

VOLUME SIX OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Perry M. Buckner, Circuit Court Judge

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S.C. SUPREME COURT

JOHN EDWARD WEIK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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VOLUME SIX
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INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	2222
RETURN.....	2229
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2274
RETURN TO AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2279
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2365
MOTION TO FILE A THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF OR IN THE ALTERNATIVE TO AMEND THE APPLICATION FOR POST CONVICTION RELIEF TO CONFORM TO THE EVIDENCE	2373
THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2376
APPLICANT'S MOTION TO AMEND HIS PETITION A FIFTH TIME	2385
POST-CONVICTION RELIEF HEARING TRANSCRIPT	2392
DEPOSITION OF MARVA HARDEE-THOMAS DATED AUGUST 17, 2006	3149
DEPOSITION EXHIBIT 1 (PETITIONER) (CERTIFICATE).....	3328
DEPOSITION EXHIBIT 2 (PETITIONER) (LETTER FROM RICKBORN INVESTIGATORS)	3329
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER TO PATTI RICKBORN DATED APRIL 30, 1999).....	3331
DEPOSITION EXHIBIT 4 (PETITIONER) (LETTER FROM PATTI RICKBORN.....	3333
DEPOSITION EXHIBIT 5 (PETITIONER) (LETTER TO PATTI RICKBORN).....	3337

DEPOSITION OF GEOFFREY R. MCKEE DATED OCTOBER 3, 2006	3347
DEPOSITION EXHIBIT 1 (APPLICANT) (AFFIDAVIT OF DR. MCKEE)	3391
DEPOSITION EXHIBIT 2 (APPLICANT) (DR. MCKEE'S NOTES)	3394
DEPOSITION EXHIBIT 3 (APPLICANT) (DR. MCKEE'S NOTES)	3395
DEPOSITION EXHIBIT 4 (APPLICANT) (DR. CRAWFORD'S EVALUATION)	3396
DEPOSITION EXHIBIT 1 (RESPONDENT) (DR. MCKEE'S BILL)	3401
DEPOSITION OF PATRICIA D. RICKBORN DATED OCTOBER 3, 2006	3402
DEPOSITION EXHIBIT 1 (PETITIONER) (LETTER FROM PATRICIA RICKBORN DATED MARCH 1, 1999)	3463
DEPOSITION EXHIBIT 2 ((PETITIONER) (NOTES FROM PATRICIA RICKBORN'S FILE)	3464
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER FROM MARVA-HARDEE THOMAS TO PATRICIA RICKBORN DATED APRIL 30, 1999)	3497

EXHIBITS FROM POST-CONVICTION RELIEF HEARING

PLAINTIFF'S EXHIBIT 1 (POTENTIAL WITNESS LIST)	3499
PLAINTIFF'S EXHIBIT 2 (DR. CRAWFORD'S REPORT DATED MAY 13, 1999)	3515
PLAINTIFF'S EXHIBIT 3 (INTERVIEW OF LILLIE VARNER FERRER WEIK)	3519
PLAINTIFF'S EXHIBIT 4 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3524
PLAINTIFF'S EXHIBIT 5 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3530
PLAINTIFF'S EXHIBIT 6 (INTERVIEW OF MAGDALENA AND JOHN GUNTER)	3533
PLAINTIFF'S EXHIBIT 7 (ARMED FORCES REPORT OF TRANSFER OR DISCHARGE - RUSSELL CHRISTOPHER WEIK)	3535
PLAINTIFF'S EXHIBIT 8 (HISTORY OF ASSIGNMENTS)	3536
PLAINTIFF'S EXHIBIT 9 (LETTER TO MICHAEL O'CONNELL FROM THE DEPARTMENT OF THE NAVY)	3537

PLAINTIFF’S EXHIBIT 10 (LETTER TO RUSSELL CHRISTOPHER WEIK FROM THE DEPARTMENT OF VETERANS AFFAIRS).....	3564
PLAINTIFF’S EXHIBIT 11 (PHYSICIAN’S ORDERS).....	3565
PLAINTIFF’S EXHIBIT 12 (IDENTIFICATION CARDS)	3566
PLAINTIFF’S EXHIBIT 13 (CONFIDENTIAL ATTORNEY WORK REPORT).....	3585
PLAINTIFF’S EXHIBIT 14 (WEIK FAMILY TREE).....	3619
PLAINTIFF’S EXHIBIT 15 (AFFIDAVIT OF RAMONDA FERRER-KLOCEK).....	3620
PLAINTIFF’S EXHIBIT 16 (AFFIDAVIT OF EDWIN WEIK, JR.).....	3625
PLAINTIFF’S EXHIBIT 17 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3628
PLAINTIFF’S EXHIBIT 18 (NOTES FROM PATRICIA RICKBORN’S FILE)	3629
PLAINTIFF’S EXHIBIT 19 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3669
RESPONDENT’S EXHIBIT 1 (BILL FROM PRIVATE INVESTIGATOR)	3670
RESPONDENT’S EXHIBIT 2 (NOTES FROM PRIVATE INVESTIGATOR).....	3671
RESPONDENT’S EXHIBIT 3 (BILL FROM DR. DONALD MORGAN).....	3674
RESPONDENT’S EXHIBIT 4 (INVOICE BJ JOHNS INVESTIGATIVE SERVICES).....	3675
RESPONDENT’S EXHIBIT 5 (QUESTION CHECKLIST).....	3676
RESPONDENT’S EXHIBIT 6 (RATING SYSTEM).....	3680
RESPONDENT’S EXHIBIT 7 (REVERSE-BATSON GENDER/RACE NEUTRAL REASONS).....	3682
RESPONDENT’S EXHIBIT 8 (MEMO FROM JEFF BLOOM).....	3685
RESPONDENT’S EXHIBIT 9 (DR. CRAWFORD’S REPORT DATED MAY 13, 1999).....	3692
RESPONDENT’S EXHIBIT 10 (PSYCHOLOGICAL EVALUATION)	3698
RESPONDENT’S EXHIBIT 11 (MEDICAL RECORDS FOR WEIK – ADMISSION DATE APRIL 30, 1999).....	3701
RESPONDENT’S EXHIBIT 12 (MEDICAL RECORDS FOR WEIK – ADMISSION	

DATE SEPTEMBER 28, 1998).....	3768
RESPONDENT'S EXHIBIT 13 (BILL FROM DR. RODGERS)	3837
RESPONDENT'S EXHIBIT 14 (BILL FROM PERRY BEAU FORD, P.A.).....	3838
RESPONDENT'S EXHIBIT 15 (MEMO FROM RICKBORN INVESTIGATIONS).....	3855
RESPONDENT'S EXHIBIT 18 (LETTER TO LT. ARNOLD PASTER DATED FEBRUARY 19, 1999)	3858
RESPONDENT'S EXHIBIT 19 (LETTER TO DR. WILLIAM BRANNON DATED FEBRUARY 19, 1999)	3859
RESPONDENT'S EXHIBIT 20 (LETTER TO MR. JAMES A. SPRINGS, JR. DATED MARCH 2, 1999)	3860
RESPONDENT'S EXHIBIT 21 (LETTER TO MR. JAMES A. SPRINGS, JR.)	3861
RESPONDENT'S EXHIBIT 22 (LETTER TO MR. BOBBY L. MINTER)	3862
RESPONDENT'S EXHIBIT 23 (LETTER TO DR. DONNA SWARTZ-WATTS).....	3863
RESPONDENT'S EXHIBIT 24 (LETTER TO DR. WILLIAM BRANNON)	3864
RESPONDENT'S EXHIBIT 25 (LETTER TO DR. GEOFFREY R. MCKEE).....	3865
RESPONDENT'S EXHIBIT 26 (LETTER TO MS. PATTI RICKBURN)	3866
RESPONDENT'S EXHIBIT 27 (LETTER TO DR. DONNA SWARTZ WATTS DATED APRIL 12, 1999).....	3867
RESPONDENT'S EXHIBIT 28 (LETTER TO PERCY BEAU FORD, P.A. DATED DATED AUGUST 17, 1998).....	3868
RESPONDENT'S EXHIBIT 29 (LETTER TO MS. PATTI RICKBORN DATED APRIL 19, 1999).....	3869
RESPONDENT'S EXHIBIT 30 (MEMO TO DORCHESTER COUNTY DETENTION CENTER DATED APRIL 26, 1999).....	3870
RESPONDENT'S EXHIBIT 31 (LETTER TO DR. DONALD MORGAN DATED APRIL 26, 1999).....	3871
RESPONDENT'S EXHIBIT 32 (MEMO TO PERCY BEAU FORD DATED MAY 6, 1999).....	3872

RESPONDENT’S EXHIBIT 33 (MEMO REGARDING PRIVATE INVESTIGATOR).....	3873
RESPONDENT’S EXHIBIT 34 (AFFIDAVIT OF MR. B.J. JOHNS).....	3874
RESPONDENT’S EXHIBIT 35 (LETTER TO MR. JOHN E. WEIK DATED MAY 14, 1999).....	3875
APPLICANT’S PROPOSED FINAL ORDER	3876
PROPOSED ORDER OF DISMISSAL BY RESPONDENTS.....	3945
ORDER OF DISMISSAL	4023
APPLICANT’S 59(e) MOTION.....	4103
ORDER DENYING RULE 59(e) MOTION.....	4111

DR. MORGAN ON DIRECT

1 Q. All right.

2 A. Maybe two weeks before the trial was scheduled.

3 Q. Now, prior to examining Mr. Weik, what materials were made
4 available to you by the defense lawyers or by anyone else?

5 A. None.

6 Q. So did you see any of the discovery materials that the de-
7 fense lawyers got from the State, from the Solicitor's Office?

8 A. No.

9 Q. Any investigative reports, defense investigator's reports?

10 A. No.

11 Q. Did you see any medical reports from the South Carolina State
12 Hospital?

13 A. I examined him there, and I'm sure I could have looked at
14 the records, but I did not.

15 Q. You examined him there?

16 A. Yes.

17 Q. Approximately how many times did you examine him prior to
18 the trial?

19 A. Twice.

20 Q. And the purpose of your examinations was what?

21 A. To assist in making a diagnosis and to assist in answering
22 the question of whether or not any mental illness that he had
23 would make him eligible for entering a plea of not guilty by rea-
24 son of insanity.

25 Q. Were you also there to examine him on the issue of whether

DR. MORGAN ON DIRECT

1 or not he was competent to stand trial?

2 A. That happened here in this Court.

3 Q. Okay. Excuse me one second, please. I apologize.

4 (Brief pause in the proceeding)

5 BY MR. O'CONNELL:

6 Q. Dr. Morgan, I want to show you what has been marked for iden-
7 tification as Plaintiff's Exhibit 1 and 2. Have you seen that
8 type of document before?

9 A. Yes.

10 Q. And what is that?

11 A. It is a staffing document.

12 Q. Is that typically -- first of all, from what institution
13 is that?

14 A. This I'm sure came from the Hall Institute.

15 Q. And at what stage of a person's admission is a document like
16 that produced?

17 A. Usually at the end.

18 Q. If I could show you on the second . . .

19 MR. O'CONNELL: Judge, I would move to admit Plaintiff's
20 Exhibit 2, which is a portion of the . . .

21 THE COURT: Wait a second. It hasn't been identified for
22 the record, and I want to know if there is an objection.

23 Ask him to identify it as to date and what the title of
24 the document would be.

25 BY MR. O'CONNELL:

DR. MORGAN ON DIRECT

1 Q. Would you identify the date and the type of document that
2 this is?

3 A. The date of examination is April 27th, May first, May third
4 and May 6th, 1999.

5 Q. And it is from what institution?

6 A. The William S. Hall Psychiatric Institution.

7 Q. And that is where then and now, I guess, people were sent
8 for psychiatric evaluations or Court-ordered evaluations?

9 A. I don't know about that.

10 Q. Okay.

11 MR. O'CONNELL: Move to admit this.

12 THE COURT: How many pages?

13 MR. O'CONNELL: It is four pages, sir.

14 THE COURT: Mr. Zelenka?

15 MR. ZELENKA: No objection.

16 THE COURT: Number what, Mike? Two?

17 MR. O'CONNELL: Yes, sir.

18 THE COURT: Applicant or Plaintiff's Exhibit Number 2 will
19 be admitted in evidence without objection. Number 2 in evidence.
20 You may publish.

21 (Psychiatric staffing document admitted in evidence without
22 objection as Applicant's Exhibit 2)

23 BY MR. O'CONNELL:

24 Q. On the second page there is a reference, the second full
25 paragraph to the social history, . .

DR. MORGAN ON DIRECT

1 A. Yes.

2 Q. Now, if you could take a moment to review that, I'd like
3 to ask you some questions about it.

4 A. All right.

5 (Brief pause in the proceeding)

6 BY MR. O'CONNELL:

7 Q. Dr. Morgan, if I could impose on you, could you please
8 read it out loud?

9 A. Sure. Mr. Weik's social history reveals that he's the
10 third child in a family of six. He was raised in an intact fam-
11 ily by a mother and father.

12 He was the product of an uncomplicated pregnancy.

13 He achieved developmental milestones in an unremarkable fash-
14 ion.

15 His mother related that he grew up in a loving, stable home.
16 She reported that he seemed to be, quote, a happy child and pre-
17 sented no behavioral challenges for him.

18 He has no history of head trauma. He has no history of
19 physical or sexual abuse. His mother reported he had been in the
20 lower learning classes as a child.

21 He dropped out of high school in the eleven grade, after hav-
22 ing been suspended for fighting.

23 Upon his termination of his education, he worked steadily
24 and gainfully. He worked for eight years as a machine operator
25 in a factory.

DR. MORGAN ON DIRECT

1 He was fired from the job after having been accused of
2 threatening a co-worker.

3 Prior to his incarceration, he had been employed full time
4 at a factory making fiberglass boats.

5 Prior to his incarceration, Mr. Weik has one significant ro-
6 mantic relationship. This relationship was with the alleged victim.
7 He became involved in her when he was in his twenties.

8 They were involved for about two years until the birth of
9 their son. The relationship terminated reportedly because the al-
10 leged victim did not wish to marry Mr. Weik.

11 Mr. Weik has no history of legal charges.

12 Mr. Weik's family psyche is significant; that his father
13 and paternal grandfather have been hospitalized for psychiatric
14 illness.

15 Q. Okay. Just one minute. Does it say which one?

16 A. No.

17 Q. Now, the mother was the sole source of the report, as far as
18 that reflects?

19 A. So far as I can read here, yes.

20 Q. Based on the information that you had in 1999 and based on
21 the information you have gathered since then, does that contradict
22 what Mrs. Weik said about a happy childhood and no abuse in the
23 home, a stable home?

24 A. Correct. Well, also the head injuries. He had several severe
25 head injuries.

DR. MORGAN ON DIRECT

1 Q. All right, sir.

2 A. And he did not meet his milestones, developmental mile-
3 stones, on time.

4 He was both slow to walk and at that time had an enlarged
5 head that was a -- I have no idea why that was.

6 Q. All right. Now, is there anything in that report, assuming
7 that it was true, that would have assisted you in your diagno-
8 sis of Mr. Weik?

9 A. . .

10 Q. Or rather that would have supported your diagnosis?

11 A. He believed that he and his family were monitored by the CIA
12 and the government. This is a belief he shares with his family.

13 His speech is significant for being vague, circumstantial
14 at times, particularly when under stress.

15 He also reports interacts with others in a guarded and con-
16 stricted fashion.

17 Q. What I'd like you to do is refer yourself to the social
18 worker's report for which the sole source of information was his
19 mother?

20 A. Right.

21 Q. Is there anything that the social worker stated in that
22 social history that would have supported your diagnosis of paranoid
23 schizophrenia?

24 A. No.

25 Q. Now, the -- is it usual that State Hospital social workers

DR. MORGAN ON DIRECT

1 have one or more than one source of information in assessing
2 social matters?

3 A. It is usual that they have one.

4 Q. So that the social history then depends on the forthcoming
5 -- the truthfulness and how forthcoming the reporter was; that is,
6 the mother?

7 A. Correct.

8 Q. Thank you.

9 THE COURT: Anything further?

10 MR. O'CONNELL: No, sir.

11 THE COURT: Cross examination.

12 CROSS EXAMINATION

13 BY MR. ZELENKA:

14 Q. Dr. Morgan, you said that Mr. Weik as a child had a large
15 or enlarged head. Would that normally be a neurological issue
16 as opposed to . . .

17 A. To a psychiatric issue? Yes.

18 Q. Okay.

19 A. And it may have kept him from reaching the milestones on
20 time.

21 Q. Were you present for the testimony at the trial of Dr.
22 William Brannon, the neurologist?

23 A. Yes.

24 Q. And he said there were no neurological defects, is that
25 correct?

DR. MORGAN ON DIRECT

1 A. Correct.

2 Q. And so at the time you were giving your opinion, you were
3 relying on the opinion still by an expert in the field, that
4 there were no neurological defects?

5 Is that correct?

6 A. That's correct.

7 Q. Yet at that time, you were also aware of this -- of some
8 of this information about an enlarged head. Correct?

9 A. I was aware at that -- I don't know whether I was or not,
10 sir.

11 Q. Then I misunderstood what was said.

12 Let me ask you to refer to Plaintiff's Exhibit 2, the bot-
13 tom paragraph on that page, which is . .

14 A. The evaluation.

15 Q. Yes.

16 A. Consisted of a review of a copy of an affidavit, arrest
17 warrant, autopsy report of victim, incident report, supplemental
18 incident reports, case notes from Detective Marshall, witness
19 statements, statements of the Defendant, case notes from police,
20 interviews with the Defendant, medical records from Hall Insti-
21 tute, discussion with Mr. Weik's attorney, Percy Buford, social
22 history obtained by Carlos Torez from an interview with the
23 Defendant's mother, Lillie Weik, clinical tests performed at Hall
24 Institute, including an EEG, an MRI, psychological testing done
25 by Steven Shay, neurological consultation, clinical forensic

DR. MORGAN ON CROSS

1 interview of the Defendant for ninety minutes on April 27th,
2 1999, fifteen minutes on May 2nd, 1999, clinical interview with
3 the Defendant for ten minutes on May third, 1999, and finally a
4 clinical interview of two and a half hours with the Defendant on
5 May 6, 1999.

6 Q. Look on page four of the Exhibit, Plaintiff's Exhibit 2.

7 The report is signed by . .

8 A. By Dr. Crawford.

9 Q. . . Dr. Crawford?

10 A. Right.

11 Q. That report was not usually what's a social history, is
12 that correct?

13 A. I beg your pardon?

14 Q. That report that you're reviewing, the social history,
15 was a social history -- isn't a social history usually something
16 that is . .

17 A. Separate.

18 Q. It is also indicated there had been some discussion with
19 Mr. Weik's attorney, Percy Buford?

20 A. Yes.

21 Q. That they were relying upon that information, is that cor-
22 rect?

23 A. . .

24 Q. As well as the social history?

25 A. I don't know what they talked about.

DR. MORGAN ON CROSS

1 Q. No further questions.

2 THE COURT: As to this witness, counselor?

3 MR. O'CONNELL: He can be excused.

4 THE COURT: Any objection?

5 MR. ZELENKA: No objection.

6 THE COURT: Doctor, thank you very much. You are now
7 excused.

8 (Witness excused)

9 THE COURT: Call your next witness.

10 MR. O'CONNELL: Scott Parker.

11 SCOTT PARKER, being duly sworn,
12 testified as follows:

13 THE COURT: If you will speak into that microphone in
14 front of you, sir, and state your full name, spelling your last
15 name?

16 WITNESS: Scott Parker, P A R K E R.

17 THE COURT: Your witness.

18 MR. O'CONNELL: Thank you.

19 DIRECT EXAMINATION

20 BY MR. O'CONNELL:

21 Q. Mr. Parker, now by whom are you employed?

22 A. Now I'm an investigator with the bank, with Wachovia Bank.
23 I'm a fraud investigator with the bank.

24 Q. What is your educational background?

25 A. Educational background is high school completion and I went

MR. PARKER ON DIRECT

1 to college for two years, business administration, and I event-
2 ually ended up in police work and went to the Charlotte Police
3 Academy in Charlotte, North Carolina, where I graduated from
4 there, sir.

5 Q. And you were a police officer after that?

6 A. A year, sir, in Charlotte.

7 Q. And are you also licensed as a private investigator in South
8 Carolina?

9 A. Yes, sir. After I left the Sheriff's Department actually
10 with the Mecklenburg County Sheriff's Department -- after I left
11 them I went to work as a private investigator, working with B. J.
12 Johns, doing death penalty investigations, investigations into
13 criminal . . .

14 Q. All right, sir. Where was that, when you worked with Mr.
15 Johns?

16 A. It was based in Columbia, but it was -- I worked all over.
17 I was licensed in North and South Carolina both.

18 Q. Now, prior to 1999, did you have experience in working in
19 mitigation investigation in death penalty cases?

20 A. I did. From 1995 to 2000, I was active as an investigator.

21 Q. Can you say how many death penalty cases you did mitigation
22 investigation for up to your involvement in this case in 1999?

23 A. I would say -- because I had several involved during the
24 same time, I would say this was probably number 20 -- 19 or 20.

25 Q. And that was both in North and South Carolina?

MR. PARKER ON DIRECT

1 A. Primarily in South Carolina, yes.

2 Q. Did you receive any specialized training in mitigation
3 investigation?

4 A. Through law enforcement and then just working with other
5 investigators doing that, with Mr. Johns, who was a licensed in-
6 vestigator.

7 Q. All right. So what do mitigation investigators in death
8 penalty cases do? What are they for?

9 A. It is for the phase of the trial where they go through
10 the point of guilt where I examine and produce evidence or in-
11 formation for the benefit of counsel and the defense, looking
12 back for the time either the person was a child or in some
13 cases all the way back to birth or even before birth, to see
14 what type of circumstances would bring them up to the point they
15 are now and the condition they are in in the
16 trial that they are facing.

17 Q. What are typically your sources of information as a miti-
18 gation investigator?.

19 A. Usually directly to the source of family relationships, get-
20 ting involved with the actual family members of a defendant. Also,
21 going to any subsequent people that would be able to provide
22 corroboration for allegations or anything the family would di-
23 vulge or friends of the family.

24 Q. In your experience as a mitigation investigator, when you
25 are asking questions about family background of family members,

MR. PARKER ON DIRECT

1 and there are things that are not pleasant to talk about,
2 what has been your experience about how forthcoming family mem-
3 bers are, at least initially, about revealing them?

4 A. They are very cautious. As an outsider, they don't know
5 whether to trust you.

6 They don't know how far to go with you and how much to let
7 down their guard. In pretty much every case, that's pretty
8 standard.

9 Even though you are working for the defense, when you are
10 touching on some issues, they can be rather guarded.

11 Q. What do you do with regarded to guarded family members
12 or sensitive family members?

13 A. Of course, getting people at ease, and that is something
14 basically when you start in law enforcement -- that is one of
15 the communication issues that you deal with to get to the
16 source of anything that may be going on within the family.

17 And basically putting that person at ease so that they feel
18 comfortable with you. In exchange, find areas that you share or
19 experiences you may have or talk about other things other
20 than directly approach the issue, so that there is some inter-
21 change and some comfort zone that is established between you and
22 the person.

23 Q. What records have you seen in your work as an investiga-
24 tor with the Defendant and/or his family?

25 A. It is kind of finding out what kind of playing field the

MR. PARKER ON DIRECT

1 person is on that you're talking about, that you are actually
2 working in that particular case, or what kind of background
3 did they have.

4 What were the parents like? What problems they may have
5 encountered early on, especially when we're looking back for
6 any type of physical or any type of a character flaw or blemish,
7 or mental problems.

8 Anything that would be chronic, that would come from a fam-
9 ily member. If there is suspicion there, then you direct the
10 questions to try to get those where they are comfortable to bring
11 them out, because then you are getting into different things and
12 you are talking about not just the people you're talking to, but
13 you are talking about where they came from and what possible
14 problems there may have been there, and that goes back to mom and
15 dad or grandparents or that sort of thing of the defendant.

16 Q. All right. Now, do you recall when you -- first of all,
17 let me get his marked. I show you what's been marked for Identi-
18 fication as Plaintiff's Exhibit 3, and ask if you recognize this?

19 If so, tell me what it is.

20 A. Yes, this is an interview at the residence of Lillie Varner Weik,
21 and her husband was interviewed on the same evening. They were
22 both present in the residence, and this was . .

23 Q. When was that?

24 A. I did this interview on May 14, 1999, on a Friday, at their
25 residence.

MR. PARKER ON DIRECT

1 Q. When did you become involved in this case, in relation-
2 ship to that interview? Interview of May 14th.

3 A. I had initially been -- B. J. Johns and I -- and I will
4 say that B. J. Johns is deceased -- B. J. Johns had been con-
5 tacted by the defense team.

6 We had gone down to the office of Marva Thomas, and it was
7 agreed upon that we would take the case.

8 Q. Do you recall how long before the trial started that that
9 occurred?

10 A. I think the trial had already started or it was -- there
11 were some hearings under way that were related to the beginning
12 of the trial.

13 It was very close to -- it was very close to the trial date
14 that . . .

15 Q. I think the trial began the following day.

16 A. Okay. So everything was in place at that point. We were
17 coming in very late into this for what time I had to work with
18 it.

19 Q. All right. Did you produce interviews with other family
20 members?

21 A. I did.

22 Q. Do you remember who?

23 A. Well, specifically in this case it was Lillie and her husband,
24 Russell, and also with Chris, the son -- I think I actually --
25 there is another couple but the name escapes me.

MR. PARKER ON DIRECT

1 Q. I'm going to hand you . .

2 A. Or another gentleman, family member, and then, of course,
3 Eddy himself,

4 They were the primary ones. That's all I really had the time
5 to do.

6 Q. All right.

7 A. And there was a lot of time that was spent looking for re-
8 cords, or trying to obtain records.

9 Q. If you could identify these two documents as well?

10 What are they, and who produced them?

11 A. Okay The -- this second Exhibit . .

12 Q. Can you give the Exhibit number?

13 A. Exhibit Number 5 and Exhibit Number 3 were both done on the
14 same day, the same evening, at the residence of Russell and Lillie
15 Weik.

16 Q. This was on May 14th?

17 A. That was on May 14th, 1999.

18 Q. Exhibit Number 4, in your left hand, what is that?

19 A. Exhibit Number 4 was the interview with Russell Christopher
20 Weik, also known as Chris Weik.

21 That was done on Tuesday, the 25th of May, 1999.

22 Q. All right, sir.

23 MR. O'CONNELL: Your Honor, I'd move to admit Plaintiff's Ex-
24 hibits 3, 4, and 5

25 THE COURT: Mr. Parker, all three of these Exhibits were

MR. PARKER ON DIRECT

1 done by you?

2 WITNESS: Yes, sir.

3 THE COURT: Any objection, counselor?

4 MR. ZELENKA: No, sir.

5 THE COURT: Very well, Plaintiff or Applicant's Exhibits 3, 4,
6 and 5 will be admitted in evidence without objection. That is
7 3, 4, and 5 in evidence without objection.

8 (Interviews by Mr. Parker of Weik family members admitted in
9 evidence without objection as Applicant's Exhibits 3, 4 and 5)

10 BY MR. O'CONNELL:

11 Q. Now, the information that you garnered from those inter-
12 views, what did you do with it?

13 A. At that point every time interviews were done, anything was
14 done, it was all turned into Percy Buford's office.

15 I only had contact with Marva's office two times. The
16 first time when B. J. and I went there, and the second time
17 was to get a letter that would give me access to get to Eddy
18 if I needed to get to him in the jail.

19 Q. You are referring to Eddy Weik?

20 A. Yes, sir. Eddy Weik.

21 Q. Now, do you recall if you had any subsequent conversations
22 with Marva Hardee Thomas about your -- about what you had discov-
23 ered in your investigation?

24 A. No, I did not.

25 Q. Did you -- you say you gave the reports that you had to --

MR. PARKER ON DIRECT

1 Exhibits 3, 4 and 5, you gave those to Percy Buford, who is the
2 other attorney?

3 A. Yes.

4 Q. Did you meet with him and talk to him about the contents of
5 those reports?

6 A. These were taken to the office, turned in as they were done,
7 and I had very little contact with Percy unless there were any-
8 thing specifically that he wanted me to concentrate on or look
9 for, which I did.

10 But as far as meeting to review any of these, no. There
11 was no review done.

12 Q. Now, there is another report that you did, an interview
13 with his sister, Maggie. Do you recall doing that?

14 A. I recall doing that. I don't recall when.

15 MR. O'CONNELL: For your information, I looked in the De-
16 fense attorneys' file and found pages two and three of a report
17 of an interview I think was done by Mr. Parker of Maggie.

18 THE COURT: Well, obviously we have to proceed with what we
19 have got.

20 Mr. Zelenka, I'm told that Mr. O'Connell found some documents
21 which he thinks are Mr. Parker's that he can't identify.

22 I assume -- I mean, unless you tell me you've got some copy
23 of that which he obtained from the Defense attorneys' file, let's
24 move on with what we do have.

25 Do you believe there is a full copy in existence that coun-
sel has?

MR. PARKER ON DIRECT

1 MR. O'CONNELL: I don't believe it's a full copy.

2 THE COURT: Proceed.

3 BY MR. O'CONNELL:

4 Q. When you say you gave these reports as they were pro-
5 duced-- Is the dates on those reports the date you did you
6 interviews?

7 A. The dates I did the interviews, yes.

8 Q. And is it also the date that you would have given them
9 to Mr Buford?

10 A. No, sir. I would have given them to him probably the next
11 day, because what I would do would be to take my case notes from
12 interviews, take them home, actually work on them from my home,
13 which was my office in Charlotte, and that would have precluded
14 me from doing lengthy reports like this immediately that same
15 day and giving them back.

16 But he would have had them within two days maximum.

17 Q. So you would have given to him by . .

18 A. By Monday in the case of these two from Friday, and the
19 Tuesday he would have had either Wednesday or Thursday.

20 Q. How would he have gotten them?

21 A. I would take them directly to his office. I usually
22 presented them to his secretary, because he did not -- he was in
23 volved with the trial at that point.

24 I did not see much of him.

25 Q. All right. The day of the reports with his parents was May

MR. PARKER ON DIRECT

1 14, 1999. What is the date of the report you did as far as his
2 brother Chris?

3 A. That was May 24, 1999.

4 Q. After the trial had gotten underway?

5 A. Yeah.

6 Q. All right. Did you ever have any subsequent conversations
7 with Mr. Buford about the contents of your reports and anything
8 else that -- well, stop there and answer that first question that
9 I asked.

10 A. No, I did not.

11 Q. So there was no -- did you make any suggestion to Mr. Buford
12 or to Ms Thomas about additional investigation that needed to be
13 done as a result of what you had discovered?

14 A. There were family members and people that I just did not
15 have time to get to in the time that I had.

16 Q. Okay.

17 A. Likewise, trying to find some of these people was proving
18 to be -- I was more concentrating on looking to try to get some
19 records to substantiate what I had uncovered in these interviews,
20 to corroborate some of the information that had been given to me,
21 which is part of what I do when I have something very substantive
22 to produce and to give.

23 I don't always like to just give something somebody said.
24 It is part of the investigator's job to go ahead and try to get
25 something to corroborate . . .

MR. PARKER ON DIRECT

1 Q. I show you what's been marked for identification as Plain-
2 tiff's Exhibit Number 6. Do you recognize that?

3 A. Yes, I -- that's an interview that I did with Magdalena
4 and John Gunter.

5 Q. Do you happen to have the dates on that?

6 A. I do not. I do not, but this was sent from my home and it
7 was sent -- I can't tell by the date. It doesn't look right.

8 Q. It doesn't matter.

9 A. Well, that would have been sent from my home.

10 MR. ZELENKA: No objection.

11 MR. O'CONNELL: I move to introduce that.

12 THE COURT: Plaintiff or Applicant's Exhibit Number 6 will
13 be admitted into evidence without objection -- Plaintiff's 6 in
14 evidence.

15 (Gunter interviews entered in evidence without objection as
16 Applicant's Exhibit 6)

17 BY MR. O'CONNELL:

18 Q. Mr. Parker, were you present during the trial?

19 A. Only the last day, sir.

20 Q. Okay.

21 A. When the expert testimony was to be presented.

22 Q. Were you asked to do anything by the defense lawyers during
23 the trial?

24 A. Specifically? No, sir.

25 Q. Did Chris Weik testify, as far as you know, at the trial?

MR. PARKER ON DIRECT

1 A. To my knowledge, he did not.

2 Q. Were you present during the penalty phase of the trial?

3 A. No, sir. No, sir.

4 Q. Okay.

5 A. I just -- as I say, I was there the one day and that was
6 when the professional witnesses were here, and that was it.

7 Q. Have you been involved in other death penalty cases in South
8 Carolina?

9 A. Yes.

10 Q. You say you have done them from 1995 to 2000?

11 A. Yes.

12 Q. What was the practice of defense lawyers in those cases in-
13 sofar as mitigation testimony? Have you been involved in plan-
14 ning that aspect of the case?

15 A. In almost every case, there were always meetings where we
16 would sit down and discuss what had been found, mainly to have
17 them tell me what it was that they would need.

18 What was integral out of those interviews that I would do
19 or records that I would get, or what else I would need to get
20 to help them with their case.

21 Q. And did you have an opportunity to do that in this case?

22 A. I did not.

23 Q. Did Mr. Buford or Ms. Hardee Thomas ever ask you to meet
24 with them after you produced these interviews?

25 A. No.

MR. PARKER ON DIRECT

1 Q. Okay.

2 A. Not after the interviews, no.

3 Q. Did -- was it your impression that they understood the im-
4 portance of the interviews that you were doing with family members,
5 with the Gunters, Mr. and Mrs. Weik and Chris Weik?

6 A. Since I didn't actually talk that much with definitely Ms.
7 Thomas -- but Mr. Buford, it was rare to see him because of the
8 -- when I was here working, usually he was in trial or he was
9 conducting other business.

10 I -- so it was rare for me, being out of State, traveling
11 and trying to arrange interviews and everything that I would have
12 any real opportunity to sit down and talk with him unless he had
13 requested it and he did not do that.

14 Q. So was there ever a time he asked you to meet with him?

15 A. No, no.

16 Q. Excuse me for a moment.

17 (Brief pause in the process)

18 BY MR. O'CONNELL:

19 Q. Would you answer any questions that counsel may have for
20 you?

21 A. Yes, sir.

22 THE COURT: Cross examination.

23 CROSS EXAMINATION

24 BY MR. ZELENKA:

25 Q. Mr. Parker, did you ever provide any information directly to

MR. PARKER ON CROSS

1 Dr. Morgan?

2 A. I did not. No, sir. I was not asked to.

3 Q. Now, in your billing report -- excuse me, Mr. Parker.

4 Let me ask if you can identify this?

5 A. Yeah, this would have been -- this is an invoice from

6 B. J. Johns, Incorporated. This is what B. J. would have sent
7 to our client.

8 Q. Would that invoice include your time?

9 A. Yes, sir.

10 Q. Were you the primary investigator with your firm on this
11 case?

12 A. Yes, sir.

13 MR. ZELENKA: Your Honor, we would move to introduce this
14 as Respondent's Exhibit 4.

15 MR. O'CONNELL: No objection.

16 THE COURT: State or Respondent's Exhibit Number 4 will be
17 admitted in evidence without objection.

18 Number 4 in evidence.

19 (B. J. Johns Invoice admitted in evidence without objection
20 as State's Exhibit 4)

21 THE COURT: Proceed.

22 BY MR. ZELENKA:

23 Q. Mr. Parker, on that it reflects how many hours you claim
24 to have spent on this case?

25 A. One hundred fifteen hours.

MR. PARKER ON CROSS

1 Q. And it doesn't segregate that time out to any particular
2 day, does it?

3 A. No, sir. Well, it segregates a block of time from 5 7
4 to 5 29.

5 Q. Five 7 to 5 29?

6 A. Yes, sir.

7 Q. And the interviews that you provided were on May 14th, is
8 that correct?

9 A. That is correct, sir .

10 Q. And then . . .

11 A. Well, two were.

12 Q. And on May 25th?

13 A. Yes, sir, May 25th.

14 Q. And did . .

15 A. Now, I'm not certain. I don't know about that.

16 THE COURT: Just a moment. One at a time.

17 BY MR. ZELENKA:

18 Q. And the interview for Magdalena Gunter?

19 A. That would have been in the same time frame, sir.

20 Q. Same time frame?

21 A. Uh hm.

22 Q. Now, do ou know whether or not you spoke with Percy Buford
23 on May 3rd, 1999, for approximately two hours?

24 A. . .

25 Q. During that billing period suggested?

MR. PARKER ON CROSS

1 A. That date would have probably been the date that we were
2 probably contracting with --- actually came down because B. J.
3 and I traveled from Columbia here to Marva Thomas' office, and
4 we did spend time in that office, sir.

5 But I don't think that was a billable trip.

6 Q. What about meeting with Mr Buford? Would you have spoken
7 to him on that day?

8 A. I don't think I met him that day. I met Ms. Thomas, and
9 I met another investigator, and they were the only two people,
10 and that was an investigator that was involved with the first
11 phase of the trial.

12 Q. And what I'm trying to distinguish is between speaking and
13 meeting. Okay?

14 A. Yes, sir.

15 Q. Let me do this. Do you know whether you spoke with Mr.
16 Buford on May 5th, 1999?

17 A. . . .

18 Q. Do you have any recollection for about an hour and a
19 half?

20 A. I can't recall.

21 Q. Okay.

22 A. I did talk with him initially when I first met him and I
23 went to his office, and . . .

24 Q. Would that have been around May 10th, 1999?

25 A. It may have been because there were actually two times

MR. PARKER ON CROSS

- 1 that I came down here. One time I did not bill for because
2 I needed the letter from Ms. Thomas, and I went to her office.
3 At some point in there, I actually met Mr. Buford.
4 Q. Okay. On 5 10 99 spoke to Mr. Buford approximately two and
5 a half hours?
6 A. That may well be. That may well be at that point.
7 Q. And that was then before the results of these interviews?
8 A. Absolutely. Yes, sir.
9 Q. Okay, on 5 12 99, could you possibly have met with Mr.
10 Buford on that day?
11 A. And that could well have been me bringing in information
12 and bringing that -- like I say, it was mainly his secretary I
13 spoke with, because he was in trial.
14 My time here was during the day time, and he was not usu-
15 ally in the office, so it was not common to see him there in
16 the office.
17 I know I did see him at least once or twice but it was
18 usually either going -- he had been in Court and I caught the
19 tail end of the day where I was dropping something off or getting
20 information, to go out to an interview, because there were -- I
21 think the one for Christopher -- it seems to me that was a
22 later one because I had to wait for him to get home from work.
23 Q. When you met with the victim's family -- excuse me -- with
24 the Defendant's family, was Mr. Buford with you?
25 A. That was when I was by myself, sir.

MR. PARKER ON CROSS

1 Q. By yourself?

2 A. Yes, sir.

3 Q. On the day you received the information from Lillie and
4 family members, did you contact or speak with Mr. Buford about
5 the results of that information?

6 A. No, I wouldn't have. No, sir.

7 Q. And you testified you were in Court on one of the days, the
8 day for expert witnesses?

9 A. Yes.

10 Q. And I assume you mean the psychiatrist and those folks from
11 -- those called to talk about his mental health?

12 A. Correct, sir.

13 Q. And at that time had you already provided all of the in-
14 formation to Mr. Buford?

15 A. Yes, sir, I had.

16 Q. You weren't just giving it to him that day, but they had
17 that before then?

18 A. Yes, sir, they had everything at that point.

19 Q. Okay.

20 A. My only purpose in being there was if there were questions
21 that may have come up as to where the information came from or
22 any validity or anything like that.

23 Q. At that time, did you speak to or did you ever speak to
24 Dr. Swartz-Watts or Dr. Jeffrey McGee or Dr. Donald Morgan be-
25 fore they testified or after they testified about family,

MR. PARKER ON CROSS

1 background?

2 A. About this case, no, sir. About anything related to the
3 case, no. I just -- formerly I had actually met these people
4 at other trials.

5 I knew who they were and it was just a matter of a congen-
6 ial hello.

7 Q. Okay, but they didn't ask you to meet with any of them or
8 with anyone else?

9 A. There was one meeting that took place in a side room right
10 outside of the Courtroom or right outside the Court over here,
11 and whatever had been discussed I was kind of at the tail end
12 of it.

13 They brought me in there and there was nothing relevant to
14 me so I stepped back out.

15 Q. Do you know whether the doctors had reviewed your documents,
16 or did you see them in their possession at all?

17 A. No, sir. The only person that made any reference to my
18 report was Dr. Schwartz Watts, and it sounded like it was some-
19 thing that she was just in possession of, and not something she
20 had to go on.

21 Q. Were you present in the Court when Lillie testified in the
22 trial?

23 A. No, sir, I was not.

24 Q. Nothing further.

25 MR. O'CONNELL: Just briefly.

MR. PARKER ON REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. O'CONNELL:

3 Q. Were you asked by the Defense lawyers to speak with the
4 mental health professionals during 1999?

5 A. No.

6 Q. Were you asked to speak to any of the psychiatrists or the
7 psychologists who testified on behalf of the State?

8 A. No.

9 Q. Either the Defense or prosecution psychiatrists?

10 A. No, sir.

11 Q. You said you worked on twenty all together, and you stopped
12 in 2000?

13 A. Right. It's twenty four total.

14 Q. How would you describe your experience in 1999 as far as
15 being a mediation investigator?

16 A. I -- again, that is a very specialized area, and I had more
17 work than I could stand at that point. It was only because of my
18 health that I stopped.

19 Q. Were you ever asked -- did you know how much experience the
20 defense lawyers had in death penalty cases?

21 A. No, I did not. Well, are you talking about . . .

22 Q. Ms. Hardee Thomas and Mr. Buford?

23 A. In the initial interview that we did, I think it came out
24 that neither had ever worked in a death penalty case before.

25 Q. Did they ask any advice from you about how to integrate the

MR. PARKER ON REDIRECT

1 interviews that you did? That is, the interviews with the
2 parents, with Chris?

3 A. . .

4 Q. Did they ask you how to integrate that into their case?

5 A. No, that was never a question.

6 Q. Did they ask you how they might use it in their case?

7 A. No, they did not.

8 Q. If you were asked that question, would you have offered
9 advice?

10 A. Absolutely.

11 Q. What advice would you have given them?

12 A. Well, it would have been how to walk the actual profession-
13 als in, because having -- I had gotten that there were some
14 questions about Mrs. Weik, Lillie Weik.

15 Having said there was no head trauma or anything which
16 was contradictory to what I had had, I was trying to find any
17 kind of evidence I could, like school records, things like that,
18 which I could not find, or find someone who could corroborate
19 what she had told me at that point.

20 A lot of those hours that were on there were corroboration
21 hours, trying to find out something that would find it, but I
22 could not.

23 Q. Do you think you had then something to offer the defense
24 lawyers, given your experience in death penalty cases in the
25 past?

MR. PARKER ON REDIRECT

1 A. Absolutely. From how open and intimate I had become with
2 the family which in a lot of these cases you become very close
3 to family.

4 They share many things with you, and obviously they felt
5 very open to talk to me about it.

6 Q. Do you think you had something to offer the defense lawyers
7 about how to integrate this into their trial?

8 A. I think so, with specifics to the background. A part of the
9 mitigation process is looking for any type of abnormalities that
10 may have been there.

11 I certainly feel that I did have something to offer in this
12 regard, and especially from the interview with the parents and
13 then corroborating with the brother, which was very -- which
14 was very strong in comparison to other cases that I had done.

15 I have done a lot more with a lot less. I had a lot to work
16 with but I was never asked for any clarification on any of the
17 things in the reports, and especially if they had just asked me,
18 you know, are you sure that this is what was said to you.

19 That was never done.

20 Q. Did they ask you at all about the conversations?

21 A. No, sir.

22 Q. Thank you.

23 THE COURT: Recross limited to Redirect?

24 RECROSS EXAMINATION

25 BY MR. ZELENKA:

MR. PARKER ON RECROSS

1 Q. The information that you have from the family members
2 about head injuries, is that when Eddy got hit with a brick-
3 bat?

4 A. That was one incident.

5 Q. Was the other one an automobile accident?

6 A. There was an automobile accident

7 Q. And were you present in the competency hearing at the
8 trial when Lillie Weik testified about those?

9 A. No, sir. I was not, sir.

10 Q. Thank you very much.

11 THE COURT: As to this witness?

12 MR. O'CONNELL: I'd ask that he be excused.

13 THE COURT: Any objection?

14 MR. ZELENKA: No, sir.

15 THE COURT: You may step down, Mr. Parker, and you are
16 excused.

17 (Witness excused)

18 THE COURT: Counsel, we're going to take our one and only
19 mid-afternoon break at this point. We'll take about ten minutes
20 and then resume.

21 (Whereupon, the Court stood in brief recess and then the
22 matter resumed)

23 THE COURT: Are you ready to proceed?

24 MR. O'CONNELL: If Your Honor Please, the psychiatrist that
25 I have retained in this case would like the opportunity to

1 re-examine Mr. Weik, or to speak with him again, before he
2 testifies.

3 When I spoke to Mr. Weik, he is willing to waive his
4 presence so the Doctor can do the interview.

5 I have spoken also with the gentlemen from the Department
6 of Corrections and they are okay with it, and spoke with the
7 Sheriff also and he is okay with it.

8 So I would like to have that occur. You may want to
9 question my client about that.

10 THE COURT: Mr. Weik, would you come around with Mr.
11 O'Connell, please, for me.

12 Come up here in front.

13 (Whereupon, the Applicant, Mr. Weik, came before the
14 Court with his counsel and was sworn by the Court)

15 THE COURT: Thank you, sir. Please step up to the
16 microphone for me. Would you state your name for the record,
17 please?

18 MR. WEIK: John Edwin Weik.

19 THE COURT: Mr. Weik, I've just heard from your attorney,
20 Mr. O'Connell, and he tells me you are willing to waive your
21 appearance here in the Courtroom in order that you can be in-
22 terviewed by an expert who he plans to call tomorrow as a witness
23 in support of your application for post conviction relief.

24 Do you understand, Mr. Weik, that you have the right to be
25 present at all stages of these proceedings?

1 MR. WEIK: Yes, sir.

2 THE COURT: Do you wish to give up that right while we
3 take testimony while you are being interviewed by this wit-
4 ness?

5 MR. WEIK: I understand, yes, sir. It's in God's hands.

6 THE COURT: You . . .

7 MR. WEIK: Yes, sir.

8 THE COURT: You wish to give up your right of appearance,
9 is that correct?

10 MR. WEIK: Yes, sir.

11 THE COURT: And you understand that you have the right to
12 be present if you so desire?

13 MR. WEIK: I do, sir.

14 THE COURT: Very well; you may return to your seat.

15 Mr. O'Connell, he has indicated to me that he wishes to
16 give up that right. If the security people would take him? Do
17 you want that done at this time?

18 MR. O'CONNELL: Yes, sir.

19 (Counsel returning to seat. Mr. Weik escorted from the
20 Courtroom)

21 THE COURT: Where is your witness? Would you provide him
22 with a room, and he is coming to join you. His name is . . .

23 MR. O'CONNELL: Dr. Halleck.

24 THE COURT: . . . Dr. Halleck, so they will know back here.
25 Very well, counsel.

1 MR. O'CONNELL: We would call Amy Weik Maxwell.

2 AMY MAXWELL, being duly sworn,

3 testified as follows:

4 THE COURT: If you would start by stating your full name,
5 and please speak into that microphone.

6 WITNESS: Amy Weik Maxwell, M A X W E L L.

7 THE COURT: Your witness.

8 DIRECT EXAMINATION

9 BY MR. O'CONNELL:

10 Q. Ms Maxwell, you are Eddy Weik's younger sister?

11 A. Yeah.

12 Q. Speak out loud. I know you're nervous today, but we all
13 need to hear you.

14 A. Yes, I am.

15 Q. Ms. Weik, are you married?

16 A. Yes.

17 Q. And how many children do you have?

18 A. I have two.

19 Q. And your husband is currently on disability?

20 A. Yes.

21 Q. What kind of work did he do before he became sick?

22 A. He worked with the union.

23 Q. Boilermaker?

24 A. Yes.

25 Q. Now, I want to draw your attention to your brother, and

MS. MAXWELL ON DIRECT

1 specifically when you were a young child.

2 How much older is your brother than you?

3 A. Which one?

4 Q. Sorry -- Eddy.

5 A. Four years.

6 Q. And when was -- how old do you think you were when you be-
7 gan to -- when you were a child, when you were a little girl, do
8 you recall thinking there was anything unusual about your bro-
9 ther?

10 A. Are you asking what age?

11 Q. When you began to notice anything.

12 A. . . .

13 Q. Just do the best you can.

14 A. Maybe about twelve.

15 Q. And what did you notice?

16 A. Eddy had some type of problem with, I guess, learning,
17 because he was trying to do homework and he would hit his head,
18 saying that he could not think, and he would call himself
19 stupid.

20 Q. Anything else that you noticed early on that you can tell
21 us?

22 A. No.

23 Q. What about, did you notice anything different about his
24 personality, about the way that he talked?

25 A. . . .

MS. MAXWELL ON DIRECT

1 Q. About how he related to people?

2 A. He had a way of speaking very fast like as if he had a
3 speech impediment, but more like his brain focus was like going
4 faster than his lips.

5 So he would like -- if he was to say something, it was
6 so fast that you couldn't hear him. It was more like a
7 mumble almost.

8 Q. Okay. Did he have any friends?

9 A. He had friends, but he had enemies too. I mean, . . .

10 Q. Would you describe him -- in terms of his -- did he spend
11 time by himself more than he spent time with other people?

12 A. I don't really recall.

13 Q. All right. I want you to answer some questions now about
14 your father and the effect he had on the children in the house-
15 hold.

16 Do you remember an incident when you were a young girl
17 and your father did something that was violent?

18 A. Yes.

19 Q. I know it's hard to talk about, but what was it?

20 A. . . .

21 Q. I would like you, if you could, to set the scene for the
22 Judge about what was going on in the room and what happened.

23 A. In our living room, we had a TV that was placed on like
24 a stand, and we had a couch near it, and my dad and I used to
25 play, like tickle and that type of thing, and I came in and

MS. MAXWELL ON DIRECT

1 I tried to tickle him, which at the time I wasn't aware of
2 what was going on, and . .

3 Q. All right. Go on, please.

4 A. And I came up to him and I was kind of like to a side of
5 him, to tickle him, and it was very quick.

6 Q. And what did he do?

7 A. He just reached up and grabbed my throat.

8 Q. Take a drink of water.

9 A. . . .

10 THE COURT: Take your time.

11 A. I'm sorry.

12 THE COURT: No need to apologize.

13 A. He reached and he grabbed my throat.

14 Q. How old were you then?

15 A. I'm not sure. Maybe eight.

16 Q. What happened? What happened after he put his hand on your
17 throat?

18 A. I was choking.

19 Q. Was it a light grab? How would you characterize it?

20 A. It was forceful.

21 Q. Did he say anything to you?

22 A. If he did, it was very distant. I felt like as if there
23 was a lot of pressure around my ears.

24 Just Charlie is what I can remember.

25 Q. I'm sorry?

MS, MAXWSELL ON DIRECT

1 A. Charlie.

2 Q. What did Charlie refer to?

3 A. At that time I wasn't sure what it referred
4 to, but I learned later that I guess Vietnamese was
5 more what it really meant.

6 Q. Did he -- was your mother present?

7 A. No one was in the room but him. My mother
8 was in the home.

9 Q. Nobody else was in the room?

10 A. Just me and my father, but my mother was in
11 the home. She was in the kitchen

12 Q. Did anyone else see him grab you by the throat?
13 Did anyone else see that?

14 A. It was just he and I.

15 Q. Did he ever explain to you after that why he
16 did that, other than what he said, Charlie, or
17 some reference to Charlie?

18 A. All I can remember is him saying, don't walk
19 up on me like that again.

20 Q. Was this in the day time or the night time?

21 A. I couldn't tell you.

22 Q. Okay. Tell me what your father was like in
23 how he dealt with your two brothers and you, as a
24 father.

25 These are general sorts of questions. I am.

MS. MAXWELL ON DIRECT

1 interested in knowing what sort of father he was,
2 and what sort of temperament he had towards you and
3 your brothers.

4 A. I'm sorry. Could you repeat?

5 Q. Describe for the Judge what type of father he
6 was to you as a child. How he treated you, and, more
7 specifically, your brothers, if there was any difference
8 there.

9 A. . . .

10 Q. What sort of things did he do with them?

11 A. I don't remember any activities that he did with
12 them, but I can speak of discipline.

13 Q. Talk to me about discipline.

14 Q. If my father wasn't there during our childhood,
15 my mother was the disciplinarian and she did disciplin-
16 arian actions with us.

17 If my father was there, he just didn't -- he didn't
18 discipline us in a fatherly way. It was . . .

19 Q. What do you mean by that?

20 A. Well, I mean . . .

21 Q. Maybe the best way is just to describe what he
22 did do.

23 A. Sometimes he would be what I consider violent.

24 Q. Tell me about that.

25 A. There was a time when we were all in the kitchen,

MS. MAXWELL ON DIRECT

1 my mother and I, and my father. I'm not sure what
2 kind of mood he was in at that time, but he come in
3 and he had had his foot crushed at the mill.

4 I started to see a lot of ups and downs with
5 him as far as emotions, but this particular incident
6 I do not know what the problem was.

7 He entered into the kitchen and he took some
8 change out of his pocket and kind of slammed it down
9 on the kitchen table and told my momma that he needed
10 to get a newspaper. I am not sure what the reason of
11 that was.

12 And as a small child, I just said, mom, I'll
13 take the money, you know, but I never got away with it.
14 I was a little selfish.

15 And he got upset and he started to raise his
16 voice and just as quickly as one move to another he
17 turned around to my brother, which was Eddy, and he
18 kind of put his hand on my brother's shoulder, his
19 left shoulder, and with his right hand he made his
20 hand very firm and put it up to my brother's rib cage
21 and told him that if he didn't get his hair cut he
22 was going to take his hand -- I'm sorry -- he was
23 going to take his hand and ram it up to his heart and
24 rip his heart out.

25 And I don't know what triggered that. I am not
150

MS. MAXWELL ON DIRECT

1 sure what triggered that,

2 Q. Were there other incidents like that where he
3 acted unpredictably?

4 A. Yeah,

5 Q. Do you remember any of those specifically?

6 A. Yeah.

7 Q. Tell me about those,

8 A. I'm not sure of the age, but there was something
9 called Sikes Radio. It's where he would buy parts for
10 TVs and that type of things, for electronics.

11 My father in his spare time would fix TVs, and he
12 had ordered my mom to go pick up a certain part for
13 him, and we got there -- it was just me and mom. we
14 had went -- she always took me mostly everywhere.

15 And it was closed, and . . .

16 Q. I'm going to bring you forward because the Judge
17 has heard part of that, but your mother was not able to
18 find the part?

19 A. No.

20 Q. And you went back to the house and what happened
21 then?

22 A. There was a lot of noise, such as yelling, and he
23 just went into this rampage.

24 The TVs were located on the upper level of our
25 home which we considered an attic, and he went up there

MS MAXWELL ON DIRECT

1 and I can remember me and my brother Eddy and my brother
2 Chris sitting on a couch downstairs and listening and
3 hearing TVs just breaking, and my mom saying, Russell,
4 please no -- the kids, and that's all I can remember.
5 I just remember us speaking amongst each other and
6 just hoping that we were not going to be next.

7 I guess it was something that we did as a bonding
8 agent.

9 Q. Do you remember your father talking about his
10 experiences in Vietnam?

11 A. Vaguely. It was when he was in Special Services
12 or Special Forces

13 Q. Did he explain any things to you of what he had
14 done in Vietnam?

15 A. Do I have to talk about it?

16 THE COURT: If you know the answer to the ques-
17 tions then you will need to answer it.

18 BY MR O'CONNELL:

19 Q. I'm sorry.

20 A. In a round about way, from what I understand, my
21 father was supposed to have been in Vietnam and he was
22 with some type of elite or black op.

23 Q. Did he say anything about what he actually did at
24 that time?

25 A. He killed people.

MS. MAXWELL ON DIRECT

1 Q. Did he ever tell you how many people he killed?

2 A. I'm sure he has, but . . .

3 Q. I want to bring you up to 1999 or 1998. Do you
4 remember--- were you living at home at that time?

5 A. No,

6 Q. Where were you living? Were you living with
7 your husband?

8 A. With the boyfriend at the time and his father
9 and my oldest son.

10 Q. Did you see Eddy very often?

11 A. Yeah. We always took trips to Granny's house.

12 Q. Do you recall what sort -- how Eddy was acting in
13 1998? Do you remember?

14 It was several weeks later that he was accused
15 of shooting Susan.

16 A. Very withdrawn at the time.

17 Q. Could you explain that? Was he physically with
18 drawing or . . .

19 A. All of that.

20 Q. Where was he spending his time during that time?

21 A. IN his room.

22 Q. By himself?

23 A. At times.

24 Q. Was he being communicative with other people in
25 the family?

MS. MAXWELL ON DIRECT

1 A. At times. There was a couple of times where he
2 would not come out of his room.

3 Q. I want to bring you forward now to 1999. Did you
4 testify in Eddy's trial?

5 A. No.

6 Q. Did you testify in the second part when the jury
7 was deciding the penalty?

8 A. No.

9 Q. Is that your memory?

10 A. As far as I understand.

11 Q. Did you meet with the defense lawyers prior to the
12 trial?

13 A. I believe once.

14 Q. Who was at that meeting?

15 A. My mother, my boyfriend at the time, Steven
16 Walker, and Bill Gunter, my brother in law, and my
17 sister, Maggie.

18 Larry Ferrar . .

19 Q. Was your father there?

20 A. I believe so, yes

21 Q. Where did the meeting take place?

22 A. .

23 Q. In Moncks Corner or was it in St. George?

24 A. It was in Moncks Corner

25 Q. Do you know whose office it was in?

MS. MAXWELL ON DIRECT

1. A. It was supposed to be Percy Buford's.
2. Q. Do you remember what Mr. Buford discussed with
3. you and other members of the family at that time?
4. A. We were not together in his speaking to us. We
5. were called in one by one, basically, and spoken to,
6. and some of it is a little cloudy, but, yes, I remem-
7. ber some of it.
8. Q. What did you talk about? Do you remember?
9. A. Somewhat.
10. Q. Tell me what you do remember.
11. A. The focus on my brother's behavior and also my
12. father's in the household.
13. Q. Your father's.
14. A. Behavior in the household.
15. Q. Did you explain or tell Mr. Buford what you knew?
16. A. Yes.
17. Q. You gave him the information that he was asking
18. you for?
19. A. Of course,
20. Q. And then you were not present during his inter-
21. views with the other family members?
22. A. No, sir. I believe my brother in law was in the
23. same study as I was at that time.
24. Q. Was Ms. Hardee Thomas there, his other lawyer?
25. Was she there?

MS. MAXWELL ON DIRECT

1 A. I never knew there was another attorney until
2 later.

3 Q. I'm sorry?

4 A. I never knew there was another attorney until
5 later. She was not present.

6 Q. How long do you think it was before the trial
7 that you had that meeting?

8 A. Two weeks, give or take. Probably more like two
9 weeks tops.

10 Q. Do you recall being interviewed by an Investigator
11 who was working for the defense lawyers?

12 A. Over the phone, yes.

13 Q. Over the phone?

14 A. Yes, only.

15 Q. You never met her in person?

16 A. No, sir

17 Q. Aside from the meeting that you had when you talked
18 to Mr. Buford, did you ever have any other meetings with
19 him?

20 A. Here.

21 Q. You mean here in the Courthouse?

22 A. In the attorney's briefing room or whatever that
23 is.

24 Q. When was that in terms of when you were to testify?

25 A. That morning.

MS. MAXWELL ON DIRECT

1 Q. What was that about?

2 A. I explained to him that I felt like I had had a
3 nervous breakdown.

4 Q. I'm sorry.

5 A. I had felt like I had had a nervous breakdown
6 the night before. It was regarding a phone call that
7 had come from the Solicitor to a mobile home that was
8 in my boyfriend's name. I was not on the contract.

9 I explained to them that I was . .

10 Q. Were you being harrassed?

11 A. I was going to be a character witness in a murder
12 trial and to please leave me alone.

13 Q. When you talked to Mr Buford that morning you
14 spoke about, do you remember what you and he discussed?

15 A. I'm sorry?

16 Q. When Mr. Buford met with you outside of the Court-
17 room, did he tell you what questions he was going to ask
18 you when he put you on the witness stand?

19 A. No.

20 Q. What was the conversation about when you told him
21 you-what you just spoke about, and I'm not minimizing it,
22 but did you talk about anything else?

23 A. . .

24 Q. Did he ask you any questions?

25 A. No.

MS. MAXWELL ON DIRECT

1 Q. Did you understand then or now what the purpose of
2 the meeting was?

3 A. Well, yeah, of course.

4 Q. What was it?

5 A. We needed to, you know, get the information to-
6 gether because two weeks tops for him to actually pull a
7 case together was minimal.

8 There should have been more time.

9 Q. What do you mean, two weeks tops? I may be misun-
10 derstanding you.

11 Did you meet with Percy Buford or did you meet
12 with the private investigator?

13 A. Scott Parker.

14 Q. The man who was in here previously?

15 A. Yes.

16 Q. You met with him out in the waiting room?

17 A. No, that was Percy. I'm sorry, I misunderstood
18 you.

19 Q. Where did you meet with Scott Parker?

20 A. I couldn't tell you.

21 Q. Was it at the Courthouse?

22 A. No, it was before that.

23 Q. All right. When you met with Mr. Buford, you said
24 you met with him once at his office with several family
25 members, and then you met with him again when you were

1586..

MS. MAXWELL ON DIRECT

1 to testify?

2 A. Yes.

3 Q. That is the meeting I'm interested in. What did
4 you all discuss or what did he go over with you during
5 that meeting?

6 A. He didn't. He did not go over anything with me.

7 Q. Do you recall what the purpose of the consultation
8 was, as far as you understood it?

9 A. I just understood that there was going to be a
10 trial, and that I would be a witness for -- to be called
11 on to testify, and that I had information concerning our
12 childhood.

13 Q. Did he ask you any questions about your childhood?

14 A. Before I come in the Courtroom? No.

15 Q. Prior to your testimony, did he review with you
16 what you were going to have to say?

17 A. No.

18 MR. O'CONNELL: Excuse me one second, Judge.

19 (Brief pause in the proceeding)

20 BY MR. O'CONNELL:

21 Q. I want to go back briefly to the past and briefly
22 talk about your father.

23 Was there any way to predict what would set him
24 off?

25 A. No.

MS. MAXWELL ON DIRECT

1 Q. Were there particular times or days of the week
2 that would set him off, or was it just random?

3 A. Random.

4 Q. Were you afraid of your father as a child?

5 A. At times, yes.

6 Q. When you were a child, did there come a time when
7 you did not have running water in the house?

8 A. Yes.

9 Q. How old were you?

10 A. It's kind of hard to remember.

11 Q. Just do your best.

12 A. Maybe early teens.

13 Q. What did you all do for water?

14 A. Well, we, my mother and I, would have to fill up
15 gallons of water at a neighbor's house and bring it
16 back to the house.

17 Q. How long did that go on?

18 A. Too long. I'm sorry. I'm not exactly sure, but
19 for a while.

20 Q. Okay. That's all I have..

21 CROSS EXAMINATION

22 BY MR. ZELENKA:

23 Q. As far as Eddy's relationship with his son, Daniel,
24 who was the son with Susan -- what was their relation-
25 ship like as far as you observed?

MS. MAXWELL ON CROSS

1 A. Well, there for a long time Eddy was parent taking
2 a role, being known as Santa Claus or the Easter Bunny.
3 He just wanted to be able to provide for the child.

4 Q. Did Eddy ever become involved in Daniel's scout
5 activities?

6 A. Yes.

7 Q. Tell us about that.

8 A. Eddy would take Samuel to Cub Scouts and they would
9 shoot rockets.

10 Q. Was Eddy a Denmaster or whatever the title was?

11 A. I'm not sure what his title was.

12 Q. Did he wear a uniform?

13 A. Yes.

14 Q. How would you describe the depth of emotion that
15 Eddy felt for his son?

16 A. He was a good father. He had a lot of emotion.
17 He wanted that chance to be a father to him.

18 Q. You ended up testifying at the trial?

19 A. Yes.

20 Q. At the time of the trial, were you aware of the
21 Hog or what the Hag was?

22 A. I've heard of the Hag before. As far as the Hag,
23 I thought it was something that people talked about in
24 old fashioned ways.

25 Q. What did you understand the Hag to be?

MS. MAXWELL ON CROSS

1 A. I'm still not understanding what it is.

2 Q. All right.

3 A. It is some type of spiritual thing that comes to
4 you, and you can be awake and it will paralyze you.

5 Q. Have you ever experienced the Hag or something
6 like that?

7 A. No, sir.

8 Q. Did you ever make a comment that when Eddy killed
9 the mother of the child, the Hag had control of him?

10 A. Yes, I did.

11 Q. What did you say that?

12 A. Because in the occurrences of him having this exper-
13 ience of the Hag, he also had many nightmares.

14 Q. Who did you learn that from?

15 A. From Eddy.

16 Q. Did you have this talk with Eddy after the incident
17 occurred?

18 A. What incident?

19 Q. The murder.

20 A. No.

21 Q. How do you know that Hag had control of him at that
22 time?

23 A. Because Eddy was disturbed about the dreams that
24 he was having and he was having problems sleeping, and
25 he was taking sedatives, sleep aids, because he was

MS. MAXWELL ON CROSS

1 having trouble sleeping.

2 Q. Where did you learn that information from?

3 A. What information?

4 Q. That he was having insomnia?

5 A. . . .

6 Q. He wasn't living with you at the time, was he?

7 A. Right, but my brother and I spoke when I would

8 visit with my mother for my children to visit with

9 their granny.

10 Q. How long before the trial -- how long before the
11 incident did you become aware that Eddy was having this
12 problem sleeping?

13 A. It was a period of about a week or two weeks, I
14 think.

15 Q. Did you mention that in any of the conversations
16 you had with the folks who were working on Eddy's case?
17 Did you share that with them?

18 A. Yes.

19 Q. You did?

20 A. I did, yes.

21 Q. Did you mention it to Patti (inaudible)?

22 A. I did. She wanted to know about the childhood, and
23 I'm not exactly sure what was happening as far as
24 psychologically with me at the time, but she withdrew me
25 from the conversation immediately after I started being

MS. MAXWELL ON CROSS

1 more emotional about the incident, and I never spoke
2 with her again.

3 Q. The first person you talked about the case with,
4 was that Mr. Buford or Mr. Parker?

5 A. I'm not sure -- I believe it was Percy

6 Q. And then you spoke to Mr. Parker after that?

7 A. I am really not sure.

8 Q. Okay, and you say you met with Mr. Buford here in
9 the Courthouse?

10 A. I spoke first with Mr. Buford over by the Berkeley
11 County Jail in his office, and then again here. Yes.

12 Q. And you spoke to him about the Hag and your bro-
13 ther's insomnia?

14 A. Among other things.

15 Q. What other things?

16 A. About the childhood, the problems Eddy had been
17 dealing with in his childhood, problems leading up to
18 these acts -- just everything.

19 Q. Childhood problems, that he was -- what?

20 A. I'm sorry.

21 Q. What were the childhood problems you told Mr.
22 Buford about?

23 A. That we discussed with Mr. Buford?

24 Q. Yes.

25 A. That -- well, the behavior in the home, my father,

1 and also Eddy having problems since he was younger.
2 My mother told Percy that when he was younger --
3 when Eddy was born, she had had some problems dur-
4 ing pregnancy, and that Eddy was born with a very
5 big head and at that time, in the old days, they
6 called it a waterhead baby.

7 Q. What else?

8 A. Well, the dreams; that he was on Melatonin, ...
9 which was suggested by a pharmacist for him to take
10 because he had insomnia.

11 That the dreams became so vivid and real to
12 him that his speaking to me in a visit -- that he
13 had dreamed of a beast with three heads, Susan being
14 one of them.

15 He just had some really bad nightmares, and it
16 got to the point where he wasn't able to sleep, but
17 he had to work, so he started taking Melatonin, and
18 some rather different dosages than I'm sure are
19 prescribed.

20 Q. And these nightmares Eddy described to you, how
21 long before the incident was that description or did
22 that event occur?

23 A. I'm sorry. Say that again.

24 Q. One of the heads being Susan and another being
25 Crystal -- did he tell you that?

MS. MAXWELL ON CROSS

1 A. Uh hm.

2 Q. What about the third one?

3 A. He said he did not recognize the face of the
4 woman,

5 Q. Okay, but he was able to give you that informa-
6 tion?

7 A. Yes.

8 Q. Some time before the murder had occurred you
9 had these discussions with him?

10 A. Very briefly. I was trying to keep my eyes on
11 two children as well.

12 Q. Okay. Where in relation to the crime? Did that
13 happen weeks before, months before?

14 A. As I said, probably about one to two weeks. I
15 can't really say exactly.

16 Q. Okay, and at that time what was his relationship
17 with Susan and relationship with her son?

18 A. Excuse me. I believe he still had an open,
19 fatherly relationship with Daniel, as far as I under-
20 stood.

21 I didn't really discuss it too much with him at
22 that time, about that.

23 Q. What was his relationship with Chris?

24 A. When?

25 Q. At that time,

MS. MAXWELL ON CROSS

1 A. I'm not really sure. I wasn't really around
2 enough to know. We weren't together like a reunion
3 every time I went over there.

4 I mean, I couldn't tell you exactly.

5 Q. Well, try. What was normal?

6 A. I couldn't tell you what was normal.

7 Q. And the relationship between your mother, Lillie,
8 and your father, Russell, how would you describe their
9 relationship?

10 A. I think they loved each other.

11 Q. Were they ever violent towards each other, physi-
12 cally violent?

13 A. No.

14 Q. Did you ever see around the house dynamite?
15 Granades?

16 A. I wouldn't call it dynamite but -- I don't know
17 the word for it. The cords for lighting.

18 Q. Fuses?

19 A. Yeah.

20 Q. You saw fuses?

21 A. Yeah, some. I mean, there was some.

22 Q. Now, the incident where the TVs were being broken,
23 upstairs in the attic, . . .

24 A. Uh hm.

25 Q. -- how old were you at that time?

MS. MAXWELL ON CROSS

1 A. I can't really say for sure. You know, a lot of
2 this I have tried to move past. Of course, I was --
3 when I was a small child my brothers were bigger and
4 they -- At the time I guess they were ten, eleven,
5 twelve.

6 Q. Did he break every TV set that was in the house?

7 A. I wasn't about to find out. I didn't watch him
8 to witness him breaking anything. I could only witness
9 hearing him doing it.

10 Q. Okay. Did you all have your own TV that you
11 watched?

12 A. You mean, in our own room?

13 Q. In the house?

14 A. Yes.

15 Q. Did that TV get broken?

16 A. No.

17 Q. Was there a TV on the kitchen table that your
18 father was working on that got smashed and broken?

19 A. The kitchen is on the bottom level, not on the
20 top level. Lamps were smashed.

21 Q. Thank you.

22 THE COURT: Anything further?

23 MR. ZELENKA: Nothing further

24 THE COURT: Redirect?

25 Mr. O'CONNELL: No, sir. She can step down,

1 and I have no objection to her being excused.

2 THE COURT: Any objection?

3 MR. ZELENKA: No, sir.

4 THE COURT: You may step down and you are excused
5 at this time.

6 (Witness excused)

7 THE COURT: You may call your next witness.

8 MR. O'CONNELL: I want to make sure I'm on the
9 same wave length on this.

10 As I understand the record in this case, from
11 the transcript and record on appeal, that is a part of
12 the record in this case, and I don't have to individ-
13 ually admit them?

14 THE COURT: That's correct. It is actually a
15 part of the Clerk's file, Mr. O'Connell, and it is
16 sitting on my desk at this time if you need to review
17 it, but I think you have your own copy.

18 MR. O'CONNELL: I have a copy, and there are
19 things I want to put on the record to you but I do not
20 believe it is necessary to do that during testimony.

21 What I'd like to have an opportunity to submit is
22 a post trial brief to point out various parts of the
23 transcript I'm referring to.

24 I believe it would be a little less time consum-
25 ing, Judge.

1 THE COURT: I have no problem with it, Mr.
2 Zelenka?

3 MR. ZELENKA: I certainly have ^{no} problem with it.
4 I think we did provide . .

5 THE COURT: I have a copy separate from the
6 Clerk's copy. I did not want to take the Court's
7 transcript.

8 (NOTE: THIS CONCLUDES THE 9 18 06 TAPES THAT
9 WERE SENT TO BE TRANSCRIBED BY ROBIN KEIL. THE
10 NEXT TAPE BEGINS ON 9 19 06.)

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1 (The matter resumed on September 19, 2006)

2 THE COURT: Let the record reflect that the Appli-
3 cant is present along with counsel for the Applicant
4 and counsel for the Respondent

5 We will now continue with the testimony. Mr.
6 O'Connell, you may call your next witness.

7 MR O'CONNELL: Thank you, Judge. I would call
8 Ms. Gunter.

9 MAGDALENA SHARON FARRER
10 GUNER, being duly sworn, testified as follows:

11 THE COURT: Maam, if you would have a seat on
12 the witness stand, please, maam, and make yourself com-
13 fortable.

14 Pull that microphone up which will amplify your
15 voice so the Court Reporter can hear you. I ask you to
16 speak if you would in a loud voice that will make you
17 almost as loud as I talk, maam.

18 If you would begin, please, by stating your full
19 name and spelling your last name for the Court Reporter

20 WITNESS: My name is Magdalena Sharon Farrer
21 Gunter, M A G D A L E N A F A R R E R G U N T E R.

22 THE COURT: Your witness, counsel

23 Mr. O'CONNELL: Thank you, Judge.

24 DIRECT EXAMINATION

25 BY MR. O'CONNELL

MS. GUNTER ON DIRECT

- 1 Q. Ms. Gunter, how are you related to Eddy Weik?
- 2 A. Eddy is my half brother.
- 3 Q. And who was your father?
- 4 A. Gustonia Farenko Farrer.
- 5 Q. And that was your mother's first husband?
- 6 A. Yes.
- 7 Q. How many siblings do you have that were your
- 8 mother's first set of children?
- 9 A. I have three siblings.
- 10 Q. And when your father died, what year was that?
- 11 A. My father died in 1964.
- 12 Q. When did your mother remarry?
- 13 A. In April of 1966.
- 14 Q. And who did she marry?
- 15 A. Russell Weik.
- 16 Q. And when she got married, how old were you?
- 17 A. Sixteen, I believe.
- 18 Q. And do you recall how old you were when -- so
- 19 Eddy is your half brother?
- 20 A. Yes.
- 21 Q. And your mother had three children, two after
- 22 Eddy, and who are they?
- 23 A. After Eddy was Russell Christopher Weik and
- 24 Amy Jeannine Weik.
- 25 Q. They testified yesterday?

MS. GUNTER ON DIRECT

1 A. Yes

2 Q. Do you remember how old you were when Eddy was
3 born?

4 A. I was sixteen, I believe, so they were married
5 when I was fifteen.

6 Q. And so how old were you when Eddy was born?

7 A. Sixteen when Eddy was born. I was born in 1951
8 and he was born in 1967.

9 Q. All right. Do you recall taking care of Eddy
10 when he was basically growing up?

11 A. I was.

12 Q. And were you also involved with caring for some
13 other children?

14 A. My aunt's children, yes.

15 Q. I want to go into what you know about Eddy's young
16 childhood, his developmental stages such as walking and
17 talking.

18 What did you notice about Eddy's ability to talk as
19 a young child? When did he start talking?

20 A. Eddy did not form sounds and talk like a normal
21 child at the development of say, age two, and my mother
22 bought extra special books and things to try to teach
23 him sounds and help with his speech.

24 Q. And what about his walking?

25 A. He was slow in walking also.

MS. GUNTER ON DIRECT

1 Q. All right.

2 A. He was quite heavy too, so somebody had to carry
3 thirty five pounds around and -- he was quite a large
4 baby.

5 Q. When he was in grade school I want you to tell
6 the Judge about his behavior, some unusual parts of his
7 behavior.

8 A. He was a very talkative child once he finally started
9 talking, and he would just start talking about things in
10 general, and he was talk a lot and very fast, and his
11 thought process worked -- he would key onto one thought
12 and he would more or less ramble.

13 Q. Was there anything else you noticed about his be-
14 havior?

15 A. He would laugh at things that weren't really funny
16 to us or to the average person, and he just seemed to
17 have a strange sense of what was funny and what wasn't
18 funny.

19 Q. Did anyone ever suggest to the family that you are
20 aware of that he should be given psychological or psychia-
21 tric care?

22 A. We didn't really talk about it.

23 Q. Okay.

24 A. Well, I -- we didn't really talk about it. I my-
25 self felt like he should have but my mother wouldn't

MS. GUNTER ON DIRECT

1 take children to doctors.

2 Q. No doctors?

3 A. It was very rare that a child got to go to the
4 doctor,

5 Q. Why was that?

6 A. She was poor, for one thing.

7 Q. Do you . .

8 A. She didn't have the money.

9 Q. That was not the case when you were -- when your
10 mother was married to your father, was it?

11 A. No. We had access to the Naval Hospital.

12 Q. Okay.

13 A. So we did get to go some.

14 Q. Okay. Did Eddy regularly see a pediatrician af-
15 ter he was born?

16 A. I really do not know.

17 Q. Do you remember the name of any pediatrician that
18 saw the children?

19 I know you weren't home very long after Eddy was
20 born, but do you remember the children being taken to
21 any pediatrician?

22 A. I do not know.

23 Q. Now, you left the home of your mother and your
24 stepfather at what age?

25 A. I married at eighteen.

MS. GUNTER ON DIRECT

1 Q. What was it like living with your stepfather,
2 Russell Weik?

3 A. It sometimes -- I don't like to think that much
4 about it.

5 Q. Ms Gunter, I know how painful this is for you,
6 but I need you to explain that.

7 A. It was hell. He had a very violent temper, and
8 it was outrageous at times. He would break things in
9 my mother's house.

10 His temper was out of hand at times.

11 Q. Would this happen in front of Eddy and Amy and
12 Chris?

13 A. It happened in front of all of us. The entire
14 family.

15 Q. What else can you remember about living with
16 your stepfather?

17 A. I can remember a time when my mother wasn't there
18 and this was shortly after they married, and he seemed
19 to enjoy having -- being like on a power trip, like he
20 could control you.

21 He made me sit at the kitchen table and he wouldn't
22 let me leave, wouldn't let me get up and move, until my
23 mother came home.

24 Q. Did you understand why?

25 A. I didn't at the time, no.

MS. GUNTER ON DIRECT

1 Q. Okay.

2 A. No, I did not.

3 Q. Did he explain why he was making you sit there?

4 A. No.

5 Q. What else can you tell us about why it was bad
6 living with your step father?

7 A. As a child, a child probably doesn't understand
8 growing up -- and I do now -- keeping things clean,
9 the house clean, for instance,

10 Q. What was your house like as far as cleanliness?

11 A. It was very much out of order. It was not organ-
12 ized. It was -- he had come in after they married
13 and he brought a lot of things.

14 After his mother died, he went back to his home
15 where the house was and he brought a lot of antiques
16 and things and that accumulated in the house, and the
17 house was already filled with things, and it became
18 more full, and he was a collector.

19 He liked to collect not only antique furniture but
20 old magazines, newspapers, guns, . . .

21 Q. Were the firearms . . .

22 A. . . coins . . .

23 Q. How would you describe the quantity of firearms in
24 the house?

25 A. More than normal. I believe much more than was
177

MS. GUNTER ON DIRECT

1 normal. All different types of guns, swords, bayonets
2 and that type of thing.

3 Q. Did your father talk about his service in the Navy?

4 A. My father?

5 Q. I mean, your stepfather. Excuse me.

6 A. Russell -- I don't refer to him as my stepfather,
7 We call him Russ. He was always Russ to us.

8 Q. Okay. Do you remember hearing from him about his
9 exploits in the Navy and going to Vietnam?

10 A. Yes. They were really wild stories as far as I'm
11 concerned. They were just stories.

12 Q. Do you remember him talking about killing people?

13 A. Yes.

14 Q. Do you remember what he said about that?

15 A. Just out -- he would name off numbers of people
16 that he had killed.

17 Q. Now, you left when you were eighteen years old?

18 A. Yes.

19 Q. And you married the gentleman who testified yester-
20 day, Mr. Gunter?

21 A. Yes.

22 Q. If you had not married, would you have remained in
23 that house after you were eighteen?

24 A. . .

25 Q. If you could have gotten out, would you?

MS. GUNTER ON DIRECT

1 A. I would have gotten away somehow.

2 Q. I'm sorry.

3 A. I would have left somehow.

4 Q. Why is that?

5 A. Nobody would want to stay there very long.

6 Q. Okay, thank you.

7 Please answer any questions Mr. Zelenka has.

8 A. . .

9 THE COURT: Cross examination.

10 CROSS EXAMINATION

11 BY MR. ZELENKA:

12 MR. ZELENKA: No questions, Your Honor.

13 THE COURT: You may stand down. As to this wit-
14 ness, Mr. O'Connell?

15 MR. O'CONNELL: As far as I'm concerned, she can
16 be excused.

17 THE COURT: Any objection, counsel.

18 MR. ZELENKA: No, objection.

19 THE COURT: You may step down and you are excused
20 from the Courtroom.

21 (Witness excused)

22 THE COURT: Call your next witness, please.

23 MR. O'CONNELL: Russell Weik.

24 RUSSELL WEIK, being duly
25 sworn, testified as follows:

MR. R. WEIK ON DIRECT

1 THE COURT: Have a seat on the witness stand and
2 make yourself comfortable.

3 He's going to pull that microphone over to you that
4 is going to amplify your voice. I want you to speak
5 into that so the Court Reporter seated below you can
6 hear you and understand your words.

7 I'd like you to begin, if you would, by stating
8 your full name.

9 WITNESS: Okay. My name is Russell C. Weik, and
10 the last is W E I K.

11 THE COURT: Your witness.

12 DIRECT EXAMINATION

13 BY MR. O'CONNELL:

14 Q. Mr. Weik, are you the father of Eddy Weik?

15 A. Yeah, that's my son. My first son.

16 Q. Mr. Weik, where are you from?

17 A. Well, my mother's family was in Virginia.

18 Q. Tell me where you were born.

19 A. Baltimore City, Maryland.

20 Q. And where did you grow up?

21 A. Baltimore County and later in Roanoke, Virginia,
22 with my grandmother on the weekends and in the summer.

23 Q. All right. I want to ask you one thing before
24 we go further. When is the last time that you saw
25 Eddy?

MR. R. WEIK ON DIRECT

1 A. . . .

2 Q. Before today.

3 A. About three years ago.

4 Q. Where did you see him?

5 A. I seen him over at Lieber.

6 Q. In Prison?

7 A. Yes.

8 Q. Did you come to the trial in 1999?

9 A. No, I didn't.

10 Q. Why not?

11 A. I had to work.

12 Q. Do you recall that you had to work several days in
13 a row or just the days it started?

14 A. I had a safe I was working on at the time for some
15 people and I had the safe manipulated for about eight,
16 nine, ten hours a day, and I finally got it open and
17 when I got it open I reset a combination on it, and they
18 paid me, and by that time the trial was over.

19 Q. You don't recall how long that repair job took?

20 A. Well, it was mostly manipulating the safe.

21 Q. How long did it take?

22 A. It took about five days, I think.

23 Q. All right, when you were a kid, did you complete
24 high school?

25 A. I left in the ninth or tenth grade to join the

MR. R. WEIK ON DIRECT

1 service.

2 Q. How old were you when you joined the service?

3 A. Seventeen, I think.

4 Q. What service did you join?

5 A. Well, I started out in the Navy.

6 Q. And where were you trained?

7 A. Great Lakes.

8 Q. What did you do -- did you complete your training
9 at Great Lakes?

10 A. Yes, sir. I have a book somewhere floating around
11 that has me in boot camp.

12 Q. What did you do after boot camp?

13 A. Well, I was coming home and I met some people that
14 said I had a new deal.

15 Q. And what deal was that?

16 A. They wanted me for some kind of little experimenta-
17 tion they are going to run.

18 Q. What experimentation?

19 A. Well, they wanted somebody that was capable of re-
20 porting to them different things and they sent me to
21 different duty stations.

22 Q. Who were these people?

23 A. They said they were the CIA, and I signed the papers
24 for enlistment in the Marine Corps.

25 Q. So you were in the Marine Corps?

MR. R. WEIK ON DIRECT

1 A. And the Navy at the same time.

2 Q. After you finished at Great Lakes, and you said you
3 were contacted by these people, where were you contacted?

4 A. As I was getting on the train with my sea bag.

5 Q. Do you know where?

6 A. To go home for thirty days.

7 Q. And was there more than one person who contacted
8 you, or just one person?

9 A. The one person, and then he took me to a base and
10 there was other people there in the Marine Corps.

11 Q. Where was that?

12 A. That was in Chicago.

13 Q. Did you go through some training in Chicago?

14 A. No, sir. I signed the papers and they all saluted
15 me and told me I was headed for Paris Island down here
16 for thirty days.

17 Then I had a drill instructor who met me at the
18 train.

19 Q. You said they saluted you?

20 A. Yes, sir.

21 Q. Were these others non-coms or were they .

22 A. Naw, they were officers.

23 Q. And so why was that?

24 A. Well, they told me I was a Colonel.

25 Q. You were a Colonel?

MR. R. WEIK ON DIRECT

1 A. Supposed to be.

2 Q. Okay. And you then trained at Paris Island?

3 A. Yes, sir. I had a man waiting for me at the
4 train and he was a drill instructor, and I wasn't
5 to know his name and he wasn't to know mine.

6 Q. All right, and what did you do at Paris Is-
7 land?

8 A. He told me for the next thirty days I was going
9 to go through hell but I was going to love it after-
10 wards.

11 Q. What was the next thirty days like?

12 A. Very bad -- They woke me up in the middle of
13 the night and pulled all kind of crap on me.

14 They trained me and then they would see how well
15 I understood what they had trained me as.

16 Q. Were you going through training with anyone else?

17 A. No, sir.

18 Q. So it was just you?

19 A. Just me and this drill instructor didn't know my
20 name and I didn't know his.

21 Q. What was the point of the training?

22 A. The point of the training was to have me able to
23 function as a Marine. I took -- it was supposed to have
24 been about three months, I think it was, and they put
25 it all in one month.

MR. R. WEIK ON DIRECT

1 That's all I had for the first -- what do you call
2 leave when you get out of boot camp, and they taught me
3 a lot of things.

4 I had already been in the Boy Scouts, and I knew
5 how to start a fire by flint and steel, friction. I
6 knew how to do a lot of things.

7 Q. After that thirty day training period at Paris Is-
8 land then what did you do?

9 A. Well, they sent me on to my new duty station.

10 Q. Which was where?

11 A. New London, Connecticut.

12 Q. What did you do there?

13 A. I started out in the MR shop.

14 Q. The what?

15 A. Machinery repair shop.

16 Q. Okay.

17 A. They taught me how to run laves and how to read
18 a michrometer and . . .

19 Q. And how long did you do that?

20 A. About three or four weeks and I was transferred
21 to the Navy motion picture exchange.

22 Q. The Navy motion picture exchange?

23 A. The PX.

24 Q. How long did you stay there?

25 A. About three or four months.

MR. R., WETK ON DIRECT

1 Q. And then what happened?

2 A. I was transferred up in the E and R Department,

3 Q. What is that?

4 A. Engineering and repair.

5 Q. How long did you stay there?

6 A. Up until they transferred me to Scotland for a
7 MCB foreign attachment kilo.

8 Q. What is MC -- I didn't get all of that. What is
9 that?

10 A. Mobile construction Battalion kilo.

11 Q. In Scotland?

12 A. Yes, sir.

13 Q. All right, and how long did you stay in Scotland?

14 A. Well, I was supposed to have been there for four
15 years, three years -- something like that, I think it
16 was.

17 Anyway, they kept TADing me to different places.

18 Q. What is TADing?

19 A. Temporary assignment duty.

20 Q. What places did you get temporary assignments to?

21 A. Well, Verona, Spain, ARD -- auxiliary repair M one.
22 That's the U.S.S. Oakridge now.

23 Q. The training you had at Paris Island, the special-
24 ized training, when did you first put that training to
25 use?

MR. R. WEIK ON DIRECT

1 A. Well, it was when I got detached to Vietnam in
2 1964 and '65.

3 Q. Where were you when you got detached to Vietnam?

4 A. I was in Scotland.

5 Q. How did you get to Vietnam?

6 A. Well, a Marine major come up there and told me I
7 had a new assignment and he took me down to Presley Air
8 Force Base and I got on a plane.

9 And they told me that all my duties and all my
10 watches and everything would be stood by other people,
11 but it would be logged in as me.

12 This person told me that I was going on a very nice
13 and exciting duty. So we got to a place called Saigon.
14 The plane had -- it was a jet and had like stewardesses
15 and all on it and there was a whole bunch of other peo-
16 ple on it.

17 Q. All right. Now, the airplane that you went to
18 Vietnam on, you said there were stewardesses on board and
19 a whole lot of other people.

20 Were the other people soldiers?

21 A. Yes, sir.

22 Q. Where did you go from Saigon?

23 A. We transferred to a prop plane.

24 Q. A what?

25 A. A prop plane.

MR. R. WEIK ON DIRECT

1 Q. All right.

2 A. And there was a whole bunch of packs back in the
3 back, and we had another pile of rifles and they were
4 AR 15s. They were fixed to be for automatic, and the
5 packs were parachutes.

6 And the gunnery sergeant in charge said that we
7 needed to put them packs on and pulled a lanyard off
8 and said I want you all to count off by twos, one, two,
9 one, two, on down the line, and so after we got that
10 done he said, I want the ones on this side and twos on
11 that side.

12 He said take your lanyard off and hook it on to the
13 wire going back through the plane. He said, while you
14 are doing that I'm going through positioning.

15 He brought back the AR 15 and he commenced telling
16 us how to use the AR 15.

17 Q. This was on the prop plane after you got off the jet
18 plane?

19 A. Yes, sir. It was a prop plane we transferred to.

20 Q. I guess you're saying you were getting ready to para-
21 chute somewhere?

22 A. Yes, it was night time.

23 Q. Where did you parachute into?

24 A. Somewhere in Vietnam.

25 Q. Now, when you were at the various places in the

MR. R. WEIK ON DIRECT

1 Navy that you described after being in Paris Island
2 those various places you said you were stationed-- what
3 rank -- if I had seen you in your uniform, what rank
4 would you have been?

5 A. A-E three.

6 Q. But you also described that you were a Marine offi-
7 cer?

8 A. Yes, sir. When I found out what I was supposed to
9 find out, I called the people and they came in and they
10 knew what to do.

11 Q. When you were on that prop plane getting ready to
12 jump out, do a night jump, the other people on the air-
13 plane, the other people, what were they? What branch
14 of the service?

15 A. It was varied. I had three LRP teams-- that's
16 long range reconnaissance patrol.

17 Q. All right.

18 A. I had a contingent of Seals. I think I had eight
19 Seals.

20 Q. Mr. Weik, let me interrupt you for a moment. You
21 said you had the Seals and you had the LRPs. What do
22 you mean when you said you had them?

23 A. I was the Colonel but no body knew it because I was
24 an E three at that time.

25 Q. Did they know you were in charge?

MR. R WEIK ON DIRECT

1 A. No.

2 Q. All right.

3 A. The reason being when we was over in Vietnam people
4 saluted officers, and the snipers shot people that got
5 saluted.

6 And . . .

7 Q. Okay, and when you got on that airplane and you
8 jumped-- you said it was a night jump-- where did you
9 land?

10 A. In the -- half of us was in a field and half of us
11 was in a wooded area.

12 Q. In what part of Vietnam were you?

13 A. (Inaudible)

14 Q. Did anyone give you a map?

15 A. No, they came and took us over and where we went
16 was in five miles of where we were striking distance,
17 was -- we were taken up there because it was a lot
18 easier for somebody to mobile us to different places:

19 I didn't like riding in any kind of vehicle for
20 the simple reason that over there it was very quiet and
21 you could hear the vehicles coming a long way away.

22 Q. What did you eventually do there after you got or-
23 ganized or after you organized this group of people who
24 parachuted in somewhere in Vietnam?

25 A. . . .

MR. R. WEIK ON DIRECT

1 Q. What were you supposed to do?

2 A. We sat up a compound.

3 Q. What was the purpose of the compound?

4 A. Well, it started off in December of '64 when I got
5 over there as an observation-investigation team. We
6 were to go out and we were the observers and we were also
7 the people who made sure what was happening was accord-
8 ing to the Geneva Convention.

9 Q. All right. Did you get involved in any combat?

10 A. Yes, I got quite a bit of it.

11 Q. Tell us about that.

12 A. Well, if you in some way shot somebody or something
13 like that, all his friends and relatives were out to get
14 you, and people started to find out that somebody was
15 there and they didn't know who, and the CIA told me to act
16 like Gomer Pyle because everybody over there watched his
17 show and Andy of Mayberry.

18 So I would hollar, golly, shazam, or something like
19 that because I was like Jim Nabors.

20 Q. You got instructions from the CIS to do that?

21 A. Yeah. I had two people with me. One was an African
22 American. The other was Caucasian, and their names were
23 Smith and Jones, and the next week Jones was Smith and
24 Smith was Jones

25 Q. They were from the CIA?

MR. R. WEIK ON DIRECT

1 A. Yeah, they worked for the CIA.

2 Q. So they were with you the whole time?

3 A. Yeah, they were taking orders from me to give to
4 the Colonel who was running the base.

5 Q. What kind of uniform were you wearing?

6 A. Well, it started out with just regular green
7 uniform, and we found out we were sticking out a lot
8 of times, and they told us we was going to have to
9 find something else, something better.

10 Q. Before you go on, Mr Weik, you said that -- you
11 described the Marines -- what branch of the Marines did
12 you say you were in?

13 A. Well, over in Scotland we wore green which was
14 Seabee Greens and which was also Marine uniforms.

15 Q. And what did you wear in Vietnam?

16 A. Greens.

17 Q. And usually they had U. S. Navy or U. S. Navy on
18 them?

19 A. They didn't have nothing like that.

20 Q. Didn't have anything on them?

21 A. No. We were to counteract the Russian Advisors
22 that was with the Vietcong and Vietnamese. We were the
23 -- how would you call it? The balancing part that was
24 supposed to save lives of our men.

25 And, well, when we was in the country there going

MR R. WEIK ON DIRECT

1 around most of the time, you would do certain things dur-
2 ing the day but at night we was night fighters.

3 Q. Now, who paid you? Did the CIA pay you?

4 A. It was all in scrip. Did you ever use any scrip
5 when you was there?

6 They didn't want you to use American money, and
7 that's what it was in.

8 Q. Did you get a check?

9 A. No, I was paid in scrip.

10 Q. All right.

11 A. The next question you're going to ask is was I
12 being paid as an E three or as a Colonel.

13 Q. I wasn't actually, but that is a good question.
14 Why don't you go ahead and answer it.

15 A. I was paid as an E three because one of the things
16 they didn't want was people to find out I was getting
17 more money than them or something like that, and not a
18 thing -- I had the authority. In other words, by the
19 power invested in me by the President of the United
20 States and the Director of the CIA, I had the power to
21 take over any phase or any plane or anything.

22 I would accept the responsibility for that.

23 Q. Did you ever use that power?

24 A. Yes, sir.

25 Q. How did you invoke that power?

MR. R. WEIK ON DIRECT

1 A. Walked up to the Bird Colonel and told him he was
2 my subordinate and the CIA man said, yes, sir, you are
3 his subordinate. He is your commanding officer, and I
4 said by the power invested in me by the President of
5 the United States and Director of the CIA I now accept
6 responsibility for your base, and all that it contains.

7 Q. And what, sir?

8 A. And all that it contains.

9 Q. All that it contains -- okay -- You said you were in
10 volved in some combat. Were you involved in large scale
11 combat where a lot of people were killed?

12 A. June 8th, 1955, we had -- alerts came back and told
13 us we had a large contingent of Vietnames down the road
14 and they were making their boxes and smoking their pipes
15 and making their ladders and stuff, and they said they
16 would be there about ten o'clock that day.

17 And that's when I accepted responsibility of the en-
18 tire base, and we all were afraid we was going to die
19 that day.

20 Q. What happened?

21 A. I made some changes and I got in trouble for some of
22 the changes I made. When you're going to die you get des-
23 perate, and I got all the people together and I told them
24 that I wanted to live through this, and I said at the
25 end of the day I hope we (portion not audible due to the

MR. R. WEIK ON DIRECT

1 witness getting very emotional)

2 It was quite an interesting day.

3 Q. Were people killed?

4 A. Yes, sir,

5 Q. How many?

6 A. I went around and counted the dead and it was

7 three thousand sixty people.

8 Q. Were these Vietnamese?

9 A. Well, there wasn't much difference at that time
10 because you didn't know whether it was North Vietnamese
11 or Regulars. They all dressed the same. Little black
12 pajamas and little hats.

13 Q. And you were the enemy?

14 A. We were the enemy; I was following orders.

15 Q. Were any of your men killed?

16 A. Yeah, I lost -- I started out with seventy seven
17 or seventy eight men, and I came out (inaudible)

18 I didn't like what happened because we were in
19 their country. I respected the Vietnamese. They had
20 a wonderful beautification program. You threw some
21 thing away in the jungle, down side the road, they would
22 pick it up and down the road about a mile they threw
23 it back at you and it usually exploded.

24 Q. How long did you stay in Vietnam?

25 A. About six months,

MR. R. WEIK ON DIRECT

1 Q. All right.

2 A. December of 1964 to July of 1965, and I was getting
3 out,

4 Q. You got out of the service?

5 A. Yes, sir.

6 Q. After your time in the service, did you ever have
7 any more contact after you got discharged?

8 A. Well, I was discharged and about a month or two
9 later I went back in the service and I didn't contact the
10 CIA that I was getting back in there.

11 I had three schools in Philadelphia, and I was sent
12 to Charleston on the U S S Fidelity,

13 Q. When you were getting paid, was somebody else some-
14 where depositing the money in an account for you?

15 A. No, I was -- I had told my mother that I was going
16 to make an account for her and an allotment, and she was
17 getting an allotment for me,

18 Q. Did you get paid as a marine officers or as a CIA --
19 did the money come to you eventually or not?

20 A. I was an E three because I couldn't go above E three.
21 They had it fixed where I couldn't go in there and become
22 a first class petty officer which was E four. I had to
23 stay at that rank.

24 They said people would not ever believe that old
25 Gomer Pyle was a full Bird Colonel in the Marine Corps.

MR. R. WEIK ON DIRECT

1 Q. Mr. Weik, when you got out of the service, you said
2 you were out about a month and then you re-enlisted and
3 went where?

4 A. Philadelphia.

5 Q. And you did some training there?

6 A. Yes, sir, I went to about three schools. Fire
7 fighting, nuclear biological chemical warfare defense,
8 and also damage control.

9 I have all my papers.

10 Q. How long did you stay in Philadelphia at that per-
11 iod of time?

12 A. I think about two months, three months.

13 Q. What did you do then?

14 A. I was transferred to the U.S.S. Fidelity down here
15 in Charleston, South Carolina.

16 Q. All right, and did anything happen to your previous
17 career when you were here in Charleston?

18 A. Well, I didn't have my people with the CIA behind me
19 because I figured I wanted to keep away from all of that
20 as much as possible, because Vietnam was sort of escalat-
21 ing, and I had enough Vietnam. I mean to tell you. Six
22 months is enough for anybody.

23 Q. Did you end up getting some medical care?

24 A. Well, one morning I had dizziness and headache and
25 I was breathing hard, and a Corpsman on the Fidelity told

MR. R. WEIR ON DIRECT

1 me that I ought to go on sick call.

2 So I went up there to the sick call place, and they
3 said that I was having a nervous breakdown or something
4 another, and they transferred me to the Naval Hospital
5 down here in Charleston.

6 Q. And where were you treated at the Naval Hospital?

7 A. I was in echo ward.

8 Q. What is that?

9 A. I was back behind echo ward in what they called the
10 observation unit first, and the CIA said they had to
11 write me a new history because I stuck out like a turd
12 in a punch bowl.

13 Q. The CIA contacted you when you were in the Naval
14 Hospital?

15 A. Yes, sir.

16 Q. You were, at least as far as anybody knew, being
17 treated for mental problems?

18 A. Yes, sir.

19 Q. So when the CIA contacted you while you were at the
20 Naval Hospital . . .

21 A. They came and stayed with me. They didn't leave.

22 Q. What was the purpose of that?

23 A. They needed to re-write my history. If you look on
24 my DD 214 from the first enlistment, there is some im-
25 priorities. On my second enlistment I only went to two
schools on my DD 214.

MR. R. WEIK ON DIRECT

1 Q. I'm going to ask you about that. One moment.

2 A. . .

3 Q. Let me ask you to identify if you can what is
4 marked for identification as Plaintiff's Exhibit Number
5 7.

6 Do you recognize that?

7 A. Let me get my glasses on.

8 Q. Okay.

9 A. I'm being treated for post war traumatic stress
10 syndrome and I didn't take my medicine today.

11 This is my first enlistment I think.

12 Q. Now, . .

13 A. And they've got it wrong up here.

14 Q. What is the name of the form?

15 A. I was in the Navy, in '61.

16 Q. What's the name of the form down in the right hand
17 corner?

18 A. DD 214, I think.

19 Q. That's the discharge.

20 A. No, it's not a discharge.

21 Q. Is it a copy of your DD 214?

22 A. Yeah, it looks like it.

23 Q. And that is what you get when you leave the ser-
24 vice?

25 A. Yes, sir.

MR. R. WEIK ON DIRECT

1 Mr. O'CONNELL: Your Honor, I'd move to admit
2 Plaintiff's Exhibit 7.

3 THE COURT: Any objection?

4 MR. ZELENKA: No objection.

5 THE COURT: Plaintiff's Exhibit 7 admitted in
6 evidence without objection. You may proceed.

7 (DD 214 form of Mr. Russell Weik admitted in evi-
8 dence as Plaintiff/Applicant's Exhibit 7)

9 BY MR. O'CONNELL:

10 Q. All right. Now I also want you to look at what
11 has been marked as Plaintiff's Exhibit . .

12 A. Yes, they wrote this up for me.

13 Q. Who wrote that up?

14 A. The CIA people.

15 Q. What is that form?

16 A. This is a record of all of my duty stations.

17 Q. Okay.

18 MR. O'CONNELL: Your Honor, I would move to admit
19 Plaintiff's Exhibit 8.

20 A. Does that say '62 or . .

21 MR. O'CONNELL: I'll ask you some questions about
22 it in a moment. We've got to do this.

23 THE COURT: Any objection?

24 MR. ZELENKA: No objection.

25 THE COURT: Plaintiff's Exhibit 8 in evidence,

MR. R. WEIK ON DIRECT

1 without objection.

2 (Service document of Mr. R. Weik admitted in evi-
3 dence without objection as Plaintiff's Exhibit 8)

4 BY MR. O'CONNELL:

5 Q. First of all, with respect to Plaintiff's Exhibit
6 7, your DD 214, does that reflect any service in the
7 Marine Corps?

8 A. No, sir.

9 Q. Does it reflect any service in Vietnam?

10 A. No, sir.

11 Q. Did you receive a Purple Heart?

12 A. I was supposed to and right now I am in category
13 three, which means you were either captured or you had a
14 Purple Heart or you sustained some kind of chain in
15 your lifestyle for something or other that happened in
16 the military.

17 Q. Now, if you would refer yourself to Exhibit 8, the
18 document right here, you said that the -- who prepared
19 this document?

20 A. Well, the one that I had had a lot more stuff in
21 it. This one here was the one that they were going to
22 send with my new service record and everything.

23 Q. Who prepared that document?

24 A. Our CIA people.

25 Q. That's when you were at echo ward at the Naval

MR. R. WEIK ON DIRECT

1 Hospital?

2 A. Yes, sir.

3 Q. Now, it doesn't say anything in there about going
4 to Vietnam?

5 A. No, sir.

6 Q. And it doesn't say anything in there about you
7 being in the Marines?

8 A. No, sir.

9 Q. Nor does the document which is Exhibit 8 say any-
10 thing about the CIA?

11 A. No, sir.

12 Q. Why is that?

13 A. Well, I was supposed to be what they called a
14 ghost warrior.

15 Q. A ghost warrior?

16 A. Yes, sir.

17 Q. What is that?

18 A. We were there but not officially. That's why a lot
19 of this stuff I don't know and can't talk about and am
20 not supposed to talk about.

21 But it happened, my God, forty years ago.

22 Q. When you say you can't talk about a lot of things,
23 does that mean someone told you you can't talk about it?

24 A. It's supposed to be top secret.

25 Q. Someone from the CIA told you you can't talk about

MR. R. WEIK ON DIRECT

1 that?

2 A. Yes, sir.

3 Q. Okay.

4 A. I came in contact with a lot of different things.

5 Q. All right, sir When how long did you spend in
6 the echo ward?

7 A. Well, I got in there about the first of January
8 and I got out of there at my discharge which was, I
9 think, the 16th of April.

10 I had already married my wife, Lillie, at the
11 time, and I was getting out.

12 If you need a copy of my marriage license and all
13 of that, I have all of it.

14 Q. Thank you. Now, I want to show you what has been
15 marked for identification as Plaintiff's Exhibit Number
16 9, and see if you recognize that?

17 A. . .

18 Q. The first page is a letter from the people at the
19 Naval Hospital to me saying these are your medical re-
20 cords.

21 If you would look at the second page in there and
22 tell me if you recognize that?

23 A. It also says I was seen at the dispensary.

24 Q. Turn to the next page, the very next page after
25 that.

MR. R. WEIK ON DIRECT

1 A. Okay

2 Q. Now, these documents -- who are they talking about
3 in these documents?

4 A. It's me.

5 Q. These are your records from the Naval Hospital?

6 A. I've never seen these before but it appears to me
7 it's what happened to me.

8 Yes, sir. This is what it was all about.

9 Q. You believe these to be your Naval Hospital re-
10 cords?

11 A. It seems that way.

12 MR. O'CONNELL: Your Honor, the Attorney General
13 and I have previously conferred about these documents,
14 and he said I did not have to authenticate them if I
15 had some communication from the Custodian of Records,
16 which is the first page.

17 MR. ZELENKA: I don't have any objection.

18 THE COURT: How many pages?

19 MR. O'CONNELL: Excuse me, Mr. Weik.

20 WITNESS: When I came out of there I hardly knew
21 my name.

22 THE COURT: One second, Mr. Weik. I want him to
23 tell me how many pages are in the exhibit.

24 MR. O'CONNELL: Twenty-six, Your Honor. Some of
25 them are back and front.

MR. R. WEIK ON DIRECT

1 THE COURT: All right, Mr. Zelenka, 26 pages, Plain-
2 tiff's 9, and some are back and front, which counsel ad-
3 vises are the medical records from the Naval Hospital in
4 Charleston.

5 Is that correct?

6 MR. O'CONNELL: That's correct.

7 THE COURT: Any objection?

8 MR. ZELENKA: No objection.

9 THE COURT: Plaintiff's Exhibit 9 will be admitted
10 into evidence without objection.

11 You may proceed.

12 (Naval Hospital records admitted in evidence without
13 objection as Plaintiff Applicant's Exhibit 9)

14 BY MR. O'CONNELL:

15 Q. Mr. Weik, at the conclusion of your hospitalization
16 at the Naval Hospital, were you discharged?

17 A. Yes, sir.

18 Q. And the first, second and third pages -- is this
19 -- it appears a Medical Board has reviewed your case
20 about whether you should stay in the Navy. Is that
21 accurate?

22 A. I have never seen this before, and what it states
23 is after I came out of the observation room when I was
24 in the echo ward they started to medicate me and every
25 thing. This is what this tells about.

MR. R. WEIK ON DIRECT

1 Q. All right. Do you recall what medications you took?

2 A. They give me Fluorazine. They give me Sodium Pento-
3 thal. They give me some kind of red capsules and they
4 give me Valium.

5 Q. As far as you understood, what was the purpose in
6 taking these drugs?

7 A. Well, it made me forget a lot of things.

8 Q. Forget what?

9 A. What I had been through before.

10 Q. I need you to be specific.

11 A. All right. Everything in Vietnam, I was supposed
12 to forget all of that, because right then I was no longer
13 an asset to the country. I was a liability.

14 In other words, one day you're a fantastic being,
15 and the next day you are never again an asset but you were
16 a liability.

17 The things you had in your mind or that you could
18 tell didn't look too good to them for me to tell anybody.

19 Q. Was the medication successful?

20 A. Yeah, I come out of there and I was pretty bad shape
21 I hardly knew my name or anything.

22 Q. All right. Would you turn to the next page and at
23 the very top -- let me make sure I'm in the right place
24 here.

25 A. Okay.

MR. R. WEIK ON DIRECT

1 Q. I'm sorry. Read those first two lines.

2 A. Chronic schizophrenia.

3 Q. All right, and did anyone ever tell you that
4 you were schizophrenic?

5 A. No.

6 Q. Do you know why that is in there?

7 A. Well, they had to have something or another,
8 and the reason I was in there.

9 You know, you either go into some place and
10 be incarcerated because you did something, or you
11 are incarcerated in a place like that because you
12 know something.

13 Q. Okay.

14 A. If you know something, like I said, one day
15 you are an asset and the next day you are a liabil-
16 ity to them.

17 Q. Is it fair to say -- and I want to make sure that
18 you and are I clear -- these two documents, Plain-
19 tiff s Exhibits 7, the DD 214, and Plaintiff's Ex-
20 hibit 8, . . .

21 A. I'll give you that one. I don't know about
22 this, you know.

23 Q. All right. Is it clear in your mind that these
24 documents do not contain accurate information?

25 A. They don't.

MR. R. WEIK ON DIRECT

1 Q. Does it contain accurate information about
2 where you were stationed?

3 A. No.

4 Q. It is not. .

5 A. Some of which is truthful and some of it isn't.
6 In other words, they re-wrote and closed out staff
7 and made several copies of it, until they got it
8 the way they wanted it.

9 My original record went to St. Louis and they
10 had a fire, and the other one went to the Archives
11 of the CIA.

12 I have some new stuff for you to play with,
13 if you want it.

14 Q. Well, . .

15 A. This come in yesterday.

16 Q. Is this from the Veterans Administration?

17 A. Yes, sir. They are trying to get my Archives
18 out of the Central Intelligence Commission as we
19 speak.

20 THE COURT: Let counsel see it also, Mr.
21 O'Connell.

22 A. And this here is the envelope it came in
23 and I have a lot of other papers if you want them
24 from the VA.

25 MR. O'CONNELL: Hold one one second. I need

MR. R. WEIK ON DIRECT

1 to mark these.

2 A. Hey, I got a question for you. How come I'm
3 on trial now?

4 THE COURT: Mr. Weik, you are not here to be
5 on trial, but you are here to answer questions,
6 not ask them.

7 If you'll just hold on and answer what you
8 know.

9 BY MR. O'CONNELL:

10 Q. Mr. Weik, I show you what's marked Plaintiff's
11 Exhibit 10. Is this the document you have handed
12 to me?

13 A. Yes, sir.

14 Q. What is that?

15 A. The people at the Veterans Administration is
16 getting with the people in the CIA.

17 Q. Speak louder.

18 A. The people at the Veterans Administration is
19 getting with the people in the CIA to try to get in-
20 formation about me.

21 I was a . . .

22 Q. Actually, Mr. Weik, if you would take that.

23 A. Okay. I am -- can I have it back after that?

24 Q. Sir, I believe..

25 A. Can you make a copy of it?

MR. R. WEIK ON DIRECT

1 Q. I believe we can.

2 A. I would like that.

3 Q. This is a document that you say the CIA and
4 the Veterans Administration are trying to do what
5 with?

6 A. They are trying to find in the Archives my
7 service records.

8 Q. And are you saying your service record was de-
9 stroyed in the fire in St. Louis?

10 A. Yes, sir.

11 Q. What about your records at the CIA?

12 A. They went in the Archives. I don't know whe-
13 ther they are still there or what, but a fellow who
14 helped me with -- who used to work with the CIA like
15 I did, he knew how to get into it.

16 So we got documentation back in 19 eighty some,
17 to get me in the VFW up there.

18 Q. Okay.

19 A. Six months later the VFW post burned down and

20 . . .

21 Q. It burned down?

22 A. Yes, sir.

23 Q. Before you go forward, I'm going to offer Plain-
24 tiff's Exhibit 10 in evidence.

25 THE COURT: Any objection?

MR. R. WEIK ON CROSS

1 MR. ZELENKA: No objection.

2 THE COURT: Plaintiff's Exhibit 10. what's the
3 date on there?

4 MR. O'CONNELL: September 15, 2006.

5 THE COURT: Plaintiff's Exhibit 10 will be admit-
6 ted in evidence with objection.

7 (VA Letter admitted in evidence without objection
8 as Applicant's Exhibit 10)

9 BY MR. O'CONNELL:

10 Q. You are not -- you didn't get to join the VFW be-
11 cause it burned down?

12 A. No, I was in the VFW about six months before that.
13 I used papers that I had a friend of mine get out of
14 the CIA somehow.

15 How his was -- well, I can't -- I can tell you his
16 first name was John. He did a lot of stuff for me, to
17 help me.

18 One copy was at the VFW and the original went to
19 the VA down there in Charleston.

20 Q. You said that you knew his first name but you are
21 not able to tell us his second name because you can't
22 remember?

23 A. Oh, I can remember his name. It is just that if I
24 involve him, I get him in a lot of trouble.

25 Q. Okay. What is the last time you were contacted by

MR. R. WEIK ON DIRECT

1 the CIA?

2 A. They -- I went down to Charleston when they had
3 a recruiting drive back in 1984 or 1985 down at Pine
4 haven Shopping Center.

5 Q. The CIA?

6 A. Yes, sir.

7 Q. All right.

8 A. They were wanting more people to join our Central
9 Intelligence Agency. They wanted people in the office
10 and things.

11 John went along with me and we was going to.

12 Q. What did you do there?

13 A. I filled out applications.

14 Q. Did you ever have an interview.

15 A. Yes, sir, I had an interview.

16 Q. Did you get hired again?

17 A. I told them that I had worked for them before, and
18 they checked up and they told me that they weren't going
19 to be able to use me because I had existence with them,
20 prior history.

21 Q. How did you find out about the recruiting drive the
22 CIA was having?

23 A. All right. John come over to the house and told
24 me -- said, look Russell, we can go down there and get
25 us a job with the company.

212

MR. R. WEIK ON DIRECT

1 Q. All right.

2 A. And so . . .

3 Q. The company?

4 A. The CIA, Central Intelligence Agency.

5 Q. Aside from that contact that you said was in 1984,
6 when you went to try to join, have you had any other
7 contact with the CIA since then?

8 Q. Oh, a few people, they represented themselves as
9 Central Intelligence Agency, and they told me that I
10 could do things, and I told them I wasn't interested in
11 it, and I -- I was in a reactor in Hartsville one time
12 whenever they contacted me -- I was building a reactor up
13 there for Westinghouse.

14 Q. When was the last time you think you were contacted
15 by the CIA?

16 A. I met a fellow up in Oakridge, Tennessee, when I
17 was working up there on the big boiler up there. A fellow
18 came and told me, how about coming back with the company?

19 Q. What was your reaction to that?

20 A. I had just fell and hurt my shoulder, and I told
21 him -- I said, lookahere, I couldn't fire a weapon if my
22 life depended on it because my shoulder was messed up.

23 Q. When was that?

24 A. I don't know what year that was. It was 2003, I
25 think, or 2004.

MR. R. WEIK ON DIRECT

1 Q. All right, sir. Are you currently receiving any
2 benefits from the Veterans Administration?

3 A. Yes, sir. I'm in category three. I don't have to
4 pay for my medications or to see a doctor.

5 Q. Are you currently taking medication?

6 A. Yes, sir. I'm type two diabetic. I'm the fellow
7 who doesn't need insulin.

8 Q. Do you take any drugs that are for mental health
9 purposes?

10 A. Just so I can sleep, yeah, and calm my nerves
11 but don't ask me what it is. I just got them a few days
12 ago.

13 Q. Aside from medications, do you also receive medical
14 care at the VA?

15 A. Yes, sir. I was supposed to been there today. I'll
16 give you my appointment slips.

17 Q. That's okay.

18 A. I took your subpoena down there and had them to make
19 a copy of it. I was supposed to see this lady here.

20 Q. Mr. Weik, I want to shift gears a little bit here.
21 and I want to talk about your children.

22 The children that you had with Lillie Weik were Eddy
23 and Chris and Amy?

24 A. Yes.

25 Q. Are those the only three children that you have?

MR. R. WEIK ON DIRECT

1 A. Not especially. I have about three or four
2 Russell Weiks running around throughout the world.

3 Q. Your children?

4 A. Yes.

5 Q. And where were they from?

6 A. Well, Isabella Johnson had a child for me, and
7 he has a band called Entre and he was on the Today Show
8 about two years ago, and he is a very smart, intelligent
9 musician.

10 Q. What about the others?

11 A. All right, Louise Heyden was supposed to have had
12 me one in New London, Connecticut. He was the head
13 engineer for Electric Boat and he has a big villa down
14 here in Hilton Head.

15 Q. What about the others?

16 A. I had I have -- Chris and Eddy was reading Hot Rod
17 Magazine one year about 1968 or 1969 and there was a
18 fellow in there whose name was Russell Weik, and he was
19 being transferred from Corvette to Cavalier.

20 Q. These are all children?

21 A. They have my name. I don't know if they're mine
22 or not.

23 Q. Okay. I want to talk about your children. When
24 your children were young, did they have -- did they see
25 a pediatrician regularly?

MR. R. WEIK ON DIRECT

1 A. Pardon?

2 Q. Did your children -- did Eddy from the time he --
3 and Chris and Amy -- were they taken to a doctor regu-
4 larly?

5 A. Oh, yeah.

6 Q. Who was that?

7 A. Dr. Meyers.

8 Q. He was a pediatrician?

9 A. He was just a general practitioner.

10 Q. Did you ever go to any doctors' appointments with
11 them?

12 A. I was on the road most of the time, working.

13 Q. I understand that, but what I'm really trying to
14 find out is if you did or not.

15 If you were on the road, that's fine, but did you
16 go to any of the appointments?

17 A. No, sir, I didn't go to any appointments.

18 Q. Okay.

19 A. Lillie handled all of that for me.

20 Q. Eddy is your oldest?

21 A. Yes, sir.

22 Q. And did you know that -- did you notice anything
23 unusual about Eddy when he was a little child, one, two,
24 three years old?

25 A. He was slow learning.

MR. R. WEIK ON DIRECT

1 Q. What else?

2 A. Also he had an awful high temper I got a movie
3 of him turning red when a fishing pole fell on his foot,
4 him and Chris in the yard.

5 Q. Okay. Anything else?

6 A. Not offhand. I don't remember much.

7 Q. Do you remember any particular problems that Eddy
8 had? For example, did he talk when most children do?

9 A. Yeah, I think so. I'm not sure.

10 Q. All right.

11 A. A lot of this stuff is forty years ago.

12 Q. Did you notice anything unusual in his behavior as
13 he was going from middle school to high school?

14 A. Well, behavior is something that is similar to what
15 Freud was categorizing people in, and when you put people
16 in groups you can just about do anything you want to to
17 them, and that was one of the things that I didn't want
18 to happen to my children.

19 Because around there we had enough problems.

20 Q. Well, what I'm wondering is about your son's behav-
21 ior. Did you notice anything unusual about it as he
22 went from grade school to middle school?

23 A. He was a slow learner.

24 Q. Anything else?

25 A. Some of the teachers told Lillie he -- I can't

MR. R. WEIK ON DIRECT

1 remember most of the stuff.

2 Q. I know you're trying to remember what a teacher
3 said, but what I'm interested in is what you observed.

4 A. Well, I didn't have too much time. One day I was
5 home and he was seven years old, and I was away a lot,
6 and I was up in Hartsville and getting quite a bit of
7 money when I was working for the Department of Corrections
8 up here at Macdougall.

9 I was on the night shift and it was twelve hours.

10 Q. You were a prison guard?

11 A. Yes, sir.

12 Q. But what I'm wondering is, and the question I just
13 asked, Mr. Weik, is whether you noticed any unusual be-
14 havior by your son Eddy as he was growing up from a teen
15 ager to an adult.

16 If you could dwell on that.

17 A. Well, whatever happened, my wife would take care of
18 it for me.

19 She would tell me so and so did such a thing and I
20 would would say to myself, my goodness, I had -- I have
21 four step-children, and Maggie was one of them, and
22 Maggie left about three years after I married Lillie, and
23 they moved to Florida.

24 They came back every summer and vacated or spent
25 their vacation up there at the house.

MR. R. WEIK ON DIRECT

1 Q. But what I'm asking about, did you notice anything
2 in Eddy's behavior as he was going from a child into
3 adolescence to a teenager and then into adulthood as
4 well?

5 Did you notice anything along that time . .

6 A. All right. Lillie told me he couldn't keep his
7 mouth shut when he was supposed to and he would get peo-
8 ple angry at him.

9 Q. Did you notice anything?

10 A. I wasn't with him that much. Like I say, I had
11 family to support, and it was bad enough the times I
12 was between jobs.

13 One time we lost the pump in the well that went
14 bad, and we had pipes that busted one winter and I had
15 to find money for them and I was still out of work. I
16 had a hot water heater go bad and stuff like that.

17 Q. I think you have answered my question about whether
18 you noticed anything. I'm not trying to cut you off,
19 but I believe you have given the answer.

20 A. Okay.

21 Q. Have you suffered, since you've been out of the
22 service, any what I guess you'd call flashbacks about your
23 experience in Vietnam?

24 A. Yes, I had a lot of them.

25 Q. Excuse me?

MR. R. WEIK ON DIRECT

1 Q. I asked if you had had any flashbacks about your
2 experiences in Vietnam.

3 A. Yes, sir, I had a lot of them.

4 Q. Excuse me?

5 A. I had a lot of them.

6 Q. Did you ever have any in the presence of your
7 children?

8 A. I can't remember. I know one thing, I was on
9 a submarine going . .

10 Q. I'm sorry. What is that?

11 A. I was on an old submarine and they had a shake-
12 down cruise going to Bermuda, They called it a rum run
13 in those days because they went down there and picked
14 up rum and put it in torpedo tubes, and if anybody said
15 anything, like the Internal Revenue or Tobacco and
16 Firearms people, or something like that, they would dis-
17 charge the bottles out the torpedo tube.

18 Q. Let me stop you. You're talking about being on a
19 shake down on a submarine cruise from . .

20 A. From New London, Connecticut down to Bermuda and
21 back. Part of the ship superintendent's personnel job
22 up there in the office was . .

23 Q. Were you on the submarine or the submarine tender?

24 A. On a submarine just for that voyage down to see if
25 anything went wrong.

MR. R. WEIK ON DIRECT

1 Q. But the question I asked you was about the flashbacks
2 you said you suffered.

3 A. Well, . . .

4 Q. Tell me about those.

5 A. Have you ever went through the little hatch down
6 into a submarine and tried to move back out of that thing with
7 a jacket full of stuff, and you don't fit the hole too good?

8 You get stuck there. Well, I got stuck there.

9 Q. Are you describing what you recall of a flashback that
10 you . . .

11 A. Yeah, I got very claustrophobic and I didn't
12 get back up through that hole, and I remember one night I had
13 a dream about it and they had started the -- the Command-
14 ing Officer said dive, dive, and they hit that claxton
15 horn and I was stuck in the hatch.

16 Q. All right, sir. Did you have any other flashback
17 experiences?

18 A. I had some in Vietnam were I was having incoming
19 one night they had to wake me up. I was hollaring incom-
20 ing and trying to run.

21 Q. Have you ever had any around your children that you
22 can remember?

23 A. I can't remember. I had a lot of things happen in
24 my life at that time and it was interesting. Without
25 using a lot of four letter descriptive words, it was
interesting.

MR. R. WEIK ON DIRECT

1 Q. All right. Do you still suffer from flashbacks?

2 A. Yes. That's why they got the -- got this new
3 medication for me. I have trouble sleeping.

4 Q. What's the problem sleeping, sir?

5 A. They give me a sleeping pill that's supposed to
6 help my memory and everything.

7 Q. I don't think you heard my question. What
8 problems do you have sleeping?

9 A. I wake up during the night with hot sweats, and
10 I have to go and walk in the other room, and I'll close
11 the door and turn the light on and play cards or some-
12 thing like that until it's over with.

13 Q. Until what is over with?

14 A. Well, right now I've got magnesium poisoning, and
15 I've got what they call the quivers in my hand and arm.
16 It's supposed to go into Parkinson's Disease, and the
17 people down at the Joye Law Firm -- I'm supposed to get
18 back with them and they're supposed to fight my case.

19 Q. What law firm?

20 A. The Joye Law Firm.

21 Q. Okay.

22 A. I also have . . .

23 Q. What causes the difficulties you have? Are they
24 dreams?

25 A. Yes, sir. I'm still sometimes in country. I was

MR. R. WEIK ON DIRECT

1 in country last night.

2 Q. You were in country last night?

3 A. Yeah.

4 Q. Are you talking about a dream?

5 A. Well, I would rather not. It brings it back.

6 Q. When you refer to country, does that mean in
7 Vietnam?

8 A. Yes.

9 Q. The reliving of your experiences in Vietnam?

10 A. Yes, sir, but on a different -- a lot of times you
11 dream and you start out the same way it happened, and
12 then it goes another twist and you are in a situation
13 where you are not aware of what's happening like you
14 were aware of before, and you make mistakes and people
15 die on account of your mistakes because you were a team
16 leader out there in the jungle.

17 Q. Mr Weik, when you have spoken about some of your
18 experiences in Vietnam, it is fair to say you have today
19 become quite emotional?

20 A. Yeah, they bring me back to something I try to
21 repress.

22 Q. The presence of bad memories in Vietnam?

23 A. Yes, sir.

24 Q. Are you telling me they cause you to show the same
25 emotions you have shown today?

MR. R. WEIK ON DIRECT

1 A. Here is the way I look at things. I was in peo
2 ples -- in another person's country in his back yard,
3 trying to apprehend and kill them and they tried to kill
4 me and stuff like that.

5 And I like people. People who have different hered-
6 itary characteristics than I have, geographical and
7 hereditary characteristics My ancestors came from
8 . . .

9 Q. Before we go there, I have some questions. You
10 have shown some emotion today when referring to your ser-
11 vice in Vietnam.

12 Is recalling those experiences what caused your
13 emotional display today? I'm not suggesting there is
14 anything wrong with that, but I just want to know if
15 they are a product of your experiences in Vietnam.

16 A. A lot of my problems through life with the children
17 and everything, at my house -- a lot of people have
18 came to stay with Amy and Chris, and I think even Eddy
19 had people to come and stay.

20 Sometimes I'd come back from work and wanting to
21 wash my clothes and spend the night and I'd have wall to
22 wall children, and . . .

23 Q. What problems with your children are you talking
24 about?

25 A. Well, Lillie was having problems with Rhonda at the

MR. R. WEIK ON DIRECT

1 time. Rhonda was a child that -- she was a wonderful
2 person but she just rebelled.

3 Q. All right. Any other problems with your other child-
4 ren?

5 A. Um, . . .

6 Q. I'm talking specifically about your children, not
7 your . . .

8 A. My children? Well, my children were just like any
9 body else's children. They went through the different
10 phases of -- how would you call it -- the times.

11 People went into . . .

12 Q. Can you tell me anything specific about an episode
13 that happened in your children's lives that you would
14 describe as a problem?

15 A. My children and I, we had our heated discussions.
16 That was about it, I think.

17 Q. Okay. Now, you started to say something about your
18 ancestors. Are you related to some famous people in
19 history?

20 A. Yes, sir. I'm related to a whole bunch of people.

21 Q. Tell me who those were . . .

22 A. I'm related to Martha Custus. I'm related to Pocahuntus.
23 I'm related to Thomas Jefferson's wife. I'm related to
24 Robert E. Lee's wife, and I'm also related to Eugene
25 Conroy Cordell, who used to be the Dean of John Hopkins

MR. R. WEIK ON DIRECT

1 University from 1900 to 1909. He was also a one time
2 captain in the Confederacy. He was a doctor.

3 Q. Any other people that you can think of?

4 A. Well, on my mother's side, I'm related to Andrew
5 Jackson and Stonewall Jackson and a whole bunch of other
6 people.

7 Some people that went with Lewis and Clark. Down
8 there in them hills, people went all over the place, and
9 my grandmother is related to everybody.

10 Q. Did you teach your children, your sons specifically,
11 about hand to hand combat?

12 A. Yes, sir. Around in the neighborhood, people were
13 calling us different names, and they beat my children
14 up.

15 So me being the ghost warrior and everything, I
16 figured I . . .

17 Q. Did you say ghost warrior?

18 A. Yes, and live on the land, and I taught them hand
19 to hand combat.

20 Q. What did you teach them?

21 A. I just taught them -- taught Eddy, Chris and Amy
22 . . .

23 THE COURT: We have to wait on the train to go by,
24 Mr. Weik, so that we can hear and the Court Reporter can
25 hear.

MR. R. WEIK ON DIRECT

1 (Brief pause in the proceeding)

2 THE COURT: Proceed.

3 BY MR. O'CONNELL:

4 Q. You were beginning to say . .

5 A. All right. I taught my three children -- by that
6 time my step-children had moved on. I taught them hand
7 to hand combat; I taught them jujitsu and taught them
8 how to protect themselves.

9 I didn't teach them none of the aggressive attack-
10 ing that we had learned, like dumock . .

11 Q. Like what?

12 A. That is a way of taking people out with your hands.
13 You don't need to have any weapons. Your body is a
14 weapon and you have to learn how to use it as that.

15 Q. So you learned how to take people out and what you
16 really mean is you . .

17 A. In the jungle at night sometimes we'd snare the
18 person before he knew we were around, and you didn't
19 have time to grab a knife or something, so you had to
20 touch them.

21 Q. So you successfully killed people with your hands,
22 is that right?

23 A. Yes, sir.

24 Q. And you knew how to do that and that is something
25 you . .

MR R WEIK ON DIRECT

1 A. I didn't teach my children that .

2 Q. But you were responsible for training them?

3 A. Yes, sir.

4 Q. When -- your sense of smell, how would you char-
5 acterize it?

6 A. Well, right now it ain't too good, but then I
7 was doing pretty good. I was doing pretty good then
8 over there.

9 Q. Is your sense of smell better than the average
10 person?

11 A. In those days it was.

12 Q. How about your eyesight?

13 A. My sight was very good. I had far vision and
14 that's why I wear these things, but the medicine and
15 all I received for being diabetic and getting these
16 lumps in my body and . . .

17 Q. Right, but talking about your eyesight, would you
18 characterize your eyesight as a lot better than the
19 average person then?

20 A. Yes, sir. I was pretty good at it. I could
21 read stuff way out here without glasses.

22 Q. Were you ever able to see things from a very far
23 distance?

24 A. Well, we had to find out what we were up against
25 over there, and it helped me to see people, and a lot

MR. R. WEIK ON DIRECT

1 of times we didn't have binoculars with us and things like
2 that, so we relied on my eyesight pretty good.

3 Q. Okay. I understand. Are there any other senses
4 that you have -- and I understand we all get older after
5 a while, but as a younger man were there any other senses
6 that you would describe as better than the average person,
7 that you had?

8 A. Well, I'm muscular.

9 Q. Okay, anything else?

10 A. . .

11 Q. How about your hearing?

12 A. My hearing was pretty good at one time until I
13 started getting into boilers and then . .

14 Q. When you were a young man, would you describe your
15 hearing as better than the average person?

16 A. Yes, sir. I did pretty good. You had to have it
17 in them days.

18 Q. Did you have a security clearance?

19 A. Pardon?

20 Q. Did you have a security clearance?

21 A. Yes, sir.

22 Q. What?

23 A. Top secret. I'm still top secret. I went to the
24 nuclear place at Barnwell over here and they were real
25 glad to know me.

MR. R. WEIK ON DIRECT

1 They said they never found anyone with security
2 clearance as well as mine. Only a few people they knew.

3 Q. You have a special type of security clearance, top
4 secret clearance?

5 A. I'm supposed to have. I hope it's still with me.

6 Q. What do you call it?

7 A. I have above secret, I think it is. I can't remem-
8 ber the exact words, but it is above secret. I can go
9 into places. . . I'm supposed to be able to go into places.
10 With a little card that I used to have with my photo-
11 graph on it in Vietnam, it said I wasn't to be detained,
12 and I could go in top secret areas and have the weapon
13 on my choice and it had Mac five on the front of it.

14 Q. Just a moment, please.

15 (Brief pause in the proceeding)

16 THE COURT: Anything further?

17 MR. O'CONNELL: Yes, sir

18 BY MR. O'CONNELL:

19 Q. Mr, Weik, did you get called upon to discipline your
20 children, your sons and daughter?

21 A. Most of the time my wife was home, and Lillie hand-
22 led that for me.

23 Q. Did you do any of it?

24 A. I can't remember. That was a long time ago,

25 Q. Would you answer any questions the Attorney General

MR. R. WEIK ON CROSS

1 might have. Thank you.

2 A. Okay.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. ZELENKA:

6 Q. Mr Weik, where did you live at the time your son
7 was arrested for murder?

8 A. Where did I live?

9 Q. Yes, sir.

10 A. I lived at 350 St. Johns Bethel Road.

11 Q. And your son was living with you at that time?

12 A. Yes, sir. He lived in the back room.

13 Q. At the time of your son's arrest until the time of
14 the trial, did you ever meet with your son's lawyers?

15 A. We went and got my son's lawyer, you might say.

16 Q. And you hired Percy Buford?

17 A. Yes, sir.

18 Q. Did you talk to him about your experiences at all
19 with your son?

20 A. I can't remember if I talked to Percy about anything.
21 I know I talked to Percy about being our lawyer, and
22 Percy told us that he was inadequate but he would give it
23 a good shot.

24 He said he'd never had that kind of-- he was the
25 only person we could get money enough to obtain for

MR. R. WEIK ON CROSS

1 Eddy, and Percy is pretty intelligent. He just lacked
2 the skills for a murder trial, he said, but he would go
3 ahead and try because, he said, maybe it would give him
4 skills that he could use in the future and be able to
5 try that kind of case.

6 Q. Did you ever meet with any of the investigators or
7 talk to them over the phone?

8 A. I met with Mr. Parker and he talked with me several
9 times, but I can't remember what he asked me.

10 Q. Was it about your background and your experience?

11 A. Yes. I was a locksmith. I was supposed to be a
12 grand master locksmith, a person who was able to do all
13 the lock work and that's what I did.

14 I opened cars. I got over a hundred kids out of
15 locked cars and I got several of them out of trunks of
16 cars.

17 I got eight or nine out of locked rooms. One of
18 them was a doctor over in Pamplico, if I remember cor-
19 rectly.

20 But I still have-- I had all of my receipt books,
21 and what number child it was and everything.

22 Q. Did you tell that to Mr. Buford or Mr. Parker?

23 A. No, they said that was irrelevant, what I did for a
24 living.

25 Q. Okay. Did you talk to them about your past military

MR. R. WEIK ON CROSS

1 service?

2 A. Well, they only asked me a few questions. They
3 didn't get into what I had done for the government.

4 Q. Did they ask you what your son was like? What
5 he was like growing up?

6 A. I think they did. I can't remember what I said,
7 really. I'm very sorry about that.

8 He was an individual and like all individuals they
9 are not the same; even twins are not uniquely the same.
10 They are individuals.

11 Everybody has an individuality, like no two people
12 -- their two ancestors never came from the same place in
13 the world. That is geographical, hereditary character-
14 istics and it shows their parentage along the line of
15 ancestors inhabited a certain part of the world, and
16 they adapted to be compatible for that area.

17 If you are African-American, your heritage kind
18 of gets thickened and it insulates your cranial cavity
19 from the sun's rays so you don't suffer heat stroke
20 as much as other people.

21 Your skin is darker pigmented, so it looks like
22 the sun's light, but these people have a part of the
23 earth near the equator, either Central America or in
24 Asia and part of Africa, and they have different geo-
25 graphical hereditary characteristics.

MR. R. WEIK ON CROSS

1 It has nothing to do with their ability to think
2 or anything. Their dietary changes. Chinese people,
3 they have a different slant, or Japanese people, be-
4 cause Japanese people kind of flinch their eyes because
5 they were fishermen. They were on an island.

6 Chinese people have poorer cooking facilities, and
7 it caused the tear ducts to be enlarged.

8 Q. Did you tell this to your lawyer?

9 A. . . .

10 Q. Or did you tell this to the investigator?

11 A. Well, a long time ago they didn't want to know my
12 learning. I went to John Hopkins University to find out
13 about all this.

14 Q. Did you tell this to your son's lawyers or the in-
15 vestigators?

16 A. No, none of them.

17 Q. I have no further questions.

18 REDIRECT EXAMINATION

19 BY MR. O'CONNELL:

20 Q. Mr. Weik, did you go to Johns Hopkins University?

21 A. Yes, sir. I went one summer. My daddy sent me
22 down there because Eugene had been a Dean down there,
23 and I got to go there. I stayed with my sister in
24 Baltimore City.

25 Q. Did you attend classes at Johns Hopkins?

MR. R. WEIK ON CROSS

1 A. Yes, sir.

2 Q. What kind of classes?

3 A. Well, what you just heard was what they called
4 compatibility. In order to understand why people look
5 differently.

6 People are supposed to be different because of
7 at one time they were building a Tower of Babel and
8 they all looked alike and spoke the same language,
9 and whenever they got up a certain way, God destroyed
10 the tower and he sent them to different parts of the
11 world and they had different dialects.

12 Q. How old were you when you took this class?

13 A. I think I was sixteen or seventeen.

14 Q. Did you attend any other classes at Johns Hopkins?

15 A. I can't remember right off hand. I knew a Profes-
16 sor Graham and he was quite a -- a very interesting
17 being, and his uniqueness was that he liked to eat
18 cucumbers and things without peeling them. He said you
19 waste a lot of your food value by peeling some veget-
20 ables.

21 You can check. Mr. Graham was a Professor at
22 Johns Hopkins University back in the fifties.

23 Q. Do you remember talking to Scott Parker?

24 A. Yeah.

25 Q. In 1999?

MR. R. WEIK ON REDIRECT

- 1 A. . . .
- 2 Q. You said something about Scott Parker previously.
- 3 A. Yes, he came to the house and he was also at
- 4 Percy Buford's law firm one day when we were told to
- 5 come up.
- 6 Q. And did you talk to him about your experiences in
- 7 Vietnam?
- 8 A. I started to but they dismissed them as influen-
- 9 tial.
- 10 Q. I'm sorry?
- 11 A. It didn't matter much, he said.
- 12 Q. Who said that?
- 13 A. I think Mr. Parker.
- 14 Q. Scott Parker?
- 15 A. Yes, sir.
- 16 Q. All right. Did you tell him about your service
- 17 in the CIA?
- 18 A. I started to but he said he didn't know about that.
- 19 Q. But he was investigating . .
- 20 A. He wanted just what he wanted.
- 21 Q. I'm sorry.
- 22 A. He said he only wanted to know what was on the
- 23 paper he had.
- 24 Q. What paper was that?
- 25 A. That I had furnished him.

MR. R. WEIK ON REDIRECT

1 Q. Okay.

2 A. He wanted to match it with the other one and they
3 couldn't match either.

4 Q. Thank you.

5 THE COURT: Anything further?

6 MR. O'CONNELL: No, sir. Dismiss him.

7 THE COURT: Recross limited to Redirect?

8 MR. ZELENKA: Nothing, Your Honor.

9 THE COURT: As to this witness?

10 MR. O'CONNELL: That he be excused.

11 THE COURT: Any objection?

12 MR. ZELENKA: No, sir.

13 THE COURT: Mr. Weik, you may step down and you
14 are excused from the Courtroom.

15 (Witness excused)

16 THE COURT: Counsel, we'll take our mid-morning
17 break at this point. We'll take about ten minutes
18 and reconvene in ten minutes.

19 (The Court took brief recess and the matter then
20 resumed)

21 THE COURT: Call your next witness.

22 MS. KIMBROUGH: We would call Dr. Donna Marie
23 Schwartz Watts.

24 THE COURT: Come around, please.

25 DR. DONNA SCHWARTZ WATTS, being

DR. WATTS ON DIRECT

1 duly sworn, testified as follows:

2 THE COURT: Have a seat on the witness stand and
3 I'm sure my Court Reporter knows how to spell your
4 name.

5 Your witness.

6 DIRECT EXAMINATION

7 BY MS. KIMBROUGH:

8 Q. Dr. Watts, what do you do for a living?

9 A. I still work at the University of South Carolina
10 School of Medicine; I'm a medical professor of
11 psychiatry there, and I'm director of forensic ser-
12 vices.

13 Q. Would you briefly describe your education for the
14 Court?

15 A. Sure. I graduated from Furman University in 1985
16 with a Bachelor of Arts Degree in psychology. I grad-
17 uated from medical school in 1989 from the University
18 of South Carolina School of Medicine.

19 I completed a residency in general psychiatry at
20 the William S. Hall Institute which is a part of the
21 Department of Mental Health in 1993, and I completed an
22 extra year of forensic psychiatry residency training at
23 the Hall Institute and finished that in 1994.

24 Q. And have you been involved in capital cases?

25 A. Yes.

DR. WATTS ON DIRECT

1 Q. Have you ever been involved in PCR cases as a fact
2 witness?

3 A. I believe in a capital case this is the first time
4 I have been a fact witness in a capital case PCR.

5 Q. And have you testified for the prosecution as well
6 as for the defense?

7 A. Yes.

8 Q. Including the Attorney General's Office?

9 A. Yes. Certainly. I was Court appointed to the sex
10 ually violent predator cases. I served as witnesses for
11 them as well, yes.

12 Q. And how about in capital cases in regard to compe-
13 tency and those issues?

14 A. I have done a number of those cases. I have never
15 been retained by the Attorney General's Office, but I
16 have done about ten probably competency to be executed
17 cases.

18 Q. Okay.

19 MS. KIMBROUGH: Your Honor, at this time we would
20 offer Dr. Watts as an expert in the field of psychiatry.

21 THE COURT: Any objection?

22 MR ZELENKA: No objection.

23 THE COURT: So qualified, without objection.

24 You may proceed, counselor.

25 BY MS. KIMBROUGH:

DR. WATTS ON DIRECT

1 Q. Dr Watts, when did you -- what is your connection
2 with Eddy Weik?

3 A. I was originally retained by Mr. Buford and Ms.
4 Hardee Thomas in Mr. Weik's trial back in 1999.

5 Q. Do you recall when in the trial preparation process
6 you were retained to work with Mr Weik?

7 A. I didn't remember that, but when you all provided
8 me with some records -- my memory is not as good as it
9 used to be -- but I understand from looking at a letter
10 that Ms. Hardee Thomas wrote to me that it would have
11 been in February, about three months prior to his trial.

12 Q. Okay. Is this a typical time frame?

13 A. No.

14 Q. Okay. Would you consider this a lot of time or
15 little time, the three months, in your professional judg-
16 ment?

17 A. Today I would call that no time. It was very little
18 time.

19 Q. How much time do you typically tell attorneys that
20 you need to perform an evaluation and prepare testimony?

21 A. I would like usually about a year of notice, and
22 also because things have changed. My schedule is much
23 busier. Usually six months to a year would be best.

24 That doesn't always happen, but given my choice I'd
25 prefer a year.

DR. WATTS ON DIRECT

1 Q. In 1998 was three months an inadequate amount of
2 time?

3 A. Yes.

4 Q. In your judgment?

5 A. Yes.

6 Q. Who contacted you?

7 A. I believe Ms. Hardee Thomas.

8 Q. And what did you do when she contacted you?

9 A. We got together and I made a schedule of when I
10 would go and evaluate Mr. Weik.

11 Q. How often did you see Eddy?

12 A. I only saw Mr. Weik twice before his Blair Hear
13 ing. I saw him at the detention center on the first
14 occasion. I met with him probably about two or two and
15 a half hours.

16 I had my resident with me at the time, and then I
17 went back about a month or six weeks later and spent
18 another three hours with him at the detention center.

19 Then, of course, I saw him on the day that we had
20 the Blair Hearing. I watched Dr. Behrman perform an
21 evaluation of him, and I also spoke with him at various
22 times on through the Blair Hearing.

23 Q. Okay. What type of information were you provided
24 at the start of your preparation in this case?

25 A. I certainly had some of the discovery and I remember

DR. WATTS ON DIRECT

1 having incident reports and that sort of thing. I remem-
2 ber clearly watching the videotape when Mr. Weik was de-
3 tained shortly after the crime.

4 I also -- I believe I may have had the autopsy re-
5 port and then I had some typewritten notes from the
6 investigator at the time, Patty Rickborn.

7 Q. And would you describe this case as complicated,
8 simple, or where on that -- how would you describe the
9 case?

10 A. Even after today with the many cases I've done,
11 this was a very complicated case.

12 Q. Why?

13 A. Well, because in my opinion Mr. Weik had a mental
14 illness and he was not going to let his attorneys, if he
15 had any choice in the matter, represent that illness or
16 put that illness forth as any kind of defense or any
17 kind of mitigation.

18 Q. Okay, and did you specifically discuss those facts
19 with Mr. Weik's attorneys?

20 A. Yes, and I -- if I can go back? The second time I
21 saw Mr. Weik -- the first time I saw Mr. Weik, I just
22 obtained a general history from him.

23 The second time, in my opinion, he had decompensated
24 greatly, and at that point I was convinced that he was
25 psychotic.

DR. WATTS ON DIRECT

1 I also was convinced at that time that he had what
2 was called a dissociative episode where he -- it was
3 clear in looking at the videotape where he described as
4 being out of his body and felt as if he was watching
5 the events.

6 It was clear he had some sort of dissociative prob-
7 lem. At that point, I clearly remember having lunch
8 with Mr. Buford and I -- I'm sorry but I can't remember
9 where we were, in some county, but at that time Mr.
10 Buford and I met and had lunch together, and I talked
11 with Mr. Buford at length about -- that I needed some
12 consultation to help me with Mr. Weik's case.

13 So that is the only meeting that I recall having
14 with the attorneys, having lunch with Mr. Buford.

15 Q. What kind of consult did you want?

16 A. I wanted a second opinion first of all from my
17 mentor at the time who was Donald Morgan. Dr. Morgan
18 was our training director when we went through train-
19 ing, and in my opinion Dr. Morgan had expertise in
20 disorders of dissociation.

21 So I specifically asked that Dr. Morgan be able
22 to do an independent evaluation of Mr. Weik to see if
23 the dissociative problems he had rose to a level that
24 would affect his guilt.

25 Q. Okay, and in addition to that consult, did you have

DR. WATTS ON DIRECT

1 any special information from Mr. Weik?

2 A. A little, but I didn't finish answering your ques-
3 tion. I need to back up.

4 I asked for a neurologist -- for a neurological
5 consult because Mr. Weik had given me some history of
6 some head injuries. I remember very clearly doing that
7 and I also asked for a psychological consult for him
8 just to check and be sure he was psychotic.

9 Q. To your knowledge, were those done?

10 A. Yes.

11 Q. And going back to the social information, do you
12 recall or does your file reflect what type of informa-
13 tion you had concerning Mr. Weik's background?

14 A. I had very little information. The only informa-
15 tion I had would have been the notes from Ms. Rickborn
16 and, of course, whatever social history I was able to
17 obtain from Mr. Weik at the time.

18 Q. Okay, and did you think that was adequate?

19 A. No.

20 Q. Did you have a chance to speak directly with mem-
21 bers of Mr. Weik's family?

22 A. The only family members I spoke with were in the
23 Blair hearing itself, in between witness' testimony.
24 I spoke with his mother very briefly and his brother
25 Chris very briefly.

DR, WATTS ON DIRECT

1 Q. Okay, and were these interviews?

2 A. No.

3 Q. Were these casual hellos, or how would you de-
4 scribe them?

5 A. Yes, I would -- the only point I remember with.
6 his mother that I was able to get was her history of
7 her pregnancy with Mr. Weik because that was con-
8 trary to what had been presented.

9 Ms. Weik told me that she had toxemia during her
10 pregnancy with Eddy, so that was a little bit different
11 history than what I had been given.

12 Q. Okay, and what happened to the investigator that
13 you recall?

14 A. Yes. I was aware -- I never met Patty Rickborn,
15 Your Honor, but when I first took the case she was kind
16 enough to actually physically drop those records off
17 in my office.

18 At the time I did not see her, but I had records
19 from her. Then I think for a period of time there was
20 no investigator, and then I believe very shortly before
21 trial and actually during the trial itself that I met
22 with Scott Parker or saw him in Court.

23 Q. Okay. So you did not speak to Scott Parker until
24 the trial?

25 A. We were actually in the Courtroom. That is the

DR. WATTS ON DIRECT

1 only conversation I recall having with Mr. Parker.

2 Q. How would you describe that hearing?

3 A. Chaotic. The -- during the Blair Hearing I certainly
4 had some strong opinions about Mr. Weik's competency and
5 I was very focused on that. I was paying attention not to
6 witnesses but was paying attention to Mr. Weik's behavior
7 in the Courtroom, and that sort of thing.

8 Q. So the information that Mr. Parker had to offer, as
9 well as information from other sources -- as I understand
10 your testimony, you had no time to review that and did not
11 review it?

12 A. That's correct. I never -- I do remember very clearly
13 asking for the Hall Institute records because I knew Mr.
14 Weik was there.

15 I had gone to see Mr. Weik, I believe, on one occas-
16 ion and he was actually in Columbia, so I was very aware
17 that he was at Hall Institute.

18 I did not see those records until the Blair Hearing
19 on that day and that was the first time I ever looked at
20 the records from the Hall Institute.

21 Q. Going back to the social history, what did you know
22 about Mr. Weik background?

23 A. I still remember what I did know. I did know they
24 lived in a somewhat delapidated trailer. I remember Mr.
25 Parker telling me about that.

DR. WATTS ON DIRECT

1 I also remember for some reason that there was a
2 dead fetus in a jar in the bathroom in Mr. Weik's home.
3 That stuck with me.

4 I remember that there were questions -- I certainly
5 suspected that Mr. Weik had been the victim of physical
6 abuse at the hands of his father.

7 I understood that his father was quite temperamental
8 and I understood that his mother was somewhat passive,
9 and that would be about my recollection of my understand-
10 ing of his social situation.

11 Q. Okay, and you were here during the testimony today?

12 A. Yes.

13 Q. Let me back up. Prior to coming here today, after
14 the trial and up until today, what did you learn in addi-
15 tion to that information?

16 A. Ms. O'Shea had provided me with some statements that
17 I was able to read. I read the transcript of my testimony
18 which refreshed my memory a good bit.

19 I read Dr. Morgan's testimony, Gus Rogers' testimony,
20 Dr. McKee's testimony, Dr. Crawford and Dr. Shea, and then
21 some memos, so I have learned a number of things about Mr.
22 Weik.

23 Q. Okay. Did you learn anything about mental illness in
24 the family?

25 A. Yes.

DR. WATTS ON DIRECT

1 Q. What specifically?

2 A. Now we know the father's history of the hospitaliza-
3 tion for psychiatric reasons, and that he was diagnosed
4 with schizophrenia.

5 Q. Okay. What about the grandfather? Did you also re-
6 ceive information concerning . .

7 THE COURT: Speak up a little bit for me.

8 MS. KIMBROUGH: I'm sorry.

9 BY MS. KIMBROUGH:

10 Q. Did you also learn anything about mental illness in
11 the prior generation?

12 A. Yes. The way I learned about that was actually
13 through the Hall social history. When we got the Hall
14 records here in the Courthouse, we had a chance to look
15 through them once and very quickly.

16 You all have provided me with those records, and in
17 reviewing those I saw the social worker, Carlos Torres,
18 had actually obtained a history similar to that, that the
19 paternal grandfather had had a history of mental illness.

20 Q. So you did review the new investigative reports on
21 the family from Margaret O'Shea?

22 A. Yes.

23 Q. Now, at the time of your testimony in the original
24 trial, did you know that Eddy's father and grandfather
25 had a history of psychiatric illness?

DR. WATTS ON DIRECT

1 A. No.

2 Q. Why would that have mattered? If you had been pro-
3 vided with that information, what, if any, impact would
4 that have had?

5 A. I can think of three things. First of all, I think
6 it would have made me more confident in my opinions, and
7 it would have made me better educated and give a better
8 opinion for the Court and the jury, because I would have
9 needed that information.

10 Secondly, it would have confirmed even more so my
11 opinion about Mr. Weik's diagnosis, that he had a gene-
12 tic predisposition to schizophrenia.

13 And thirdly, and I think most importantly, during Mr.
14 Weik's trial all of us were concerned about his delusions
15 about the CIA and his delusions were characterized as a
16 cultural belief.

17 Knowing that his father had schizophrenia would have
18 made me much more aggressive in stating emphatically that
19 that was not a cultural belief, and, in fact, his father
20 was psychotic too, and the family shared those psychotic
21 beliefs.

22 That was really very different from a cultural be-
23 lief, even though members of the family believed it,
24 because it's not true.

25 Q. You were present when the State's doctors testified

DR. WATTS ON DIRECT

1 that the Hag was a cultural phenomenon. I think they
2 said it was while waking up and going to sleep, and that's
3 how they explained it.

4 Is that your understanding?

5 A. Yes. They explained both the Hag and the beliefs
6 about the CIA as cultural beliefs.

7 Q. In addition to this mental illness and schizophrenia,
8 what else did you learn about Russell Weik prior to coming
9 here today that you did not know in trial?

10 A. That he had been much more physically abusive and un-
11 predictable when unstable in front of the children.

12 Q. How did you find that out?

13 A. Through Ms. O'Shea's notes.

14 Q. And you had very little social history at the time of
15 the trial?

16 A. That's right.

17 Q. Do you recall Dr. Augustus Rogers' testimony?

18 A. Yes.

19 Q. Who is . . .

20 THE COURT: Speak up, please, Ms. Kimbrough. When
21 you put your head down it's hard for me to hear with this
22 echo in here.

23 MS. KIMBROUGH: Okay, I'll do my best. Sorry, Your
24 Honor.

25 BY MS. KIMBROUGH:

DR. WATTS ON DIRECT

1 Q. All right, so you were here for the social work testi-
2 mony at trial?

3 A. Yes.

4 Q. Okay, and you heard the testimony provided by Dr.
5 Rogers?

6 A. Yes.

7 Q. Did Dr. Rogers get into any of the information that
8 you have learned since the trial?

9 A. No, none at all.

10 Q. Why was that?

11 A. I have my lay person's opinion watching it. I don't
12 think he got into the substance of anything. I'm not real
13 sure what happened.

14 I was waiting in the Court because a lot of that so-
15 cial history I was going to use for my benefit. I needed
16 to hear it.

17 And I was real surprised that they just -- in my
18 opinion, it never came -- nothing came out.

19 Q. Okay. Did you have a chance to talk to the other
20 experts prior to his information?

21 A. No. Even though I had asked for Dr. Morgan to con-
22 sult, the first time that we were actually all together
23 was in the Blair Hearing actually.

24 Q. Who were those experts that you saw at the Blair
25 Hearing?

DR. WATTS ON DIRECT

1 hearing?

2 A. I remember very clearly myself, Dr. Brannon, Dr.
3 McKee and Dr. Morgan.

4 Q. Were you impressed by their . .

5 A. No.

6 Q. And I believe I've already addressed it, but let me
7 ask you this. Were you provided with any medical records
8 or provided with the William S. Hall records prior to
9 your testimony?

10 A. It would have been sometime that morning in Court,
11 and keep in mind that we all had to look at those records.
12 None of us had seen them, so as the hearing progressed
13 we were steadily looking at records.

14 Q. So on the day of the hearing you saw the records that
15 you had asked for prior to that day?

16 A. That's correct.

17 Q. Okay.

18 A. We were never provided them. The Hall doctors were
19 nice enough to let us look through their charts. They
20 were actually in chart form and there were never any cop-
21 ies of those records.

22 So the Hall doctors were nice enough to let us look
23 through those records while they were waiting to testify
24 as well.

25 Q. And are there specific things in the Hall records that

DR. WATTS ON DIRECT

1 having additional time to review it after the trial and
2 before your testimony today that you were able to identify
3 as significant?

4 A. Yes.

5 Q. Can you discuss some of those?

6 A. Certainly. I am going to have to refer to my notes
7 for this.

8 If I may, Ms. Kimbrough, what I'll do is I'll just
9 go through the chart as it was sent to me, which is also
10 similar to how they have their records organized anyway.

11 Q. That will be fantastic.

12 A. The first set of records from the Hall Institute are
13 when Mr. Weik was admitted as an inpatient. He spent a
14 number of days at Hall, I think, as they performed the com-
15 petency and criminal responsibility evaluation, and the
16 first thing to note is the first page of the medical re-
17 cords are called physicians' orders, and it is standard
18 procedure when the patient is admitted to the Hall Insti-
19 tute the doctor writes the various orders to tell the
20 nurses what kind of -- what level of care the patient
21 needs.

22 There are a number of things that were interesting
23 even in the first page of the records, and that was --
24 excuse me. This is not the page I looked at earlier.

25 On one of the physicians' orders the patient's diagnosis

DR. WATTS ON DIRECT

1 was listed as psychosis not otherwise specified, and the
2 medical Haldol was written as an order for him if he were
3 to need it.

4 And that was of concern to me.

5 Q. Dr. Watts, I'm handing you a copy of . .

6 A. Yes, this is the one I'm referring to, yes.

7 Q. Thank you.

8 MS. KIMBROUGH: I'd like to have this marked as an
9 Exhibit.

10 THE COURT: Show it to counsel and ask her to iden-
11 tify it for the record so we know what we're talking
12 about here.

13 MS. KIMBROUGH: Excuse me, Your Honor.

14 THE COURT: That's 11.

15 BY MS. KIMBROUGH:

16 Q. Dr. Watts, can you identify this document for me,
17 please?

18 A. Yes. This would be -- there are different dates and
19 I am surprised. Evidently Mr. Weik was admitted to Hall
20 twice.

21 This is dated September 28, 1998. The physician's
22 order I had came from April of 1999, which was the record
23 I was familiar with.

24 This is September of 1998, and his admission orders,
25 and the diagnostic impression is psychosis, not otherwise

DR. WATTS ON DIRECT

1 specified, and actually not only that but he was placed
2 on Haldol. Not even a PRN of that medication was written,
3 Your Honor.

4 He was placed on the medication Haldol, five milli-
5 grams, twice a day.

6 Q. Thank you.

7 MS. KIMBROUGH: Your Honor, I would move to admit
8 this document as Plaintiff's . .

9 THE COURT: Any objection?

10 MR. ZELENKA: No, sir.

11 THE COURT: Plaintiff or Applicant's Exhibit Number
12 11 is admitted into evidence without objection.

13 (Medical record of 9 28 98 admitted in evidence
14 without objection as Plaintiff-Applicant's Exhibit 11)

15 THE COURT: You may proceed.

16 BY MS. KIMBROUGH:

17 Q. Dr. Watts, I hand you the document back and ask you
18 what is significant about that document?

19 A. Again, the fact that he was given a diagnosis of psy-
20 chosis which is certainly what my clinical impression
21 was. Not only was he given that diagnosis but he was
22 placed on medication for psychotic behavior.

23 Q. And for those of us here today who are not psychia-
24 trists, tell us what psychosis means?

25 A. Yes. It is not being in touch with reality. It is

DR. WATTS ON DIRECT

1 hallucinating and perhaps believing things that are not
2 true.

3 A psychosis diagnosis is basically a grab bag, Your
4 Honor. It means at this point that we suspect them to be
5 psychotic but they may or may not meet the full criteria
6 for schizophrenia or some of the other psychotic disorders.

7 That is a diagnostic impression and then the person
8 can be evaluated to determine if they meet the criteria
9 for a more specific thought disorder.

10 But a psychosis is a disorder of thought.

11 Q. And is Haldol what is prescribed?

12 A. Yes. Haldol is what is called an anti-psychotic
13 medication. It organizes things and in some cases it may
14 stop hallucinations and that sort of thing.

15 So it is a medication that is indicated for psychotic
16 disorders.

17 Q. All right, and going back to your review of this
18 chart, can you give us your thoughts on it?

19 A. Yes, and I have to say for the record that the hos-
20 pitalization I have in my records now is from April of
21 1999, so I don't even have those other records from him
22 being hospitalized in September of 1998.

23 The next thing that was important, Your Honor, from
24 the 1999 admission is when you are admitted into the Hall
25 Institute they have what is called a vital sign sheet in

DR. WATTS ON DIRECT

1 which they take your vital signs and take your blood pres-
2 sure and that sort of thing, and what was significant
3 here is they never measured a weight on Mr. Weik. They
4 never recorded a weight.

5 Yet we know or I knew from evaluating Mr. Weik that
6 there was a period of time during that hospitalization
7 when he faked -- he was not eating because he smelled
8 poison in his food and was not eating.

9 So it would have been nice to have some weights in
10 here to be able to know if he had lost weight during the
11 period of time when he was hospitalized.

12 The next thing that was important is called the
13 nursing quality assurance monitor, and what happened when
14 the patient was first admitted to the institute was a
15 nurse would do an assessment on him as well.

16 The typical protocol is when a patient came to be
17 admitted they would see the resident or psychiatrist --
18 whoever was on call -- who would perform a history and
19 physical sheet and psychiatric workup.

20 Then he would also see a nurse who would perform a
21 nursing assessment, and this paper -- basically what it
22 does is it goes through -- it is basically a check-sheet
23 that records whether symptoms are present or they are ab-
24 sent.

25 And what was significant here is that the nurse

DR. WATTS ON DIRECT

1 checked off, experiences delusions. She placed present
2 -- excuse me, he placed present -- Lee Bailey. I know
3 Mr. Bailey.

4 Experiences hallucinations. The nurse checked pre-
5 sent.

6 So even a nurse at the time of his admission in 1999
7 endorses that he was having psychotic symptoms.

8 Q. Is there some mention there also about his sleeping?

9 A. Yes, and that is also quite important.

10 The main records that were helpful for me, Your
11 Honor, is that again Mr. Weik had told me that he was
12 not eating the first few days he was in that hospital be-
13 cause he feared the doctors -- he thought the doctors
14 were trying to poison him.

15 Mr. Weik had delusional beliefs in my opinion that
16 the doctors at Hall wanted him to be crazy so he couldn't
17 stand trial, and those records were important because
18 what they did -- the Hall records had a nursing flow
19 sheet that records how much you sleep and how much you
20 eat, and those records show that he was not sleeping
21 very well on the times it was filled out.

22 There are nursing marks that show that he was not
23 sleeping, and also confirm that he was not eating as
24 scheduled.

25 Q. What about the presence of creatin in his urinalysis?

DR. WEIK ON DIRECT

1 Is that significant?

2 A. It could be. It would have required further work-
3 up, but what happened is that a drug screen was done and
4 it showed creatin.

5 That could be a finding that he was not eating and
6 would require further work-up.

7 Q. All right. What about some of the testing that was
8 performed?

9 A. I was quite interested in that, Your Honor. He had
10 a brain wave study order which is called an EEG. I still
11 don't see the results of that test in this chart.

12 He also had a neurological consult with Dr. Velini
13 who was a very good neurologist there, and in these re-
14 cords I don't see the results of that neurological con-
15 sult.

16 So many of the tests that were perhaps ordered for
17 him or the studies, I don't have the results of those even
18 today.

19 Q. Is that typical?

20 A. I don't think so. There are certainly cases where
21 pieces of information may not be in the chart and it
22 is understandable, but that has not been my experience
23 there.

24 The problem sometimes at Hall, Your Honor, is that
25 there are different charts. If Mr. Weik came in as an
259

DR. WATTS ON DIRECT

1 outpatient, which he did on one occasion, that would have
2 been a separate record.

3 If he came in as an inpatient, those records were
4 stored in a different chart.

5 So as far as I can tell, I don't have any of his
6 outpatient records, and I just have the one inpatient re-
7 cord from 1999.

8 Q. How about from Dr. Shea?

9 A. There is no report or any kind of psychological in
10 these records from Dr. Shea at all.

11 Q. Is that troubling?

12 A. Absolutely.

13 Q. What about the physical examination that was done on
14 Mr. Weik? Was anything in that of interest to you at
15 all?

16 A. Yes, that was of interest again, Your Honor. The
17 physical exam was performed by Dr. Cherbonde. He was a
18 resident at the time and I knew him quite well. He
19 was a child psychiatry resident.

20 He had a physical exam done, except that the page
21 that represents the neurological exam is not in my re-
22 cords either, but I know from reviewing the records further
23 that Mr. Weik had what is called an abnormal Babinski.

24 What that means-- that's how it was coded in the
25 chart -- a Babinski is a reflex, and it is normally when
260

DR. WATTS ON DIRECT

1 you strike the bottom of somebody's foot with a key and
2 the toes should go down.

3 He had an abnormal response which could be indica-
4 tive of some kind of neurological problem.

5 So he had an abnormal finding on his neurological
6 exam which would have certainly been of interest to me.

7 Q. Did you notice anything about whether or not his at-
8 tending physician at William S. Hall noted anything about
9 that?

10 A. Yes. I looked very clearly at that. When patients
11 are admitted into the Hall Institute for evaluations,
12 they would have what is called a treatment team, where the
13 team would get together and discuss the patient's needs
14 or what the goals of the hospitalization were.

15 I looked through the chart, and the only attending
16 I ever saw in the chart was Dr. Crawford. She wrote a
17 note on the day Mr. Weik was discharged, but none of the
18 residents' notes nor any of the treatment team were signed
19 by any attending physician there.

20 Q. All right. Related to that, were you present for
21 Dr. Crawford's testimony?

22 A. Yes.

23 Q. Okay. Do you see anything in the chart from William
24 S. Hall that strikes you as inconsistent with her testi-
25 mony? In particular, her testimony concerning the Hag?

DR. WATTS ON DIRECT

1 A. Yes. Dr. Crawford -- if I remember correctly, I
2 read her testimony. She was aware that Mr. Weik, I
3 think, had complained of hallucinations, and she testified
4 about that.

5 But I think she was -- from my understanding of her
6 testimony, I don't -- there was other records involved in
7 the Hall chart that alluded to the fact that he was hav-
8 ing hallucinations also, on more than one occasion.

9 There was a note on May 6th, 1999, and it says a
10 psychiatric medical student, and it states patient is
11 without complaints today; watching television and read-
12 ing his Bible.

13 Patient states he is still seeing, quote, the Hag,
14 and having auditory hallucinations.

15 So there would be -- then on the same exact day,
16 Dr. Crawford writes the evaluation was completed and the
17 patient is not psychotic.

18 He is without present suicidal ideation, and he is
19 to be discharged.

20 So the next note directly under that stated that he
21 was not psychotic.

22 Q. Okay. What about Dr. Behrman? Did you have an
23 opportunity to deal with anything that he generated as a
24 result of his stay at William S. Hall?

25 A. No, and I still have not seen that today.

DR. WATTS ON DIRECT

1 Now, that day in Court -- I don't know if that would
2 have been in those records, but I think I remember seeing
3 some notes from Dr. Behrman in whatever chart I was pre-
4 sented with that day in Court.

5 But in terms of the information I have now, I have
6 nothing from Dr. Behrman.

7 Q. All right, and was that the type of information that
8 would be contained in the William S. Hall record?

9 A. It should have been certainly, yes. If these re-
10 cords were subpoena, the inpatient records and outpa-
11 tient records were requested, they should have been in-
12 cluded, yes.

13 Q. Not having those records in the William S. Hall
14 records, would that affect your testimony?

15 A. Yes.

16 Q. Okay.

17 A. I can think of a couple of specific times. There
18 was one occasion that I thought Mr. Bailey was teasing
19 me. He had asked me if Mr. Weik had ever complained of
20 hearing crickets, and I think I actually gave probably
21 a somewhat sarcastic answer.

22 I think I told him that it would depend on what the
23 cricket said, but actually there really was a record evi-
24 dently from Dr. Shea where Mr. Weik had complained about
25 hearing crickets and I knew nothing about that.

DR. WATTS ON DIRECT

1. I can also think -- again, the evidence where Mr.
2 Weik told me he wasn't eating, and then sure enough if
3 you look at the nurses' notes he missed a number of
4 meals.

5 So it certainly would have confirmed a lot of the
6 impressions that I had, and it would have served as a
7 cross reference for my testimony.

8 Q. And could you give us your impression of Dr. Shea's
9 testimony and references to Dr. Behrman's diagnosis?

10 A. Well, for me, I think what was the most important
11 was that Mr. Weik was having delusions about the Hall
12 Doctors, even at the time of his hearing.

13 He trusted Dr. Shea, I think, more than the other
14 doctors, but he had some very strong beliefs about the
15 doctors' motivations, and he was very clear.

16 After the doctors testified, I spent some time with
17 him, and he truly reported to me that these doctors were
18 trying to make him act up in Court so that they would
19 ship him off to the hospital, find him crazy, so that he
20 could not stand trial.

21 Q. All right. Moving on to the defense experts, what
22 type of information, based on your having been in Court
23 when Dr. Brandon testified -- did he have any information
24 about Mr. Weik's having had head trauma?

25 A. No, and I was somewhat upset about that. I listened

DR. WATTS ON DIRECT

1 to Dr. Brandon's testimony and re-read it, and Mr. Weik
2 did not admit to any head injuries.

3 Now, here I had arranged for him to see one of the
4 best neurologists in the country -- in my opinion, Dr.
5 Brandon is an excellent neurologist -- and Mr. Weik de-
6 nied any history of head injuries when he attempted to
7 perform his neurological evaluation.

8 Q. All right. How did you know about the head injur-
9 ies?

10 A. Mr. Weik told me about one but actually from Dr.
11 Shea. Dr. Shea spoke of it when he was on the stand.

12 That was one of the points when he had actually given
13 Dr. Shea a much more in depth description of the head
14 injury than he gave to me, and I am very specific
15 when I ask defendants about that.

16 That is one of my routine questions, and I go quite
17 in length into that, and I obtain a decent neurological
18 exam, and certainly I did with Mr. Weik, which is why I
19 referred him to a neurological in the first place.

20 Q. How about Dr. Morgan? Did he also receive that re-
21 port?

22 A. I'm sorry. In terms of . .

23 Q. Of head injury.

24 A. I don't know. I don't remember if Dr. Morgan had
25 that history or not.

DR. WATTS ON DIRECT

1 Q. Okay. Did you receive information from Mr. Parker
2 prior to the hearing? Scott Parker?

3 A. I had that, but whether I had it at the time of
4 the trial I don't remember.

5 I remember talking with Mr. Parker, but I don't
6 recollect. I may have -- I may be wrong -- but I do
7 not recollect having anything written from him.

8 Q. Okay. Do you recall receiving information, parti-
9 cularly from Chris and Maggie, concerning the abuse
10 that he suffered?

11 A. Well, I see those now, and I have been able to
12 coordinate the dates of the reports. That date would
13 have been after I testified at the Blair hearing, so it
14 would have had to have been sometime after the competency
15 hearing when those interviews were conducted.

16 Q. Would that information have aided . .

17 A. Absolutely.

18 Q. . . you in your testimony?

19 A. Certainly.

20 Q. Why?

21 A. To talk about competency, that is a present issue.
22 That is how well he -- what kind of capacity do you have,
23 and it would have explained a lot of Mr. Weik's behavior
24 to me, why he was quiet, why he wasn't forthcoming with
25 information.

DR. WATTS ON DIRECT

1 There are a lot of reasons for that, and one was be-
2 cause he was ill. That was certainly consistent, in my
3 opinion, with him having schizophrenia.

4 But it also would help me in learning how to approach
5 him, how to get a better interview from him, how to get
6 more information.

7 It would also have helped me, I think, in terms of
8 being much stronger and clearly in my testimony.

9 Q. Okay. Did you ever have any chance to discuss the
10 social history with Dr. Rogers?

11 A. No.

12 Q. Okay.

13 A. Again, we were literally in the Courtroom, sitting
14 all together, while the proceedings happened. So what-
15 ever word you could get in without interrupting the Court
16 process or during a break, but I don't recall having
17 any significant history from him at all.

18 Q. Did you listen to his testimony at trial?

19 A. Yes.

20 Q. Was it helpful?

21 A. Again, I was somewhat shocked. Really in my opin-
22 ion there wasn't any social history elicited at all.

23 Q. All right. When were you in Court?

24 A. I remember very clearly being there for the Blair
25 Hearing. I remember testifying in the penalty phase to

DR. WATSON DIRECT

1 the jury, and evidently after reading the transcript I
2 must have been present on a Thursday, but I have no clue
3 -- I don't know if maybe I perhaps was going to be a
4 witness and the Court ended that day and I had to come
5 back the next day.

6 I don't have any recollection of why I would have
7 been there on another day, but evidently from the record
8 I must have been.

9 Q. Okay. You were present for the Blair Hearing?

10 A. Yes.

11 Q. Was there anything strange that happened during the
12 Blair hearing?

13 A. Yes.

14 Q. What was that?

15 A. While I was on the stand, Your Honor, testifying
16 about Mr. Weik's mental condition, he slammed his
17 head very, very hard on his desk. I was watching him as
18 I testified, and without any provocation or any clues
19 that I could tell -- just in the middle of my testimony,
20 he slammed his head very hard on the table.

21 And I was shocked. I think I jumped and excused my-
22 self to the Court because it startled me.

23 Q. Do you remember when in your testimony that this
24 occurred?

25 A. I think when I told the Judge excuse me, and he

DR. WATTS ON DIRECT

1 said, go right ahead.

2 Q. How do you know that's when it occurred?

3 A. Again, because I believe I jumped and so I excused
4 myself, because I made a sudden movement on my part while
5 on the stand.

6 That was the first time that had happened.

7 Q. Going back to information you were provided, other
8 than the outpatient records and access to the inpatient
9 records, as well as the few interviews that you were pro-
10 vided, what information did you have about Mr. Weik's
11 background and social history?

12 A. Nothing.

13 Q. What else would you need?

14 A. I would have interviewed the family members. I
15 would have asked for medical records on the parents, psy-
16 chiatric records on any of the parents or siblings.

17 I didn't even know Mr. Weik had half siblings. I
18 didn't know his mother had been married before.

19 I did not know about his older siblings' father
20 dying.

21 I would have gotten a lot more history in terms of
22 his upbringing. I would have wanted school records, and
23 I would have wanted medical records on Mr. Weik.

24 I would have asked for records from the detention
25 center. I did speak with some of the detention center

DR. WATTS ON DIRECT

1 officers when I was there to learn a little bit about
2 Mr. Weik's conduct and that sort of thing.

3 Any kind of record where he would have seen any kind
4 of mental health professional, any doctor, anything like
5 that.

6 Q. Okay. Did you have a medical history on Mr. Weik?

7 A. No. The only developmental history I got was my
8 brief time to ask Mrs. Weik if -- and keep in mind I had
9 Mrs. Weik and Chris Weik, and I had to pick and choose
10 during that period who I was going to get the information
11 from.

12 So in terms of prioritizing, I thought Mr. Weik's
13 birth history would have been important, and in fact
14 it was.

15 The only information I had is that Mr. Weik -- that
16 Mrs. Weik, his mother, had problems with her pregnancy
17 with him.

18 Q. What have you learned about Eddy's development since
19 the trial? What have you learned about that that is
20 significant?

21 A. I learned a number of things. First of all, I was
22 very surprised that he did not speak until after the age
23 of two years.

24 Your Honor, that opens up a whole lot of doors in
25 terms of other things to consider diagnostically.

DR. WATTS ON DIRECT

1 People with developmental disorders like autism
2 are known not to speak for a number of years, and it
3 would have been very helpful to me.

4 Also to know that Mr. Weik was teased, that he was
5 picked on in school, and the kinds of problems he had
6 progressing in school.

7 That he didn't have very many friends; that he was
8 exposed to physical abuse; that his father -- that he
9 was raised by a father who had an active mental illness
10 in the household during the time he was growing up.

11 Q. Did you ever have any medical or psychiatric his-
12 tory on Russell Weik?

13 A. No.

14 Q. Was the psychiatric information that was provided
15 to you after the trial, and specifically the Naval
16 Hospital records, as well as the social history --
17 would that have been helpful concerning the testimony that
18 was provided by the State, had you had it?

19 A. Certainly.

20 Q. How would that information have assisted you, as
21 far as the State's doctors and their minimalization of
22 the delusions and hallucinations of Mr. Weik? I mean,
23 would it have been helpful?

24 A. Certainly, for two reasons. First of all, there
25 were some cultural beliefs that would have, such as Mr.

DR. WATTS ON DIRECT

1 Weik's mother being native American, and reading some
2 of the interviews that Mr. Shea had conducted.

3 There are some beliefs in that culture that have to
4 do with the Hag, but I think the main and most import-
5 ant thing about that is that we couldn't dismiss those
6 as cultural beliefs because Mr. Weik's culture was being
7 raised by psychotic parents so there was something --
8 to attribute something -- just because a belief is shared
9 by a family doesn't mean it's not crazy.

10 Just because the whole family believes it, that
11 doesn't mean that it's not true. It doesn't mean it is
12 not crazy.

13 And so to have that information would have shed a
14 lot more light on the mental state of other family mem-
15 bers and why Mr. Weik believed -- why Mr. Weik believed
16 some of the things that he did.

17 Q. Would this information have been helpful in the
18 Blair hearing?

19 A. Absolutely.

20 Q. Why is that?

21 A. Again, it gave much more evidence. It could have
22 been much more convincing to Judge Shuler about the role
23 that family history -- schizophrenia is a genetic illness
24 and it is passed on; it has family history.

25 To know that he had a first degree relative, his

DR. WATTS ON DIRECT

1 own father, who had that diagnosis would have streng-
2 thened my opinion greatly.

3 Secondly, it would have helped again to refute any
4 ideas that this was a cultural belief. It's a shared de-
5 lusional belief.

6 There are psychiatric articles on that. That is a
7 keen area of interest in psychiatry, and it is very rare,
8 but it happens more than we think.

9 And to have had that history would have been very
10 helpful, in my opinion.

11 Q. In the Blair hearing, you testified that Eddy was
12 incompetent?

13 A. Correct.

14 Q. And all of this medical information supports that?

15 A. Absolutely. Especially -- again, one of the bases
16 for the opinion about him not being competent was his
17 belief about the CIA.

18 Mr. Weik was very clear that he could not be sure
19 if people from the CIA would be on his jury panel. He
20 was very confused before the trial because he was
21 frightened.

22 He stated that they were the Smiths and the Jones,
23 very similar to what his father just said, and that you
24 can't tell who the Smiths and Jones are because they
25 all look like normal people, and so he wasn't even sure

DR. WATTS ON DIRECT

1 if he could have a fair trial.

2 He also felt like during the proceeding, while in
3 the Courtroom, that the State's doctors were trying to
4 upset him on purpose, so he would get sent to the hos-
5 pital, not have a trial.

6 Mr. Weik very much wanted to have his day in
7 Court. He wanted to be found guilty at that time, and
8 he wanted to be given the death penalty, and he was very
9 interested in having these proceedings go forward.

10 Q. Were you ever contacted during the trial about a
11 second Blair hearing?

12 A. I have no recollection of that at all.

13 Q. If someone had contacted you during the trial and
14 asked you to offer testimony at a second Blair hearing,
15 would you have made yourself available for that hear-
16 ing?

17 A. Certainly, and that has happened many times. It
18 has been a normal course of a trial where that has hap-
19 pened, and I have done that.

20 MS. KIMBROUGH: May I have a moment, Your Honor?

21 THE COURT: Yes.

22 (Brief pause in the proceeding)

23 BY MS. KIMBROUGH:

24 Q. If you had had the information that has been made
25 available to you today -- if it had been made available

DR. WATTS ON DIRECT

1 earlier, as well as the William S. Hall records, how do
2 you believe that you could have helped or could you have
3 helped defense counsel with presentation of their case?

4 What use would you have made of these records?

5 A. Well, for example, when -- I believe it was Steve
6 Shea who testified that he and Dr. Behrman referred back
7 to the Hall notes when I mentioned that Mr. Weik wasn't
8 eating, and those records showed the level of eating.

9 I actually went back and looked at one time, and
10 out of eight meals that Mr. Weik should have received,
11 I believe there were four that he missed and one that was
12 not recorded.

13 So certainly little details like that would have been
14 very helpful, and if Mr. Buford had asked me to consult
15 with him during the time other witnesses were testify-
16 ing. That sort of thing.

17 There are plenty of records in the chart -- for
18 example, when asked about developmental history, just
19 having those records available would have been useful in
20 terms of preparing not only my testimony, but if Mr.
21 Buford had asked in assisting him by consulting on the
22 other witnesses.

23 Q. Is that a common function that . .

24 A. Well, you shouldn't do both. If you're an expert,
25 you should testify. If you are a consultant, you should

DR. WATTS ON DIRECT

1 help with questions, but there certainly have been
2 times in the South Carolina Courts, and especially back
3 then -- even at the Hall Institute where we were trained
4 sometimes we did both of those things.

5 We don't do that any more. We are very careful
6 about that.

7 But during the time we all worked at the Hall Insti-
8 tute and the Department of Mental Health, that was not
9 uncommon.

10 Certainly if you were asked and there was no other
11 doctor who was consulting -- if you were asked, you
12 would do it.

13 Q. You would have helped?

14 A. Certainly.

15 Q. Please answer any questions Mr. Zelenka may have.

16 A. Certainly.

17 CROSS EXAMINATION

18 BY MR. ZELENKA:

19 Q. Dr. Watts, in 1999 before your testimony, you com-
20 mented that you had only one meeting with Percy Buford
21 and that was early on before the neurologist was re-
22 tained and Dr. McKee was retained?

23 A. Yes, and also before Dr. Morgan. That is my mem-
24 ory of it.

25 Q. Dr. Morgan?

DR. WATTS ON CROSS

1 A. Yes, sir.

2 Q. Did you have telephone conversations with the law-
3 yers at all about any of those things or the status of
4 your evaluation, prior to the time of the Blair hearing,
5 or prior to the time of your testimony?

6 A. I'm sure I would have had to. I don't have a mem-
7 ory of that. I know we would have had to, because I
8 think Mr. Buford was aware of many of the issues.

9 He knew that I was very concerned that Mr. Weik was
10 not competent in how he would proceed in terms of his
11 trial.

12 So we certainly had some form of communication but
13 my memory is that a lot of that occurred in the Court-
14 room.

15 I'm sure we would have had to have some phone
16 calls.

17 Q. And while you were looking at competency to stand
18 trial, were you also looking at criminal responsibility?

19 A. Certainly.

20 Q. And what information did you have at that time, the
21 information you had in 1999, about criminal responsibil-
22 ity and those issues?

23 A. It was my opinion he was criminally responsible
24 and he had capacity to confirm his conduct, at least
25 based on information I had.

DR. WATTS ON CROSS

1 Q. I'm not sure you . .

2 A. I was concerned about the part where he -- in his
3 statement to the police where he states he had left his
4 body and that's why we consulted Dr. Morgan, and I was
5 aware somehow during the course of that proceeding that
6 Dr. Morgan also felt like that did not rise to the
7 level that it would affect criminal responsibility.

8 So it was certainly my opinion he knew right from
9 wrong and he had the capacity to conform his conduct.

10 Q. And how does the Hag, which you were aware of at
11 that time, play into that sense of criminal responsibil-
12 ity?

13 A. In my opinion, not at all. The Hag -- what was
14 significant was that that was a part of his illness. It
15 was a part of what was going on with his present mental
16 state, the fact that it was a hallucination.

17 He explained that hallucination by a belief, but
18 Mr. Weik never said anything to me about the Hag being
19 there that day or the Hag having made him do that. I
20 never got that information.

21 Q. And you also reviewed the statement or the state-
22 ments he gave when he was talking contemporaneously with the
23 time of the event?

24 A. Yes.

25 Q. Now, with respect to the impact of the Hag on his

DR. WATTS ON CROSS

1 present mental status at that time in 1999, at the
2 time of trial, were you aware that many people in the low-
3 lowcountry or many members of the (inaudible) in the low-
4 country have a belief in the Hag?

5 A. Absolutely, yes.

6 Q. And their belief system is similar in that someone
7 is holding them down while they are asleep or coming out
8 of sleep?

9 A. Absolutely. I think sometimes some people call
10 them differently. Some in the lowcountry I think say
11 the devil riding their back.

12 But I am very familiar with that concept, and I do
13 see it as cultural in this area.

14 Q. Cultural in the area, but are you aware that his
15 family members also shared that belief, or are you
16 now?

17 A. I certainly am. I cannot remember when I became
18 aware of that, but, yes, and through Ms. O'Shea's in-
19 terviews I have seen where family members shared in
20 that.

21 Q. And from the notes that you received, you did have
22 some understanding about the influence that the father
23 had upon the dynamics in the family?

24 A. Absolutely.

25 Q. At that time in 1999, what was your understanding

DR. WATTS ON CROSS

1 about the dynamics and influence the father had on the
2 family?

3 A. It was my understanding, and I think it's fair to
4 say, that he ruled the roost with an iron fist.

5 Q. Was it also your understanding that the military
6 background played into that?

7 A. Yes.

8 Q. And that he used that as a fear factor with his fam-
9 ily members?

10 A. . .

11 Q. His military background gave him some knowledge and
12 power?

13 A. Yes.

14 Q. Now, when you reviewed the military records that
15 have since been provided to you on Russell Weik, do you
16 recall what his discharge diagnosis was?

17 A. No.

18 Q. Do you recall his discharge diagnosis was not schizo-
19 phrenia?

20 A. No.

21 Q. All right.

22 A. If you have those records, I'll be glad to look at
23 those.

24 Q. But that was not your understanding?

25 A. I just don't have a memory of that, so I would need

DR. WATTS ON CROSS

1 to look at that.

2 Q. With respect to the information that you presented
3 here today, your opinion is still the same about Mr.
4 Weik now that it was back then. Is that correct?

5 A. My opinion from back then is still the same. I hav-
6 en't seen Mr. Weik. I don't know if he has changed. I
7 have not seen him, Your Honor, since, like I said, the
8 time in Court.

9 Certainly there is nothing that has been presented
10 that changed my opinion back then but there has been
11 plenty presented that certainly would have made it stronger
12 and more educated and probably more beneficial to the
13 Court.

14 Q. When you reviewed the records, you reviewed Dr.
15 Crawford's report that she made back in May of 1999?

16 A. Yes.

17 Q. Which would have been days before the competency
18 hearing?

19 A. Correct.

20 Q. And did you review that prior to the time that
21 you testified at the Blair hearing on May 18th?

22 A. I don't know but I certainly -- I think that Dr.
23 Crawford and I had actually talked.

24 What we did is we all went back the morning of the
25 hearing, and Dr. Behrman conducted an evaluation of Mr.

DR. WATTS ON CROSS

1 Weik. We were all there.

2 And I had some understanding from Dr. Crawford --

3 I certainly knew what her opinions were.

4 Whether I saw this or not, I don't remember, but I
5 certainly am familiar with it now.

6 Q. You knew it was Hall Institute's opinion at that
7 time that it wasn't a schizoid personality disorder?

8 A. Schizotypal -- yes, sir.

9 Q. Schizotypal?

10 A. Yes.

11 Q. And in your discussions with Dr. Crawford, you were
12 somewhat firm in your sense that she was absolutely
13 wrong, isn't that right?

14 A. No, no. I don't think that's fair to say. I just
15 wasn't sure how much -- I didn't agree with her, but I
16 would never say she is absolutely wrong. She's a very
17 smart lady.

18 But it was my opinion -- I probably had the advantage
19 of seeing Mr. Weik in different settings. I saw him in
20 the detention center versus the hospital, where he was
21 more paranoid when he was in the hospital.

22 I think I just had access to different information
23 than Dr. Crawford. We definitely disagreed. I think
24 that is fair to say, but I would never consider her abso-
25 lutely wrong.

DR. WATTS ON CROSS

1 Q. That wasn't a quote. That was a concept.

2 A. Okay.

3 Q. And when you reviewed the record, you criticized the
4 fact that you couldn't find Dr. Shea's report, is that
5 correct?

6 A. That's correct.

7 Q. Have you seen Dr. Shea's report?

8 A. No.

9 Q. So your opinion today is absent any knowledge of what
10 was contained in Dr. Shea's written report?

11 A. That's correct.

12 Q. You say you were present when Dr. Shea testified at
13 the Blair hearing and then on the day of the trial?

14 A. I know I was there for the Blair hearing. I can't
15 remember -- I don't remember the order of things.

16 I don't remember if I was in the sentencing phase.

17 I may or may not have been, but I certainly was aware
18 of the nature of his testimony.

19 Q. And you criticize the fact that some of those re-
20 cords are not factual?

21 A. Correct.

22 Q. Where is your report?

23 A. I wasn't asked to give one. I have actually changed
24 my methods now. Before, my understanding was that when
25 a defense expert was retained by an attorney that there

DR. WATTS ON CROSS

1 was attorney-client privilege, and that we were not to
2 give a report unless asked.

3 I am not a lawyer but I know there were discovery
4 battles.

5 What I do now routinely is I give a report whether
6 anyone wants one or not. I just tell them up front I'm
7 going to write a report.

8 But back then I wasn't asked. I certainly would have
9 been glad to had I been asked or told to.

10 Q. So now your only report is in fact your trial testi-
11 mony both at the Blair hearing, pre-trial hearing, and
12 the trial?

13 A. Correct.

14 Q. And you -- help me out here because I am -- the
15 difference between a cultural belief which is shared by
16 family members and shared by people in the community --
17 when a cultural belief becomes a shared delusional be-
18 lief -- explain that.

19 A. Sure, and I don't think I would consider the Hag as
20 an example of that. I can tell you why I think the Hag
21 is psychotic versus a cultural belief, but for me the
22 beliefs about the CIA is, as you heard Mr. Weik's father
23 testify today that he had been commissioned by the CIA
24 as some elite Marine to perform whatever duties in
25 Vietnam.

DR. WATTS ON CROSS

1 Although all the family members believe that because
2 Mr. Weik said those things, that doesn't mean that they
3 are true.

4 When we say cultural belief, we think that because
5 everyone believes that in the family that perhaps it was
6 true and the family shares that belief, but unless evi-
7 dence is presented otherwise I don't think that testi-
8 mony was correct.

9 I haven't seen any records where Mr. Weik's father
10 was in Vietnam or that he was a full bird Colonel, so
11 when you say cultural belief, many people share that
12 belief.

13 Usually it will have some truth to it. For example,
14 people in Waco, although they may have had a fundamental
15 cultural belief there, many people share that belief.

16 I think in Mr. Weik's case, only the immediate fam-
17 ily shared that belief, and it wasn't true, and so that
18 -- it was a psychotic belief. I guess a shared cultural
19 psychotic belief.

20 But the point was it was not an actual truth.

21 The Hag is a little bit different. What makes the
22 Hag in my opinion psychotic -- because there is many
23 people in the family and maybe in the cultural Mr. Weik
24 shares that belief in the Hag -- what makes the Hag psychotic
25 for Mr. Weik is the fact that
 he sees her while he's awake and it has nothing to do

DR. WATTS ON CROSS

1 with him being asleep or waking from sleep.

2 If you talk with many people who share the cultural
3 belief about the Hag, it is usually in the course of sleep
4 or in the course of nighttime.

5 Mr. Weik has reported that he experienced those
6 things in the middle of the day, and so the nature of
7 the way he reports it is what
8 makes it different.

9 Going back to the CIA, the nature of the way
10 Mr. Weik interprets those things are very different.
11 He -- Dr. Morgan's testimony was very clear, and I
12 wasn't even aware of this at the time of my evaluation
13 of Mr. Weik, I don't think. I learned this from Dr.
14 Morgan's testimony.

15 Mr. Weik felt the CIA drove around with comput-
16 ers in their trunk and they monitored where he was.
17 I don't think anybody in his family -- I didn't ask,
18 but I haven't heard any testimony or evidence that
19 anybody in his family believes they have computers
20 in their trunks that monitor where you are.

21 So his beliefs were interpreted even further
22 than even his family members.

23 Q. But with respect to the CIA, you heard his
24 father in the Courtroom here express a belief that he
25 was in Vietnam and was a member of the CIA?

DR. WATTS ON CROSS

1 A. Yes.

2 Q. And it's clear that based upon the information
3 you have read, he shared those beliefs with his fam-
4 ily throughout the time of his marriage?

5 A. Yes.

6 Q. Essentially?

7 A. Yes.

8 Q. With all the children?

9 A. Yes.

10 Q. And why is that because it is something coming
11 from the father, who may be schizophrenic -- the fact
12 he is talking about it to the children, why does it
13 become their delusion?

14 A. . .

15 Q. When it was his delusion?

16 A. That's a great question, and where it crosses
17 the line is when Mr. Weik adds to the story. He
18 never heard his father talk about being monitored by
19 computers in terms of sedans that drive by the house.

20 Mr. Weik added to that story and added things
21 that there is no evidence had been presented. So he
22 is -- in a way he puts his own spin on the things he
23 is told.

24 Q. So you are saying the CIA never monitors people?

25 A. No, but I don't have -- unless you all know

DR. WATTS ON CROSS

1 better than me, I don't have any reason to think that
2 they were going in front of Mr. Eddy Weik's house
3 with a computer in their trunk, working with the ATF
4 to monitor his whereabouts.

5 Q. But you are aware the CIA is alleged in many
6 books, in many movies, to monitor people?

7 A. Certainly.

8 Q. And you are aware from some of the information
9 that there was dynamite at the Weik household?

10 A. I just found that out this morning actually as
11 I was screening one of the documents in the Courtroom.
12 Yes.

13 Q. And who monitors such types of weapons? It's
14 the ATF, isn't it?

15 A. Yes, that is certainly my understanding. I do
16 not know a lot about them but that would be the agency,
17 yes.

18 Q. So that he may think the ATF possibly was inter-
19 ested in searching their household because of the
20 number of firearms they had and other types of vio-
21 lent weapons available there?

22 A. . .

23 Q. That that would be something the family would
24 naturally be concerned about?

25 A. Certainly, but I don't think the ATF would be

DR. WATTS ON CROSS

1 working with the CIA with computers.

2 Somehow, Mr. Weik lumped all of those things into
3 one agency that was monitoring him.

4 Certainly, sure, if you had weapons, I would
5 hope you would come under the suspicion of the ATF, if
6 you had that kind of arsenal or dynamite, or you
7 might bury it in your back yard.

8 Q. How did that information come to you from Mr.
9 Weik? What questions did you ask him?

10 A. Actually, I didn't. The information -- how
11 it got presented was Dr. Morgan when we were back in
12 the Chambers here before Mr. Weik's Blair hearing--
13 Dr. Behrman was conducting an evaluation, going
14 through the standard routine we always do when we
15 ask about the Court and that sort of things, and Dr.
16 Morgan interjected.

17 He said, Mr. Weik, tell them about your beliefs
18 with the jury, and that is when Mr. Weik got into the
19 ideas about the CIA. I had no knowledge about that
20 at all, and, in fact, with Dr. Morgan's testimony, that
21 was the first I had ever heard about the computer and
22 the ATF.

23 I had not gotten that informatn from Mr. Weik
24 at all.

25 Q. So up until that day, he had never shared those
beliefs with you?

DR. WATTS ON CROSS

1 A. No, sir.

2 Q. And he never shared any beliefs about the CIA?

3 A. Not with me. Again, I may not have asked. That
4 is why you need some of the social history. If I had
5 known some of his father's beliefs, I would have known
6 where to go in that interview.

7 Now, he certainly gave me psychotic symptoms when
8 I spoke with him, but they had nothing to do with
9 the CIA.

10 They were more related to his body and bodily
11 functions.

12 Q. Did you share your opinion with Mr. Buford about
13 the fact that he was criminally responsible?

14 A. I'm sure I would have done that. I think we
15 were clear about that.

16 Q. And did you have discussions with Dr. Donald
17 Morgan about your opinion as far as criminal respon-
18 sibility?

19 A. The opinion -- what I would have had a discus-
20 sion with Dr. Morgan about was I called him -- the
21 reason I know this is I read his testimony and it cer-
22 tainly refreshed my memory.

23 I called him and told him I had a very compli-
24 cated case. I told him that the gentleman dissociated
25 during the crime and I needed him to go in specifically

DR. WATTS ON CROSS

1 and look at that, and I remember having that conver-
2 sation, and I remember at some level -- I don't remem-
3 ber if Dr. Morgan told me or Mr. Buford, but I knew
4 at some level that Dr. Morgan did not consider that
5 rising to the level of an insanity defense.

6 So I was able to inform Mr. Buford, and he did
7 know. He certainly knew that I thought he was crim-
8 inally responsible.

9 The main thing Mr. Buford and I worked on, it was
10 really my opinion he was not competent, so we focused
11 a lot of our time and energy on the Blair hearing -- a
12 lot of time and energy on that hearing.

13 Q. Now, you testified that your preference is to
14 have at least one year to . . .

15 A. In Utopia, yes.

16 Q. . . before you give testimony?

17 A. Yes.

18 Q. Utopia rarely happens though. Is that correct?

19 A. Not as often as you'd like. It is getting better
20 because I'm actually so busy sometimes that I have
21 to plan a year ahead of time. It has just happened
22 because of my schedule.

23 But you are correct. There are many cases that --
24 and there have been some even recently where I did
25 not have -- maybe less than three months notice.

DR. WATTS ON CROSS

1 And we have been able to get the job done.

2 Q. And you were able to give an opinion to a reason-
3 able degree of medical certainty that really has not
4 changed to today. Isn't that correct?

5 A. Correct.

6 Q. No further questions.

7 THE COURT: Redirect?

8 MS. KIMBROUGH: Thank you, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. KIMBROUGH:

11 Q. Dr. Watts, Mr. Zelenka just asked you about
12 the time frame in which you would prefer to have con-
13 tact with an individual prior to trial?

14 A. Yes.

15 Q. Are you currently working with Mr. Bailey on a
16 death penalty case?

17 A. Yes.

18 Q. And how long have you been working with Mr.
19 Bailey on this case?

20 A. At least six months.

21 Q. And to your knowledge, what is the trial date in
22 that case?

23 A. I don't even know if it has been scheduled yet.

24 Q. Do you anticipate having to appear in that case?

25 A. Yes.

DR. WATTS ON CROSS

1 Q. I believe Mr. Zelenka also asked you about the
2 Naval Hospital records on Mr. Weik, and the discharge
3 summary.

4 I would like to refer you back to those records
5 if I may.

6 Referring to Plaintiff's Exhibit 9, page four,
7 do you mind reviewing this diagnosis that the Naval
8 Hospital gave to Russell Weik?

9 A. . .

10 Q. Would you read it, please?

11 A. Certainly.

12 Q. Okay.

13 A. It says on the top of the page March 11, '66,
14 diagnosis chronic simple schizophrenia.

15 Q. Thank you. Does that appear to be a final diag-
16 nosis?

17 A. I'll have to look just for a minute. As part of
18 our training, we've been at the VA Hospital, so I am
19 somewhat familiar with how they organize the charts.

20 That looked like the discharge summary, but I
21 want to be sure.

22 (Brief pause in the proceeding)

23 A. Yes, that would be consistent.. It looks like
24 that is the standard one they use, and it was called
25 the chronic ological record of medical care.

DR. WATTS ON CROSS

1 Q. Thank you. So in other words, his final dis-
2 charge diagnosis was schizophrenia?

3 A. Chronic simple schizophrenia. Correct.

4 Q. A couple more questions. I believe Mr. Zelenka
5 asked you about general lowcountry beliefs in the
6 Hag.

7 You are not saying everyone who believes in the
8 Hag is schizophrenic?

9 A. Correct.

10 Q. A diagnosis of schizophrenia is not based on
11 belief in the Hag?

12 A. No.

13 Q. I believe Mr. Zelenka also asked you about re-
14 ceiving information about Russell Weik's influence on
15 the family.

16 A. Yes.

17 Q. And the information you have is that he was
18 tough and he ruled with an iron fist?

19 A. Yes.

20 Q. And that he had a military background which in-
21 fluenced his parenting?

22 A. Yes.

23 Q. Did you have any specific information that Russell
24 Weik assisted in the homicide?

25 A. No.

DR. WATTS ON REDIRECT

1 Q. Just a moment. Thank you.

2 THE COURT: Recross limited to Redirect?

3 MR. ZELENKA: Nothing, Your Honor.

4 THE COURT: As to this witness, counsel?

5 MS. KIMBROUGH: We'd ask that she be excused,

6 Your Honor.

7 THE COURT: Any objection?

8 MR. ZELENKA: No, sir.

9 THE COURT: You may step down, and you are ex-
10 cused.

11 WITNESS: Thank you.

12 (Witness excused)

13 THE COURT: Next witness, please.

14 MR. O'CONNELL: Seymour Halleck.

15 SEYMOUR HALLECK, being duly
16 sworn, testified as follows:

17 THE COURT: Take a seat on the witness stand,
18 and he is going to adjust the microphone for you
19 to speak into.

20 Would you begin by stating your full name, and
21 spelling your last name for the Court Reporter.

22 WITNESS: Seymour Leon Halleck, H A L L E C K.

23 THE COURT: Your witness, counsel.

24 DIRECT EXAMINATION

25 BY MR. O'CONNELL:

DR. HALLECK ON DIRECT

1 Q. Dr. Halleck, you are a psychiatrist?

2 A. Correct.

3 Q. How long have you been a psychiatrist?

4 A. Since 1953, so that would make it fifty-three
5 years.

6 Q. Fifty-three years.

7 A. Right.

8 Q. Would you give the Judge your educational back-
9 ground?

10 A. Okay, I started at the University of Chicago in
11 1945 and received my Bachelor of Philosophy Degree
12 there in 1948.

13 After that, I started medical school and while in
14 medical school I received a Bachelor of Science in
15 anatomy.

16 I graduated from the University of Chicago
17 Medical School in 1952.

18 Following that, I interned in the United States
19 Public Health Service in San Francisco, and I stayed
20 in the United States Public Health Service for two
21 more years, and after San Francisco I was transferred
22 to be a psychiatrist without training at the United
23 States Medical Center for federal prisoners in Spring-
24 field, Missouri, where I worked for two years with very
25 acute psychotic patients.

DR. HALLECK ON DIRECT

1 Upon leaving Springfield and getting out of the
2 service, I went to the Menninger
3 School of Psychiatry which at that time was located
4 in Topeka, Kansas.

5 Q. Mettinger?

6 A. Menninger.

7 Q. Okay. It was at that time located in Topeka,
8 Kansas, and I had a three year residency in psychia-
9 try.

10 Following that I took a position as an Assist-
11 ant Professor at the University of Wisconsin where I
12 worked for fourteen years and did a number of tasks
13 and ended up as Acting Chairman.

14 I left Wisconsin in 1972 to come to North Carolina
15 where I stayed at the University until 1996.

16 Q. The University of North Carolina?

17 A. The University of North Carolina at Chapel
18 Hill -- at Chapel Hill.

19 I stayed there until 1996 and had many jobs in
20 the Department, including Acting Chair, and
21 while teaching at both the University of Wisconsin and
22 the University of North Carolina, I also taught in
23 law school.

24 Q. Where?

25 A. At both Universities -- at Wisconsin and North

DR. HALLECK ON DIRECT

1 Carolina.

2 At North Carolina, even though I was not an
3 attorney, they let me teach by myself.

4 Q. What did you teach?

5 A. Psychiatric law. I taught medical law some
6 of the time, and I taught legal interviewing.

7 Q. You have spent by your description a substantial
8 or significant part of your career in academic medi-
9 cine. Is that correct?

10 A. Most of my career has been in academic medicine.
11 Really almost none of it -- I took two years off in
12 Wisconsin to head up the medical service for the
13 Division of Corrections, but aside from that and
14 aside from my retirement, everything I have done has
15 been academic.

16 Q. All right, sir. What is your specialty?

17 A. I guess these days forensic psychiatry is my
18 speciality. It probably has been, and particularly
19 since I have been retired.

20 Q. And when did you retired?

21 A. I retired in 1996.

22 Q. When you say retired, you mean from teaching?

23 A. From the University, yes.

24 (Brief pause in the proceeding)

25 MR. O'CONNELL: I'm sorry.

DR. HALLECK ON DIRECT

1 THE COURT: Proceed.

2 BY MR. O'CONNELL:

3 Q. Doctor, are you listed in a publication called
4 Best Doctors in America?

5 A. I was throughout most of the nineteen nineties.

6 Q. In what specific field?

7 A. Forensic psychiatry.

8 Q. When did you develop a -- you have been an ex-
9 pert in many cases in the field of psychiatry?

10 A. Yes.

11 Q. When did you develop that part of your career?

12 A. It's strange. When I was with the Public Health
13 Service as a federal prison doctor, I had to testify
14 a couple of times in my capacity in that job.

15 Then when I was at Wisconsin I worked with sex
16 offenders and ran a sex offender program for the
17 State.

18 Then I had to testify in Court a little bit with
19 that, but later on I didn't begin to testify until
20 really the late nineteen nineties and very sparcely.

21 I remained interested, however, in criminology
22 and I saw myself more as a psychiatric criminologist
23 and worked in prison systems.

24 Q. What is a psychiatric criminologist?

25 A. It is someone who works in prisons and tries to

DR. HALLECK ON DIRECT

1 treat criminals actually. Tries to diagnose and
2 treat them.

3 Q. And you said -- you were talking about the evol-
4 ution of your movement toward becoming an expert in
5 court cases, and you said you started in Springfield
6 at the University of Wisconsin.

7 When did you -- in the nineteen nineties was
8 there a case that you worked on that really got you
9 in demand for your services?

10 A. Yes, it was here in South Carolina. Susan Smith.

11 Q. Did you testify -- who did you testify for?

12 A. For the defense.

13 Q. What other cases have you been qualified -- you
14 have been qualified as an expert in the field of
15 forensic psychiatry?

16 A. Yes.

17 Q. What other cases in South Carolina have you qual-
18 ified as a forensic psychiatrist in?

19 A. Danny Wilson, Mr. Northcutt.

20 Q. These were death penalty cases?

21 A. Death penalty cases. One later, a rights case,
22 Mr. South.

23 Q. Robert South?

24 A. Robert South. A number of cases I did with John
25 Bloom.

DR. HALLECK ON DIRECT

1 Q. Have you testified and been qualified as an ex-
2 pert in civil cases?

3 A. Yes, I have.

4 Q. In South Carolina?

5 A. A few months ago, yes.

6 Q. Which case?

7 A. A woman versus Trident Hospital, a malpractice
8 case.

9 Q. And in whose behalf did you testify?

10 A. The Defendant.

11 Q. Do you recall the law firm?

12 A. The Hood Law Firm.

13 Q. Okay. What other notable cases have you been
14 qualified in as an expert in the field of forensic psy-
15 chiatry?

16 A. Well, one of the most notable cases, Jeff
17 MacDonald.

18 Q. The Green Beret Doctor?

19 A. Yes.

20 Q. Who was convicted of killing his wife and his
21 children?

22 A. Correct. I did get to Court but they wouldn't
23 let me testify.

24 I spent many, many hours examining Timothy McVeigh
25 but they decided not to use psychiatric testimony.

DR. HALLECK ON DIRECT

1 And I was on the team that was dealing with Theodore
2 Kazinski, the Unabomber. I never got to testify be-
3 cause he plea-bargained.

4 Q. All right.

5 MR. O'CONNELL: Your Honor, we would offer Dr.
6 Halleck as an expert in the field of forensic psy-
7 chiatry.

8 MR. ZELENKA: No objection.

9 THE COURT: So ordered, without objection.

10 You may proceed.

11 BY MR. O'CONNELL:

12 Q. Dr. Halleck, you have been retained in this case
13 in behalf of Mr. Weik by me?

14 A. That's correct.

15 Q. When did you first see Mr. Weik?

16 A. I saw him this month on the 7th of the month.

17 Q. Prior to seeing Mr. Weik, did you have an oppor-
18 tunity to review certain records?

19 A. At the time I saw him, I had reviewed most of
20 the testimony of the psychiatric experts at the --
21 both at the competency hearing and at the trial, and
22 then I had a summary from Ms. O'Shea which was miti-
23 gation material.

24 That's all I had at the beginning.

25 Q. Did you review anything after the time you saw

DR. HALLECK ON DIRECT

1 him?

2 A. Subsequently I saw many of the actual records
3 of the trial. I saw much of the discovery and much
4 of the police work.

5 I saw the autopsy report, and let me think of what
6 else.

7 I reviewed the records from the Hall Institute
8 also.

9 Q. All right. Did you also have an opportunity
10 to review the records from the Department of the Navy
11 regarding Mr. Weik's father?

12 A. I did not receive those records. I received
13 right before I came here on Saturday a new report
14 from Ms. O'Shea in which she quotes some of those re-
15 cords.

16 So I was familiar with those records but had not
17 actually seen them until this moment.

18 Q. Okay. Dr. Halleck, when did you next see Mr.
19 Weik?

20 A. I saw him yesterday here.

21 Q. When you first saw him, it was at the Lieber
22 Correctional Center?

23 A. It was at Lieber.

24 Q. You had been there before and interviewed other
25 death penalty inmates?

DR. HALLECK ON DIRECT

1 A. Yes.

2 Q. What were your findings so far as Mr. Weik is
3 concerned?

4 What was your diagnosis and then I'll go back and
5 ask . .

6 A. My diagnosis is very complicated, but my main
7 diagnosis was schizophrenia paranoid type.

8 I also in axis two diagnosed him as having a
9 schizotypal personality disorder.

10 I also thought he had a major depressive disorder,
11 axis one.

12 Q. Major depressive disorder on axis one. Axis
13 one is . .

14 A. The main diagnosis in axis to his personality
15 and diagnosis of developmental disorders.

16 Q. The fact that there were two axis one diagnoses,
17 -- schizotypal was not a disorder -- schizophrenia --
18 are those diagnoses mutually exclusive, or do they
19 exist at the same time?

20 A. Your question is not clear. You said there were
21 two axis one diagnoses. Schizotypal is axis two.

22 Q. Excuse me. Axis one and axis two. Axis one
23 being schizophrenia and axis two being the schizotypal
24 personality disorder.

25 Are those diagnoses mutually exclusive?

DR. HALLECK ON DIRECT

1 A. No, they are not mutually exclusive. They can
2 exist together and you can very often -- a schizotypal
3 personality disorder is viewed as the beginning of
4 schizophrenia. The incipient symptoms.

5 Q. Tell me why you made those diagnoses. What was
6 the basis of the diagnoses insofar as your conversa-
7 tions and evaluation of Mr. Weik, and feel free to re-
8 fer to any other records.

9 A. Okay. Well, let's do the schizophrenia one first.
10 The most striking thing is he has delusions and hallu-
11 cinations.

12 The hallucination of the Hag is only one of the
13 kinds of hallucinations I think he has, which are
14 visual.

15 He also has what I think are olfactory hallucina-
16 tions, and they may also be called delusions.

17 He believes that he can smell very well -- can
18 smell a woman's perfume from great distances; that
19 he can smell fish in the water; he can smell when it
20 is going to rain.

21 That he could smell medicine that they had put in
22 his food at the Hall Institute.

23 I asked him if anything could convince him --
24 could anything at all happen -- if we had that tested
25 and it came back and said there was no medicine in

DR. HALLECK ON DIRECT

1 there, would you then come back and believe there
2 wasn't medicine in it, and he said no. He would
3 still continue to believe that.

4 These olfactory things are either hallucinations
5 or delusions.

6 Q. Was that part of the diagnosis?

7 A. Part of the diagnosis of schizophrenia, but then
8 he also -- the main portion of his diagnosis are the
9 voices, and the history of that varies.

10 He has told more and more -- the longer he's been
11 interviewed and the more he's seen people -- and
12 yesterday for the first time he told me that he's
13 been hearing voices since he was about fifteen years
14 old.

15 And the first time it happened was when he in-
16 jured his arm in a shotgun accident, and he remembers
17 that right after that happened there was a voice he
18 heard saying, look, look.

19 Then he continued to hear voices after that, and
20 he began drinking. I didn't have this history be-
21 fore but he actually began drinking at about that
22 time.

23 He drank until he was about twenty-six years
24 old and that's when he joined A.A. and had two years
25 with them and had a sponsor and got better and stopped

DR. HALLECK ON DIRECT

1 drinking.

2 But the voices continued after he stopped drink-
3 ing. He would drink to try to keep the voices out,
4 but they continued after that.

5 Then about the time of the Hag incident, the
6 voices became much more clear and they were easier
7 to make out.

8 Originally they were mumbled. Originally they
9 were somewhat indistinct, and they would come and go,
10 and sometimes he said they would come on in waves and
11 then disappear.

12 Sometimes he said it was like a record that was
13 speeded up.

14 But after the Hag incident which was around Sep-
15 tember of 1997, he began to hear voices clearly, and
16 these were voices that would comment about what he was
17 doing, negatively, almost always.

18 They would call him names, be very critical of
19 him, and he actually had voices which at times argued
20 with each other because they talked about him, and
21 sometimes he would try to argue with them.

22 So the reason I mention that is that the DSM four
23 states that to make a diagnosis of schizophrenia,
24 all you need is one symptom. You don't need two out
25 of three or three out of four and that sort of thing;

DR. HALLECK ON DIRECT

1 that if the delusions are bizarre, or if the voices
2 talked to each other, comment on your thinking or
3 your behavior, that is sufficient to make a diagnosis
4 of schizophrenia.

5 Now, in addition to hallucinations, he also
6 has delusions, and I think a lot of the delusions are
7 in terms of the special powers.

8 He feels he has unusual eyesight and can see
9 for long distances. He feels . .

10 Q. Do you remember him explaining the extraordinary
11 sight he claims to have or did he give you an example
12 of it?

13 A. One example was as a young child -- he was a
14 teenager when he was wounded, and he saw a red dot
15 at a distance nobody else could see which was act-
16 ually a truck and he ran to the truck and the truck
17 brought him to the hospital, saved him.

18 With regard to his sight, another thing special
19 about it is that he claims he can see things in three
20 dimensions. When he reads blue prints he can see
21 them in three dimensions.

22 That is really impossible unless you have some
23 gadget available to do that.

24 In general he believes that things affect his body
25 differently than they affect other people.

DR. HALLECK ON DIRECT

1 He is convinced that sugar gets to some part of
2 his brain and makes it almost impossible for him to
3 think or remember things, and I think that is prob-
4 ably delusional, although he is convinced it's true.

5 Q. Anything else?

6 A. Well, I believe that the fear of the CIA and the
7 Masons really rose to the level of a delusion. I un-
8 derstand he learned it from his father, but there is
9 such a thing as shared psychotic disorder, and I be-
10 lieve that Eddy believes his father much more strongly,
11 much more intensely, than the other siblings or the
12 mother.

13 Chris in his last little note that I got about
14 him, that indicated he is not always sure about his
15 father, whether he was telling the truth or not.

16 I showed the records to Eddy -- we now have his
17 records, and I showed him and he saw in there that he
18 was never in Vietnam and that none of these things ever
19 happened -- would he believe that, and his comment
20 was the CIA has ways of hiding these things and these
21 are secrets. They have ways of distorting things. No
22 way would I ever stop believing that.

23 Q. Were you present during his father's testimony
24 this morning?

25 A. Yes.

DR. HALLECK ON DIRECT

1 Q. Did you hear his testimony about how he has
2 flashbacks of his experiences in Vietnam?

3 A. Yes.

4 Q. The evidence is, so far, that he was never there;
5 that he was never part of the CIA and wasn't in the
6 Marine Corps, but spent his time here in the States
7 and in Scotland.

8 Assuming those things he claims are untrue, if
9 he has flashbacks about something that never happened,
10 what would you call that?

11 A. I don't know what you'd call it. The -- either
12 he is just making these things up for attention, or
13 he is delusional.

14 Q. And did you notice that in his testimony he
15 would go on and on and answer some other question and
16 get further and further from what the question was to
17 begin with?

18 A. Yes. He did that some, but he doesn't do it as
19 much as Eddy does.

20 You were talking about the diagnosis. The main
21 reason I thought Eddy was schizophrenia was the way he
22 presented his thoughts.

23 Q. Explain that.

24 A. He is very disorganized in his presentation
25 of his thoughts. Some people refer to him as going off
310

DR. HALLECK ON DIRECT

1 on tangents or being over-inclusive because he has
2 to tell everything in great detail, and he often for-
3 gets where he started out.

4 But there are times when he really forgets what
5 he wants to say, what they call derail.

6 Other times he is incoherent. You can't make out
7 -- make any sense of what he says.

8 That, I think, is the main diagnostic symptom
9 which leads me to believe he is schizophrenic, cer-
10 tainly now.

11 Q. Any other observations you wish to make?

12 A. Well, there was testimony at both the trial and
13 the competency hearing by some of the witnesses for
14 the prosecution that he couldn't be schizophrenic
15 because he functioned so well at work, and there are
16 many, many schizophrenics who do well at work, and
17 particularly paranoid schizophrenics, so that was not
18 unusual.

19 Q. Have there been some experiments -- I'm sorry
20 -- some studies about treating schizophrenics and
21 enabling them to function?

22 A. In the last few years, there have been a number
23 of studies on schizophrenic patients who function quite
24 well.

25 Some of these studies come out of Europe, and I

DR. HALLECK ON DIRECT

1 don't know the percentages of that, but a surprisingly
2 large number of people with schizophrenia do quite
3 well.

4 When I was a resident in Topeka, I had a team of
5 brilliant people who devised the means of treating
6 chronic VA patients who were schizophrenic, and it
7 was strictly supportive psychotherapy.

8 We had no real drugs to use at that time, but
9 we tried to teach these people how to function better
10 on a day to day basis and deal with their voices and
11 deal with these delusions.

12 Many of them held quite successful jobs in the
13 community, like real estate agents, insurance agents,
14 or workers at the Menninger Foundation themselves.

15 Q. Any other observations you made that you wish to
16 discuss?

17 A. That is it for schizophrenia. He did not have
18 the negative symptoms you usually see, although his
19 affect was inappropriate.

20 Q. What about schizotypal personality disorder?

21 A. He met all the criteria for that, and I'm not
22 sure I can recite all nine without looking, but I can
23 start.

24 He had ideas of reference, he had paranoia.

25 Q. What is an idea of reference?

DR. HALLECK ON DIRECT

1 A. These are references where you think people are
2 talking about you. He had odd feelings. He had odd
3 behavior. He had odd beliefs.

4 He was superstitious. He had distorted percep-
5 tions at times which we called delusions, not quite
6 hallucinations.

7 He had many of the things you see in -- he had
8 disorganized speech at times. He had many of these
9 things you see in schizophrenia but as to define schizo-
10 typal personality it is somewhat less.

11 I was joking with you about this yesterday and I
12 called it schizophrenia Lite.

13 In the old days, schizotypal disorder was really
14 considered a form of schizophrenia. It wasn't until
15 DSM Four where after much debate and for no good reason
16 they decided to make that diagnosis and put it in the
17 personality disorder category.

18 DSM Four T R has some interesting things to say
19 about patients with schizotypal personality disor-
20 der.

21 Q. What did you -- DSM Four . .

22 A. DSM Four T R.

23 Q. All right, sir.

24 A. It points out that these people are quite prone
25 to having psychotic episodes which can last from minutes

DR. HALLECK ON DIRECT

1 to many hours, and it also points out that fifty per
2 cent of people with schizotypal personality disorder,
3 when they present for treatment, have a major depres-
4 sive disorder.

5 So whether you call it schizophrenic or schizotypal,
6 in either instance he was probably psychotic or at
7 least somewhere preceding the time during when all of
8 this happened.

9 Q. What is a psychosis?

10 A. A psychosis is a gross break with reality, where
11 the patient is really unable to think rationally or
12 assess reality accurately.

13 Q. Now, you said something previously about a major
14 depressive disorder. Would you tell us about that?

15 A. There again, there are nine symptoms and he
16 had about five or six of them.

17 He had the sad mood most of the time during the
18 episodes of depression he had. He had lack of inter-
19 est in doing things, lack of pleasure.

20 He had a sleep disorder which he has always had.
21 He had difficulty concentrating. He had marked shifts
22 in his weight, sometimes too much, sometimes too
23 little.

24 He had a great deal of agitation. He had a
25 great deal of guilt. He had low self-esteem, and he
314

DR. HALLECK ON DIRECT

1 had thoughts of killing himself.

2 Q. And did . . .

3 A. Let me say this. He didn't have those all the
4 time. He had it in various episodes, but he had low
5 grade depression even when he didn't have this, and
6 the low grade depression would have been called a
7 dysthymia -- I keep making more diagnoses.

8 Q. All right.

9 A. But dysthymia would be major depression. It's
10 just a modified form but a more chronic form of de-
11 pression.

12 Q. Did you diagnose any other psychiatric problems?

13 A. No.

14 Q. Now, I want you to address yourself to Mr. Weik's
15 desire for the death penalty, and is that related to
16 his mental illness?

17 A. I think it is. In my experience with maybe
18 thirty or forty death penalty cases -- it may be more
19 than that but it's not less -- most everybody I see
20 at the beginning says if it's life without parole
21 or the death penalty I would rather have the death
22 penalty.

23 Most people ponder that and think about it and
24 don't immediately come to that. I've also seen peo-
25 ple like Mr. South and another person in North

DR. HALLECK ON DIRECT

1 Carolina who . .

2 Q. Is that Robert South?

3 A. Right -- who decided to waive their further ap-
4 peals, and I felt they had a perfect right to do
5 that and it was a rational decision.

6 The problem with Eddy was that he from the be-
7 ginning said I need to get the death penalty. He
8 was overwhelmed with guilt, and I think his need for
9 it or insisting on it -- incidentally now he's not
10 quite saying that. He's just saying I don't want to
11 do life without parole.

12 But I think the illness here which was behind it
13 was his major depression and the overwhelming guilt.
14 Of course, the schizophrenia with his inability to
15 reason well and his real inability to make good risk-
16 benefitted evaluations.

17 Q. What role, if any, do you believe his cultural
18 background influenced or was a part of his illness?

19 A. I think it's main response has been in allowing
20 himself to be convinced that he doesn't have an ill-
21 ness.

22 He is able to explain everything that is happen-
23 ing to him in spiritual or religious terms, and he is
24 very, very determined, as was his mother, to never
25 see him as mentally ill.

DR. HALLECK ON DIRECT

1 Eddy learned -- he told me today he learned at a
2 young age that if he talked about the voices, people
3 would think he was crazy, and he doesn't want people
4 to think that of him.

5 But given the fact that a lot of people in his
6 community believe in the ability to predict the
7 future, believe in omens, believe in the Hag, and he
8 does not consider his experiences as being any sign
9 of a mental illness.

10 Most people when they hear voices think there is
11 something wrong with them, or at least most of them.
12 Most other people think there's something wrong with
13 them, but I think he explained this as being done by
14 the devil. I asked him that, and he said, of course.
15 He had no doubts about that.

16 Q. Why is that significant?

17 A. Well, in a way to rationalize and believe that
18 he's not ill. I think that's the main significance of
19 that.

20 Q. How do you know he's not faking?

21 A. Well, he is very consistent when he finally gets
22 around to talking about things. He describes symptoms
23 that someone with his education couldn't possibly have
24 known real well.

25 He doesn't try to exaggerate. He doesn't try to

DR. HALLECKON DIRECT

1 convince you that he's sick. He denies that he's
2 sick.

3 Then, Dr. McKee's tests indicated he was not ma-
4 lingering.

5 Q. Have you found malingering in other people that
6 you have examined in the past?

7 A. Yes.

8 Q. How do you do that?

9 A. Well, generally they exaggerate so much that it
10 can't really be -- they tell stories about their symp-
11 toms that can't be accurate.

12 They talk about symptoms that don't make sense,
13 or they solve problems that look very difficult and
14 then they fail to solve problems that are very easy.
15 Usually they are very angry, very uncooperative, and
16 they are inconsistent.

17 Q. What -- you have had an opportunity to review
18 the environment which he grew up in, his physical
19 abuse, emotional abuse, and his father having what-
20 ever they were -- stories about being in combat and
21 so on, having killed people, and having many firearms
22 and such things.

23 How would all of that have contributed to his
24 illness?

25 A. Well, they certainly made him more suspicious
318

DR. HALLECK ON DIRECT

1 and most distrustful as well. The abuse and neglect
2 can have a specific effect of inducing depression later
3 in life.

4 There has been research in the last few years,
5 a lot of it coming out of Emory University from one
6 of my old students, Dr. Emeroff, indicating that if
7 one is severely abused or neglected during early child-
8 hood, the first few years, that they are likely to
9 have a very high incident of major depression in
10 later life.

11 I don't know of any studies that relate that to
12 schizophrenia.

13 Q. If you had been retained on this case back in
14 1999, in a timely fashion, what could you have offered
15 in the case?

16 A. Given the material available to the people who
17 were retained -- if I had had to deal with the same
18 material, I think I would have testified much as Ms.
19 Watts did.

20 But I could not have offered them all of the
21 mitigation stuff that was there, and I could not have
22 told them about the severity -- probably the severity
23 of his illness because he has become more and more
24 open about the severity of his illness, the longer he
25 has been locked up.

DR. HALLECK ON DIRECT

1 Q. There has been some testimony, for example, Drs.
2 Shea and McKee testified that there had been no de-
3 terioration in function of Mr. Weik prior to the in-
4 cident, prior to the murder, and that that was a sign
5 that he was not schizophrenic. Is that correct?

6 A. No, I think there had been some deterioration.
7 I think he was beginning to have trouble at work and
8 he had never had trouble before, and he actually
9 lost his job, and he was beginning to lose his temper
10 more easily.

11 So he was deteriorating. There was some diminution
12 in his functioning, although he did really well at
13 his next job for a while.

14 But you can have schizophrenia and still work
15 well.

16 Q. Would you have been of any assistance had you
17 known what you now know existed in 1999 and what has
18 been gathered in preparation for this case?

19 Could you have offered attorneys some advice
20 about how to impeach the State's mental health witnes-
21 ses?

22 A. I think I could have pointed out how strong
23 the case for schizophrenia really was, and how to
24 diagnose a schizotypal personality. It really didn't
25 make that much difference; that it really was a

DR. HALLECK ON DIRECT

1 serious diagnosis.

2 I think I could have pointed out some of the
3 errors that were made on the part of the prosecution
4 by the psychiatrists.

5 I think we could probably have assisted on all
6 this if somewhere along the line there had been an
7 extensive long videotape of psychiatric interviews
8 with Mr. Weik.

9 I had hoped to do some yesterday but it is really
10 not possible and there probably wouldn't be time in this
11 this kind of hearing to show it anyway.

12 But at the actual trial, I would have wanted a
13 psychiatrist like Dr. Watts to do a two hour inter-
14 view with him and show it to the Court and show it to
15 the jury. I think that would have made an enormous
16 difference.

17 Q. When you testify in other cases, as a psychia-
18 trist in behalf of a criminal defendant, and you
19 diagnose, say, schizophrenia, are you typically asked
20 the basis of your opinion?

21 A. Yes.

22 Q. The basis of your opinion is broader -- can be
23 broader than just your observations. Is that fair to
24 say?

25 A. Well, I think experience plays a large role

DR. HALLECK ON DIRECT

1 in it and what you know about the natural history of
2 these illnesses plays a large role in it.

3 Q. What about the history of the person on trial?

4 A. Absolutely you need a very extensive history of
5 that person.

6 Q. Is it fair to say that when you have been ques-
7 tioned at other trials that the lawyers have asked
8 you what you have learned about the person, the fam-
9 ily, and so forth?

10 A. Sure. They have to, really.

11 Q. And that then is something you explain to the
12 jury and how it supports whatever diagnosis you find?

13 A. Yes, absolutely.

14 MR. O'CONNELL: Excuse me one second.

15 THE COURT: Counsel approach.

16 (Conference at the bench between counsel and the
17 Court off the record)

18 BY MR. O'CONNELL:

19 Q. Did you read Mr. Weik's testimony from the trial,
20 the 1999 trial?

21 A. Yes, I did.

22 Q. Is there anything in that testimony that sup-
23 ports your diagnosis?

24 A. I remember it fairly well. He did fairly well
25 much of the time, but near the end he just got argumentative.

DR. HALLECK ON DIRECT

1 I think he wasn't understanding what was going on. He
2 seemed kind of confused, and he ended up looking like he
3 was not willing to answer questions, like he was arguing
4 with the prosecutor.

5 So there were things in that testimony that indicated
6 that his thinking was not very good.

7 Q. Thank you. That's all I have.

8 THE COURT: Dr. Halleck, I'm going to stop at this
9 point for my lunch break.

10 During the course of the lunch, I want you to have
11 time to get lunch. We'll take about a forty-five minute
12 break.

13 I'm going to ask you, if you would, please do not
14 discuss your testimony with any of the lawyers. We are
15 in the middle of your testimony.

16 We will resume at approximately two o'clock with
17 cross examination in this matter.

18 (Witness excused from stand)

19 THE COURT: This Court stands adjourned until two
20 o'clock this afternoon.

21 (Whereupon, the Court stood in recess for the lunch
22 break and thereafter resumed)

23 THE COURT: Doctor, I'd ask you to come back to the
24 witness stand for me, please.

25 (Dr. Halleck returning to witness stand)

DR. HALLECK ON DIRECT

1 THE COURT: Is the Applicant ready to proceed?

2 MR. O'CONNELL: We are, Your Honor.

3 THE COURT: Respondent ready to proceed?

4 MR. ZELENKA: Respondent's ready.

5 THE COURT: Before we begin cross examination, I
6 was advised by counsel for the Applicant-Respondent
7 during the lunch break that Exhibit 9 which had been pre-
8 viously been introduced into evidence without objection,
9 has somehow left the Courtroom.

10 Counsel is in the process of trying to determine if
11 a witness or some other entity may have had some involve-
12 ment with this and possibly agrees to substitute a copy.
13 I will await -- my recollection of the record is that
14 Exhibit 9 were the Naval Hospital records that Mr.
15 O'Connell introduced.

16 I asked him how many pages and he told me 26, in-
17 cluding front and back.

18 The copy that was brought to me in Chambers did not
19 contain that number of pages. Counsel is continuing ef-
20 forts to substitute a full and correct copy.

21 Is that correct?

22 MR. O'CONNELL: Yes, Your Honor.

23 THE COURT: Very well, and you agree to substitute a
24 copy, is that right?

25 MR. ZELENKA: Yes, sir.

DR. HALLECK ON DIRECT

1 THE COURT: Very well. We will now continue with
2 the testimony in the trial of this case.

3 Cross examination of this witness. Dr. Halleck, of
4 course, you are still under oath.

5 CROSS EXAMINATION

6 BY MR. ZELENKA:

7 Q. Dr. Halleck, I just have a few questions for you.
8 When did you reach your diagnosis of Mr. Weik in this
9 case?

10 A. It was really after I saw him on the 7th of this
11 month.

12 Q. And that diagnosis on the 7th was consistent with
13 your diagnosis today, paranoid schizophrenia?

14 A. Correct.

15 Q. Schizotypal personality disorder?

16 A. Correct.

17 Q. And major depressive . . .

18 A. Disorder -- correct.

19 Q. Okay. So what occurred in your meeting yesterday
20 was supportive of your opinion, or was not necessary for
21 your opinion?

22 A. Well, it supported it rather strongly. He was much
23 more forthright about his symptomatology yesterday than
24 I had ever seen him.

25 Q. And you did not do a written report in this matter.

DR. HALLECK ON DIRECT

1 Correct?

2 A. No, I did not.

3 Q. Did you do any writings in arriving at your diag-
4 nosis of Mr. Weik?

5 A. I made my own notes, and I certainly advised counsel
6 as to what I thought I should testify about.

7 Q. Was that advice oral?

8 A. Yes.

9 Q. Never in writing?

10 A. No.

11 Q. Okay. So the prosecution in seeking your opinion
12 would have to ask you directly because there is no writ-
13 ing to support it. Correct?

14 A. Well, there is a transcript of this, certainly.

15 Q. But until today, there was none?

16 A. No.

17 Q. In your diagnosis, you reviewed the Naval history or
18 reports on Mr. Russell Weik?

19 A. Well, again, I didn't actually review them. I had
20 Ms. O'Shea's synopsis of them in the mitigation report
21 that I read.

22 Q. I understand, but what was Ms. O'Shea's synopsis
23 about the conclusion of the discharge of Russell Weik
24 in March of 1966?

25 A. Well, there was a formal hearing, and at the formal
326

DR. HALLECK ON DIRECT

1 hearing it was decided the discharge diagnosis should be
2 schizoid personality.

3 Q. Then it was not schizophrenia?

4 A. It was not schizophrenia. That was diagnosed
5 earlier.

6 Q. So the discharge diagnosis was schizoid personality
7 disorder?

8 A. Correct.

9 Q. And a personality disorder would fall under which
10 axis?

11 A. Axis two.

12 Q. At that time he was not diagnosed with an axis one
13 diagnosis?

14 A. Not by this board, no.

15 Q. What is schizoid personality disorder?

16 A. It is somebody who is very withdrawn, who deliber-
17 ately seeks isolation, generally shows little emotion-
18 ality, and much of a loner. Much like schizotypal,
19 although not quite as bizarre as schizotypal.

20 Q. In talking about schizoid personality disorder, we
21 are talking about as it was defined in 1966 with respect
22 to Mr. Russell Weik?

23 A. Yes.

24 Q. Has that changed as the data has progressed?

25 A. To the best of my recollection, that one has stayed

DR. HALLECK ON CROSS

1 pretty consistent. Schizotypal is kind of a late edition
2 but that one has stayed consistent.

3 Q. Let's briefly talk about that. You referred to it
4 once as schizophrenia light?

5 A. I was being flippant.

6 Q. Okay.

7 A. Uh huh, but there is a history of that. One of the
8 great psychiatrists, Dr. Blayther, always felt there was
9 such a thing as latent schizophrenia which met the exact
10 symptoms of schizotypal personality disorder, and many
11 people believe that is a form of schizophrenia.

12 As I indicated in my direct testimony, there has
13 been a great deal of debate in our organization on whe-
14 ther it should be listed with schizophrenia or listed with
15 schizoid personality disorder.

16 Q. In 1966, what was simple schizophrenia? What was
17 that?

18 A. That was generally one that didn't fit any of the
19 other classifications like catatonic or paranoid, but it
20 just meant that there was a gradual deterioration of the
21 individual.

22 It was a little bit more like Blayther's latent
23 schizophrenia.

24 Q. Isn't that what is now schizotypal personality dis-
25 order?

DR. HALLECK ON CROSS

1 A. Yeah. It is probably less because it included people
2 who didn't have very blatant symptoms but just deterior-
3 ated.

4 Mostly, they had negative symptoms and no affect and
5 not much speech, not much action.

6 Q. In 1966, what was chronic simple schizophrenia?

7 A. Just about what I said. People who . .

8 Q. The addition of the word chronic, did that mean
9 anything?

10 A. It meant it had been around a while.

11 Q. Around a while, meaning how long? Six months?

12 A. Probably much more than six months. You're talking
13 -- before 1980, you are talking about DSM two, and my
14 recollection of that isn't all that good.

15 Q. Now, with your diagnosis of the Defendant in this
16 matter, you have said that people who have been diagnosed
17 as schizophrenic can hold a job well?

18 A. Some people can.

19 Q. Someone who suffers under schizophrenia can also be
20 competent to stand trial?

21 A. Yes.

22 Q. And someone who suffers from paranoid schizophrenia
23 can be competent to stand trial? .

24 A. Yes.

25 Q. Now, the combination of paranoid schizophrenia and

DR. HALLECK ON CROSS

1 schizotypal personality disorder -- why do you diagnose
2 under both instead of just diagnosing under schizophrenia?

3 A. Well, you don't get to necessarily make an Axis two
4 diagnosis if you've made an Axis one diagnosis; but I
5 think it helps to understand the case, because for many,
6 many years all that were seen were symptoms of schizotypal.

7 Q. Many, many years . .

8 A. By history. By looking at the charts, the medica-
9 tion material.

10 Q. When did that history change into schizophrenia?

11 A. . .

12 Q. As you understand, in this case?

13 A. I don't know. I don't know. I would have thought
14 until yesterday that it would have been in September of
15 1997 when he first saw the Hag and started hearing voices
16 more clearly.

17 But he told me yesterday that he began hearing
18 voices a lot sooner than this, so it may have been present
19 sooner, but I don't know when.

20 Q. Looking at the history you have looked at, it did
21 not reference any other types of delusions or hallucina-
22 tions or whatever?

23 A. Well, a lot of people thought he was very different
24 than a lot of people. A lot of people in the vernacular
25 thought he was crazy at times.

1 You know, there was no clinical effort before that,
2 and certainly he had never seen a doctor who examined him
3 for any of those things.

4 Q. With respect to the Hag, you understand that the Hag
5 is a part of the cultural belief of some folks?

6 A. It is part of a belief system, but I don't know how
7 many people actually see the Hag. I mean, he reported
8 seeing it.

9 Anybody who sees it who is not under the influence
10 of some kind of medication or trying to bring it out, I
11 would think they were hallucinating.

12 Now, some Indian cultures actually use drugs to try
13 to have a hallucination which is considered an important
14 thing to do, but that is not his tribe.

15 Q. So if last week I was here -- not here but I was
16 in Moncks Corner and randomly had four people come and
17 tell me they had experienced the Hag, they would all be
18 suffering under delusions? Had seen the Hag?

19 A. I would say they had a hallucination.

20 Q. And with that hallucination, if they had experienced
21 that for over six months, that would fit into schizo-
22 phrenia?

23 A. It could fit into that, but it also could -- there is
24 such a thing as histrionic hallucinations.

25 People are very impressionable, and have a very

DR. HALLECK ON CROSS

1 erratic personality. Sometimes under stress they will
2 imagine they are seeing things that aren't there, but
3 that is another possible thing that could happen.

4 But, of course, his visualizing with the Hag goes
5 along with other symptoms, including hearing voices.

6 Q. Whose voices is he hearing?

7 A. He hears many different people. He cannot always
8 identify them as male or female.

9 Q. And when was this first described to you?

10 A. It was described to me on September 9th. It was
11 described to me much more elaborately yesterday.

12 Q. And where in his records did he describe those voices
13 previously?

14 A. I think he had described them to one of the psychia-
15 trists who testified, particularly Dr. Watts.

16 Q. Now, with respect to your diagnosis of schizophrenia,
17 as I understood your testimony, one of the main features
18 was his manner of communicating directly with you?

19 A. Correct.

20 Q. And since he has not testified here today, I am not
21 sure I understand what that speech pattern is you are
22 talking about.

23 Describe that in some detail.

24 A. Well, it has been described in many ways by different
25 people. I think everybody agrees he is tangential. He

DR. HALLECK ON CROSS

1 can't come to the point, and he loses his point. He
2 loses track of things.

3 That is one thing. He is also rather inclusive. He
4 wants to get in every possible detail and I remember
5 when he was being examined on cross examination he kept
6 saying, please let me finish, please let me finish. He
7 wanted to tell all kinds of extraneous details that nobody
8 wanted to hear.

9 There are also times when he seems to lose his train
10 of thought and goes off on something totally different
11 and he seems to not know where he's been, which has no
12 relationship to what happened before.

13 And he talks so fast that it all comes out in such a
14 garbled form that sometimes it is not comprehensible,
15 and one cannot figure out what he's saying.

16 To me, this is the major symptom of schizophrenia
17 and it is more important than delusions or hallucinations.
18 Q. Okay. Now, in preparation for your testimony, did
19 you review the statements that he gave contemporaneous
20 with his arrest?

21 A. Yes, I did.

22 Q. Did you hear the tape of those statements?

23 A. I didn't hear the tape, no.

24 Q. Not having heard the tape, but having reviewed the
25 statements, was his speech manner on the tape consistent

DR. HALLECK ON CROSS

1 with what you saw yesterday?

2 A. At the time of his arrest, he was much more clear.

3 Q. So if . .

4 A. He was more coherent at the time of his arrest.

5 Q. In his testimony in the in-camera proceeding and
6 before the jury, he was much more clear then than he was
7 yesterday.

8 Isn't that correct?

9 A. Yes, he was, but I don't think he was entirely clear
10 on any of those.

11 Q. Have you ever been cross examined by Walter Bailey?

12 A. By who?

13 Q. By Walter Bailey?

14 A. No. Not that I recall, anyway.

15 Q. Did he describe to you -- did he describe to you
16 his thoughts on the CIA, the Masons?

17 A. Only because I asked him about it.

18 Q. Why did you ask him about it?

19 A. Because I read in the material that he didn't want
20 anybody from the CIA or the Masons on the jury.

21 Q. How did you ask that leading question of him?

22 A. . .

23 MR. O'CONNELL:, Objection to the characterization
24 of leading question.

25 He asked him how did he ask him that leading

DR. HALLECK ON CROSS

1 question. I don't think that is what the testimony
2 was, and I object.

3 THE COURT: It's cross examination. If you under-
4 stand the question, Dr. Halleck, you may answer it.

5 Overruled.

6 A. I think I just simply asked him, is it true that
7 you were concerned about having Masons or CIA as members
8 of the jury.

9 BY MR. ZELENKA:

10 Q. And how did he respond?

11 A. He said yes.

12 Q. Was that the end of it?

13 A. No. We discussed it a little bit more and I asked
14 him why.

15 Q. What was that response?

16 A. I didn't ever find out about the Masons, but I do
17 think -- I did find out that he was worried that the CIA
18 was after his father and they would be after him too.

19 Q. Was that the substance of it?

20 A. He was very determined to believe in that, and
21 yesterday I asked him about his father and the CIA and all
22 those things, and he said nothing can convince him that
23 the CIA isn't plotting against him.

24 Q. Against who?

25 A. Against him and his father.

DR. HALLECK ON CROSS

1 Q. Now, with respect to the crime itself, did you ask
2 him about the crime?

3 A. Yes, I did.

4 Q. How did you ask him?

5 A. I think I asked him in very general terms to begin
6 with, and then I tried to fill in what happened.

7 Q. And what did he say?

8 A. He told me essentially the same story he told every-
9 body else.

10 Q. Was this the first meeting?

11 A. This was the first meeting. I didn't ask him any-
12 thing about the crime yesterday.

13 Q. What did he tell you essentially?

14 A. He told me essentially that he had called his son;
15 that his son didn't want to talk to him; that he told his
16 son that he didn't want to be his father any longer, and
17 he felt bad about that.

18 He decided he would go over there and see if he
19 could make amends, and tell him that he was sorry, and
20 the boy avoided him when he got there.

21 The wife came out screaming at him and words were
22 exchanged.

23 He -- she told him to leave and he would never see
24 his son again and never to come back again; that she
25 was going to call the police.

DR. HALLECK ON CROSS

1 He went to his car and tried to put it into re-
2 verse, and in the meantime he was
3 hearing voices calling him names.

4 He was hearing voices saying he was a bad person,
5 and he messes up everything; he does things wrong. Then
6 he suddenly finds himself putting the car in forward,
7 grabbing a shotgun and going in and shooting her.

8 Q. Did he say why he shot her?

9 A. He merely -- the only thing he said that came close
10 to it was, a man can only put up with so much. I think
11 he was angry.

12 Q. Did he describe to you consistent with his statement
13 his feelings after he had shot this lady?

14 A. I never got that, but I did see him saying that in
15 the interview with the detective, and, again, it was
16 repeated in one of the cross examinations, I think.

17 Q. But he didn't describe that to you yesterday?

18 A. I didn't ask him about it.

19 Q. Did you talk to him yesterday about his communica-
20 tion with either Marva Hardee Thomas or Percy Buford?

21 A. No.

22 Q. Did you ask him about whatever communication or
23 thoughts he had about the trial itself?

24 A. Really he made one illusion which I didn't ask him
25 about to the lead attorney; that he keeps consistently

DR. HALLECK ON CROSS

1 telling him everything would be okay, and he said that
2 mockingly. He was kind of mocking his lead attorney.

3 MR. ZELENKA: Court's indulgence.

4 (Brief pause in the proceeding)

5 BY MR. ZELENKA:

6 Q. Did you ever talk with Percy Buford about his commun-
7 ication with the Defendant?

8 A. No.

9 Q. Or Marva Hardee Thomas?

10 A. No.

11 Q. Pamela Crawford -- did you talk to her?

12 A. No.

13 Q. Steven Shea?

14 A. No.

15 Q. In reviewing his employment records, you disagree
16 apparently with the assessment of the employment record,
17 the way you see them, compared to the way Mr. Shea sees
18 them?

19 A. I don't know if I disagree until maybe the last
20 couple of months. The last couple of months he was get-
21 ting into a little bit of trouble.

22 Q. His last couple of months in which employment?

23 A. At Broyhill.

24 Q. And what was the nature of those problems that he
25 was having?

DR. HALLECK ON CROSS

1 A. He felt some new administrators had come in and he
2 referred to them as college boys who came up from North
3 Carolina, and he was being given orders by people he
4 didn't respect and didn't want to do some of the things
5 they were telling him to do.

6 Q. Did you discuss that with Mr. Weik?

7 A. I think in the first interview I did.

8 Q. And what impression did you have of Mr. Weik concern-
9 ing this information?

10 A. Just about what I told you, and in addition to
11 that he felt just terrible after he lost his job. He got
12 depressed and was thinking about suicide.

13 Q. Did he communicate that with you?

14 A. Yes.

15 Q. And you understood what he was telling you?

16 A. Yes, I did.

17 Q. And was that corroborated by the history that you
18 saw?

19 A. Yes.

20 Q. I have no further questions.

21 MR. O'CONNELL: Just a few.

22 REDIRECT EXAMINATION

23 BY MR. O'CONNELL:

24 Q. Dr. Halleck, assume for a moment that Mr. Weik was
25 clear in his testimony at the trial in 1999 and when he

DR. HALLECK ON CROSS

1 talked to police officers he was also clear and didn't
2 ramble, would that preclude the diagnosis of paranoid
3 schizophrenia?

4 A. Not at all. Nobody is totally incoherent all of
5 the time. The sickest person with schizophrenia has
6 moments of lucidity, and those moments are most likely
7 to come on when the person is focused.

8 Sometimes being under pressure makes them act even
9 better, but particularly when they are being focused
10 and being asked direct questions.

11 In a situation which calls for a lot of attention,
12 they can speak a lot better.

13 Q. All right, sir.

14 A. It is a strange phenomena and I know when I worked
15 at the federal prison back in the fifties before we had
16 drugs, on the ward -- I was speaking on the ward to an
17 extremely sick individual, somebody who had not spoken in
18 years, and who only talked in gibberish, and we had had
19 a bad flu epidemic hit that ward, and one of my patients,
20 the one who had never spoken, suddenly came up to me
21 and said, I need help; I'm pretty sick and I want you
22 to take care of me.

23 He was quite coherent and the man who had been speak-
24 ing gibberish did that. He came up to me and stopped
25 all of that.

DR. HALLECK ON CROSS

1 all of that.

2 So even the sickest schizophrenic has some control
3 and can be coherent for periods of time.

4 Q. Thank you.

5 THE COURT: Recross?

6 MR. ZELENKA: None, Your Honor.

7 THE COURT: As to this witness, counsel?

8 MR. O'CONNELL: Be excused.

9 THE COURT: Any objection?

10 MR. ZELENKA: No, sir.

11 THE COURT: You may step down. You are excused.

12 (Witness excused)

13 THE COURT: Call your next witness.

14 MS. KIMBROUGH: Your Honor, the Applicant calls
15 Jeffrey Bloom.

16 JEFFREY BLOOM, being duly
17 sworn, testified as follows:

18 THE COURT: Have a seat on the witness stand, if
19 you would. Make yourself comfortable and George is going
20 to adjust the microphone for you so you can amplify your
21 voice.

22 If you'd begin by stating your full name, spelling
23 your last name for my Court Reporter.

24 WITNESS: Jeffrey Phillip Bloom, B L O O M.

25 DIRECT EXAMINATION

1 BY MS. KIMBROUGH:

2 Q. Good afternoon, sir. How are you?

3 A. Good afternoon, Ms. Kimbrough.

4 Q. Jeff, what do you do for a living?

5 A. I'm an attorney here in South Carolina. I was li-
6 censed in North Carolina in 1983, and as well
7 in South Carolina in 1985.

8 Q. All right.

9 A. I'm in private practice currently.

10 Q. Can you give us your educational background,
11 please?

12 A. I attended the State University College of New
13 York at Geneseo, G E N E S E O, in upstate New York.
14 I received my Bachelor of Arts degree in political
15 science and a minor in english.

16 I attended Columbus School of Law at Catholic Uni-
17 versity in Washington, D. C. and graduated in 1983, and
18 I've been in the practice of law since.

19 Q. Okay, and what kind of additional training have
20 you received in the field of criminal law?

21 A. Well, I was a public defender for fourteen years
22 and I had some sort of training -- seven years in Horry
23 County, seven years in Richland County.

24 I headed up the Horry County Public Defender Office
25 for about five of those years.

MR. BLOOM ON DIRECT

1 I headed up the Richland County Public Defender's
2 Office for all seven of those years.

3 I also since the late eighties have attended annual
4 death penalty defense colleges or specialized seminars
5 which usually range -- are about three or four days of
6 specialized death penalty defense training.

7 I have also attended specific seminars on jury
8 selection and jury voir dire; seminars on mitigation
9 presentation and investigation.

10 I am currently -- and I have also specialized in
11 training in mental health issues, although I don't pre-
12 tend to be a psychiatrist such as we've had testify here
13 today.

14 Finally, I am an assistant clinical professor of
15 neuro-psychiatry and behavioral science at the Univer-
16 sity of South Carolina School of Medicine where Dr.
17 Donna Schwartz-Watts is also.

18 It is an honorary position. I am not paid. I lec-
19 ture once or twice a year to the psychiatric fellows
20 there on issues relating to psychiatry and law.

21 Q. Okay, so would it be fair to say that criminal de-
22 fense is your main area or field of expertise in both
23 capital trials and trials with mental health issues?

24 A. It is, and since I've been in private practice in
25 1999, I specialize in both death penalty defense cases

MR. BLOOM ON DIRECT

1 as well as litigation and jury consulting in capital
2 cases.

3 Q. Is that how you became first sought out in this
4 case?

5 A. It is. I had just gone into private practice in
6 fact and left the Richland County Public Defender's Of-
7 fice about a month before, when the trial attorneys in
8 this case contacted me by telephone.

9 Q. Tell us about that.

10 A. About a week before the trial -- this would have
11 been roughly May 17th, and I think the trial began on
12 May 24th -- I got a call from Ms. Marva Hardee Thomas
13 and Mr. Buford, and they asked me if I would be avail-
14 able to assist them with jury selection in the case.

15 Q. What was your impression at least at that point of
16 the first contact about the nature of this case and what
17 it involved?

18 A. It was a short telephone call. It was about a
19 week before the trial started. They told me a little
20 bit about the case in terms of the factual circumstances.

21 I told them I'd be glad to help. It was actually
22 the very first jury consultating case -- consultation
23 case -- excuse me -- that I had taken, and Mr. Buford
24 and I spoke on the phone again I think the Sunday be-
25 fore jury selection and I came down here Monday morning

MR. BLOOM ON DIRECT

1 to assist with jury selection on May 24th.

2 Q. Okay, and what information did you have when you
3 came there for jury selection?

4 A. Just kind of bare bones of the facts of the case.
5 I think Mr. Buford may have faxed me or very quickly
6 mailed to me at the beginning of the week a general list
7 of the jurors coming in, as well as copies of their ques-
8 tionnaires.

9 I'm sure I received that by mail, not by fax, and so
10 I had the jury questionnaires to kind of look through on
11 Sunday before I came down.

12 So I had really very little information about the
13 case itself until I showed up here Monday, intending to
14 assist solely with jury selection.

15 Q. What conversation, if any, did you have with either
16 defense attorney concerning what their theory of the case
17 was?

18 A. When I got here Monday morning for jury selection,
19 we had a few brief recesses in between the general qual-
20 ification of the jury, which, of course, the Judge did.

21 We met in the back room in the Courthouse and began
22 discussing the case a little further, and their theories,
23 and it quickly became apparent to me -- and I mean no
24 disrespect to either trial counsel -- they are very fine
25 lawyers -- but it became very quickly apparent to me that

MR. BLOOM ON DIRECT

1 they were very much way in over their heads, and I say
2 that with all due respect.

3 There are a lot of cases I don't try. I would not
4 want to be plucked up and put in the middle of a bank-
5 rupy court or tax court or even family court. I don't
6 practice in family court.

7 And it was clear to me that Mr. Buford was bearing
8 the sole brunt of the case really.

9 Q. Why do you say that?

10 A. Well, my first impression wasn't -- this was just
11 listening to what Ms. Marva Hardee Thomas said herself in
12 the back room where we were talking in between breaks of
13 jury selection -- she did not see her role as doing any
14 voir dire. She was not going to ask a single juror a
15 question. That was all Mr. Buford's role, apparently.
16 She was not going to ask a single witness a question.
17 She wasn't going to do any direct, no cross examination.
18 That was all Mr. Buford's role.

19 I don't know how they arrived at that division of
20 responsibility. I don't know why she saw her role that
21 way, but it was clear that that's what it was.

22 Q. (Question left off tape)

23 A. Absolutely. She -- the transcript reflects, I'm
24 sure, that she did not question a single juror. I was
25 here all day Monday. We were here maybe ten, twelve

MR. BLOOM ON DIRECT

1 hours Monday, from about eight A.M. to eight P.M., se-
2 lecting a jury.

3 Tuesday, roughly the same time frame, and then we
4 actually struck the jury on Wednesday morning. So I was
5 here about two and a half days.

6 I never saw her do anything in the way one would
7 think a meaningful co-counsel would have. She did not
8 question any jurors. She didn't offer suggestions on any
9 questioning.

10 She didn't indicate that she intended to handle any
11 of the expert witnesses, any of the lay witnesses, any
12 of the research, nothing. Mr. Buford was totally on his
13 own, and my heart went out to him for that reason.

14 Q. Were there discussions about how the process would
15 take place? Let's start there.

16 A. Sure. Well, I guess I would start by saying this
17 is the first and last time I have ever allowed myself to
18 be retained as a jury consultant under the types of
19 circumstances I was here.

20 To this day, I know if an attorney calls me a week
21 before trial or even two or three weeks before trial,
22 I kindly tell them no, I can't help you that late in the
23 game.

24 I may have two or three other jury consultants I may
25 refer them to so as to not totally leave them out in the

MR. BLOOM ON DIRECT

1 cold, but I no longer operate that way. I just don't
2 do it.

3 The reason I say that is, again, Mr. Buford was in-
4 credibly well-meaning. He was incredibly committed to
5 Mr. Weik's defense and his case, and he was a good law-
6 yer, but he was totally in over his head and had no
7 help.

8 My brief appearance in this Courtroom for two and
9 a half days as his jury consultant sort of late in the
10 game -- there wasn't anything I could do to pick him up
11 and help him in that short amount of time.

12 What I now do is when attorneys contact me, with
13 enough advance notice in case -- one of the first things
14 I require them to do if they want me to assist them in
15 jury selection, is to do some practice voir dire.

16 One of the reasons attorneys in this State are often
17 not skilled at voir dire is we don't do it, as Your
18 Honor knows, in any other case. We aren't allowed.
19 It is only in death penalty cases.

20 So it is a skill we haven't very much developed, and
21 so I now require attorneys to do a practice voir dire. I
22 bring in my jurors and we go through questioning. We
23 practice objections from the other side, and again we
24 practice how to get at jurors' true opinions and their
25 biases so we can determine who we want to select and who

MR. BLOOM ON DIRECT

1 we don't.

2 Obviously, that wasn't done in this case.

3 Q. Was there a body of case law that governed that, or
4 guidelines about what you can ask or what you can't ask?

5 A. Sure. Starting with Witherspoon and Wainwright ver-
6 sus Witt, all the way up through Morgan versus Illinois.
7 Our own South Carolina Supreme Court law, such as State
8 versus David Clayton Hill, Skipper -- there is a whole
9 body of law as to what you can ask.

10 There is another whole body of law such as the
11 Skipper case from North Carolina in which our own State
12 versus David Clayton Hill is based on, which does allow
13 questioning on, for example, jurors' opinions about
14 psychiatric testimony, or their opinions about psychia-
15 trists in general.

16 That's not staking out, and I was unable to in the
17 short amount of time I had educate Mr. Beaufort as to
18 those kinds of cases and get him to understand those
19 types of cases. It was just impossible, and that is not
20 a comment on his skill. It is a comment again, that I
21 showed up here on a Monday and we had no prior preparation
22 time.

23 He had no substantive co-counsel and so he wasn't
24 conversant in the law on voir dire.

25 There is a whole separate body of law, for example,

MR. BLOOM ON DIRECT

1 on -- death penalty case law just on voir dire.

2 As a result of that, I was trying to pass notes to
3 Mr. Buford while he was in the middle of listening to
4 jurors during voir dire and asking questions, and some-
5 times he would ask the question and sometimes he wouldn't
6 ask it exactly as it was supposed to be, and there would
7 be an objection.

8 He wouldn't know how to handle the objection and it
9 would be sustained. So he didn't know how to come back
10 and ask what would be a properly based question on voir
11 dire.

12 One of the best examples I can give is I don't think
13 a single juror was asked a very permissible question of
14 what is their general opinion about psychiatry; what do
15 they think about psychiatrists.

16 We know a lot of jurors have opinions either in
17 favor of psychiatry. Some jurors think it is hogwash and
18 others don't have any contact with it at all.

19 I wasn't able to get him to phrase those questions
20 properly just by passing notes, since we had no prepara-
21 tion, no practice time, no time for me to educate him
22 when he had an objection how to respond to that with a
23 proper case.

24 So . . .

25 Q. Okay.

350

MR. BLOOM ON DIRECT

1 A. . . that is one example.

2 Q. Okay. Let me follow up on that. That was with re-
3 gard to psychiatric testimony that was going to be coming
4 up in the trial?

5 A. Certainly. Especially since I did understand some
6 of the bare bones that there was some substantial mental
7 health information that they had available to them.

8 Q. And you understood the fact that they were obviously
9 alleging incompetency?

10 A. I understood that was going to be one of the issues
11 as well.

12 Q. Have you reviewed the transcript of the trial?

13 A. Yes. When you asked me to testify, I went back and
14 briefly scanned the transcript of the voir dire of the
15 jurors who were actually selected and seated, as well as
16 some of the jurors who were qualified.

17 Q. Okay, and did you find anything specific in the
18 transcript that you think is helpful in understanding how
19 this voir dire fell short?

20 A. Sure. Again, voir dire is a basic skill. It is not
21 a hard skill to learn, although we as lawyers kind of
22 have to unlearn what we have learned about cross exami-
23 nation because we don't want to cross examine a juror.
24 We want to ask open-ended questions and really probe for
25 biases or prejudices or not.

MR. BLOOM ON DIRECT

1 We are trying to determine through questioning, as
2 Morgan versus Illinois says, what the jurors' true be-
3 liefs are.

4 An example I can point to in the transcript in this
5 case is where things fell short -- is at least three jurors
6 should have been excused for cause during questioning.

7 Again, because -- let me just give those names. It
8 would be Douglas . . .

9 MR. ZELENKA: Your Honor, I would object on grounds
10 of relevance.

11 There is no allegation in the post conviction relief
12 application concerning voir dire issues.

13 THE COURT: Counsel, in your amended application, is
14 there any allegation of effective assistance or ineffec-
15 tive assistance concerning the use or failure to properly
16 exercise voir dire?

17 MR. O'CONNELL: There is not, Your Honor, but we
18 believe it is relevant.

19 THE COURT: On what basis?

20 MR. O'CONNELL: Well, I think that it does add cre-
21 dibility to this witness' observations that Mr. Buford
22 was in over his head as far as a death penalty case is
23 concerned.

24 The issue of why we didn't raise that probably has
25 to do with prejudice and difficulty showing prejudice,

MR. BLOOM ON DIRECT

1 but it does go to lend credibility to the rest of his
2 testimony that these lawyers presented ineffective assis-
3 tance of counsel.

4 THE COURT: Mr. Zelenka, there is no jury here. Ob-
5 viously, I'm going to take the testimony of Mr. Bloom.

6 I understand your objection. Counsel candidly
7 concedes that he didn't put you on notice to defend such
8 a claim, although he has generly alleged ineffective of
9 counsel in certain other particulars.

10 I think I can discern from listening to the witness'
11 testimony what is relevant and what is not.

12 So I'm going to overrule your objection and allow
13 you to testify.

14 You may proceed, Mr. Bloom.

15 A. Thank you, Your Honor. There are at least five or
16 six jurors who should have been excused for cause, and
17 through good, artful questioning a litigator experienced
18 in voir dire or who had practiced voir dire or who
19 understood capital defense could have done that.

20 Those five jurors are Number 174, Douglas Judy;
21 Allen Bates, Number 23; William DeLonge, Juror Number
22 93; Juror William Matthews, whose Number was 204; Juror
23 Michael Black who was Juror Number 34, and then there was
24 someone who fell in the alternate sequence, Juror 239,
25 Daniel Owens.

MR. BLOOM ON DIRECT

1 BY MS. KIMBROUGH:

2 Q. Would you explain why in your judgment these six
3 jurors should have been excused for cause?

4 A. Sure. Douglas Judy on page 556 and 561 to 65 clearly
5 states that if you prove the facts to him that someone is
6 guilty of murder, then he's going to vote for the death
7 penalty.

8 This is what we call an automatic death penalty
9 juror, ADP, under Morgan versus Illinois.

10 Defense counsel mistakenly got up and said, well,
11 if you are presented remorse, you could consider that. Right?
12 Right? And the juror says, well, yeah.

13 What defense counsel did is inadvertently rehabili-
14 tated an automatic death penalty juror.

15 So that is a juror that could have or might have
16 been struck for cause.

17 The important part of this is at least -- and I'll
18 go through the other names I mentioned -- there are at
19 least three jurors who we were forced to take on the
20 actual jury and who were seated because we couldn't af-
21 ford preemptory challenges to excuse them because there
22 were other, more serious, jurors past them.

23 Those three are Douglas Judy, 174; Jerry Brian, 48;
24 Marvin Ladson, 183.

25 Those jurors should have been struck with preemptories

MR. BLOOM ON DIRECT

1 but we couldn't afford to because we had to use preemp-
2 tories on these others I named that should have been
3 struck for cause.

4 The next one, Allen Bates, also was an automatic
5 death penalty juror. He admits to the Presiding Judge
6 right then that he is in category number one.

7 THE COURT: You say that is Juror 23?

8 WITNESS: Yes, sir, Your Honor. Number 23.

9 A. He told the Presiding Judge he was a category one,
10 and what that means if you look at the transcript -- and
11 in this State most Judges during a capital case give the
12 juror something to read -- and it is a sheet has has
13 category one juror, category two and category three.

14 A category one juror is someone who always votes
15 for the death penalty. A category two juror is someone
16 who never votes for the death penalty, and a category
17 three juror is someone who will look at all the evidence.

18 If you look at Mr. Bates on page 574 through 79,
19 and again at 580 through 91, he not only admits to auto-
20 matically voting for the death penalty but he is also
21 someone we call mitigation impaired.

22 That means even if he is not an automatic death pen-
23 alty juror, he will never consider or very unlikely give
24 meaningful consideration to mitigation evidence.

25 The U. S. Supreme Court requires under its case law

MR. BLOOM ON DIRECT

1 that an unbiased juror be able to give meaningful con-
2 sideration to mitigation. So Mr. Bates should have been
3 struck for cause.

4 As to Mr. DeLonge, he gave similar responses to the
5 others and the specific pages are page 961 and 966 to 70.
6 He also admitted to being somewhere between a category
7 one and category three.

8 Again, through artful questioning I think he could
9 have been turned down as truly a category one juror.

10 Mr. Matthews on page 1001 through 1003 -- it became
11 clear he was mitigation impaired and could not meaning-
12 fully consider or listen to mitigation.

13 And Michael Black gave similar responses, and on
14 page 1022 and 1027 to 30 -- in fact, Juror Black said
15 I favor the death penalty if he's guilty of it, and that
16 is a standard Morgan-impaired type juror.

17 BY MS. KIMBROUGH:

18 Q. From your review of the record, was there ever any
19 objection to qualification of any juror?

20 A. No, not to my recollection. The transcript speaks
21 for itself.

22 But not to my recollection, and that is what I was
23 trying to get Mr. Buford to do, but, again, that -- I'll
24 wait.

25 (Brief pause due to noise outside of Courtroom)

MR. BLOOM ON DIRECT

1 THE COURT: All right, counsel. You may proceed.

2 A. Thank you, Your Honor. No, maam, and again that
3 is because Mr. Buford and I had no time to prepare be-
4 tween the time he called me and the morning I showed up
5 here.

6 Secondly, I suppose I didn't fully understand his
7 background or lack of background in death penalty or
8 litigation experience.

9 Thirdly, I didn't fully understand that his cocounsel
10 took no meaningful role in the case, so that she could
11 not assist him or me and was not going to in voir dire.

12 Again, it is not a comment on Mr. Buford. He is a
13 fine and honorable gentleman, but he was way in over his
14 head and there was nothing I could do in the heat of voir
15 dire to lift him up out of it.

16 I mean, I was trying to pass him notes. I was
17 trying to feed him case law, but, of course, he had the
18 Solicitor objecting. He had the Judge asking him
19 what's your basis, and I'm trying to feed him informa-
20 tion, all simultaneously, and he just couldn't humanly
21 possibly absorb all of that, particularly with a cocoun-
22 sel that wasn't assisting him in any meaningful way what-
23 soever.

24 It was a disaster.

25 BY MS. KIMBROUGH:

MR. BLOOM ON DIRECT

1 THE COURT: All right, counsel. You may proceed.

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3 is because Mr. Buford and I had no time to prepare be-
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13 fine and honorable gentleman, but he was way in over his
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20 tion, all simultaneously, and he just couldn't humanly
21 possibly absorb all of that, particularly with a cocoun-
22 sel that wasn't assisting him in any meaningful way what-
23 soever.

24 It was a disaster.

25 BY MS. KIMBROUGH:

MR. BLOOM ON DIRECT

1 Q. This may be an obvious question, but if you do
2 not objection to qualification of a juror, what then
3 happens?

4 A. Well, then the juror is qualified. There is no
5 objection in the record of the case, and if you haven't
6 through questioning laid the foundation for the objec-
7 tion then you have no valid objection anyway.

8 You can object all day long and tell the Judge,
9 well, we object to that juror, but if you haven't through
10 questioning gotten the juror to through their own words
11 reveal the bias or the opinion -- not necessarily a
12 bias -- then the objection isn't going to be meaningful
13 in any sort of way.

14 Q. So additional questioning, if I understand your
15 testimony -- additional question wasn't even (not audible
16 on tape)

17 A. Well, I think additional questioning was because
18 if you read those five that I named, the jurors kind
19 of went back and forth.

20 One of them said I'm somewhere between a one and a
21 three, and in one case trial counsel inadvertently re-
22 habilitated an automatic death penalty juror.

23 So I think even in those five cases, while an objec-
24 tion could have been interposed, it was the questioning

25 358

MR. BLOOM ON DIRECT

1 which lacked completion of the juror's own responses.

2 To give you an example, a juror who says, I'm some-
3 where between a one and a three, and then after the
4 Judge questions them the juror says, okay, yeah, I think
5 I'm a three, Your Honor, then I think it is the defense
6 counsel's obligation -- and through training this is
7 where you can learn it -- to go back and just without
8 being confrontational ask, can you tell me what you mean
9 by that? Can you explain what you meant by that? Can
10 you tell me -- you know, when you first started out with
11 the Judge you were a number one, and a few minutes later
12 you are a number three. What thinking process were
13 you going through?

14 Those sorts of questions -- just open-ended ques-
15 tions, getting the juror to open up and use their own
16 words, and then using their own words back at them -- not
17 in an accusatory way but to get them to explain
18 and describe it, because most jurors haven't been through
19 this process.

20 In fact, I would say all jurors -- it is very rare
21 to find a juror who has been through a voir dire process
22 before. I think I had one in twenty years.

23 Most of them don't understand the words of art we are
24 using such as aggravation and mitigation, and things of
25 that nature.

MR. BLOOM ON DIRECT

1 Even murder -- many of the jurors say, yes, I can
2 give life for murder, and what they have in their head
3 is a manslaughter situation or an accident situation,
4 and so until you probe the juror and get them to feed
5 you their own answers and responses and get them to ex-
6 plain, you are just making assumptions. You don't know
7 what's going on in their heads.

8 That is what was done here, and I could not teach
9 that to Mr. Buford in the heat of the moment.

10 Q. Okay, and in your review of the voir dire that was
11 conducted, how many pages of voir dire . .

12 A. I went back and looked at the defense voir dire of
13 jurors actually seated in this case, and it totaled some
14 thirty-five pages.

15 That is, again, an illustration of where the defense
16 team in this case were over their head, because they
17 didn't understand how important voir dire was.

18 I couldn't teach that to them in the middle of the
19 Courtroom during voir dire, as much as I tried. Mr.
20 Buford had no assistance.

21 So 35 pages of voir dire for actual jurors is embar-
22 rassing and appalling, and I am embarrassed I was a part
23 of it, and I don't do that any more. I don't come in and
24 assist -- parachute in and try to help attorneys like
25 that.

MR. BLOOM ON DIRECT

1 Mr. Bloom was very well intentioned but you cannot
2 teach someone how to try a capital case in the middle of
3 a capital case. It doesn't work like that.

4 I think the time frame of the jury selection speaks
5 for itself. We were done with jury selection in two
6 days. We were striking the jury Wednesday morning.

7 Most effective voir dire occurs over a period of
8 days. Most voir dire now in this State takes a week or
9 longer to take the time and let jurors open up and talk
10 about it so that both sides have a fair understanding
11 of where that juror's opinions lay or where their
12 biases might be.

13 Q. Did you observe or were you a part of any conversa-
14 tions or interactions with defense counsel during the
15 period you were present?

16 A. We had a few meetings, as I say, in the back room
17 during the breaks, and the defense theory was that the
18 mental health information they had, whatever it was --
19 I don't know all the details there -- would somehow get
20 them to guilty but mentally ill, which would somehow
21 get them to manslaughter.

22 And I -- although I didn't understand or have access
23 to all the defense reports or interviews or the psychia-
24 trists, and certainly couldn't learn it in the few minutes
25 we had in the back room, it was clear to me that defense

MR. BLOOM ON DIRECT

1 counsel failed to understand that mental health issues
2 don't get them to manslaughter. There is no case law in
3 this State which allows you to use a mental health de-
4 fense to create legal provocation or heat of passion.

5 I tried to suggest to defense counsel that you may
6 be a little bit off the mark there. I don't totally know
7 what information you have, and I don't want to bust in
8 here on the first day and tell you to re-frame the theory
9 of your defense when we're in the middle of jury selec-
10 tion, but I'm not aware of any case in South Carolina
11 that because you have mental health impairment it gets
12 you to manslaughter.

13 It may get you to guilty but mentally ill. It may
14 get you to not guilty by reason of insanity, but it cer-
15 tainly will never get you to manslaughter.

16 There is no case in South Carolina that stands for
17 that proposition, and that became clear to me again that
18 very first Monday, that these folks, though committed
19 and zealous, well intentioned, were in way over their
20 heads.

21 Q. In addition to the theory of the defense, what was
22 your impression about their theories on mitigation?

23 A. Again, I didn't have all the details on what mental
24 health information they had. I know they had several
25 experts. I know one of their investigators dropped out

MR. BLOOM ON DIRECT

1 and they got another one at the last minute, but it
2 was also clear to me that the time-intensive job that goes
3 into the investigation and preparation of one of these
4 cases hadn't been done.

5 The pain-staking and timely interviews -- by timely
6 I mean not just meeting with a family member for ten
7 minutes or whatever -- hadn't been done.

8 They didn't have a real clear, coherent understand-
9 ing of the mitigation information they did have.

10 Again, I don't pretend to know -- I did not know
11 all their mental health information, but it was clear
12 they had not spent substantial time with their own ex-
13 perts and investigator, the family, the witnesses, put-
14 ting together a theme and a coherent story to present to
15 the jury on behalf of mitigation.

16 Q. Are you familiar with any guidelines or instructions
17 as to preparing for such . .

18 A. Well, sure. The American Bar Association guide-
19 lines have been in existence for defense counsel in death
20 penalty representation since 1989.

21 The U. S. Supreme Court in the recent cases of
22 Wiggins and Rompilla have reaffirmed that, and those
23 guidelines have been in existence since 1989, and
24 they impose on defense counsel in death penalty cases the
25 obligation to do a thorough mitigation investigation

MR. BLOOM ON DIRECT

1 where you collect all the mental health records, all the
2 military records, the medical records, employment re-
3 cords, and do extensive interviews.

4 The reason for that, as the U. S. Supreme Court has
5 so wisely said, is because mitigation is important, and
6 you can't tell a jury half the story with half the in-
7 formation.

8 Again, they were clearly over their head, though very
9 well-intentioned and very decent lawyers and decent liti-
10 gators, but Mr. Buford was clearly left out on his own to
11 do all that.

12 He didn't have a thorough understanding, I don't think,
13 of how mental health did not link with manslaughter; how
14 a coherent story might be told in mitigation, and he had
15 no help.

16 He absolutely had no help from his cocounsel, and I
17 don't know how that division of responsibility occurred,
18 but it was clear he was just left out on his own, and
19 way in over his head, and it was just -- it was sad.

20 Q. Let me ask you this, and you may have already ad-
21 dressed it -- were you present in the Courtroom . .

22 THE COURT: Speak up, Ms. Kimbrough.

23 MS. KIMBROUGH: I'm sorry.

24 BY MS. KIMBROUGH:

25 Q. Were you in the Courtroom when Mr. Buford raised his

MR. BLOOM ON DIRECT

1 particular defense before the Judge?

2 A. I think I was. I know I have reviewed the tran-
3 script or part of that, and it is somewhere around page
4 fifteen hundred something.

5 I cannot specifically recall if I was in the Court-
6 room or not at that point.

7 I would actually have, I guess, to look at a
8 transcript and see -- I think we had finished jury selec-
9 tion by then.

10 THE COURT: Why don't you show him what you are re-
11 ferring to?

12 MS. KIMBROUGH: May I approach the witness?

13 A. So I do not think I was in the Courtroom at that
14 point. I think I left after jury selection.

15 BY MS. KIMBROUGH:

16 Q. Are you specifically aware of the content or the
17 general overall . .

18 A. I have reviewed those transcript pages somewhere
19 around fifteen hundred, where Mr. Buford is telling the
20 Judge about his manslaughter theory, and that certainly
21 is consistent with what he was telling me in the back
22 conference room between jury selection.

23 His remarks to the Judge were the same in substance
24 and form that he was making to me when I was trying to
25 suggest to him that it might not have a legal basis under

MR. BLOOM ON DIRECT

1 South Carolina law.

2 MS. KIMBROUGH: Beg the Court's indulgence.

3 (Brief pause in the proceeding)

4 BY MS. KIMBROUGH:

5 Q. Please answer any questions the State may have.

6 A. Certainly.

7 THE COURT: Cross examination.

8 MR. ZELENKA: Thank you.

9 CROSS EXAMINATION

10 BY MR. ZELENKA:

11 Q. Mr. Bloom, you say your specialization is in some
12 sense capital mitigation?

13 A. That would be correct, sir.

14 Q. Why?

15 A. It is funny how I ended up doing that. I think it
16 is a result of fourteen years as a public defender and
17 having done a large number of capital cases, including
18 jury trials, over that career.

19 When I went in private practice, Circuit Judges
20 started calling me, wanting to appoint me to those trial
21 and PCR cases because of that experience.

22 So it is just something that evolved.

23 Q. Why capital mitigation?

24 A. It is interesting, it's intriguing. It is the most
25 difficult challenge, I suppose, in law for either the

MR. BLOOM ON DIRECT

1 prosecutor or the defense lawyer.

2 Q. If the State asked, would you authorize yourself
3 to be retained as an expert in jury selection?

4 A. I don't know. I'd have to take that phone call
5 and have that discussion.

6 I have been asked one time to testify as an expert
7 in a PCR case. It wasn't a capital case -- by a lawyer
8 from the Attorney General's Office, but as it turned
9 out they did not need my testimony, and I was willing
10 . . .

11 Q. Why was that?

12 A. I was willing to do it pro bono because I was
13 in Richland County and it was just a standard PCR case.
14 I can't remember what the charge was. I don't think it
15 was a murder case.

16 I was prepared to testify that the attorney had ren-
17 dered effective assistance of counsel from the inform-
18 ation that I had.

19 I don't remember the case now. It was back around
20 1999 or 2000 when I first started practicing.

21 Q. Are you opposed to the death penalty?

22 A. I have always affirmed that I could view all the
23 evidence fairly if I were selected on the jury. There
24 are probably some cases where I would be more inclined
25 to look at the death penalty as an appropriate punishment

MR. BLOOM ON CROSS

1 and in other cases where I probably would not.

2 Q. Knowing what you know about Mr. Weik, are you op-
3 posed to Mr. Weik getting the death penalty?

4 A. I do not know the evidence in the case. I have not
5 read all of the transcripts. I had a vague inkling of
6 what the mitigation is from the little bit of testimony
7 I heard today.

8 I came in about ten thirty and heard the latter
9 half of the adult Mr. Weiks' testimony, and I heard Dr.
10 Schwartz-Watts and Dr. Halleck.

11 That is all I know about his case, so I would not be
12 able to render an opinion in that regard.

13 Q. Okay.

14 A. But to be fair to your question, I would say that
15 if Mr. Weik was severely mentally ill at the time of
16 his offense, obviously given my experience and my work
17 with people who are mentally ill and mental health, I
18 would lean towards the view that the death penalty is
19 probably not appropriate in cases where people are se-
20 verely mentally ill at the time of their defense.

21 So I'm trying to be fair to you and your question
22 and not evade your question, sir.

23 Q. You are retained in this matter. Do you remember
24 the date you were retained?

25 A. I got a phone call the Monday before jury selection.

MR. BLOOM ON CROSS

1 I want to say jury selection was May 24th, so I would
2 have gotten a brief phone call on May 17th, if I'm
3 deducting seven days correctly.

4 Q. And what occurred at that time?

5 A. I got a phone call from Marva Hardee Thomas and
6 Mr. Buford. I can't remember if it was a conference call
7 or they called me separately, and they had learned that
8 I had left the Public Defender's Office and, given my
9 capital experience, I was willing to assist in jury selec-
10 tion and was I willing to help them with their case, and
11 I said I would.

12 Then I got basic facts about what Mr. Weik was
13 charged with, and that was it. It was very bare bones.

14 Q. Did you ask about who the witnesses were or what
15 witnesses were going to be testifying?

16 A. I asked them in general what the facts of the case
17 were and then generally what their sentencing phase miti-
18 gation plans were, so that I could prepare appropriate
19 questions around that.

20 Q. By preparing questions, you mean doing a question
21 outline?

22 A. Yes, sir.

23 Q. Let me provide you this and see if you can identify
24 it for us?

25 A. I sure can.

MR. BLOOM ON CROSS

1 Q. What is that?

2 A. This is a question outline I prepared and probably
3 faxed to Mr. Buford and Ms. Marva Hardee Thomas or to Mr.
4 Buford directly.

5 Q. Does that appear to be the one that you actually
6 prepared?

7 A. It does. It is.

8 Q. There are some markings on this?

9 A. Those are not my handwriting.

10 Q. Thank you.

11 A. But the typed portion is mine, if I can clarify
12 that.

13 THE COURT: Mr. Zelenka, do you wish to offer this
14 document?

15 MR. ZELENKA: Yes, sir.

16 THE COURT: Any objection?

17 MR. O'CONNELL: No, Your Honor.

18 THE COURT: Mark it, please. Respondent's Exhibit
19 Number 5 will be admitted into evidence without objec-
20 tion.

21 Respondent's 5 in evidence.

22 (Bloom prepared questions admitted in evidence
23 without objection as Respondent's Exhibit 5)

24 THE COURT: You may proceed.

25 BY MR. ZELENKA:

MR. BLOOM ON CROSS

1 Q. Let me provide you again with Respondent's Exhibit
2 5. What were the types of questions?

3 A. Things such as psychiatry, mental illness, one of
4 which is on the very first page of Respondent's Exhibit 5
5 about three quarters of the way down.

6 In deciding -- may I quote from that or . .

7 Q. Yes.

8 A. In deciding whether to impose life or death, could
9 you consider facts that may have nothing to do with
10 the crime, such as mental illness, and it lists other
11 things.

12 Q. You also spoke on direct examination more particu-
13 larly about jurors' beliefs in psychiatrists and psychia-
14 try?

15 A. Sure.

16 Q. Is that anywhere on the list?

17 A. Well, it is encompassed by mental illness. You
18 know, I could come up with a list that is twenty pages
19 long, and that is why I was present and assisting, but
20 it was clear to me when the objections came from the Sol-
21 icitor from the very first juror and sustained by the
22 Court that I had had too short a time to prepare Mr.
23 Buford to help him respond to those objections effect-
24 ively or adequately.

25 He was not versed on the case law and didn't know how
371

MR. BLOOM ON CROSS

1 to handle those objections, and I couldn't stand up and
2 make the argument for him.

3 Q. That's a very general answer, but what questions and
4 what objections are you talking about?

5 A. Well, they come from the very first juror, Douglas
6 Judy. I don't have that full transcript in front of me.
7 I think they start somewhere around page -- I've made a
8 note -- around page 561.

9 Q. What was the question?

10 A. It may have been something about could you consider
11 certain specific mitigating circumstances, and the way it
12 was being asked it appeared to be a stake-out type
13 question.

14 That is my recollection. I don't have the transcript
15 in front of me.

16 MS. KIMBROUGH: Your Honor, we have a copy of that
17 portion of the transcript for the witness.

18 THE COURT: Very well.

19 A. I'm sorry, Mr. Zelenka. Were you going to ask a
20 further question or waiting for me? I don't have a fur-
21 ther response.

22 THE COURT: He's got the transcript. You want to ask
23 your question concerning it?

24 MR. ZELENKA: He just gave a general answer to the
25 question I asked.

MR. BLOOM ON CROSS

1 THE COURT: Do you wish to continue your answer in
2 any way?

3 A. For example, on page 566, Solicitor Bailey makes
4 an objection where defense counsel is trying to ask a
5 question that is usually permissible. It's a follow
6 the majority type question.

7 Would the juror just cave in and follow the majority,
8 and Trial Court sustained the objection because Mr.
9 Buford had had an inadequate amount of time to understand
10 how to ask it properly and to use the case law to argue
11 his position.

12 That is one example.

13 BY MR. ZELENKA:

14 Q. Mr. Bloom, what case law would you use on that ques-
15 tion?

16 A. A Lexington County case and I was trying to think of
17 the name. I was afraid you were going to ask me the name
18 and I'm trying to think. It was State versus -- it has
19 since been modified by one of my cases, State versus
20 David Markhill -- Bennett -- it just kind of popped into
21 my head.

22 State versus Bennett.

23 Q. Were there any other?

24 A. I'm sorry. I closed the transcript.

25 Q. Any others that deal with psychiatrists or things

MR. BLOOM ON CROSS

1 along that line?

2 A. Well, let me -- for example, on page 581, which I
3 think is Juror Allen Bates, who I previously referenced,
4 Juror Number 23 -- trial counsel attempts to ask ques-
5 tions to determine if the juror could consider certain
6 mitigating factors.

7 There was an objection and the Court allowed some of
8 it because the Court had volunteered the mitigating factor
9 of age.

10 Then defense counsel doesn't follow up with what the
11 Court allowed him to do, so I would use that as an example.
12 If you look at the other jurors, I also referenced -- I
13 found in those transcript pages and I could sit here and
14 go through each one of them if you need me to -- but
15 that is kind of replete through here.

16 Trial counsel didn't know how to overcome the ob-
17 jection to being allowed to ask about mitigating factors.
18 Solicitor Bailey kept objecting that he's trying to stake
19 him out and ask about specific mitigators.

20 What we were trying to accomplish and I couldn't do
21 through posted notes or whispering in his ear was to ask
22 about general mitigation such as psychiatry, mental ill-
23 ness, background, not specific mitigators applicable in
24 this case.

25 That is staking out, and that never got done. It

MR. BLOOM ON CROSS

1 never got done successfully in any shape or form, asking
2 about general mitigating circumstances.

3 And jurors -- I found in doing this twenty years
4 that jurors don't understand when you use the terms ag-
5 gravating and mitigating. They are terms of art, and so
6 you have to break it down and give them some definition
7 that the Court, defense counsel and the solicitor can
8 all agree on, without getting to the specific facts of
9 your case.

10 That was never done.

11 Q. And those objections were sustained by the Court?

12 A. Correct.

13 Q. Do you know if those issues were raised on appeal?

14 A. . .

15 Q. Challenging the responses to the objections?

16 A. I don't know that because I don't know if any
17 proffer was ever made as to what question was trying
18 to be proposed properly, and part of the problem there was
19 that the questions weren't getting posed properly.

20 Some of them were staking out, if that answers your
21 question.

22 But I guess to go back, I don't know if it was raised
23 on appeal or not.

24 Q. And in one case you said a juror was inadvertently
25 -- what was the phrase -- inadvertently rehabilitated?

MR. BLOOM ON CROSS

1 A. What I meant by that is trial counsel rehabilitated
2 a juror who should have been struck for cause because the
3 juror was an automatic death penalty juror.

4 If a juror comes out of the box and says I'm in a
5 number one category, or, yeah, if you prove the person to
6 me is guilty of murder, I'm going to vote for death, then
7 you don't come back and say, well, if we showed you re-
8 morse, could you consider life then.

9 You don't want that juror. That juror is saying
10 they are predisposed to vote for death, and defense
11 counsel does not want to rehabilitate that juror so
12 that they become a qualified juror.

13 It appeared to me -- I guess I was being kind -- that
14 that trial counsel inadvertently rehabilitated a juror
15 who should have been struck for cause. We should -- what
16 I mean by that is we should not have been trying as
17 defense counsel to rehabilitate that juror.

18 Q. The juror was rehabilitated?

19 A. By defense counsel. Yes, sir.

20 Q. He was able to consider the evidence, weigh the
21 factors and make a decision according to the law and the
22 evidence as presented . . .

23 A. Under the one factor defense counsel proposed, I
24 would agree with that, but I would still . . .

25 Q. Well, . . .

MR. BLOOM ON CROSS

1 A. I'm sorry. I would say that juror was still an au-
2 tomatic death penalty juror and mitigation impaired under
3 the limited responses we got from the questioning of that
4 juror.

5 Q. Despite the fact that the juror was rehabilitated?

6 A. Yes, by defense counsel. Despite that fact.

7 Q. The questions he asked didn't stop questions by
8 other counsel?

9 A. No. There were questions by the Court, questions by
10 the prosecutor, certainly.

11 Q. And ultimately those jurors were found to be qualified?

12 A. Certainly they were.

13 Q. And he was in possession of questions that you had
14 faxed to him before?

15 A. I can't recall if I faxed that to them before that
16 Monday or provided it on that Monday. I know I provided
17 it to them. I don't recall when.

18 Q. Did you provide any other information to them?

19 A. There is a blank form that goes with Respondent's
20 Exhibit 6 which has space for the name of the juror, the
21 juror number, a brief physical description so that you
22 can recall.

23 You know, if the juror had long hair or a beard, so
24 you can have some visual recollection of the juror.

25 And there are lines for responses of the juror.

MR. BLOOM ON CROSS

1 Q. During the process, did you have a note for each
2 juror?

3 A. I had a written form for each juror as I have just
4 described that I would fill in.

5 Q. And would you rely upon that form in making your de-
6 termination as to which jurors to keep and which should be
7 struck?

8 A. Correct.

9 Q. Did you also basically figure out which jurors --
10 the manner in which the jurors should be approached based
11 upon their responses?

12 A. If I understand your question correctly, there were
13 some juror responses we got during voir dire, and when
14 those jurors were actually seated I encouraged trial
15 counsel to emphasize certain portions, you know, of the
16 case or certainly phrases that might create a connection
17 with those jurors.

18 Q. And throughout this process in monitoring the State's
19 questions that were asked, you also were using his ques-
20 tions to prepare a challenge, if necessary?

21 A. Correct.

22 Q. And what is a Batson challenge?

23 A. A Batson challenge is where one side or the other
24 strike predominantly jurors of a particular race or gender,
25 and I kind of am incorporating a lot of the cases that

MR. BLOOM ON CROSS

1 came after Batson.

2 In Batson it was strictly the prosecution striking a
3 number of African-Americans, but since then it has been
4 extended to both defense and prosecution, and race and
5 gender.

6 Q. But it can be directed toward the defense?

7 A. It can be directed toward the defense. I have seen
8 on occasion where the defense strikes an inordinate number
9 of male jurors or an inordinate number of female jurors,
10 or an inordinate number of jurors based on race, either
11 white or African-American.

12 Q. And why would that be something that defense lawyers
13 should look out for or not look out for?

14 A. It is something I think both sides need to be cogni-
15 zant of when they are striking jurors. You have both race
16 neutral and gender neutral reasons to do so, but you are
17 not striking strictly on race or gender lines.

18 Q. Okay.

19 A. And that's valid because a lot of defense attorneys
20 make the erroneous assumption that one particular gender
21 or one particular race or one particular religion, for that
22 matter, may be more pro-death penalty or more pro-life,
23 and I encourage attorneys not to make those assumptions,
24 because jurors are individuals, and you have to listen to
25 what they have to say.

MR. BLOOM ON CROSS

1 Q. If you are a defense lawyer and you are preparing
2 someone, you write a memo to someone -- would you prepare
3 a memo or the first Batson strike?

4 A. One may need to anticipate that, if once you get to
5 the point where you are going to strike jurors. If it
6 appears on paper that you are inordinately striking one
7 race or the other or one gender or the other, you may
8 need to go back and say, okay, why am I doing this? What
9 are my reasons for striking these jurors?

10 It may fall out. For example, if you have ten strikes
11 and eight of those are against caucasians and two are
12 against African-Americans, you may have to explain to the
13 Judge why you are striking eight caucasian jurors.

14 You would need reasons for that.

15 Q. Do you prepare that before the strike or after the
16 strikes?

17 A. That would -- well, in a capital case, or in this
18 capital case, the jurors were qualified without a strike
19 as you go program.

20 What I mean by that is we qualified a pool of thirty-
21 something jurors and then came back Wednesday morning and
22 we knew which jurors we were going to strike Wednesday
23 morning.

24 So you would prepare that right before you struck be-
25 cause once you went down and looked at their opinions you

MR. BLOOM ON CROSS

1 might then check and say, oh, my goodness, I'm striking,
2 you know, nine women and one male. So I'm going to have
3 to go back and look at my reasons and explain to the
4 Court why I was doing that.

5 So that would be prepared ahead of time.

6 Q. Okay. You didn't prepare one ahead of time in this
7 case, did you?

8 A. I believe I did, yes, because once we went down and
9 looked at all the opinions we knew we were subject to
10 what's called a reverse Batson challenge.

11 Q. Let me ask if you can identify that?

12 A. That is a document I prepared for the defense for a
13 potential Batson challenge.

14 MR. ZELENKA: Your Honor, we would move to introduce
15 this document.

16 THE COURT: Any objection?

17 MS. KIMBROUGH: No objection.

18 THE COURT: All right, Respondent's 7 in evidence
19 without objection. Respondent's 7.

20 (Bloom document admitted in evidence without objec-
21 tion as Respondent's Exhibit 7)

22 THE COURT: You may proceed.

23 BY MR. ZELENKA:

24 Q. Mr. Bloom, are those comments on each of those jurors
25 your comments, or are those Mr. Buford's comments, or are

MR. BLOOM ON CROSS

1 they Mr. Buford's comments, or all of your comments?

2 A. I know I prepared this. I do not recall if the comments
3 on each juror are totally from my own notes and recollec-
4 tion at the time as well as the juror questionnaires, or
5 whether any of the information was provided by either Ms.
6 Marva Hardee Thomas or Mr. Buford.

7 Q. And everyone on that list except one, Martha James,
8 are white individuals. Correct?

9 A. Correct, according to the document that I prepared.

10 Q. And on one, Martha James, you know she was a witness
11 for the Solicitor in the last death penalty case, and you
12 noted on that that the Solicitor may excuse. Is that
13 correct?

14 A. Yes, sir.

15 Q. Okay.

16 A. And I don't know why I would -- I don't have a recol-
17 lection as to why the Solicitor may excuse her. I'm sure
18 at the time when I prepared this, there was either some-
19 thing in my notes or something from Mr. Buford or Ms.
20 Hardee Thomas or someone had mentioned to me.

21 It could have been that she was a witness for him but
22 she didn't do very well or something.

23 I think Ms. Marva Hardee Thomas was the contract pub-
24 lic defender here at the time, so she may have had some
25 insight into why the Solicitor may excuse someone or might

MR. BLOOM ON CROSS

1 not.

2 Q. After you prepared that -- after the jury was selected,
3 you prepared another document?

4 A. I believe so.

5 Q. Let me ask if you can identify this?

6 A. Yes, this is a post-jury selection memorandum that I
7 prepared to provide some suggestions to defense counsel.

8 It appears primarily for the sentencing phase, and I
9 would have faxed that down to them, is my recollection.

10 MR. ZELENKA: Your Honor, we would move to introduce
11 this.

12 THE COURT: Any objection?

13 MS. KIMBROUGH: No objection.

14 THE COURT: Respondent's Number 8 in evidence, with-
15 out objection. Respondent's Number 8 in evidence.

16 (Post-jury memo of Mr. Bloom admitted in evidence
17 without objection as Repspondent's Exhibit 8)

18 THE COURT: You may proceed.

19 BY MR. ZELENKA:

20 Q. Mr. Bloom, let me hand that back to you.

21 A. Okay.

22 Q. I would ask you to look at this to refresh your re-
23 collection. What were you trying to accomplish by pro-
24 viding this to them at that time?

25 A. I was trying to provide them with some guidance and

MR. BLOOM ON CROSS

1 support as to some of the sentencing phase issues and
2 matters they had made me aware of during our brief re-
3 cesses in the conference room in between jury selection.

4 We were in Court, as I said, from about eight A.M.
5 to eight P.M., and in between we had a few minutes here
6 and there where they were sharing some of the informa-
7 tion with me, some of their strategies, as I have testi-
8 fied to already.

9 So I was trying to provide them some guidance and
10 support as to how to bring their case together.

11 Q. And when you did that, you suggested a motion for a
12 directed verdict. Correct?

13 A. Motion for directed verdict on the physical torture,
14 aggravated, because it appeared to me they were not aware
15 they could make a directed verdict on an aggravating
16 circumstance at the close of the State's case, but the
17 law is identical to a regular guilt phase.

18 So, yes, . . .

19 Q. Also, you analyzed the experts . . .

20 A. They had given me some information on the various
21 experts by the end of jury selection.

22 So, yes, I provided them some suggestions and guidance
23 in that regard.

24 Q. You told them not to use Dr. McGee?

25 A. Correct.

MR. BLOOM ON CROSS

1 Q. You . . .

2 A. That was a recommendation of mine.

3 Q. You told them to use Dr. Rogers?

4 A. Correct.

5 Q. You told them how to use Dr. Schwartz-Watts?

6 A. Correct. Well, in the -- you know, I say that. I
7 mean, for example, my suggestion on Dr. Rogers is two
8 paragraphs of maybe twelve lines, so trying to condense
9 -- if I may -- to complete my answer?

10 It was clear to me they were in over their head.

11 It was clear to me Mr. Buford had no second counsel. He
12 was truly trying this case by himself.

13 It was -- he had never tried a capital case before,
14 and it was clear to me while he was a committed and decent
15 attorney and decent litigator, that he had never presented
16 a mitigation type case before.

17 And him really fearing how to do it, and he didn't
18 quite understand how to do it.

19 So what I was trying to do in these brief six pages
20 was teach him in a very short time in little framework,
21 rather than him trying to recall, you know, what we had
22 talked about in the conference room, what to do with
23 this case.

24 Q. So this complies with your thoughts and understanding
25 of the case at that time?

MR. BLOOM ON CROSS

1 A. Absolutely.

2 Q. So page three is opinion?

3 A. Yes, sir.

4 Q. And page two references some -- you are describing
5 the particular information to pull out?

6 A. Yes, sir.

7 Q. To explain why Mr. Weik is asking for death?

8 A. Correct.

9 Q. To point out that you have testified for the State
10 also?

11 A. Correct.

12 Q. And giving an opinion with the mitigating factors,
13 and specifically to develop some support on the existence
14 of the mental health aspects of mitigation?

15 A. Correct. It was like trying to teach death penalty
16 101 by memo in a short amount of time.

17 Q. Similarly to use Dr. Donald Morgan in the sentencing
18 phase of the case?

19 A. Correct.

20 Q. And emphasizing that he has been the chief psychia-
21 trist for the State?

22 A. Right.

23 Q. And has testified numerous times for the State?

24 A. Correct.

25 Q. To explain the type of medication Mr. Weik was on?

MR. BLOOM ON CROSS

1 A. Correct.

2 Q. Closing argument -- the next page?

3 A. Yes. I had -- I'm sorry. I didn't mean to inter-
4 rupt your question.

5 I apologize. Ask your question.

6 Q. On the next page, closing argument, you discussed how
7 you felt that should be approached?

8 A. Correct.

9 Q. Make sure the Judge gives certain instructions,
10 that life means life and death means death?

11 A. Correct.

12 Q. Is that one of the mitigating circumstances you
13 felt should be charged, giving that information?

14 A. Correct.

15 Q. And, again, how to start and end the closing argu-
16 ments in the case?

17 A. Correct. That's actually a trick I learned from the
18 Solicitors, by the way. I want to give credit where it's
19 due.

20 How to use jurors' answers during voir dire in open-
21 ing and closing statements.

22 Q. For every juror?

23 A. I don't think with every juror. The ones I dealt
24 with are listed in there. I'm not sure.

25 Q. But you pointed out things each of them said that

MR. BLOOM ON CROSS

1 . . .

2 A. Yes, sir.

3 Q. And after all of that, you typed this up and sent it
4 to them?

5 A. I did.

6 Q. A couple of questions about the timing involved.
7 Nothing in that is related to the guilt phase of the
8 trial?

9 A. Correct.

10 Q. Why is that?

11 A. Because they had no coherent theory of defense in
12 the guilt phase that I understood. Trial counsel kept
13 staying that they were going to get a manslaughter ver-
14 dict based on the mental health information, and I felt
15 that was totally misdirected and I never understood how
16 they thought they were going to get there.17 So I felt there was nothing I could add other than
18 what I had suggested . . .

19 Q. And at this time . . .

20 A. . . in the conference room.

21 A. . . after the trial began, you were giving them ad-
22 vice on mental health matters in the penalty phase of
23 the trial?

24 A. . .

25 Q. Yet you understood in your mind they had a misdirected

MR. BLOOM ON CROSS

1 theory with regard to the guilt phase?

2 A. Correct.

3 Q. And you did not provide direction or assistance on
4 the guilt phase?

5 A. Because trial counsel was totally focused on present-
6 ing a manslaughter defense which had no legal basis, so
7 I didn't know what else to tell them, other than what I
8 had told them in the conference room.

9 That my suggestion was I'm not aware of any South
10 Carolina law that allows you to do that, so other than
11 -- having told him that, I knew of
12 nothing else I could recommend or suggest to them in
13 the guilt phase.

14 I also had surmised that this case was clearly headed
15 to a sentencing phase, and so I was trying to provide some
16 herculean efforts to educate them very quickly on how
17 to handle some of that evidence.

18 You know, I'm not familiar enough with all of the
19 underlying facts in the case to comment on what possible
20 defenses might be there.

21 I remember trying to suggest to them that their
22 efforts might better be directed at contesting the burg-
23 lary; that from the scant information I had been pro-
24 vided, that that would be a more viable defense.

25 They would maintain credibility with the jury and

MR. BLOOM ON CROSS

1 whether or not they were successful or not in defeating
2 the burglary indictment, that it would be a theme that
3 would carry over into sentencing.

4 Sometimes when you are presented with a guilt phase,
5 where guilt is overwhelming, the appropriate strategy is
6 not to just fall on your knees in front of the jury and
7 say, you know, we did it; we've just got to ^{go}slow through
8 this part.

9 But to focus on what the aggravators are, because
10 the aggravators often are also charged in the indictment.
11 In fact, the ABA death penalty defense guidelines require
12 and encourage us to focus on aggravators and rebut those,
13 and in this case my recollection of the guilt phase evi-
14 dence is the burglary is really a very thin burglary, in
15 terms of evidence.

16 It is not the traditional burglary you see in Gen-
17 eral Sessions Court. It is basic -- it is barely a burg-
18 lary, if I may put it that way.

19 So I tried to suggest to them it might be more pro-
20 ductive to try to defeat the burglary indictment, because
21 if you do you knock an aggravator out, and if you do
22 not you haven't lost credibility with the jury.

23 You are maintaining a consistent theme in sentencing,
24 but that recommendation didn't go anywhere, and I wasn't
25 about to try to upset the apple cart he was focused on,

MR. BLOOM ON CROSS

1 mental health and manslaughter, as much as he was.

2 So I was trying to provide some information in
3 sentencing, since I knew that is where the case was going
4 to end up anyway.

5 In hindsight I would never do this again, and I have
6 not.

7 Q. But you did comment on the weakness of the burglary
8 count?

9 A. Yes.

10 Q. But you didn't give them comment on the law on the
11 weakness of the burglary defense?

12 A. I did not, no.

13 Q. You didn't give them citations or legal authority on
14 how manslaughter didn't fit the facts of this case as you
15 knew them?

16 A. I did not.

17 Q. Did you advise them what evidence to put up in the
18 guilt phase, if any?

19 A. I don't recall because the evidentiary information
20 I had -- let me put it this way.

21 Let me rephrase that. The evidentiary information
22 that I recollect and remember about the case is slim, so
23 I thought of what is in this memo, Respondent's Exhibit
24 8, and some of the testimony I've heard today has re-
25 freshed my recollection.

MR. BLOOM ON CROSS

1 I just don't recall a lot of what the evidence might
2 have been. I know I didn't have the police reports. I
3 now require that.

4 I didn't have witness statements, and I require that
5 now.

6 I didn't have summaries of any of the forensic evi-
7 dence and things of that nature. I now require that when
8 I do these types of cases.

9 So most of that information was given to me verb-
10 ally and to this date I don't recollect a lot of it, other
11 than what I've testified to here today.

12 Q. What was the last thing you told the defense team
13 in this case?

14 A. The last thing I told them? Probably good luck,
15 and Godspeed.

16 Q. Read the last two sentences of the first page of
17 Respondent's Exhibit 8.

18 A. . .

19 Q. First page.

20 A. Good luck. You've prepared your case well. You
21 are committed to your client's best interest. He is lucky
22 to have both of you. Trust in your case. Godspeed.

23 Q. No further questions.

24 THE COURT: Counsel, approach.

25 (Conference at the bench between counsel and the

1 Court off the record)

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. KIMBROUGH:

5 Q. Mr. Bloom, Mr. Zelenka showed you copies of Exhibits
6 7 and 8?

7 A. Yes, maam.

8 Q. If you would, please, go to the question check-list.

9 A. Yes, maam.

10 Q. Go to the last page.

11 A. Where there is questioning of the juror about major-
12 ity rule . .

13 A. Yes, maam

14 Q. . . what is the last case you cite as legal author-
15 ity?

16 A. State versus Bennett.

17 Q. What does that case basically stand for?

18 A. Bennett basically allows the attorney to ask on voir
19 dire if a juror would just cave in and give up their
20 vote to go along with the majority.

21 That has since been modified a little bit by the
22 case of the State versus David Mark Hill, which came after
23 this trial.

24 Q. All right. So in other words, you provided defense
25 counsel with legal authority for the argument that he was

MR. BLOOM ON REDIRECT

1 allowed to ask that question?

2 A. Correct.

3 Q. Do you have the facsimile date for that document?

4 A. Yes. It is May 23, 1999, so that would have been
5 that Sunday.

6 Q. Okay, and was that argument raised by Mr. Buford?

7 A. And there are other cases in there, and it is my re-
8 collection in reviewing the transcript that I've testi-
9 fied about today in voir dire that I don't think any case
10 law or anything got cited any time an objection was raised
11 by the prosecution.

12 The defense made no case law citation or any other
13 defense to ask such questions.

14 Q. And you were asked by Mr. Zelenka why you didn't
15 bother to file a memo concerning the guilt phase, and my
16 question to you is were you required by your appointment
17 as jury consultant to provide any of this information?

18 A. No. I was -- I mean, I saw . .

19 Q. Were you . .

20 A. I saw the train wreck coming, and I knew that this
21 case was going to come down to sentencing. There was no
22 coherent guilt phase strategy that was going to carry
23 over.

24 The defense was focused on a misguided notion that
25 mental health could get you a manslaughter defense, but

MR. BLOOM ON REDIRECT

1 there was no memo I could write to address that.

2 Q. Would you ever tell two lawyers who were trying a
3 death penalty case that they were a train wreck waiting
4 to happen?

5 A. No, I would not do that. They were decent and
6 committed to their case. They -- Mr. Buford, it was
7 clear, had worked hard. He was simply over his head.

8 I also assumed they had all the information they were
9 supposed to have and all the records and witnesses and
10 interviews, and I have since learned through today's
11 testimony that's really not the case.

12 They were decent people. They were in over their
13 heads.

14 Q. And is that why you provided this informatoin to
15 them?

16 A. Sure.

17 Q. Thank you. I have no further questions.

18 THE COURT: Recross, limited to redirect.

19 MR. ZELENKA: Just one question.

20 REXCROSS EXAMINATION

21 BY MR. ZELENKA:

22 Q. You charged them Three Hundred Dollars for that
23 particular memo. Is that right?

24 A. I billed my time back then at a Hundred Fifty Dol-
25 lars an hour. That's correct.

MR. BLOOM ON REDIRECT

1 Q. No further questions.

2 THE COURT: As to this witness?

3 MS. KIMBROUGH: Please excuse him.

4 THE COURT: Any objection?

5 MR. ZELENKA: No objection.

6 THE COURT: Mr. Bloom, if you will leave my exhibits
7 behind, you are free to leave.

8 (Witness excused)

9 THE COURT: I need to see counsel at the bench
10 briefly.

11 We're going to take a break at this time, so if you
12 need to do so, please take your break while I talk to coun-
13 sel.

14 (Conference at the bench between counsel and the
15 Court off the record)

16 (Court stood in recess until September 20,
17 2006, when the matter resumed)

18 THE COURT: Let's deal with two housekeeping matters.
19 Yesterday we had an exhibit which I believe was the
20 Applicant -- labeled Plaintiff's -- Exhibit Number 9,
21 which somehow or another during the testimony of one of
22 the witnesses we could not find, and you were going to
23 substitute a copy.

24 Is that correct?

25 MR. O'CONNELL: That's correct.

1 THE COURT: All right.

2 MR. O'CONNELL: And it consists of 27 pages, some of
3 which are front and back.

4 THE COURT: All right. We will substitute the copy
5 and mark it as Exhibit 9, without objection, and that
6 is Applicant's Exhibit 9.

7 (Copy so substituted for original as Applicant's Ex-
8 hibit 9)

9 THE COURT: Now, I understand -- give her the copy so
10 she can put a sticker on it.

11 I understand you wish -- although we are getting
12 close to the conclusion of the Applicant's case, I under-
13 stand the parties have agreed that they would take a wit-
14 ness out of order, that being Dr. Crawford.

15 Is that correct?

16 MR. O'CONNELL: That's correct, Your Honor.

17 THE COURT: Very well. Counsel, is this the only
18 witness that you need to take out of order?

19 MR. ZELENKA: That's right, Your Honor.

20 THE COURT: Very well. Then you may call Dr.
21 Crawford at this time.

22 MR. ZELENKA: The State calls Dr. Crawford.

23 PAMELA CRAWFORD, being duly
24 sworn, testified as follows:

25 THE COURT: I don't think I need to have the witness

1 spell her last name. You may proceed.

2 DIRECT EXAMINATION

3 BY MR. ZELENKA:

4 Q. Would you state your full name?

5 A. Pamela Crawford.

6 Q. Briefly describe your educational background.

7 A. I went to Emory University and graduated with a
8 Bachelor's in psychology in 1983. I then went to medical
9 school at Emory and got my degree in -- my medical degree
10 in 1988.

11 Then I went and took special ed in psychiatry and
12 completed that in 1992.

13 I am board certified in forensic and general adult
14 psychiatry.

15 Q. Briefly describe your employment background.

16 A. Okay. I spent three years in the Air Force, prac-
17 ticing psychiatry and finished at the rank of Major. That
18 was right after I got out of residency training.

19 I then was -- I went to Georgia to practice, and
20 I was the assistant clinical director of the state hos-
21 pital there which had a lot of forensic patients.

22 I went to South Carolina and in South Carolina I
23 initially treated patients and then I became the director
24 of forensics at the Hall Institute.

25 I did that for three years, and I am currently still

DR. CRAWFORD ON DIRECT

1 working with the Department of Mental Health, and I do
2 the sexually violent predator evaluations for the
3 State and do consulting work on dangerous patients.

4 I also work for State Law Enforcement in the capac-
5 ity of assisting in threats against public officials
6 and assisting as well in SWAT calls.

7 I am also an assistant clinical professor at the
8 University -- USC.

9 Q. And as a part of that, have you been involved in
10 a series of competency to stand trial evaluations?

11 A. Yes.

12 Q. Approximately how many of those do you think you
13 have done?

14 A. Several hundred -- over a couple hundred.

15 Q. And have you also done evaluations for criminal
16 responsibility or qualification for guilty but men-
17 tally ill in South Carolina?

18 A. Yes.

19 Q. At some point in time did you become involved in
20 the case of Eddy Weik?

21 A. Yes, I did.

22 Q. As a part of that process, did you perform a
23 competency to stand trial evaluation, as well as evalua-
24 tion for criminal responsibility?

25 A. Yes.

DR. CRAWFORD ON DIRECT

1 Q. Was that pursuant to a Court Order?

2 A. Yes.

3 Q. And that was in 1999?

4 A. Correct.

5 Q. And as part of that procedure, did you complete and
6 do a report?

7 A. Yes, I did.

8 Q. And are you referring to that report right now?

9 A. Yes, I am.

10 Q. Dr. Crawford, let me ask you to identify what has
11 been marked as Respondent's Exhibit 9.

12 A. This is a copy of my report in which I rendered
13 reports on competency to stand trial and criminal re-
14 sponsibility and capacity to conform.

15 Q. And what is the date of that report?

16 A. May 13, 1999.

17 Q. Okay.

18 MR. ZELENKA: Your Honor, we would move to introduce
19 this report as Respondent's Exhibit Number 9.

20 THE COURT: Any objection?

21 MR. O'CONNELL: No, sir.

22 THE COURT: Respondent's Exhibit Number 9 will be
23 admitted into evidence without objection. Respondent's 9
24 in evidence.

25 (Dr. Crawford's report entered in evidence without

DR. CRAWFORD ON DIRECT

1 objection as Respondent's Exhibit 9)

2 THE COURT: You may proceed.

3 BY MR. ZELENKA:

4 Q. Dr. Crawford, this report was prepared before
5 you testified in the Blair hearing on May 18, 1999,
6 is that correct?

7 A. That's correct.

8 Q. And in that report, you concluded that he was com-
9 petent to stand trial based upon your reviews of him
10 at that time?

11 A. Yes.

12 Q. You found that he was basically -- he met the
13 standards for being criminally responsible; in other
14 words, the State M'Naghten standard that he was not in-
15 sane. Correct?

16 A. That's correct.

17 Q. And similarly that he has the capacity to confirm,
18 is that correct?

19 A. That's correct.

20 Q. And that he did not meet the standards for guilty
21 but mentally ill, because he did not lack sufficient capa-
22 city to conform to the requirements of the law. Is that
23 correct?

24 A. That's correct.

25 Q. And in that evaluation, you found that he did not

DR. CRAWFORD ON DIRECT

1 have an axis one diagnosis?

2 A. That's correct.

3 Q. And what does that mean?

4 A. That means that he did not meet criteria for a major
5 mental illness such as schizophrenia or bipolar disorder.
6 It was my opinion he did not have a major psychiatric dis-
7 order.

8 Q. And on axis two, what did your report find?

9 A. It was my opinion that he had schizotypal personal-
10 ity disorder.

11 Q. Distinguish schizotypal personality disorder from
12 schizoid personality disorder.

13 A. They are similar in a lot of ways, and one of the
14 main differences would be the odd or eccentric thinking
15 of the person with the schizotypal personality disorder,
16 but they have characteristics of kind of odd kind of cog-
17 nition and odd way of thinking about things, and they
18 may have odd beliefs.

19 The beliefs are outside the norm but do not reach
20 the level of frank psychosis, and it would mean they
21 are not schizophrenic.

22 Q. Distinguish that from schizophrenia.

23 A. Okay. Schizophrenia is a major psychiatric illness;
24 that is, the hallmarks of which are delusions which are
25 fixed, false beliefs, hallucinations, hearing voices,

DR. CRAWFORD ON DIRECT

1 seeing things, and often disorganized thinking, and there
2 are often deterioration or typically deterioration in
3 function over time.

4 It is usually a progressive illness. You will have
5 periods of acute illness, and over time a person typi-
6 cally gets sicker and less able to function.

7 Q. In your evaluation at that time, did you prepare --
8 if you will look at the bottom paragraph, it notes the
9 materials on the first page?

10 A. Right.

11 Q. It notes the materials that you reviewed prior to the
12 time of your evaluation?

13 A. Yes.

14 Q. Would you summarize what those materials were?

15 A. A copy of the affidavit, arrest warrants, an autopsy
16 report of the victim, incident reports, supplemental inci-
17 dent reports, case notes from Detective Marshall, wit-
18 ness statements, statement of the Defendant, case notes
19 from a police interview with the Defendant.

20 Medical records from Hall Institute, discussion with
21 Mr. Weik's attorney, Percy Buford. A social history ob-
22 tained by Carlos Torrez.

23 An interview with the Defendant's mother, clinical
24 tests performed at Hall Institute, including EEG and MRI
25 of the head.

DR. CRAWFORD ON DIRECT

1 Psychological testing performed by Dr. Steven Shea,
2 neurological examination, clinical forensic interview --
3 do you want me to go into the interview part as well, or
4 just the stuff that I looked at?

5 Q. Go over the interviews.

6 A. I interviewed Mr. Weik for ninety minutes on April
7 27th, 1999; fifteen minutes on May 2nd, 1999; ten minutes
8 on May 3rd, 1999, and two and a half hours on May 6th,
9 1999.

10 Q. And as a result of that information, you found he
11 was competent to stand trial?

12 A. Yes.

13 Q. There was a Blair hearing subsequent to the report
14 on May 18, 1999?

15 A. Yes.

16 Q. Have you had the opportunity to review your testimony
17 from that hearing?

18 A. Yes, I have.

19 Q. Did you interview the Defendant prior to that tes-
20 timony being given on that day?

21 A. Yes.

22 Q. And at that time you were qualified as an expert
23 witness in forensic psychiatry?

24 A. Correct.

25 Q. In South Carolina?

DR. CRAWFORD ON DIRECT

1 A. Correct.

2 MR. ZELENKA: Your Honor, we would move that Dr.
3 Crawford be also qualified in this proceeding.

4 THE COURT: Any objection?

5 MR. O'CONNELL: To qualify her as an expert in . .

6 THE COURT: Forensic psychiatry. Without objec-
7 tion?

8 MR. O'CONNELL: That's correct, Your Honor.

9 THE COURT: Very well. So ordered without objection
10 and you may proceed.

11 BY MR. ZELENKA:

12 Q. Having reviewed your testimony, do you find that
13 to be accurate?

14 A. Yes.

15 Q. Let me ask you to identify this document, if you
16 could.

17 A. This is a psychological evaluation that was -- a
18 summary of the report prepared by Dr. Steve Shea, the
19 clinical psychologist who worked on the case with me.

20 Q. And Dr. Shea also testified at the time of the Blair
21 hearing?

22 A. Yes, he did.

23 MR. ZELENKA: Your Honor, we would move this in as
24 the next Respondent's Exhibit at this time.

25 MR. O'CONNELL: What is the document?

DR. CRAWFORD ON DIRECT

1 THE COURT: Dr. Shea's report.

2 MR. O'CONNELL: As a part of what she relied on in
3 her evaluation?

4 THE COURT: She stated that she relied on it. As I
5 recall her testimony, she relied on Dr. Shea's psycho-
6 logical assessment and his report in forming her opinion
7 in the Blair hearing and in criminal responsibility and
8 capacity.

9 That's as I recall her testimony.

10 MR. O'CONNELL: Thank you.

11 THE COURT: I will let the Court Reporter -- hold
12 on a second.

13 (Brief pause in the proceeding)

14 THE COURT: I understand, Mr. O'Connell, as to Ex-
15 hibit 10 for Respondent, you have no objection, is that
16 correct?

17 MR. O'CONNELL: Not for the purpose of what it was
18 used for.

19 THE COURT: Very well. Respondent's Exhibit 10
20 will be admitted into evidence without objection.

21 You may proceed.

22 (Respondent's Exhibit 10, Dr. Shea report, admitted
23 in evidence without objection)

24 BY MR. ZELENKA:

25 Q. In your evaluation, you also reviewed the records

DR. CRAWFORD ON DIRECT

1 of the South Carolina State Hospital, is that correct?

2 A. That's correct.

3 Q. Let me ask you to identify -- maybe I should have
4 this marked first.

5 Let me ask you to identify first what has been marked
6 as Respondent's Exhibit 11.

7 A. These are the medical records from Hall Institute
8 from Mr. Weik's admission from April 3, 1999, through
9 May 7, 1999.

10 Q. Okay, and your evaluation was at what time?

11 A. My evaluation was from April 27, 1999, through May
12 6, 1999.

13 Q. And would that documents directly relate to your
14 particular evaluation at the Hall Institute?

15 A. Yes.

16 Q. Did you review those materials in coming up with
17 your opinion?

18 A. I did, and I was also involved in treating him on
19 the unit. So I reviewed the record and I also produced
20 much of the record.

21 MR. ZELENKA: Your Honor, we would move these into
22 evidence.

23 THE COURT: As to Respondent's 11, the Hall records,
24 Mr. O'Connell.

25 MR. O'CONNELL: No objection.

DR. CRAWFORD ON DIRECT

1 THE COURT: Respondent's Number 11 will be admitted
2 into evidence without objection.

3 (Hall Institute records admitted in evidence without
4 objection as Respondent's Exhibit 11, being 1999 records)

5 THE COURT: You may proceed.

6 BY MR. ZELENKA:

7 Q. Let me ask you if you can identify what has been
8 premarked as Respondent's Exhibit 12.

9 A. Yes. These are the records for the Respondent when
10 he was at Hall Institute from September 28, 1998, through
11 October first, 1998.

12 Q. Did you review those records in making your evalua-
13 tion in 1999?

14 A. Yes, I did.

15 THE COURT: Do you offer those?

16 MR. ZELENKA: Your Honor, we would offer these mat-
17 ters in evidence.

18 THE COURT: As to Respondent's Exhibit 12, the 1998
19 records of Hall?

20 MR. O'CONNELL: No objection.

21 THE COURT: Respondent's Number 12 will be admitted
22 in evidence without objection.

23 (Hall Institute records of 1998 admitted in evidence
24 without objection as Respondent's Exhibit 12)

25 THE COURT: You may proceed.

DR. CRAWFORD ON DIRECT

1 BY MR. ZELENKA:

2 Q. In Respondent's 12, there is some material by --
3 identified at the top by Carlos Torres. Let me ask you
4 if you can briefly review those matters and identify what
5 that essentially is?

6 A. This is the social history that Carlos Torres, who
7 at the time was a social worker, prepared for the Respon-
8 dent.

9 Q. Is that social history that you are identifying in
10 your report?

11 A. Yes.

12 Q. Okay. Referring to Respondent's Exhibit 9, Dr.
13 Crawford, it also includes -- and you have stated this --
14 that there was a discussion with Mr. Weik's attorney,
15 Percy Buford?

16 A. Yes.

17 Q. And also an interview with the Defendant's mother,
18 Lillie Weik. Did you specifically speak with Mr. Buford
19 about this matter?

20 A. I believe I did.

21 Q. Did you personally interview Lillie Weik, the mother
22 of the Defendant in this matter?

23 A. Yes, by telephone, as best I can recall.

24 Q. What was the reason for those interviews?

25 A. My recollection from reading the transcript which is
409

DR. CRAWFORD ON DIRECT

1 mostly what I'm relying on, is that I talked with his
2 attorney and asked him if he had any more information
3 that could -- in terms of Mr. Weik being psychotic, and
4 that any additional information I would want to make sure
5 he would give to me regarding psychosis.

6 Talking with his mother was just to get a more detailed
7 history, social history.

8 Q. And the reason for seeking out that information was
9 what?

10 A. For completeness sake. I wanted to be provided with
11 what I could.

12 Q. By the time that you were appointed in this case, you
13 were a Court's witness, defense witness or prosecution
14 witness?

15 A. Court's witness.

16 MR. O'CONNELL: I'm sorry, Judge. The three witnesses
17 of Court's, defense and prosecution -- she was not called
18 by the Court, and I object to that.

19 She was called by the State.

20 THE COURT: Well, let's go back and look at the
21 transcript. I am assuming that you are referring to the
22 Blair hearing, and the Judge certainly had the power to
23 order one whenever he had reason to believe under the
24 statute the person may not be competent.

25 For that purpose, I don't know -- I mean, without

DR. CRAWFORD ON DIRECT

1 a jury here, I . . .

2 MR. ZELENKA: I may have misphased my question.

3 BY MR. ZELENKA:

4 Q. At that point in the evaluation, were you a Court
5 expert, a prosecution expert or a defense expert?

6 A. Court expert.

7 Q. Okay, and what does that mean?

8 A. What that means is that at the Hall Institute we re-
9 ceive Court-ordered evaluations, and we are not ex-
10 perts for one side or the other.

11 Then we render an opinion for the Court.

12 Q. And whoever calls you calls you?

13 A. Right. Sometimes we are called by the defense and
14 sometimes we're called by the prosecution.

15 Q. And in this particular case, you were called by the
16 prosecution?

17 A. Correct.

18 Q. And that was at the Blair hearing, and then subse-
19 quently in the penalty phase of this case?

20 A. Correct.

21 Q. You testified based on the information you had be-
22 fore you at that particular time. Is that correct?

23 A. That's correct.

24 Q. Did you remain at the Court throughout the entire
25 trial?

DR. CRAWFORD ON DIRECT

1 time?

2 A. No. As I recall, I came in and testified and left
3 at each time.

4 Q. Did you have any consultation with any of the defense
5 experts in this case, Dr. Donna Schwartz-Watts, Dr. Donald
6 Morgan, Dr. McKee?

7 A. Yes. I talked with Donna Schwartz-Watts one if not
8 more times.

9 Q. Okay, and are you aware that Dr. Watts did not share
10 your opinion as to the competency to stand trial or that
11 there was no diagnosis on axis one?

12 A. Yes, I am.

13 Q. Let me ask you briefly another question about schizo-
14 phrenia.

15 Does the illness of schizophrenia preclude a deter-
16 mination of competency to stand trial?

17 A. No.

18 Q. Have you evaluated individuals who suffer from schizo-
19 phrenia who were still deemed competent to stand trial?

20 A. Yes.

21 Q. Have you also evaluated people who suffer from schizo-
22 phrenia who are not competent to stand trial?

23 A. Yes. Certainly, yes.

24 Q. Now, in this particular case, your conclusion was in
25 fact that he did not suffer from schizophrenia?

DR. CRAWFORD ON DIRECT

1 A. Yes, that's correct.

2 Q. And you in fact ruled out schizophrenia?

3 A. Yes. That was the diagnosis I was looking at
4 and most concerned about, and that is what I was able
5 to rule out.

6 Q. All right. Now, subsequent to your testimony,
7 you were contacted initially by Mr. Weik's present
8 lawyer and also by me?

9 A. Yes.

10 Q. And you reviewed various materials to determine
11 if they would have impacted your opinion on behalf of
12 Mr. Weik?

13 A. Correct.

14 Q. Would you briefly identify the materials?

15 A. Certainly. I reviewed the transcripts. I re-
16 viewed some of the same materials I had looked at be-
17 fore I rendered an opinion.

18 There was also some interviews that I believe
19 were produced by investigators or mitigation experts
20 for the defense.

21 I'm looking through these things -- from a variety
22 of different people -- some of them were from 1999,
23 and some of them were from 2005.

24 THE COURT: Do you want her to give the identity
25 of the people she reviewed . .

DR. CRAWFORD ON DIRECT

1 A. Okay, and some of them are not labeled by who
2 produced it for me, so that's why -- I have something
3 that says Tuesday, May 27, 1999, at residence. Inter-
4 view with Russell Weik.

5 It does not say who produced that . .

6 THE COURT: Counsel, show her the Applicant's Ex-
7 hibits so she will . .

8 MR. ZELENKA: I'm not going to introduce those.

9 THE COURT: It's already in evidence. Show her
10 the Applicant's Exhibits so she has an idea of what
11 you have and whoever we're talking about in the record.

12 MR. ZELENKA: I'm not sure that one is in the re-
13 cord, Judge.

14 THE COURT: Mr. O'Connell, did you not put in
15 Applicant's Exhibit 1 during the testimony of Mr.
16 Minter, his interview notes?

17 MR. O'CONNELL: Yes, sir, but that was -- they
18 were not all of these.

19 THE COURT: All of Mr. Minter's notes?

20 MR. O'CONNELL: All that I knew about but I did
21 not include the other investigator.

22 THE COURT: Mr. Parker.

23 MR. O'CONNELL: Mr. Parker and Ms. Richardson.
24 They are not in evidence.

25 THE COURT: You didn't put Mr. Parker's in?

DR. CRAWFORD ON DIRECT

1 MR. O'CONNELL: No, sir.

2 THE COURT: I want you to look and make sure be-
3 cause my notes reflect that you put in number 1 and
4 then you put in 4 and 5, which I thought were the in-
5 vestigative reports from Mr. Parker.

6 MR. O'CONNELL: You are right.

7 THE COURT: I appreciate your saying that, Mr.
8 O'Connell.

9 MR. O'CONNELL: Number 3 is the report of inter-
10 view of Ms. Lillie Weik, and I think the Attorney Gen-
11 eral has Number 4, an interview by Mr. Parker of
12 Chris Weik.

13 Then Number 5 is the report Mr. Parker did with
14 Russell Weik, who testified yesterday.

15 Then Number 6 is a report on an interview with
16 Magdalene and John Gunter. Only pages 2 and 3 were
17 available.

18 THE COURT: So 3, 4, 5 and 6 are investigative
19 reports of Mr. Parker, and 1 is investigative notes of
20 Mr. Minter. Is that correct?

21 MR. O'CONNELL: Yes, sir.

22 THE COURT: Very well. Proceed, counsel. I'm
23 clear now on what is in the record.

24 BY MR. ZELENKA:

25 Q. Let me ask you to identify Plaintiff's Exhibit 5
415

DR. CRAWFORD ON DIRECT

1 and see if that is material that you have reviewed?

2 A. I have reviewed this. Let me make sure -- hold
3 on a second. Yes, I have.

4 Q. And that is Russell Weik as dated May 25, 1999?

5 A. May 14th.

6 Q. May 14 -- I apologize. Let me ask you to review
7 Plaintiff's Exhibit Number 4, styled at the top, inter-
8 view with Russell Christopher Weik.

9 A. Yes. I reviewed this. This is from May 25,
10 1999.

11 MR. O'CONNELL: Just for purposes of clarifica-
12 tion, are these reports you reviewed for purposes of
13 today or that you reviewed in 1999?

14 THE COURT: We're going to get a chance to cross
15 examine. Let's proceed and I'll give you a chance
16 to clear anything up you need.

17 Let's don't ask the witness to answer questions
18 from both sides at one time.

19 Proceed.

20 BY MR. ZELENKA:

21 Q. This is Plaintiff's Exhibit 3. Please identify
22 that.

23 A. This is the same -- it looks like the same as
24 the May 14, 1999 -- the same as the first one.

25 Q. And that is an interview with Lillie Weik?

DR. CRAWFORD ON DIRECT

1 A. An interview with Lillie Weik.

2 Q. And did you review that?

3 A. Yes.

4 Q. Solely for the purposes of this proceeding?

5 A. Yes.

6 Q. And Plaintiff's Exhibit 6, an interview with
7 Magdalene and John Gunter -- have you ever seen that
8 document?

9 A. I'll have to check. I don't recall this.

10 Q. Okay. Did you review other documents?

11 A. Yes. I reviewed a document from Margaret O'Shea
12 dated January 13, 2005, an interview with Chris Weik
13 on January 12, 2005.

14 I reviewed another one from Margaret O'Shea dated
15 March 2nd and it says typo corrected -- 2004 -- typo
16 corrected on January 4, 2005.

17 This is regarding telephone conference with Bill
18 Gunter on January 22nd, 2004.

19 Q. Okay.

20 A. I reviewed a packet of information -- several
21 pages -- entitled Rickborn Investigations, and this
22 included a letter to the attorneys, Mr. Weik's at-
23 torneys at the time.

24 Do you want me to go over all the information
25 that's in here?

DR. CRAWFORD ON DIRECT

1 Q. Yes.

2 A. Okay, and then I have a -- something that says
3 Plaintiff's 1 on it from May 11, 1999, to Percy Buford
4 from -- and Marva Hardee Thomas from Bobby Minter.
5 It says, subject, potential witness list.

6 Q. Let me ask you. Did you compare that with
7 Plaintiff's Exhibit 1?

8 A. Same document, yes.

9 Q. Thank you.

10 A. I also reviewed, which I don't have here, but I
11 did review from the Respondent's attorney a copy of
12 Mr. Weik's father's military discharge information or
13 his record.

14 Q. And by the father's attorney, now you are refer-
15 ring to Mr. O'Connell?

16 A. I'm sorry. Yes, Mr. O'Connell provided me a copy
17 of his military medical reports.

18 THE COURT: For purposes of this hearing, we'll
19 refer to Mr. O'Connell as the Applicant's attorney.

20 A. I'm sorry. Applicant . .

21 THE COURT: This is a civil matter, Dr. Crawford,
22 and we use those terms because this is civil court,
23 Applicant and Respondent.

24 It will confuse us even further because the
25 Court Reporter's stickers say Plaintiff and Defendant.

DR. CRAWFORD ON DIRECT

1 We refer to the Plaintiff as Applicant and Defendant
2 as Respondent.

3 A. All right.

4 BY MR. ZELENKA:

5 Q. Dr. Crawford, let's keep these papers separate
6 so we don't get them confused.

7 A. Okay.

8 Q. Plaintiff's Exhibit 7 -- I ask if you've seen
9 that?

10 A. I don't recall if I saw his -- is this a DD
11 214 form?

12 I'm not sure if I saw this or not.

13 Q. Let me ask you about Plaintiff's Exhibit 9.

14 A. Yes, this I saw.

15 Q. What is that?

16 A. This is -- I believe it is his medical board re-
17 port from -- Russell Weik's medical board report when
18 he was in the Navy in 1966, and the medical records
19 from his evaluation.

20 Q. In reviewing those reports, what was the diagno-
21 sis at discharge?

22 A. At discharge the diagnosis was schzoid personality
23 disorder.

24 Q. Was he diagnosed with schizophrenia, chronic
25 schizophrenia, at his discharge?

DR. CRAWFORD ON DIRECT

1 A. Not at discharge, no.

2 Q. Thank you. Having reviewed these materials,
3 which involves a significant amount of background his-
4 tory related to Mr. Weik, personal relationships
5 with family members, . .

6 A. Yes.

7 Q. . . his father's background generally and his
8 own mental history. Does that revise your opinion on
9 competency to stand trial as it existed in 1999?

10 A. No, not as it existed then.

11 Q. Does it affect your opinion on criminal responsi-
12 bility?

13 A. No.

14 Q. In relation to that information, would that af-
15 fect your general diagnosis on axis one, axis two,
16 axis three?

17 A. Not from the information that I reviewed. There
18 doesn't seem to be -- I mean, there is certainly
19 additional information, but not that would change
20 the diagnosis in my opinion.

21 Q. Okay. With respect to that information, what im-
22 pact, if any, does the fact that Mr. Weik may have had a
23 large head when he was a baby have on your diagnosis?

24 A. It wouldn't have any. I think when I reviewed the
25 information also from Hall Institute, I think it said he

DR. CRAWFORD ON DIRECT

1 specifically did not have hydrocephalus. That he may
2 have had a large head and may have been made fun of, but
3 there is no information that I have seen to show that
4 he had a brain difficulty as a result of having a large
5 head.

6 Q. Was a neurological examination done at Hall?

7 A. Yes.

8 Q. What impact at all would the fact that he was slow
9 to read or slow to walk have on your
10 evaluation?

11 A. It would only have an impact -- I mean, not his
12 history of being slow to read or slow to walk.

13 I mean, if he had continued problems that would im-
14 pair competence at the time, which is what I was assess-
15 ing, then that might be relevant.

16 But just having had a history of that would not be
17 relevant in terms of my evaluation of competency and also
18 his discussion of the incidents that occurred and my
19 opinions regarding criminal responsibility and capacity to
20 conform.

21 Q. What was your understanding of his educational level?

22 A. I believe he might have had a tenth grade or an
23 eleventh grade education. I would need to check that.

24 The psychological testing that we did showed him to
25 read at about an eighth or ninth grade level.

DR. CRAWFORD ON DIRECT

1 He was in resource classes and he was in some slow
2 learning classes, I believe. If you'll give me a second
3 here.

4 (Brief pause in the process)

5 A. He dropped out of high school in the eleventh grade.
6 BY MR. ZELENKA:

7 Q. Okay. There has been testimony about the impact of
8 the Hag, his belief in the Hag.

9 A. Right.

10 Q. What effect would that have on whether that would
11 meet the level of schizophrenia? His beliefs, as you un-
12 derstood it, about the Hag from information you had then
13 and information you have now?

14 A. My understanding -- and that is something I spent a
15 good deal of time looking at -- is that this is a belief
16 that is held by a number of members of his family and
17 also member of the community about the Hag.

18 But more specifically when I evaluated him, he de-
19 scribed a belief in it, but he described seeing it when
20 he would be coming in or out of sleep. We call those
21 hypnagogic or hypnopompic hallucinations.

22 So he described these when he was in that intermed-
23 iary place, falling asleep or waking up, which is not
24 abnormal for people to have those kinds of hallucinations.
25 That would not be one that would be typical of schizophrenia.

DR. CRAWFORD ON DIRECT

1 And, again, it was fairly clear to me that this was
2 something that was acceptable in his family, a belief in
3 a lot of superstitious things, including the Hag, and
4 also some very odd beliefs that were propagated by his
5 father regarding the CIA and the Masons.

6 Q. All right. With respect to his father, his father
7 based upon information that we have expressed the belief
8 that he had been over in Vietnam.

9 A. Yes.

10 Q. And was some sort of military undercover agent for
11 the CIA.

12 A. Yes.

13 Q. And this was information he shared with his family
14 members?

15 A. Yes, it seemed pretty clear that they had been raised
16 with that belief and made frightened in certain ways by
17 that belief as well throughout their childhood.

18 Q. What effect would the Defendant's belief in his fa-
19 ther's version have on schizophrenia or your evaluation
20 of schizophrenia?

21 A. We now have more information about the environment
22 he was raised in, but at the time we did know these were
23 beliefs that were held by his family.

24 That was one of the things that I looked at, is
25 that delusions would be ones that are not culturally

DR. CRAWFORD ON DIRECT

1 accepted beliefs and in the culture of his family there
2 were these beliefs and some bizarre things he was raised
3 to believe and told to believe.

4 So within the culture of the family, that was the
5 norm. They all believed that kind of information, and
6 so one would distinguish those odd beliefs from a delus-
7 ion because, again, in the culture of the family it was
8 accepted.

9 So, for example, if Mr. Weik had come to me with no
10 family history of any of this kind of stuff and all of
11 a sudden spontaneously started believing the CIA is fol-
12 lowing him and the Masons, that would be more indicative
13 of a major mental illness.

14 I certainly have diagnosed people with schizophrenia
15 who have fixed false beliefs about the CIA, but what we
16 had to do was look at it in the context of how he was
17 raised, and that did not in my opinion go along with the
18 schizophrenia.

19 Q. Explain the concept of shared delusional beliefs.

20 A. Well, there . .

21 A. And how that is different from . .

22 A. . . there is a shared delusional disorder, and I
23 have also treated people with that. .

24 What you usually see in that is a delusion that comes
25 on later in life. It isn't something that children are

DR. CRAWFORD ON DIRECT

1 raised with.

2 What happens is you usually have one person who is a
3 dominant party in the delusion and then you have others
4 who are sort of -- who are maybe less sophisticated who
5 may share the belief.

6 But it is a new onset of a delusion. It is not a
7 culturally accepted thing.

8 It would be, for example, say, somebody in his thir-
9 ties has a belief that he is being followed by the CIA
10 and then he -- his wife starts believing it as well, spon-
11 taneously, as opposed to a child being raised and being
12 told these things from early on.

13 I would distinguish it in how it presents psychia-
14 trically.

15 Q. Okay. Does the finding or the evaluation where he
16 was found to suffer from schizoid personality disorder,
17 possibly at some point leading up to schizophrenia -- how
18 does that impact upon your evaluation?

19 A. It is not surprising when we look at the information
20 about people with schizotypal. They have a higher prepond-
21 erance of family members with schizophrenia and/or schizo-
22 typal personality and/or schizoid personality as well.

23 So it is not surprising that he would have a fam-
24 ily member with -- it would not make or break a diagnosis,
25 given that somebody's father has a serious mental illness.

DR. CRAWFORD ON DIRECT

1 Q. You weren't here yesterday, but Dr. Halleck eval-
2 uated Mr. Weik's present mental status as also suffering
3 from a major depression disorder.

4 A. Okay.

5 Q. Did you see that at the time you did an evaluation
6 of Mr. Weik?

7 A. No.

8 Q. Is a major depressive disorder something that since
9 1999 could have developed on an individual who was left
10 on death row?

11 A. Sure. It could develop in any individual on death
12 row or not.

13 It is something that could come up, and it is certainly
14 not atypical for people with these sorts of personality
15 disorders to become depressed.

16 Q. I believe I have no further questions. Thank you.

17 THE COURT: Very well. Cross examination.

18 MR. O'CONNELL: Thank you.

19 CROSS EXAMINATION

20 BY MR. O'CONNELL:

21 Q. Dr. Crawford, we have not met but we have talked
22 on the phone.

23 A. Yes.

24 Q. When we spoke last, you asked me whether I was going
25 to ask you to come down, . .

DR. CRAWFORD ON CROSS

1 A. Right.

2 Q. . . and I asked you if your opinion had changed,
3 and as a result I told you I was not going to ask you to
4 come down.

5 A. Correct.

6 Q. When you were told by Mr. Zelenka that you were to
7 come, . . .

8 A. Yes.

9 Q. . . what did he tell you?

10 A. What did he tell me? He told me lots of things.
11 I think he called me the day before yesterday or yesterday --
12 I think he called me the day before yesterday to tell me
13 that he was going to have me come. I can't recall.

14 I have been in Court so much. It might have been on
15 yesterday.

16 He told me that he was going to ask me about whether
17 I had information that would change my opinions in the
18 case, and he brought over documents. He provided me
19 with a bunch of documents.

20 Q. Did he tell you about Dr. Halleck's testimony?

21 A. He told me that Dr. Halleck testified.

22 Q. Did he tell you what he said?

23 A. I don't remember what he said. Donna Schwartz-Watts
24 called me this morning and told me what Dr. Halleck said
25 or some of what he said.

1 Q. Okay.

2 A. So I'm trying to remember what -- I'm not trying to
3 be difficult.

4 Q. I don't think you are either.

5 A. Thank you. I've been in Court just constantly.

6 I think that he told me that he testified. I can't
7 remember if he told me or if Donna told me that he diag-
8 nosed him both with schizophrenia and schizotypal. It
9 might have been Donna.

10 Q. Do you recall anything Mr. Zelenka told you as to
11 why he wanted you to come down?

12 A. He told me Donna testified. He told me that the
13 father testified.

14 Q. You are talking about Dr. Donna . . .

15 A. I'm sorry. Dr. Donna Schwartz-Watts.

16 Q. Okay.

17 A. He told me she testified and told me that the father
18 had testified, and that the father seemed very unusual.
19 He did tell me that.

20 Q. Did he tell you the substance of his testimony?

21 A. I think he told me it seemed pretty crazy, and that

22 . . .

23 Q. DSM Four?

24 A. Yeah. Well, I don't know those were his words, and
25 I don't want to say the wrong thing in terms of his words,

DR. CRAWFORD ON DIRECT

1 but he said that he was -- he thought he was pretty men-
2 tally ill or pretty crazy, and I think he said that he
3 believed that the father believed that he was in Vietnam.

4 Q. Are you familiar with Dr. Halleck in the field of
5 psychiatry?

6 A. Yes.

7 Q. And do you respect his opinions?

8 A. I have a very mixed opinion about his opinions.

9 I . . .

10 Q. Do you respect him as a psychiatrist?

11 A. I don't know that I -- what I can say about that.

12 I know him to be a psychiatrist that works for the de-
13 fense, that is very anti-death penalty.

14 He has taken issue with things I have done in the
15 past. I really don't know enough about him to say. I
16 would have concerns about him, being that he is -- and
17 this is my opinion and what I have heard -- that he is
18 very defense-oriented. That's the best I can say.

19 Q. Is that what you've heard or do you know that to be
20 actually true?

21 A. I can't, no -- do I know that to be true? I have
22 heard him testify where he said he is against the death
23 penalty.

24 But actually when I was talking with Donna this
25 morning, she was telling me that he is a truthful person.

1 and a good psychiatrist.

2 I mean, this is all second hand information, so

3 I don't . . .

4 Q. Is he a good psychiatrist?

5 A. I have no idea.

6 Q. You don't know?

7 A. No.

8 Q. Have you all ever testified in the same case?

9 A. Yes.

10 Q. What case was that?

11 A. We testified in a Greenville case, where I-- in a
12 death penalty case.

13 Q. And was the subject of your testimony a -- was it
14 during a suppression hearing?

15 A. I think I testified twice. One was in a suppression
16 hearing and another time I testified in the trial it-
17 self, I believe.

18 Q. The suppression hearing was for the purpose of sup-
19 pressing a statement you had gotten from the Defendant?

20 A. Right.

21 Q. And as a result of the suppression hearing, the
22 statement he gave was suppressed. Is that correct?

23 A. No.

24 Q. It was not suppressed?

25 A. No, they allowed it in.

Q. They allowed it in?

DR. CRAWFORD ON CROSS

1 A. I believe so. You know, I never -- I believe they
2 allowed it in.

3 Q. Did you have a conversation with Dr. Halleck after
4 that trial?

5 A. Yes. Let me again think back, because I do so many
6 of these.

7 I think what happened was the prosecution decided
8 not -- I can't remember how they decided but I ended up
9 testifying.

10 I thought that the Judge ruled it in. I was already
11 involved in another death penalty case in Charleston the
12 next week, so . .

13 Q. What conversation did you have with Dr. Halleck?

14 A. Well, Dr. Halleck -- I had been doing these evalua-
15 tions for SLED, for the solicitors, and . .

16 Q. What evaluations for SLED?

17 A. I'm explaining. Okay, I have been doing these eval-
18 uations where I would be asked by -- I had a contract
19 -- well, not a contract. I worked for DMH but they had
20 an agreement with SLED, and I would do these evaluations
21 where they would call me into a case right after the
22 alleged crime had been committed, and I would mirandize
23 the person.

24 I would identify myself as an agent of the State
25 and mirandize the person and get informed consent, and
we would videotape these.

DR. CRAWFORD ON CROSS

1 Then I would ask them and essentially do a psychiatric
2 evaluation if they waived their right to an attorney.

3 Now, Dr. Halleck had tremendous problems with that
4 and so . . .

5 Q. What problems?

6 A. He thought it was unethical.

7 Q. Did you have any conversation with Dr. Halleck about
8 whether or not it was?

9 A. Yes, he and I talked about it.

10 Q. Do you also believe it is unethical?

11 A. No. No. What I said was that I wasn't going to do
12 them any more because I got a tremendous amount of flack
13 from the -- from people like Dr. Halleck and from people
14 in the American Psychiatric Association who were of the
15 opinion that it was.

16 I still don't think it's unethical.

17 Q. But you got flack from Dr. Halleck and from other
18 people in the American Psychiatric Association that it
19 was unethical?

20 A. I got -- I would say that, for example, Dr.
21 Zynana interpreted the rule -- there is a rule that says
22 that you -- there was a rule back then that you cannot as
23 a psychiatrist evaluate a person who has been charged
24 with a crime unless they have access to or availability
25 of counsel.

DR. CRAWFORD ON CROSS

1 And so what our disagreement was was what access to
2 or availability meant, and it was my understanding and the
3 understanding of other APA members that that meant that
4 they could request a lawyer if they wanted to and that
5 the proceedings would stop.

6 Now, Dr. Halleck had a different interpretation, as
7 did some other members of the APA to my understanding,
8 but since that time what they have done is they came out
9 and actually within maybe a year of this happening -- came
10 out and said that psychiatrists cannot participate, per-
11 iod, before the person has a lawyer.

12 So they have made it very clear, but at the time it
13 was not a clear statement. It is my opinion to this
14 day that if someone intelligently, knowingly waives their
15 right and agrees to talk to a psychiatrist, they should
16 be able to.

17 But since the APA has come out with the absolute
18 edict on it, I don't do it. It's just not worth it.

19 Q. You got -- when the defendant in that case made a
20 statement, were you acting as a law enforcement officer
21 or as a psychiatrist?

22 A. As a psychiatrist, and what I did was -- if I was
23 doing a psychiatric evaluation with a law enforcement
24 person present, the purpose was not to have them make a
25 statement but the purpose was to do a psychiatric evaluation

DR. CRAWFORD ON CROSS

1 and actually try to understand state of mind as close
2 to the incident as possible, and the statement that came
3 out of him was that -- I asked him his thoughts and feel-
4 ings before the incident, and he talked about the fact
5 that he had been keeping a journal.

6 And I asked him about the journal, and he told me
7 and the law enforcement person where the journal was, and
8 when they retrieved the journal it had information about
9 him planning the killing and about him having a copy of
10 the work schedule of the girl he killed.

11 And so that information would not have come to light
12 had I not done that psychiatric evaluation.

13 Q. The information was helpful to the State?

14 A. Yes.

15 Q. Where did that interview take place?

16 A. The law enforcement center, I believe it was. This
17 was in Greenville, so I think it was in the Greenville
18 Sheriff's Office.

19 Q. This was how long after the arrest?

20 A. I don't remember. It may have been like the same
21 day or the -- probably the same day.

22 Q. Did the Defendant have counsel?

23 A. No.

24 Q. I mean, not there, but anywhere?

25 A. No.

DR. CRAWFORD ON CROSS

1 A. No.

2 Q. All right.

3 A. But what I did was, again, I read him his rights
4 -- no, I discussed his rights with him, and Dr. Halleck
5 didn't think I did an adequate job of that and giving
6 informed consent.

7 Dr. Halleck also said I was seductive or something
8 throughout the interview.

9 Q. So you were in Greenville -- asked to come to
10 Greenville by law enforcement?

11 A. I think it was the Solicitor's Office slash law
12 enforcement. It was in my capacity as a psychiatric con-
13 sultant for law enforcement.

14 Q. At that point, where were you employed?

15 A. Where I still am. I am employed by the Department
16 of Mental Health, and the Department of Mental Health
17 has a Memorandum of Agreement with SLED.

18 And I act -- in my capacity with Mental Health, I
19 am their consultant, and so I identified myself as working
20 for SLED and with SLED to do the evaluation.

21 Q. So as you recall it was the day of or the day after
22 . . .

23 A. I think it was the day after.

24 Q. You had come to Greenville to interview someone?

25 A. Yes.

DR. CRAWFORD ON CROSS

1 Q. Who had not yet acquired counsel?

2 A. Correct.

3 Q. And you had -- this was a psychiatric evaluation?

4 A. Yes.

5 Q. In conjunction with law enforcement?

6 A. Yes.

7 Q. And it was videotaped?

8 A. I think it was either video or audio-taped.

9 Q. Okay.

10 A. I can't remember if this -- I did several of these
11 and I can't remember if this was on video or audio, but
12 it was taped in some way, shape or form. I think it was
13 -- this might have been audio.

14 Q. And the purpose of that was to get the Defendant to
15 incriminate himself?

16 A. No. The purpose of that was to do a psychiatric
17 evaluation as close to the time of the incident as poss-
18 ible.

19 What I have found is that for a variety of reasons
20 the psychiatrist is typically not able to talk with the
21 person until there has been oftentimes a lot of inter-
22 ference from other people and a lot of potential sug-
23 gestions made, etcetera, etcetera.

24 This to me, and it still is to me, is the fairest
25 way to assess state of mind, to do it at the time and to

DR. CRAWFORD ON CROSS

1 tape it so that everybody had access to it.

2 But, again, I don't do this any more, because I got
3 a tremendous amount of flack for it.

4 Q. In the psychiatric community?

5 A. Some, I would say, from people like Sy Halleck. I
6 would say that the ones I saw -- I guess Sy was the
7 main one of the ones I saw or Rick Friarson, and I
8 worked with him at Hall.

9 And then the APA made their position crystal clear
10 that -- I'm not the only one who has been doing these.
11 In California, they were doing these for a good period
12 of time.

13 But when the APA made their position crystal clear,
14 it was my position that I didn't want to fight that bat-
15 tle.

16 In my opinion, the APA is a political organization,
17 and they are -- they have come out against the death pen-
18 alty and they make decisions, in my opinion, that are
19 consistent with them being against the death penalty.

20 So I still don't think it's unethical to do it,
21 but I don't do it.

22 Q. Now, did Mr. Zelenka describe to you Mr. Russell
23 Weik's testimony yesterday?

24 A. That's the day?

25 Q. Yes. I'm sorry.

DR. CRAWFORD ON CROSS

1 A. I mean, what he said was he seemed pretty crazy.
2 I don't know if that's exactly what he said but that is
3 what I took from it.

4 Q. Did Mr. Zelenka tell you that the father's testi-
5 mony was that he believed -- that in fact his history
6 was, according to him, that he was in the Navy and he was
7 on his way after basic training when the CIA came to
8 take him to Paris Island for thirty days for special-
9 ized training; that they then took him to Vietnam or
10 dropped him in Vietnam somewhere in a parachute jump at
11 night where he was in charge of thirty or forty soldiers?

12 A. . .

13 Q. Did he tell you any of that?

14 A. No.

15 Q. Did he tell you that according to Mr. Weik when he
16 testified that in 1984 -- when I asked if he had had any
17 more contact with the CIA, he said, yes; that in 1984 he
18 went to -- I guess it was what he described as a job
19 fair at Pinehaven Shopping Center where the CIA had set
20 up for the purpose of recruiting people?

21 That he went down to re-up.

22 Did he tell you that?

23 A. No. He didn't discuss any specifics of his tes-
24 timony.

25 Q. Assuming that I am characterizing the testimony Mr.

DR. CRAWFORD ON CROSS

- 1 Weik gave, you wouldn't believe that, would you?
- 2 A. No.
- 3 Q. Obviously it's untrue?
- 4 A. I suppose so. I mean, . .
- 5 Q. And you have seen today the DD 214 which is Plain-
- 6 tiff's Exhibit 7, his discharge paper?
- 7 A. Yes.
- 8 Q. And have you ever seen a DD 214 before?
- 9 A. Yes, I have one.
- 10 Q. Okay, and DD 214s in summary fashion will inform
- 11 the reader where the person was stationed and what sort
- 12 of training he had when he was in service?
- 13 A. Yes.
- 14 Q. And if that DD 214 doesn't say he was in Vietnam,
- 15 he wasn't in Vietnam?
- 16 A. He was not in Vietnam. Quite clear.
- 17 Q. If the DD 214 says he was not there, it didn't hap-
- 18 pen?
- 19 A. I assume so, yes.
- 20 Q. And the other document in your hand, which I be-
- 21 lieve is Plaintiff's Exhibit 8, . .
- 22 A. Yes.
- 23 Q. . . those, according to Mr. Weik, are a history
- 24 of his assignments?
- 25 A. Yes.

DR. CRAWFORD ON CROSS

1 Q. And none of those indicate that he was in Vietnam?

2 A. No.

3 Q. Okay. Did he tell you that Dr. Halleck testified
4 yesterday that he asked Mr. Weik, is there any evidence
5 that I can present to you that your father was not in
6 Vietnam and was not in the CIA that would convince you
7 that he was not?

8 A. No.

9 Q. Did he tell you -- so you didn't know that Mr. Weik,
10 my client, told Dr. Halleck that nothing you can show
11 me -- even after the testimony of his father -- would
12 convince me my father was not in Vietnam . .

13 A. Right.

14 Q. . . and did not work for the CIA?

15 A. Right. I mean I didn't know that, but I know it
16 now.

17 Q. So you talk about the delusions and then his cul-
18 tural beliefs.

19 A. Right.

20 Q. The cultural beliefs in a family like that, they
21 can mature as people grow older, and, more importantly,
22 gain some information, . .

23 A. Sure.

24 Q. . . that would change them in most people, even
25 though they are cultural beliefs?

DR. CRAWFORD ON CROSS

1 A. Sometimes they do and sometimes they don't. I mean,
2 I think -- and my understanding would be that his father
3 sort of covered all the bases in terms of, you know,
4 the government will hide this stuff.

5 He provided these children with these reasons why
6 all of this would be not true.

7 I know of many family where there are government con-
8 spiracies that people continue into their adulthood to
9 believe firmly.

10 For example, that AIDS was brought here to kill cer-
11 tain people and -- so some people grow out of it and others
12 maintain those beliefs.

13 Q. If someone based on uncontravertible evidence is
14 shown that a belief that they have cannot possibly be true
15 but yet they continue to believe it, what is that?

16 A. Well, it can be -- it depends on what we're talk-
17 ing about.

18 If it's within the culture -- say, for example, if
19 the family has a belief that we might not share, that
20 they are Hindu or some other religion, and we show them
21 uncontravertible evidence to the contrary, and they still
22 believe it, that doesn't make them psychotic.

23 So that . .

24 Q. I was just asking what it was.

25 A. A firmly held belief that is unusual in the general

DR. CRAWFORD ON CROSS

1 population. I mean, it could be . .

2 Q. False?

3 A. Yeah, false, because we have enough information.

4 Yes.

5 Q. So it is a false belief?

6 A. And they -- the only reason I'm hesitating in that

7 is because you are using the words to define delusion.

8 There can be fixed false beliefs that are not delusions.

9 For example, people who believe that -- I'm trying

10 to think of sort of everyday ones -- there are conspir-

11 acies. You know, beliefs that President Kennedy was

12 assassinated by somebody other than who they were.

13 There are fixed false beliefs that are not delusions.

14 Q. Okay.

15 A. I'm trying to think . .

16 Q. I understand.

17 A. Do you understand what I'm -- it was my opinion that

18 his fixed false beliefs were not delusions and not neces-

19 sarily -- that they were part of the cultural belief

20 within the family.

21 Q. But even when faced with uncontravertible proof, he

22 still has not changed his mind and believes that what his

23 father said is absolutely true?

24 A. Okay.

25 Q. Is that a fixed false belief or is that a delusion?

DR. CRAWFORD ON CROSS

1 A. No, I don't think it is because I think it is within
2 the context of the family.

3 Now, if -- it would be if he were to come to me as
4 a new patient and there is no history of this, but this is
5 a family that has said these things were true over and
6 over and over again.

7 I think in the context I would not say it is a delus-
8 ion. In the context of that particular family.

9 Q. Okay. Now, when you testified at the trial in 1999
10 and you testified twice?

11 A. Yes.

12 Q. The competency hearing and again in the penalty
13 phase?

14 A. Yes.

15 Q. I'm going to show you a portion of your testimony
16 which was in the penalty phase of the trial.

17 A. Right.

18 Q. And if you could start with line 18, which is
19 okay, and then your testimony, . .

20 A. Uh huh.

21 Q. . . and read that . .

22 THE COURT: Page number?

23 A. Page 2075 -- okay. Starting with -- answer, I would
24 give the social history provided by the social worker
25 and -- question, was that something that you would in your

DR. CRAWFORD ON CROSS

1 position would need to do in order to reach any kind of
2 opinion or conclusion?

3 Answer, I think it is a very important piece.

4 Q. Okay, let me ask you this, if you will stop there.

5 A. Okay.

6 Q. The -- that was your information and there is no-
7 thing -- I mean, that was accurate?

8 A. . .

9 Q. Sorry -- it was important in 1999?

10 A. Yes.

11 Q. And that's the sort of thing that continues to be
12 important in the field of psychiatry?

13 A. Sure.

14 Q. And your report -- excuse me. Plaintiff's Exhibit
15 Number 2 -- I apologize.

16 THE COURT: What exhibit?

17 MR. O'CONNELL: Plaintiff's Exhibit 2.

18 BY MR. O'CONNELL:

19 Q. It says that Mr. Weik's social history -- the sec-
20 ond full paragraph. Would you read it?

21 A. Sure. Mr. Weik's social history revealed he was
22 the third child in a family of six. He was raised in an
23 intact family by his mother and father.

24 He was the product of an uncomplicated pregnancy.
25 He achieved developmental milestones in an unremarkable

DR. CRAWFORD ON CROSS

1 fashion.

2 Q. Stop there.

3 A. Sure.

4 Q. That was what you believed in 1999, based on informa-
5 tion you had been provided?

6 A. Yes.

7 Q. The reaching of developmental milestones at appro-
8 priate ages was in fact not true, was it?

9 A. Okay.

10 Q. Is that correct?

11 A. I don't know. That's what his mother said.

12 Q. Well, do you also understand that the witnesses who
13 testified here yesterday and Monday testified that he was
14 very late in walking and very late in talking?

15 A. Okay. Let me say this. I have not seen any records
16 that substantiate that. The mother reported that.

17 I don't know who said what in terms of late walking
18 and talking, so I don't know if that's true or not.

19 Q. I'm not trying to say you should have known these
20 things in 1999.

21 A. Right.

22 Q. But I'm asking what you did know as opposed to what
23 the evidence in this trial has been so far.

24 I am not charging you with knowledge that happened
25 here in this Courtroom. I'm just wanting to know what

DR. CRAWFORD ON CROSS

1 you knew back then?

2 A. What I knew back then or what I believed back then
3 was that he achieved developmental milestones in an
4 unremarkable fashion.

5 Q. And if he, according to several witnesses, did not
6 talk at the same time as most other children, is that a
7 developmental milestone?

8 First of all, is talking a developmental milestone
9 for a child?

10 A. Sure.

11 Q. All right, and so if he talked later, significantly
12 later, than other children, . .

13 A. Yes.

14 Q. . . then your information, or at least that one,
15 was not accurate, without charging you with anything?

16 A. No, but what I'm saying is that just as likely the
17 information you have now is not accurate.

18 Q. Okay. So you are making a judgment that what I
19 know now or what we've learned now is not accurate because
20 what his mother told you was accurate?

21 A. I have no idea.

22 Q. Okay. Let's assume it to be true that he didn't
23 reach that milestone, . .

24 A. Yeah.

25 Q. . . then that information you had at your disposal

DR. CRAWFORD ON CROSS

1 in 1999 is just wrong?

2 A. . .

3 Q. I'm not charging you with anything.

4 A. No, I know you're not charging me with anything.

5 I am just saying I have to consider the source of the
6 information.

7 I mean, his mother is as likely to know what his
8 developmental milestones are as whoever you had testify.
9 The thing is, I don't know -- I don't know.

10 Q. How about an older sister?

11 A. I cannot determine with a reasonable degree of psy-
12 chiatric certainty whether his sister knows more than his
13 mother knows about his developmental milestones.

14 Q. You talked with his mother on the telephone or face
15 to face?

16 A. I believe it was the telephone, but I didn't ob-
17 tain that information. The social worker did.

18 Q. And so you make a judgment when you read these so-
19 cial histories about who is being truthful or not being
20 truthful?

21 A. Very often. I mean, if I had -- for example, if you
22 gave me this information, conflicting information, I'd
23 have to evaluate both sources of information before I'm
24 going to believe one or the other.

25 So the fact that his sister now says this, that

DR. CRAWFORD ON CROSS

1 doesn't necessarily mean that's true and the other is
2 false.

3 I would have to talk with her and weigh that informa-
4 tion, unless there is a medical record.

5 For example, if someone goes to a pediatrician -- and
6 maybe he didn't get medical care. I don't know, but that
7 would be good information.

8 Or if there are school records, for example. If
9 there are school records often they go back and do a
10 history and they say there was some delay, but when a
11 family member now comes, as opposed to a family member I
12 saw in 1999, I am not sure how to make a distinction. I
13 mean, I am not sure how to weigh that.

14 Q. The testimony in this Court under oath was that he
15 did not talk and walk at normal ages.

16 A. Okay.

17 Q. It was not a normal history, and that was the tes-
18 timony under oath.

19 A. Okay.

20 Q. The information that came by way of a social worker
21 to you or from the mother to the social worker to you was
22 that everything was fine?

23 A. Yeah.

24 Q. Right?

25 A. Yes.

DR. CRAWFORD ON CROSS

1 Q. Making the judgment that what people said in this
2 Courtroom under oath is incorrect?

3 A. No, I'm saying I cannot make a judgment because I
4 have not spoken with them.

5 Q. If that was true, that he did not reach those two
6 milestones at an appropriate age, . .

7 A. Okay.

8 Q. . . that would be important information to you in
9 making a diagnosis?

10 A. The diagnosis of schizophrenia? No.

11 Q. A diagnosis?

12 A. Not necessarily.

13 Q. Well, in your testimony you said it was very im-
14 portant?

15 A. What I said was that a social history is important
16 but not every element of the social history would impact
17 the diagnosis.

18 For example, there are schizophrenics who walked and
19 talked early, who walked and talked on time, who walked
20 and talked late.

21 That is not in my opinion a significant factor in
22 rendering a diagnosis.

23 Q. I'm just asking you -- you were asked the question
24 on the witness stand if a social and childhood history is
25 important in your work?

DR. CRAWFORD ON CROSS

1 A. A social history.

2 Q. It is very important, isn't it?

3 A. Yes. A social history also incorporates who . .

4 Q. Doctor, that's all I asked you, whether that is
5 what you said. Okay?

6 A. . .

7 THE COURT: The witness can answer the question,
8 counsel. Let her complete her answer.

9 MR. O'CONNELL: She . .

10 THE COURT: You ask questions and she answers them.
11 Do you wish to finish your answer?

12 A. Yes, I'd like to finish the answer.

13 THE COURT: All right.

14 A. A social history and what would be crucial in this
15 case would involve things such as relationships later in
16 life, how he did in his job, how he related to other peo-
17 ple, how he was able to perform.

18 So what you're -- not every element of a social his-
19 tory is necessarily important in a specific case. Not
20 every single point.

21 BY MR. O'CONNELL:

22 Q. All right.

23 A. Okay.

24 Q. But the -- also from his mother -- he was raised by
25 his mother in that report?

DR. CRAWFORD ON CROSS

1 A. Yes.

2 Q. And he was raised in a loving and stable family?

3 A. Yes.

4 Q. It was brought out today and in fact was in the
5 possession of the lawyers in 1999 that that was absolutely
6 not true?

7 A. Correct.

8 Q. That he was brought up in an abusive family?

9 A. Yes.

10 Q. And, in fact, his father was -- you may not call
11 it a major mental illness, but he was mentally ill from
12 what information you've been able to see?

13 A. There was something very wrong with his father.

14 Q. So the impression you had in 1999 of a loving and
15 stable family is -- you have now learned that that is not
16 true?

17 A. That's correct, but I also did know that they had
18 very bizarre beliefs in the family, but I did not know
19 there was abuse.

20 Q. And the information that he came from a loving and
21 stable family came from his mother?

22 A. Yes.

23 Q. And what she said in 1999 wasn't true?

24 A. Correct.

25 Q. And so would you also assume that what she also said

DR. CRAWFORD ON CROSS

1 about the developmental milestones being reached in a
2 timely fashion would be . .

3 A. I don't know.

4 Q. But you are making a judgment between what the people
5 who were here testified to and believing what she has
6 said?

7 A. I would have to talk -- I haven't talked to people
8 in here. I could see how someone could want to protect
9 -- my understanding is that she wanted to protect the
10 husband.

11 That would be a reason to be untruthful.

12 I am not sure that she would have the same reason to
13 be untruthful about his birth records.

14 I don't know is the best I can say.

15 Q. Is it your experience that when you as a psychia-
16 trist, or looking for family background, social background,
17 that people are not forthcoming with problems that occur
18 in a family because it is personally embarrassing to
19 them?

20 A. Yes.

21 Q. And if you are going to try to get that information
22 out of them, you would have to be persistent?

23 A. Or good at it.

24 Q. Or good at it, or spend some time on it?

25 A. Possibly, yes.

DR. CRAWFORD ON CROSS

1 Q. Okay.

2 A. It just depends. There are some people who will
3 talk your ear off as soon as they pick the phone up,
4 but there are others who are more difficult.

5 Q. So I don't fault you for the social worker at the
6 State Hospital, . .

7 A. Right.

8 Q. . . but you didn't have time to do an in-depth in-
9 vestigation to see if Mrs. Weik's reports of a loving
10 and stable family and that my client reached milestones
11 at appropriate ages was true?

12 A. I had no reason to believe that it wasn't.

13 Q. I know.

14 A. And had we had the reason to believe, we would have
15 -- it's not a matter of time. We had no reason to be-
16 lieve there was anything different.

17 Had we had information that we thought was crucial
18 in terms of diagnosis, we would have spent the time.

19 Q. I understand that, but I'm not talking about what
20 you and the social worker were able to do since you had
21 no reason to believe it was untrue.

22 But if the defense lawyers did an in-depth investi-
23 gation in 1999 they would have discovered these things?

24 A. Sure.

25 Q. And they have now been discovered?

DR. CRAWFORD ON CROSS

1 A. Sure.

2 Q. And in fact they were in the possession of defense
3 lawyers based on what you reviewed in 1999?

4 A. Yes.

5 Q. That it was not a loving, stable family?

6 A. Right.

7 Q. And he was subjected to physical abuse?

8 A. Yes.

9 Q. And his father, at least in the words of a layman,
10 is insane, is crazy?

11 A. Yes.

12 Q. I don't want to get hung up on psychiatric terms.

13 Did you have information in 1999 that Mr. Weik's
14 first -- his wife from whom he has been divorced for many
15 years was mentally retarded?

16 A. I don't think I even knew he had a wife.

17 Q. Okay. I have provided you with a lot of material
18 to review over the weekend. Did you say that you talked
19 to Mr. Percy Buford?

20 A. Apparently I did. I have no recollection of it, but
21 apparently I did because it is in my report, and I think
22 I testified to it.

23 Q. Okay. Do you recall talking to his other lawyer,
24 the lady named Marva Hardee Thomas?

25 A. I don't think I ever talked to her.

1 Q. Do you recall if Mr. Buford provided you any of the
2 information that you now have been provided that existed
3 in 1999?

4 A. No.

5 Q. So you did not rely on it?

6 A. No.

7 Q. Were you provided with information in 1999 that Mr.
8 Weik, my client, and his father believed that -- I'm
9 sorry -- that Mr. Weik, his father, taught him and his
10 other children the Vietcong were in the woods behind the
11 house and they believed that?

12 A. I don't recall knowing that until you showed me the
13 information, but there -- I don't recall a lot of the
14 details, but I don't recall that.

15 Q. You have no memory of that?

16 A. No. I can't remember what I did yesterday.

17 Q. I asked you if what I provided you with changed
18 your opinion, and you firmly said no.

19 A. Right.

20 Q. I'm not faulting you. I may fault your opinion
21 but not . . .

22 A. Okay.

23 Q. You said something to me about -- I think it was --
24 the apple didn't fall far from the tree?

25 A. Right.

DR. CRAWFORD ON CROSS

1 Q. Talking about his father?

2 A. Yes.

3 Q. And you also thought or told me that what I pre-
4 sented you was very powerful mitigating evidence?

5 A. Yes.

6 Q. In a death penalty case?

7 A. I thought that it could be.

8 Q. And that the jury -- that it would have been im-
9 portant information for a jury to consider?

10 A. I mean, I didn't say that, that it would be im-
11 portant. I mean, I think there is significant mitigation
12 that would typically be presented to a jury.

13 Q. Is it your information that it wasn't?

14 A. My understanding is that it wasn't, but I am not an
15 expert in mitigation.

16 To me, there were some significant things in terms
17 of abuse.

18 Q. You have testified in a lot of death penalty trials?

19 A. Yes.

20 Q. And you have seen the sort of mitigation that has
21 been presented in those death penalty trials?

22 A. Yes.

23 Q. Did you see the mitigation that was presented in
24 this trial?

25 A. No.

DR. CRAWFORD ON CROSS

1 Q. Were you given the testimony in the transcript?

2 A. No.

3 Q. So you did not review that?

4 A. No.

5 Q. When the defense presented their mitigation in
6 some of the cases you testified in, it was lengthy and
7 thorough, is that correct?

8 A. Yes. Some have been very lengthy and thorough and
9 some have not, but the ones -- I think they do a
10 good job if they are lengthy and thorough.

11 Q. How many death penalty cases do you think you have
12 testified in?

13 A. Maybe -- in any way, shape or form, maybe twenty,
14 fifteen -- I don't know.

15 Q. I'll take your best . .

16 A. I'm not sure. A lot if you go from competency all
17 the way up through the trial itself -- a lot.

18 (Discussion between counsel and the Court with re-
19 gard to exhibits)

20 BY MR. O'CONNELL:

21 Q. Now, the things I provided to you that you reviewed
22 in preparation for your testimony . .

23 A. Yes.

24 Q. . . among the things you have here are those?

25 A. I didn't print those off. I have them on my com-
puter.

DR. CRAWFORD ON CROSS

1 These are all things that Don Zelenka gave me here.

2 Q. Do you recall that they were in use -- they were
3 conducted in 1999?

4 A. Yes, there were some.

5 Q. Let me give you a list and you tell me which ones
6 you remember.

7 Your testimony in the penalty phase and the compe-
8 tency hearing?

9 A. Yes.

10 Q. Testimony of Dr. Shea, Dr. Behrman?

11 A. No -- I don't remember.

12 Q. Okay. Did I also provide you with reports of in-
13 vestigations from 2004 forward?

14 A. Yes.

15 Q. All right. Are you a sworn law enforcement officer?

16 A. No.

17 Q. Have you ever acted as a law enforcement officer?

18 A. No. When you say acted -- I would have had to be
19 sworn to do that, so no. I have acted in concert with
20 law officers but not as a law officer.

21 Q. But you have done a psychiatric evaluation of a
22 guy on the same day of his arrest?

23 A. Right. I consider myself an agent of the State at
24 that point, but not a law enforcement agent because I am
25 not trained as a law enforcement agent.

DR. CRAWFORD ON CROSS

1 Q. But you are trained in getting information out of
2 people? That is part of what psychiatrists do?

3 A. I guess that's one way of putting it. I mean, I am
4 trained to do psychiatric evaluations.

5 Q. Which includes getting information from people?

6 A. Yes, I have to get information from people.

7 Q. Thank you.

8 THE COURT: Any further questions?

9 MR. O'CONNELL: One second, Judge.

10 (Brief pause in the proceeding)

11 MR. O'CONNELL: Nothing further.

12 THE COURT: Redirect?

13 MR. ZELENKA: Yes, sir.

14 THE COURT: Proceed.

15 REDIRECT EXAMINATION

16 BY MR. ZELENKA:

17 Q. In considering the history and developmental mile-
18 stones, assuming the assertions about the slow to learn,
19 slow to walk are accurate, what impact would that have
20 upon a diagnosis of schizophrenia versus schizotypal per-
21 sonality disorder?

22 A. I can't think of how it would impact that, that spe-
23 cific information.

24 Q. And also that information concerning competency to
25 stand trial, what impact would . .

DR. CRAWFORD ON REDIRECT

1 A. I don't see how because, again, we are evaluating
2 his thoughts, actions and diagnosis at the time of the
3 events.

4 So I don't see how it would.

5 Q. Okay. Assuming that the father is telling false
6 statements about his service in Vietnam, how would that
7 impact on his competency to stand trial, criminal respon-
8 sibility, with respect to this case?

9 A. It doesn't in my assessment.

10 Q. Assuming that there was an abusive family relation-
11 ship, based on the family as a whole, how does that im-
12 pact on competency and criminal responsibility?

13 A. It doesn't in any way I can think of.

14 Q. Schizophrenia versus schizotypal personality dis-
15 order.

16 A. I'm sorry. What's the question on that?

17 Q. The abusive family relationship.

18 A. Oh, how it affects that? There is not necessarily
19 any connection.

20 Q. Assuming that John Weik was in fact a slow to learn,
21 would that impact at all upon your conclusions about all
22 of this?

23 A. No.

24 Q. The fact that he was married?

25 A. No.

DR. CRAWFORD ON REDIRECT

1 Q. The fact that his wife had a low intelligence level,
2 would that have any impact at all?

3 A. No.

4 Q. Now, in your role as a psychiatrist in this case,
5 were you acting as an agent for the prosecution at the
6 time you did an evaluation?

7 A. No.

8 Q. How do you know that?

9 A. Because I was doing this on a Court Order, first of
10 all. Second of all, I didn't even work in any capacity
11 for law enforcement at that time.

12 Also, I rendered opinions and still do that are
13 sometimes helpful to the defense and sometimes helpful to
14 the prosecution.

15 It was very clear what my role was, and I believe
16 I maintained that role.

17 Q. In 1999, did you have any memorandum or contractual
18 relationship with SLED?

19 A. No.

20 Q. Did that occur after . .

21 A. It occurred afterwards.

22 Q. I have no further questions.

23 THE COURT: Recross limited to Redirect.

24 MR. O'CONNELL: No further questions.

25 THE COURT: As to this witness?

1 I assume, Mr. Zelenka, you are asking that she be
2 excused?

3 MR. ZELENKA: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. O'CONNELL: No, Your Honor.

6 THE COURT: I'm going to excuse you.

7 (Witness excused)

8 THE COURT: All right. Do you have 11 for the Re-
9 spondent and 12 for the Applicant?

10 REPORTER: I have them all.

11 THE COURT: Counsel, we will be taking our one and
12 only midmorning break at this time.

13 We will go back to your case, Mr. O'Connell, since
14 she was taken out of order without objection. We will
15 start back with your case after the break.

16 We'll take ten minutes.

17 (The Court took brief recess, after which the mat-
18 ter resumed)

19 THE COURT: Mr. O'Connell, are you ready to proceed?

20 MR. O'CONNELL: Yes, Your Honor.

21 THE COURT: State ready to proceed?

22 MR. ZELENKA: Yes, sir.

23 THE COURT: Do you need to approach?

24 MR. O'CONNELL: No, sir, Judge. We have reached a
25 stipulation about some documentary evidence which is

1 going to be Plaintiff's Exhibit 12, and these are jail
2 records of my client from 1999 after he was arrested
3 until the time he was convicted.

4 THE COURT: How many pages?

5 MR. O'CONNELL: Twenty-one, Your Honor.

6 THE COURT: Mr. Zelenka? It is my understanding
7 that you have had the opportunity to review the Appli-
8 cant's proposed Exhibit 12 and that you have no objection
9 to its admission into evidence on behalf of Respondent.

10 Is that correct?

11 MR. ZELENKA: That's correct.

12 THE COURT: Plaintiff's 12 will be admitted into
13 evidence without objection.

14 (Jail records admitted in evidence without objection
15 as Exhibit 12)

16 MR. O'CONNELL: Judge, under the stipulation regard-
17 ing this exhibit, this is from the inmate jacket of my
18 client from 1999 and it was in the practice and is still
19 in the practice of the Dorchester County jail officials
20 in murder cases that they make a photostatic copy of the
21 identification of any and all visitors who visit the
22 inmate during the time at the Dorchester County Jail.

23 So the documents in Plaintiff's Exhibit 12 are the
24 photostatic copies of the identification of all persons
25 who visited him from the date of his arrest until the day

1 he was transported to the Department of Corrections.

2 MR. ZELENKA: As they exist in today's file.

3 MR. O'CONNELL: Well, I can't go . .

4 THE COURT: I mean, you've got it, so this is what
5 the file reflects record-wise as to visitation in 1999 up
6 until the Department of Corrections took custody over
7 your client?

8 MR. O'CONNELL: Yes, sir. Judge, I just noticed --
9 these were brought over by Captain Hassert from the jail
10 this morning and the last few pages are regarding some-
11 one else.

12 I think they got stapled . .

13 THE COURT: Did Exhibit 12 just get shortened by two
14 pages, Mr. O'Connell?

15 MR. O'CONNELL: It did, sir.

16 THE COURT: Mr. Zelenka, I assume you agree with
17 Mr. O'Connell that Plaintiff's 12 or Applicant's 12 is
18 now 19 pages.

19 MR. O'CONNELL: Thank you.

20 THE COURT: In evidence, I understand.

21 All right. Call your next witness, please.

22 MS. KIMBROUGH: Your Honor, I would call Dr.
23 Augustus Rodgers.

24 AUGUSTUS RODGERS, being duly
25 sworn, testified as follows:

1 THE COURT: Have a seat, if you would, on the wit-
2 ness stand, please, sir. I'd like you to begin if you
3 would by stating your full name for the record, spelling
4 your last name for the Court Reporter.

5 WITNESS: My name is Augustus Rodgers, R O D G E R
6 S, sir.

7 THE COURT: Your witness, counsel.

8 DIRECT EXAMINATION

9 BY MS. KIMBROUGH:

10 Q. Good morning, Dr. Rodgers. How are you?

11 A. Good morning. Fine, thank you.

12 Q. Dr. Rodgers, what do you do for a living?

13 A. Well, I'm a retired professor emeritus at the
14 University of South Carolina College of Social Work, and
15 I am currently practicing behavioral medicine.

16 Q. All right, and would you describe for us your edu-
17 cational background?

18 A. I have a Baccalaureate Degree earned in 1965. I
19 also have a Master's of Social Work earned in 1969. I
20 have a PHD earned in 1977, and I have a Master's of
21 Divinity also.

22 Q. All right.

23 A. In 1988.

24 Q. Have you testified as an expert in social work be-
25 fore?

DR. RODGERS ON DIRECT

1 A. I have.

2 Q. Approximately how many times?

3 A. Quite a few occasions.

4 Q. Did you testify as an expert in social work in Mr.
5 Weik's case?

6 A. I did indeed.

7 MS. KIMBROUGH: Your Honor, at this time we would
8 offer Dr. Rodgers as an expert in the field of social
9 work.

10 THE COURT: Any objection, Mr. Zelenka?

11 MR. ZELENKA: No objection.

12 THE COURT: So ordered, without objection.

13 MS. KIMBROUGH: Thank you.

14 BY MS. KIMBROUGH:

15 Q. Dr. Rodgers, when did you first become involved in
16 Eddy Weik's case?

17 A. As best I can recall, and I have no chronological
18 documents to verify an exact date, but it was nearing
19 the time of trial.

20 Q. Could you estimate in terms of weeks or months how
21 close it was to the trial date?

22 A. I would say it may have been several weeks prior
23 to.

24 Q. No more than a month?

25 A. If I recall correctly, it was probably not much more

DR. RODGERS ON DIRECT

1 than that.

2 There may have been some contact regarding this
3 case -- it's a possibility -- but I believe that activ-
4 ity began perhaps a month prior to.

5 Q. Okay, and how did that begin? Who contacted you?

6 A. You know, that part of the question and the truth
7 of the matter is I can't tell you exactly who it was. I
8 don't know whether it was someone in my circle of referrals
9 or with whom I've worked in the past, or whether it was
10 the attorney for the defense, but someone within that
11 network.

12 Q. Okay, and at some point did you come to have contact
13 with the defense lawyer?

14 A. Yes.

15 Q. Do you recall who you dealt with?

16 A. Well, I think I spoke -- in fact, I'm sure that at
17 some point I have spoken with both of them.

18 Q. And as part of your involvement in the Weik case,
19 would you explain to me what type of information you re-
20 quested?

21 A. Typically one would rely upon the investigatory in-
22 formation gathered by investigators who specialize in
23 this particular line of work.

24 And also on the information that had been gathered
25 through primary sources; that is, being directly involved

DR. RODGERS ON DIRECT

1 in securing information.

2 Q. Okay, and were you provided any such material in
3 this case prior to this?

4 A. I believe I was.

5 Q. Do you have a copy of that with you?

6 A. I know I've got one.

7 Q. What I'd like to do, Dr. Rodgers, is walk you
8 through this. I would refer you to page 1925 of the trial
9 transcript.

10 A. Okay.

11 Q. I would like to walk you through your testimony.

12 A. Uh hm.

13 Q. Page 1925.

14 A. Okay.

15 Q. It appears that your qualifications end on 1925?

16 A. Uh hm.

17 Q. And that you are in fact qualified on 1928 as an
18 expert?

19 A. Okay.

20 Q. All right, and -- I'm sorry, page 1929 you were
21 actually qualified.

22 A. Uh hm.

23 Q. And then on 1930 the transcript reflects your in-
24 volvement?

25 A. Yes.

DR. RODGERS ON DIRECT

1 Q. Would you explain that to us?

2 A. Yes. Well, I would like to explain my discipline
3 in this matter. Social work, first of all, is a pro-
4 fessional discipline that requires an educational process
5 of training.

6 To reach what is now regarded as the professional
7 level for licensure, one is expected to have a Master's
8 Degree in social work from an accredited institution at a
9 university or college.

10 It is a profession that is basically designed to help
11 people in processing issues and working on problems and
12 difficulties that may present conflicts in relationships
13 and interaction within institutional settings and the
14 general society.

15 In our training, there is a great deal of emphasis
16 based upon the impact of systems and institutions that
17 affect and influence personality development.

18 Q. Is there any one institution in particular that . .

19 A. Well, there is. The first primary and foremost in-
20 stitution is that of the family. The family is the first
21 organization in which one gains membership upon birth,
22 and it has a profound impact upon personality develop-
23 ment.

24 Q. And moving on from the discussion and referring to
25 the transcript again.

DR. RODGERS ON DIRECT

1 A. Uh hm.

2 Q. Do you recall your testimony in the case?

3 A. I recall having been here obviously.

4 Q. I would refer you to page 1933 of the transcript.

5 I believe that is where the substance of your direct tes-
6 timony begins.

7 A. Uh hm.

8 Q. I believe the record reflects that you were asked
9 to describe things in the family?

10 A. Yes.

11 Q. Such as discussing poverty and the commotion.

12 A. Uh hm.

13 Q. And I believe you actually cited an example on page
14 1904?

15 A. Okay, let's see.

16 Q. Line 3.

17 A. Line 3 -- yes.

18 Q. Would you read line 3?

19 A. Line 3. Okay, beginning and as a result of that
20 particular?

21 Q. Yes.

22 A. As a result of that particular episode the entire
23 family was terrorized, so to speak, especially the
24 children, and the ones with whom I spoke said that it was
25 a rather horrifying kind of experience, and this was not

DR. RODGERS ON DIRECT

1 the one time but there were repeated episodes given to
2 me with regard to the experiences that they had that
3 were extremely traumatizing.

4 Q. Do you recall then receiving certain types of in-
5 formation before you testified?

6 A. . .

7 Q. Interview notes, that sort of thing?

8 A. Yes, I did receive some notes.

9 Q. Okay, and I believe the transcript reflects -- I
10 will again point you back to it.

11 Page 1931 . .

12 A. Uh hm.

13 Q. . . where you were asked . .

14 MS. KIMBROUGH: Beg the Court's indulgence.

15 (Brief pause in the proceeding)

16 BY MS. KIMBROUGH:

17 Q. Page 1939.

18 A. Page 1939 -- okay.

19 Q. I believe you were asked what type of information
20 you were provided?

21 A. Uh hm.

22 Q. Do you mind reading lines 3 through 8?

23 A. Okay. From whom would you have gained information?
24 Well, the written records that I received from the in-
25 vestigator, Mr. Scott Parker. In addition, I interviewed

DR. RODGERS ON DIRECT

1 several members of the family in addition to Eddy him-
2 self.

3 Based upon that information, what information did
4 you gain about Eddy's adult life?

5 Q. So does the transcript accurately reflect what
6 information you were provided prior to your testimony?

7 A. The transcript I have in my hand here?

8 Q. Yes.

9 A. I would imagine it does. I have no reason to think
10 otherwise at the moment.

11 Q. Do you have any recollection of being provided with
12 additional investigative notes from Mr. Minter?

13 A. I don't remember having received those.

14 Q. Now, prior to your testimony here today, were you
15 provided with additional information?

16 A. Yes, I was.

17 Q. What information were you provided?

18 A. Well, I received quite a bit of information from
19 transcripts that were provided me by Miss Margaret
20 O'Shea.

21 Q. Okay, and did she provide you with a chronology or
22 a life history?

23 A. Yes.

24 MS. KIMBROUGH: Your Honor, may I approach the
25 witness?

DR. RODGERS ON DIRECT

1 witness?

2 THE COURT: You may.

3 MS. KIMBROUGH: Thank you.

4 BY MS. KIMBROUGH:

5 Q. Dr. Rodgers, I'm going to hand you what is marked
6 Plaintiff's Exhibit 13 for identification and ask if you
7 can identify that?

8 A. Okay. I believe I have a copy of this document,
9 yes, and it is entitled confidential attorney work pro-
10 duct.

11 Q. Did you receive that in preparation for your testi-
12 mony today?

13 A. Yes, I did.

14 MS. KIMBROUGH: We would offer this . .

15 THE COURT: As to Plaintiff's 13?

16 MR. ZELENKA: Objection.

17 THE COURT: You object to Number 13?

18 MR. ZELENKA: Yes, Your Honor. Hearsay. The mere
19 fact that he relied it is not sufficient to verify the
20 information.

21 MS. KIMBROUGH: Your Honor, this is the type of
22 information that social workers rely upon in reaching their
23 opinions.

24 THE COURT: There is no question about that. He
25 can certainly testify to what he relied on.

DR. RODGERS ON DIRECT

1 It's a question of whether it is admissible because
2 he didn't prepare it, because it's hearsay.

3 MR. O'CONNELL: Your Honor, the State has previously
4 entered similar information . . .

5 THE COURT: Without objection.

6 MR. O'CONNELL: . . and it was admitted. I said it
7 was admitted as a basis for her opinion, and I think that
8 can be admitted for that purpose.

9 THE COURT: Counsel, the only discussion -- he can
10 testify to what he reviewed. The question is whether
11 the document can come in evidence now.

12 He can certainly testify to anything that formed the
13 basis of his opinion, even though it may be hearsay, as
14 an exception for experts.

15 He has been qualified, and it is just the document.
16 I have to sustain the objection as to the document unless
17 you can give me some law that says the document comes
18 in.

19 MR. O'CONNELL: Your Honor, Rule 705 . . .

20 THE COURT: Yes, sir.

21 MR. O'CONNELL: . . says an expert may testify in
22 terms of opinion. The expert in any event may be re-
23 quired to disclose the underlying facts or data on
24 cross examination.

25 I think we have the right to put this in evidence

DR. RODGERS ON DIRECT

1 as an exhibit since it is something he relied upon.

2 THE COURT: Counsel, approach.

3 (Conference at the bench off the record between
4 counsel and the Court)

5 THE COURT: Objection is sustained. Move on,
6 counsel.

7 BY MS. KIMBROUGH:

8 Q. Dr. Rodgers, I hand you what has been marked . .

9 THE COURT: For identification only as Plaintiff's
10 13, counsel.

11 MS. KIMBROUGH: Thank you, Your Honor.

12 Q. You received this document?

13 A. Yes.

14 Q. You also received additional interview notes from
15 Bobby Minter as well as . .

16 A. I did, maam.

17 Q. In reviewing this material, did you find any addi-
18 tional information or -- do these documents contain ad-
19 ditional information that you did not have at the time
20 of trial?

21 A. I believe these documents were far more exhaustive,
22 detailed, and provided me with information that has been
23 of tremendous benefit.

24 Q. All right.. I'm going to show you another document
25 which is Exhibit 14, and I believe the State has been
provided a copy of it.

DR. RODGERS ON DIRECT

1 I would ask if you can identify that?

2 A. I can. This is the John E. Weik family tree.

3 Q. Okay, but also known as a Genogram?

4 A. Yes.

5 Q. Now, is a Genogram frequently produced as a
6 part of your preparation for trial?

7 A. It is.

8 Q. What is a Genogram?

9 A. Well, basically it is an outline, an inter-generational
10 outline that helps one to better understand the parentage,
11 grandparents, other relevant relations, within the family
12 context, immediate and extended family.

13 Q. I'm just going to hold this up for you and ask you,
14 Dr. Rodgers, if you could explain the John E. Weik family
15 tree.

16 A. Yes, maam.

17 THE COURT: Do you seek to introduce the document?

18 MS. KIMBROUGH: Yes.

19 THE COURT: Is there any objection?

20 MR. ZELENKA: My objection at this point would be
21 hearsay.

22 THE COURT: Why don't you discuss it with counsel
23 and see if we can work it out? Obviously I don't want to
24 start and stop.

25 Hold the document down a second and let's see if this

DR. RODGERS ON DIRECT

1 can be worked out.

2 (Conference at the bench between counsel off the
3 record)

4 THE COURT: You are telling me this witness did not
5 prepare this exhibit?

6 MR. O'CONNELL: No.

7 THE COURT: But he relied on it in forming an opin-
8 ion that he's going to give today?

9 MR. O'CONNELL: Yes.

10 THE COURT: He can testify how he relied on it and
11 what it is, but the Exhibit itself -- I will sustain the
12 objection to hearsay as to Applicant's 13.

13 MR. O'CONNELL: Can we try to work something out?

14 THE COURT: Is there any reason we need to stop and
15 read the rules at this point, counsel, or can we move
16 on?

17 MR. ZELENKA: This may be . . .

18 THE COURT: Counsel, ask the question and let's move
19 forward. This stopping and reading rules -- I'll hear any
20 objection and rule on it.

21 Ask a question. Move along.

22 BY MS. KIMBROUGH:

23 Q. Dr. Rodgers, if you will explain what the John E.
24 Weik family tree does?

25 A. I can. We have what we call a maternal side in the

DR. RODGERS ON DIRECT

1 family; that is, the side from which the mother of Eddy
2 Weik -- his mother, Lillie Weik, and we have the paternal
3 side which represents the side of his father, Mr. Russell
4 Weik.

5 The maternal side here is included in red, and the
6 red is basically designed to symbolize the ethnic back-
7 ground and history on the maternal side of his family.

8 They are Native Americans or American Indians.

9 This side, of course, is not coded as heavily in red
10 because there is some definitive European ancestry here.

11 Q. Let me hold this up.

12 A. Okay. Now, the red dot which is one of the keys
13 here that symbolizes the Native American heritage, as I
14 have indicated.

15 The yellow dot here symbolizes mental illness which
16 included depression and alcoholism in the family history
17 and background.

18 Of course, the black dot which is morbid indicates
19 miscarriages and death within this family.

20 If you notice, there is quite a bit of yellow in the
21 configuration of the outline that is associated with the
22 Native American ancestry background and history.

23 A considerable number of yellow dots either in the
24 circles, which represent females, or the squares that
25 represent males.

DR. RODGERS ON DIRECT

1 Q. All right. Can you discuss the significance of the
2 yellow?

3 A. Well, we are concerned in my line of work with indi-
4 cations of pathology that might be perceived as having
5 some relevance with regard to the behavior or acts or per-
6 sonality of one who may be a subject in question, such as
7 Mr. Weik is here today.

8 As I've indicated, the yellow dots do suggest path-
9 ology, and the pathology here is in some instances re-
10 flective in primary parents and also their offspring.

11 One of the problems that has been prevalent in this
12 family tree over at least two or perhaps three genera-
13 tions has been mental illness, depression and addictions.

14 The addictions from what I've gathered in reading
15 information and having discussions would include alcohol
16 and perhaps even other substances.

17 Q. Okay, and could you identify those family members
18 and their relationship to Mr. Weik who are denoted as hav-
19 ing mental illness and/or addiction problems?

20 A. Well, here in the tree you have I think as a primary
21 figure I'd concern myself with Ms. Lillie Varner Weik,
22 and that is the mother of Eddy Weik.

23 She is deceased now, of course, you know, as is in-
24 dicated by the X in the circle.

25 But she had two marriages which included Mr. Russell

DR. RODGERS ON DIRECT

1 Weik and also her former husband, who was deceased, of
2 course, prior to her second marriage.

3 All of these are either her children in this lower
4 line and/or children that she would have had, had there
5 not been a miscarriage.

6 We have one daughter in the first set of family mem-
7 bers or the first family, if you will, that was -- that
8 came as a result of a union between her and her former
9 husband, a daughter by the name of Maggie, that had dif-
10 ficulties that were either related to depression and/or
11 difficulties of some sort associated therewith.

12 And Jose, a son in the first marriage, had difficul-
13 ties as well, and Ray, who was a product of that first
14 marriage, also had difficulties that might be associated
15 with some form of disfunctional behavior.

16 Larry is the oldest of the first group of children,
17 and he seems to be the one based on this genogram that
18 was fairly stable, solid and seems to be leading a rather
19 normal life.

20 Q. And this is information obtained from interviews as
21 well as any other . .

22 A. The basis was large provided by the documents I read
23 and there were interviews involved in securing this in-
24 formation.

25 Q. Did you do this personally or . .

DR. RODGERS ON DIRECT

1 A. You mean in terms of interviews I have done?

2 Q. Yes, or did you rely on someone else's informa-
3 tion?

4 A. Yes. I relied upon someone else's interviews.

5 Q. Okay, let's talk about Eddy Weik's siblings.

6 A. Okay. Now, this was the -- these four children,
7 Larry, Maggie, Jose and Ray, were from the first set of
8 children by the first marriage.

9 There was a second set that comprised Chris -- I
10 mean, Eddy, his brother Chris and his sister Amy.

11 Q. What can you tell us about those?

12 A. Well, we had a blended family, number one, and when
13 we think in terms of a blended family it is very impor-
14 tant for us to know that often blended families have an
15 inherent difficulty and have conflicts.

16 In reading one of the documents, it struck my atten-
17 tion that it wasn't until this crisis involving the
18 brother and also the death of their mother that some of
19 these differences between the two sets of children became
20 more pronounced.

21 It may have been conveyed in other ways prior
22 thereto, but it became a bit more pointed and pronounced
23 upon the death or illness of Ms. Lillie Weik.

24 I think it is important to note that the first set
25 of children were kind of reared separate and apart from

DR. RODGERS ON DIRECT

1 the second set primarily.

2 The second set, of which Eddy was the oldest, were
3 reared together in a single household, and I believe
4 there was one person who remained in that household with
5 them from the former set of children for a while longer
6 than the other three, and that person was Ray, I believe.

7 Q. Okay, and what did you learn about that second set of
8 siblings?

9 A. Well, as I may have indicated in my first testimony
10 in this trial, and certainly as was corroborated by exten-
11 sive reading I have done of the documents recently re-
12 ceived, the second set of children had
13 an experience that was very difficult for them.

14 It can be described in large measure as traumatiz-
15 ing, often terrorizing, and they were certainly the kind
16 of experience that entailed an environment characterized
17 by poverty or deprivation, by neglect.

18 Q. Let's talk about these separately. In reviewing
19 your testimony at trial, did you see any indication that
20 you were asked and that you provided to the jury evidence
21 of difficulties of Eddy?

22 A. I don't know that I did, and as I have gathered
23 more in depth information, more recently, I think it is
24 something that I could have done more effectively in
25 amplifying the degree to which this kind of abuse did

DR. RODGERS ON DIRECT

1 occur.

2 Q. If you'd been asked questions such as, Dr. Rodgers,
3 please tell the jurors about beliefs of the family, that
4 would have been testimony that you could have provided,
5 is that correct?

6 A. I could have. I should have, and certainly I feel
7 that such testimony would have been most significant.

8 Q. Okay, how about physical abuse? Do you have in-
9 formation about the mother taking lunch money for
10 cigarettes and beating the child for telling . .

11 THE COURT: Just a moment. Yes, sir?

12 MR. ZELENKA: I would ask that counsel not lead
13 the witness so much.

14 THE COURT: Sustained, but I've allowed both of you
15 all to lead on direct examination, unless we're
16 going to -- we'll start enforcing it. Ask direct ques-
17 tions, counsel.

18 MS. KIMBROUGH: Thank you.

19 BY MS. KIMBROUGH:

20 Q. I will rephrase my question. In the new information
21 that you have been provided, is there any evidence related
22 to physical neglect of the children?

23 A. Well, the new information serves to more effectively
24 support prior speculation. I had the occasion to visit
25 this home back in -- at the beginning of the trial or

DR. RODGERS ON DIRECT

1 near the beginning of the trial, and general observations
2 would suggest that this was a very impoverished place,
3 the dwelling home and surroundings.

4 It left a lot to be desired in terms of a more stable
5 and desirable kind of environment.

6 The documentation that I have since had access to
7 has suggested that it was as bad as I perhaps had suspected,
8 or maybe even worse.

9 This family was quite clearly poverty stricken in
10 terms of monetary resources. One of the antidotes that I
11 recall vividly that impressed me was that often the lunch
12 money that the children would have for school would be
13 spent by their mother on cigarettes because of her addic-
14 tion to smoking.

15 Q. How about evidence of medical neglect? Did you see
16 any of that, based on the additional information that was
17 provided?

18 A. I surmised from my review of documents that there
19 was certainly a lack of proper medical attention, as in
20 the case of injuries from time to time that children in
21 the family received, and there was no clear indication
22 that medical attention was provided.

23 But also when I look at all of the black dots on the
24 Genogram, I am made to think that Mrs. Weik, Lillie Weik,
25 certainly was not receiving the kind of medical attention

DR. RODGERS ON DIRECT

1 that might have been indicated certainly today in our
2 society and even during that time.

3 These are all in the case of miscarriages that we
4 have here in this particular instance, and there may have
5 been more than five during the period of time, and one
6 questions whether she should have been having children
7 at all.

8 Q. Okay, and can you give us a sense of what the family
9 attitude was as regards medical care?

10 A. Well, I would say it may have been somewhat primi-
11 tive. There was an option between -- I'm just going to
12 give you this as an example -- if there was an option
13 between going to a hospital and having a midwife deliver
14 a baby, our assumption was that the midwife certainly
15 would have been a viable alternative.

16 And I just feel that this family might have been
17 somewhat locked in to a more rural kind of a lifestyle,
18 where they were perhaps a bit more self reliant, and inde-
19 pendent in terms of their lifestyle.

20 Q. Did any of the interviews indicate that they were
21 willing to obtain medical care for Eddy? Is there any
22 information in the material about Eddy obtaining medical
23 care?

24 A. I think you have to understand -- at least I would --
25 something about the culture.

1 This was a Native American family and there is a
2 strong Native American tradition in history, and if I
3 were dealing with myself, a Black American, for example,
4 I would certainly have to take that history into consid-
5 eration.

6 In this case, we're talking about a Native American
7 history, family and background, and it was somewhat of a
8 bold system in my opinion and they had ways of thinking
9 about certain phenomenon like mental illness.

10 That reflected an attitude very much unlike our own.
11 The whole notion then of something being wrong with some-
12 one of a mental nature was alien and it was not something
13 one would want to consider in this family, and certainly
14 one would not seek, you know, any kind of intervention
15 that may have been geared toward addressing mental ill-
16 ness.

17 Q. Okay, and following that line, did you see any evi-
18 dence of emotional abuse within this family?

19 A. I did.

20 Q. Can you tell us about that?

21 A. Well, the abuse in my opinion was beyond emotional.
22 It was both psychological and physical.

23 Much of what I've gathered from my review of the
24 information, which I believe is valid, was often the name-
25 calling that various members of the family were subjected

DR. RODGERS ON DIRECT

1 to from time to time by Mr. Weik, in particular; that is,
2 Russell Weik, the father of our client.

3 Actual physical assaults from time to time. Games
4 that were, in my opinion, very debilitating psychologi-
5 cally, as in the case of war games and that kind of
6 thing within the perimeters surrounding the environment
7 of the home.

8 The availability and loose handling, if you would,
9 of weaponry, often loaded guns with ammunition and that
10 kind of thing, which suggests to me that there was a
11 great deal of abuse that did occur.

12 Q. Okay. Are there any particular examples insofar as
13 disciplining that would rise to the level of abuse?

14 A. Yes. A couple of examples or instances that I can
15 cite.

16 One had to do with Chris and Eddy having been locked
17 for hours in a hot attic because of a squabble between
18 the two of them.

19 They were locked as a means of punishment in the attic
20 and when they were possibly going to be let out or given
21 some relief they were made to apologize and kiss and make
22 up, and after having done so they were put back in the
23 attic to think about it a while longer before they were
24 allowed out.

25 That could have been as long as one or two additional

DR. RODGERS ON DIRECT

1 hours.

2 There was an episode that was shared in the documents
3 having to do with having been whipped with a machete at
4 one time by . .

5 Q. The flat end?

6 A. The flat end, yes, of course, with a machete, and
7 this was a beating that was perpetrated by Mr. Russell
8 Weik upon Eddy and his brother.

9 There had been times when they would be hit physi-
10 cally with a fist or hand without warning or tripped when
11 attempting to get out of a door past a chair that was
12 manned by Mr. Weik.

13 There were numerous episodes of things of that na-
14 ture that were consistent rather than sporadic; rather
15 frequent throughout their childhood.

16 Q. All right, and in addition did you find any evidence
17 of biological or genetic influence in Eddy Weik?

18 A. Well, in my line of work, and it's pretty much docu-
19 mented in research in my profession -- there are two
20 classic schools of thought that we adhere to very strongly.

21 We believe that there is such a thing as genetic or
22 hereditary influence that certainly can impact personal-
23 ity, and that is shared by other disciplines other so it
24 is not unique in social work.

25 We also believe that environment does indeed have a

DR. RODGERS ON DIRECT

1 great impact upon personality development.

2 Now, you asked about hereditary or genetic. I think
3 you asked about genetic influences then.

4 I have gathered, you know, from the documents that
5 Mr. Weik certainly had a certified diagnosis at some point
6 that made him unsuitable for military service, and as a
7 result he was discharged because he could no longer
8 function.

9 And it had to do with an emotional unbalance.

10 There is other research that I have -- information
11 I got from my readings that his father, Edwin Weik, the
12 grandfather to Eddy, also suffered from or at least he had
13 a nervous breakdown.

14 Q. Did that information come from the war records, or
15 do you recall?

16 A. Yes.

17 Q. So what would the impact be of the environmental
18 and the genetic impact?

19 A. Well, I think we are all shaped including myself --
20 we are all shaped by our past and present experiences.
21 The impact certainly of the area, depending upon the in-
22 dividual, yes, but our experiences tend to shape the way
23 we view the world and how to learn to negotiate the world
24 and the like, generally speaking.

25 Q. Do you have an opinion to a reasonable degree of

DR. ARMSTRONG ON DIRECT

1 certainty in the field of social work as to the effect
2 of these factors you have just described, hereditary . .

3 A. And environmental.

4 Q. . . and environmental, yes -- do you have an opin-
5 ion as to the effect of the hereditary and environmental
6 on Eddy Weik?

7 A. I do have an opinion. I believe that the effect
8 would have been very negative, very detrimental.

9 I think that he has had a lot of things historically
10 working against him, even from birth.

11 Q. Okay. Can you think of any positive influence that
12 he may have had that would counter-balance what you have
13 just described?

14 A. I think there could have been a lot more in the
15 way of interventions that would have been of help. For
16 example, having been exposed to counseling or some type
17 of psychological or psychiatric assistance or intervention
18 early on, but I am aware of none of those.

19 I understand they were involved in their community
20 church, but beyond that I don't know of any formal kind
21 of intervention that did take place.

22 In my opinion certainly there was indication of a
23 need for such intervention early on in this entire family
24 system.

25 MS. KIMBROUGH: Beg the Court's indulgence.

DR. ARMSTRONG ON DIRECT

1 (Brief pause in the proceeding)

2 BY MS. KIMBROUGH:

3 Q. Dr. Rodgers, I'm handing you what has been marked
4 for identification only as Plaintiff's Exhibit 13. Can you
5 identify that document again?

6 A. Yes, maam. It is entitled confidential attorney work
7 product.

8 Q. And what kind of a document is that?

9 A. A chronology.

10 Q. Did you use or rely upon that document in reaching
11 your opinion that you have given today?

12 A. Yes, maam, I did.

13 Q. Was that the document provided to you in 1999?

14 A. I don't remember having ever received -- no -- an
15 attorney work product like this, no.

16 Q. And when you have testified in the past have chron-
17 ologies been provided to you?

18 A. Oh, yes, they have in the past. They have been in
19 the past.

20 In most instances, now, but not always. In most
21 instances they have.

22 Q. Is that a standard thing that is done?

23 A. I think for some people it is. It is certainly a
24 product that helps me in my work immensely.

25 Q. And is that something that is relied upon by you

DR. RODGERS ON DIRECT

1 and by other social workers?

2 A. It is. One other thing I want to inject, and it is
3 pretty well professionally supported and documented, is
4 that we have what we call a primary source of information
5 where we are directly involved in gathering information
6 ourselves which is very difficult at times to do with all
7 the possible parties we would like to engage.

8 But there is also a legitimate source called a col-
9 lateral source of information upon which we rely as well.

10 MS. KIMBROUGH: Your Honor, at this time the Appli-
11 cant would me to admit Plaintiff's Exhibit 13, not for
12 the truth of the matter asserted but simply to establish
13 the standard -- that this is a standard document relied
14 upon that was not provided at the time of trial.

15 THE COURT: As to Plaintiff's Number 13, Mr.
16 Zelenka?

17 You have previously objected to this on the basis of
18 hearsay. I called counsel to the bench who advised he
19 could authenticate it by calling another witness and I
20 didn't want to stop to have to do that.

21 There is no jury here, Mr. Zelenka.

22 MR. ZELENKA: Right, and after hearing it explained
23 I don't have an objection.

24 THE COURT: You withdraw your objection?

25 MR. ZELENKA: Not for the truth of the matter asserted . .

DR. RODGERS ON DIRECT

1 THE COURT: For the purpose for which it is being
2 offered?

3 MR. ZELENKA: Correct.

4 THE COURT: Very well. Plaintiff's Exhibit 13 admit-
5 ted in evidence.

6 (Chronology admitted in evidence without objec-
7 tion as Plaintiff's Exhibit 13)

8 THE COURT: Proceed.

9 BY MS. KIMBROUGH:

10 Q. And, finally, Dr. Rodgers, can you identify Plain-
11 tiff's Exhibit 14, please, sir?

12 A. I can, yes. This is the John E. Weik family tree,
13 typically referred to, and it is a commonly used instrument
14 in my line of work, a family genogram.

15 Q. Did you receive that item prior to your testimony
16 of . . .

17 A. Yes, maam. Oh, when?

18 Q. Prior to your trial testimony in 1999?

19 A. I don't believe I did.

20 Q. All right. Is this the type of exhibit or informa-
21 tion that you have been provided previously in cases in
22 which you have testified?

23 A. Oh, yes, I have. I'm not sure I've been provided
24 them in every case but it is certainly in the standard
25 procedure to receive them.

DR. RODGERS ON DIRECT

1 I have certainly seen these before and used them
2 before.

3 MS. KIMBROUGH: Your Honor, again, on the same basis
4 as Plaintiff's Exhibit 13, we would move Exhibit 14 in
5 evidence.

6 THE COURT: And I understand it is not for the truth
7 of the matter asserted on the document, but you are ad-
8 mitting it for the sole purpose of what he relied on in
9 forming his opinion.

10 MS. KIMBROUGH: Yes.

11 THE COURT: Not for the truth of the matter as-
12 serted?

13 MS. KIMBROUGH: Correct, Your Honor.

14 MR. O'CONNELL: Your Honor, there is additional rea-
15 son . . .

16 THE COURT: Hold on, Mr. O'Connell. Let me find
17 out if there is an objection.

18 Is there, Mr. Zelenka?

19 MR. ZELENKA: No, sir.

20 THE COURT: Very well. Plaintiff's Exhibit Number
21 14 is admitted in evidence.

22 (Weik family tree admitted in evidence without ob-
23 jection as Plaintiff's Exhibit 14)

24 MR. O'CONNELL: It is also for the purpose of show-
25 ing what the standard . . .

DR. RODGERS ON DIRECT

1 THE COURT: Mr. O'Connell, she's telling me one pur-
2 pose and then you come and say another, and I had a de-
3 cision by counsel.

4 After I've ruled on something you don't need to tell
5 me another purpose for admitting it. It is for the lim-
6 ited purpose described by counsel, or you can go about it
7 in another way with another witness.

8 Let's move along.

9 BY MS. KIMBROUGH:

10 Q. Dr. Rodgers, I don't have any further questions.

11 A. Thank you.

12 THE COURT: Cross examination.

13 CROSS EXAMINATION

14 BY MR. ZELENKA:

15 Q. Dr. Rodgers, . .

16 A. Yes, sir.

17 Q. . . you are a professor of social work at the
18 University?

19 A. Emeritus.

20 Q. Part of your studies in social work, you prepare
21 social workers to prepare social assessments?

22 A. Yes, sir, I do.

23 Q. And a part of the social assessment involves the
24 chronology of an individual's family?

25 A. Uh hm.

DR. RODGERS ON DIRECT

1 Q. And is that a role that social workers generally do,
2 developing that information?

3 A. It's something they can and, depending upon the
4 need -- certainly not in every case but in an instance
5 like this it would certainly be indicated.

6 Q. What you have referred to, Plaintiff's Exhibit 13,
7 is very similar to a psycho-social assessment, isn't it?

8 A. The chronology? Not entirely now. As I see it, a
9 chronology is an anthamology of sorts. You are looking
10 at major key events, given dates and times as near as
11 we can arrive, but I think the psycho-social is often a
12 lot more -- well, there could be other dimensions in a
13 psycho-social, in addition to chronology.

14 Q. A chronology is a part of that assessment?

15 A. Yes.

16 Q. Okay.

17 A. There are some similarities, yes, sir.

18 Q. And social workers are trained in classes at places
19 like the University of South Carolina on how to acquire
20 materials, interview family members, . .

21 A. Absolutely, yes.

22 Q. . . and obtain that information?

23 A. Yes, sir.

24 Q. And is that something you would normally do?

25 A. Well, it's something I could do but I can also rely

DR. RODGERS ON CROSS

1 upon others acquiring that information for my benefit and
2 use.

3 Q. Certainly, certainly. But that is also something a
4 social worker does?

5 A. Yes, sir.

6 Q. Okay, and in 1998 you invoiced for your representa-
7 tion in this case?

8 A. Yes.

9 Q. Can you identify that?

10 A. . .

11 Q. The document I have just provided to you?

12 A. Yes. This is my invoice.

13 THE COURT: Do you want to offer it?

14 MR. ZELENKA: Yes, sir.

15 THE COURT: Any objection, Ms. Kimbrough?

16 MS. KIMBROUGH: No objection.

17 THE COURT: All right, Respondent's 13 will be ad-
18 mitted into evidence without objection.

19 (Invoice of Dr. Rodgers from 1998 admitted in
20 evidence without objection as Respondent's Exhibit Num-
21 ber 13)

22 THE COURT: Proceed.

23 BY MR. ZELENKA:

24 Q. Would you respond to Respondent's 13?

25 A. Uh hm.

DR. RODGERS ON CROSS

1 Q. And it reveals your first involvement in this case

2 . .

3 A. Yes.

4 Q. . . on May 24th, interviewing Scott Parker. Is that
5 correct?

6 A. Yes.

7 Q. And so you had had some contact prior to that parti-
8 cular interview with Scott Parker?

9 A. Based upon this, I presume I had.

10 Q. But after your interview with Scott Parker -- that
11 lasted approximately how long, according to that state-
12 ment?

13 A. I'm looking for Scott Parker's name here now.

14 Q. First invoice.

15 A. I have two hours down here.

16 Q. Do you recall what occurred during that interview
17 with Mr. Parker?

18 A. I cannot recall, Mr. Zelenka. I'm sorry.

19 Q. Apparently . .

20 A. We talked. I'm sure we talked, you know, but spe-
21 cifically, you know, I have no idea what the conversation
22 was.

23 Q. And you next invoices matters involving a series
24 of hours, approximately seven hours, on a series of
25 days, where you interviewed records?

DR. RODGERS ON CROSS

1 A. Reviewed records, yes.

2 Q. Do you recall what records you had in your posses-
3 sion when you did your seven hours in this matter?

4 A. Well, when I -- these are estimated times but they
5 were probably information or records that were provided
6 by the investigator, Scott Parker.

7 Q. Apparently it was a high number of records, isn't
8 that correct?

9 A. Well, whatever I had, it required time. You know,
10 you have to read and study information, so it may have
11 been limited content, you know, that required my having
12 to review it for this span of time.

13 Q. And after those reviews which you did on May 24th
14 and May 25th, May 26th, then you had your first interview
15 with John Weik, correct?

16 A. May 26th?

17 Q. Yes.

18 A. Yes.

19 Q. Approximately how long did you have this interview
20 with him?

21 A. I have one hour here.

22 Q. Would that be correct as you now recall?

23 A. That is as best I recall.

24 Q. What was the purpose of interviewing John Weik at
25 that time? For what reason did you decide to see him at

DR. RODGERS ON CROSS

1 that time?

2 A. Well, if I recall -- my memory is sketchy about this,
3 but it was basically to meet him and become acquainted
4 with client.

5 Q. To develop the social history?

6 A. Well, I wasn't getting very much information from
7 him. I got it as best I could, but that certainly would
8 have been one way of developing a history.

9 Q. And on that same day you met with Percy Buford, is
10 that correct?

11 A. According to this, I did.

12 Q. And this is Mr. Buford here in Court?

13 A. Yes, sir.

14 Q. And presumably you met also at that time with Marva
15 Hardee Thomas?

16 A. I'm assuming so, based on this.

17 Q. Her name is on that invoice?

18 A. Uh hm.

19 Q. And presumably on the same day?

20 A. Yes. I can't remember it but I'm assuming it
21 is . . .

22 Q. Then also on May 26, 1999, does this invoice re-
23 flect you . . .

24 A. May 26, 1999, Dr. Morgan and Dr. Schwartz-Watts.

25 Yes.

DR. RODGERS ON CROSS

1 Q. And what was your purpose at that time in interview-
2 ing the two psychiatrists who had been involved in the
3 case, as you recall?

4 A. To hear what they might have had to offer, say,
5 with regard to the case from their perspective.

6 Q. Could it have been for the purpose of providing
7 them information?

8 A. Would I have been providing them information?

9 Q. Yes.

10 A. We may have had some discussion in which I did,
11 yes.

12 Q. And subsequent to that, two days later, you then
13 interviewed Mr. Weik?

14 A. Yes, that is indicated here.

15 Q. And again, Mr. Buford?

16 A. Uh hm.

17 Q. The attorney for Mr. Weik?

18 A. Yes.

19 Q. Do you recall anything that occurred in that meet-
20 ing?

21 A. Not specifically.

22 Q. And then on the 28th also you interviewed family mem-
23 bers?

24 A. Yes.

25 Q. All right.

DR. RODGERS ON CROSS

1 A. And I can't tell you which ones they were.

2 Q. Do you recall if you interviewed the mother?

3 A. At some point I talked with her, yes.

4 Q. Okay. You talked with her for what reason?

5 A. To gather from her what information I could with
6 regard to her son.

7 The circumstances and the situation surrounding this
8 case.

9 Q. Do you remember where that interview occurred?

10 A. It was somewhere between their home and a parking
11 lot, if I recall. It has been some time ago and my
12 memory is fuzzy, so I can't tell you exactly.

13 Q. But at that time you did visit with some family mem-
14 bers?

15 A. Yes.

16 Q. Do you recall how much time you spent there?

17 A. I don't recall.

18 Q. And you have described conditions at the home for
19 us so you have viewed the home?

20 A. Yes.

21 Q. All right.

22 A. The home impressed me as one that was rather rustic,
23 unkempt. I don't know there was a cultivated lawn or
24 yard.

25 There may have been some indication of a need for

DR. RODGERS ON CROSS

1 painting and other repairs, and it was kind of depleted
2 in terms of creature comforts.

3 Q. Was it safe?

4 A. Was it safe?

5 Q. Yes.

6 A. I couldn't tell you that.

7 Q. Did you see any guns around, machetes?

8 A. Well, I'm not sure I can say I saw guns and
9 machetes there, no.

10 Q. Did you see unsanitary factors in the house?

11 A. Well, I would say that there was certainly an in-
12 dication of a need for some repair and maintenance, or
13 upkeep.

14 Q. Can you be more specific about that?

15 A. Well, cleaning.

16 Q. Okay. Did you see dirty dishes or . .

17 A. I didn't go into the kitchen, you know, but gen-
18 erally speaking there certainly would have been some need
19 for that.

20 Q. Would you describe the house as cluttered?

21 A. I remember perhaps it can best be described as a
22 need for better organization.

23 Q. Now, after meeting with family members, what impres-
24 sion did you have about familiy members you met?

25 A. Subsequent to the meeting?

DR. RODGERS ON CROSS

1 Q. Yes, after the meeting with family members.

2 A. Well, I left with the impression of a family that
3 was certainly in need of help. Help in terms of resources,
4 and I left also with the impression with regard to Mr.
5 Weik in particular that just kind of left me with some
6 questions.

7 Q. Mr. Weik being Russell Weik?

8 A. Russell Weik.

9 Q. How was that?

10 A. He just struck me as being kind of a strange person-
11 ality.

12 Q. Why did you think he was a strange person? What
13 did he say or do that caused you to think that?

14 A. Probably more what he didn't say. I'm not sure he
15 said much of anything, you know, that struck me as
16 being rather tangible, that I could get my hands around
17 and evaluate.

18 Q. Do you recall if you interviewed the sister, Amy,
19 at that time?

20 A. I really don't.

21 Q. Do you recall interviewing his brother Chris?

22 A. I can't say. I'm really fuzzy on who in particu-
23 lar I did interview.

24 Q. Did you keep any notes of your interviews?

25 A. I did, Mr. Zelenka, but I don't have any of them

DR. RODGERS ON CROSS

1 now, and I can tell you why.

2 Q. Okay.

3 A. I have since retired, relocated, moved, and lost
4 a lot of stuff.

5 Then I didn't even anticipate the possibility of an
6 experience like this because I've never gone through what
7 we call a relief . .

8 Q. Post conviction relief.

9 A. Post conviction relief -- yes.

10 Q. Now, at that time in developing an understanding
11 of him -- going back to Russell Weik, the father -- did
12 you know if John Weik was born in a hospital?

13 A. I did not.

14 Q. Where did you think he was born?

15 A. I'm not sure I knew where he was born, but it would
16 not have surprised me had he been delivered by a mid-
17 wife at home.

18 Q. Did you subsequently learn he was not born at home
19 with a midwife?

20 A. Yes.

21 Q. So what you said on direct that this was a family
22 that would prefer to have children born at home using
23 a midwife did not apply to him?

24 A. Well, what I said in direct examination, as I in-
25 tended it to be conveyed, is that I got the impression

DR. RODGERS ON CROSS

1 that this was a fairly provencial family, rural oriented,
2 and I wouldn't have been surprised, if given the option,
3 that this would have been a viable alternative.

4 I just used that as an example, and the reason I
5 thought about that as an example was because of another
6 item in the record having to do with the family being
7 without running water for approximately two years, and
8 them drinking from a well, and when the well was in some
9 way no longer functional they carried water for a consid-
10 erable period of time before running water was provided.

11 I also gathered, you know, that the use of candles
12 might have been an alternative to electric lights from
13 time to time.

14 Also, that, you know, family members might have been
15 as comfortable, and particularly Ms. Weik, using an out-
16 door privy as opposed to an indoor bathroom.

17 Q. Did they have an outdoor privy?

18 A. My assumption is that at some point in time in
19 their history they did have.

20 Q. There was a bathroom in the house, was there not?

21 A. I'm not sure whether there was or not.

22 Q. Now, in your trial testimony you gave a brief sum-
23 mary of your impression about Mr. Weik's family.

24 A. Uh hm.

25 Q. Can you summarize today or give an opinion to a

DR. RODGERS ON CROSS

1 reasonable degree of certainty in your field . . .

2 A. Yes, sir.

3 Q. . . what your impressions are about the social his-
4 tory and background of John Weik?

5 A. Of . . .

6 Q. The son.

7 A. My impression is that John has been in need of help
8 for a long time and that the environment and the condi-
9 tions upon which he grew up had every indication or many
10 indicators, if you will, of the need for innovative help
11 and that the cultural constrictions as determined by
12 identity and cultural orientation in this part of the
13 country kind of minimize many of those possibilities for
14 them.

15 Not because of external forces necessarily, but per-
16 haps because of internal value systems and also external
17 forces that might have been in play.

18 Q. In 1999, what were your impressions?

19 A. What were my impressions then?

20 Q. Yes.

21 A. With regard to this family?

22 Q. Yes.

23 A. Similar to what I just expressed. However, I did
24 not know the degree and magnitude to which this family
25 was deprived.

DR. RODGERS ON CROSS

1 Q. You referred to some evidences that some of the
2 family members, including Lillie, had generally?

3 A. Uh hm.

4 Q. What specifically did Lillie Weik have?

5 A. What did she have? That will take some telling.
6 Now, I can't attest factually as a non-MD that she was
7 depressed, but based upon letters that were referred to
8 in the documents and the life style it seems to me that
9 she might very well have been.

10 Q. Are there are clinical findings of depression?

11 A. I haven't seen a medical document that says that,
12 no.

13 Q. With . .

14 A. But I've seen some expressions that have been alluded
15 to or given to her indicating or where she has indicated,
16 you know, at times to feeling very low and depleted in
17 terms of energy and drive and just general spirit.

18 Q. Well, clinical depression requires a lot more than
19 feeling low?

20 A. Well, now, in my humble opinion, depression may not
21 suggest mental illness entirely, but one can be de-
22 pressed and not necessarily psychotic.

23 Q. All right.

24 A. Uh hm.

25 Q. But you suggested in your original testimony that

DR. RODGERS ON CROSS

1 she qualifies in the genogram as having . .

2 A. Yes, indeed.

3 Q. And that would apply to mental illness?

4 A. Depression and mental illness. Okay? So certainly
5 she could have been a depressed personality, and in my
6 opinion she was.

7 Q. Is there any clinical information that she was in
8 fact suffering from a designated mental illness?

9 A. I have not seen any.

10 Q. And was Maggie diagnosed as suffering from an addic-
11 tion?

12 A. I'm trying to make a distinction between Maggie and
13 Ray. I don't have it here in front of me, but was Maggie
14 in the first family? Yeah, she was.

15 Q. As was Ray.

16 A. As was Ray, yes.

17 Q. Okay.

18 A. Clinical depression is what I gather from my read-
19 ings.

20 Q. So she was diagnosed with that?

21 A. I didn't see a diagnosis.

22 Q. The same with Jose -- same question. What diagnosis
23 did he have of mental illness or addiction?

24 A. Have I seen a document to that effect? I have seen
25 records in my material that, yeah, he had a dirnking

DR. RODGERS ON CROSS

1 problem, I believe.

2 Q. A drinking problem?

3 A. Yeah..

4 Q. And what is a drinking problem?

5 A. Well, I don't want to be stereotypical now, but it
6 is widely believed and there is research that among na-
7 tive americans alcohol is not an uncommon phenomenon, and
8 I am assuming that there may have been some history of
9 alcoholism.

10 Q. You are assuming there may have been some history
11 of alcoholism?

12 A. Yes, which I don't think is unreasonable.

13 Q. Now, you did not do a written report of your own in
14 this case, did you?

15 A. No, sir. I didn't do a written report, but I cer-
16 tainly reviewed information and made notes, none of which
17 I have now.

18 I did not do a written report, no.

19 Q. And did the information you had include interviews
20 with family members back in 1999?

21 A. Interviews . .

22 Q. Done by Scott Parker with family members?

23 A. Yeah.

24 Q. Let me ask you if you recall ever seeing any mate-
25 rial which has previously been introduced into evidence.

DR. RODGERS ON CROSS

1 This is Plaintiff's Exhibit 3, an interview of May 14,
2 1999, with Lillie Weik?

3 A. Who did this?

4 Q. I believe Scott Parker.

5 A. I don't see a name on here.

6 Q. You don't recall seeing that?

7 A. No, I don't see a name. I don't see Scott Parker's
8 name on here.

9 Q. Okay, and you don't have any present recollection
10 as to . . .

11 A. Uh uh. I don't -- I can't say I didn't see it, but
12 I just don't remember.

13 Q. Okay, and similarly Plaintiff's Exhibit 4, an in-
14 terview with Russell Weik, May 25, 1999?

15 A. I may have seen these, but I can't remember.

16 Q. Plaintiff's Exhibit 6, interview with Magdalene and
17 John Gunter?

18 A. You are asking if I saw these back during that
19 time?

20 Q. Back during that time?

21 A. I don't remember it, but I'm not denying it. I
22 just don't remember.

23 Q. Plaintiff's Exhibit 5, interview with Russell Weik,
24 May 14, 1999?

25 A. I don't remember. No, sir.

DR. RODGERS ON CROSS

1 Q. So the records that you reviewed on May 24, May 25,
2 May 26, May 28th, may or may not have been those docu-
3 ments?

4 A. Could have been because I did do some reviewing but
5 I don't have them.

6 Q. Now prior to your testimony at trial, which occurred
7 on May 29, 1999, did you have a discussion with either
8 Mr. Buford or with Marva Hardee Thomas about your find-
9 ings and your conclusions before you entered the witness
10 stand?

11 A. Mr. Zelenka, I can't really remember whether I did
12 or not because it's been seven years, and I just can't
13 remember.

14 I have done a number of things since that time and
15 this case has recently come back to my attention.

16 Q. But your record reflects that the day before you
17 testified . . .

18 A. I'm sure I did. Whatever my records indicate,
19 but if you're going to ask me to go beyond that in terms
20 of what -- that's what I submitted.

21 Q. It does reflect you did meet with Mr. Buford on the
22 28th?

23 A. Yes, but I can't tell you what we talked about.

24 Q. Okay. No further questions.

25 THE COURT: Any Redirect?

DR. RODGERS ON REDIRECT

1 MS. KIMBROUGH: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. KIMBROUGH:

4 Q. Dr. Rodgers, the transcript reflects that your
5 testimony at trial was that you had reviewed certain
6 types of information?

7 A. Uh hm.

8 Q. As of that date that would have been correct, would
9 it not?

10 A. It would be but, here again, I can't tell you what
11 I reviewed.

12 Q. Okay, and, likewise, Plaintiff's 13 shows that your
13 involvement in this case began on May 24th?

14 A. Uh hm.

15 Q. Would you like to see the document again?

16 A. When was the trial? I'm trying to remember.

17 Q. Your testimony was five days after you became in-
18 volved in this case?

19 A. I mean, that is pretty much what it was, and I
20 don't remember anything to the contrary. That is the
21 only document apparently that is available.

22 Q. The point is that if you put it down here, that is
23 what happened?

24 A. As best I can recall.

25 Q. And I'm not trying to embarrass you, but since the

DR. RODGERS ON REDIRECT

1 time of this trial, you have had undergone some things
2 which you said have affected your memory?

3 A. Most definitely, and that's certifiable.

4 Q. And that would be . .

5 A. Chemotherapy.

6 Q. No further questions.

7 THE COURT: Recross limited to Redirect?

8 MR. ZELENKA: Nothing further.

9 THE COURT: As to this witness, counsel?

10 MR. O'CONNELL: No objection to his being excused.

11 THE COURT: Mr. Zelenka, do you have any objec-
12 tions?

13 MR. ZELENKA: No objections.

14 THE COURT: Very well, you may be excused, sir.

15 (Witness excused)

16 THE COURT: Counsel, approach.

17 (Conference at the bench between counsel and the
18 Court off the record)

19 THE COURT: All right, counsel. It is my understand-
20 ing that the next witness may take a little bit of time,
21 and I understand your food has arrived.

22 So I'm going to stop at this point for lunch. We
23 will break from now until approximately one thirty for
24 our lunch break.

25 We'll start back immediately after lunch.

1 (Whereupon, the Court stood in recess for the lunch
2 period and thereafter resumed)

3 THE COURT: Are you ready to proceed?

4 MR. O'CONNELL: We are.

5 THE COURT: Is the Respondent ready?

6 MR. ZELENKA: Respondent is ready, Your Honor.

7 THE COURT: Very well. Mr. O'Connell, you may call
8 your next witness.

9 MR. O'CONNELL: Margaret O'Shea.

10 MARGARET O'SHEA, being duly
11 sworn, testified as follows:

12 THE COURT: Please make yourself comfortable on the
13 witness stand and he will adjust the microphone so that
14 Mr. O'Connell and I can hear you since we don't have the
15 best hearing in the world.

16 Please state your full name and spell your last name
17 for the Court Reporter.

18 WITNESS: Margaret Leslie O'Shea, O apostrophe S H
19 E A.

20 THE COURT: Your witness.

21 DIRECT EXAMINATION

22 BY MR. O'CONNELL:

23 Q. Ms. O'Shea, you live in Columbia, South Carolina?

24 A. Yes, I do.

25 Q. What do you do for a living?

MS. O'SHEA ON DIRECT

- 1 A. I am a specialist in developing mitigation in death
2 penalty cases.
- 3 Q. How long have you been doing that kind of work?
- 4 A. I've been doing it for five years now.
- 5 Q. Prior to beginning that type work, what did you
6 do?
- 7 A. I was a journalist for thirty-seven years.
- 8 Q. And where was that?
- 9 A. The bulk of my career was at the State Newspaper in
10 Columbia. Prior to that I started working at about the
11 age of sixteen and my first job was with the West Columbia-
12 Cayce Journal which no longer exists.
- 13 I graduated from high school and applied for a job
14 at the Columbia Record which no longer exists, and I was
15 told I was too young.
- 16 So I went back at eighteen and said, well, I'm
17 eighteen now; can I work? And I worked there for three
18 years while I was in school at the University of South
19 Carolina.
- 20 I went to graduate school at Southern Illinois Uni-
21 versity, and my job to sort of pay the bills while I was
22 there was with the Southern Illinoian in Carbondale,
23 Illinois.
- 24 Q. And did you complete graduate school?
- 25 A. Yes, I did.

MS. O'SHEA ON DIRECT

1 Q. And what was your degree in?

2 A. Journalism.

3 Q. Undergrad and graduate school?

4 A. Yes, journalism.

5 Q. Where did you get your graduate degree?

6 A. Southern Illinois University at Carbondale.

7 Q. And after you got your graduate degree, what did
8 you do?

9 A. I came home and my original plan had been to return
10 to work at the Columbia Record where I had been working
11 when I left. They had no openings, and so I applied at
12 the State, and that kind of ended up where I landed
13 when I married and had children. I wasn't interested in
14 moving so I stayed there.

15 Q. And what kind of work did you do?

16 A. I was a reporter.

17 Q. What kind of reporting?

18 A. Over the years, pretty much everything. In the last
19 I would say two thirds of my career, I concentrated on
20 courts, government and investigative work.

21 Q. I know this would be stating the obvious, but would
22 you tell us what you have to do in order to get the in-
23 formation that you want in order to write your stories?

24 A. It involves a lot of interviews, a lot of document
25 collection, a lot of sifting through mounds of information

MS. O'SHEA ON DIRECT

1 and trying to determine what is important and what is
2 not; developing leads; taking one piece of information
3 to the next step if a new direction is suggested by it.

4 Q. Is it fair to say that persistence is something
5 that a reporter should have?

6 A. If you don't have it, you need to do something else.

7 Q. You said that you became involved in death penalty
8 work five years ago?

9 A. Yes.

10 Q. When you became involved in death penalty work,
11 was that as a mitigation investigator?

12 A. From the beginning, yes.

13 Q. And in how many death penalty cases, whether or
14 not they have gone to trial, have you been the mitiga-
15 tion investigator?

16 A. I was trying to remember off the top of my head,
17 and I don't have a resume with me, but I believe this is
18 accurate, that I've been involved in five or six original
19 trials, three to four post-conviction relief cases.

20 I had one case where I was called in to finish some
21 work that another investigator had not completed and the
22 trial was two weeks away.

23 I am currently getting involved in a resentencing
24 trial, so I guess that's a total of a dozen or so.

25 Q. Have you testified before in death penalty cases?

MS. O'SHEA ON DIRECT

1 A. Never have.

2 Q. Have you declined to work in some death penalty
3 trials?

4 A. Yes, I have declined employment at least three times,
5 and the most egregious case when I was -- someone at-
6 tempted to hire me six weeks before the trial was sche-
7 duled, and I agreed to look at what they had and suggest
8 what needed to be done, and then I saw the type of case
9 it was, the amount of work it would require, and I deve-
10 loped a report on that and suggested that they ask for
11 a continuance, which the lawyer refused to even consider
12 asking for a continuance.

13 Then I told him he needed to find someone else, and
14 I have had two other occasions where there might have been
15 enough time to do the work but I knew that with my case
16 load I couldn't give the time to it that it would re-
17 quire, and I did decline those cases.

18 Q. You mentioned an egregious case where someone wanted
19 to hire you six weeks before a trial?

20 A. Yes.

21 Q. What is a sufficient amount of time to do what you
22 typically do in your investigation and your mitigation
23 efforts?

24 A. It is really a hard question to answer because every
25 case is different. Every case has its unique qualities.

MS. O'SHEA ON DIRECT

1 Six weeks in any case in my view would not be enough time
2 and the reason that I say that is at the minimum, even if
3 you have good luck collecting the records that you need
4 to collect, and even if you have good cooperation from
5 families, it does take a good deal of time to develop
6 trust.

7 Part of what I see as my job is to be as thorough as
8 I can, so that I can assist the experts in being as thor-
9 ough as they should be.

10 I can give them the tools and direction to go that
11 might be helpful, and I tend to feel that if an expert
12 fails I don't want it to be because I failed.

13 Q. Tell the Judge which lawyers you have worked with in
14 death penalty cases in South Carolina?

15 A. Okay. I probably will leave some out here. This
16 is off the top of my head.

17 I have worked with Theresa Norris, Jeff Bloom, Diana
18 Holtz, John Bloom, Derrick Enderlind, Sims Culbertson,
19 John Delgado, Kelly Perkins Brown, Hank Gaileys, and
20 there may be more -- and you.

21 Q. Have you worked with David Brucker?

22 A. I have not worked with him on a case but I have
23 worked with him in, I guess you'd say, informal consul-
24 tation kinds of situations, where we have discussed cases
25 and bounced ideas around.

MS. O'SHEA ON DIRECT

1 I have known him for a lot of years and so it is
2 sort of -- the kind of relationship, I guess, where I've
3 not been hired to work for him but I have enjoyed the
4 opportunity to work with him, if that makes sense.

5 Q. Yes. I understand. Now, this case involving Mr.
6 Weik was tried beginning on May 24, 1999. Would approxi-
7 mately a year or ten months have been a sufficient amount
8 of time for you to do the work in this case that should
9 be done on behalf of Mr. Weik?

10 A. Possibly, and I say that with the idea that it might
11 be possible if I were not doing anything else, if I had
12 no other cases to sandwich -- you know, that I had to
13 juggle things.

14 If I could concentrate on it, if I worked full time
15 on it, possibly.

16 There are some unique characteristics of this case
17 that would suggest that might not be possible too.

18 Q. What are those?

19 A. The biggest hurdle I saw in this case, and I think
20 it would have been even greater in 1999 than it was when
21 I became involved with the case, is the family dynamic.

22 This is in my view one of the most dysfunctional fam-
23 ilies I've ever dealt with. There is an element in the
24 family that has fought very, very hard to or has seen it
25 as important to look normal; you know, to make their

MS. O'SHEA ON DIRECT

1 family life seem like most other peoples, and under no
2 circumstances portray anything that would appear to show
3 that Eddy or his dad or anyone else in the family had
4 any significant problems.

5 There is another dynamic in the family that is a huge
6 hurdle. Well, I don't suppose I finished what I started
7 to say about the two sides of the family, in that there
8 is another side of the family that does recognize the
9 extent of mental illness, and, in fact, this was avail-
10 able in 1999 when -- her name now is Amy Maxwell -- she
11 told one of the original investigators there were layers
12 and layers of problems in the family and it would be
13 difficult to get people to talk about them.

14 And when I became involved in the case, I saw that
15 that is indeed true; that there are layers and layers of
16 problems, and many people do not want to talk about them;
17 do not want to be open about them.

18 Q. In your experience, when you have things the family
19 does not want to talk about, some sensitive issues, what
20 do you have to do to overcome the reluctance to talk
21 about those things with family members?

22 A. In most cases, you can with time overcome that, as
23 you develop trust, and that means not going in and doing
24 one interview or even two interviews and expecting them
25 to tell you everything, but over time developing the kinds

MS. O'SHEA ON DIRECT

1 of communications with them that they do begin to see,
2 yes, this will help my son or daughter or relative.

3 Developing trust, I would say, is the major key, and
4 in cases where you cannot develop trust you need to seek
5 other avenues to the information.

6 You need to see if it shows up in some kinds of re-
7 cords where even if people are lying about it, as occurred
8 when Lillie Weik gave the social history at William S.
9 Hall -- she did not tell the truth about a number of the
10 things she said.

11 Q. I want to stop you there. You said she said some
12 things in the family history that were untrue?

13 A. Right.

14 Q. Through your investigation, what did you learn? I
15 know it is an obvious thing, but I need you to state it.
16 Okay?

17 A. I would characterize the family life in the Weik
18 household as possibly the least stable of any I have en-
19 countered.

20 Q. How did you learn that?

21 A. Through talking to as many of the family members as
22 possible, developing trust with some of them, and I will
23 admit there are others that I never did develop trust
24 with.

25 I learned part of it through the various records I

MS. O'SHEA ON DIRECT

1 was able to collect and examine, and in cross relating
2 all of those things I was able for the most part, I be-
3 lieve, to tell who was being truthful and who was not
4 about various aspects.

5 Q. Now, in the other death penalty cases that you have
6 worked on, have you prepared what has been called a chron-
7 ology?

8 A. I almost always prepare a chronology. The only rea-
9 son I would not would be if I were told that one was not
10 needed, or if I were hired in -- in a few instances I
11 am hired for a very limited purpose, such as to look at
12 only mental retardation or competency or a specific is-
13 sue.

14 In a case like that, I would not have available to
15 me all of the material I needed to do a chronology.

16 Q. What is a chronology?

17 A. A little more than the word implies. What I do is
18 try to create a chronology that will be a useful tool to
19 everyone who needs to deal with it, and that would be a
20 tool for lawyers as a quick reference for the order of
21 time in which things happen or specific dates that docu-
22 ments were generated, or dates that various things occur.

23 The lawyers can use it as a tool. The front section
24 includes the contact information so obviously that is a
25 tool for them.

MR. O'SHEA ON DIRECT

1 It is a tool for the various experts in that it
2 gives them that same kind of contacts for the various
3 elements of the case that they have to deal with.

4 For example, the chronology will always include each
5 school year, and the things that not only were learned
6 from the client's school records in some cases, in some
7 cases the school records of siblings, since those often
8 show problems at home.

9 But since it is a chronology and a time line, it
10 would include various events and other things that happened
11 during that school year, and it would give experts who
12 are looking at the client a context in which to see what
13 was going on in the client's life and his family life
14 during each age period of his life. Time in his life.
15 Quite often, I use the chronology to go way back. For in-
16 stance, in this case, where I saw at the beginning that
17 the Native American heritage might be of significance, I
18 took it back as far as I could.

19 Q. Now, in other case you have worked on -- other
20 death penalty cases you have worked on in which you have
21 prepared a chronology, what use has been made of the
22 chronology by the experts?

23 A. Normally what I do is I prepare -- I prepare the
24 chronology. I go ahead when I am fairly far into that
25 process and give a first version.

MS. O'SHEA ON DIRECT

1 I give that to the lawyers and as I make changes or
2 additions and as more records come in, I will give a new
3 version. Each one is dated.

4 I try to indicate what is new and what is not, so
5 that people who are already working on the case will be
6 able to have the use of it as soon as possible.

7 But in general the lawyers determine who gets the
8 chronologies, and it is normally provided to all the
9 expert witnesses in the case.

10 Each one will have his own particular need for it or
11 own use for it. Normally I find that social workers use
12 it to determine which people in the family they need to
13 interview specifically, or what directions they might
14 want to take their inquiries.

15 Many of the mental health experts have used chronolo-
16 gies to find indicators of records they will ask me to
17 find for them, or they will see events that suggest an
18 aspect of a potential mental
19 problem that had not come to their attention, and they
20 will go ahead and explore that.

21 Normally, the chronology is a tool for other people
22 to use to guide them in doing the work that they do.

23 Q. Do you incorporate in a chronology the various inter-
24 views you have done?

25 A. Right

MS. O'SHEA ON DIRECT

1 Q. Various family members and other relevant people to
2 put together, I guess, a profile of the Defendant's life?

3 A. Right, and I always indicate where that information
4 came from, that person told me this, because it is often
5 the case that what a person says may not be true.

6 Another person may have a different version of the
7 same event, so I do always indicate who said what, and I
8 try not to pick and choose one person's version over
9 another if there are competing versions. I throw them
10 both in.

11 Q. You said it has been your experience that in other
12 death penalty cases you have worked that you meet with the
13 lawyers and the mental health experts during your prepara-
14 tion time?

15 A. I would more often meet with the social workers and
16 the lawyers than with the mental health experts, but I
17 . . .

18 Q. Well, stop there. Why do you meet more often with
19 social workers rather than the psychiatrists and psycholo-
20 gists?

21 A. Because in general the type of work that they do
22 to prepare for trial often involves more face to face in-
23 terviews with people, and I am normally the person who
24 indicates who has met these people and can provide an in-
25 troduction and help them feel comfortable in talking to

1 the social worker, so I get more involved in that aspect
2 for that reason.

3 Q. Now, I show you what has been admitted into evi-
4 dence as Plaintiff's Exhibit 13, and can you identify
5 this?

6 A. Yes. This is the last revision of the chronology
7 that I prepared for this case.

8 Q. Is that typical of chronologies that you have done
9 in your other death penalty cases you have worked on?

10 A. . .

11 Q. I don't mean the content but I mean the general con-
12 tent that's in there about school records, interviews
13 with relatives, trying to find out about a person's hered-
14 ity?

15 A. This is absolutely typical. The only difference, I
16 think, in this one as compared to some others I've done
17 is that at this point; that is, the point of being in
18 Court, and having the document being used, there are in
19 my view some records that should be in here that are not
20 in here because of the unique characteristics of this case
21 that I was talking about.

22 Q. I'm sorry. You're talking about the records in this
23 chronology or some other chronology?

24 A. I'm saying that most of the time by the time a case
25 is in Court, a chronology would be more complete than

MS. O'SHEA ON DIRECT

1 this one. I don't view this one as being as complete as
2 I normally do.

3 There are some things that are not here that I would
4 like to be here. Some of those things don't exist, by
5 the way, like the Berkeley County Hospital records, med-
6 ical records for the entire family. They are not here,
7 and normally they would be.

8 Q. Do they exist, as far as you know?

9 A. It is my understanding that they were destroyed when
10 the hospital was replaced by a new hospital. Those re-
11 cords were placed in storage in a building in Moncks Cor-
12 ner, and I was unable to find where they went from there.

13 Q. Aside from those medical records, what are the
14 other things, if there are other things, that you want
15 in there that are not in there?

16 A. I would love to have Russell Weik's complete mili-
17 tary record.

18 Q. Anything else?

19 A. I'm sure there is, but those are the glaring omis-
20 sions that certainly bother me.

21 There is one item that would have been easy to get,
22 and I just didn't have time to. I would normally have had
23 Eddy's divorce record here, and I never got to pick it
24 up.

25 Q. As far as Mr. Weik's military records are concerned,

MS. O'SHEA ON DIRECT

1 one of the things he testified to was about a fire in St.
2 Louis. Are you aware that that particular part of his
3 testimony was actually true?

4 A. I am aware of that, although I am not sure that is
5 the reason I don't have his record.

6 In my view, the reason I don't have his records is
7 that he was unable or unwilling to help me complete the
8 form required for me to request them on his behalf.

9 Q. Now, Plaintiff's Exhibit 14 -- what is this?

10 A. This is the genogram that I prepared for this case?

11 Q. And what basis of this genogram? What did you use?

12 A. The information for this comes from a variety of
13 sources. I collected the names of these various people
14 obviously throughout the course of my investigation and
15 through various interviews.

16 There were a few members of the family who had done
17 some geneological work, and I was able to look at their
18 records and determine the patterns of family and the
19 placement of names and some significant dates.

20 So it is pretty much a product I produced at the end
21 after I had done everything else.

22 Q. What use is typically made in your experience in
23 death penalty cases of Plaintiff's Exhibit 14, a geno-
24 gram?

25 A. One thing the genogram does is help experts keep

MS. O'SHEA ON DIRECT

1 straight who is who. If they use it for nothing else,
2 it kind of helps them know where different people fell in
3 the family.

4 Another use of genograms is to determine whether or
5 not there is significant generational information that
6 should be followed up on or that might be documented.

7 It is also very useful in determining different eth-
8 nic and cultural patterns.

9 I have done them with a lot of different colors where
10 they look like Christmas trees, where there were multi-
11 ple problems in a family, because what I like to do that
12 many of the experts find helpful is to point out problems
13 that might have some impact on our client, and in this
14 case the ones that I identified that I thought might have
15 significance, or maybe the Native American heritage, be-
16 cause I did know that there were cultural patterns and
17 beliefs and there were also some distinct things that
18 happened in Eddy's family concerning the way he was
19 brought up that stemmed directly from his mother's hav-
20 ing grown up in a rather isolated situation in a commun-
21 ity made up entirely of Varnertown Indians, the Wassamasaw
22 Tribe.

23 Q. The yellow blocks and circles that are colored yel-
24 low, . . .

25 A. Right.

MS. O'SHEA ON DIRECT

1 Q. . . what do they stand for?

2 A. Some of . . .

3 Q. What is the yellow?

4 A. I have used the yellow as kind of a catch-all to
5 point out mental illness that was documented, depression
6 that was either documented, and I know depression is a
7 mental illness, but there are levels of it, and some peo-
8 ple don't consider it quite that serious.

9 But depression that was documented or either that I
10 had from a reliable anecdotal source, and because they
11 are so wrapped up in the dynamics of a family and create
12 the same kinds of problems as mental illness, I went
13 ahead and included addictions problems in that category.

14 Q. All right.

15 A. Also, I probably should be honest and say the new
16 computer program I have doesn't have as many colors as
17 my old one did.

18 Q. Now, the black circles . . .

19 A. Right. In this -- on a lot of genograms, I would
20 not normally indicate an abortion or a miscarriage or
21 -- well, I usually probably indicate a stillbirth, but
22 I do try to indicate them when I think they are signifi-
23 cant.

24 I thought this might be a particular clue of inter-
25 est to both the mental health experts and the social workers

MS. O'SHEA ON DIRECT

1 in this case, that if something of this nature had been
2 done at the outset it would have been a red flag to them.

3 In conjunction with the genogram, if you look at
4 this, what I indicated was Lillie Weik's first family and
5 all the children in it.

6 Granted, there is a lot of yellow on her side, and
7 most of it deals with alcohol and drug addictions,
8 which I thought might come from the genetic kind of sit-
9 uation that I read about with Native Americans where
10 they may have difficulty with alcohol.

11 But a lot of it was depression also, and this was
12 her first family, her first set of children, and I knew
13 that this son did not really live in the household with
14 Eddy Weik.

15 Q. That's Larry?

16 A. That's Larry, and this person, Maggie, . .

17 Q. She testified yesterday.

18 Q. . . she testified yesterday -- lived in the house-
19 hold with Eddy only briefly. She got married and she
20 left.

21 Jose was there very, very briefly and he left.

22 The only one of these children on this side from
23 this line over, the first set of children -- the only one
24 who lived in that household with Eddy with the same set
25 of -- the same environmental circumstances as Eddy, was

MS. O'SHEA ON DIRECT

1 Ray, and I knew that Ray had significant problems. There
2 was depression which can be documented but has not yet.
3 We just didn't ask for it.

4 She had severe alcoholism and treatment for that, a
5 serious disfunction in her life.

6 Q. Did you talk with Ray?

7 A. Yes, I did.

8 Q. All right.

9 A. Numerous times. This side of Lillie is her other
10 family, and this is what stood out for me. I'd have to
11 look back at the dates, but there is only -- between 1967
12 and 1971, here is what was going on with the mother of
13 this family, who is supposed to be the care-giver to
14 these children.

15 She married Russell Weik and in less than a year has
16 a miscarriage, and she still has barely been married
17 to him for a year or so when Eddy is born.

18 Q. Okay.

19 A. So she has had a miscarriage and a baby in a short
20 amount of time. She almost immediately has another mis-
21 carriage. Almost immediately after that, she is pregnant
22 with twins, and miscarries one, and she has Chris -- Chris
23 was born a year after Eddy.

24 So we are looking at two years in which she has had
25 three miscarriages and two children.

MS. O'SHEA ON DIRECT

1 Very shortly after that, she is carrying twins, she
2 loses one, has the other one, and shortly after that has
3 another miscarriage.

4 We are looking at a woman who had all of this happen-
5 ing in her reproductive life, and in five years time.
6 She couldn't have been a good mother. I figure a social
7 worker would have gotten that.

8 Q. I know the answer may be obvious, but what use has
9 been made of these, in your experience, in death penalty
10 cases you have worked on?

11 A. I have worked on some cases where the various experts
12 have found them highly helpful and have followed through
13 and talked to numerous people suggested by the genogram;
14 who have asked for additional records because of the geno-
15 gram, and used that in their testimony.

16 Q. Now, in your experience, is the genogram -- is it
17 shown to juries during the testimony of whatever expert
18 uses it?

19 A. Usually. Often, at least.

20 Q. Okay.

21 A. It is kind of helpful to show a picture of what is
22 going on.

23 Q. And I believe you've answered this question, but
24 that information is contained in the chronology which is
25 Plaintiff's Exhibit 13?

MS. O'SHEA ON DIRECT

1 A. I believe so. There is a -- no, there were some
2 neighbors or people that knew the family who were sug-
3 gested to me to interview, and when I interviewed them
4 they either had nothing to offer or nothing that I thought
5 was significant to include, and I didn't.

6 Q. Okay. Have you ever testified in one of these cases
7 or in death penalty cases?

8 A. Actually, no.

9 Q. Were you looking forward to being called as a witness
10 today?

11 A. Not at all.

12 Q. Just one second.

13 MS. O'CONNELL: Your Honor, I would offer Ms. O'Shea
14 as an expert in the field of mitigation investigation.

15 THE COURT: Any objection?

16 MR. ZELENKA: Your Honor, I don't think that is an
17 area of expertise. I understand her employment and . .

18 THE COURT: There was no objection to her offering
19 her opinions earlier in the absence of qualification, so
20 I need to know now.

21 I mean, you didn't object to her being able to give
22 an opinion based on her experience.

23 MR. ZELENKA: No, I didn't.

24 THE COURT: I don't know it is absolutely a recog-
25 nized field but she has testified about her education and

MS. O'SHEA ON DIRECT

1 testified as to her qualification.

2 Is there an objection?

3 MR. ZELENKA: An objection as to whether it is an
4 area of expertise. I don't question that she is qualified
5 to give an opinion on fact-finding and . .

6 THE COURT: I think based on her experience I can
7 take it for the weight it deserves, so I would overrule
8 that objection and permit her to give and she has given
9 her opinions.

10 Counsel, it would probably have been better had you
11 offered her earlier, but you elicited opinion testimony
12 from this witness which has been received without objec-
13 tion.

14 I understand clearly her background, education and
15 her qualifications. I understand you are objecting, Mr.
16 Zelenka, on the basis that you don't think it is a recog-
17 nized specialty, but I overrule that objection.

18 MR. O'CONNELL: I only have a few more questions.

19 WITNESS: Could I say one thing quickly? I omitted
20 one thing inadvertently concerning my work, and so that the
21 record will be complete.

22 After I left the State Newspaper, I did work at the
23 Augusta Chronicle three years.

24 BY MR. O'CONNELL:

25 Q. Let me ask you something else. Are there other people

MS. O'SHEA ON DIRECT

1 in South Carolina who do what you're doing?

2 A. Yes.

3 Q. Do you know them?

4 A. I know some of them.

5 Q. And how many of the ones who do the kind you do have
6 you heard of?

7 A. Who have I heard of?

8 Q. Or know?

9 A. Really very few. About five or six.

10 Q. I have nothing further. Would you answer any ques-
11 tions the Attorney General may have?

12 A. Sure.

13 THE COURT: Cross examination.

14 MR. ZELENKA: Thank you, Your Honor. I just have a
15 few questions.

16 CROSS EXAMINATION

17 BY MR. ZELENKA:

18 Q. Ms. O'Shea, during your work in this case did you
19 consider yourself a fact-gatherer or a fact-finder?

20 A. I am not sure I see the distinction.

21 Q. You made a firm statement that the mother lied in
22 giving her initial social history that she had a loving
23 and stable relationship -- that was a lie?

24 A. Yes.

25 Q. That strikes me as maybe fact-finding, or that that

MS. O'SHEA ON CROSS

1 was your own conclusion?

2 A. I think that is inevitable, but part of -- what I
3 did with that information, I included her statements that
4 were given to the Department of Mental Health, and I also
5 included the other information that I uncovered and, you
6 know, other people who deal with the information.

7 It is my view that she lied about that and the head
8 injuries and the absolutely uncomplicated pregnancy.

9 Q. And in your evaluations of family members, you took
10 statements?

11 A. Right.

12 Q. Including a statement of Amy in March of 1994 --
13 excuse me, March of 2004.

14 A. Uh hm.

15 Q. In which she indicated to you or characterized her
16 parents' relationship as very good or they were much in
17 love with each other?

18 A. Uh hm.

19 Q. Is that correct?

20 A. Uh hm.

21 Q. Is that anywhere in your chronology?

22 A. I believe that it is in the -- not in those words,
23 but I have indicated that -- I believe I have indicated
24 that the children in general, you know, tried to protect
25 their parents' relationship; that they said or seemed

MS. O'SHEA ON CROSS

1 to think they loved each other.

2 I had the impression that they did think they loved
3 each other, but there were a lot of problems.

4 Q. And with the genogram, you set out -- you noted in
5 your testimony about the miscarriages?

6 A. Yes.

7 Q. And some of those miscarriages, or at least one, by
8 an automobile accident?

9 A. Right. I saw that as a stressor on the family.

10 Q. When did you first become involved in preparing this
11 social history?

12 A. The written social history or compiling the inform-
13 ation?

14 Q. When you first became involved in the case?

15 A. Sometime in 2004. I don't remember when I was hired,
16 and I am not sure really I was able to start on it im-
17 mediately right after I was hired.

18 Q. Do you recall when you started on it, because you
19 were at least getting statements in March of 2004?

20 A. Right, and that is probably pretty early after I
21 started. Pretty early after I started, and I worked on
22 the case off and on up until last week.

23 Q. How many times did you interview Amy?

24 A. I interviewed Amy for -- I had one sit down inter-
25 view with her. I ran into her a couple of other times and

MS. O'SHEA ON CROSS

1 may have asked her some other questions but did not re-
2 duce those to memos.

3 Q. How many times did you interview Chris?

4 A. I interviewed Chris once extensively -- once for a
5 couple or three hours, and I asked him some clarifying
6 questions by phone and Email after that, and then I had
7 a subsequent interview with him that was in preparation
8 for this Court date.

9 Q. How many times did you interview the mother?

10 A. Lillie had died when I became involved in this case.
11 She had recently died.

12 Q. How many times did you interview Russell?

13 A. It's hard to know how to answer that question. I
14 spent a lot of time with Russell Weik. There were times
15 that I visited him that I didn't do any written memo;
16 that there was nothing new or for some other reason I
17 just didn't see the need to.

18 A lot of -- I saw Russell Weik and visited him in
19 conjunction with this case at least seven or eight
20 times, but a lot of that was trying to get his signed
21 release for his records and trying to convince him that
22 I wasn't worried about the CIA killing me if I requested
23 his records.

24 Q. And in the genogram you prepared that you have already
25 talked about, this would have included everything from

MS. O'SHEA ON CROSS

1 the documented mental illness to the family member's
2 drinking problems. Is that correct?

3 A. I could probably show you individually which ones
4 are which if you'd like. There were -- mainly on the
5 maternal side of the family, a lot of that is anecdotal
6 when I would have more than one person tell me that about
7 an individual..

8 I included it from a standpoint that I saw it as
9 something that an expert might think we should follow up
10 on and would want to know about.

11 There are other yellow places where, yes, there are
12 documents.

13 Q. So the fact that someone -- that there the yellow dot
14 doesn't mean that someone is drinking or heavy drinker
15 or suffer from alcohol addiction?

16 A. I tried not to include those that I didn't think the
17 anecdotal reports I had came to that level. I didn't
18 include those.

19 There would be more yellow dots if I had included
20 those.

21 Q. I don't think I have anything further.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. O'CONNELL:

25 Q. You said you interviewed family members or some of

MS. O'SHEA ON REDIRECT

1 them more than once?

2 A. Right.

3 Q. Did either I or my co-counsel, Ms. Kimbrough, attend
4 some of those interviews?

5 A. Yes.

6 Q. And . . .

7 A. Those in preparation for this event.

8 Q. What was the most recent interview that I was with
9 you? Do you recall?

10 A. I think that would have been the one with Chris Weik.

11 Q. About two weeks ago?

12 A. Maybe a little less than that.

13 Q. Did you and I also and Ms. Kimbrough meet with . . .

14 A. With Russell Weik.

15 Q. Two and a half weeks ago?

16 A. Yes.

17 Q. And did you and I and previous co-counsel also meet
18 with Maggie?

19 A. Yes.

20 Q. And did you and I also meet with Ray?

21 A. Yes.

22 Q. The half sister?

23 A. Yes.

24 Q. And in your experience -- I have nothing further.

25 THE COURT: Recross, limited to Redirect?

1 MR. ZELENSKA: Nothing further.

2 THE COURT: Do you wish her to remain for any rea-
3 son?

4 MR. O'CONNELL: Not for the purpose of being recalled
5 as a witness.

6 THE COURT: Ms. O'Shea, you may step down. You're
7 being asked by counsel for the Applicant to remain for
8 other reasons.

9 (Witness excused from stand)

10 MR. O'CONNELL: Your Honor, the other two witnesses
11 that we have will be presented by deposition. We have al-
12 ready discussed that it will be Dr. Jeff McKee and Ms. Patty
13 Rickborn.

14 THE COURT: And those depositions you think you can
15 take in Columbia within fifteen days of our concluding
16 the testimony on the record this week and submit copies
17 to the Court?

18 MR. O'CONNELL: Yes, sir. The only issue is whether
19 Mr. Zelenka's schedule is going to permit that, but I
20 think that is something we can work out.

21 THE COURT: Do you know of something that would per-
22 mit you from being available since they both -- I assume
23 both of these witnesses are in Columbia?

24 MR. O'CONNELL: They will be taken the same day.

25 THE COURT: Do you believe anything will prohibit

1 you from being available?

2 (Colloquy between counsel and the Court concerning
3 scheduling of deposition)

4 MR. O'CONNELL: Let's just see what we can work out,
5 Judge.

6 THE COURT: I understand if you need more time, Mr.
7 O'Connell. Come back to me but I would suggest fifteen
8 days subject to Mr. Zelenka's schedule and yours.

9 If you need a little more time than that, I certainly
10 understand.

11 MR. O'CONNELL: Thank you, Judge, and the two affi-
12 davits I mentioned, Your Honor, I have those.

13 THE COURT: You have those?

14 MR. O'CONNELL: Correct, and these are copies I am
15 giving to Mr. Zelenka if he doesn't have any objection to
16 them being copies.

17 THE COURT: This would be 15 and 16, I believe.

18 MR. O'CONNELL: Correct, Your Honor. Plaintiff's
19 Exhibit 15 is an affidavit, five pages, from Ramonda
20 Ferrer Kloczek, and she is the half sister of my client,
21 and Plaintiff's Exhibit 16 is a three page affidavit from
22 Edwin Weik, Jr., who is the half brother of Russell Weik.

23 Both of these witnesses live out of State.

24 THE COURT: It is my understanding, Mr. Zelenka, you
25 agree to the admissibilities of copies of these affidavits

1 as part of the Applicant's case at this time.

2 The statute permits affidavit testimony.

3 MR. ZELENKA: That's correct.

4 THE COURT: All right, Plaintiff's Exhibits 15 and
5 16, two affidavit copies, are in evidence without objec-
6 tion.

7 (Affidavits so admitted without objection as Plaintiff/
8 Applicant's Exhibits 15 and 16 in evidence)

9 THE COURT: Anything further from the Applicant?

10 MR. O'CONNELL: No, sir.

11 THE COURT: Subject to your right to take the deposi-
12 tions of the two individuals, Dr. McKee and Ms. Rickborn
13 -- with that, you rest, Mr. O'Connell?

14 MR. O'CONNELL: That's correct, Judge.

15 THE COURT: Any matters of law I need to take up at
16 this time, Mr. Zelenka, or would you rather wait and let
17 me hear them at the conclusion of the testimony?

18 I know we have people waiting, but if you'd like for
19 me to hear it at this time, I will.

20 MR. ZELENKA: Your Honor, I just want to make sure
21 that the allegations are closed at this time.

22 MR. O'CONNELL: I think that they . .

23 THE COURT: The problem I have, when you agree to
24 deposition testimony, is that obviously for purposes of
25 any motion at this time, I would have to consider that,

1 and you have agreed to allow the taking of the depositions
2 within fifteen days.

3 MR. O'CONNELL: That's correct, and I also have some
4 amendments to the application to conform to the proof
5 that has been litigated here.

6 The first is I have submitted grounds of ineffective
7 assistance of counsel for failure to supply mental health
8 experts the needed evidence that would have bolstered
9 their testimony, plus would have impeached the State's
10 witnesses.

11 I have not -- at this time I would move to amend to
12 include the ground that the Applicant was denied effective
13 assistance of counsel because the trial attorneys failed
14 to present evidence to the jury that might have through
15 -- failed to present evidence to the jury as I have in
16 this, through direct witnesses such as Amy Maxwell, the
17 sister; Chris Weik, the brother; Ramonda Ferrer Kloczek,
18 who is his half sister; Maggie Gunter, Bill Gunter -- the
19 evidence of those witnesses should have been presented to
20 the mental health experts and also presented directly
21 to the jury, and the trial lawyers had this information
22 in their file at the time of trial and it wasn't presented.

23 The other grounds are ineffective assistance of coun-
24 sel during jury selection, in that the trial attorneys
25 made insufficient objections to the jurors who were sub-

1 presented in that they were not able to consider mitigat-
2 ing evidence, as testified to yesterday by Mr. Bloom.

3 THE COURT: Over objection.

4 MR. O'CONNELL: Yes, sir, but then he went ahead and
5 cross-examined Mr. Bloom on the omissions.

6 THE COURT: That's because I ruled I would listen to
7 it, and I overruled the objection.

8 MR. O'CONNELL: Yes, sir. Ineffective assistance of
9 counsel for failing to move to exclude for cause jurors
10 who indicated they could give the death penalty for mur-
11 der, and ineffective assistance of counsel because the
12 trial attorneys rehabilitated the juror -- I think more
13 than one juror -- who said they would always vote for death
14 in a case of murder.

15 Defense lawyers then went and asked whether they
16 could consider mitigating evidence and thereby rehabili-
17 tated them, and they made them eligible to at least be on
18 the panel.

19 THE COURT: Mr. Zelenka, I realize you were not
20 placed on notice in the application as to the particulars
21 of these allegations of ineffective assistance of coun-
22 sel.

23 I also realize that yesterday during the testimony of
24 Mr. Bloom you objected on the basis that he was going
25 into an area in which you had not been placed on notice.

1 If you need additional time in light of this motion
2 in order to adequately prepare the defense at what is now
3 the close of the Applicant's case, being raised by motion
4 for the first time, I will certainly consider it.

5 But I am willing to hear you now or give you that
6 additional time so that you will in no way be prejudiced
7 by the Applicant moving at the conclusion of three days
8 of testimony to amend the very grounds on which he seeks
9 this Court to grant him relief, when you had no idea prior
10 to commencement of this hearing that these grounds would
11 be included until the hearing commenced.

12 MR. ZELENKA: Your Honor, with respect to the first
13 ground of presenting what I understand to be family --
14 actual witnesses, family testimony, we don't have an ob-
15 jection to that.

16 THE COURT: The failure to call live mitigating wit-
17 nesses, I will call it, as grounds of ineffective assist-
18 ance of counsel.

19 Therefore, so ordered to conform to any proof that
20 was raised during the Applicant's case. The application
21 is amended to include that.

22 MR. ZELENKA: As to the second ground, which I ob-
23 jected to yesterday, I still object to that.

24 Let me specify my understanding so it is clear. The
25 allegation of ineffective assistance of counsel concerning

1 the voir dire testimony involves approximately one thous-
2 and pages of transcript that needs to be reviewed at least
3 to make some sense as to what that claim actually goes to.

4 I apologize to the Court, but in light of the fact
5 that that allegation was not known previously, I did not
6 review as to each of the individual jurors the questions
7 on voir dire concerning the nature of the questions and
8 the nature of the objections made throughout the entire
9 process.

10 I apologize to the Court, but it was . .

11 THE COURT: Of course, that transcript is a part of
12 the record of this hearing.

13 MR. ZELENKA: The transcript is a part of the re-
14 cord of this hearing, but there may have been -- and I
15 can't say right now -- inconsistent factors which could
16 have become involved in the testimony of Mr. Bloom that I
17 would have liked to have impeached him on.

18 There may not be anything there, but I want to sug-
19 gest to the Court that there may be differences there
20 which may bring those matters . .

21 THE COURT: That is why I am offering you some time
22 if you feel it necessary, in order to rebut that. I am
23 already keeping this record open for fifteen days.

24 Would you have sufficient time to make that examina-
25 tion and, if necessary, ask this Court to allow you to

1 take depositions to rebut or to possibly recall Mr.
2 Bloom for cross examination on that ground within that
3 time frame that I have extended to the Applicant.

4 MR. ZELENKA: Absolutely. I can do that within the
5 fifteen days.

6 THE COURT: In that case, I will reserve my ruling
7 on that, pending hearing from you, and I will leave the
8 record open for you on the grounds being raised for the
9 first time of ineffective assistance of counsel on voir
10 dire.

11 I will give you the opportunity to review the record
12 within fifteen days as to whether Mr. Bloom should neces-
13 sarily be called back for further cross examination or to
14 allow you to present rebuttal testimony on that ground
15 only in a deposition, if you so desire.

16 MR. ZELENKA: Thank you.

17 THE COURT: Very well, and as to the last motion to
18 amend?

19 Ineffective assistance of counsel about the improper
20 rehabilitation -- I believe is what Mr. O'Connell has
21 called it -- improper rehabilitation on voir dire by coun-
22 sel for the Defendant of a particular juror which I believe,
23 according to Mr. Bloom's testimony, was actually Juror
24 Number 174, which is found on page 569 of the transcript.

25 Wasn't that what you moved for, Mr. O'Connell?

1 MR. O'CONNELL: Yes, sir, that's correct.

2 THE COURT: It actually encompasses more than page
3 569, but that was a reference that Mr. Bloom gave us
4 when he was testifying.

5 (Brief pause in the proceeding)

6 MR. ZELENKA: We would have no objection.

7 THE COURT: Very well, Mr. O'Connell. Your motion
8 is granted only to this extent at this point, subject to
9 further ruling by the Court.

10 I will allow you to amend the application to allege
11 ineffective assistance of counsel, for failure to call
12 live mitigation witnesses, who you believe you've identi-
13 fied on the record.

14 I will also allow you to amend to allege ineffective
15 assistance of counsel -- both without objection by Mr.
16 Zelenka -- to allege ineffective assistance of counsel in
17 the improper, as you call it, rehabilitation by defense
18 counsel of Juror 174 which is, I think -- I believe the
19 juror's name was Judy. Is that right?

20 MR. O'CONNELL: That's correct.

21 MS. KIMBROUGH: Douglas Judy.

22 MR. O'CONNELL: Page 569.

23 THE COURT: That's where it begins?

24 MR. O'CONNELL: Yes, sir.

25 THE COURT: All right. Without objection, both of

1 those are allowed.

2 However, I am reserving my ruling in light of giving
3 the State additional time to decide whether they need to
4 rebut or try to cross examine on your motion in general
5 on improper voir dire of potential jurors.

6 MR. O'CONNELL: Thank you, Judge.

7 THE COURT: Very well. Anything further at this stage,
8 Mr. Zelenka?

9 MR. ZELENKA: Nothing further.

10 THE COURT: Are you ready to proceed, Mr. Zelenka?

11 MR. ZELENKA: I'm ready to proceed, Your Honor, un-
12 less you want to take a break.

13 THE COURT: I'm going to take my one and only after-
14 noon break right now and let everybody have a break. Then
15 we will move forward.

16 (Whereupon, the Court took a brief break and the mat-
17 ter was resumed)

18 THE COURT: Please be seated. Counsel, you may call
19 your first witness.

20 MR. ZELENKA: Your Honor, the State calls Percy Buford
21 first.

22 MR. O'CONNELL: I move that Ms. Hardee Thomas be
23 sequestered during Mr. Buford's testimony.

24 THE COURT: Any objection? The problem I have in
25 doing it at this time is that I -- normally if I do

1 sequestration I do it for both sides, but if you feel
2 -- if you can give me some basis as to why it's needed,
3 then -- counsel, approach.

4 (Conference at the bench between counsel and the
5 Court off the record)

6 THE COURT: The motion has now been withdrawn, and
7 you will be allowed to remain in the Courtroom.

8 Is that correct?

9 MR. O'CONNELL: Yes sir, it is.

10 THE COURT: Call your witness.

11 MR. ZELENKA: State calls Percy Beauford.

12 PERCY BEAUFORD, being duly sworn,
13 testified as follows:

14 THE COURT: Have a seat on the witness stand and
15 George is going to pull that microphone over for you.

16 I will ask you to begin by stating your full name
17 and spelling your last name for the Court Reporter.

18 WITNESS: Percy Beauford -- B E A U F O R D.

19 THE COURT: Your witness.

20 DIRECT EXAMINATION

21 BY MR. ZELENKA:

22 Q. What is your present occupation?

23 A. I'm an attorney.

24 Q. How long have you been practicing law in South
25 Carolina?

MR. BEAUFORD ON DIRECT

1 A. Sixteen years.

2 Q. As a part of your practice, have you handled criminal
3 cases in South Carolina?

4 A. Primarily all through my practice, yes.

5 Q. And as part of that practice, have you represented
6 individuals charged with murder?

7 A. Yes, I have.

8 Q. Approximately how many individuals charged with
9 murder?

10 A. I would say approximately about ten. Ten or fifteen,
11 but I can say ten comfortably.

12 Q. Roughly how many of those cases resulted in a jury
13 trial?

14 A. Seventy-five percent.

15 Q. As a part of that practice, did you become involved
16 in the case of the State versus John Weik?

17 A. I did.

18 Q. How did that occur?

19 A. I knew his parents. They owned a locksmith company
20 in Berkeley County and when this event happened they came
21 to me to represent him basically on murder. He hasn't
22 been noticed on the death penalty at that time.

23 Q. And did you enter into a contract with them to repre-
24 sent their son?

25 A. Yes, on the murder initially. Yes.

MR. BEAUFORD ON DIRECT

1 Q. At some point in time after that, did that contract-
2 ual relationship change?

3 A. Yes. I came over here and explained to the Judge
4 basically after getting notice what they had retained me
5 for, and they said they couldn't afford the experts and
6 all of that.

7 So the Judge said, well, you're appointed, and at
8 that point is where it started.

9 I think it was Judge Brown.

10 Q. Was anyone else involved in that case with you at
11 that time?

12 A. Not at that time. When I came over to the Courthouse
13 -- I don't know if it was the same time or not, but I
14 think Miss Hardee was here, and he questioned her about
15 had she ever qualified on a death penalty case, but I
16 think at that time she wasn't death penalty qualified based
17 on the years.

18 But he said by trial time she would have been, so
19 he made her co-counsel.

20 Q. Let me show you a document and ask you if you can
21 identify this document?

22 A. Yes, this is the -- I can identify it and it's a
23 copy of my services rendered in this case.

24 Q. That is a voucher you sent for fees at the conclusion
25 of the case?

MR. BEAUFORD ON DIRECT

1 of the case?

2 A. It is.

3 MR. ZELENKA: Your Honor, we would move to introduce
4 this document.

5 MR. O'CONNELL: No objection, Judge.

6 THE COURT: Respondent's Number 14 will be admitted
7 into evidence without objection. Respondent's 14 is in
8 evidence.

9 (Mr. Beauford's voucher admitted in evidence without
10 objection as Respondent's Exhibit 14)

11 THE COURT: You may continue.

12 BY MR. ZELENKA:

13 Q. Mr. Beauford, when does that document reflect your
14 services began in this case?

15 A. It says 7 29 98, spoke to the client. However, I
16 think it had occurred before then because I had some docu-
17 ments before I actually spoke to the client.

18 So there will be some things I may remember that are
19 not reflected on this because I know when I spoke to the
20 client I would have had some documents to review prior to
21 that point in time.

22 Q. For my clarification and for the Court's qualifica-
23 tion, that 7 29 98, was that the first meeting with your
24 client?

25 A. Yes.

MR. BEAUFORD ON DIRECT

1 Q. Is this the first meeting after you had been ap-
2 pointed by the Court?

3 A. I think it was the first meeting at any point in
4 time.

5 Q. And the total number of hours that you worked on
6 the case?

7 A. . .

8 Q. Is that summarized on the document?

9 A. I don't see the hours totalled.

10 Q. But at the conclusion of the case, how much fee did
11 you gain for this?

12 A. A total of Twenty-three Thousand Four Hundred Forty-
13 two Dollars and Fifty Cent.

14 Q. Do you recall what that rate was?

15 A. I don't know what the going rate was there, but I
16 believe Forty Dollars out of Court and Sixty Dollars in
17 Court -- a little more death penalty, but whatever the
18 rate was on the forms.

19 I don't remember off the top of my head.

20 Q. All right. Now, . .

21 A. But I could figure it out based upon the hours and
22 the bill. I would say Fifty Dollars an hour.

23 Q. And you were involved in the case with another, is
24 that correct?

25 A. Another attorney?

MR. BEAUFORD ON DIRECT

1 Q. Yes.

2 A. Yes, Marva Hardee Thomas.

3 Q. What was your relationship with Marva Hardee Thomas
4 as far as the particular roles in the defense of your
5 client?

6 A. Well, the way I understood it, I was lead counsel,
7 but we were both attorneys for the client. So as a rule,
8 we were working for the best interests of the client.

9 I don't know how to answer your question.

10 Q. What did you expect Ms. Hardee Thomas to do in the
11 defense of the case?

12 A. . .

13 Q. As part of her representation, was she to acquire
14 witnesses, view evidence -- what was it?

15 A. Well, basically, when it started out, I think she
16 had had some information on being in another case about
17 the different experts.

18 So I said, Marva, you handle all the experts, get-
19 ting them signed up, and getting going as to what informa-
20 tion they need to get started.

21 So initially she would be handling a lot of the ex-
22 perts and I was working on the case, working on theories,
23 trying to work the case up.

24 At the same time, I was talking to other witnesses.
25 Primarily, in the beginning, she was handling all of

MR. BEAUFORD ON DIRECT

1 the experts.

2 Q. Okay, so was your role then more a factual investi-
3 gation of the circumstances?

4 A. Yes, I did most of the things dealing with police
5 officers and things of that nature, and she was gathering
6 the experts at that time.

7 Q. As part of your preparation of the case, did you
8 have access to the State's evidence?

9 A. I'm pretty sure I did. Walter was pretty good with
10 that in giving me all the information that he had.

11 Q. You viewed the State's evidence in the case?

12 A. Yes, I did.

13 Q. And did you meet with your client and talk with
14 him about the facts and circumstances of the case?

15 A. Yes.

16 Q. And to the best of your recollection is that included
17 in your voucher or the time that you met with him?

18 A. I think it is, yes.

19 Q. Okay, and have you had the opportunity to review
20 that voucher more recently?

21 A. Yes, I have.

22 Q. Does it seem to reflect your recollection as to the
23 circumstances of your defense?

24 A. Pretty much, yes.

25 Q. Now, when you met with your client, what was -- prior

MR. BEAUFORD ON DIRECT

1 to trial time, what was your theory of the defense that
2 you had, if any, at that time?

3 A. Well, of course, basically in talking with him and
4 gathering information, it would have been some type of
5 mental illness.

6 So basically we were working on that theory, and my
7 initial theory of the case was, you know, guilty but men-
8 tally ill.

9 That would have been my initial theory in the case.

10 Q. Did you develop another theory later on in the
11 case?

12 A. Well, I think the facts of the events were undis-
13 puted, and in talking with him and how he described certain
14 things, how it happened, it -- I just felt that is where
15 we initially were. We were going to go with this.

16 Q. During that period of preparation, was your client
17 able to discuss the facts of his version of the case
18 with you?

19 A. I felt he did.

20 Q. And was the version he gave to you somewhat consis-
21 tent with the taped statements he had given?

22 A. Identical. Every time you asked something, it was
23 the same. It never changed.

24 That was one thing that we were sure of, that those
25 are the facts, pretty much.

MR. BEAUFORD ON DIRECT

1 Q. And subsequent to that period of time of your ini-
2 tial interview with your client, did you as a member of
3 the defense team seek to hire investigators in the case?

4 A. Yes, I looked at that earlier but it was more dele-
5 gated to Ms. Hardee early on.

6 Q. Do you recall who the investigators were?

7 A. The title they had or the name, I remember, but I
8 don't remember who it was. Oh, Mr. Minter was the
9 investigator, yes.

10 Q. Did you also retain Patty Rickborn?

11 A. Yes.

12 Q. And subsequently did you retain Scott Parker?

13 A. Correct.

14 Q. Are those the only investigators that you recall
15 were retained in the case?

16 A. Yes.

17 Q. With respect to the factual investigation, what did
18 you ask the investigators to do for you in preparing your
19 defense?

20 A. Basically initially I wanted to know what all they
21 had -- what evidence there was, all the physical evidence,
22 to view the reports and documents, the tapes, and then
23 we will sit and try to assess it from that point on.

24 Q. With respect to Ms. Richborn particularly, her role
25 was a little different as far as the investigation in the

MR. BEAUFORD ON DIRECT

1 case?

2 A. Correct.

3 Q. How was it different?

4 A. Ms. Richborn again is in that category. Going back
5 to this, Ms. Hardee primarily was handling a lot of -- all
6 of the experts initially, and I don't know how it came
7 about where I thought there was discord, and I didn't
8 know what was going on at the time between Ms. Hardee and
9 Ms. Rickborn.

10 And when I did it was late totally in the game, and
11 then I tried to correct it and confronted the Judge,
12 but again she was handling most of the experts.

13 So I was expecting her to compile the information,
14 give them what they need and then possibly looking at the
15 information at that point, but then I noticed something
16 happened there, and I can't tell you what the dynamics
17 were or why it happened in that manner.

18 Q. Was this your first death penalty case?

19 A. Yes, it was.

20 Q. And what type of preparation, legal education prep-
21 aration, did you do, if any, to help prepare you in this
22 case?

23 A. The first thing I did was ran to the statute and
24 read up on the capital cases, capital sentencing, the
25 procedures, and then I talked to several attorneys who

MR. BEAUFORD ON DIRECT

1 had handled death penalty cases, and again that was my
2 starting point.

3 Q. At that time, did you understand that a death pen-
4 alty case consisted of two parts?

5 A. Yes, I always knew that.

6 Q. Okay.

7 A. I always knew that.

8 Q. Okay, and in the penalty phase were you aware that
9 the family was relied upon for information?

10 A. Yes.

11 MR. O'CONNELL: Object to the leading.

12 THE COURT: Sustained

13 Direct examination, counsel.

14 BY MR. ZELENKA:

15 Q. What did you understand to be the purpose of the
16 penalty phase?

17 A. Basically, after you're found guilty of whatever
18 the crime is, at that point in time we're before the Court
19 to maybe mitigate and you can bring family members, a
20 social history, other matters to show why we would re-
21 quest life as opposed to the next sentence.

22 Q. In preparation for the penalty phase, what, if any-
23 thing, did you do before the trial began?

24 A. Well, basically, of course, you talk to your ex-
25 perts, and see what they have, what they've found, things

MR. BEAUFORD ON DIRECT

1 of that nature, and then you talk to family members and
2 see if you get to that point who you will decide to place
3 on the stand at that point in time.

4 So those were initial things I would have done.

5 Q. Did you do that?

6 A. Yes.

7 Q. Okay. You mentioned Patty Rickborn and some confus-
8 ion as to her. Let me show you a document and ask if
9 you can identify that document?

10 A. I've seen this document, yes.

11 Q. Okay, and what is that document?

12 A. It is a letter from Ms. Rickborn to Marva and my-
13 self.

14 Q. And what's the date on that document?

15 A. April 29, 1999.

16 Q. Okay.

17 MR. ZELENKA: Your Honor, we would move to intro-
18 duce this.

19 MR. O'CONNELL: No objection.

20 THE COURT: Respondent's Exhibit Number 15 will be
21 admitted into evidence without objection. Respondent's
22 15.

23 (Letter of Patty Rickborn admitted in evidence with-
24 out objection as Respondent's Exhibit 15)

25 BY MR. ZELENKA:

MR. BEAUFORD ON DIRECT

1 Q. Mr. Beauford, in reviewing Respondent's Exhibit 15,
2 is that the document that made you believe there may
3 be a need for you to intervene with Ms. Rickborn and
4 Ms. Marva Hardee Thomas?

5 A. This document was presented. As the trial goes on,
6 I remember a lot of things, as any other witness.

7 I don't know if she had called me directly. Ini-
8 tially, as I told you, I wasn't handling that prior to
9 this letter, but I know this document was something that
10 was brought to my attention also.

11 Q. Does that document reflect Ms. Rickborn saying she
12 is no longer going to be involved in assisting in the
13 case?

14 A. Correct. That is correct.

15 Q. Prior to that time, had she been providing any in-
16 formation to you as a part of her role of an investiga-
17 tor?

18 A. I don't remember any coming to me, but, again, and
19 I keep going back -- Ms. Hardee was primarily handling
20 the experts at that time, but I don't remember any inform-
21 ation coming from her.

22 Q. Now, as a result of that, did you bring to the
23 Court's attention that Ms. Rickborn was no longer in-
24 volved in the case?

25 A. Yes, I did.

MR. BEAUFORD ON DIRECT

1 Q. Let me ask you to refer to the record, page 442,
2 which would be in volume one.

3 A. . .

4 Q. Does that reflect that you made a motion for contin-
5 uance based upon the fact that she was no longer going
6 to be working with you?

7 A. It is.

8 Q. And as a result of that, the Judge denied your re-
9 quest. Isn't that true?

10 A. Correct.

11 Q. All right. During that motion for continuance you
12 did not present that letter that you have in front of you
13 where she advised you that in fact she was no longer
14 going to continue working the case?

15 A. I don't think I placed it in the record, but I don't
16 know -- I brought it to the Judge's attention, I believe,
17 but I'm not sure.

18 Not on the record. I know that.

19 Q. Is there any strategic reason you chose not to enter
20 that document?

21 A. . .

22 MR. O'CONNELL: That's a leading question.

23 THE COURT: Sustained. Ask direct questions.

24 BY MR. ZELENKA:

25 Q. Was there any reason that you did not provide that

MR. BEAUFORD ON DIRECT

1 to the Court?

2 A. I can't say what the reason would have been. I'm
3 trying to look at the date and see if I had the letter at
4 the time. I'm not sure.

5 Q. You don't have any recollection of that?

6 A. No. That's why I was saying earlier I don't know
7 if I had a telephone conversation that alerted me about
8 the situation. I'm not sure.

9 Q. After Ms. Rickborn took herself off the case, did
10 you then hire Scott Parker?

11 A. Correct.

12 Q. Why was that done at that stage?

13 A. Well, we needed someone to try to help us in that
14 situation. Someone has left the team, and that is a
15 vital person in the team.

16 Q. What sorts of things did you ask Mr. Parker to do
17 for you?

18 A. To investigate. To actually try to ascertain first
19 what Ms. Rickborn had and maybe that would help him not
20 to start from ground zero.

21 Q. Okay, and did you provide him with any materials
22 in advance, or do you recall?

23 A. I don't recall.

24 Q. Did you direct Mr. Parker to interview family members?

25 A. I really don't recall my conversations with him.

MR. BEAUFORD ON DIRECT

1 much. I don't remember those conversations.

2 Q. Does your voucher reflect . .

3 MR. O'CONNELL: Objection. He can ask him what
4 his voucher reflects, rather than telling him.

5 THE COURT: I couldn't hear you.

6 MR. O'CONNELL: He's asking a leading question. He
7 is telling him what the document shows.

8 THE COURT: Don't suggest an answer, Mr. Zelenka.
9 Rephrase your question.

10 BY MR. ZELENKA:

11 Q. Would you review your voucher and see if it reflects
12 when you hired Mr. Parker as your investigator in 1999?

13 A. I see here I spoke to Scott Parker on 5 4 99. On
14 5 5 I met with Scott Parker.

15 On 5 10 spoke again with Scott Parker; 5 20 something
16 with Scott Parker again. I think that's all I see on the
17 voucher.

18 Q. Look at 5 14 99. Spoke with mitigating investigator.

19 A. Okay.

20 Q. Do you know who that is in reference to?

21 A. That would have been Scott Parker also.

22 Q. Now, as you entered the guilt phase of the trial,
23 it became a Blair hearing situation?

24 A. Correct.

25 Q. What, if any, preparation did you do for the Blair

MR. BEAUFORD ON DIRECT

1 hearing?

2 A. Well, of course, I spoke to my experts. Even during
3 that period of time, Ms. Donna -- she was always there
4 with me, so basically we had constant contact as to
5 what was going on.

6 So basically through Donna we decided how we were
7 going to handle that, basically from the medical stand-
8 point.

9 That's where we were with the Blair hearing.

10 Q. And Donna being Dr. Schwartz-Watts?

11 A. Correct.

12 Q. And there were other witnesses involved?

13 A. Yes.

14 Q. Let me ask you to refer to your voucher again and
15 see if that refreshes your recollection into the experts
16 that you (inaudible)?

17 A. Among the experts I used in the case was
18 Donna Schwartz-Watts, Dr. Morgan, Scott Parker and Dr. ~~Donna~~
19 Sexton.

20 Q. Dr. Sexton was used in the Blair hearing?

21 A. No, he wasn't used in the Blair hearing. I don't
22 think he was.

23 Q. Do you recall whether the defense team hired any
24 psychologists specifically?

25 A. . .

MR. BEAUFORD ON DIRECT

1 Q. Or a neurologist?

2 A. I'm looking back seven years, and a lot of these
3 names I'm trying to put them with what their roles were,
4 and that's why I am having difficulties here.

5 Q. Do you recall Dr. Jeffrey McKee?

6 A. Yes.

7 Q. Was he involved with your defense?

8 A. Yes, he was.

9 Q. Do you recall if he testified at the Blair hearing?

10 A. I don't recall but I would think he would have.

11 Q. Okay. At the time of the Blair hearing, what inten-
12 tion did you have as far as your client's competency to
13 stand trial?

14 A. I felt that he was not competent basically. I
15 think there had been through the course of events even in
16 the trial -- I think that he had exhibited behavior that
17 I thought was abnormal, and I think Donna Schwartz had to
18 bear with me to pretty much give me a better understand-
19 ing of what was going on with him mentally.

20 So basically I felt he was not competent.

21 Q. Was that just since the trial began?

22 A. No, basically . .

23 Q. What was your theory of his competency?

24 A. I felt he was mentally ill.

25 Q. There has been some testimony about the Hag, and

MR. BEAUFORD ON DIRECT

1 did you understand from your client what the Hag was?

2 A. Yeah. I'm a little afraid to answer that because
3 yesterday I sat in and the doctor said it may be delusional
4 if you had an experience with the Hag, but I understood
5 what he was talking about because the Hag was nothing new
6 to me.

7 That phenomenon has happened to me. I think it has
8 happened to many people in the black community. I don't
9 know if it's cultural or if it's southern, but the Hag --
10 when he said the Hag, that is not an experience or some-
11 thing that was new to me.

12 So I didn't feel that that was a major component
13 in the case because that is a phenomenon that if you ask,
14 two out of four blacks will say, yes, I know what you're
15 talking about.

16 Q. Have you had that experience recently in asking?

17 A. Yes. I was surprised when you came to my office that
18 you had never heard of that.

19 Q. All right.

20 A. And so I asked four people in my office, and three
21 out of the four could tell you exactly what the Hag is
22 and what their experience was when that event happened to
23 them.

24 They were all black.

25 Q. With your understanding of the Hag and your client's

MR. BEAUFORD ON DIRECT

1 understanding of the Hag, how does that influence the
2 manner that you sought to prepare this case?

3 A. Well, that didn't because, I guess, what -- in this
4 case at the moment in which the act happened, where his
5 mental state was, not necessarily a lot of the other
6 things -- they were very important, but, you know, I was
7 convinced that during that period of time that mental
8 illness or whatever his situation was has showed itself.

9 But, again, the Hag part, it didn't play a big role
10 in it.

11 Q. And at the time of the Blair hearing, you questioned
12 all the witnesses, as well as Dr. McKee, Dr. Brandon and
13 Dr. Schwartz Watts, Dr. Morgan, as well as the State's
14 witnesses who testified at that time, Dr. Crawford, Dr.
15 Behrman and Dr. Shea.

16 You previously have testified that cocounsel was
17 involved in handling the experts, so why did you handle
18 the questioning at that time?

19 A. Okay. Let me back up. When I was saying handling
20 the experts, that is in the gathering of the evidence
21 stage early on.

22 That was before the trial basically when she was
23 handling and making sure they had what they needed in or-
24 der to do the things they would be asked to do.

25 Now, when it came to trial, that wasn't how I

MR. BEAUFORD ON DIRECT

1 wanted it to happen, but came to happen that way.

2 Q. And why is it that that is not how you wanted it
3 to happen?

4 A. Well, you know, basically when you are acting in this
5 kind of role you want someone to handle something else
6 so you can be looking at different areas, and while some-
7 one is testifying you can be looking for possible objec-
8 tions.

9 So you want to be concentrating on the entire
10 Courtroom, and so I thought we would switch out basically
11 so one could watch your back and you could watch their
12 back.

13 But I think during that time and prior to trial, when
14 I wanted to separate those and say, you handle these wit-
15 nesses and I'll handle these witnesses, she declined to
16 do so.

17 Q. So prior to trial, you were aware that you were
18 going to be handling all the witnesses?

19 A. Right. At trial, yes.

20 Q. And so at the time of trial, what was Marva Hardee
21 Thomas' role?

22 A. . . .

23 Q. What was her role as you saw it?

24 A. I wouldn't know what her role would be, if you
25 don't take any active part within the trial. I mean,

MR. BEAUFORD ON DIRECT

1 that is the trial. You basically examine, cross examine,
2 make motions or whatever, so that is the entire
3 trial pretty much.

4 So if you're not doing those things, I don't know.

5 Q. You understood your role basically was to be the
6 lawyer in the case?

7 A. Yeah. I -- yeah, I assumed that role.

8 Q. And in that role, did you prepare the witnesses you
9 were going to place on the witness stand and make those
10 decisions . . .

11 MR. O'CONNELL: Excuse me, Judge, but he is still
12 leading the witness.

13 THE COURT: Rephrase the question.

14 BY MR. ZELENKA:

15 Q. Who made the decision of what witnesses to call in
16 the case?

17 A. I did.

18 Q. Who made the decision as to how to interview those
19 witnesses and prepare them for the case; at that time?

20 A. I did, by default.

21 Q. And who made the decision as to when or whether to
22 call the Defendant?

23 A. I did, and in talking to him also. So at that
24 point we sat and I talked to Mr. Weik, you know, as
25 to why basically I thought we should go this way as

MR. BEAUFORD ON DIRECT

1 opposed to that way. Whether he testifies or not testi-
2 fies.

3 Q. When those decisions were made, did you discuss those
4 with your cocounsel?

5 A. We were always together but, you know -- so she was
6 there during the discussions, yes.

7 Q. Did she agree or disagree with those discussions at
8 all?

9 A. She never disagreed. I think she agreed with every-
10 thing.

11 Q. And at the time before the time of jury selection,
12 there was testimony that you asked Jeffrey Bloom to assist
13 in jury selection. Is that correct?

14 A. That's correct.

15 Q. And what was the purpose in retaining him to assist
16 you in the jury selection, as you recall?

17 A. Basically, he was noted as being a professional in
18 that area, expert in that area, in assisting attorneys in
19 a case of this nature.

20 So we wanted his assistance.

21 Q. And did he assist you?

22 A. Yes, he did.

23 Q. Did you rely on any information and input that he
24 gave you?

25 A. I relied on much of it, yes.

MR. BEAUFORD ON DIRECT

1 Q. Now, during the trial there was defense of guilty
2 but mentally ill presented during the expert witnesses,
3 is that correct?

4 A. That is true.

5 Q. Why was that not done?

6 A. Well, as the trial went on, the information wasn't
7 coming out -- the evidence wasn't coming out to really
8 support it, and also in talking with Donna Schwartz Watts
9 constantly through the trial, that defense wasn't there.

10 So it started to slide and we started trying to create
11 another area where we were going to go at the end of the
12 trial.

13 Q. Okay, and what area was that that you were trying to
14 present to the jury in the guilt phase?

15 A. Well, one thing you need to understand is that my
16 client basically wanted two things. To walk free or to
17 die. So -- and I kept telling him -- the conversation I
18 had with him was, you know, trying to do what the client
19 wanted and also trying to represent him at the same time.

20 That made it more difficult. It was already a diffi-
21 cult case -- more difficult.

22 So basically I'm trying to create as the case goes
23 on where I wanted to end up. So I think one of the things
24 that was said yesterday -- Jeff Bloom was talking about
25 this, and I don't think it was early on, but somehow he

MR. BEAUFORD ON DIRECT

1 must have heard or whatever that a manslaughter was com-
2 ing in, and I was doing research during the entire trial,
3 even though in most cases you have to set where you want
4 to go.

5 But I sort of go -- when I'm trying a case, it's
6 like an empty cup, and I may have to move on to something
7 else that works with the evidence, and I am not rigid on
8 where I want to go sometimes.

9 I say sometimes -- so I researched a case and it was
10 a Family Law case, and it may have been a first impres-
11 sion but based upon my client's wishes and the type of
12 client he would be even on the stand, that's where the
13 manslaughter started coming in.

14 It met so many elements. I had a problem as it got
15 to the legal justification, but there was an argument and
16 all this stuff, and there is no cooling out period, and
17 so that is where I wanted to head.

18 But again, my client wants one of two things, to walk
19 with no time or death penalty.

20 Q. During the trial, there was some testimony consider
21 blood splatters?

22 A. Uh hm.

23 Q. When you presented your case you had reviewed the
24 State's evidence?

25 A. Yes, I had.

MR. BEAUFORD ON DIRECT

1 Q. Did you review the photographs of the crime scene
2 itself?

3 A. I did.

4 Q. Did those photographs include what appeared to be
5 blood?

6 A. Yes.

7 Q. Were you anticipating that there would be some in-
8 formation coming out from the expert witnesses about the
9 crime scene itself?

10 A. I had, yes, but as I said earlier, the facts of the
11 events were -- we weren't going to get by that. They
12 were going to come out and any reasonable person would
13 have known they were blood, based upon the information,
14 the pictures and everything.

15 So there wasn't any question, so sometimes to object
16 to something that is so common sense, it is not to me
17 sometimes a good objection.

18 Q. Now, let me ask you to refer to page -- I believe it
19 is on 1470 of the record, and it would be at line three,
20 I believe.

21 A. . .

22 Q. Let me know when you're there.

23 A. . .

24 THE COURT: Are you there, Mr. Beauford?

25 WITNESS: Yes, I am, Your Honor.

MR. BEAUFORD ON DIRECT

1 BY MR. ZELENKA:

2 Q. Is it correct at that point in the testimony the wit-
3 ness was being asked to describe the crime scene and whe-
4 ther there is a volume of blood splatter?

5 A. Correct.

6 Q. Did you object to the witness' qualifications to give
7 an opinion on blood splatters?

8 A. No, I didn't.

9 Q. Let me ask you now to refer to the penalty phase,
10 around 1846 and it should be at line four.

11 A. . . .

12 Q. Pages 1846 through 1860, and let me ask you speci-
13 fically to refer to the bottom of page 1850. At that time
14 the record reflects that you questioned Mr. Asbill's quali-
15 fications as an expert in blood splatter. Is that cor-
16 rect?

17 A. Correct.

18 Q. Why did you do that at that time and not do it dur-
19 ing the guilt phase of the trial?

20 A. I think it is more just trying to slow the train
21 down.

22 I mean, I know he was qualified to testify because I
23 knew a little bit about his history and his working with
24 blood, and it was more common sense than anything.

25 But I think that was -- I'm looking back at my mindset

MR. BEAUFORD ON DIRECT

1 and we were taking a beating.

2 Q. Okay. But he was ultimately qualified to give an
3 opinion, wasn't he?

4 A. Yes, I know.

5 Q. After your objection?

6 A. Yes.

7 Q. I would also ask you to refer to the guilt phase,
8 the malice instruction, which begins at 1785.

9 A. . .

10 Q. Have you had an opportunity to review that?

11 A. Yes, I have.

12 Q. You did not make an objection to the malice instruc-
13 tion as it was given in this case, is that correct?

14 A. Correct.

15 Q. Why is it that you did not object to this malice in-
16 struction at that time?

17 A. . .

18 Q. Do you recall?

19 A. I didn't see where it was an error.

20 Q. So it is your opinion that this was appropriate un-
21 der South Carolina law at that time?

22 A. I think that's what it was, yes.

23 Q. Now, your client was ultimately convicted of this
24 particularly crime, is that correct?

25 A. Correct.

MR. BEAUFORD ON DIRECT

1 Q. In the guilt phase of the trial, you put up the
2 Defendant's mother as well as the Defendant. Do you re-
3 call that?

4 A. Yes.

5 Q. What was the reason that the Defendant testified in
6 the guilt phase of this case?

7 A. Basically, we were going back and forth between my
8 client and Walter Bailey. My client wanting to testify
9 and tell the jury that he wanted death, and, of course,
10 we were going back and forth.

11 Walter Bailey went on the record and said, Your Honor,
12 he has a right to testify, and all that. My client
13 wanted to testify.

14 So he and I were going back and forth, with that
15 scenario, and I think he and I talked about it and ulti-
16 mately I said, well, if you testify here, I'm not going
17 to let you testify in the penalty phase, because I know
18 he is going to ask for death.

19 Q. And you discussed that with your client?

20 A. Yes.

21 Q. Was that discussed with Ms. Hardee Thomas?

22 A. It should have been.

23 Q. Should have been, meaning what?

24 A. I mean, I don't know where she would have been,
25 other than there.

MR. BEAUFORD ON DIRECT

1 Q. And your client did testify in that phase?

2 A. Yes.

3 Q. But there were no questions, were there, about his
4 opinion on what sentence would be appropriate at that
5 time?

6 A. I don't think there was.

7 Q. Okay. His mother also testified?

8 A. Yes.

9 Q. Why did you have her testify in the guilt phase
10 rather than the penalty phase?

11 A. With her, it was a similar situation in that she was
12 a bad witness in the sense that she was blaming everyone
13 else. Of course, if I had any phase it would not have
14 been in the penalty phase I'd want her to testify.

15 But, of course, she wanted to testify and I think I
16 discussed it with him, you know; that his mom was wanting
17 to testify, and what do you want, but, again, I voiced my
18 objection because in talking with them I knew what kind
19 of demeanor she would have had.

20 Q. Explain the type of demeanor she would have had. We
21 weren't there in the Courtroom.

22 A. . .

23 MR. O'CONNELL: Your Honor, I'd object.

24 A. Well, she starts off nice and calm, and then as it
25 goes on -- as she continues to talk, she becomes angry,

MR. BEAUFORD ON DIRECT

1 and you can clearly see the anger like it's everyone else's
2 fault.

3 Q. As you entered the penalty phase, what decisions
4 were made as to what type of mitigation you would put up
5 in your client's behalf?

6 A. Of course, Dr. Gus who was doing the social back-
7 ground, and I have gathered since this all started -- I
8 was not aware, according to what they say -- that they
9 had not been supplied with a lot of information, and why
10 I say that is a lot of things they are saying -- they are
11 talking about, I knew of it, and I'm trying to think why
12 didn't they know of it at that time, or whatever.

13 So again, I don't know if it was a lack of communica-
14 tion between me and cocounsel in getting information to
15 them, but I mean -- when Dr. Augustus testified that he
16 did not have certain things and all that it was shocking
17 to me, them saying they didn't have this information, and
18 they were supposed to supply me with a final product based
19 on just the information they had.

20 Q. Okay. What information did you have about your
21 client and about his family in 1999?

22 A. Well, again, I don't recall a lot of the documents
23 that has been shown, but I knew of the fact -- I can't say
24 whether I got it from an expert or whatever, but all of
25 the different things that were testified to, you know, I

MR. BEAUFORD ON DIRECT

1 knew of it, and I don't know whether I got it from Eddy
2 in conversation about all the different things, about
3 the living arrangements and all those things.

4 But I don't really think that -- I don't know where
5 I got the information from, and I noticed at the end
6 some of it was in my file and I don't know at what point
7 it came to be in my file, but I don't think I placed it
8 in my file.

9 Q. Other than the living arrangements, did you have in-
10 formation about the relationship Eddy had with his father?

11 A. I had some and the information I had I think in
12 talking with Eddy he was a very hard individual. I think
13 he even demonstrated some of the things that he did.

14 Like there is one sister that they thought was a
15 witch or something like that, and I think the father tried
16 to strangle her or something like that -- something of
17 that nature.

18 So I know it was very abusive, as Dr. Augustus tes-
19 tified to earlier.

20 Q. Were you aware of his father's beliefs that he had
21 been involved with the CIA?

22 A. Yes.

23 Q. You had that information in 1999?

24 A. I'm pretty sure I did, yes. I knew of it, yes.

25 Q. And did you interview any of the family members

MR. BEAUFORD ON DIRECT

1 yourself?

2 A. I spoke -- yes, several of his family members.

3 Q. Did you learn material about the dynamics of the fam-
4 ily relationship?

5 A. I don't think I learned it from them. That's what
6 I'm saying. I didn't learn that information from the fam-
7 ily members themselves. I spoke to them, but from some
8 other source I gathered all of that information.

9 Q. You identified previously a number of times that you
10 met with the mitigation investigator, Scott Parker. Were
11 you here in Court when Scott Parker testified?

12 A. No, I wasn't.

13 Q. Now, Mr. Parker prepared a couple of documents that
14 have been introduced in evidence. Are you aware of that?

15 A. I wasn't here, so . . .

16 MR. ZELENKA: Court's indulgence.

17 (Brief pause in proceeding)

18 BY MR. ZELENKA:

19 Q. I'm showing you Plaintiff's Exhibit Number 3, and I
20 would ask if you can identify that?

21 A. I can't say I remember this document.

22 Q. Okay. Plaintiff's Exhibit 4. Do you remember if
23 you saw that back at the time of trial?

24 A. I can't say I remember this document either.

25 Q. Plaintiff's Exhibit 5. Do you recall seeing that?

MR. BEAUFORD ON DIRECT

1 Do you recall seeing that before trial?

2 A. I don't remember seeing this.

3 Q. Okay, Plaintiff's Exhibit 6 -- do you recall whether
4 you saw that prior to this time?

5 A. I don't remember this document.

6 Q. Plaintiff's Exhibit Number 1, materials from Bobby
7 Minter -- do you have any recollection at this time of
8 having seen those?

9 A. I think I remember this document.

10 Q. Pardon me?

11 A. I think I remember Bobby Minter's documents.

12 Q. You remember Bobby Minter's documents. Okay.

13 Now, you talked to Scott Parker subsequent to the
14 time or date of those documents?

15 A. That would be true.

16 Q. Do you recall whether Mr. Parker provided you with
17 any of those documents on those occasions when you spoke?

18 A. I don't remember meeting right now with Mr. Parker.

19 I'm not sure I know what he looks like.

20 I don't remember.

21 Q. But you do remember he worked on the case?

22 A. Yes.

23 MR. O'CONNELL: Objection.

24 THE COURT: Grounds?

25 MR. O'CONNELL: Leading.

MR. BEAUFORD ON DIRECT

1 THE COURT: Sustained. Rephrase your question.

2 MR. ZELENKA: I'll move on.

3 BY MR. ZELENKA:

4 Q. At the penalty phase of the trial, who made the de-
5 cision as to the fact that Amy would be called as a wit-
6 ness?

7 A. It would have been me.

8 Q. Would have been you?

9 A. Yes.

10 Q. And why would you make that decision to call her,
11 rather than some other family members?

12 A. It would probably have been -- I'm just guessing be-
13 cause I don't remember, but she probably would have been
14 more stable.

15 She probably could convey things a lot better than
16 the others.

17 Q. How did you learn that information about her stabil-
18 ity?

19 A. In either talking with her or talking with the
20 investigator and her also.

21 Q. You did not have, as you testified previously, your
22 client testify in the penalty phase of the trial?

23 A. No, that's correct.

24 Q. And was your client aware he had a right to testify?

25 A. Oh, yes.

MR. BEAUFORD ON DIRECT

1 Q. Was he aware he had the right to testify even though
2 you disagreed with it?

3 A. Yes.

4 Q. How do you know that?

5 A. We talked about it, and we talked -- I told him af-
6 ter we took a break or something or maybe it was another
7 day -- I explained to him what the Judge had said and
8 basically about what he could say and what he couldn't
9 say. That might be at the other stage though, but I did
10 explain to him basically that he could testify, yes.

11 Q. And were you aware at that time that he had the
12 right to make a personal closing statement and not be
13 subject to cross examination?

14 A. Yes. I mean, that was his time. I mean, he could
15 . . .

16 Q. Let me ask you to refer to the transcript, to
17 two portions. Page 2087 and 2089.

18 A. . .

19 Q. Page 2095 -- have you reviewed that?

20 A. Yes.

21 Q. And would you also review transcript page 2107 through
22 2108?

23 A. Yes.

24 Q. In both of those cites, the Court is talking both
25 to you and to your client, is that right?

MR. BEAUFORD ON DIRECT

1 A. Yes.

2 Q. About a personal closing statement?

3 A. That's correct.

4 Q. And there are references in there from the Court
5 that there was not supposed to be any discussion about
6 the facts dealing with the crime.

7 Do you recall that?

8 A. Yes.

9 Q. What information or what impact do you think that
10 discussion may have had on your client when he was choos-
11 ing to make a personal closing statement or not?

12 A. I don't think it had any because basically in my
13 discussion with him, had he chose to make a statement,
14 you know, I would advise them -- say, look, this is your
15 last chance; just let the Judge call you down but you've
16 got to say what you've got to say.

17 Q. What particularly did you tell your client, if any-
18 thing, that he could say at that stage of the trial?

19 A. You're talking about the penalty stage, is that
20 correct?

21 Q. Correct.

22 A. Basically I cautioned him about mercy because there
23 is only two things, life or death, at this stage of the
24 trial.

25 So basically you can talk about mercy, can talk about

MR. BEAUFORD ON DIRECT

1 what type of person he was. He was a nice person, other
2 than this one incident, I believe. He was a real nice
3 person, and he had a story if he wanted to tell it.

4 Again, in talking with him, his belief of an eye for
5 an eye -- he was going to say he killed and therefore he
6 needed to die.

7 So I was convincing him, if you're going to make
8 that type of statement, I don't want you to testify and
9 that's what I told him.

10 Q. And what about his making a personal closing state-
11 ment?

12 A. Again, that's the first thing I said that he had the
13 right to do that, but if you're going to talk about that
14 issue I would prefer him not to testify.

15 The first part of my discussion was he had a right
16 to make a personal statement. He had a right to do that,
17 but again in talking with him he conveyed that he wanted
18 to die.

19 He don't want to spend life in prison.

20 Q. So the issue was that he was . .

21 MR. O'CONNELL: Objection, leading.

22 THE COURT: Rephrase your question. Sustained.

23 BY MR. ZELENKA:

24 Q. Based upon your discussions with your client, would
25 he have sought mercy or not?

MR. BEAUFORD ON DIRECT

1 Would he have sought mercy from the jury in his per-
2 sonal closing statement?

3 A. He would not have.

4 Q. Would he have attempted to bring in facts about not
5 being guilty of the crime in the penalty phase closing
6 statement?

7 A. He would not have.

8 Q. And the reason for that would be what?

9 A. Eddy is I think a truthful person. He felt that he
10 killed this individual, and therefore he felt that death
11 -- I don't think he would stray from those facts, that he
12 killed someone.

13 So therefore in my talks with him he had always been
14 truthful with me, and I felt confident he would ask
15 for death.

16 Q. And also in the penalty phase you called the social
17 worker who testified earlier?

18 A. Right.

19 Q. Dr. Augustus Rodgers.

20 A. Correct.

21 Q. Do you recall what information Dr. Rodgers gave you
22 prior to him taking the witness stand?

23 A. . . .

24 Q. Pertaining to his testimony?

25 A. Of course, we spoke, but I don't remember any phy-
 sical information.

MR. BEAUFORD ON DIRECT

1 Q. Was his testimony given at trial consistent with
2 . .

3 MR. O'CONNELL: Objection to leading.

4 THE COURT: Rephrase your question.

5 BY MR. ZELENKA:

6 Q. Have you reviewed -- when you presented Mr. Rodgers
7 to testify at the trial, did you ask about all areas of
8 inquiry that you sought to present?

9 A. Yes. Basically based upon a conversation that I
10 had with him prior to him taking the stand, so I knew what
11 information he would have brought out.

12 I asked those questions to get that information
13 out.

14 Q. Were you satisfied with the information he presented
15 as being what was desired in that time frame?

16 A. At that time, yes.

17 Q. You called forensic witnesses also in the penalty
18 phase. You called Dr. Schwartz Watts?

19 A. Yes.

20 Q. And Dr. Morgan?

21 A. Yes.

22 Q. Were you satisfied that the information they pre-
23 sented was consistent with information you had before
24 making that determination to present them?

25 A. Yes.

5939

MR. BEAUFORD ON DIRECT

1 Q. You testified earlier to something about Dr. Schwartz
2 Watts assisting you while witnesses were being presented?

3 A. Experts. Some of the experts.

4 Q. Describe that for us, what that included.

5 A. Well, basically when some of the experts made some
6 medical determinations or gave opinions she enlightened
7 me a little bit more about what were questions to ask to
8 pull out or get the information I may need later on.

9 Q. And was this before those individuals had testified
10 or . . .

11 MR. O'CONNELL: Objection to leading. He's suggest-
12 ing an answer rather than asking what happened.

13 THE COURT: All I heard was, was this before -- let
14 me hear your question, Mr. Zelenka.

15 MR. ZELENKA: I will ask the question again.

16 THE COURT: All right.

17 BY MR. ZELENKA:

18 Q. When did your interaction with Dr. Schwartz Watts
19 take place?

20 A. Well, basically before the case started. Of course,
21 you always have a set of questions you want to ask the
22 various witnesses, and she took part in me preparing the
23 questions.

24 So then along with their testimony, there were some
25 additional things that was brought out to me by her.

MR. BEAUFORD ON DIRECT

1 Q. Was she present in the Courtroom with you while they
2 were testifying?

3 A. . .

4 MR. O'CONNELL: Objection.

5 THE COURT: Sustained. You will have to ask direct
6 questions without suggesting an answer.

7 Rephrase it.

8 BY MR. ZELENKA:

9 Q. Who was in Court with you when the State's experts
10 were testifying?

11 A. Dr. Watts was one of the persons in the Courtroom.

12 Q. And did you discuss their testimony with her while
13 they testified?

14 A. Did I discuss their testimony while they were testi-
15 fying?

16 Q. Let me rephrase. While they were testifying, did
17 you have any interaction with Dr. Schwartz Watts?

18 A. Yes.

19 Q. What was that?

20 A. Basically while they were testifying, if she saw
21 there was something they were testifying to that was --
22 I don't want to use the word incorrect, but -- I can
23 attack from a certain angle, then she would give me little
24 notes to brief me on where they were going with that.

25 Q. At the conclusion of the trial, some aggravating

MR. BEAUFORD ON DIRECT

1 factors were submitted?

2 A. Correct.

3 Q. And physical torture was given in this particular
4 case?

5 A. Correct.

6 Q. Did you review that physical torture instruction as
7 given to the jurors?

8 A. Yes.

9 Q. And that is on page 2093. Do you recall it?

10 A. I remember reading it, yes.

11 Q. Did you object to the submission of the aggravating
12 factors submitted to the jury?

13 A. I don't think I did.

14 Q. Why was that?

15 A. I didn't see anything incorrect in the charge.

16 Q. Did you object to the charge itself, the language of
17 the charge?

18 A. I don't remember, but -- I'm trying to find the area
19 where that is located at so I can tell you whether I did
20 or not.

21 (Brief pause in the proceeding)

22 BY MR. ZELENKA:

23 Q. The charge conference is around page 2088 through
24 2093.

25 A. Okay.

MR. BEAUFORD ON DIRECT

1 Q. Do you ...

2 A. I don't see where I objected to any of it.

3 Q. And your reason for not objecting?

4 A. I think the elements or potential elements were
5 there.

6 Q. You participated in the jury questioning with Ms.
7 Hardee Thomas there?

8 A. Correct.

9 Q. And did you make the decisions as to what questions
10 to ask each of the jurors?

11 A. I think the first basis of questions came from Jeff
12 Bloom. Then again, I had my own questions.

13 Q. And one of the jurors was an individual by the name
14 of Steven Judy, is that correct?

15 A. I don't remember.

16 Q. Page 561.

17 A. What page?

18 Q. First look at page 555 and your examination begins
19 at 561.

20 A. Okay.

21 Q. Have you already reviewed that testimony?

22 A. I have.

23 Q. And under what theory were you asking your questions
24 to qualify or disqualify?

25 A. A combination of Jeff Bloom's information he gave

MR. BEAUFORD ON DIRECT

1 me and my own experience.

2 Q. And ultimately that juror was qualified?

3 A. Correct.

4 Q. And did he make statements to the Judge throughout
5 those questions that he would support death if the facts
6 were there?

7 A. Yes. I think initially he had said I'm three and
8 then when asked more detailed questions he said he could
9 -- in summary that he could be fair.

10 Q. Did you find that juror to be an honest person?

11 A. Of course, I found him to be honest or I wouldn't
12 have put him on -- if I didn't think he was honest.

13 Q. I have no further questions at this time. Thank
14 you.

15 THE COURT: Very well.

16 CROSS EXAMINATION

17 BY MR. O'CONNELL:

18 Q. Mr. Beauford, you and I have spoken about this case
19 on several occasions?

20 A. We have.

21 Q. And in reference to Plaintiff's Exhibit 4, is that a
22 report of an interview with Mr. Weik?

23 A. This is a report from one of the investigators of an
24 interview, yes.

25 Q. That is an interview of Russell Christopher Weik?

MR. BEAUFORD ON CROSS

1 A. Correct.

2 Q. And what was the date of that interview?

3 A. May 25, 1999.

4 Q. The trial started on May the 24th, is that correct?

5 A. I don't even remember.

6 Q. Jury selection was on May 24th -- I'm sorry, the
7 trial began or voir dire began on May 24th. Is that cor-
8 rect?

9 A. . .

10 Q. Would you refer yourself to the table of contents
11 in the transcript, and it appears that jury voir dire began
12 on May 24th.

13 A. I see that, yes.

14 Q. And the date of that interview was . .

15 A. May 25th.

16 Q. So that took place after the trial had started?
17 That interview?

18 A. Yes.

19 Q. And when we spoke about this and I showed you that
20 in your office, do you recall that?

21 A. I remember you showing me some documents, yes.

22 Q. And I asked if you had seen that before, talking about
23 Plaintiff's Exhibit 4?

24 A. I'm sure you asked me that, yes.

25 Q. And did you at that time tell me you had not seen it

MR. BEAUFORD ON CROSS

1 before?

2 A. I think I said I don't remember seeing it.

3 Q. And do you remember that I told you I had gotten it
4 out of your file that very day?

5 A. Yes, I remember you saying that.

6 Q. Do you know how it got in your file?

7 A. I don't know. As I said earlier, I just knew that
8 after the trial I was given some more information or after
9 the trial Ms. Hardee gave me more information, but whether
10 this is one I got then or not I don't know.

11 Q. So it might have gotten in your file after the trial
12 from Ms. Hardee Thomas when she gave you some paper work
13 from her file?

14 A. It could have. I am not sure.

15 Q. You don't recall?

16 A. I don't recall.

17 Q. But you hadn't seen it before?

18 A. Correct.

19 Q. Now, you said that the division of responsibility
20 between you and Ms. Hardee Thomas was that she was going
21 to handle the experts and you were going to handle the
22 other trial preparation?

23 A. Well, when you say handle, basically in the start of
24 the preparation for trial, not necessarily the trial it-
25 self, and questioning the experts. I want to make that
clear.

MR. BEAUFORD ON CROSS

1 I'm talking about in dealing with them, getting them
2 signed up, making sure they had necessary information to
3 do their work, not the trial itself, as she's going to
4 ask questions of all the experts.

5 That is not what I'm talking about.

6 Q. When you and Ms. Hardee Thomas got appointed on this
7 case, you made the decision and she may have agreed or you
8 may have made a joint decision that she was going to be
9 handling the experts and retain experts, and you were
10 going to work on the cases, I think you said in your direct
11 testimony.

12 Is that fair to say?

13 A. Work on and deal with the police officers, gather
14 information, going out to the scene and everything of that
15 nature.

16 Q. And it was very apparent to you early on in this case
17 that Mr. Weik was mentally ill? I think you testified
18 to that.

19 A. I think at the time I felt that he had snapped.

20 Q. But you -- it is not very hard to determine after
21 talking to Mr. Weik that he's mentally ill, is it?

22 A. . .

23 Q. I mean, in 1999 you talked with Mr. Weik?

24 A. I wouldn't say in talking with him and having a con-
25 versation with him that you could say he's mentally ill.

I wouldn't -- I don't know how they assess it, but I did

1 not feel while I was talking to him that he was mentally
2 ill. I thought there was some problems there, and I don't
3 know how you define mentally ill.

4 Q. You thought there might be some problems with Mr.
5 Weik's mental health based on conversations you had with
6 him?

7 A. Mental health as it relates to at the time of when
8 this happened. I felt he snapped.

9 Q. Okay. Did you also think there were broader mental
10 health issues or may be broader mental health issues con-
11 cerning Mr. Weik after you met him and had a chance to
12 talk with him several times?

13 A. I don't want to say I felt he was mentally ill. I
14 just felt that there were some issues there.

15 I mean, an expert would have come back to me to tell
16 me what those issues were.

17 Q. And you made a determination early on that you would
18 need to get mental health experts involved?

19 A. Yes. I wanted to know.

20 Q. Now, you were appointed on this case in -- do you
21 recall being appointed in this case in July of 1998?

22 A. I believe that's correct.

23 Q. I show you what's been marked as Plaintiff's Exhibit
24 17. Is this a copy of the Order appointing you in July
25 of 1998?

MR. BEAUFORD ON CROSS

1 A. Yes, it is.

2 MR. O'CONNELL: Your Honor, I'm offering this in evi-
3 dence.

4 MR. ZELENKA: No objection.

5 THE COURT: Mark it -- what number?

6 MR. O'CONNELL: It's 17, Your Honor.

7 THE COURT: Plaintiff's Number 17 admitted into
8 evidence without objection.

9 (Order of Appointment admitted in evidence without
10 objection as Plaintiff's Exhibit 17)

11 BY MR. O'CONNELL:

12 Q. So you were appointed in July of 1998. When did you
13 hire the first mental health expert?

14 A. . .

15 Q. Is there anything that would help you to refresh
16 your memory?

17 A. I'm trying to look through my invoices to see.

18 Q. Okay.

19 A. The first doctor I see is Dr. McKee on 2 4 99. I'll
20 look back to see if I see anyone else prior to that.

21 I think that's the earliest you see.

22 Q. The earliest contact was in February of 1999, when
23 you spoke with Dr. McKee?

24 A. Yes.

25 Q. Do you know what that conversation was about?

MR. BEAUFORD ON CROSS

1 A. I can't tell you at this point in time.

2 Q. When did you know this case was going to be tried in
3 May of 1999?

4 A. I don't remember.

5 Q. Now, you said that Ms. Hardee Thomas was supposed to
6 be getting materials to the mental health experts and get-
7 ting the mental health experts signed on.

8 She was supposed to be getting information to them
9 they would need?

10 A. Yes.

11 Q. You depended on her to do that?

12 A. Yes.

13 Q. And later did you learn she did not do that in a
14 timely fashion. Is that fair to say?

15 A. I later learned it wasn't done, yes.

16 Q. In fact, the investigation that Ms. Richborn did,
17 -- this communication that either you or Ms. Hardee Thomas
18 received from Ms. Richborn on April 29, 1999, you have al-
19 ready identified.

20 Is this the last communication that either you or Ms.
21 Hardee Thomas received as far as you know from Ms.
22 Richborn?

23 A. I was reading from the transcript and I knew I had
24 to let the Judge know something by the next day by five
25 o'clock.

MR. BEAUFORD ON CROSS

1 So I may have had some other contact with her, be-
2 cause I think the Judge ordered that either she come on
3 board or something at that point in time.

4 Q. That was in the competency hearing when you reminded
5 the Judge that you had a pending continuance motion?

6 A. Okay.

7 Q. That you had discussed with him about the private in-
8 vestigator having left?

9 A. I got the dates wrong. Yes, I guess that's the last
10 correspondence I would have seen, at that point in time.

11 Q. Okay. Did you see -- let me show you this. This has
12 been marked Plaintiff's Exhibit 18, a group of reports
13 from Ms. Richborn.

14 I want you to tell me which of those, if any, you
15 remember?

16 A. . . .

17 THE COURT: Hold on a second. Are you going to try
18 to admit it?

19 MR. O'CONNELL: I'm going to have him identify it.

20 THE COURT: Let him identify it and let counsel see
21 it. I don't know what -- it's so thick.

22 BY MR. O'CONNELL:

23 Q. If you can look through that and tell me which of
24 those you saw in 1999 prior to trial?

25 A. . . .

MR. BEAUFORD ON CROSS

1 (Brief pause in the proceeding)

2 THE COURT: Have you had a chance to go through all
3 of the documents?

4 WITNESS: I have, Your Honor.

5 THE COURT: All right, counsel. Ask your question.

6 BY MR. O'CONNELL:

7 Q. What was your response?

8 A. Okay. You asked me to look at the documents and see
9 which ones I could identify that I had seen before.

10 I had not seen the ones between Ms. Rickborn and
11 Marva Hardee where they were going back and forth, and that
12 is on the back.

13 Also, I notice there is one that says Percy B. came
14 to me. Please be advised -- I don't remember seeing that
15 document, even though it has my name on it.

16 Q. Okay.

17 A. But none of the others . .

18 Q. The one on the last page is the letter from Marva
19 Hardee Thomas to Ms. Richborn, and you think you've seen
20 that before?

21 A. Yeah, and a return response or back and forth between
22 the two of them.

23 Q. Then there is something -- you have seen what has
24 been marked Respondent's Exhibit Number 15, which is the
25 letter of April 29, which is included in what you have in

MR. BEAUFORD ON CROSS

1 front of you, from Ms. Rickborn to you and Ms. Hardee
2 Thomas?

3 A. Correct.

4 Q. Other than that, you have not seen any of these?

5 A. I don't recall. This don't even look familiar to me.

6 Q. Okay. Do you recall that they were in your file?

7 A. I don't recall that.

8 MR. O'CONNELL: Your Honor, I would -- here's the
9 problem.

10 I went to his office and I got them out of his file.

11 MR. ZELENKA: I don't know there's a problem.

12 THE COURT: You want to admit them, Mr. O'Connell?

13 MR. O'CONNELL: I do.

14 THE COURT: All right.

15 (Brief pause in the proceeding)

16 MR. O'CONNELL: Your Honor, we're submitting that
17 these came out of Mr. Beauford's file and on that basis
18 I move to admit them as Plaintiff's Exhibit 18.

19 THE COURT: Without objection?

20 MR. ZELENKA: No objection.

21 THE COURT: You stipulate all of these documents
22 which I have heard testimony about a failure to recollect
23 -- but all of these documents came from Mr. Beauford's
24 file, is the stipulation?

25 MR. O'CONNELL: Right.