GOING FORWARD
3 WE NEED TO SET ASIDE SOME TIME TO, ONE, DISCUSS WHETHER
4 THEY SHOULD BE HERE. AND IF THEY ARE STILL GOING TO ALLOW
5 -- BE ALLOWED TO BE HERE, YOU KNOW, WE NEED SOMEBODY WHO
6 IS -- I WOULD LIKE TO SEE SOMEBODY WHO IS IN CHARGE,
7 SOMEBODY WHO CAN BE TOLD THIS IS THE WAY IT'S GOING TO BE
8 DONE AND SOMEBODY WHO CAN BE HELD RESPONSIBLE.

9 YOU KNOW, THAT'S JUST -- WE DON'T NEED ANYMORE OF
10 THESE ISSUES ---

11 THE COURT: BEFORE YOU GO ANY FARTHER AND BEFORE I
12 HEAR FROM THE STATE, WHEN WE HAD THE HEARING SEPTEMBER
13 14TH OF '07 MR. JAY BENDER WAS HERE ON BEHALF OF THE SOUTH
14 CAROLINA MEDIA ASSOCIATION OR I DON'T KNOW WHAT THE
15 ORGANIZATION IS. AND IT WAS MY UNDERSTANDING THAT WE WERE
16 CLEAR.

17 WE HAVE AT EVERY HEARING WE'VE HAD PASSED OUT THE
18 SEPTEMBER 14TH, 2007 ORDER, WHICH I ISSUED, WITH RESPECT
19 TO MEDIA COVERAGE. AND ATTACHED TO EVERY ONE OF THOSE
20 ORDERS WAS THE RULE 605. AND I BELIEVE WE HAVE THE
21 SIGNATURE AND WE HAVE COPIES OF EVERY AUTHORIZATION
22 ALLOWING MEDIA IN THE COURTROOM.

23 SO WE KNOW WHO'S BEEN HERE. THEY HAVE BEEN INFORMED.
24 THIS IS, IN MY MIND, EXTREMELY SERIOUS. IT IS A BREACH OF
25 A COURT ORDER IN THE COURT'S PRESENCE, A DIRECT AND

1 POTENTIALLY CRIMINAL CONTEMPT OF COURT. SO HAVING SAID
2 THAT, I'LL TURN IT OVER TO MR. ARIAIL.

3 MR. ARIAIL: YOUR HONOR, JUST A COUPLE OF THINGS IN
4 RESPONSE. BEFORE, I GUESS, THE STATE HAS -- BEING
5 COLLOQUIAL, I DON'T THINK WE HAVE A DOG IN THIS FIGHT.
6 THIS IS A MATTER BETWEEN THE COURT AND THE MEDIA OVER YOUR
7 ORDER.. NOW THAT'S THE FIRST ISSUE.

8 THE SECOND ISSUE, WHICH I THINK WE SHOULD APPROACH
9 WITH SOME TREPIDATION IS AN ATTEMPT BY THE DEFENSE TO
10 SOMEHOW CONVERT THAT INTO A DUE PROCESS AND SOMETHING THAT
11 HE KEEPS REFERRING TO THE SOLICITOR'S OFFICE.

12 THERE'S NO QUESTION, AT LEAST I DON'T THINK THERE IS
13 ANY QUESTION, WE DIDN'T HAVE ANYTHING TO DO WITH THIS. SO
14 WHATEVER INFORMATION WE RECEIVED, WE RECEIVED AS A RESULT
15 OF THE MEDIA VIOLATING YOUR ORDER, AND I BELIEVE ALSO WHEN
16 WE GET IN THE FACTS, COUNSEL VIOLATING WHAT WAS A KNOWN
17 FACT BECAUSE AS I PUT -- I HAVE AN AFFIDAVIT FROM MYSELF,
18 MS. STROM, AND MS. PICKETT, MY ADMINISTRATIVE COORDINATOR,
19 THAT ONE OF THE COMMUNICATIONS I MADE TO MR. CULBERTSON
20 WAS DON'T GET IN FRONT OF THIS JURY BOX AND TALK ABOUT
21 THIS CASE BECAUSE THEY HAVE A LIVE FEED RUNNING. HE
22 DISREGARDED THAT, WENT UP THERE, TALKED TO THEM ANYWAY.

23 SO SOMEHOW THIS IS THE DEFENSE WHO IS CLAIMING SOME
24 SORT OF, AS A SECOND ISSUE, SOME SORT OF DUE PROCESS
25 VIOLATION IS PARTLY, AT LEAST PARTLY AT FAULT, ALONG WITH

1 THE MEDIA IN CREATING THE SITUATION BECAUSE THE PEOPLE YOU
2 TALK TO, AT LEAST MYSELF, TALKING -- GETTING
3 COMMUNICATIONS FROM MS. PICKETT, WAS MR. CULBERTSON THAT
4 THEY HEARD, COUNSEL. SO -- AND HE WAS FULLY WARNED. AND
5 I THINK HE WILL ACKNOWLEDGE THAT.

6 BUT LET ME GO BACK. AND WHAT I'D LIKE TO DO IS HAND
7 UP TO THE COURT THREE ORIGINAL AFFIDAVITS FROM ME, BETTY
8 STROM AND MS. PICKETT REGARDING WHAT WE KNOW ABOUT THE
9 INFORMATION. I'LL FILE THE ORIGINAL WITH THE CLERK AND
10 SUBMIT THEM FOR YOUR HONOR'S CONSIDERATION.

11 FOURTHLY LET ME SAY THAT IN ANTICIPATION OF THIS
12 HEARING I REQUESTED THAT MS. PICKETT, WHO IS MY
13 ADMINISTRATIVE PERSON, CONTACT EACH MEMBER OF MY OFFICE,
14 EACH STAFF MEMBER, WHICH IS SOME HUNDRED AND TEN PEOPLE,
15 AND GET A RESPONSE FROM EACH ONE OF THEM AS TO WHETHER OR
16 NOT THEY HEARD ANYTHING, IF SO, WHAT IT WAS.

17 I HAVE THOSE IN A FOLDER HERE. THEY WERE DONE BY
18 E-MAIL. I HAVE NOT LOOKED AT THESE. DON'T KNOW WHOSE
19 CATEGORY, WHERE THEY FALL IN OR WHO RESPONDED YES AND WHO
20 RESPONDED NO OTHER THAN SHE HAS INDICATED TO ME THAT
21 EVERYONE HAS RESPONDED.

22 SO I'D LIKE TO HAND THESE UP TO THE COURT FOR YOUR
23 REVIEW AND ALSO TO SET FORTH THAT I HAVE NO OTHER
24 INFORMATION ABOUT ANY OF THIS OTHER THAN WHAT I TOLD YOU
25 AT THE LAST HEARING WHICH WAS I TOLD MR. CULBERTSON NOT TO

1 GO OVER THERE.

2 THEN I GOT A CALL FROM MS. PICKETT ON MY CELL PHONE.
3 SHE SAID, MR. CULBERTSON TALKING ABOUT HEAD WOUNDS AND
4 DONNA SCHWARTZ-WATTS AND TELLING THEM THEY OUGHT TO TAKE
5 PICTURES OF HER. AND THE FIRST ONE DEALT WITH THE
6 CONVERSATION BETWEEN YOUR LAW CLERK AND THE BAILIFF, WHICH
7 IS DETAILED IN THE AFFIDAVIT. AND I'LL HAND THESE
8 DOCUMENTS UP.

9 THE COURT: ALL RIGHT.

10 (WHEREUPON MR. ARIAIL HANDED DOCUMENTS UP TO THE
11 COURT)

12 MR. ARIAIL: HAVING SAID ALL THAT AND SUBMITTED ALL
13 THAT, I DON'T BELIEVE THERE'S AN ISSUE HERE. AND THERE'S
14 CERTAINLY NOT AN ISSUE HERE THAT WE BELIEVE THAT -- AND IF
15 YOU WANT TO ORDER AN INVESTIGATION, THAT'S CERTAINLY UP TO
16 YOU. AND WE'LL CERTAINLY PARTICIPATE IN IT.

17 BUT IN TERMS OF ANY KIND OF DUE PROCESS -- THE FIRST
18 ISSUE, I THINK, YOU CAN'T EVEN GET OVER -- YOU CAN'T OR
19 SOMEBODY'S GOING TO HAVE TO DECIDE BEFORE YOU GET GOING
20 TOO FAR IS WHETHER OR NOT A DEFENDANT HAS AN
21 ATTORNEY/CLIENT PRIVILEGE OF COMMUNICATIONS THAT HE MAKES
22 IN AN OPEN COURTROOM.

23 THIS IS AN OPEN PROCEDURE, AN OPEN FORUM. THERE ARE
24 PEOPLE SITTING BEHIND HIM, BESIDE, BAILIFFS, THE DEPUTIES
25 AND EVERYWHERE. AND I DON'T KNOW THAT EVEN IF THEY JUMP

1 OVER THAT PART, WOULD JUMP TO THE ATTORNEY/CLIENT
2 PRIVILEGE, I DON'T KNOW THAT COMMUNICATIONS IN THIS
3 COURTROOM ARE PROTECTED BY ATTORNEY/CLIENT PRIVILEGE
4 'CAUSE I'VE BEEN IN COURTROOMS MANY A TIMES SITTING AND
5 HEARD CONVERSATIONS BETWEEN THE DEFENSE GOING ON AT
6 DECIBEL LEVELS THAT THEY OUGHT TO KNOW BETTER THAN TALKING
7 TO, BUT I STILL CAN HEAR THEM. SO I'M NOT SURE THAT WE
8 HAVE A LEGAL ISSUE.

9 WE HAVE RESPONDED TO HIS OTHER MOTION THAT HE FILED.
10 AND IT'S MY UNDERSTANDING YOU'VE CANCELLED MY COURT FOR
11 THE REST OF THE AFTERNOON?

12 THE COURT: CORRECT.

13 MR. ARIAIL: ALL RIGHT. AND SO WE COULD -- WE COULD
14 SPEND THE REST OF THE AFTERNOON DEALING WITH THESE SO WE
15 WOULDN'T HAVE TO COME BACK AND TAKE UP TIME THAT BOTH OF
16 US NEED FOR PREPARATION.

17 WE'VE FILED -- WE HAVE RESPONSES THAT WE'D BE GLAD TO
18 FILE. OUR RESPONSE TO DEFENDANT'S MOTION TO BAR BROADCAST
19 MEDIA IS ALONG THE SAME LINES AS WE DID AT THE FIRST
20 HEARING IN WHICH WE SAY THAT'S A MATTER WITHIN OBVIOUSLY
21 YOUR DISCRETION. AND BUT WE URGE YOU TO FOLLOW THE RULES
22 SET FORTH IN THE CASES THAT ARE OUTLINED IN THAT MOTION TO
23 GIVE THE RIGHT OF THE MEDIA TO BE HEARD AND MAKE ARGUMENTS
24 IN REGARD TO OPPOSING IT.

25 THE STATE DOES NOT CONCUR IN CLOSING THE MATTER TO

1 THE MEDIA. I FILED THAT RESPONSE. SO WE CAN -- IF YOU
2 WANT TO HAVE ARGUMENT ON THAT, WE CAN.

3 MR. BANNISTER: YOUR HONOR, COULD I AT LEAST GET A
4 COPY AT SOME POINT?

5 MR. ARIAIL: UM-HUM (AFFIRMATIVE). I'LL GIVE YOU ONE
6 RIGHT NOW. I'LL GIVE YOU A COPY OF EVERYTHING I'VE GOT.
7 AND AS HE WANTS TO TAKE UP THE OTHERS, WE'LL BE GLAD TO
8 TAKE THOSE UP TOO.

9 ONE IS A MOTION TO -- WELL, HE'S, I'M SORRY, HE'S
10 ALREADY TAKEN THAT UP. TEXT MESSAGES, I FILED A RESPONSE
11 IN REGARD TO THAT.

12 MR. BANNISTER SAID SOMETHING ABOUT A SUBPOENA. I
13 KNOW OF NO SUBPOENA TO MY OFFICE. AND WE'RE OPERATING AS
14 IF THERE'S NOT A SUBPOENA. IF THERE IS A SUBPOENA,
15 SOMEBODY GOT IT THAT I DON'T KNOW ABOUT.

16 THE COURT: OKAY. THE RESPONSES ---

17 MR. ARIAIL: AND I PUT IN THE AFFIDAVIT I BELIEVE
18 THERE ARE NO TEXT MESSAGES.

19 THE COURT: THE RESPONSES YOU'VE HANDED TO ME ARE
20 PURSUANT TO MY ORDER AT THE LAST HEARING, ISN'T THAT
21 CORRECT? AM I UNDERSTANDING THAT CORRECTLY?

22 MR. ARIAIL: YES.

23 THE COURT: OKAY.

24 MR. ARIAIL: YES.

25 THE COURT: ALL RIGHT.