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S.C. SUPREME COURT

VOLUME SEVEN OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Perry M. Buckner, Circuit Court Judge

JOHN EDWARD WEIK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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MR. BEAUFORD ON CROSS

1 THE COURT: Very well. Plaintiff or Applicant's
2 Exhibit 18 in evidence without objection.

3 (Correspondence re Ms. Richborn admitted in evidence
4 without objection as Plaintiff's Exhibit 18)

5 BY MR. O'CONNELL:

6 Q. Mr. Beauford, in the letter attached to Plaintiff's
7 Exhibit 18, the letter from Ms. Hardee Thomas to Ms.
8 Richborn, have you read that recently?

9 A. I've read it recently.

10 Q. Now, on the second or third full paragraph, Ms. Hardee
11 Thomas writes to Ms. Rickborn, on April 8, 1999, when I
12 received your letter requesting an interview with the
13 children, I faxed this information directly to Mr. Beauford.
14 Mr. Beauford needs to make a decision on these issues,
15 not me.

16 I never knew you were waiting on an answer. If I
17 had known, I would have referred you directly to Mr.
18 Beauford.

19 Does that accurately describe the professional rela-
20 tionship you had with Ms. Hardee Thomas?

21 A. Looking back at the information from where I am now,
22 the relationship is very strained because I notice in some
23 of the letters I have subsequently read is that she is
24 writing me letters as opposed to that I'm used to -- if
25 you are cocounsel we are talking, not letter writing.

MR. BEAUFORD ON CROSS

1 So a lot of this is strange to me, looking back now.
2 Why are we writing letters if we are seeing each other,
3 and it seems so strange to me looking back now.

4 Q. Now, the fact that these came out of your file,
5 Plaintiff's Exhibit 18, you testified that they -- is it
6 fair to say they could have come into your file after the
7 trial was over because Ms. Hardee Thomas then sent them
8 to you?

9 A. Yes, because it is one of those situations where, as
10 I look at it, when the trial was over she just got rid of
11 everything and said, here, these are -- so there is like lots of
12 things that were placed there.

13 I don't know what was because I didn't look back in
14 the file after that either.

15 Q. When the trial is over, the trial is over, and you
16 are not interested in looking back?

17 A. Right, and I know there was a large paperwork that
18 she said, here, put this in your file.

19 Q. So it could be that she never gave you those before
20 the trial?

21 A. It's a possibility, yes.

22 Q. Or at any time until after the trial?

23 A. It's a possibility.

24 Q. You said that at one point Ms. Hardee Thomas -- Mr.
25 Zelenka asked you if she participated in certain discussion

MR. BEAUFORD ON CROSS

1 you had with your client, and your answer was she was
2 there.

3 Is that -- do you remember giving that answer?

4 A. Yes, I do. That's pretty much accurate.

5 Q. Is your statement that she was there, occupying space?

6 A. She was there, yes.

7 Q. She didn't contribute anything?

8 A. Not anything of substance, I would say, as a defense
9 lawyer.

10 THE COURT: Say that again.

11 A. Not anything I would say of substance as a defense
12 lawyer, as to theories or where we want to go or advice.

13 BY MR. O'CONNELL:

14 Q. Is it fair to say that in this case you were depend-
15 ing on Ms. Hardee Thomas to get information from these
16 investigators to either you -- to you and the experts who
17 were out there? The mental health experts?

18 A. Yes.

19 Q. And these letters in Plaintiff's Exhibit 18 indicates
20 -- the letters of Ms. Rickborn in Plaintiff's Exhibit
21 18 indicate she was giving things to you and not to the
22 experts. Is that fair to say?

23 A. That is what the letter says.

24 Q. Do you think that is accurate?

25 A. I don't think it is accurate, no.

MR. BEAUFORD ON CROSS

1 Q. What do you think she was doing with the material?

2 A. I don't know.

3 Q. Do you think it was accurate that she was just giving
4 it to you and not giving it to the experts?

5 A. I don't think she was.

6 Q. You don't know whether she gave them to you or not?

7 A. That's what I'm saying.

8 Q. You also don't know whether she was giving them to
9 the experts?

10 A. Well, I don't know that based on information -- I
11 have sat here and heard the experts didn't get the in-
12 formation, so I don't know how to assess that.

13 Q. Did you know she was leaving it up to you to give
14 this information to the experts? Whatever information
15 existed, that she was depending on you to get these things
16 to the experts?

17 A. No, because that wasn't how we initially started
18 the case.

19 I thought we were trying to bring it together.

20 Q. The letter to Ms. Rickborn of April 30, 1999, says
21 that is exactly what she was doing. She was sending things
22 to you and you could make a decision and tell her what
23 was next?

24 A. That's what the letter says.

25 Q. Do you have any reason to believe she was not being

MR. BEAUFORD ON CROSS

1 truthful about that when she wrote that letter?

2 A. Yes, I have all reason, because that was the way it
3 was.

4 Q. Do you feel like you were absolutely alone in repre-
5 senting Mr. Weik?

6 A. Yes.

7 Q. That you didn't have another lawyer helping you?

8 A. . .

9 Q. I'm sorry. You had a person that had a law license.
10 Correct?

11 A. Correct.

12 Q. Who was appointed on the case the same day you were?

13 A. Correct.

14 Q. But other than that, she didn't act as a lawyer in
15 this case. Is that correct?

16 A. She didn't give me the assistance that I thought I
17 needed in trying the case.

18 Q. Have you said that one thing she did other than hire
19 experts -- can you think of one thing that she did other
20 than hiring experts or get Court Orders approving the hir-
21 ing of experts?

22 A. . .

23 Q. Can you think of one thing that she did during the
24 trial that was of any assistance to you or to Mr. Weik?

25 A. No.

MR. BEAUFORD ON CROSS

1 Q. And that was not a desirable situation for you, was
2 it?

3 A. No.

4 Q. I mean, trying these death penalty cases is a scary
5 proposition, isn't it?

6 A. The first death penalty case -- you've got a man's
7 life in your hands. It's a serious situation.

8 Q. If you ever try another one, you'll have the same
9 feeling, I think you'll agree, and they are all scary.
10 Is that correct?

11 A. I don't think so in that sense because, you know,
12 again, this has been an experience. I have learned a lot
13 of what I need to do, what more.

14 Q. Did you expect more of Ms. Hardee Thomas than what
15 she did?

16 A. Yes.

17 Q. Now, in reference to the -- at one point you wanted
18 the Judge -- you suggested to the Judge after the testimony
19 of Ms. Weik during the guilt phase that there was evi-
20 dence of voluntary manslaughter.

21 Do you remember that?

22 A. Yes, I do.

23 Q. And your theory of that was that voluntary man-
24 slaughter in this case would be the result of legal provo-
25 cation, sufficient legal provocation, that Mr. Weik was

MR. BEAUFORD ON CROSS

1 denied access to his son by this woman?

2 A. That was reaching, and the jury may not have come
3 to that verdict, but I thought there could have been
4 some evidence because I was arguing pretty much you have
5 a legal right to see your child.

6 Q. Okay.

7 A. And then when that legal right was taken away by a
8 person who has the immediate opportunity to do so, I thought,
9 you know, that was justification.

10 Did it rise to murder? The jury probably would not
11 or may not have come back, but I thought the charge should
12 be given.

13 Q. All right.

14 A. I argued pretty much that you have a legal right to
15 see your child, and I felt that the mother through her ac-
16 tion of saying you're never going to see your child again
17 had the present ability to do so, to take that right away,
18 and so based on that -- whether that was sufficient provo-
19 cation, that is another question.

20 But did it rise to the level -- you should never want
21 to kill someone but I thought possibly it could have been
22 charged.

23 At this point in time at the trial, I am trying to
24 get something else because I saw I was not getting anywhere
25 with the other issues or theories.

MR. BEAUFORD ON CROSS

1 Q. The reason for calling Ms. Weik as a witness in the
2 guilt phase of the trial was to try to establish that
3 there was sufficient legal provocation in this case, in
4 order to get a charge on voluntary manslaughter.

5 Isn't that correct?

6 A. Yes.

7 Q. She was there to testify to how much he loved his
8 son, and that this woman was denying him the opportunity
9 to every see him again?

10 A. Correct.

11 Q. And he got very upset and he killed her?

12 A. They were arguing and the whole works.

13 Q. You were also trying to inject, were you not, that
14 there was a mental health issue as well; that he was parti-
15 cularly vulnerable to fits of violence because of his
16 mental state, to kill this lady, because she denied him
17 access to his child?

18 A. I don't know about fits of violence, but I think that
19 lessened -- I was trying to give the jury his mental
20 state because of his situation.

21 Q. Diminished capacity?

22 A. Somewhat, but I don't want to go that far.

23 Q. Now, were you aware then that the idea that you had
24 that you could get a charge on voluntary manslaughter,
25 based on the fact that he had been denied by her any access

MR. BEAUFORD ON CROSS

1 to his child as far as he knew forever -- did you know
2 there was no legal support in South Carolina law for that
3 proposition?

4 A. . . .

5 Q. That that is voluntary manslaughter . . .

6 A. Well, I had a case and it's the only thing that got
7 me that it went up to the Supreme Court but they never did
8 come back down with a ruling, and that's where I was
9 stuck at.

10 Q. Did you find any cases to give to the Judge in 1999
11 when you were arguing that, after he excused -- the Judge ex-
12 cused the jury when Ms. Weik was testifying, and he was
13 -- he started asking you what is this testimony about, and
14 you started explaining him . . .

15 A. Well, the Court didn't go as far as with the argument,
16 so he wouldn't have supported me in the sense of saying
17 there's a ruling. The Court didn't go as far as the argu-
18 ment and I was trying still the argument because I did
19 want it to go back maybe for appeal.

20 Because at this point I'm trying the case a little bit
21 more for appeal also.

22 Q. I understand. Did you cite a case?

23 A. No, there weren't any cases that had that proposi-
24 tion. Correct.

25 Q. Is there any authority at all in South Carolina that

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MR. BEAUFORD ON CROSS

1 would have allowed Judge Shuler to charge voluntary man-
2 slaughter, given the facts of the case?

3 A. There is no case. I mean, I was seeing whether he
4 would charge it. It was an opportunity, and based on a
5 little bit of the facts he may have charged it or may have
6 not, and he decided not to.

7 Q. Did you think you had a reasonable chance of him
8 charging voluntary manslaughter, based on what the facts
9 in this case are?

10 A. I was trying anything to try to make it work at this
11 point.

12 Q. Did you believe it to be legally supported?

13 A. I think it was somewhat, but it wasn't . .

14 Q. Did you have any case law?

15 A. I told you I didn't have any case law.

16 Q. No case law at all?

17 A. Correct.

18 Q. In fact, did you do some research on voluntary
19 manslaughter?

20 A. Yes.

21 Q. And the law in South Carolina is that words alone
22 are not sufficient legal provocation. Do you understand
23 that?

24 A. I understand that.

25 Q. You understood it then?

MR. BEAUFORD ON CROSS

1 A. Yes.

2 Q. Now, you hired a new investigator in the case, and
3 what did you understand he was going to be doing for you
4 and Mr. Weik?

5 A. Basically he was going to gather all the police re-
6 cords, all the incident reports, and do a lot of foot work
7 about the families, things of that nature.

8 Basically, he's the one that did the ground work, a
9 lot of the non-expert ground work.

10 Q. Now, Exhibit 2, which has been previously identified
11 as a list of the tasks he performed, . .

12 A. Uh hm.

13 Q. . . on behalf of you in this case -- it looks like
14 the first thing that he did was in January at the top of
15 the page . .

16 A. January 29th, 1999.

17 Q. So you hired Mr. Minter in January of 1999, is that
18 fair to say?

19 A. Correct.

20 Q. You hired him to gather police reports and the other
21 discovery materials from the Solicitor's Office?

22 A. Correct.

23 Q. And you had been appointed since -- actually, you
24 got retained shortly after the case started, is that cor-
25 rect?

MR. BEAUFORD ON CROSS

1 A. Correct.

2 Q. Which was in April of 1998?

3 A. Correct.

4 Q. And you were appointed in July of 1998?

5 A. Correct.

6 Q. You hired an investigator in January, the last part
7 of January, 1999?

8 A. Okay, and I take it when you say I hired -- again,
9 I would say Marva handled the experts, even those from
10 this.

11 This is where he goes to her office to pick up the
12 package and everything of that nature, but as the lead
13 counsel, yes, this is correct. He started January 29th,
14 as far as I understand.

15 Q. And Mr. Minter is the investigator that you first
16 worked with in this case?

17 A. As far as I remember, yes.

18 Q. Then if he got the discovery material from the
19 Solicitor's file and gathered it for you, you didn't have
20 it up until then, is that fair to say?

21 A. This that he picked up from Marva's office.

22 Q. I asked you before what you hired him for, and you
23 said to get police reports and other discovery items from
24 the Solicitor's Office. If he didn't start until the last
25 part of January, 1999, you didn't have it before that.

MR. BEAUFORD ON CROSS

1 Is that fair to say?

2 A. I mean, that's not correct, but I understand where
3 your logic follows.

4 Q. That is based upon what you have testified . .

5 THE COURT: One question at a time, and let him answer.
6 Proceed.

7 Ask one question.

8 BY MR. O'CONNELL:

9 Q. Did you previously testify that you hired him and one
10 of the things he was going to do in this case was to gather
11 discovery items from the Solicitor's Office?

12 A. The police department and different areas, yes.

13 Q. And so from the day you got appointed in July of 1998
14 until January of 1999, when Mr. Minter began gathering
15 these things for you, you didn't have them?

16 A. No, that's not correct. Because again this letter
17 reflects we already had it because it says January 29th,
18 picked up copies of the case from Attorney Marve Hardee.
19 We already had it.

20 Q. Ms. Hardee Thomas had it but you didn't have it?

21 A. When I say we, the team is what I mean. Okay.

22 Q. He picked up the materials from Ms. Hardee Thomas'
23 office, and what did he do with it? Did he take them to
24 your office?

25 A. I don't know what documents he picked up at the time,

MR. BEAUFORD ON CROSS

1 I'm sure I would have had the file at this time.

2 Q. I understand.

3 A. Because, again, as part of our Rule Five, Walter
4 would have supplied a lot of it directly to me.

5 Q. You said that you . .

6 A. Walter would have supplied a lot of things directly
7 to me as part of Rule Five.

8 Q. You told us today that you hired him and what he
9 did was gather discovery evidence from the Solicitor's
10 Office?

11 A. I threw that out there as a part of doing ground
12 work from different police agencies or different things we
13 may require him to do, but I don't want to say that is
14 all he did at this point in time.

15 Maybe I should not have said that, because we already
16 had a lot of that.

17 He may have gone back and gathered some additional
18 information.

19 Q. Now, do you recall the first mental health experts
20 you hired; that you talked to Dr. McKee in February of
21 1999?

22 A. . .

23 Q. I think that's what your invoices identified.

24 A. Okay.

25 Q. He being the first mental health expert you contacted.

MR. BEAUFORD ON CROSS

1 A. Okay.

2 Q. Is that fair to say?

3 A. That's correct.

4 Q. When was Dr. McKee hired?

5 A. I don't know when he signed on. I don't remember
6 when he was actually signed on.

7 Q. When was Dr. Morgan signed on?

8 A. I'm not sure. If I talked to them, probably they
9 were already signed on.

10 Again, I didn't handle the area of signing them on
11 or whatever, so when I talked to them they were probably
12 already signed on.

13 Q. Do you know when Ms. Hardee Thomas signed them on?

14 A. I don't know. That's what I'm saying. Probably when
15 I talked to them they should have already been signed on.

16 Q. Would you agree that it appears that they were not
17 involved -- actively involved in this case until as early
18 as March of 1999?

19 A. I pretty much agree to that.

20 Q. And that they didn't actually see your client until
21 the last part of April of 1999?

22 A. Yes.

23 Q. In fact, in Plaintiff's Exhibit 18 is a memo from
24 Ms. Rickborn to Donna Schwartz Watts, saying here are the
25 reports I've got, dated April 23, 1999?

MR. BEAUFORD ON CROSS

1 A. I remember reading that document.

2 Q. I'm sorry.

3 A. I say I remember reading that from the documents
4 here.

5 Q. And so Ms. Rickborn appears to have taken on the
6 responsibility of getting her own reports to your experts?

7 A. As it goes to Ms. Patty Rickborn, until this situa-
8 tion came up, I don't think I had a lot of conversations
9 with her, if any -- until the situation came up.

10 Q. Only evidence that you know of how and when those
11 reports, Ms. Rickborn's reports, got to Dr. Schwartz Watts
12 was the letter dated April 23rd, saying here are the re-
13 ports I've gathered so far.

14 A. Yes, that's correct.

15 Q. And that was April 23rd, which was a month before
16 trial?

17 A. Whatever the date is, yes.

18 Q. It appears Ms. Rickborn first was hired in this case
19 and became active after March first, 1999, according to
20 Plaintiff's Exhibit 18?

21 A. Yes.

22 Q. And the letter of March first, 1999, in Plaintiff's
23 18 is really a description of what Ms. Rickborn is and
24 what her experience is?

25 A. Correct.

MR. BEAUFORD ON CROSS

1 Q. And it's the sort of things that you would present
2 to a Judge in a Petition for money to hire?

3 A. It looks that way, yes. A resume type . .

4 Q. And doing that was Ms. Hardee Thomas' job; that is,
5 to get the Order approving the expense of hiring a mitiga-
6 tion investigator?

7 A. Yes, I understood it to be that way.

8 Q. And at that point in time -- you got hired the last
9 part of July, so you had five months in 1998 and then two
10 months in 1999, and you finally got the mitigation inves-
11 tigator at the beginning of March of 1999?

12 A. . .

13 Q. Correct?

14 A. Correct.

15 Q. A little less than three months before the trial?

16 A. Correct.

17 Q. A death penalty trial, which is a very complicated
18 matters, as you have since learned?

19 A. Correct.

20 Q. And very difficult to prepare for?

21 A. Correct.

22 Q. And they take a lot of time?

23 A. Yes.

24 Q. More time to prepare for than three months prior
25 to trial or to begin to prepare three months prior to

MR. BEAUFORD ON CROSS

1 trial?

2 A. I would agree with that.

3 Q. This was your first death penalty case?

4 A. That is right.

5 Q. Did you have an appreciation then -- and it's easy
6 to say after the fact -- did you have an appreciation then
7 as to how time-consuming it would be to prepare a death
8 penalty case for trial?

9 A. I do now, and this means all the experts -- just a
10 little while this week I learned what it actually required
11 of them and what they needed to do. Yes, I do.

12 Q. Did you understand back then how early you have to
13 start preparing the case for trial in order to give ef-
14 fective assistance of counsel?

15 A. I understand.

16 Q. Certainly not three months before trial, is it?

17 A. Looking back, I would have wanted a lot more time
18 to actually put things out.

19 Q. But you had the time since you got involved in 1998?

20 A. I guess I was answering your question of looking back
21 do I have an appreciation, and so I was answering that
22 question, yes, looking back now.

23 Q. Okay, but you had the case as of -- much earlier
24 than that, because you got retained right after the crime
25 happened in 1998?

MR. BEAUFORD ON CROSS

1 A. Correct.

2 Q. Nothing substantive happened as far as preparing the
3 case for trial; that is, getting this mental health ex-
4 pert, the mitigation expert, until the first of March
5 of 1999, three months before trial?

6 A. That seems to be correct.

7 Q. No question that Mr. Weik did this?

8 A. No.

9 Q. And I understand your position about a voluntary
10 manslaughter charge, but it kind of looked like it was a
11 murder case from the very beginning?

12 A. I don't -- I still don't see it that way. I mean,
13 I know it was a murder case, but I guess I'm saying --
14 are you saying that -- it was a murder case, yes.

15 Q. That was pretty apparent from the very beginning?

16 A. Yes.

17 Q. And you had some hope it would be voluntary or you
18 would get a charge on voluntary manslaughter?

19 A. Right.

20 Q. Did you also have some hope when you were hired by
21 Ms. Weik to represent her son that you might get a plea
22 early on to voluntary manslaughter?

23 A. No.

24 Q. How much did you charge them?

25 A. I don't remember.

MR. BEAUFORD ON CROSS

- 1 Q. Ten Thousand Dollars?
- 2 A. No. That wasn't the total price, no.
- 3 Q. How much do you think you charged them?
- 4 A. Either Fifteen or Twenty.
- 5 Q. How much did you get?
- 6 A. Five.
- 7 Q. Does -- when you were appointed in July of 1998,
- 8 did you already have notice from the Solicitor that this
- 9 was a death penalty case?
- 10 A. When I got appointed?
- 11 Q. Yes.
- 12 A. That's what the appointment was, as a death penalty
- 13 case.
- 14 Q. That is when the lawyers were appointed?
- 15 A. Yes.
- 16 Q. You said -- did you consult with other lawyers in
- 17 this State sometime after you got appointed -- other law-
- 18 yers who had death penalty experience?
- 19 A. Yes.
- 20 Q. Who did you consult?
- 21 A. I know one of them was Norb Cummings, and there was
- 22 someone else in Berkeley County.
- 23 Q. Did you consult with . . .
- 24 A. I think Norb had just come off the Schuler case.
- 25 Q. Did you consult with any of the lawyers like John Bloom

MR. BEAUFORD ON CROSS

1 or . . .

2 A. No, not in Columbia. Norb is one and the one in
3 Berkeley-Charleston County that I've forgotten who it was.

4 Q. Now, did you consult with John Delgado?

5 A. I don't even know who that is.

6 Q. You don't know who that is?

7 A. No.

8 Q. Okay, so as far as you know or as far as you remem-
9 ber, you consulted with Norb Cummings and somebody in
10 Moncks Corner?

11 A. Yes.

12 Q. Did you inquire as to who else in the State might
13 have been able to supply assistance to you?

14 A. I did not inquire.

15 Q. Did Ms. Hardee Thomas suggest to you that you should
16 seek assistance from somebody other than Mr. Cummings?

17 A. . .

18 Q. Or aside from Mr. Cummings?

19 A. She didn't suggest, no.

20 Q. I'm sorry?

21 A. No, she didn't.

22 Q. Did she tell you that she went and met with any law-
23 yers in Columbia who were knowledgeable about death pen-
24 alty cases?

25 A. No.

MR. BEAUFORD ON CROSS

1 Q. You never went with her obviously since you -- you
2 never went with her?

3 A. No. I didn't know she went if she did.

4 Q. When did you meet with Mr. Cummings or approximately
5 when did you meet, unless it's in your bill?

6 A. No, it's not in my bill. It was right after the
7 appointment, and then we talked several times about the
8 case.

9 Q. What advice did Mr. Cummings give you?

10 A. We talked, of course, about the different phases, and
11 I think he talked something about the experts, experts you
12 probably will need -- things of that nature.

13 Q. Did he talk to you about a mitigation investigator?

14 A. I'm sure he did.

15 Q. You talked about a mitigation expert early in the
16 case -- maybe you didn't say it, but you talked with him
17 shortly after you got appointed?

18 A. Yes. I think he had used Patty or whoever in the
19 Schuler case. I'm thinking it was the same expert they
20 had in the Schuler case.

21 Q. Why did you wait until March of 1999 to hire him?

22 A. Again, according to my recollection, I did not know
23 things were not moving along the other way because we had
24 all the documents and the requests for these experts to
25 be on the team.

MR. BEAUFORD ON CROSS

1 It wasn't until later I found out they weren't con-
2 tacted or things weren't done.

3 Q. You were depending on Ms. Hardee Thomas?

4 A. Yes.

5 Q. Is it fair to say that the mitigation investigation
6 was done in a hurry?

7 A. I would say so, based on the short length of time
8 when they got notice to do the work.

9 Q. You would say so?

10 A. Yes.

11 Q. Do you think that was appropriate under the circum-
12 stances, that you didn't get a mitigation expert on board
13 until March of 1999?

14 A. I don't think it was appropriate. I would never
15 want to be in that situation again, so I do not think it
16 was appropriate.

17 Q. Do you agree it also hurt your case, the preparation
18 of your case, presentation of your case?

19 A. Yes.

20 Q. And I'm not asking you that because he got the
21 death penalty.

22 A. I understand that. The more time you've got, the
23 more you can sit back and look at it and make changes, or
24 look at it and make changes.

25 Q. Because these are very complicated cases?

MR. BEAUFORD ON CROSS

1 A. Yes.

2 Q. Do you agree?

3 A. Yes.

4 Q. It's a very specialized area of law. Would you
5 agree?

6 A. I wouldn't give it that term, but it is complicated,
7 yes. I mean, I just don't want to label specialized.

8 Q. Have you ever done a bankruptcy case?

9 A. No, I don't do bankruptcy.

10 Q. Would you do a bankruptcy case?

11 A. I would not.

12 Q. Is that because you don't know how to do bankruptcy
13 cases?

14 A. I just wouldn't like to do that. I'm a people person.

15 Q. Okay, let's put aside issues of whether you're a peo-
16 ple person. I would suspect that's true, what I'm asking
17 you is, is this a highly specialized area?

18 A. It is, yes.

19 Q. You wouldn't take a case like a bankruptcy case on
20 because, like me, we are not qualified to do bankruptcy. Isn't
21 that fair to say?

22 A. I'm not qualified, yes.

23 Q. I'm not either. Would you agree that death penalty
24 work, defense, is no less complicated?

25 A. It is very complicated.

MR. BEAUFORD ON CROSS

1 Q. Do you agree it is no less complicated than an area
2 you have never had any experience with and know nothing
3 about?

4 A. I would agree. I would agree.

5 Q. This isn't like another criminal case, because you've
6 got some experience in criminal work?

7 A. Yes.

8 Q. It's not a regular run of the mill -- I'm not deni-
9 grating your practice, but it's not a run of the mill
10 criminal case? It's a world apart from that, isn't it?

11 A. Huge difference.

12 Q. It takes a great deal of specialized knowledge, is
13 that correct?

14 A. Yes.

15 Q. Training?

16 A. It takes some training, yes.

17 Q. Did you attend -- prior to this trial, did you at-
18 tend any programs on death penalty defense?

19 A. Yes, I did.

20 Q. Where?

21 A. Columbia.

22 Q. Which one?

23 A. I don't know. A guy came out of D.C. or something,
24 a top or reknown death penalty expert.

25 Q. How long was it?

MR. BEAUFORD ON CROSS

1 A. Just one day.

2 Q. Did you go there because of . .

3 A. I think I went to two of them, but not the same
4 year.

5 Q. Do you know if that was before this trial?

6 A. No.

7 Q. Pardon?

8 A. I don't think it was before the trial.

9 Q. So it was after this trial?

10 A. I think it was.

11 Q. Before this trial, did you have any death penalty
12 training, formalized death penalty training?

13 A. No, I hadn't.

14 Q. Now, . .

15 THE COURT: You may approach the witness, counsellor.

16 MR. O'CONNELL: I apologize, Judge.

17 THE COURT: Then step back and ask your question.

18 MR. O'CONNELL: I apologize.

19 BY MR. O'CONNELL:

20 Q. With respect to Plaintiff's Exhibit Number 4, that
21 is the interview that Scott Parker did with your client's
22 brother?

23 A. Uh hm.

24 Q. And you and I spoke about that in your office?

25 A. We did.

MR. BEAUFORD ON CROSS

1 Q. Do you remember the document I asked if you had ever
2 seen before when you and I met in your office, and you
3 said you had not seen it before?

4 A. Okay. I mean -- again, I say, I don't remember the
5 document.

6 THE COURT: Is this an exhibit?

7 MR. O'CONNELL: Yes, sir. It is contained in Plaintiff's
8 Exhibit 4. I apologize.

9 BY MR. O'CONNELL:

10 Q. Have you had an opportunity to review that, sir?

11 A. I haven't read it in its entirety. I just read
12 through it to see whether I remembered anything about it
13 or had seen it before.

14 I haven't read it in the entirety.

15 Q. You don't think you knew about that before the
16 trial?

17 A. No, I don't think I did.

18 Q. So you didn't have the opportunity to consider whe-
19 ther to use that, to present Chris Weik, as a mitigation
20 witness?

21 A. . .

22 Q. Is that fair to say, because you didn't know about
23 it?

24 A. Okay. You said Chris Weik. Is this the father?

25 Q. No. Russell Christopher.

MR. BEAUFORD ON CROSS

1 A. Russell Christopher.

2 Q. My client's brother.

3 A. No, I didn't have this document to decide whether to
4 use him in the trial.

5 Q. So you couldn't make that decision about whether
6 to use him or not?

7 A. Correct.

8 Q. Now, you testified previously on direct examination,
9 I think, and correct me if I'm wrong, that you had in-
10 formation that Mr. Weik's father choked his daughter?

11 A. Yes.

12 Q. And that information -- did that come from a report
13 Ms. Rickborn did of an interview with Amy Weik?

14 A. No, I think it came from Eddy.

15 Q. You think it came from Eddy?

16 A. . .

17 Q. What was your information about that?

18 A. That -- he told me his father had served in Vietnam
19 or whatever, and thinking -- the sister had dark hair,
20 and he was thinking of the Vietcong women over there,
21 and he had grabbed her and was choking her, and the mother
22 got a frying pan and hit him in back of his head.

23 Q. Was that any other source of information you had
24 that that occurred? Or that you knew about?

25 A. No.

MR. BEAUFORD ON CROSS

1 Q. I want to show you in Plaintiff's Exhibit 18, Ms.
2 Rickborn's reports, about in the middle of the page, a one
3 sentence paragraph, which says Amy is the one that Mr.
4 Weik's father took for a Vietnamese girl?

5 A. I see that.

6 Q. And choked her?

7 A. Yes.

8 Q. And did you see Russell Christopher Weik's report,
9 which is Plaintiff's Exhibit 4, that same thing reported by
10 Chris Weik?

11 A. I didn't see that, but also I didn't notice the

12 . .

13 Q. You didn't notice that?

14 A. Yeah, and the other part I told you about, the fry-
15 ing pan and all that -- I don't see it here, so I'm pretty
16 sure Eddy told me.

17 Q. When he told you that, did you have some reason to
18 -- did you ever meet Mr. Russell Weik, my client's
19 father?

20 A. Yes.

21 Q. And did you have -- do you remember anything about
22 that conversation?

23 A. No, I don't remember anything about the conversation.

24 Q. Let me see if I can refresh your memory. It may or
25 may not. You tell me.

MR. BEAUFORD ON CROSS

1 Do you remember him talking to you about his exploits
2 in Vietnam?

3 A. Yes.

4 Q. Did he talk about working for the CIA?

5 A. Yes.

6 Q. And when he told you that, did you have some reason
7 to believe that might not have been true?

8 A. I mean, I didn't know him like that, so I didn't
9 doubt him. Basically a lot of people that goes over there
10 come back a little off.

11 So I didn't doubt him because that seems to be --not
12 a standard, but I would say people who fought over there
13 come back a little different.

14 Q. What about the part about the CIA?

15 A. . . .

16 Q. I mean, I know some people come back from Vietnam
17 who are psychological damaged, so that was not exactly an
18 unusual situation.

19 But what about the part about the CIA and working
20 for the CIA? Do you think that . . .

21 A. Well, he was sort of like -- I won't say eccentric
22 but he took things to another level in wanting to be no-
23 ticed.

24 So -- but when he said that, again, I mean, I didn't
25 think about it because I really didn't know himn like that

MR. BEAUFORD ON CROSS

1 and you never know what a person might have been involved
2 in at any time in these covert operations.

3 So I just left it alone.

4 Q. So no alarms went off in your head that this guy
5 might be -- there may be some further problem working be-
6 hind the lines?

7 A. Well, I mean, his behavior suggested something was
8 wrong, but, again, I could read that to being in Vietnam
9 or exposed to some chemical or something.

10 I did think in the conversation when he was going
11 on maybe about Agent Orange or something like that, but I
12 didn't take the conversation to that extent.

13 Q. Giving you Plaintiff's Exhibit 5, an interview with
14 Mr. Weik's father that was done by Scott Parker, dated
15 May 14th.

16 A. Okay, that's correct.

17 Q. And when do you recall first seeing that?

18 A. You may have brought it to my attention when you were
19 in my office. I'm not sure.,

20 Q. Do you think you saw it in 1999?

21 A. No, I don't think I saw it then.

22 Q. Might it have been something Ms. Hardee Thomas was
23 supposed to have gotten to you?

24 A. Well, if she had it, she was supposed to have gotten
25 it to me.

MR. BEAUFORD ON CROSS

1 Q. As far as you know, you never saw it?

2 A. Correct.

3 Q. In reference to Plaintiff's Exhibit 3, an interview
4 with Lillie Weik, can you identify that as having been
5 done by Mr. Parker, the date of which is May 14, 1999?

6 A. Yes.

7 Q. Did you see that prior to the trial in 1999?

8 A. No, I didn't.

9 Q. I show you Plaintiff's Exhibit 4 which is an inter-
10 view with Chris Weik, his brother, that was done on --
11 what is the date?

12 A. May 25th, 1999.

13 Q. Did you see that?

14 A. No, I didn't.

15 Q. So you didn't have an opportunity to make a decis-
16 ion as to whether or not to use Mr. Weik, Chris Weik, as
17 a witness?

18 A. Based upon his document, no, I didn't have that op-
19 portunity.

20 THE COURT: I'm sorry. I couldn't hear you.

21 WITNESS: I say, based upon his document or using
22 his document as a basis for calling him, no, I didn't have
23 that opportunity.

24 THE COURT: If you would stand out here, I could hear
25 better.

MR. BEAUFORD ON CROSS

1 BY MR. O'CONNELL:

2 Q. Because you didn't know about it?

3 A. Correct.

4 Q. Given those documents, the interviews with Lillie
5 Weik and the father, Russ Weik, and the brother, Chris
6 Weik, are there indications in there that this is a very,
7 very bizarre family?

8 A. . .

9 Q. If you had had those in a timely fashion, do you
10 think you could have done something with those from a
11 mental health standpoint?

12 A. Yes, it could have helped to bolster us in that
13 area.

14 Q. And it would also have been important information for
15 the jury to consider?

16 A. Yes. Ultimately you want to get it to the jury.

17 Q. And the mental health experts for the State testi-
18 fied during the competency hearing and in the trial
19 that Mr. Weik, your client, grew up in a loving, stable
20 family, and the evidence that was available, and perhaps
21 you didn't know about it, but that would state that none
22 of that was true.

23 He didn't grow up in a loving and stable family but
24 he grew up in a family of family mentally ill people,
25 and that would have been important information for the

MR. BEAUFORD ON CROSS

1 jury to have seen. Would you agree?

2 A. These documents and giving them to the experts, yes,
3 it would have been important for the jury to see.

4 Q. And because it was significant mitigation evidence.
5 Isn't that true?

6 A. Right.

7 Q. And not only would it have been important to give
8 to the experts, but it would have been important, for example,
9 for Chris Weik to testify about what he knew about grow-
10 ing up in the family?

11 A. . .

12 Q. Have you read this interview?

13 A. I haven't read much of it, but based on where he
14 tells of problems the family was going through, and Mr.
15 Weik in particular, and different things, yes, it would
16 have been very helpful.

17 Q. When you called Amy Weik as a witness in this case
18 in the penalty phase, her testimony lasted eight or nine
19 pages from my recollection.

20 It is short, I know.

21 Q. Where are you?

22 A. I am on page 1918, beginning . .

23 A. I have this.

24 Q. Do you want to count this?

25 A. Count the pages or wait on that page?

MR. BEAUFORD ON CROSS

1 Q. Well, on page 1918 she begins her testimony and she
2 completes her testimony on page 1925. Is that correct?

3 A. Correct.

4 Q. Since you didn't have an opportunity to know what
5 she had said in the report or interview that she gave to
6 Ms. Rickborn, you didn't know what questions to ask to
7 get that information out to the jury, did you?

8 A. I didn't know specifically, but I think I asked the
9 open-ended questions that could have allowed it --maybe
10 not -- she didn't follow up and I didn't follow up, not
11 knowing what the information was that I needed to get out
12 to the jury.

13 Q. That's my point. I mean, if you had available to you,
14 a report Ms. Rickborn had of her interview with Amy Weik,
15 there was a lot more information she knew about.

16 Isn't that correct?

17 A. I don't know what the report says, but possibly it
18 could have, yes.

19 Q. And in order for you to prepare a witness to testify
20 you need to tell them what questions you're going to ask
21 in advance so that you'll know what the answer is going
22 to be?

23 A. Of course.

24 Q. And in order to do that, you've got to know what
25 their story is, what they potentially will testify to?

MR. BEAUFORD ON CROSS

1 A. Yes. I had spoken to her, I think, but, again, she
2 may have gone more in depth with Ms. Rickborn, and I
3 would have needed that information to actually pull it
4 out of her again.

5 Q. Ask her questions, specific questions?

6 A. Yeah.

7 Q. Isn't that fair to say, that that's what you've got
8 to do . .

9 A. Yes.

10 Q. . . to prepare her?

11 A. Right.

12 Q. Now, on April 29th Ms. Rickborn sent the letter that
13 is referenced, Plaintiff's Exhibit that is in front of you,
14 and if you'll excuse me, Judge, one second -- letter from
15 Ms. Rickborn to Ms. Hardee Thomas and you, Plaintiff's
16 Exhibit 18.

17 You have reviewed that before?

18 A. Yes.

19 Q. You said during direct examination that you had not
20 been aware that there was a problem between Marva Hardee
21 Thomas and Ms. Rickborn prior to that letter having
22 been written or received?

23 A. It would have been sometime around there. I'm say-
24 ing prior -- the time line may be off, but sometime around
25 I guess that time.

MR. BEAUFORD ON CROSS

1 Q. Have you had an opportunity to review that letter
2 before?

3 A. Let me read it again.

4 Q. Please do.

5 A. Okay.

6 Q. Did you know the contents of that letter when you
7 moved for continuance before Judge Shuler after the compe-
8 tency hearing on May 18th?

9 A. I may have. I probably did because I think in read-
10 ing the letter and trying to gather my thoughts back then
11 that is when I realized something was seriously wrong be-
12 cause there seemed to be a strain going back and forth.

13 This letter suggests that there was something going
14 on behind the scenes that I didn't know about.

15 Q. Nobody told you about that?

16 A. No, but the letter suggests they were going back
17 and forth with each other.

18 Q. Would you look at page 442 of the trial transcript?

19 A. You say 442?

20 Q. Yes, 442.

21 A. I have it.

22 Q. Would you look at line 7 which says, just a little
23 housekeeping -- there's an outstanding motion -- you ac-
24 tually filed the motion for continuance and sent it to the
25 Clerk about a week and a half before that. Do you recall?

MR. BEAUFORD ON CROSS

1 A. I'm sure I did. I mean, it . .

2 Q. And you informed Judge Shuler that your mitigating
3 expert left the team, and so you wanted a continuance,
4 and Judge Shuler says, at line 21, what is his role,
5 talking about Scott Parker -- what role does he have.

6 He is asking you for information, correct?

7 A. Correct.

8 Q. Then the next page starts -- Judge Shuler starts
9 talking about not paying Ms. Rickborn or she's going to
10 quit.

11 Then on page --he asked you why she quit on page 443,
12 and did you tell him?

13 A. Page 443 -- I think I did.

14 Q. You said something about there were some communica-
15 tion problems?

16 A. Yes.

17 Q. Are you with me?

18 A. Yes.

19 Q. But you never showed him Ms. Rickborn's letter of
20 April 29th?

21 A. I know I never placed it in the record. I don't
22 know if we ever -- because I think we were back in Cham-
23 bers afterward and I know we did at some time
24 shortly before or after.

25 We discussed it a little bit more off the record.

MR. BEAUFORD ON CROSS

1 Let me put it that way.

2 Q. You went and discussed Ms. Rickborn's letter?

3 A. I don't know about the letter, but we discussed this
4 matter.

5 Q. Did you tell him what she had written in her letter
6 of April 29th?

7 A. I'm not sure if I did, because I don't know at what
8 point I got the letter or saw the letter.

9 But, I mean, I don't know if I did or not, but I
10 know we discussed in more detail than is in the record
11 off the record, in Chambers.

12 Q. Is it fair to say that this exchange goes on on
13 page 443, 444, and Judge Shuler is wanting to know some
14 information about what the problem is here. Why did she
15 leave and how is your client going to be prejudiced?

16 A. Yes, that's correct.

17 Q. Did you ever tell him?

18 A. Not on the record, no.

19 Q. You told him off the record?

20 A. We had a conference in the Chambers and we just
21 talked about it more thoroughly there.

22 Q. What good did that do you?

23 A. It probably didn't do me any good.

24 Q. I mean, you understand that if you want to make an
25 objection or ask the Court to give you some relief that

MR. BEAUFORD ON CROSS

1 asking for it in Chambers and being denied in Chambers
2 with no Court Reporter present doesn't do you any good?

3 A. I understand that, yes.

4 Q. Why didn't you do it on the record?

5 A. I should have done it on the record, yes.

6 Q. Did Ms. Hardee Thomas suggest that maybe you ought
7 to do this on the record?

8 A. No.

9 Q. I've been in that situation, Mr. Beauford. You were
10 being pressed for trial, and I gather that is what was
11 going on with you, correct? You were being pressurized
12 from all sides?

13 A. Correct.

14 Q. And you felt like you were on your own?

15 A. Pretty much, yes.

16 Q. And you were pretty much?

17 A. Yes.

18 Q. At some times, don't you agree, when you feel that
19 way it is a good idea to have cocounsel say, wait a min-
20 ute, Percy, we need to go put this on the record?

21 I mean, that's what cocounsel is for?

22 A. That's the purpose of cocounsel most of the time.
23 When you lose sight of something, they pull you back or
24 they see something you didn't see.

25 Q. And that is what you want out of cocounsel?

MR. BEAUFORD ON CROSS

1 A. Yes.

2 Q. Effective cocounsel?

3 A. I agree I want cocounsel to give me that kind of as-
4 sistance when I miss something or allowing something to
5 happen that should not.

6 Q. And you didn't have that in Ms. Hardee Thomas?

7 A. She didn't provide me with the kind of counsel I
8 would want in a case like this.

9 Q. She didn't provide you with anything. Correct?

10 A. She wasn't, I guess, as helpful as I wanted her to
11 be.

12 She wasn't helpful, I would say, at all during this
13 matter.

14 Q. This matter being . .

15 A. The case.

16 Q. The entire case?

17 A. Yes.

18 Q. Do you understand as far as the question of what
19 happened in Chambers between you and the Judge, Ms. Hardee
20 Thomas and the Solicitor, about this continuance motion,
21 because it was in Chambers . .

22 A. I understand that quite well.

23 Q. . . but Judge Buckner doesn't understand it either
24 except for what you remember.

25 A. I understand that.

MR. BEAUFORD ON CROSS

1 Q. So it would have been much better for Judge Buckner's
2 purposes to have this information on the record as to
3 exactly what was said and what information you gave Judge
4 Shuler about why you needed this continuance.

5 Is that fair to say?

6 A. That's correct.

7 Q. Have you had the experience where a Judge takes
8 you back in Chambers and makes a ruling on something and
9 it is not on the record, and you know it's a good idea to
10 have that so you come back out in the Courtroom and put
11 it on the record?

12 A. . .

13 Q. Is that something you really ought to do?

14 A. I've done it lots of times. Most of the times or
15 pretty much all the time.

16 Q. Because some Judges in this State will take you back
17 in Chambers and make a ruling on a matter because they
18 don't want it on the record?

19 A. Correct.

20 Q. You have had that experience?

21 A. A few times.

22 Q. And any time you ask a Judge, Judge, I understand
23 your ruling but I want to go put this on the record, they
24 always do that, don't they?

25 A. Always do what?

MR. BEAUFORD ON CROSS

- 1 Q. They always agree it's got to be put on the record?
- 2 A. Correct.
- 3 Q. But you have to ask for that?
- 4 A. Yes.
- 5 Q. You don't ask, you don't get it?
- 6 A. Most of the time, yes.
- 7 Q. And if you had discussed this back in Chambers with
- 8 Judge Shuler and said, I want to put all this on the re-
- 9 cord, and put Ms. Rickborn's letter in the record; I
- 10 want to show you why I'm prejudiced; I want to show you
- 11 why I have not had a lawyer assisting me in this case, being
- 12 cocounsel -- do you think if you put all of that on the
- 13 record that Judge Shuler probably would have changed his
- 14 mind and given you the continuance?
- 15 A. I'm sure he would have, yes.
- 16 Q. I mean, aside from the fact that the statute says
- 17 there are supposed to be two lawyers in a death penalty
- 18 case and in fact it's required, your own experience is
- 19 two lawyers are really necessary. Isn't that true?
- 20 A. Yes.
- 21 Q. In order to give someone effective assistance of
- 22 counsel?
- 23 A. Yes.
- 24 Q. In a case of this magnitude?
- 25 A. Yes, in a case of this magnitude.

MR. BEAUFORD ON CROSS

1 Q. Now, do you think -- there were several times after
2 the evidence was concluded in this penalty phase where
3 Judge Shuler discussed with Mr. Weik what he would say if
4 he chose to get up for closing argument.

5 Do you remember those?

6 A. Yes.

7 Q. And on several occasions in the transcript, he said
8 you have to confine yourself to matters that are in the
9 record.

10 Do you recall that?

11 A. I remember that, yes.

12 Q. And what an appropriate sentence would be?

13 A. I remember that.

14 Q. Mr. Weik knew that the law the Judge, the guy in
15 charge, that's what he would say, and you would say -- I
16 think you were telling Mr. Weik, and tell me if I'm wrong,
17 that he would go beg for mercy and show remorse?

18 A. Yes.

19 Q. Is that correct?

20 A. Correct.

21 Q. So he's got you, the lawyer, telling him one thing,
22 and the guy who is in charge, the Judge, telling another.
23 Judge Shuler said nothing about expressing remorse or ask-
24 ing for mercy, and he instructed Mr. Weik as to what he
25 could say in his final statement to the jury.

MR. BEAUFORD ON CROSS

1 Is that correct?

2 A. Yes, that's correct.

3 Q. His decision about whether he's going to make a
4 final argument was really Mr. Weik's decision, wasn't
5 it?

6 A. Correct.

7 Q. And it is really something he should decide based
8 on advice that you give him?

9 A. Yes.

10 Q. The instructions that the Court gave Mr. Weik about
11 what he could do in his closing argument to the jury was
12 not a complete explanation of the law in South Carolina,
13 isn't that correct?

14 A. I thought it was incorrect, if you're saying that.
15 Yes.

16 Q. He didn't say you can beg for mercy and you can show
17 remorse?

18 A. No, he didn't say that.

19 Q. And you did not object to Judge Shuler's instruction
20 to Mr. Weik which he gave at least twice?

21 A. Correct.

22 Q. Did Mr. Weik ask you -- I'm sorry. Did you tell Mr.
23 Weik the Judge is wrong and I'm right? You are not con-
24 fined to that; you can ask for mercy and show remorse?

25 A. I didn't say, Mr. Weik, the Judge is wrong and this

MR. BEAUFORD ON CROSS

1 is what we do. I told him basically he could do that. I
2 didn't use the term, the Judge is wrong. I said you can do
3 these things.

4 Q. All he knew from the man in charge was that he could
5 comment on the evidence and what an appropriate sentence
6 would be?

7 A. Well, basically I told him differently, but . .

8 Q. I know you did.

9 A. Yes.

10 Q. But the guy in charge told him something different?

11 A. Yes. The Judge did say something different.

12 (Whereupon, the Court took a brief recess and the
13 matter then resumed)

14 THE COURT: Is the Respondent ready to proceed?

15 MR. ZELENKA: Yes, sir.

16 THE COURT: Very well. Counsel?

17 CROSS EXAMINATION CONTINUED

18 BY MR. O'CONNELL:

19 Q. On page 480, if you would refer to that, sir?

20 A. Yes, 408?

21 Q. Yes.

22 A. Yes, I have it.

23 Q. Beginning on line 12, you asked Judge Shuler for
24 another Blair hearing?

25 A. Page 408?

MR. BEAUFORD ON CROSS

1 Q. No, 480.

2 A. Yes, I have that.

3 Q. What happened or what occasioned you asking him for
4 that?

5 A. . .

6 Q. Did something happen that prompted you to ask for
7 another Blair hearing? Something new happen?

8 A. I need to read forward just to read what's going on
9 during that period of time.

10 Q. Do you recall having . .

11 (Brief pause in the proceeding due to noise in the
12 background)

13 MR. O'CONNELL: I don't believe I have any further
14 questions.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. ZELENKA:

18 Q. Mr. Buford, let me refer you to Plaintiff's Exhibit
19 18. Again, the letter of Marva Hardee Thomas dated April
20 30, 1999.

21 Page one of that -- I would ask you to read the last
22 two sentences on that page and the first sentence on the
23 next page.

24 A. You must know that I sent Donna Schwartz Watts and Dr.
25 McKee all of the documents for this case. I only asked

MR. BEAUFORD ON REDIRECT

1 you to deliver the videotapes to Donna, which she has never
2 seen.

3 I did not tell you to give her anything but the three
4 videos I sent you. Dr. Morgan was just brought into this
5 case within one week of this letter. I never asked you to
6 give him anything. I never had a chance to since he is so
7 new in this case.

8 Q. Okay. So on cross examination, you were asked whether
9 it was your role or your cocounsel's role to deliver mate-
10 rials to the experts. Is that correct?

11 A. That's correct.

12 Q. And does that record reflect also that in the past
13 Marva Hardee Thomas had delivered items to defense experts?

14 A. That's what the letter says.

15 Q. Is that consistent -- is that part of the law consist-
16 ent with your understanding of what her role was?

17 A. Yes. Her role was to work with the experts.

18 Q. And let me ask you to refer to Respondent's Exhibit
19 14 and specifically -- which is your voucher -- and speci-
20 fically to items noted on April 23, 1998 -- excuse me, on
21 July 23, 1998, July 29, 1998 and August 11, 1998.

22 Do you see those items?

23 A. Yes.

24 Q. After viewing that, does that refresh your recollec-
25 tion as to what you were doing on those dates?

MR. BEAUFORD ON REDIRECT

1 A. Yes.

2 Q. Okay. On July 23rd, 1998, it states you reviewed
3 video and audio tapes. Correct?

4 A. That's correct.

5 MR. O'CONNELL: Your Honor, . .

6 THE COURT: Yes, sir.

7 MR. O'CONNELL: I object to the question. He asked
8 him to refresh his recollection, and he didn't lay a foun-
9 dation as to whether he needed his recollection refreshed.

10 THE COURT: Well, if he recalls, Mr. O'Connell, I'm
11 going to allow him to testify. He's handed him the docu-
12 ment.

13 If he knows the answer, whether it is refreshed or
14 whether or not he had prior knowledge, I'll allow him to
15 testify.

16 That objection is overruled.

17 BY MR. ZELENKA:

18 Q. On August 29, 1998, what does your voucher state
19 that you did on that date?

20 A. Reviewed evidence and worked on case.

21 Q. On August 11, 1998, what does that reflect?

22 A. Spoke to Marva about Orders. Reviewed discovery.

23 Q. Okay. Reviewing those matters, that all occurred be-
24 fore January of 1999, and does it reflect your review of
25 materials . .

MR. BEAUFORD ON REDIRECT

1 MR. O'CONNELL: Objection.

2 THE COURT: Sustained.

3 BY MR. ZELENKA:

4 Q. Did you review materials, the State's evidence,
5 before January of 1999?

6 A. Yes.

7 Q. Do your records reflect you reviewed those materials
8 before January of 1999?

9 A. Correct.

10 Q. Do you have any recollection as to whether you
11 specifically interviewed Chris Weik, the brother of the
12 Defendant, sometime prior to trial?

13 A. I don't have any recollection. I mean, I'd have to
14 see faces and I have not spoke to many of the family mem-
15 bers.

16 Q. Do you still have the transcript up there?

17 A. Yes.

18 Q. Would you refer to the record page 446, line one?

19 A. . .

20 Q. Excuse me, page 445, where the Court is speaking on
21 lines 9 through 18.

22 A. I have that.

23 Q. From that is it clear that the Court is allowing
24 you to speak with him ex parte about a matter that is in-
25 volving your representation and the investigation in this

MR. BEAUFORD ON REDIRECT

1 case?

2 A. That's correct.

3 Q. Do you have an understanding that the Judge is autho-
4 rized to review things ex parte with counsel dealing with
5 matters involved -- matters of attorney-client privilege?

6 A. Yeah, I understood that. I don't know that -- look-
7 ing further down, knowing it was ex parte, and line 20 --
8 I can't remember the facts, but I think the Court said
9 the other attorney had a right to be there.

10 So I don't know how that matter went.

11 Q. As far as the continuance motion?

12 A. Yes.

13 Q. So what the Judge is talking about is about other
14 matters ex parte, isn't that correct?

15 A. It is, yes.

16 Q. Counsel on Recross asked you about the Court's inquiry
17 made at the -- prior to the penalty phase and closing
18 arguments, about whether you could argue remorse or mercy,
19 is that correct?

20 A. . .

21 Q. Counsel asked you that on Cross Examination?

22 A. I don't remember. Could you just point me to where
23 it is located?

24 Q. Let me ask this. Is it your recollection at the time
25 of trial that the Trial Judge advised you that you would

MR. BEAUFORD ON REDIRECT

1 not be able to have your client argue mercy or remorse
2 in the case?

3 A. Well, it's not my understanding because when you are
4 at that phase to ask for life, that's mercy. I just don't
5 understand the interpretation.

6 You only have -- if you ask for life, that is mercy,
7 based upon life and death, the only two choices.

8 So, I mean, I don't know if I'm answering your ques-
9 tion, but I didn't -- I don't think he specifically said
10 mercy or whatever, but that is the only choice you've got,
11 to ask for life, which I would say is mercy.

12 Q. Let me ask you to refer to the record on page 481,
13 line one.

14 A. Page 481, line 4?

15 Q. Lines 4 through 10.

16 A. All right.

17 Q. That is regarding your second request for a Blair
18 hearing?

19 A. That's my comments, yes.

20 Q. Do those comments reflect the reason why you were
21 making your request for a second Blair hearing to occur
22 before the trial began?

23 A. That's a little fuzzy, and I think the record -- it
24 is not a good record because I don't know what the situation
25 was that comes up. I don't know what the means right now.

MR. BEAUFORD ON RECROSS

1 In my mind, I don't know what the situation is.

2 Q. Okay, at this time . .

3 A. I don't recall.

4 Q. . . it is suggesting something . .

5 MR. O'CONNELL: Objection.

6 THE COURT: Sustained.

7 MR. ZELENKA: No further questions.

8 MR. O'CONNELL: No recross.

9 THE COURT: As to this witness?

10 MR. ZELENKA: Ask that he be excused.

11 MR. O'CONNELL: No objection.

12 THE COURT: All right, sir, you are excused, and
13 drive carefully on the way home.

14 (Witness excused)

15 THE COURT: Give all the Exhibits back to that nice
16 lady there.

17 All right, counsel, it's my understanding that the
18 Respondent has at least one more witness. Is that cor-
19 rect, sir?

20 MR. ZELENKA: Just one more.

21 THE COURT: Then we will start back at nine thirty
22 A.M. tomorrow morning, and I appreciate your patience,
23 Madam Court Reporter, tonight in staying until twenty minutes
24 to seven so that we could complete that testimony.

25 Thank you, maam.

1 This Court stands adjourned until nine thirty A.M. in the
2 the morning.

3 (Whereupon, the Court stood in recess until September
4 21, 2006)

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1 (The matter came back before the Court on
2 September 21, 2006)

3 THE COURT: Is the Respondent ready to
4 proceed?

5 MR. ZELENKA: The Respondent is ready,
6 Your Honor.

7 THE COURT: Very well. You may call
8 your next witness, Mr. Zelenka.

9 MR. ZELENKA: The State calls Marva
10 Hardee-Thomas.

11 MARVA HARDEE-THOMAS, being duly sworn,
12 testified as follows:

13 THE COURT: Have a seat on the witness
14 stand for me, Marva, and I believe the Court Reporter
15 is very familiar with this name.

16 Your witness, Counsel.

17 DIRECT EXAMINATION

18 BY MR. ZELENKA:

19 Q. Ms. Hardee-Thomas, is that how I should say your
20 name?

21 A. That's fine.

22 Q. State your name for the record, please.

23 A. Marva Hardee-Thomas.

24 Q. All right. And what is your present occupation?

25 A. I'm a contract public defender for Dorchester

- 1 County and I also have a private practice.
- 2 Q. When did you become a member of the Bar in South
3 Carolina?
- 4 A. September 19, 1995.
- 5 Q. Okay. And what was your employment background at
6 that time before you were a member of the Bar?
- 7 A. I was a contract public defender and also had a
8 private practice.
- 9 Q. Okay. And in your responsibilities as a contract
10 public defender, did you represent individuals in the
11 form of felony cases?
- 12 A. Criminal cases. Yes.
- 13 Q. Okay. Prior to your representation of John Weik,
14 had you handled any murder cases before that?
- 15 A. Yes.
- 16 Q. All right. Were you involved in any death
17 penalty cases?
- 18 A. I think one before ... There may have been one
19 before him.
- 20 Q. Okay. And who did you work with on that case?
- 21 A. If I can remember what the case was ... Probably
22 Norbert Cummings.
- 23 Q. Okay. Do you remember how you got involved in
24 John Weik's case?
- 25 A. I was appointed.

1 Q. All right. And subsequent to your appointment,
2 did you become involved with his prior retained
3 attorney? Mr. Beauford?

4 A. Right. From my understanding I was called by him
5 to be advised that he was representing him before and
6 that he was going to contact Judge Luke Brown to be
7 appointed.

8 Q. Okay. And upon your appointment in the case,
9 what did you see your role to be immediately upon
10 appointment in the case?

11 A. Well, I didn't know what was going on but that ...
12 I mean the phone call from Mr. Beauford indicated to
13 me that he was working on the, you know, the murder
14 case but since it was turning to be a death penalty I
15 felt that my role at that point ... I told Mr. Beauford
16 that he needed to get expert witnesses. I'm working
17 on this case immediately.

18 Q. Okay. And what was your role, if any, concerning
19 getting expert witnesses as you understood it?

20 A. Well, I told him first I had to ask and see who
21 he had and I didn't think that there was anyone or any
22 suggestions of anyone so I believe I just used a list
23 that I, you know, used from the previous case and then
24 I guess added a few new people.

25 Q. Okay. Do you remember at all at this time ... Let

1 me ask another question? Have you found your file in
2 this case?

3 A. No. It's my understanding that I - when I was
4 contacted by Mr. McDonald, I had the file and this was
5 before I went on maternity leave ... I had the file,
6 went to Staples, got it copied, he got his copy and I
7 picked my copy up and then from my understanding it
8 was left in my office and from that time period, it's
9 my understanding that my office packed that away along
10 with several other public defender files and brought
11 it to the storage area which is right out the door.

12 Q. Right out the door (inaudible - both parties were
13 speaking).

14 A. Right. And I've had our assistant to try to find
15 any pieces of it but I haven't been able to find
16 anything.

17 Q. Okay. So, essentially since the trial you've not
18 reviewed your file prior to your testimony here today.
19 Is that correct?

20 A. I didn't review the file when I got my file copy
21 for Mr. McDonald nor did I have a chance to view it
22 before coming here.

23 Q. Is that Mike O'Connell?

24 A. I'm sorry, Mr. O'Connell. I'm sorry. No, I
25 haven't had a chance to review that even then.

1 Q. At the time, do you remember at all what
2 witnesses - expert witnesses - you contacted to assist
3 you in this case?

4 A. I remember working with Donna Schwartz-watts for
5 sure. Her boss, Dr. McKee. Bobby Minter. I've
6 always worked with him as an investigator. The person
7 I'm not too familiar with is Patty Rickborn but I
8 probably would have done that too. I don't believe I
9 know her very well but I remember using Dale Davis in
10 the prior and I don't know why I wouldn't have used
11 her unless she was not available.

12 Q. Do you remember if an individual by the name of
13 Scott Parker also assisted you ...

14 A. He may have came later.

15 Q. Okay. And Donna Schwartz-watts' boss. Would
16 that be Doctor Donald Morgan?

17 A. Yes.

18 Q. Okay. And as far as providing information or
19 getting information, who did you rely upon, if anyone,
20 to provide information concerning mitigation evidence
21 for the defense team?

22 A. Mitigation meaning the social aspect? That would
23 have been Mrs. Rickborn, I believe.

24 Q. At some time did you and Mr. Morgan find
25 yourselves in a contractual conflict?

- 1 A. Well, I remember receiving a letter.
- 2 Q. Let me show you Respondent's Exhibit 15 and ask
3 you if that's the letter that you received?
- 4 A. Yes.
- 5 Q. And as a result of that letter, what, if
6 anything, did you do?
- 7 A. I wrote a letter back to her. I know for sure I
8 wrote her a letter back to her.
- 9 Q. Defendant's Exhibit 18. Let me show you what's
10 been ... Near the last three pages is another document.
11 I ask if you can identify that?
- 12 A. Okay. This is the letter I wrote back to her.
- 13 Q. Okay. And what was the reason you wrote that
14 letter back to her?
- 15 A. I guess I was shocked when receiving the letter
16 that she wrote to me.
- 17 Q. And why were you shocked?
- 18 A. Well, you know, it's like if you're saying if you
19 hadn't heard that there was a problem and all of a
20 sudden she writes a letter about a problem you want to
21 address the problem.
- 22 Q. Okay. What were you asking Patty Rickborn to do
23 for you up until that period of time?
- 24 A. Well, see - this was in conjunction with what Mr.
25 Beauford wanted and basically was more so like a

1 directive. What he was looking for. I believe she
2 was trying to gather social information regarding Mr.
3 Weik and I felt if she had any problems doing that she
4 would have, you know, told us.

5 Q. Okay. And as a result of that, you wrote that
6 April 30th letter and expressed some concerns about
7 what you thought that Mrs. Rickborn thought her role
8 was supposed to be in the case. Correct?

9 A. Right. That's correct.

10 Q. And within that letter did you also describe your
11 relationship as far as your role with Percy Beauford
12 and what the defense team and their particular roles
13 were supposed to be at that time?

14 A. Right.

15 Q. On April 29th, when you received that letter and
16 April 30th, when you wrote your letter back to Mrs.
17 Rickborn, what did you think your role was as far as
18 gathering information and your role in the defense of
19 Mr. John Weik?

20 A. Assisting Mr. Beauford with regards to getting
21 prepared for the case.

22 Q. Okay. And specifically, how did that role relate
23 to the presentation and preparation of witnesses at
24 that time?

25 A. Well, in getting directives with regards to

1 what's needed for Mr. Weik. Making sure that - I
2 think she wanted to get social history on him. I
3 didn't know what she needed to do that. Probably like
4 criminal subpoenas. That was easily gotten.

5 Sometimes, you know, if they're not from this
6 county or if they're familiar with the clerk's office
7 they can obtain them themselves but, you know, just
8 something to not abridge them from getting what they
9 needed and helping with the case.

10 Q. Okay. What was your role with particular experts
11 that the defense team had retained at that time? Were
12 you communicating with them at all or were you relying
13 on someone else to do that?

14 A. Well, it depends. It was an individual
15 situation. Say, for example, with say Donna Schwartz-
16 watts. She may have called Mr. Beauford directly or
17 she may have contacted me if she needed something
18 that, you know, I needed to do. It's my understanding
19 that, you know, if I wasn't like a mediator between
20 Mr. Beauford.

21 I was basically helping with regards to getting
22 information. Say, for example, Mrs. Rickborn - she
23 probably could talk directly to Mr. Beauford. But if
24 she needed something that she felt that I could get
25 real fast for her I was there to do that.

1 Q. Okay. In the letter that you wrote on April 30th,
2 look at the last page - excuse me - look at the first
3 page of that letter.

4 A. Um-hmm.

5 Q. The bottom paragraph and let me ask you if that
6 is consistent with what you have done in the case up
7 until that time in relation to Doctor Donna Schwartz-
8 watts?

9 A. Let's see. You're asking the fact that I sent
10 Donna Schwartz-watts and Mr. McKee all the documents
11 in the case?

12 Q. Yes.

13 A. Okay. Okay.

14 Q. Okay. Is that accurate?

15 A. Yes.

16 Q. Okay. And how did you send those materials to
17 them if you recall?

18 A. The U.S. Mail.

19 Q. Okay. All right. Prior to that letter ...

20 A. Or maybe hand delivered because they may have
21 come down.

22 Q. Let me ask you if you can identify this letter
23 for us.

24 A. It's a letter to Lieutenant Paster at the
25 Dorchester County Detention Center.

1 Q. And is it signed by you?

2 A. Yes, it is.

3 Q. Okay ...

4 A. In my office.

5 Q. The letter that you would have prepared?

6 A. Right.

7 Q. Okay.

8 MR. ZELENKA: Your Honor, we would move
9 to introduce this as Respondent's Exhibit 18.

10 THE COURT: Any objections?

11 MS. KIMBROUGH: No objection.

12 THE COURT: Respondent's 18 will be
13 admitted into evidence without objection.

14 Respondent's 18 in evidence.

15 Q. Hand me the last two exhibits you showed the
16 witness please. Respondent's exhibit 18. What is the
17 purpose of that particular letter?

18 A. Basically this was to the jail letting them know
19 that Doctor Donna Schwartz-watts was going to be at
20 the jail on February 26, 1999 at 2:00 PM to see Mr.
21 Weik and to please provide a room so that she, you
22 know, could speak with him.

23 Q. Did you see that as part of your role to do that
24 in assistance of your client in the preparation of
25 this case?

1 A. Yes.

2 Q. Let me show you what has been pre-marked as
3 Respondent's Exhibit 19 and ask if you can indentify
4 that?

5 A. I can.

6 Q. What is that?

7 A. It's a letter to Doctor William Brandon, the
8 University School of Medicine in Columbia, and
9 advising them that Mr. Weik will be at William S. Hall
10 Psychiatric Institute on March 15th and to contact
11 Shirley Sutton to see what time that she would be able
12 to see Mr. Weik.

13 Q. Okay.

14 MR. ZELENKA: Your Honor, we would move
15 Respondent's Exhibit 19 into evidence.

16 THE COURT: Any objection?

17 MS. KIMBROUGH: Without objection.

18 THE COURT: Respondent's 19 in evidence
19 without objection.

20 Q. Okay. At that time, had you already had contact
21 before this letter with the Neurologist, Doctor
22 William Brandon?

23 A. Right.

24 Q. Okay. And do you remember why he was brought on
25 to the defense team?

1 A. He was needed.

2 Q. Okay. Do you remember at all who made that
3 request?

4 A. I believe in talking to Mr. Beauford with regards
5 to the expert. Before I contacted any of the experts,
6 he had knowledge with regards to what they were there
7 for and basically indicated that they would be needed.

8 Q. Let me show you what's been marked as - pre-
9 marked as Respondent's Exhibit 20 and ask if you can
10 identify that?

11 A. This is a letter to James A. Springs, Forensic
12 Consultant in Chapin South Carolina, and basically he
13 was given a copy of the discovery with regards to the
14 Weik's case to review for preparation of trial.

15 Q. Okay. And that's dated March 2nd ...

16 A. 1999.

17 Q. 1999.

18 A. That's correct.

19 MR. ZELENKA: Your Honor, we would move
20 Respondent's Exhibit 20 into evidence.

21 THE COURT: Any objection.

22 MS. KIMBROUGH: Without objection.

23 THE COURT: Respondent's number 20
24 admitted into evidence without objection.

25 Q. Okay. Ms. Hardee-Thomas, do you have any

1 recollection as to what the discovery list was at that
2 time that you would have been providing him?

3 A. I believe Springs, it had something to do with
4 the gun and so he basically would have a copy of
5 police reports and information regarding the gun.

6 Q. Okay. So it's more than a list. I just don't
7 want to put words in your mouth.

8 A. Discovery would be basically he would want to see
9 police reports, anything dealing with Mr. Weik's case
10 so that he could concentrate on the gun.

11 Q. Okay. Is that the material you attached to that
12 document?

13 A. Yes.

14 Q. Okay.

15 A. And I believe that ... I think I also probably
16 arranged something with the Sheriff's office so that
17 he could either test the gun or see the gun also.

18 Q. Okay. Let me show you what's been pre-marked as
19 Respondent's Exhibit 21 and ask if you can identify
20 that document?

21 A. To Mr. James A. Springs also. Please advise that
22 there will be a meeting at the Dorchester County
23 Sheriff's office and with Detective Asbell. I
24 remember this one. And that if you would like to
25 attend the meeting commencing at ten AM to eleven

1 AM (inaudible) so that they could show him the gun.

2 Q. Okay.

3 MR. ZELENKA: Your Honor, we would move
4 to introduce as Respondent's Exhibit 21.

5 THE COURT: Any objection.

6 MS. KIMBROUGH: No objection.

7 THE COURT: Respondent's 21 entered
8 into evidence without objection.

9 Q. Okay. Now that letter is undated but it is
10 referring to a meeting on March 11th, 1999. Is that
11 correct?

12 A. That's correct.

13 Q. Okay. Do you recall if you were present at such
14 a meeting when the evidence was disclosed?.

15 A. I couldn't tell you if I was or not.

16 Q. Okay. Let me show you a letter that's been pre-
17 marked and is Respondent's Exhibit number 22.

18 A. Okay. This is a letter to Bobby Minter in North
19 Charleston. Please advise that there will a meeting
20 at Dorchester County Sheriff with regards to the gun
21 or rifle.

22 MR. ZELENKA: Your Honor, we would move
23 to introduce Respondent's Exhibit 22.

24 THE COURT: Any objection?

25 MS. KIMBROUGH: No objection.

1 THE COURT: Respondent's number 22 in
2 evidence without objection.

3 Q. Okay. Now, that letter was to Bobby Minter. Is
4 that correct?

5 A. Right. The investigator.

6 MR. ZELENKA: Publish the dates of the
7 record of the day of that 22.

8 THE COURT: That's an undated letter
9 also.

10 Q. All right, Judge. That letter was to Bobby
11 Minter about that same March 11th disclosure meeting in
12 evidence.

13 A. Exactly.

14 Q. And what was Mr. Minter's role at that time if
15 you recall?

16 A. He was the investigator in the case.

17 Q. Did you have other communication with Mr. Minter
18 throughout your representation or, excuse me, during
19 your representation with Mr. Weik?

20 A. Right. I have.

21 Q. And was Mr. Minter having discussions with you
22 about the results of his investigation or not?

23 A. Yes. With both of us.

24 Q. Okay.

25 A. If Bobby Minter came to my office and he had

1 some information with regards to something going on in
2 the case I would get Mr. Beauford on so he could hear,
3 you know, first hand and if there was any documents
4 that he had then that was sent to Mr. Beauford.

5 Q. Okay. How was it sent to Mr. Beauford?

6 A. By U.S. Mail.

7 Q. Okay. When you said, get him on, you were having
8 telephone discussions with him?

9 A. Yes. If Bobby Minter came to my office with
10 something that he found out I would get Mr. Beauford
11 on the phone.

12 Q. And those discussions - would Mr. Minter be
13 talking to Mr. Beauford on the telephone?

14 A. Yes.

15 Q. Okay.

16 A. And he talked to him sometimes at Mr. Beauford's
17 office with, you know, with me on the phone. Just in
18 case I needed to do something else.

19 Q. Okay. Let me show you what's been pre-marked as
20 Respondent's Exhibit number 23 and ask if you can
21 identify that document.

22 A. This is a letter to Donna Schwartz-watts. Please
23 advise that there will be a meeting at the Dorchester
24 County Sheriff's with Detective Asbell. Basically, I
25 believe that this had something to do with the

- 1 gun also.
- 2 Q. Okay. Now, Donna Schwartz-watts was your
3 forensic Psychiatrist that you retained in this case.
4 Is that correct?
- 5 A. Yes. Um-hmm.
- 6 Q. Why would you be advising her of a disclosure of
7 evidence meeting in this particular case at that time?
- 8 A. It had to be a directive by Mr. Percy Beauford
9 to, you know, make sure she was there.
- 10 Q. Okay. Do you have any recollections as to
11 whether she was there at that disclosure meeting on
12 March 11th?
- 13 A. I have no idea.
- 14 Q. Okay. You have no idea or you have no
15 recollection or you don't recall the meeting?
- 16 A. I just - I cannot remember at this point.
- 17 Q. You remember there was a disclosure meeting with
18 evidence in this case?
- 19 A. Yes. I remember there was a disclosure.
- 20 Q. Do you remember going to such a meeting?
- 21 A. That I cannot remember putting myself in the
22 meeting. I just can't. I remember seeing something
23 but I just couldn't tell you if I was or what it was.
- 24 Q. Let me show you this final exhibit number 24 and
25 ask if you can identify that.

1 A. A letter to Doctor William Brendan. This was
2 basically talking about a meeting commencing on March
3 11th where - at the Sheriff's office with Detective
4 Asbell and Marshall displayed the evidence in this
5 case.

6 Q. Okay.

7 MR. ZELENKA: Your Honor, we move that
8 to be introduced as Respondent's Exhibit number 24.

9 THE COURT: We don't have a 23. Is
10 that right?

11 MR. ZELENKA: Yes. That was the letter
12 to Doctor Schwartz-watts. At least that's what I have
13 written down.

14 THE COURT: You want to not introduce
15 it.

16 MR. ZELENKA: Your Honor ...

17 THE COURT: Have you got it?

18 MR. ZELENKA: Your Honor, I would move
19 to introduce Respondent's Exhibit number 23.

20 THE COURT: Any objection?

21 MS. KIMBROUGH: No objection.

22 THE COURT: Identify it for the record.

23 MR. ZELENKA: Letter addressed to
24 Doctor Donna Schwartz-watts undated and signed by
25 Marva Hardee-Thomas.

1 THE COURT: Very well. And as for 24.

2 As to Respondent's 24. Any objection?

3 MS. KIMBROUGH: No objection.

4 THE COURT: Very well. Respondent's 23
5 and 24 admitted into evidence without objection.

6 MR. ZELENKA: Thank you, Judge. My
7 apologies.

8 Q. Why would this letter to Doctor Brandon, the
9 Neurologist, have been written with respect to a
10 disclosure meeting of evidence on March 11th, 1999?

11 A. It would have to be a directive by Mr. Beauford
12 to make sure that he was advised about a discovery
13 meeting at the Sheriff's office.

14 Q. Okay. And why would you have written that letter
15 instead of Mr. Beauford?

16 A. That was my job.

17 Q. Let me ask you if you can identify Respondent's
18 Exhibit number 25. Pre-marked. Excuse me.

19 A. This is a letter to Godfrey McKee.

20 Q. Geoffre McKee?

21 A. G-E-O-F-F-R-E. Geoffre. Okay. Geoffre McKee,
22 indicating that there was a meeting at the Sheriff's
23 office where Detective Asbell and Detective Marshall
24 would display evidence on March 11th.

25 Q. Okay. And that's an undated letter?

1 A. Yes.

2 MR. ZELENKA: Okay. We would move to
3 enter that into evidence, Your Honor.

4 THE COURT: As to 25.

5 MS. KIMBROUGH: No objection.

6 THE COURT: Respondent's Exhibit number
7 25 is admitted into evidence without objection.

8 Q. Okay. Ms. Hardee-Thomas, why would that letter
9 have been written to your Forensic Psychologist,
10 Doctor Geoffre McKee at that time?

11 A. To let him know that there was a meeting with
12 regards to evidence.

13 Q. And why would you have written that particular
14 letter to Mr. McKee?

15 A. As a directive from Mr. Beauford to let them know
16 to be at the meeting.

17 Q. Okay. Do you recall having any independent
18 contact with Mr. McKee prior to that time?

19 A. Probably calling him to see if he could come
20 aboard with regards to being an expert.

21 Q. Okay. In each of those exhibits that we've
22 talked about. The letters drafted by you. Copies of
23 those letters were also sent to Percy Beauford. Is
24 that correct?

25 A. That's correct.

1 Q. Let me show you what's been pre-marked as
2 Respondent's Exhibit number 26 and ask if you can
3 identify that document?

4 A. This is a letter to Patty Rickborn, the
5 mitigating investigator, basically telling her that
6 there is a meeting at the Sheriff's office and
7 Detective Asbell and Marshall will display evidence.

8 Q. Okay. That's an undated letter.

9 A. Yes, it is.

10 MR. ZELENKA: Your Honor, we would move
11 that as Respondent's Exhibit number 26.

12 THE COURT: Any objection?

13 MS. KIMBROUGH: No objection.

14 THE COURT: Respondent's 26 in evidence
15 without objection.

16 Q. And again, Ms. Hardee-Thomas, why would you have
17 written that letter?

18 A. On direction by Mr. Beauford to just let Ms.
19 Rickborn know that there is a meeting where we were
20 going over evidence.

21 Q. And again prior to March 11th, 1999, what was the
22 role of Ms. Rickborn in this case?

23 A. She's a mitigating investigator.

24 Q. Okay. And she was working for the defense team
25 to do what?

1 A. Get mitigating evidence.

2 Q. Ms. Hardee-Thomas, let me show you another
3 document and ask if you can identify that document?

4 A. Okay. This a letter to Doctor Donna Schwartz-
5 watts in Columbia. I am requesting that you see John
6 Weik as soon as possible. It's very important that I
7 know what's going on with him before April 24th. I
8 need to give Mr. Bailey 30 days notice in Mr. Weik's
9 capacity. I had to have my ...

10 Q. Hold on one second. Oh- go ahead.

11 A. I had to have my secretary to write this. I may
12 have been in say, General Sessions court or something
13 like that but this is a letter that was written by my
14 secretary. She signed my name and signed her name
15 after. That's how I know it had to have been a phone
16 call from somewhere else where I called her to make
17 sure that that was sent out.

18 Q. Okay.

19 MR. ZELENKA: Your Honor, we would move
20 that as Respondent's Exhibit number 27.

21 THE COURT: Any objection.

22 MS. KIMBROUGH: Without objection.

23 THE COURT: Respondent's 27 in evidence
24 without objection.

25 Q. Okay. So, what would the purpose of that letter

1 have been to Doctor Donna Schwartz-watts?

2 A. Well, if there was a letter that came from my
3 office that I didn't sign - I was not there. I'm
4 saying I may have been in General Sessions. I would
5 have gotten a call by Mr. Beauford with regards to
6 this or in contact with him in getting information
7 that he wanted with regards to Mr. Weik.

8 Q. Okay. And that letter references something
9 happening about April 24th. Do you recall at this time
10 why April 24th was an important day for wanting an
11 evaluation done by?

12 A. No.

13 Q. Okay. Let me show you what's been pre-marked as
14 Respondent's Exhibit 28 and ask if you can identify
15 that document?

16 A. Okay. This is a letter to Mr. Beauford and it's
17 dated August 17th, 1998. Enclosed please find the
18 curriculum vitae of George Stanley including this item
19 in the documents we have to be submitted for funding
20 of our other experts.

21 Q. Okay.

22 MR. ZELENKA: Your Honor, we would move
23 that into evidence. It's a letter dated August 17th,
24 1998.

25 MS. KIMBROUGH: Without objection.

1 THE COURT: Respondent's 28 admitted
2 into evidence without objection.

3 Q. Okay. In that letter dated August 17th, 1998, it
4 reflects that Doctor Donna Schwartz-watts was going to
5 be seeing your client at some time in the near future.
6 Is that correct?

7 A. Right. Since she was in Charleston, she may have
8 called me and said that she was going to be in
9 Charleston in that area and basically I was taking, I
10 guess, giving him information with regards to what was
11 going on.

12 The curriculum vitae, with regards to Stanley,
13 and by the way Donna Schwartz-watts was going to be in
14 the area and wanted to see Mr. Weik since she was
15 going to be in Charleston and that I would see him on
16 Thursday for lunch at 1 PM to discuss the Weik matter.

17 Q. Okay. So at that time, you had already had
18 communication with Donna Schwartz-watts some nine
19 months before the trial was about to begin.

20 A. That's correct.

21 Q. Okay. Let me show you what's been pre-marked as
22 Respondent's Exhibit number 29 and ask if you can
23 identify that document?

24 A. Okay. This is a letter dated April 19th, 1999, to
25 Patty Rickborn with Rickborn Investigations in

1 Columbia. Enclosed please find three video tapes for
2 your review regarding the above case and that was Mr.
3 John Weik's case.

4 Q. Okay.

5 MR. ZELENKA: Your Honor, we would move
6 that into evidence as Respondent's Exhibit 29.

7 THE COURT: Any objection?

8 MS. KIMBROUGH: No objection.

9 THE COURT: Respondent's 29 in evidence
10 without objection.

11 Q. Okay. Ms. Hardee-Thomas, what would have been
12 the purpose of writing that particular letter?

13 A. Basically to give Mrs. Rickborn evidence that I
14 had with regards to Mr. Weik.

15 Q. And that evidence was video tapes of his
16 confession?

17 A. Right.

18 Q. Okay. Had you reviewed those video tapes before
19 you submitted them to Ms. Rickborn?

20 A. I'd seen them. Not in it's entirety but enough
21 to know that - what was on them and in discussing with
22 Mr. Beauford he indicated to make sure that she
23 received those.

24 Q. Okay. I want to follow up on that. Not in it's
25 entirety at the time you submitted them to Ms.

1 Rickborn or not in it's entirety throughout your
2 representation?

3 A. Well, what I would have done is gone through them
4 with regards to what said and fast forwarded so I
5 couldn't tell you - say for example, in fast
6 forwarding, what was not said but I went through them
7 fast forwarding, you know, to know what was on them.
8 If there was something pertinent I would know it was.

9 Q. Okay. Did you view in it's entirety of your
10 client's statement with law enforcement on the video
11 tape?

12 A. Yes.

13 Q. Okay. You didn't fast forward through that. Is
14 that correct?

15 A. No. No.

16 Q. Okay. I just want to be (inaudible) for the
17 statement. And did you do that at the time before you
18 submitted that to Ms. Rickborn?

19 A. Yes.

20 Q. Okay. Did you review those tapes afterwards
21 also? Do you recall?

22 A. I may have.

23 Q. I'm going to show you what's been pre-marked as
24 Respondent's Exhibit number 30 and ask if you can
25 identify that document?

1 A. This is a letter dated April 26, 1999, to the
2 detention center. Basically I would like to make
3 arrangements for the following doctors to see Mr. Weik
4 and that was Doctor McKee on April 27th, 1999, at 10
5 AM. He was coming to see Mr. Weik. And Doctor Donald
6 Morgan was coming on April 30th at 10 AM to see Mr.
7 Weik.

8 Q. Okay.

9 MR. ZELENKA: Your Honor, we would move
10 to enter into evidence Respondent's Exhibit 30.

11 THE COURT: Any objection?

12 MS. KIMBROUGH: No objection.

13 THE COURT: Respondent's 30 into
14 evidence without objection.

15 Q. Okay. And again, why would you have written that
16 letter?

17 A. Basically if these individuals were involved in
18 the case they wanted to see Mr. Weik. Wanted to make
19 sure that it was clear for them to see him without any
20 interruptions or if they wanted to take Mr. Weik ... If
21 the jail wanted to take him somewhere to make sure
22 that he was available on those dates so that he could
23 see these individuals.

24 Q. Okay. On Respondent's 30, it doesn't include
25 your signature but it has a CC in handwriting on that.

1 A. Right.

2 Q. Is that your handwriting or your secretary's
3 handwriting?

4 A. This has to be the secretary's handwriting with
5 the CC but this document is in memo form just to make
6 sure that it was sent out and clear that he would be
7 able to be seen by these individuals.

8 Q. Okay. Let me ask you if you can identify
9 Respondent's Exhibit 31.

10 A. This is a letter dated April 26 to Doctor Donald
11 Morgan in Blackstock, South Carolina. Basically
12 telling him that I need for him to see Mr. Weik as
13 soon as possible and his assistance is greatly needed
14 in this case. And the dates that he could see Mr.
15 Weik and what his hourly charges are. Two hundred
16 dollars an hour.

17 Q. Okay.

18 MR. ZELENKA: Your Honor, we would move
19 this in evidence as Respondent's Exhibit number 31.

20 THE COURT: Any objections?

21 MS. KIMBROUGH: Without objection.

22 THE COURT: Respondent's 31 in
23 evidence.

24 Q. Okay. Ms. Hardee-Thomas, now why would that
25 letter be written to Doctor Morgan if you recall?

1 A. Basically getting him on board with regards to
2 the involvement in this case.

3 Q. Okay. On board meaning retaining him?

4 A. Right.

5 Q. Okay. And what was the date that he was
6 retained?

7 A. I don't know exactly the date he was retained.

8 This was a letter that was written April 26, 1999.

9 Q. Okay. So prior to that time, you had confirmed
10 at least with him his rate. Is that correct?

11 A. Well, I believe he had ... I may have spoken to
12 him on the telephone for me to have an amount of that
13 nature. I can't remember if I got a curriculum vitae
14 from him. I usually do but I still don't know if he
15 had been retained before or after that time period.

16 Q. Let me show you what's been pre-marked as
17 Respondent's Exhibit number 32 and ask if you can
18 identify that?

19 A. This is a memorandum dated May 6th, 1999, to Mr.
20 Beauford regarding Mr. Weik. Basically it indicates ...
21 I'm sorry.

22 Q. Okay. Was that memo prepared by you?

23 A. Yes, it was.

24 MR. ZELENKA: Your Honor, we would move
25 that into evidence and it's Respondent's Exhibit 32.

1 THE COURT: Any objection?

2 MS. KIMBROUGH: Without objection.

3 THE COURT: Respondent's 32 in evidence
4 without objection.

5 Q. Okay. Ms. Hardee-Thomas, why was that memorandum
6 prepared to Mr. Beauford?

7 A. Let me see. Okay, if it was written by me, I
8 guess, what I saw ... This was my understanding of what
9 I saw needed that I didn't have an understanding if he
10 had already taken care of. I just wanted to make sure
11 that since we hadn't spoken and I hadn't had clarity
12 with regards to, you know, he was going to do this.
13 What was he going to do?

14 Q. In light of discussion of what you thought needed
15 to be done then and a confirmation with Mr. Beauford
16 with what you thought the deadlines were.

17 A. Well, it may have been something that we
18 discussed and I wanted to make sure that it was going
19 forth.

20 Q. Specifically, what was that?

21 A. It's a May 18th, 1999, hearing in (inaudible)
22 issues. Blair hearing is A. B - defense argument
23 Jackson v Dino. C - jurors who have a reason to be
24 excused will come into Court. I have deadlines. May
25 20th, 1999, give Solicitor names of all witnesses

1 including birth dates and social security numbers. B-
2 must exchange expert written report before the Blair
3 hearing on either May 12th or May 15th, 1999, which is
4 seven to ten days before the hearing.

5 On May 5th, 1999, must inform expert of this
6 request. If Solicitor does not give his report,
7 defense is not responsible for giving their report.
8 And orders - A - judge orders Mr. Weik to be brought
9 back to Dorchester when he has completed testing in
10 Columbia. B - defense is ordered not to mention to
11 the jury that if Mr. Weik does not get the death
12 penalty, he will get life. And C - two witnesses will
13 testify for the Solicitors regarding identification.
14 Thomas Evans and Mr. Hutto. And I put P.S., I still
15 have not received a copy of Doctor Brandon's report.
16 I've enclosed a copy of Mr. Weik's suicide letter, a
17 picture of how he tried to hang himself, and a copy of
18 Corporal Korsky's report on Mr. Weik's suicide
19 attempt.

20 Q. And you were providing this information to Mr.
21 Beauford.

22 A. Right.

23 Q. Is that correct?

24 A. Right.

25 Q. Now at that time which I believe it's dated May

1 6th, 1999. What did you see as your role in the
2 defense preparation of Mr. Weik's case to be?

3 A. I was helping Mr. Beauford.

4 Q. Okay. Did you ...

5 A. Assisting Mr. Beauford.

6 Q. Were you providing that - were you directing Mr.
7 Beauford to do things or were you advising him to do
8 things?

9 A. Well, if I wrote a letter like this, we had to
10 have had a discussion and this was like a reiteration
11 to make sure that we have done certain things because
12 there were like deadlines set. If he had discussed
13 something and I wasn't too sure I wrote it down to
14 just make sure. Clarity with regards to what's going
15 to be done.

16 Q. Okay. Take that and put it back on the Court
17 Reporter's table and let me see that exhibit.

18 Ms. Hardee-Thomas, let me show you what's been pre-
19 marked as Respondent's Exhibit 33 dated May 7, 1999,
20 and ask if you can identify that.

21 A. This is a letter dated May 7th, 1999. To whom it
22 may concern, please be advised that Mr. Scott Parker,
23 private investigator, is presently working with
24 Attorney Percy Beauford and Marva Hardee-Thomas.
25 Please allow Mr. Parker to see and speak with Mr. John

1 Weik. This was a letter to the jail.

2 Q. Okay. But at that time - excuse me.

3 MR. ZELENKA: Respondents will move to
4 introduce that as Respondent's Exhibit 33.

5 MS. KIMBROUGH: Without objection.

6 THE COURT: 34 isn't it? Didn't we
7 just admit 33?

8 COURT REPORTER: This is 33. May 7th is
9 33.

10 THE COURT: Very well. Respondent's
11 Exhibit 33. Is there any objection?

12 MS. KIMBROUGH: Without objection.

13 THE COURT: Respondent's Exhibit 33
14 admitted into evidence without objection.

15 Q. Ms. Hardee-Thomas, that includes both your
16 signature and Mr. Beauford's signature. Is that
17 correct?

18 A. That's correct.

19 Q. And at that time it reflects that you retained
20 Mr. Scott Parker to assist you in your mitigation?

21 A. Correct.

22 Q. And what was the purpose of that document at that
23 time dated May 7th, 1999?

24 A. Well, this had to have been faxed to the jail so
25 that Mr. Scott Parker could basically see Mr. Weik.

1 (End of tape)

2 Q. Show you what's been pre-marked as Respondent's
3 Exhibit number 34 and ask you if you can identify that
4 document?

5 A. It's an ex parte affidavit of Mr. B.J. John,
6 private investigator.

7 Q. And what's the date of the affidavit?

8 A. The 7th of May, 1999.

9 Q. Okay.

10 MR. ZELENKA: Your Honor, we would move
11 to introduce this document into evidence as
12 Respondent's Exhibit number 34.

13 MS. KIMBROUGH: Without objection.

14 THE COURT: Respondent's 34 in evidence
15 without objection.

16 Q. Okay. And do you recall what the purpose of that
17 document was?

18 A. It's says after conferring with the above named
19 attorneys. It's Marva Hardee-Thomas and Mr. Percy
20 Beauford. In reference to charges lodged against the
21 defendant, the amount of in mitigating investigation
22 has been completed. It normally takes several months
23 at a minimum to conduct and complete a mitigating
24 phase investigation. He advised the attorneys for
25 defense that the court date was May 24th and being

1 so close would not allow us ample time to adequately
2 conduct a mitigating phase investigation.

3 Q. He is also asking at least two months to prepare
4 that. Is that correct?

5 A. Right. At the bottom it says that he would
6 request that he be allowed to conduct a mitigating
7 phase investigation in the minimum time. The amount
8 of time requested that the trial be continued for at
9 least two months to give him adequate time to complete
10 that mitigating phase.

11 Q. Okay. And that was dated May 7th, 1999?

12 A. Right.

13 Q. And what date does it say that he is having his
14 discussion with you about doing the mitigation
15 direction? I refer you to the first paragraph.

16 A. That on May 6th he was contacted by Marva Hardee-
17 Thomas and Mr. Percy Beauford for the defense in
18 reference to conducting a mitigating investigation.

19 Q. Okay. So that suggests that the first time Mr.
20 John's firm was contacted was on May 6th, 1999. Is
21 that correct?

22 A. Correct.

23 Q. Do you know why Mr. John's firm who works with
24 Scott Parker was contacted at that date at that late
25 stage?

1 A. I believe because Mrs. Patty Rickborn was no
2 longer working as a mitigating investigator.

3 Q. So up until that period of time do you believe
4 you still have mitigation investigator, Patty
5 Rickborn, working in the case until there was a need
6 to hire him. Is that correct?

7 MS. KIMBROUGH: Objection. Leading.

8 THE COURT: Sustained. Rephrase your
9 question.

10 Q. What was the reason that Mr. John's firm was
11 contacted about providing a mitigation investigation?

12 A. To take over where Ms. Patty Rickborn was not
13 working in that capacity.

14 Q. And why was Ms. Rickborn not working in that
15 capacity at that time but at least on March 6th, 1999?

16 A. I believe she no longer wanted to work on the
17 case.

18 THE COURT: Counsel, you handed my
19 Exhibit 34 and it refers to May 6th and not March. Did
20 your question ...

21 MR. ZELENKA: My apologies. I
22 misspoke.

23 Q. May 6th is correct. Ms. Hardee-Thomas, let me
24 provide you with Respondent's Exhibit number 35 and
25 ask if you can identify that document.

1 A. It's dated May 14th, 1999, on my public defender
2 letterhead to Mr. Weik. Basically it says, enclosed
3 please find a copy of the death penalty statutes and
4 sentencing procedures for your review. This is for
5 you to read and both attorneys will again review the
6 entire statute with you.

7 Q. Okay.

8 A. And he signed it when he received it May 14th,
9 1999.

10 MR. ZELENKA: Respondent's will move to
11 introduce Respondent's Exhibit number 35.

12 MS. KIMBROUGH: Without objection.

13 THE COURT: Respondent's 35 in evidence
14 without objection.

15 Q. What was the purpose of that letter being
16 written?

17 A. Well, basically if I had any documents to give to
18 Mr. Weik, I would give it to him but I would make him
19 sign for it.

20 Q. Okay. In particular, what document does that
21 letter reference that were given to him?

22 A. This is a copy of the death penalty statute and
23 the sentencing procedures.

24 Q. Okay. And the effect of Mr. Weik's signature on
25 that. Do you recall what that is for?

1 A. Well, basically, that he personally received it
2 and on what date he received it.

3 Q. Do you have a recollection of having given him
4 the statutes and the sentencing procedures?

5 A. At the jail.

6 Q. Do you have a recollection as to whether, in
7 fact, you went over those procedures with him?

8 A. Yes, we did.

9 Q. Okay. Had you gone over those procedures before?

10 A. I believe we had.

11 Q. Had you reviewed the death penalty statutes
12 before that date, May 14th, 1999?

13 A. I had.

14 Q. All right. Now, after May 14, 1999, with the
15 trial beginning within ten days. What did you see
16 your role in presentation of the defense of Mr. Weik?

17 A. Just assisting Mr. Beauford.

18 Q. Okay. Were you prepared to take any of the
19 State's witnesses or the defense witnesses at that
20 time?

21 MS. KIMBROUGH: Objection. Leading.

22 THE COURT: Sustained. Rephrase your
23 question.

24 Q. What was your role with Mr. Weik concerning the ...
25 Excuse me. With Mr. Weik and Mr. Beauford concerning

1 the presentation of any witnesses in this case?

2 A. Basically, I believe my role was to help Mr.
3 Beauford. I had not - we had not basically sat down
4 and discussed what witnesses I was going to take or
5 anything of that nature. I remember him asking me if
6 this was a time of trial, you know, if I wanted to ask
7 some questions of some witnesses and I said no because
8 we hadn't worked with regards to saying, well I would
9 take this witness and I will take this witness.

10 We hadn't - I hadn't been placed in that
11 capacity. I know I've worked in a death penalty case
12 beforehand and way before, you know, you know what you
13 are going to be doing but it's like I was assisting
14 him and he was basically going to be doing all the
15 questioning.

16 Q. Were there any witnesses who you desired to take
17 at that time in the trial?

18 A. I don't believe I was in a position to basically
19 question any witness because I was in a position to
20 help Mr. Beauford.

21 Q. Okay. At the time of the trial, did you have any
22 expectation that you'd be ... When the trial began, did
23 you have any expectation that you'd be taking any of
24 the witnesses presented in the case?

25 A. No.

1 Q. All right. Why was that?

2 A. I believe it was the position that I was placed
3 in with regards to assisting him and he was basically
4 going to be doing the questioning.

5 Q. With regard to any strategy in the case, what was
6 your want?

7 A. I was assisting Mr. Beauford. I was not given
8 any information with regards to discussing strategy.
9 I was there with regards to talking with Mr. Weik,
10 talking with the investigators, talking with the
11 clinical people but with regards to Mr. Beauford and I
12 basically saying, well you're going to basically be
13 responsible for this. You're going to be responsible
14 for that. We never had that type of dialogue. It was
15 always - Mr. Beauford was handling the case.

16 Q. Now, at the time of the trial, did you sit in
17 Court throughout the time - the trial?

18 A. I did.

19 Q. Were you present during the voir dire?

20 A. I was.

21 Q. Okay. During that period of time, did you have
22 any discussion even with you client or Mr. Beauford
23 about what was going on in Court?

24 A. We discussed with each other about jurors and,
25 you know, information but I was there to assist him.

1 Q. If you ran into a problem would you take notes or
2 pass notes if you can recall?

3 A. I remember doing that.

4 Q. Okay. And why did you do that?

5 A. I was assisting him, sir.

6 Q. Did you consider yourself an attorney in the
7 case?

8 A. I was an attorney assisting Mr. Beauford.

9 Q. Okay. In your deposition, you referred to
10 yourself at some point as his administrative
11 assistant. Explain why you used that phrase at that
12 time of the deposition yet you're saying more than
13 that?

14 A. Well, I felt that I was the paper person. I was
15 doing all the paper trail with regards to making sure
16 everyone got what they needed and if there was
17 something that needed to be sent or, you know,
18 received I was that person and that's why I felt that
19 I was the administrative person.

20 Q. Did you - the materials that came to you, did you
21 provide those materials to Mr. Beauford? Let me ask
22 this question again. Who had the file of the case,
23 the State versus John Weik?

24 A. Both of us. If the State had evidence, the State
25 would send Mr. Beauford a file and send me a file.

1 Q. Okay.

2 A. I didn't have to worry about sending him evidence
3 because my evidence would technically go to the
4 experts.

5 Q. Okay. But as far as information that you got
6 from any of the investigators directly to you, what
7 did you do with that information?

8 A. Forwarded it to Mr. Beauford. If they didn't
9 speak to him themselves.

10 Q. Do you recall if you did that every time before
11 the trial began or on occasion?

12 A. Well, at the trial I believe they were dealing
13 directly with him. It wasn't a ... I'm going to use it
14 for example. It was a situation where they would
15 call him for direct information but if they needed
16 something like subpoenas or if they needed something
17 that they couldn't get from him, then they would call
18 me. Like if he hadn't responded to something then
19 they would call me.

20 Q. At this time I have no further questions, Your
21 Honor.

22 THE COURT: Mr. O'Connell, I'm going to
23 take my one and only break this morning right now
24 before we begin cross examination.

25 (Short break in testimony)

1 (Court resumes)

2 THE COURT: Is the Respondent ready to
3 proceed?

4 MR. ZELENKA: Yes, Your Honor.

5 THE COURT: Very well. Cross
6 examination.

7 MS. KIMBROUGH: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. KIMBROUGH:

10 Q. Good morning, Ms. Hardee-Thomas, how are you?

11 A. Good morning.

12 Q. Ms. Hardee-Thomas, do you recall when you were
13 first appointed to represent Mr. Weik?

14 A. I don't have the exact date, ma'am. There should
15 be a court appointment that I indicated that was in
16 the clerk's office as to my appointment.

17 Q. All right. Nineteen.

18 MS. KIMBROUGH: Is that right, Judge?

19 THE COURT: Pardon.

20 MS. KIMBROUGH: Applicant's 19. Is
21 that the next exhibit you have?

22 THE COURT: Correct.

23 Q. Ms. Hardee-Thomas, I want to show you what has
24 been pre-marked as Plaintiff's Exhibit 19 and see if
25 you can identify that document?

1 A. Okay. Defense of Indigents act. This is - this
2 would have been given to me in General Sessions with
3 regards to the appointment and it's dated July 20,
4 1998. That's when I was appointed to represent Mr.
5 Weik.

6 Q. Okay. Thank you.

7 MS. KIMBROUGH: Your Honor, I'd move to
8 admit this at this time.

9 MR. ZELENKA: No objection.

10 THE COURT: Applicant's Exhibit 19 is
11 admitted into evidence without objection. In
12 evidence. Number nineteen.

13 Q. So July of '98 would have been ten months before
14 the actual trial took place?

15 A. Correct.

16 Q. Do you recall when you first had contact with
17 Eddie?

18 A. Probably that day.

19 Q. And your contact with Eddie would have been
20 limited to I gather visiting him in the jail.

21 A. Right. Or if he was brought over here. Before
22 they take them back I may have been able to speak to
23 him in the back but definitely at the jail.

24 Q. Okay. So after you met him that first day, all
25 the subsequent contacts I gather would have been

1 at the Dorchester County Detention Center?

2 A. Yes, ma'am.

3 Q. Okay. And when you go to the Dorchester County
4 Detention Center, is it customary to provide
5 identification so they know who you are ...

6 A. If you are - how do I say this - if you are like
7 a public defender I don't ever bring my
8 identification. I usually sign in. I mean, it's not
9 until like recent that they started a new procedure
10 where they wanted to see your ID but if you come there
11 all the time, I don't ever present my ID.

12 Q. And you don't recall having to do that in this
13 case?

14 A. No. I mean - let me see, in 1998 was three
15 years since I've been practicing and I wouldn't
16 remember having to take a photo ID to the Dorchester
17 County Detention Center to get in. They have a sign
18 in sheet that you have and sometimes they, you know,
19 would write something down in their books saying that
20 you were there.

21 Q. Okay. What about the bar card?

22 A. Bar card would have been ... I don't even remember
23 having that. When I go there, I have pieces of paper
24 and a pen. I don't remember having to provide those
25 items as a public defender.

1 Q. Okay. All right. Let me just show you what's
2 been marked as Plaintiff's Exhibit 12 and just for
3 purposes of the record, one, two, three... page seven
4 of Plaintiff's Exhibit 12 and ask if you can identify
5 the information contained on that page.

6 A. It looks to be my bar card, Marva Hardee-Thomas
7 bar card, and then there is a drivers license with
8 regards to Percy Beauford.

9 Q. Okay. And do you see the date?

10 A. It's a date that's written on there.

11 Q. Okay. Can you read that as well?

12 A. The date that's written on there is December 30th,
13 1998. Time - 12:40.

14 Q. Okay. Do you recall having to present your bar
15 card?

16 A. Well, apparently I had it then but I don't
17 remember ever having to, you know, present a card to
18 go see any of my clients.

19 Q. Okay.

20 A. I hate to say this. They probably were showing
21 off since I was there with Mr. Beauford. He's not
22 familiar with that detention center so ... It's just
23 not common for me to take my bar card.

24 Q. Okay.

25 A. Or ID.

1 Q. Sometimes they did.

2 A. Right.

3 Q. Fair enough. And do you recall your deposition
4 in August of this year?

5 A. I did do a deposition.

6 Q. Okay. And we were all there.

7 A. Well, you and Mr. ...

8 Q. Mr. O'Connell and Mr. Zelenka.

9 A. Yes. Yes.

10 Q. And we had an assistant, Kate, who was also
11 there.

12 A. That's correct.

13 Q. Okay. And this was on August 17th.

14 A. Of this year.

15 Q. Yes, ma'am. All right. And I believe Mr.
16 Zelenka asked you a little bit with your relationship
17 with Percy Beauford and sort of what - how you all
18 worked together on this case. And if I understood,
19 now do you have a copy of your deposition?

20 A. No.

21 Q. I'm going to refer you to specific parts of it.
22 Referring to page 65 in the deposition. Your Honor,
23 may I approach the witness?

24 THE COURT: You may.

25 MS. KIMBROUGH: Thank you.

1 THE COURT: Do you have a copy for the
2 Court?

3 MR. O'Connell: I guess we don't,
4 Judge. I'm sorry.

5 MS. KIMBROUGH: May I have the Court's
6 indulgence?

7 Q. I'll just ask you some general questions.

8 A. Okay.

9 Q. In the deposition, do you recall sort of
10 characterizing your role in this case as that of a - I
11 think you said a worker bee?

12 A. Administrative person.

13 Q. Yes, ma'am. And I believe you also used the
14 term, paper person, in that deposition as well here
15 today?

16 A. Correct.

17 Q. Okay. I believe Mr. Zelenka handed you a number
18 of pieces of correspondence that you sent to the
19 detention center.

20 A. Yes.

21 Q. Okay. And if I understand your testimony
22 correctly, you essentially let Mr. Beauford tell you
23 or sort of give you your marching orders.

24 A. Umm.

25 Q. He asked you to do it and you did it?

1 A. Right.

2 Q. Okay. And otherwise, you let him direct the
3 pace. Would that be fair to say?

4 A. He was lead counsel. Yes, he was directing as
5 far as trying the case ...

6 Q. Okay.

7 A. But as far as evidence that would come in, you
8 know, if the person came to me first I'd make sure he
9 knew about it through a phone call or information or
10 definitely they'd visit both, you know, entities.

11 Q. Okay. So part of your role was providing Mr.
12 Beauford with the information that was sent to you
13 from experts, investigators, and any other sort of
14 outside help.

15 A. Correct.

16 Q. And in that regard, did you become involved or
17 did Percy become involved with Patty Rickborn?

18 A. Correct. I did.

19 Q. Okay. And Ms. Rickborn appears to have sent you
20 and I'm referring to Plaintiff's Exhibit 18. Just the
21 very first page. May I approach the witness, Your
22 Honor?

23 THE COURT: You may. Are you going to
24 use - is that our exhibit?

25 MS. KIMBROUGH: Yes, sir.

- 1 THE COURT: All right.
- 2 Q. March - the very first page. Does it reflect
- 3 what date Ms. Rickborn was contacted or retained?
- 4 A. I have no idea if this is the date but this
- 5 letter is sent March 1, 1999. To whom it may concern.
- 6 I am a licensed private investigator in the state of
- 7 South Carolina. Is this the introduction to
- 8 curriculum vitae? Telling what she does? I'm not ...
- 9 This is what you've handed me. A letter indicating
- 10 what she does.
- 11 Q. Yes, ma'am. Have you seen that before? Do you
- 12 recall that?
- 13 A. Not right off hand because I ... Not right off
- 14 hand. If she sent it to me she sent it to me but I
- 15 couldn't say that ... Just like I couldn't say that I
- 16 received anything from Mr. McKee because I don't have
- 17 it in front of me.
- 18 Q. All right. Do you recall specifically when Patty
- 19 Rickborn was hired?
- 20 A. I do not.
- 21 Q. Okay. Would it have been around March 1st of '98?
- 22 A. It could have been.
- 23 Q. Okay.
- 24 A. 1998 or 1999?
- 25 Q. 1999. I apologize.

- 1 A. Okay. It could have been.
- 2 Q. And what was the purpose in hiring her?
- 3 A. She's a mitigating investigator.
- 4 Q. Okay. Why is that important? Why was that
- 5 important?
- 6 A. Well, what we wanted her to do was basically get
- 7 the social history with regards to Mr. Weik.
- 8 Q. And why was social history so important in this
- 9 case?
- 10 A. To get a little bit of information regarding his
- 11 background.
- 12 Q. Okay. Why would it have been important in the
- 13 penalty phase of this case?
- 14 A. To give some defenses if anything.
- 15 Q. Okay. When you say defenses, do you mean
- 16 information that would have been persuasive in so far
- 17 as getting a life sentence. Is that what you mean?
- 18 A. Could be. Yes. It could be used towards that.
- 19 Q. All right. So you recognized early on that
- 20 mitigating evidence and penalty phase information was
- 21 critical to Mr. Weik's case?
- 22 A. Well, mitigating period with regards to the
- 23 individual is very important and I believe Mr.
- 24 Beauford wanted a mitigating investigator involved in
- 25 this matter.

1 Q. Okay. He needed all the information he could get
2 to help those experts that you had brought in.

3 A. He needed what now?

4 Q. Was the purpose of hiring Patty Rickborn to get
5 her to get as much information as she could to provide
6 to your experts?

7 A. Right. About Mr. Weik.

8 Q. Yes. Yes, ma'am. And to family.

9 A. Correct.

10 Q. Okay. All right. And do you recall receiving a
11 series of letters from Ms. Rickborn about the course
12 of her investigation, what she was finding, the people
13 she was speaking to, and the information she was
14 getting? Do you recall that?

15 A. I may have received that and whatever I received
16 I sent to Mr. Beauford.

17 Q. All right. All right. Now, again in your role
18 as sort of the administrative helping to Mr. Beauford,
19 would it have been your job to get for your
20 investigators and experts whatever they requested if
21 it was going to help move the case along?

22 A. To help with the case. Yes.

23 Q. Okay. Such as court orders.

24 A. Yes.

25 Q. Okay. Subpoenas?

1 A. Correct.

2 Q. Okay. So, your job was to essentially give them
3 the tools so that they can do their jobs?

4 A. Correct.

5 Q. Paper tools.

6 A. Correct.

7 Q. Okay. All right. I'm going to show you
8 Plaintiff's 18 again. This is a fairly big document
9 but I'm going to show you page - page 4.

10 MS. KIMBROUGH: Your Honor, may I
11 approach the witness?

12 THE COURT: You may.

13 MS. KIMBROUGH: Thank you, Your Honor.

14 Q. Again I ask you if you would please read the
15 second to last paragraph beginning with, we will need.

16 A. Okay. This is a memo to Marva Hardee-Thomas
17 dated March 12th, 1999. We will need medical and
18 psychological records for Russell Weik. I know that
19 very important records will be held by the Naval
20 Hospital where he was treated after he returned from
21 Vietnam. These are U.S. Government records that will
22 require a court order for release. The sooner we get
23 started to obtain these records the sooner we get
24 through the government red tape. Mrs. Weik told me

1 that one of the drugs that Mr. Weik was taking was
2 Thorazine.

3 Q. And can you read the vary last paragraph?

4 A. Court orders will release these records to us
5 much faster than releases or a subpoena. We will not
6 get the records from the government without a court
7 order.

8 Q. All right. Do you recall that memorandum from
9 Ms. Rickborn?

10 A. I do not recall but if it was to me I may have
11 received it. I mean I don't recall saying I received
12 it on this specific date but if it's to me then more
13 than likely I received it.

14 Q. All right.

15 MS. KIMBROUGH: Your Honor, may I
16 approach the witness?

17 THE COURT: You may.

18 MS. KIMBROUGH: Thank you. I'm just
19 going to take this exhibit back.

20 Q. Do you recall ever taking any steps to get the
21 Naval Hospital records in this case?

22 A. Any steps to getting ... I don't recall doing
23 anything with regards to the Naval Hospital. I just
24 don't recall.

25 Q. All right. And you don't even recall if you

1 received this memorandum?

2 A. I can't recall. I mean to tell you - my name is
3 on it. That's my writing on top saying that I sent it
4 to Mr. Beauford so I'd have to have seen it. I had to
5 have gotten it.

6 Q. All right.

7 MS. KIMBROUGH: And if you would, may I
8 approach the witness again?

9 THE COURT: You may.

10 MS. KIMBROUGH: Thank you.

11 Q. Can you read what's at the top of page four of
12 Plaintiff's Exhibit 18 and state whether or not it
13 appears to be in your own handwriting?

14 A. Yes. It's signed by me March 12, 1999. Percy,
15 these came today. Please advise.

16 Q. All right. But you don't have a specific
17 recollection of taking any steps to assist Ms.
18 Rickborn in getting the Naval Hospital records?

19 A. No.

20 Q. Okay. And in fact ...

21 A. Or getting a court order as she requested.

22 Q. All right. And these records were never
23 received?

24 A. I have no idea. I have no idea.

25 Q. All right. Now, in addition to the March 1st

1 letter containing Plaintiff's 18 on page one, it
2 appears to me that there are a number of other
3 investigative reports. If you would please, review
4 Plaintiff's Exhibit 18 and identify the dates of all
5 reports and the page of Exhibit 18 in which those
6 reports can (inaudible).

7 A. Okay. This is Exhibit 18 on March 1st, 1999. To
8 whom it may concern. It's a letter headed Patty
9 Rickborn, Private Investigator, 933 Brandon Avenue in
10 Columbia, South Carolina 29209. The first page
11 basically tells about I'm a licensed private
12 investigator and the second paragraph indicates that
13 she's been - had more than ten years experience in
14 investigating criminal cases.

15 Q. I'm sorry to interrupt you. I just want to
16 establish the number of memos you received BC.

17 A. Oh. Okay.

18 Q. And the dates.

19 A. All right. The second letter would be March 9th,
20 Russell and Lilly Weik. The third letter would be to
21 Marva Hardee-Thomas indicating we need to get records
22 for Eddie from Berkley County School Systems.

23 Q. A general request for records.

24 A. It's a general request. Basically she indicates
25 where she wanted to get them from - Whitesville

1 Elementary, Berkley High School. The third memo would
2 be March 12th after we received the report from the
3 state hospital regarding Mr. Weik's evaluation under
4 McNaughten. It's still a document to me from Patty
5 Rickborn dated March 12th after - it seems like it
6 repeats itself. After we received the report from the
7 state hospital regarding the evaluation of Eddie under
8 McNaughten. Let me see.

9 Q. And I think I can shorten this.

10 A. Yeah. This document repeats itself. It may have
11 been a ... It's the same document. It's a blowup of
12 each other.

13 Q. Okay. All right. Not to be lather the point but
14 in other words there were quite a few memos that were
15 generated by Ms. Rickborn. Would that be fair to say?

16 A. Correct.

17 Q. Okay. Now, do you recall the (inaudible-
18 background noise) memo?

19 A. I may have.

20 Q. All right. But you can't say for certain whether
21 or not you recall receiving that memo?

22 A. With all the investigators if they gave me
23 information, I made sure Mr. Beauford got them. If he
24 received the information he made me aware of them.

25 Q. All right. Let's move on. Discussing

1 again sort of your role in the case, in addition to
2 being consistent and trying to assist the experts that
3 you had hired, what involvement, if any, did you have
4 with respect to witnesses deciding who you would call
5 and when?

6 A. I didn't have any decision on that. There was no
7 discussion with regards to me as to who was going to
8 be called in the trial.

9 Q. Okay. And what discussions did you have with Mr.
10 Beauford concerning the defense theory of the case?

11 A. I didn't have that discussion.

12 Q. Okay. What about the defense theory of penalty
13 phase?

14 A. I didn't have that discussion.

15 Q. Okay. Why not?

16 A. As I said, I was assisting him. He was the lead
17 counsel on the case.

18 Q. Was strategic input and advice part of the way
19 you assisted him?

20 A. Basically if I offered it he could probably
21 listen but that wasn't done.

22 Q. Okay. All right. So, in other words, you didn't
23 participate in any strategic decision making with Mr.
24 Beauford?

25 A. No, I did not.

1 Q. All right.

2 THE COURT: Anything further?

3 MS. KIMBROUGH: Yes, Your Honor, I
4 apologize.

5 Q. Ms. Thomas, I'm going to hand you what's been
6 marked Respondent's Exhibit number 32. This document
7 is dated May 6th of 1999 and it appears to be a
8 memorandum prepared by you concerning the issues that
9 were coming up at the May 18th hearing.

10 A. Right.

11 Q. And do you recall advising Mr. Beauford that the
12 defense, "is ordered not to mention to the jury that
13 if Mr. Weik does not get the death penalty he will get
14 life."

15 A. If I wrote something like that, it had to have
16 been something as a reminder and basically it would
17 not be me advising him but to just basically say, this
18 is what you told me to remind you.

19 Q. Okay. So, an FYI.

20 A. FYI.

21 Q. Okay. What did that mean?

22 A. If he mentioned it, I basically mentioned it
23 again with regards to this is what he wanted me to
24 remind him of.

25 Q. Okay. Do you know what it meant? Not

1 advising the jury that if Mr. Weik didn't get death
2 he'd get life.

3 A. Like I said, if it's written down, it's something
4 that I was supposed to remind him of.

5 Q. Okay. Do you recall when Mr. Beauford was not
6 supposed to make those comments?

7 A. No.

8 Q. Going back to your role as assistant, what
9 advice, if any, did you offer Mr. Beauford concerning
10 the use of witnesses such as the brother, the mother,
11 the father, the sisters?

12 A. I didn't have any advice with regards to who he
13 needed to call. He basically decided who he was going
14 to have as a witness.

15 Q. What use do you think he could have made of the
16 lay witnesses? The family members?

17 THE COURT: I'm sorry, Counselor. I
18 couldn't hear your question.

19 MS. KIMBROUGH: I apologize.

20 Q. What use do you think Mr. Beauford could have
21 made of those type of witnesses? The lay witnesses?
22 The mama, the brother, you know, the people who were
23 interviewed?

24 A. They could have assisted him.

25 Q. In what way?

1 A. Basically, tell me which phase you want me to ...

2 They could have assisted him.

3 Q. In either phase. How about the guilt phase?

4 A. Well, I don't know if they knew anything about
5 the guilt phase. That's the problem.

6 Q. How about the penalty phase?

7 A. Help beg for his life. Help beg for his life.

8 Q. Okay. Now, how were your interactions with Eddie
9 Weik?

10 A. Basically I would go and talk to him. Tell him
11 what's going on in the case. That was very important
12 that he be advised as to what was going on. If
13 someone was coming to see him, he was advised that
14 someone was going to be showing up to see him. If
15 something was going on with the case, more than likely
16 Mr. Beauford and I would be going together because I
17 wouldn't know, you know, what was going to be done in
18 the case but I was there when he was talking with him
19 with regards to what to expect.

20 Q. Okay. So, how did you find out about what was
21 going to be going on in the case?

22 A. Mr. Beauford.

23 Q. And why is that?

24 A. That's the way it was done. In that situation
25 that's the way it was done.

1 Q. Why?

2 A. It was just done that way.

3 Q. Why?

4 A. He did it.

5 Q. What about you?

6 A. What about me?

7 Q. You were appointed.

8 A. I understand that.

9 Q. Beg the Court's indulgence. So why were you
10 appointed?

11 A. I was appointed to represent Mr. Weik.

12 Q. Okay. Why were you appointed to represent Mr.
13 Weik?

14 A. Maybe I don't understand the question.

15 Q. Okay.

16 A. Because I'm repeating myself.

17 Q. I'm sorry. I'll be more specific. What was the
18 purpose of your appointment?

19 A. To represent Mr. Weik.

20 Q. Okay. Let's discuss again your role in the
21 actual presentation of evidence in this case. Why
22 were the family members interviewed? I mean, what was
23 the purpose of hiring Ms. Rickborn and then Mr. Minter
24 and Mr. Parker?

25 A. In hiring Ms. Rickborn to basically get

1 information regarding Mr. Weik's background. In
2 hiring Mr. Bobby Minter to get any information that he
3 had about the case. The factual information about the
4 case.

5 Q. Okay. And what was the purpose of generating
6 that type of information?

7 A. To get all the information that we need to help
8 defend him.

9 Q. Okay. And what would you have done with that
10 information to help defend Mr. Weik?

11 A. We used the information to defend him based on
12 the information that you find.

13 Q. Okay. Well, perhaps I'm being too general but
14 how did the information contained in the reports from
15 the mitigation investigators - how could that have
16 been used at trial? In your opinion.

17 A. To help defend him.

18 Q. But how? I mean, specifically what could you
19 have done or what was the purpose of having the
20 information in hand.

21 A. To help Mr. Beauford help defend Mr. Weik.

22 THE COURT: Let's move along, Counsel.

23 Q. What are the uses that you could have made with
24 that information?

25 A. Uses of what information?

1 Q. Mitigating memos and interviews and ...

2 A. Give me one example. If we can go line by line
3 with regards to the paperwork she gave I can probably
4 come up with some examples.

5 (Tape ended)

6 Q. I'm going to show you Plaintiff's Exhibit 1.

7 MS. KIMBROUGH: May I approach the
8 witness?

9 THE COURT: You may.

10 Q. Can you read the date and identify what this
11 document is?

12 A. Okay. To Percy Beauford, Marva Hardee-Thomas
13 from Bobby Minter. Subject potential witness list.
14 This is a list of individuals Mr. Bobby Minter came up
15 with regards to potential witnesses.

16 Q. Can you identify those folks by name?

17 A. And these people have been interviewed by Mr.
18 Minter. Abraham Nelson Rodriguez Jr., Alton Huggins,
19 Pastor Bruce Scott, Ervin Barner, Pastor Legrand
20 DuPre, and Bernice Alston. Those are all the names on
21 the first page.

22 Q. Okay. Moving on to the actual interview and you
23 don't need to read the full text but can you identify
24 who was interviewed by Mr. Minter and the date on
25 which they were interviewed?

1 A. Who was interviewed by Mr. Minter? Who Mr.

2 Minter interviewed?

3 Q. Yes.

4 A. Okay. On May 9th, 1999, Mr. Bobby Minter
5 interviewed Abraham Nelson Rodriguez at his home.

6 Q. Okay. And what use could have been made of that
7 interview?

8 A. I have no idea. If I finish reading - could I
9 possibly do that?

10 Q. Have you seen that document?

11 A. No. I mean, I may have but it's been a long
12 time. This is the first time I'd seen it since 1999.

13 Q. Okay.

14 A. Okay. Basically Mr. Rodriguez is an employee
15 that worked with him at Broyhill. He basically could
16 tell him what kind of person he was. That he was
17 dependable and he would help out anytime.

18 Q. Okay. So good information?

19 A. Right.

20 Q. Okay. Did you make any suggestions to Mr.
21 Beauford as to how Mr. Rodriguez could have been used
22 in the defense?

23 A. No, I did not.

24 Q. Okay. Can you - what's the next interview? Let
25 me ask you. Why did you ...

1 A. Why. Okay. It's my understanding that I
2 provided Mr. Beauford with the information and he
3 decided the trial strategy.

4 Q. Okay. Now, you had more capital experience than
5 Mr. Beauford as of the time of this trial. Is that
6 right?

7 A. I had one case more than he ever did. This would
8 have been my second death penalty case and it would
9 have been his first. And I've done a lot of murder
10 cases.

11 Q. Okay. But during your deposition, I think you
12 referenced several more than that. That was, in fact,
13 false.

14 A. Exactly because since that time I thought I had
15 like five but I'm thinking of what I've tried
16 beforehand before Mr. Weik and in actuality I was
17 spoken to by the Attorney General I had only done one.

18 Q. All right. You said you spoke to the Attorney
19 General.

20 A. No. After you guys did direct, he did cross.
21 After the cross I was basically told that I had only
22 done one.

23 Q. Okay. And what case was that?

24 A. ...

25 Q. Thomas Schuler?

1 A. He was one that I did. I couldn't tell you which
2 order I did it but he was one that I had done.

3 Q. Okay. But that still gave you one more than Mr.
4 Beauford as of this time.

5 A. Correct.

6 Q. Okay. And so you had some sense of what was
7 required in a death penalty case?

8 A. Correct.

9 Q. Okay. With that additional experience, certainly
10 you knew more about capital cases than Mr. Beauford.
11 Would that be fair to say?

12 A. I have experience.

13 Q. Okay. Why didn't you give him advice?

14 A. You can give someone advice. I mean, you could
15 talk to someone ... I remember when we first started we
16 talked about the case. We talked about where we were
17 going with the case but ultimately Mr. Beauford took
18 it on with regards to being lead attorney and I took
19 on a more administrative position.

20 Q. Okay. What advice did you give Mr. Beauford?

21 A. Well, basically we talked about who we had as far
22 as witnesses. We talked about the evidence. When you
23 say advice - we talked about the factual stuff that we
24 had but as far as me saying, you should do this, this

1 way - I don't know if I ever did that with Mr.

2 Beauford.

3 Q. And why not?

4 A. Because of the - it was the - I guess the role
5 that I was placed in, that he was basically trying the
6 case and I was helping out.

7 Q. You were appointed first. Correct?

8 A. Well, technically I was appointed first but Mr.
9 Beauford was working on the case before I got
10 involved.

11 Q. Okay. But you became involved because this case
12 sort of exploded into a capital case from a simple -
13 not simple murder, but a regular non-capital murder
14 into a death penalty murder.

15 A. I think I got involved because it turned into a
16 capital case and there needed to be a second party
17 appointed to the case.

18 Q. Why do you think a second counsel is required in
19 death penalty cases?

20 A. In helping out with the volume of what the case
21 carries.

22 Q. Is there a lot of witnesses and a lot of issues
23 (inaudible- tape noise)?

24 A. It depends on, you know, the facts of each case.

1 Q. But you would certainly agree that death penalty
2 cases are a unique creature?

3 A. Correct.

4 Q. What other interviews do you see contained in
5 the packet of information from Mr. Minter?

6 A. There is an interview on February 29th, 1999, with
7 Olson Higgins and he was also a person who worked with
8 Mr. Weik.

9 Q. Okay. Do you remember seeing that interview
10 prior to trial?

11 A. Yes. It would have been one that I had gotten.

12 Q. Okay. Do you recall discussing that interview.
13 and the contents of a potential witness with Mr.
14 Beauford?

15 A. No.

16 Q. Why not?

17 A. I just don't remember doing that.

18 Q. Okay. How about the next interview?

19 A. March 1st, 1999, met with Laura Tyson at Broyhill.
20 Also she's a personnel manager at his job.

21 Q. Okay. And what's the next interview?

22 A. Pastor Bruce Scott. He met with him on February
23 11th, 1999.

24 Q. And what was his connection with Eddie Weik?

1 A. He came to his church. Mr. Weik came to Pastor
2 Bruce Scott's church. Knew him casually.
3 Q. Okay. What's the next interview?
4 A. He spoke with - Bobby Minter spoke with Tammy
5 Geddis by phone but she refused to meet with him.
6 Q. Okay.
7 A. And she didn't want to have anything to do with
8 the case, I believe.
9 Q. All right.
10 A. Spoke to James Raben's wife ...
11 THE COURT: Counsel approach.
12 (Conversation at the bench)
13 THE COURT: Examination.
14 MS. KIMBROUGH: Thank you, Your Honor.
15 Q. In looking through these documents ... May I
16 approach? Sorry. Exhibit 18. You would agree with
17 me that there were numerous witnesses who were
18 interviewed that were good candidates for being called
19 in the penalty phase of mitigation.
20 A. They could.
21 Q. Okay. And they could have provided powerful
22 mitigation.
23 A. When you say powerful - I mean, they talked about
24 working with him, on what type of person he is, and we

1 could have asked them to help beg for mercy for his
2 life also.

3 Q. Okay. So they would have humanized him?

4 A. Well, he was humanized. I don't understand that
5 question.

6 Q. Okay. Do you ever remember discussing with Mr.
7 Beauford the uses to which that information and those
8 ...

9 THE COURT: Just a moment.

10 (Train passing by)

11 THE COURT: Proceed.

12 Q. Thank you. I'll rephrase. I'm sorry I'm a
13 little wordy so I'll try to chop it down,

14 A. That's all right.

15 Q. Do you ever remember discussing any of those
16 witnesses with Mr. Beauford?

17 A. I did not discuss any of those witnesses with Mr.
18 Beauford.

19 Q. Why not?

20 A. We just did not.

21 Q. But you were a lawyer in this case.

22 A. Yes, I was.

23 Q. Your job was to represent Mr. Weik?

24 A. Correct.

25 Q. So why would you not want to participate?

- 1 A. I wouldn't say that I was not participating.
2 It's just that in this particular case my job was to
3 help Mr. Beauford and in helping him I had certain
4 things that I was doing and that's not one that I
5 remember doing.
- 6 Q. If I understand you correctly, your role was
7 administrative.
- 8 A. For the fourth time, yes.
- 9 Q. Were you comfortable in that role?
- 10 A. That's the role I was placed in.
- 11 Q. But you were appointed as an attorney?
- 12 A. Correct. I still was an attorney as an
13 administrative person.
- 14 Q. Right. You are a licensed member of the bar?
- 15 A. Correct.
- 16 Q. With greater experience in capital cases than Mr.
17 Beauford?
- 18 A. One case more.
- 19 Q. Which was one more than he had.
- 20 A. Correct.
- 21 Q. So, why didn't you participate?
- 22 A. I did participate. It was just a situation of my
23 role in this particular case was what I was doing.
- 24 Q. I apologize. Were you comfortable being
25 relegated to paperwork?

1 A. When you say I was comfortable, what do you mean
2 by that?

3 Q. As a professional.

4 A. I was still doing legal work. I just didn't go
5 and basically talk in this particular case with
6 regards to Mr. Weik's matter.

7 Q. Why?

8 A. That's the way it was done. It was a decision.
9 You may call it trial strategy. It was a decision
10 that Mr. Beauford was lead counsel and he was heading
11 the case and he made the decision.

12 Q. Okay. So, his trial strategy was to try this
13 case single-handedly?

14 A. I don't know what his trial strategy was. We
15 never had that discussion.

16 Q. All right. Is it your impression that it was his
17 strategic decision to make sure that he made all the
18 decisions strategic and otherwise in relegating you to
19 the role of transferring documents and trying to come
20 up with court-orders for money and that sort of thing?

21 A. That's right. That's the position I was placed
22 in.

23 Q. All right. Let me ask you if you've seen
24 Plaintiff's Exhibit 4 and could you identify what this
25 document is?

1 A. Okay. State versus John Weik interview.

2 Russell Christopher Weik.

3 Q. Do you remember ever receiving that document

4 (inaudible-background noise)

5 A. I could have. I just don't know who it's by.

6 Q. All right. Do you know who Russell Christopher

7 Weik is?

8 A. His brother.

9 Q. Okay. Do you remember discussing how this
10 interview and this potential witness could have been
11 used?

12 A. I did not discuss that with Mr. Beauford. I may
13 have - if he had not received it, I may have sent that
14 document to him. If he'd receive it, I don't remember
15 having any discussion about that interview.

16 Q. Do you ever remember meeting Christopher Weik?

17 A. Not right off hand. I remember going to Mr.
18 Weik's home. I don't remember meeting Mr. Christopher
19 Weik.

20 Q. Okay. Again why didn't you discuss the
21 interviews with Mr. Beauford?

22 A. We just didn't.

23 Q. All right. I'd like to show you Respondent's -
24 excuse me - Plaintiff's Exhibit 3 and ask if you can
25 identify this document.

1 A. This is State versus John Edward Weik. Interview
2 Lilly Varner Farrah Weik.

3 Q. Okay. Do you remember receiving that document?

4 A. Again, I may have. I don't know who it's from
5 and if I did it would have been given to Mr. Beauford.

6

7 Q. Okay. It's from Scott Parker. Does that refresh
8 your recollection?

9 A. No.

10 Q. No. Okay. Now, this interview with Lilly Weik -
11 Lilly Weik was ...

12 A. His mom.

13 Q. His mom. Okay. Do you ever remember discussing
14 what potential assistance she could have provided Mr.
15 Weik at trial?

16 A. I did not discuss any information like that with
17 Mr. Beauford. The only thing I remember was at the
18 penalty phase that he was very and I said this in my
19 deposition. He was very leery with regards to having
20 Mr. Weik testify because he was - he didn't know what
21 he was going to say. He was very leery with regards
22 to doing the same thing with his mom. The same thing
23 - he didn't know what she was going to say. This is
24 what I remember.

25 Q. Okay. What about an interview with Russell Weik?

1 A. The father.

2 Q. Ever remember receiving any interviews?

3 A. I had to - I remember that because I remember
4 that he was just off. Just off. And I remember that
5 from even before getting any interview because I think
6 when we went to the house, we were told to be aware
7 because he could have shot us.

8 Q. Okay.

9 A. Just, you know, coming up to a house with his
10 mindset you just don't know what may have happened.

11 Q. Okay. So you were on notice?

12 A. I was on notice.

13 Q. Can you identify this document noted as
14 Plaintiff's Exhibit number 5?

15 A. It says State versus John Edward Weik. Interview
16 Russell Castle Weik.

17 Q. Okay. And that was Eddie's father.

18 A. Correct.

19 Q. Okay. And again you didn't discuss any of the
20 information in here with Mr. Beauford?

21 A. No, I did not. With regards to an interview.

22 However, before I don't know when that may have a date
23 on it but before we received something in writing Mr.

24 Beauford knew of the father so he knew his background.

1 Q. All right. And do you ever remember receiving
2 interviews from Magdalena and John Gunter? Maggie and
3 John Gunter?

4 A. I said I may have but in discussing it with Mr.
5 Beauford, no, I do not remember doing any of that.

6 Q. And finally, Respondent's Exhibit 15, which is
7 the letter from Ms. Rickborn that prompted your
8 response.

9 A. Right.

10 Q. One of her complaints is that she never got a
11 court order to be paid. Do you recall that complaint?

12 A. I remember reading it. Like we saw it in a
13 deposition but ...

14 Q. Ever remember getting a court order for funding?

15 A. We probably would have done that early on but we
16 needed to find out, you know, if the judge had signed
17 it, if they were still being reviewed. I mean to tell
18 you right now if it had been sent out depending on how
19 - if we had the experts listed, it probably would have
20 already been sent out. She just probably wanted proof
21 of, you know, knowing that she was going to be paid.

22 Q. Would you be surprised to know that no court
23 order was ever signed and that she was never paid for
24 her work?

1 A. Yes, I would be very surprised because most
2 experts would not get involved unless they receive
3 something showing that an order has been done and the
4 judge has it in their hands.

5 Q. All right. And I believe she makes that
6 statement herself in the letter.

7 A. Right. I mean, I received documents where people
8 indicate that they haven't received certain things and
9 basically they just hadn't gotten the order but I
10 couldn't tell you to what extent if it had been done
11 or not.

12 Q. Thank you very much.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. ZELENKA:

16 Q. Ms. Hardee-Thomas, when you received material and
17 sent it off to Mr. Beauford, did you read the material
18 before it was sent?

19 A. Of course. And I would sometimes brief it and
20 talk to Mr. Beauford over the phone and let him know
21 what was going to be sent.

22 Q. Let me ask you to again refer to Plaintiff's
23 Exhibit 18 and ask you to review the letter about what
24 you understood and see if that refreshes your

1 recollection about what you understood the status of
2 the court order was at that time April 30th, 1999?

3 A. You mean the court order to Ms. Rickborn?

4 Q. Yes.

5 A. One second. Okay. It's my understanding that
6 there was an order that was done. A copy of the
7 signed order was never sent to you because we never
8 got it. Mr. Beauford and I found out on April 30th,
9 1999, that Judge Shuler already signed the order and
10 it was lost in transit between this office and the
11 clerk of court. So there was an order that was
12 done it just was never received.

13 Q. Well, that was your understanding that that
14 happened.

15 A. Right. We would not have known this information
16 until we called the judge to find out about it.

17 Q. You were asked on cross about Abraham Rodriguez.
18 Do you recall that on cross examination?

19 A. Correct.

20 Q. Do you recall if Abraham Rodriguez testified
21 during the trial?

22 A. I didn't have privy to a transcript, sir. I
23 couldn't tell you.

24 Q. Let me refer you to line four of the transcript,
25 page 1587, and ask you a couple of questions.

1 A. Okay. Yes. Mr. Abraham and Rodriguez Jr. There
2 was a direct examination by the defense. He did
3 testify.

4 Q. Okay. I have no further questions.

5 THE COURT: Recross limited to
6 redirect.

7 RECROSS EXAMINATION

8 BY MS. KIMBROUGH:

9 Q. Just briefly, Ms. Hardee-Thomas ...

10 A. Yes, ma'am.

11 Q. Abraham Rodriguez' views would have been in
12 penalty. Would it not?

13 A. It could have been.

14 Q. Because he liked Eddie. Eddie was a good father.
15 He loved his son. He was involved in Cub Scouts.
16 That's good mitigation. Wasn't it?

17 A. Yes, he could have been used in that phase.

18 Q. Okay. Thank you.

19 THE COURT: No further questions?

20 MR. ZELENKA: That's correct.

21 MS. KIMBROUGH: I apologize. No
22 further questions.

23 THE COURT: Ms. Hardee-Thomas, you may
24 step down and you are excused.

25 A. Thank you.

1 (Discussion in the Courtroom off the record)

2 THE COURT: Marva doesn't have any exhibits. I'd
3 like for Counsel now to check their tables and make
4 sure since we have had some shuffling of papers this
5 morning, that all exhibits have been returned to the
6 Court Reporter. The Applicant has 19 exhibits. The
7 Respondent has 35.

8 MR. ZELENKA: We don't have a listing
9 of Respondent's 16 and 17. I think that was my
10 mistake. I started out ...

11 THE COURT: Actually, Robin?

12 COURT REPORTER: I don't have it
13 either. I have written out three stickers, 16, 17,
14 and 18 and he saw sticker 18 and put it on the
15 exhibit.

16 THE COURT: Well, it wasn't his
17 exhibit. It was the Applicant's exhibit.

18 MR. ZELENKA: No. We're saying that
19 we've got 1 thru 15 and 18 thru 35.

20 THE COURT: Well, 15 is the affidavit
21 which definitely came into evidence. We're not even ...

22 COURT REPORTER: No, well, 15 is the
23 Respondent's letter. Right?

24 THE COURT: We're not talking about
25 Respondents. This is Applicant's 15.

1 MR. ZELENKA: No, we are talking about
2 Respondent's 15.

3 THE COURT: Oh, I'm sorry. Okay.

4 COURT REPORTER: We're talking about
5 missing 16 and 17.

6 THE COURT: Respondent's 15 is the
7 letter of Patty Rickborn which came in as a part of
8 the Applicant's Exhibit number 12, I think. Or 18. I
9 don't have anything for ... Wait a minute now. I don't
10 have anything for Respondent's 16 and 17.

11 MS. KIMBROUGH: We're all on the same
12 page.

13 MR. ZELENKA: That was my fault because
14 I announced it as ...

15 THE COURT: You're right. We went from
16 Respondent's 15 to Respondent's 18.

17 MS. KIMBROUGH: I just want to make
18 sure we are all on the same ...

19 THE COURT: So actually the number of
20 exhibits that I tell you wasn't actually correct. I
21 told you the total. The numbers come to 35 but it
22 actually is 33 exhibits numbered between 1 and 35 to
23 make it even more confusing for those of us that have
24 tried to keep up with the exhibits.

1 COURT REPORTER: Well, they're all
2 there.

3 THE COURT: I've got to put something
4 on the record. Have you got me a copy?

5 MR. ZELENKA: Yes, sir.

6 THE COURT: Is that a copy? Okay.
7 That's a copy of Plaintiff's 14. I'm asking them or
8 is - this is my copy. I just happen to have a
9 sticker.

10 MR. ZELENKA: I just marked it for the
11 Clerk so I can give you another copy if you need to
12 take one with you.

13 THE COURT: The one you're giving me -
14 is this the one? Robin's got the original. Right?

15 MR. ZELENKA: She has the poster board.
16 Yes, sir.

17 THE COURT: Okay. This one's in color.
18 They're going to go ahead - this one has the exact
19 same color marker. Ms. O'Shea just got this for me
20 out of her file. I've asked the bailiffs to make me a
21 copy of every single exhibit so that Robin keeps hers
22 and I can take back to Walterboro mine. Here's 14.
23 Ya'll are going to keep that one and you want me to
24 keep the little one as my copy.

25 MR. ZELENKA: Yes, sir.

1 THE COURT: Okay. Now, we've got all
2 the exhibits straight.

3 MR. ZELENKA: Yes, sir. I've counted
4 and they are all there.

5 THE COURT: Let me go back on the
6 record when you're ready, Robin.

7 MS. KIMBROUGH: We found our missing
8 affidavit.

9 MR. ZELENKA: As soon as my assistant
10 came back I knew she'd find it. They're already in
11 evidence.

12 THE COURT: They're already in evidence
13 because as I recall Mr. Zelenka agreed to substitute
14 copies that Mr. O'Connell had given him and the copies
15 were placed into evidence. Isn't that true, Mr.
16 O'Connell? Of the affidavits?

17 MR. O'CONNELL: That's absolutely
18 correct.

19 THE COURT: But it's nice to have
20 someone here in the Courtroom who keeps up with the
21 evidence, ma'am. We certainly missed you in your
22 absence. All right. Now, again as to the exhibits.
23 I want to make sure that we now have - the Court
24 Reporter has all the exhibits. You're satisfied. The
25 applicant is?

1 MR. O'CONNELL: Yes, sir.

2 THE COURT: Is the Respondent
3 satisfied?

4 MR. ZELENKA: Yes, sir.

5 THE COURT: Does the Respondent wish to
6 call any additional testimony today?

7 MR. ZELENKA: No, sir.

8 THE COURT: Does the applicant ... Mr.
9 O'Connell, you told me you would not have any reply
10 and obviously this would be the time to call reply
11 because the Respondent, except for the fact, Mr.
12 O'Connell, that because you tried to amend your
13 third - you had two amended applications. At the
14 close of your case, you made a motion that this court
15 order that you be allowed to amend to conform to the
16 proof. Although the amendment as to calling live
17 mitigation witnesses was done by me without objection
18 and the amendment as to juror number 1 ...

19 MR. O'CONNELL: Juror Judy.

20 THE COURT: Juror Judy - which he had a
21 number. 0174. I believe you consented to that
22 amendment.

23 MR. O'CONNELL: That's correct, Your
24 Honor.

1 THE COURT: But, well, I'm not sure that
2 you did now. Did you consent to 174 or you consented
3 to ... Mr. O'Connell wanted to move to amend that there
4 was ineffective assistance at counsel in the improper
5 rehabilitation of juror 174 and I believe you objected
6 to that if my memory serves me correct. You did not.

7 MR. ZELENKA: I did not.

8 THE COURT: All right. Then what was
9 the other issue that was left open on the motion to
10 conform to the proof that you did object to?

11 MR. O'CONNELL: Voir dire generally.

12 THE COURT: Just general voir dire as
13 ineffective assistance of counsel.

14 MS. KIMBROUGH: There were certain
15 jurors specifically cited by Mr. Bloom in his
16 testimony that he said, look, these folks aren't
17 qualified (inaudible).

18 THE COURT: Yes. Jurors 23, 93, 204,
19 34, and 239. And you're still objecting to that so
20 I've ruled - I'm not ruling on that yet because I gave
21 you the opportunity. I've given Mr. O'Connell the
22 opportunity to present to me and he'll have to send it
23 to me because I'll have to review this testimony.
24 He's taking two additional witnesses' depositions which
25 we placed on the record. They're going to be taken

1 within 15 days of today. I gave you the opportunity
2 in light of the fact that he wanted to amend, I gave
3 you the 15 days to determine if you wanted to take any
4 additional testimony to rebut or if you would tell me
5 whether or not you objected to his motion to amend.
6 Do you understand that?

7 MR. ZELENKA: I understand.

8 THE COURT: All right. So you have the
9 opportunity now to produce evidence if you want to
10 rebut since you weren't on notice of that until the
11 close of the Applicant's case. All right. Now,
12 again, Mr. O'Connell, do you wish to put up any reply
13 testimony live today?

14 MR. O'CONNELL: No, sir.

15 THE COURT: All right. So the record
16 is going to be what has been produced this week by
17 live testimony. The exhibits and the live testimony.
18 The record is also going to be the two additional
19 deponents that the Applicant intends to take their
20 deposition within 15 days of today and the record
21 would also include if Mr. Zelenka determines that he
22 wishes to do so. That he may produce live testimony
23 to me or by deposition or he may require me to recall
24 the witness that you claim presented the testimony.
25 That being, Mr. Bloom, for further cross-examination

1 in light of your motion to amend. But that must be
2 done within 15 days of today. Do you understand?

3 MR. ZELENKA: I do now.

4 THE COURT: Good. Same time deadlines
5 for both sides so if you want that done then you're
6 going to have to advise me that you want that done if
7 you can't do it by deposition. Do you understand?

8 MR. ZELENKA: Well, we could do that by
9 deposition.

10 THE COURT: You could ask me to allow
11 you to summon Mr. Bloom to a deposition for you to
12 cross examine on the issue of the amendment that Mr.
13 O'Connell decided to wait until the close of his case
14 to try to amend on those grounds in which you felt you
15 didn't have adequate time to prepare or rebut.

16 MR. ZELENKA: Okay.

17 MR. O'CONNELL: The Attorney General
18 has (inaudible) to recall him in front of you or by
19 way of deposition.

20 THE COURT: Well, on that issue only,
21 it could be done by deposition if ya'll - if you have
22 some objection to it. Since I've already seen Mr.
23 Bloom live and I've had the opportunity to judge his
24 credibility, however, if ya'll feel it's necessary to
25 I'll be happy to see him live if that's what you're

1 telling us.

2 MR. O'CONNELL: I leave it up to Mr.
3 Zelenka. I'm fine either way.

4 THE COURT: Mr. Zelenka, that will be
5 your call but you make it within 15 days.

6 MR. ZELENKA: All right, sir.

7 THE COURT: All right. Now, are there
8 any other matters that I haven't covered that we need
9 to place on the record before we close the hearing
10 today. Anything from the Applicant?

11 MR. O'CONNELL: No, sir.

12 THE COURT: Anything from the
13 Respondent?

14 MR. ZELENKA: No, Your Honor.

15 THE COURT: Very well. I'm going to
16 get copies from the exhibits. Robin is going to have
17 the exhibits but I'm going to take xeroxed copies. I
18 have the transcript so if ya'll are deciding once we
19 get to it because I'm going to be giving you time
20 deadlines once the records close on proposed orders
21 but once we get there I don't want you to feel you've
22 got to send me anything as far as the transcript is
23 concerned. I have my own copies which I have in
24 Waltherboro and I want ya'll to know that. I'm leaving
25 the copies here in the Clerk's file here but I'm

1 taking the exhibits from the testimony this week or
2 copies of them with me and I'm taking my own copy of
3 the transcript. Do both of you understand?

4 MR. O'CONNELL: Yes, sir. The Clerk's
5 file. Is it this case or the criminal case?

6 THE COURT: What I have right now is
7 the Clerk's file in this case. The Clerk also has a
8 file in the criminal case.

9 MR. O'CONNELL: Yes, sir.

10 THE COURT: I do not have that file
11 with me in Walterboro. I want ya'll to understand
12 that when I'm considering this I want ya'll to know
13 what information I have so that you won't have to
14 duplicate it in any fashion when you are trying to
15 send me information or feel like I've got to come back
16 to Dorchester to review the file to look for it. I'm
17 going to take the exhibits with me and I've got my own
18 copy of the trial transcript in this matter which has
19 been referred to. Now, you did say, Mr. O'Connell,
20 early on that you wanted to publish for me certain
21 portions of transcript, then you decided just to use
22 page numbers in questioning. Was there some portion
23 of the trial transcript - you both agreed on that -
24 that you wanted to publish to me as part of this post-
25 conviction case or have we covered that in the

1 questions you've asked by referring to page numbers?

2 MR. O'CONNELL: I think we've covered
3 that, Your Honor. It may be in the proposed order
4 that I send you that I will point out parts of the
5 transcript that didn't get specifically referred to at
6 this hearing but ...

7 THE COURT: Well, the transcripts have
8 been - the entire transcript is part of the record.
9 Obviously you both agree to that and I have a copy so
10 all you have to do is give me that transcript's page
11 number and line number and I can refer to it with my
12 copy when I'm considering proposed orders.

13 MR. O'CONNELL: Other than that I don't
14 have anything to publish ...

15 THE COURT: Very good. Thank you both
16 for your time, your patience. I appreciate it. I'm
17 going to expect and let me tell you this. I'm going
18 to expect that the depositions and your decision about
19 any further testimony, Mr. Zelenka, as we discussed in
20 light of that motion because I need to know your
21 position on the motion to amend. I'm going to expect
22 the depositions to be taken within 15 days. Now, I
23 recognize that the Court Reporter has got to get me
24 the depositions. Once they've been taken I expect you
25 to advise me also, Mr. Zelenka, of your position

1 within 15 days about additional testimony in light of
2 the motion. I expect that to be in writing and I
3 expect you to copy Counsel on your transmittal to me.
4 You may write to me at PO Drawer 470, Walterboro
5 29488. Please copy opposing Counsel on any
6 transmittal you make to me. You may also email me at
7 PbucknerJ@sccourts.org. You may email my law clerk at
8 PbucknerLC@sccourts.org. Any email that you send to
9 me you have to copy opposing Counsel on any
10 transmittal of the email. Now, I think that covers
11 everything. Is there anything either one of you want
12 to place on the record before we close it for today?

13 MR. O'CONNELL: No, sir. I appreciate
14 the patience you've shown us this week.

15 THE COURT: I appreciate your patience
16 as well, Mr. O'Connell and Ms. Kimbrough. And yours
17 as well, Mr. Zelenka. It is just after noon on
18 Thursday and this Court for purposes I'm not closing
19 the record because of my situation dealing with these
20 other matters. I'll be looking to hear from both of
21 ya'll. Mr. O'Connell, please find out from the Court
22 Reporter when you advise me of the deposition taken
23 how long before you can actually get me the copy since
24 I know that's going to be done in this case and I
25 assume you both agree in taking the depositions

1 that the depositions could be used without me viewing
2 these witnesses.

3 MR. ZELENKA: Yes, sir.

4 MR. O'CONNELL: Same with me, Your
5 Honor.

6 THE COURT: All right. I'll look
7 forward to hearing from you then within the time
8 deadlines. I thank ya'll very much for today. This
9 Court stands adjourned.

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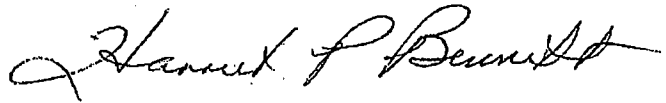
25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, hereby certify that
4 the foregoing Transcript of Record was prepared by me
5 from the records of Robin Keil, to the best of my ability,
6 having been heard in the Court of Common Pleas for
7 Dorchester County, South Carolina, on September 18 through
8 21, 2006.

9 FURTHER, I certify that I am neither of kin nor coun-
10 sel to any party to this action, nor do I have interest
11 in the outcome thereof.

12 This 19th day of March, 2008.

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF DORCHESTER

4 JOHN WEIK,

5 Petitioner(s),

CIVIL ACTION NO.
CP-18-575

6 vs.

7 JON OZMINT, COMMISSIONER OF THE
8 SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS & THE STATE OF
SOUTH CAROLINA,

9 Defendant(s).

COPY

10
11 DEPOSITION OF: MARVA HARDEE-THOMAS

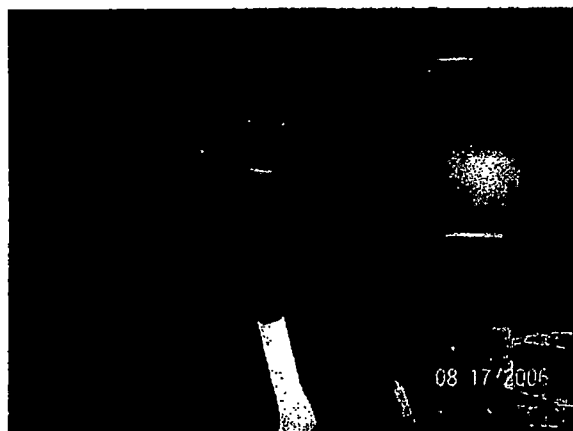
12 DATE: Thursday, August 17, 2006

13 TIME: 10:41 a.m. through 2:22 p.m.

14 LOCATION: Law Offices of
15 Marva A. Hardee-Thomas
16 130 East Richardson Street
Summerville, South Carolina

17 TAKEN BY: Attorneys for the Petitioner(s)

18 REPORTED BY: MADONNA M. FARRELL-PERKINS
19 Registered Professional Reporter



APPEARANCES OF COUNSEL

On behalf of the Petitioner:

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-and-

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On behalf of the Respondent:

SOUTH CAROLINA ATTORNEY GENERAL'S OFFICE
BY: DON ZELENKA, ASSISTANT DEPUTY ATTORNEY GENERAL
Post Office Box 11549
Columbia, SC 29211
(803) 734-3601

ALSO PRESENT: Kate Herron, Paralegal

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION: It is stipulated by and
2 between Counsel that this deposition is
3 being taken in accordance with the South
4 Carolina Rules of Civil Procedure; and
5 that the deponent does not waive reading
6 and signing of this deposition.

7 * * * * *

8 MARVA HARDEE-THOMAS, being first
9 duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. O'CONNELL:

12 Q. Would you state your full name?

13 A. Marva A. Hardee-Thomas, or Marva Ann
14 Hardee-Thomas.

15 Q. Have you ever had your deposition taken
16 before?

17 A. No.

18 Q. Have you ever taken a deposition?

19 A. No. Never given one, either.

20 Q. You've never taken a deposition as a lawyer.

21 A. No.

22 Q. Okay. The rules require me to tell you the
23 following: If you have a question about my
24 questions or something is unclear, or you need me
25 to repeat something or rephrase something, you need

10:42A

10:42A

10:43A

1 to ask me for an explanation on the record and not
2 anybody else, including Mr. Zelenka, who's the
3 Attorney General here.

4 If you need to take a break during the
5 deposition, you need to tell me; but during breaks,
6 you can't talk to anybody about your testimony.
7 You can talk about the weather or anything else,
8 but you can't talk to anybody about your testimony.

9 A. Who am I going to talk to? I mean, like --

10 Q. The rules say I have to tell you this.

11 A. Okay.

12 Q. I don't know who you would talk to.

13 A. I got you.

14 Q. And please do -- you're only a semi-captive
15 in this room, so if you need to take a break,
16 please let me know.

17 A. If I have to use the bathroom or something
18 like that, I'll let you know.

19 Q. I won't inquire as to why you need a break,
20 but if you need one...

21 You're an attorney.

22 A. Yes.

23 Q. And how long have you been a attorney?

24 A. September 19, 1995.

25 Q. That's when you were sworn into the South

10:43AM

10:43AM

10:43AM

10:43AM

10:44AM

1 Carolina Bar?

2 A. Yes.

3 Q. Where did you do your undergraduate school?

4 A. North Carolina State University.

5 Q. And law school?

10:44AM

6 A. Seaton Hall Law.

7 Q. Did you go directly from NC State to Seaton
8 Hall?

9 A. No.

10 Q. What did you do in between?

10:44AM

11 A. Worked with Eastern Airlines. They
12 transferred me to New York to Continental Airlines,
13 then went to law school.

14 Q. What did you do for Eastern Airlines and
15 Continental?

10:44AM

16 A. Eastern Airline, I was an airport agent.
17 Continental, I was a city ticket agent.

18 Q. Okay. How long did you do that, those two
19 jobs?

20 A. Graduated from undergrad in '86. I started
21 working with Eastern '86 to 87, I believe. They
22 went bankrupt. And so they transferred me to
23 Continental, which is, like, '88, '89, I think.
24 And I believe in '90, I started law school.

10:44AM

25 Q. Okay.

10:45A

1 A. 1990.

2 Q. Were you a full-time law student?

3 A. I started off full-time until I got a job
4 with Prudential Securities, which paid my law
5 school loan, and I started part time, and I
6 graduated on time.

10:45AM

7 Q. So you graduated in three years?

8 A. Uh-huh.

9 Q. So you must have went to summer school.

10 A. I went straight through. They paid for
11 everything.

10:45AM

12 Q. And you're from Summerville.

13 A. No; I'm from Manhattan, New York.

14 Q. Oh, did you grow up in Summerville?

15 A. You might as well say in Lincolnville. We
16 didn't -- we weren't allowed to come to
17 Summerville. I'll put it that way.

10:45AM

18 Q. Okay. Where did you go to high school?

19 A. RB Stall High School.

20 Q. Okay. So you moved to South Carolina at
21 some point after you were born.

10:45AM

22 A. Probably before, like, five years old,
23 because at age six or seven, I started at Alice
24 Byrne Middle.

25 Q. All right. When you graduated from Seaton

10:46AM

1 Hall, did you --

2 A. Clerk.

3 Q. That was in 1995?

4 A. No. Graduated from Seaton Hall was 1990 to
5 '93.

10:46AM

6 Q. All right. What did you do after law
7 school?

8 A. Clerked for --

9 Q. Who?

10 A. -- a judge in Jersey City, New Jersey.

10:46AM

11 Q. Did you take the New Jersey bar?

12 A. No. I knew I was going to stay -- New
13 Jersey -- if you -- you take New York, New Jersey
14 and Pennsylvania at the same time.

15 Q. All right. Did you take any of those bars?

10:46AM

16 A. No.

17 Q. How long did you stay as a clerk for that
18 judge?

19 A. I broke my clerkship, I believe, I think,
20 halfway and came back to South Carolina.

10:46AM

21 Q. And when would you have taken the bar?

22 A. Probably in '94, '95.

23 Q. And you were sworn in in '95.

24 A. Yeah, probably during that time.

25 Q. So you must have taken the bar in May.

10:47AM

1 A. I remember it was hot.

2 Q. I'm sorry; excuse me. The bar is given
3 twice a year.

4 A. Right.

5 Q. It's given in February, and you get the
6 results in May.

7 A. Right.

8 Q. And it's given at the end of July, and you
9 get the results in approximately November.

10 A. It had to be, like, May because I
11 remember --

12 Q. My question is, if that's a -- getting sworn
13 in in September would be unusual, in my experience
14 at least, because the bar's given in February and
15 you get the results in May.

16 A. Oh, okay.

17 Q. And it's given in late-July, and you get the
18 results in November, at least that's the way it's
19 been happening.

20 A. It may have been February. It may have been
21 February. But I remember right after being sworn
22 in, I practiced. I was practicing as a public
23 defender and an attorney.

24 Q. So you don't know why you were sworn in in
25 September of '95 as opposed to when --

1 A. I presume -- I knew I finished the bar. The
2 question is when. I don't have a clue.

3 Q. Were you sworn in with other people?

4 A. Yeah. I came down and practiced -- well,
5 practiced for the bar with some of the South
6 Carolina lawyers in Columbia and studied with them.

10:48AM

7 Q. All right.

8 A. And --

9 Q. You only took the bar once?

10 A. I think I took it twice.

10:48AM

11 Q. You took it twice?

12 A. Yes, I came down in February and then I
13 think when it was really hot.

14 Q. Okay. That would have been the end of July.

15 A. Uh-huh.

10:48AM

16 Q. And so you didn't pass it the first time;
17 you passed the second time.

18 A. Exactly.

19 Q. Okay. So after you passed the bar, what did
20 you do?

10:48AM

21 A. After I passed the bar, I started working
22 with the -- I started working here, I believe.
23 September '95? I was working here. Beforehand, I
24 was working with the Solicitor's office waiting on
25 the bar results.

10:49A

1 Q. How long did you work at the Solicitor's
2 office?

3 A. Six months. And that was in Orangeburg.

4 Q. All right. When you say you started here,
5 what do you mean?

10:49AM

6 A. This office, I believe. Well, not
7 necessarily. I was working as a public defender
8 and I was on Trolley Road with -- renting space
9 from Mortimer, Linedecker & Rose. And then shortly
10 after, I came here to this office.

10:49AM

11 Q. How long did you work -- what was the name
12 of that law firm?

13 A. I rented space from Mortimer, Linedecker &
14 Rose on Trolley Road.

15 Q. And how long were you in that space?

10:49AM

16 A. I believe that was in '95. Yeah. I started
17 with them immediately after being sworn in.

18 Q. And that was on Trolley Road?

19 A. Uh-huh.

20 Q. And you said you became the public defender.

10:50AM

21 A. During that time.

22 Q. Was that immediately after you got sworn in
23 and started practicing law?

24 A. Yeah.

25 Q. How did you get the public defender job?

10:50AM

1 A. Applied and basically interviewed with
2 Arnold Goodstein, who was head of Public Defender
3 Corporation at that time.

4 Q. And was there -- why were they looking for
5 someone to be the public defender?

10:50AM

6 A. There was a gentleman, Mark
7 something-or-another that left, because his wife
8 was in the military or something like that, and so
9 they wanted to fill the position.

10 Q. So is it safe to say that the public
11 defender was your first job out of law school --
12 after you became a lawyer, rather -- sorry. After
13 you became a lawyer, was that your first job?

10:50AM

14 A. Well, one of them because the Public
15 Defender Corporation is -- in Dorchester County --
16 is part time, so you could practice on your own.

10:51AM

17 Q. I understand.

18 A. So I had the private practice and the public
19 defender.

20 Q. So when you started at the public defender,
21 you believe that was in 1995?

10:51AM

22 A. It was in 1995.

23 Q. You were the public defender for Dorchester
24 County.

25 A. One. They have contract public defenders.

10:51AM

1 It was myself, Mark Linedecker and Gene Dukes, who
2 dealt with the adults.

3 Q. Okay. So Mark Linedecker was then a
4 contract --

5 A. Part-time public defender.

10:51AM

6 Q. Did you-all have an office together?

7 A. No. We -- how do I say this? I rented
8 space from Mortimer, Linedecker, Rose.

9 Q. Right.

10 A. But we had like a chinese wall. Everything
11 was separate.

10:51AM

12 Q. You said Mr. Linedecker was also a public
13 defender here.

14 A. Uh-huh.

15 Q. Was he in that same space where you were?

10:51AM

16 A. Yeah, but I rented space from them, but we
17 didn't share anything.

18 Q. All right. Was he a contract public
19 defender?

20 A. Yes. That's all you can be in Dorchester
21 County.

10:52AM

22 Q. And you're a contract public defender.

23 A. Yes.

24 Q. Okay. Did you and he collaborate on cases?

25 A. No.

10:52AM

1 Q. Tell me how that worked then.

2 A. Well, I mean, you're given an assignment of
3 a case through the Public Defender Corporation
4 coordinator, and you work that case.

5 Q. So you don't collaborate with the other
6 public defender.

7 A. No; they're separate and independent and
8 apart.

9 Q. Okay. And so you're paid a salary by -- who
10 pays your salary?

11 A. The Public Defender Corporation. And they
12 get monies from the corporation, the town and the
13 state. It all comes together in some respect.

14 Q. When you say the town, do you also -- does
15 that mean the town of Summerville funds part of
16 your salary?

17 A. Yes.

18 Q. And so that means you practice in the town
19 court?

20 A. Well, if they call you. Now -- how do I say
21 this?

22 Q. Practice as a public defender in the town
23 court.

24 A. Well, before then, we did preliminary
25 hearings in the town court with the magistrate

10:52AM

10:52AM

10:53AM

10:53AM

10:53A

1 judges. And now we're required to do transfer
2 court, which is, you know, magistrate level
3 offenses out of General Sessions. And they're
4 talking about making us do some of the magistrate
5 offenses, but we haven't gotten to that yet; we
6 haven't been ensued yet to be able to do that.

10:53AM

7 Q. When was the first time you tried a case?
8 How long after you became public defender was the
9 first time you tried a criminal case?

10 A. September 1995.

10:53AM

11 Q. You tried a case as soon as you became a
12 public defender?

13 A. Yes.

14 Q. What kind of case was it?

15 A. I remember it being a sex offense case.

10:54AM

16 Q. Had you ever participated in a trial before?

17 A. The requirement that you had with regards to
18 sitting in different trials and stuff like that,
19 but as far as going with another attorney, no. The
20 requirement, the 403s, I believe --

10:54AM

21 Q. Whatever that number is, it requires people
22 to have certain number of experiences --

23 A. Right.

24 Q. -- by observing trials.

25 A. Uh-huh.

10:54AM

1 Q. You had to do that.

2 A. Yes.

3 Q. But when you tried that sex offense case, it
4 was criminal sexual conduct?

5 A. Right.

10:54AM

6 Q. First degree?

7 A. Yes, because of her age, I believe. It may
8 be second. It may have been second.

9 Q. Okay. A serious offense.

10 A. Yeah, it was very serious.

10:54AM

11 Q. And so that was the first trial that you
12 ever took part in as a lawyer.

13 A. By myself.

14 Q. But did you ever sit with somebody else who
15 was trying a case other than the rule -- whatever
16 they are?

10:55AM

17 A. Not that I remember.

18 Q. How did that -- what was that experience
19 like, to have the first trial by yourself trying a
20 pretty serious crime?

10:55AM

21 A. When you become a public defender, that's
22 what you're asking for, trial experience.

23 Q. Yeah, I understand. But how did that feel
24 for you to be doing that, to be put in that
25 position so quickly?

10:55AM

1 A. Well, I knew that was what I was going to be
2 doing. That's why I wanted to be a public
3 defender, to try cases.

4 Q. How did that make -- were you apprehensive?

5 A. No.

10:55AM

6 Q. No?

7 A. No. You mean like I didn't know like what
8 was going to be happening?

9 Q. No. I asked if you were apprehensive about
10 the prospect of trying a fairly serious criminal
11 case by yourself. And that was the first time you
12 had ever been involved in a trial. Did that make
13 you apprehensive?

10:55AM

14 A. No.

15 Q. Okay. When do you think was -- after you
16 became public defender, when was the first time you
17 think you tried a murder case?

10:56AM

18 A. Let's say -- you mean tried a murder case.
19 Non-capital?

20 Q. Of any sort.

10:56AM

21 A. Yeah, non-capital.

22 Q. No, of any sort, whether it's capital or
23 non-capital, a murder case.

24 A. I'd say probably two to three years. I'd
25 say probably two to three years, from 1995.

10:56AM

1 Q. Was that a capital case?

2 A. No, I don't believe so.

3 Q. Did you try that by yourself?

4 A. Yes.

5 Q. When was the case that we're here about, the
6 John Edward Weik case? Was that the first death
7 penalty case you had?

8 A. I don't believe so.

9 Q. What was the first death penalty case that
10 you tried?

11 A. Oh, let's see. I remember Bowman being kind
12 of like the last. But the first Weik -- there were
13 probably two others with Norbert Cummings. I
14 remember trying about four cases with him. I
15 couldn't give you the names, though.

16 Q. Do you know whether they were before or
17 after John Edward Weik?

18 A. Weik was with Mr. -- I forgot -- in Moncks
19 Corner. I think about probably three.

20 Q. You think you tried three death penalty
21 cases before -- between '95 and '99, before this
22 case?

23 A. I think so.

24 Q. And you think you tried all of those with
25 Norbert Cummings?

1 A. I believe so, because he and I have had all
2 of the death penalty cases except for this one with
3 Weik.

4 Q. Except for?

5 A. This one with Mr. Weik.

10:58AM

6 Q. Okay. Why did you -- why did it happen that
7 you tried all those cases with Norbert Cummings?

8 A. That's the way it worked out. I mean,
9 usually what happens is a public defender is on one
10 side and a private attorney is on the other. And
11 usually he's chosen, and they just put a public
12 defender in there. And from the public defenders
13 that they had to choose, Linedecker and Gene
14 Dukes -- I think I just got picked because -- I
15 think I just got picked.

10:58AM

10:58AM

16 Q. How did Norbert Cummings get picked?

17 A. In some of the cases, he was the first one
18 to get picked, like going down the roster.

19 Q. Yeah, I understand that. What I am
20 wondering is, why would he have gotten picked --
21 you said three or four cases that you -- death
22 penalty cases that you tried before Weik, or Wiek?

23 A. I think it may have been two to three,
24 because I remember Bowman being kind of like the
25 last one.

10:59AM

1 Q. The last one that you tried.

2 A. Right, with Norb.

3 Q. Which would have been when?

4 A. 2002, 2003.

5 Q. Okay. So the -- when you're talking about
6 the last one, that was the last one you tried with
7 Norb Cummings.

10:59AM

8 A. Right.

9 Q. But you tried two or three cases, death
10 penalty cases, with Norbert Cummings prior to this
11 case --

10:59AM

12 A. Right.

13 Q. -- with John Weik.

14 A. Right.

15 Q. What I am wondering is, that's -- and you
16 think you tried how many death penalty cases with
17 Norb?

10:59AM

18 A. I'd say three to four. I remember him being
19 on -- he and I just being ones that, you know, were
20 picked to try these particular cases, not
21 necessarily saying that they are the only death
22 penalty cases in Dorchester County, because there
23 were other attorneys trying them, but Norbert was
24 always the attorney, I remember, being on the other
25 side.

10:59AM

11:00AM

1 Q. Why was he picked so often?

2 A. Because he tried the cases.

3 Q. No. Why was he selected to be -- to try
4 these death penalty cases so often?

5 A. I can't tell you, because in some respects
6 he would be chosen before I was placed into the
7 scenario.

8 Q. In the cases that you tried with Norbert
9 Cummings, who did you view as lead counsel?

10 A. He did. He was.

11 Q. Okay. When you tried this case -- this
12 case, John Weik -- I pronounce it Weik; you
13 pronounce it Wiek?

14 A. Wiek, yeah.

15 Q. We are talking about the same person.

16 A. We are talking about the same person.

17 Q. Who was -- between you and Mr. Beauford, who
18 was lead counsel?

19 A. Definitely Mr. Beauford. And let me tell
20 you the distinction. Mr. Beauford was originally
21 hired to represent Mr. Weik, from my understanding.
22 They didn't have any money. And so, therefore,
23 Mr. Weik was back in to Dorchester County getting
24 counsel. I was the first one chosen.

25 Q. I'm sorry. I missed something there.

1 A. Mr. Weik --

2 Q. Mr. Beauford got retained.

3 A. Retained.

4 Q. In this case.

5 A. Exactly.

11:01A

6 Q. And then --

7 A. There was no money, so therefore --

8 Q. When you say he got retained, I assume that
9 means they paid him something.

10 A. I don't know. I never asked him about that,
11 but when it came down, he was appointed a public
12 defender, and then Mr. Beauford came back to the
13 judge and asked that he be appointed, since he's
14 already worked in the case and that he would
15 continue working, you know, with the appointment.

11:01A

16 Q. So how did you get into the case?

17 A. Appointed.

18 Q. I understand that, but was Mr. Beauford
19 continuously representing him until he got
20 appointed because they didn't have any more money?

11:02

21 A. It's my understanding that when there was no
22 money, I think he stopped the -- you know, his
23 representation or something like that. Then he
24 went to the county. And I believe I was appointed
25 then. I was the only one that was on the case.

11:02

1 And so they had to appoint another attorney, and
2 then -- so Mr. Beauford was appointed then.

3 Q. Did he get relieved at some point?

4 A. I have no idea. I didn't get involved in
5 that aspect. I just remember receiving something
6 showing that I was appointed in a death penalty
7 case. And I was the only one in there at that
8 time.

9 Q. My review of your file seems to
10 indicate that --

11 *(The proceedings were interrupted.)*

12
13 THE DEPONENT: Let me ignore this; go
14 ahead.

15 BY MR. O'CONNELL:

16 Q. Do you need to take that?

17 A. No.

18 Q. It seems to indicate to me that your
19 involvement began in early-1999. The case was
20 tried in May of '99. Do you know when you became
21 active in the case?

22 A. That's what I was trying to tell you. There
23 would be an appointment sheet that would tell you
24 when I was activated, and that's when I, I guess,
25 became involved.

1 Q. How long do you remember being involved
2 before the trial?

3 A. A few months.

4 Q. A few months?

5 A. Uh-huh.

11:03AM

6 Q. Can you define a few months a little better?

7 A. I don't have the paperwork to tell you, but
8 -- that's the thing; I don't have the paperwork.

9 Q. Yeah, I understand. You said a few months.
10 Do you mean three or four months?

11:03AM

11 A. Probably a little bit more than that, I
12 would presume.

13 Q. So for some period of time, you were the
14 only lawyer that Mr. Weik had.

15 A. Yeah, but it was a short period of time,
16 because I remember when I got appointed, we got
17 before, I believe, Judge Brown and he wanted
18 someone appointed to a second chair so that the
19 case could continue on. And I believe Mr. --

11:03AM

20 Q. When you got appointed, were you -- had a
21 Notice of Intention to Seek the Death Penalty been
22 served?

11:04AM

23 A. God. It's my understanding that when
24 Mr. Beauford was involved, some of that may have
25 already occurred. So I basically was brought into

11:04AM

1 the situation as being appointed as a public
2 defender because they needed a public defender on
3 the other side. And I see that as basically saving
4 the county money when they do that.

5 Q. When you say you're a contract public
6 defender, do you get paid by the hour?

11:04AM

7 A. No. You get paid a yearly contract amount,
8 a stipend that's yearly, and then they apportion it
9 out on a monthly basis.

10 Q. How much is that currently?

11:05AM

11 A. Right now, I believe it's 47.5 -- 42,
12 47,500.

13 Q. When you started in 1995, what were they
14 paying you?

15 A. 32.5, 32,500.

11:05AM

16 Q. How much of your time, when you began your
17 first five years of this job, from '95 to 2000, how
18 much of your time was taken up by public defender
19 cases?

20 A. It's like a full-time job. I'd say 40
21 hours. They tell you that, you know, you're
22 spending like 20 hours. That's a bunch of crap,
23 because by the time you get appointed cases and go
24 see your clients, you work on cases, it's really a
25 full-time job.

11:05AM

11:06A

1 Q. So that's the case since you began this job
2 up until now; it takes at least 40 hours a week.

3 A. Uh-huh.

4 Q. You've got to please say yes or no.

5 A. Oh, yes.

11:06AM

6 Q. The reason I say that is when it appears in
7 the transcript, you don't know what it means.

8 A. (Moves head up and down.)

9 Q. So you have a private practice.

10 A. Yes.

11:06AM

11 Q. And you've had a private practice since you
12 started practicing law in 1995.

13 A. Yes.

14 Q. How many hours a week do you think you
15 presently devote in your private practice?

11:06AM

16 A. Probably 30 to 40.

17 Q. So was that true back in 1995?

18 A. 1995, I didn't have much of a client base.

19 Q. Okay.

20 A. So --

11:06A

21 Q. You think around '98, '99, when this case
22 was tried, how much of a client base did you have?

23 A. My position as public defender was not only
24 working with adults but working with juveniles,
25 also. They kind of, like, stopped that a little

11:07

1 bit for me now because they have one individual
2 dealing with the juveniles. I only get involved
3 with juveniles if there's a second or third
4 codefendant. So I'm still involved in that regard.
5 So that's what I'm saying. Other than dealing with
6 the adults, having to go see them, I'm dealing with
7 juveniles, also.

11:07AM

8 So, now, I'd say that my practice -- you're
9 in General Sessions two weeks out of the month.
10 Two weeks out of each month, you're in General
11 Sessions. So you're left with the other two weeks,
12 you know, to occupy your time, and that's mainly
13 when I practice my private practice.

11:07AM

14 Q. So for the two weeks terms of court, they're
15 consecutive terms?

11:07AM

16 A. Yes.

17 Q. You'd spend all your time as a --

18 A. Public defender.

19 Q. -- public defender.

20 A. Uh-huh.

11:08AM

21 Q. And the two weeks that you didn't have terms
22 of court, you would spend all of your time on your
23 private practice?

24 A. Not necessarily all, because I make
25 appointments to see my public defender clients

11:08AM

1 coming in for interviews, and then I make a point
2 to go see them in jail.

3 Q. The description you've given of your work
4 patterns, was that true in 1998, 1999?

5 A. Yeah.

11:08AM

6 Q. What I am asking is, did you have a pretty
7 good client base for your private practice then?

8 A. Well, it's not as it is now, put it that
9 way. I think I have more clients now than I did
10 back then.

11:08AM

11 Q. How would you compare them?

12 A. Apples and oranges.

13 Q. How would you quantify that?

14 A. Apples and oranges. I mean, I didn't have
15 that many -- I had more free time, put it that way,
16 with regards to my private time.

11:08AM

17 Q. I don't know what that means.

18 A. Well, now I have schedules. I make
19 appointments. People come in. I'm occupied with,
20 you know, seeing clients who want to come in on a,
21 you know, private basis. Back then, I had more
22 free time. I could have gone home, because I've
23 had -- you know, didn't have clients coming in. I
24 wasn't, you know, too well known in the community
25 to do private work, and so it was quite different.

11:09AM

11:09AM

1 Q. So back in '98 and '99, you think you were
2 spending how much -- describe your work patterns as
3 a public defender back then in terms of how many
4 hours a week do you think you were spending on
5 them.

11:09AM

6 A. I think I was doing 40 hours a week and then
7 on my private time, I would have clients come in to
8 see them, or I would go to the jail to see my
9 private -- excuse me -- my public defender clients.
10 And, plus, they could call me in for juveniles at
11 any time they wanted to.

11:10AM

12 Q. What I am wondering is, how much -- you say
13 this is a full-time job.

14 A. Uh-huh.

15 Q. And you said it was a full-time job from the
16 beginning.

11:10AM

17 A. Uh-huh.

18 Q. And the answers to the last two questions
19 are yes?

20 A. Oh, yes. Yes.

11:10AM

21 Q. I sometimes forget, too.

22 So you had a private practice in 1998, '99.

23 A. Yes.

24 Q. You had a full-time job as a public
25 defender.

11:10AM

1 A. Yes.

2 Q. Forty hours every week.

3 A. Yes.

4 Q. Or was it just 40 hours of work during the
5 two weeks terms of court?

11:10AM

6 A. Well, it was definitely 40 hours then. And
7 then if you had a trial, it was over that. I mean,
8 you're -- we were required to go to St. George
9 from, say, 9:00 to 5:00. And sometimes it spilled
10 over because you had to go to the jail. Sometimes
11 it spilled over because you had to, you know, get
12 back to the office and do pleadings for trials or,
13 you know, meet clients or meet witnesses. So I
14 mean, I wouldn't say exactly 40 hours. It depends
15 on the situation. But you definitely had to be in
16 St. George 9:00 to 5:00 for two weeks.

11:10AM

17 Q. Were you spending 60, 70 hours a week
18 working between private practice and your public
19 defender job? I mean, I know you have a baby now
20 and you're probably not doing that anymore, but is
21 that what the case was back in '98, '99?

11:11A

22 A. I mean, it could, but it depends on the
23 situation. I mean, sometimes if you had a case and
24 -- you had to come to the office and continue to do
25 work. But it was like a case-by-case situation.

11:11.

1 That could have happened during the week of General
2 Sessions, because I couldn't be at the office at
3 all, so I had to be in St. George.

4 Q. So for two weeks every month, you're in
5 court all day long every day.

11:12AM

6 A. Yes. And if I didn't have a trial, you
7 still had to be there.

8 Q. The other two weeks you're here working on
9 your private practice and working on the public
10 defender cases.

11:12AM

11 A. Yes, yes.

12 Q. All right. That's my question. The two
13 weeks that you didn't have court, how many hours a
14 day were you working?

15 A. Well, it depends. You could -- if you -- it
16 depends, because you would set -- I set all my new
17 cases up for people to come in during those two
18 weeks. I also set up time to go to the jail to see
19 old clients, new clients. And then you never knew
20 when you were going to be called in for juvenile
21 cases. And that could be the whole day.

11:12AM

22 Q. Can you quantify how many hours a week you
23 were working between the two positions in your off
24 court weeks?

11:12AM

25 A. I put it at an equilibrium of 40 to 40.

11:13A

1 But, typically, if I'm in General Sessions for two
2 weeks, it spilled over a little bit on my private
3 practice. So -- it could be 40; it could be 60
4 weeks some weeks.

5 Q. I'm talking about off weeks --

11:13AM

6 A. Yeah.

7 Q. -- not court weeks.

8 A. Okay. If I'm working 40 hours on my private
9 practice, and I've had people -- I had people
10 coming in for public defender work, on the non- --
11 on my private practice, I could say, like, 20.

11:13AM

12 Q. Okay.

13 A. Or less.

14 Q. What training have you had in trying death
15 penalty cases?

11:14AM

16 A. Only CLEs going to -- there's a course I
17 went to Georgia with regards to trial experience.

18 Q. Where was that?

19 A. I don't know what part of Georgia it was,
20 but I remember going there one time then, CLEs with
21 regard to death penalty.

11:14A

22 Q. How long was the training at the Georgia
23 thing?

24 A. I think it was three days.

25 Q. That was a seminar that you sat in a room

11:14.

1 with a bunch of other lawyers listening to people
2 lecture?

3 A. No, you had to actually -- they gave you a
4 scenario, and you practice in a trial-type
5 situation in front of a judge.

11:14A

6 Q. So that was a three-day seminar or a
7 three-day training.

8 A. Yes.

9 Q. Was that in Macon, Georgia, by chance?

10 A. Yes.

11:14A

11 Q. Was that at the National Criminal Defense
12 College?

13 A. Yes, exactly.

14 Q. And it was in the summertime?

15 A. Yes.

11:15A

16 Q. But you only did three days.

17 A. I remember three days.

18 Q. Was it designed -- did the course actually
19 last longer than three days?

20 A. It could have been longer. I just remember
21 three days.

11:15A

22 Q. I've actually taught in that course, and
23 it's a two-week session. Do you think that --
24 Macon, Georgia is the hottest place I've ever been,
25 except for maybe Columbia, South Carolina.

11:15A

1 A. Uh-huh.

2 Q. Do you remember, was it in the summertime?

3 A. It was definitely in the summertime.

4 Q. And so you went -- so did you have the
5 impression that everyone was going to be there for
6 two weeks, the other students?

11:15AM

7 A. I just remember three days. I couldn't tell
8 you how long it was. I remember three days. I
9 mean, I came in with everybody and I left with
10 everybody.

11:16AM

11 Q. Okay.

12 A. I got my certificate.

13 Q. When was that?

14 A. I couldn't tell you. I just remember going
15 to Macon, Georgia.

11:16A

16 Q. Was that devoted to death penalty work?

17 A. Well, I don't believe -- it was not devoted
18 to death penalty. It was devoted to trial
19 practice.

20 Q. Do you have your certificate?

11:16A

21 A. I think I do, in my drawer.

22 Q. Can I see it?

23 A. Sure. I can have her looking for it.

24 (Off-the-record conference.)

25 BY MR. O'CONNELL:

11:16

1 Q. Mercer Law School.

2 A. That's right.

3 Q. Aside from that training -- and that was
4 just training for -- not specifically devoted to
5 death penalty work, have you been to any other
6 death penalty seminars that were devoted to
7 training for death penalty cases?

11:17AM

8 A. South Carolina Bar.

9 Q. Which have you gone to?

10 A. Every year we have -- what is it -- the
11 criminal -- the public defender conference. They
12 have some aspects -- they give you information
13 regarding that. They had this, I think, this
14 private aspect with regards to this -- exclusively
15 death penalty that was offered by the South
16 Carolina Bar that I remember going to.

11:17AM

17 Q. Was that at the yearly bar meeting?

18 A. I don't know if it was a yearly bar meeting.
19 I think this was something separate that was
20 offered by like Delgado or something like that.

11:17AM

21 Q. These are one-day seminars?

22 A. I believe so.

23 Q. All right. I don't know how long Norbert
24 Cummings has been a lawyer, but do you know?

25 A. For years.

11:18AM

1 Q. Well, me, too, but can you narrow that down
2 a little bit?

3 A. Let's see. Probably 15 years or 20 years.

4 Q. Okay. I want to ask you about your role in
5 this case.

11:18AM

6 A. Okay.

7 Q. What was your role? How would you describe
8 it?

9 A. I was trying to get into that a minute ago,
10 by saying that when Norb and I operated, we
11 basically sat down and we discussed what positions
12 I would be taking, what people -- people who I was
13 going to be questioning and stuff like that. We
14 actually worked together on the case. But in this
15 situation, I was appointed, and basically
16 Mr. Beauford took the lead with regards to doing
17 everything, with regards to, you know, questioning
18 the witness, getting ready for court, getting ready
19 for, you know, trial. And I just felt that I was
20 an administrative staff person.

11:18AM

11:19AM

11:19AM

21 Q. Why did it happen that way?

22 A. That was just how he wanted it.

23 Q. Did he tell you that? I mean, how did y'all
24 decide that between yourselves?

25 A. I think it was a situation where --

11:19AM

1 (Proceedings were interrupted.)

2 THE DEPONENT: Yeah, that's it.

3 MR. O'CONNELL: Can I look at it?

4 (Off-the-record conference.)

5 BY MR. O'CONNELL:

11:20AM

6 Q. I'm sorry. We were talking about --

7 A. Was it Mr. Beauford's decision to --

8 Q. How did it happen -- how did that decision
9 get made?

10 A. I think the way he was -- I think it was
11 done by design, the way he was operating, because
12 -- this is the way I saw it. He was originally on
13 the case, working on the case. They ran out of
14 money. The court appointed Mr. Weik to me as a
15 public defender because I'm in Dorchester County.

11:20AM

16 Mr. Beauford indicated that he had knowledge
17 of what was going on in the case and he just wanted
18 to be appointed to the case so that he could be
19 paid by the state because they didn't have any
20 money. And so he already was familiar with what
21 was going on. And I think it happened by design.

11:20AM

22 Q. Whose design?

23 A. I think it's his design. It sure wasn't
24 mine. I didn't make decisions like that. I just
25 wanted to know what was my position. What do you

11:21AM

11:21A

1 want me to do? And I went to him and asked.

2 Q. Did you consider assuming a leadership role
3 in the case?

4 A. No. How do you mean assuming a leadership
5 role?

11:21AM

6 Q. Well, I guess what I'm gathering from what
7 you're saying is that he was the -- the popular
8 term these days was first chair, second chair being
9 the subordinate lawyer. Did you consider assuming
10 the position of the first chair, that is, the
11 primary lawyer in the case.

11:21AM

12 A. When I got appointed, yes, because I was the
13 only one on there.

14 Q. Yeah, of course. I mean as between you and
15 Mr. Beauford.

11:21AM

16 A. Well, when I got appointed, I did assume
17 myself as lead chair because I was the only one.
18 And then when he got involved, he basically said
19 that he had already worked on the case, he had
20 already done certain things. But I remember
21 getting some of the experts --

11:22AM

22 Q. Yeah. But before you get there, what I mean
23 is, when he gets in the case, it's already your
24 case. You've been on the case for at least some
25 period of time as the only lawyer. Then he comes

11:22AM

1 to me. It sounds to me -- maybe I'm wrong -- it
2 sounds to me that he assumed the position as the
3 lead lawyer in the case. Is that fair?

4 A. It could be. I remember it this way. I
5 knew he had worked on the case. I knew he had gone
6 to Judge Brown and told him that he wanted to be
7 appointed on the case because he had already worked
8 on the case, since he was appointed. And when -- I
9 was in on that conversation with the judge and him
10 asking to be appointed, from my understanding.

11:22AM

11:23AM

11 Q. Right.

12 A. And so since he had already been involved
13 prior, he had already done some work in the case,
14 and this was just an appointment, he wanted to
15 resume his position in regards to getting, you
16 know, the case resolved.

11:23AM

17 Q. What I am asking is, why didn't you say,
18 "It's my case, I'll be lead lawyer, and I'll make
19 the decisions, and I'll tell you what I want you to
20 do"? Is it fair to say that that's what he did to
21 you?

11:23AM

22 A. I wouldn't -- I can't say that because I
23 don't remember that. I just remember him coming in
24 saying that he had worked on the case, you know,
25 prior and that he just needed the appointment, you

11:23A

1 know, to get back into the case so he could
2 continue doing what he was doing.

3 Q. And you said that -- so your role in the
4 case was what? How would you describe it?

5 A. I looked at it as more administrative.

11:24AM

6 Q. What do you mean by that?

7 A. Well, when I got involved, I usually find
8 out what's going on in the case. In talking to the
9 client, you know, he said he had someone that he
10 couldn't afford to pay. So the first thing I
11 remember doing is getting experts involved. My
12 thing is if there were experts involved beforehand,
13 you know, I would have clashed, because I remember
14 getting everybody.

11:24AM

15 Q. So before you got involved, there were -- no
16 experts had been retained?

11:24AM

17 A. As far as I know, I don't know who it was,
18 but the experts that were needed, I felt that I
19 got.

20 Q. I'm sorry. You said you didn't know who
21 they were.

11:24AM

22 A. Yeah.

23 Q. Were there any?

24 A. I have no idea.

25 Q. You didn't know of any.

11:24A

1 A. No.

2 Q. All right.

3 A. I didn't deal with them, I don't think. But
4 I don't remember getting Patti, so I don't think.

5 Q. Did you also get the investigators involved? 11:25AM

6 A. I believe so.

7 Q. Were there any investigators before you got
8 involved?

9 A. See, I don't know. See, I don't know if --

10 Q. Do you remember any? 11:25AM

11 A. Patti, I don't know.

12 Q. No. I mean before you got involved, were
13 there any investigators working on the case?

14 A. I have no knowledge.

15 Q. You don't know of any. 11:25AM

16 A. No.

17 Q. Before I get too far afield, is this the --
18 let me mark this -- I guess we'll call this
19 Petitioner's Number 1.

20 (PETITIONER EXH. 1, Certificate from
21 National Criminal Defense College, was
22 marked for identification.)

23 BY MR. O'CONNELL:

24 Q. Ms. Hardee-Thomas, this has been marked as
25 Petitioner's Number 1. And is this a true and 11:25AM

1 correct copy of the certificate that you received
2 from the National Criminal Defense College?

3 A. Yes.

4 Q. And you said this was a three-day training
5 that you had in 1997 that --

11:26AM

6 A. I remember --

7 Q. It was a three-day --

8 A. I believe it was three days. It could have
9 been more. I remember three days.

10 Q. And this was the -- what you described as a
11 general criminal defense training.

11:26AM

12 A. Trial practice.

13 Q. Trial practice.

14 A. Uh-huh.

15 Q. Okay. So you got -- as far as you know,
16 there were no experts involved in the case until
17 you got into it?

11:26AM

18 A. Right.

19 Q. And as far as you know, there were no
20 investigators involved in the case until you got
21 into it?

11:26AM

22 A. Right.

23 Q. And who do you remember being the experts
24 that you got involved in this case?

25 A. Donna Schwartz-Watts, her boss. Was it

11:26AM

1 Bradley or -- Donna Schwartz-Watts, her boss,
2 another forensic psychologist. What's his name?
3 Bobby Mentor, investigator. Patti
4 something-or-other.

5 Q. You remember getting Patti Rickborn
6 involved?

11:27AM

7 A. But, see, this is the thing. I don't know
8 her from Adam. So my question is, how would I get
9 her involved? I don't know her at all. Now, she
10 may have been a referral, but I definitely remember
11 her being involved. I don't know when she got
12 involved. I don't know if I got her or if she
13 was -- I don't know how she got involved. I really
14 don't; I'm sorry.

11:27AM

15 Q. Do you remember that she was involved?

11:27AM

16 A. Yes, because I wrote a letter.

17 Q. But aside from the letter that -- you and I
18 discussed the letter when I met with you a couple
19 weeks ago.

20 A. Uh-huh.

11:28AM

21 Q. Is that a yes?

22 A. Yes.

23 Q. Prior to that time, did you remember that
24 she was involved in this case?

25 A. Yes. I mean, I don't know how she got

11:28A

1 involved. I don't believe that she's one of the
2 persons that I would put down as one of the
3 experts, because I don't know her.

4 Q. Okay.

5 MR. O'CONNELL: Why don't you mark this
6 as Number 2?

7 (PETITIONER EXH. 2, 4/29/99 Rickborn
8 Investigations Letter to Percy Beauford &
9 Marva Hardee-Thomas, was marked for
10 identification.)

11 BY MR. O'CONNELL:

12 Q. Petitioner's Number 2 is a letter dated
13 April 29, 1999 that I got out of your file. Do you
14 recognize that?

15 A. Yes.

16 Q. And that was written to both you and
17 Mr. Beauford.

18 A. Uh-huh.

19 Q. Yes, right?

20 A. Yes.

21 Q. And one of the things she complains of here
22 is that there was no court order ever approving her
23 being hired. Was that accurate?

24 A. If she said so.

25 Q. Why would that have been?

11:28A

11:29A

11:29

11:29

1 A. I have no idea. I mean, I know better
2 than -- when people get involved in cases, they
3 need to know if they're getting paid. So the first
4 thing I would do is if I'm getting somebody
5 involved, I would get some type of court order
6 saying, "Okay. You're working on this case. This
7 is how much you're going to be making. Start
8 working." And most of them won't start working
9 unless they know that they're getting paid, or if
10 there's a court order because the judge could say
11 no, deny them any payment.

11:29AM

12 Q. Do you know if there was an order?

13 A. If I did it, there had to have been an
14 order, meaning if I had her as part of the experts,
15 there had to have been an order.

11:30AM

16 Q. So when she complains that there wasn't any
17 order, do you know anything about that?

18 A. No. My concern -- if I got a letter or
19 something of this nature with regards to
20 complaining about getting contact with attorneys,
21 or if I'm involved, I definitely would respond.

11:30AM

22 Q. Respond to?

23 A. Her, in writing.

24 Q. The transcript reveals that at the
25 competency hearing in this case which was held, I

11:30AM

1 think, around May 5, 1999, about two weeks before
2 the trial, that y'all asked for a continuance. Do
3 you remember -- because your investigator had quit.
4 Do you remember that?

5 A. Only from what you told me.

11:31AM

6 Q. That letter, which is Petitioner's Number 2
7 that you have in front of you, that announces to
8 you her resignation, right?

9 A. Right, but it also announces too --

10 Q. Excuse me?

11:31AM

11 A. It also announces things that she indicates
12 was happening in the case that I probably had issue
13 to, because I wrote her back.

14 Q. Okay. We'll get to that in a moment.

15 That -- do you remember, in the wake of this
16 letter, going to court and asking Judge Schuler for
17 a continuance because your investigator quit?

11:31AM

18 A. I think Percy Beauford did; he asked.

19 Q. Were you in Court when that happened?

20 A. I believe so.

11:31AM

21 Q. Do you remember -- did you inform Judge
22 Schuler why she quit?

23 A. I'm sure Mr. Beauford did.

24 Q. Do you think you did, either on the record
25 or off the record?

11:32AM

1 A. I know I probably didn't have the -- I know
2 I probably -- I know I didn't say -- I don't
3 remember saying anything with regards to it. I
4 think Mr. Beauford handled all of that.

5 Q. Had you been the one working with the
6 investigators?

7 A. When you say working --

8 Q. Prior to trial.

9 A. If I hired them, I would communicate with
10 them with regards to things that they're doing.
11 They would communicate with Mr. Beauford. I was
12 more the -- I hate to say it, but I felt that I was
13 more of the paper type person, where they would,
14 you know, contact me for -- if they needed
15 something, like Subpoenas or anything of that
16 nature, or if they needed to get something that
17 they couldn't get done through Mr. Beauford or
18 something like that. I felt that I was the, I
19 guess, mediator or go-between or something like
20 that.

21 Q. So you were there to be on call for the
22 investigators if they needed you to do something.

23 A. I wouldn't say I'm the only one that would
24 be there. I'm sure she would have contacted
25 Mr. Beauford.

1 Q. I'm only asking about your position. As far
2 as you saw it, you were on call -- if the
3 investigators needed something or had a question
4 about the case, you were on call to respond to it.

5 A. Yeah, I was one of them.

11:33AM

6 Q. Okay. But other than that, you weren't
7 directing their investigation.

8 A. Other than that, what now?

9 Q. You weren't directing their investigation.

10 A. No.

11:33AM

11 Q. And that was being done by whom?

12 A. Mr. Beauford.

13 Q. All right. In terms of those times that you
14 said that you were there, available to be on call
15 to assist the investigators, and if they had some
16 question or they needed a Subpoena or something
17 like that, what do you remember being asked to do
18 by the investigators, either Ms. Rickborn -- now,
19 can we get -- I didn't make any other copies of
20 this, and this is the rest of what I got out of
21 your file from Ms. Rickborn. Can we impose on your
22 assistant to get copies, please?

11:34AM

11:34AM

23 A. Uh-huh.

24 (Off-the-record conference.)

25 MR. O'CONNELL: We need to go off the

11:35AM

1 record and take a break.

2 (A recess transpired from 11:36 a.m.
3 through 11:38 a.m.)

4 BY MR. O'CONNELL:

5 Q. I've got here with me the entire record on 11:38AM
6 appeal which includes the Transcript of Trial. And
7 I want you, just if you could, start reading on
8 page 422 of the transcript and tell me -- I don't
9 want you to read it out loud. Just read it to
10 yourself, and then I want to ask you some questions 11:39AM
11 about it. It really goes into --

12 A. Four --

13 Q. 442, right, where Mr. Beauford starts asking
14 -- they're telling the Court that there's an
15 outstanding motion in which we tried to get a 11:39AM
16 continuance. And then he says, basically, one of
17 our mitigating -- has left the team. And we now
18 have Cot Parker, C-o-t Parker. That's the way it
19 appears in the transcript. And he had just
20 started. 11:39AM

21 A. What judge is that?

22 Q. Judge Schuler.

23 (PETITIONER EXH. 3, 4/30/99 Letter to
24 Patti Rickborn from Marva A. Hardee-Thomas,
25 was marked for identification.)

1 BY MR. O'CONNELL:

2 Q. Where are you on, page 445 now?

3 A. Uh-huh.

4 Q. All right. I want to ask you a question
5 about what -- after Mr. Beauford's -- beginning --
6 if you look at the bottom of page 443, where the
7 Court begins talking along line 8. And line 23,
8 Judge Schuler asks, "What did she jump ship for?"
9 And do you see that?

11:42AM

10 A. Uh-huh.

11:42AM

11 Q. If you see, Mr. Beauford begins to answer.
12 And you go to the next page and Mr. Beauford said,
13 "There were communication problems."

14 And then he said on the record -- beginning
15 on line 5, Mr. Beauford says, "I think
16 communication problems is a broad area we could use
17 on the record."

11:42AM

18 I take it then that this Petitioner's
19 Exhibit Number 3 was not shared with Judge Schuler.

20 A. You mean on --

11:43AM

21 Q. Petitioner's Exhibit Number 2 -- I'm sorry
22 -- was not shared with Judge Schuler at that time.
23 In other words, Ms. Rickborn had quit.

24 A. Right.

25 Q. You-all communicated to -- Mr. Beauford

11:43AM

1 communicated to the Court that she had quit, and he
2 wanted a continuance, right?

3 A. That's what he did.

4 Q. And he didn't tell the judge about
5 Ms. Rickborn's letter which is Petitioner's Exhibit
6 Number 2 in which she gave her reasons why she
7 resigned.

8 A. In front of Walter Bailey and on the record.

9 Q. I'm asking, was it shared with him?

10 A. I have no idea. I know -- I mean, looking
11 at this, I don't know if he didn't want it stated
12 in front of Walter regarding his case, but I
13 couldn't tell you. I couldn't tell you if they
14 went, you know, in chambers beforehand or what. I
15 couldn't tell you.

16 Q. You don't know if that happened.

17 A. No, I don't.

18 Q. Do you remember anything like that happening
19 in chambers?

20 A. No. I remember Judge Schuler very well,
21 probably preempt -- he probably preempted him,
22 letting him know that he was going to put on the
23 record that he was asking for -- going to ask for a
24 continuance, but then never said why.

25 Q. Do you recall Mr. Beauford ever asking for

1 an in camera ex parte hearing with the judge in
2 order to tell him about the letter from
3 Ms. Rickborn, which is Petitioner's Exhibit Number
4 2?

5 A. I don't remember that.

11:44AM

6 Q. Ms. Rickborn is critical of you and
7 Mr. Beauford in that, Petitioner's Exhibit 2; is
8 that correct?

9 A. Yeah.

10 Q. Is that why you didn't share it with Judge
11 Schuler?

11:45AM

12 A. Why I didn't?

13 Q. Or either one of you.

14 A. I have no idea why Percy didn't, but as I
15 was telling you, I wasn't talking before the court
16 at all.

11:45AM

17 Q. Yeah, I understand that. But, I mean, you
18 didn't ask for an in camera ex parte hearing with
19 the judge in order to --

20 A. He didn't --

21 Q. -- so he wouldn't be -- your client wouldn't
22 be prejudiced in front of Mr. Bailey.

23 A. He didn't.

24 Q. Mr. Beauford didn't.

25 A. Right.

11:45AM

1 Q. You didn't, either?

2 A. No, I didn't speak at all.

3 Q. But that was Mr. Beauford's decision, not
4 yours.

5 A. He was lead counsel.

11:45AM

6 Q. So the answer to my question is, yes, it was
7 Mr. Beauford's decision and not yours?

8 A. Right.

9 Q. Okay. Did you think that maybe it should
10 have been done at the time? Did you think about
11 it?

11:45AM

12 A. Even if I thought if it should have been, I
13 think that that was Mr. Beauford's way of handling
14 the case would have override how he wanted to
15 proceed.

11:46AM

16 Q. But you don't even remember making the
17 suggestion that it be communicated to the judge in
18 an ex parte hearing.

19 A. No. I don't remember, like, hitting him on
20 the side and say, you know, "Maybe you should talk
21 to the judge in an ex parte aspect."

11:46AM

22 But if he didn't want to say anything like
23 this on the record, I don't know why he didn't
24 think of saying anything in camera with the judge.
25 I think what stopped him was the fact that the

11:46AM

1 judge said he wanted everything on the record.

2 Q. Well, my experience, at least, if you don't
3 ask for something in court, you don't get it,
4 correct?

5 A. That's generally the answer.

11:46AM

6 Q. Universally the answer, right?

7 A. Unless you're told beforehand, you know,
8 "Don't even go that direction."

9 Q. Yeah, I understand that. But don't you have
10 to -- if the judge tells you in his office, "Don't
11 you go in that direction," don't you have an
12 obligation to put that on the record, he said,
13 "Don't go in that direction"?

11:47AM

14 A. You should, to protect yourself.

15 Q. Nothing like that was done in this instance.

11:47AM

16 A. Not from what I see.

17 Q. Okay.

18 MR. O'CONNELL: Would you mark this as
19 Number 4 and this as 5?

20 (PETITIONER EXH. 4, 3/1/99 Letter from
21 Patricia D. Rickborn, was marked for
22 identification.)

23 (PETITIONER EXH. 5, 4/30/99 Letter to
24 Patti Rickborn from Marva A. Hardee-Thomas,
25 was marked for identification.)

1 BY MR. O'CONNELL:

2 Q. I want you to look at Petitioner's Exhibit
3 -- is he the petitioner or the applicant?

4 MR. ZELENKA: Applicant, but go with
5 whatever's comfortable.

11:48AM

6 MR. O'CONNELL: Applicant, fine.

7 BY MR. O'CONNELL:

8 Q. Anyway, I want you to look at -- in
9 Petitioner's Number 3, which is -- is that 3?

10 A. That's 5; this is 2.

11:48AM

11 MR. O'CONNELL: Okay. We are screwed
12 up here. This is my fault. This letter,
13 April 30th, is marked 3 and 5. I told you
14 it was my fault.

15 (Off-the-record conference.)

16 BY MR. O'CONNELL:

17 Q. Exhibit Number 3, which is the letter dated
18 April 30, 1999 to Patti Rickborn, is that your
19 letter?

20 A. Yes.

11:49AM

21 Q. Is that a response to the --

22 A. April 30th, her letter.

23 Q. Which is Petitioner's Number 2?

24 A. April 29th.

25 Q. This letter was not -- that is, Exhibit 3

11:49AM

1 was not shared with Judge Schuler, either; is that
2 correct?

3 A. As from my understanding, no, it was not.

4 Q. All right. Now, Plaintiff's Exhibit 4 is a
5 group of reports from -- that I got out of your
6 file from Ms. Rickborn that she produced. Those
7 are the ones that were in your file that you gave
8 me that I guess you had copied for me.

11:50AM

9 A. Got you.

10 Q. The first one, the earliest dated one is
11 March 1, 1999.

11:50AM

12 A. Uh-huh.

13 Q. And I don't see any reports among the things
14 you provided to me from her that predated March 1,
15 1999. Do you believe that's about the time that
16 she got -- asked to become involved in this case by
17 you?

11:50AM

18 A. Right.

19 Q. But you don't actually remember involving
20 Ms. Rickborn.

11:50AM

21 A. I don't. I really don't. I mean, if I did,
22 it would have to have been from someone calling me
23 and saying that, you know, "This is a referral that
24 you can use because she's worked on my case" or
25 something of that nature. But I don't know her

11:51AM

1 from Adam.

2 Q. Look at the one after March -- let's see.
3 The first one is March 1st. Attached to that is
4 the one from March 12th. Another one from March
5 12th. March 23rd. And March 26th. The one, for
6 example, right after the March 1st, March 12th,
7 that's addressed to you.

11:51AM

8 A. Yeah.

9 Q. The one dated --

10 A. And I wrote -- same day, I sent it to
11 Percy -- "these came today, please advise."

11:51AM

12 Q. So you just forwarded this to Percy.

13 A. Yeah.

14 Q. This is your handwriting?

15 A. Right.

11:52AM

16 Q. This is -- these are all, by the way,
17 clipped together in Petitioner's Number 4.

18 Is that what you would do with these reports
19 that you got from her?

20 A. Right.

11:52AM

21 Q. You would send them to Percy Beauford and
22 wait for him to tell you what to do?

23 A. Right.

24 Q. The next -- there's another one, second one
25 dated March 12 addressed to you.

11:52AM

1 A. Next one? March 12 is the one we were
2 talking about. There's March 23rd.

3 Q. I see two dated March the 12th.

4 A. Oh, let me see.

5 Q. The first one that has your handwriting at
6 the top.

7 A. Got you.

8 Q. The next one is also dated March 12th, but
9 it's a different report.

10 A. Right.

11 Q. That's addressed to you?

12 A. Right.

13 Q. Next one is dated March 23rd.

14 A. Right.

15 Q. That's addressed to you?

16 A. Uh-huh.

17 Q. Next one is March 26th, and that's addressed
18 to you?

19 A. Right.

20 Q. And then I see one there, April 13th,
21 addressed to you.

22 A. Yeah, she's injured her right front.

23 Q. April 20th addressed to you, which is
24 several pages.

25 A. April 20th.

11:52AM

11:52AM

11:52AM

11:53A

11:53A

1 Q. And that's addressed to you, correct?

2 A. That's correct.

3 Q. The last one I've got is not dated.

4 A. Let's see.

5 Q. It's from Patti Rickborn addressed to you.

11:53AM

6 The first sentence of which says, "Attached are

7 copies of immunization records supplied by the

8 Berkeley County Health Department," et cetera.

9 Keep going. You'll see it. That's out of order.

10 I think the cover of that is the last page for the

11:54AM

11 immunization record.

12 A. "Attached is a copy of the immunization

13 records supplied by Berkeley County," okay.

14 Q. So all these were addressed to you.

15 A. Uh-huh.

11:54AM

16 Q. And -- but you don't remember

17 Ms. Rickborn actually -- you don't know her.

18 A. I don't know her; I really don't.

19 Q. And your position with these is you would

20 just send them straight to Percy Beauford and wait

11:54AM

21 for him to tell you what to do.

22 A. Right.

23 Q. And when that happened, what would he do?

24 Would he get back to you?

25 A. He probably called me or called them

11:54AM

1 directly and then let me know after the fact what
2 he's done.

3 Q. Do you remember either as a result of these
4 memos -- these communications from Patti Rickborn,
5 or from Percy Beauford, after he got them -- do you
6 remember doing anything in response to these
7 communications from Patti Rickborn?

11:54AM

8 A. The only thing I would do was probably
9 contact Percy with regards to them and see if he
10 wanted me to do anything other than, you know, the
11 ordinary.

11:55AM

12 Q. Anything.

13 A. Right.

14 Q. What I asked is, you didn't do anything in
15 response to these when you got them from
16 Ms. Rickborn; you waited for Percy Beauford to tell
17 you something to do.

11:55AM

18 A. Unless it was something simple like -- you
19 know, I didn't want to do anything to jeopardize
20 the case. If it was something like getting
21 subpoenas from criminal court from Dorchester
22 County, I mean, I can easily do that. I mean,
23 something that doesn't take away from, you know,
24 what Mr. Beauford had, you know, envisioned the
25 case to go or something like that.

11:55AM

11:55AM

1 I did -- how do I say this? I would have
2 done something that -- if she needed the paperwork,
3 I would have done something. If she needed a phone
4 call, if she needed, you know, something, you know,
5 to get done that was simple. But he always knew 11:56AM
6 what was going on, and I would tell him. Like if
7 he wanted -- I mean, if she wanted subpoenas for
8 criminal cases, I can easily call the clerk's
9 office and get that for her.

10 Q. Do you remember doing anything like that? 11:56AM

11 A. In this case, I don't remember, you know,
12 practically what I did. I mean, what I'm doing is
13 reading and saying, I probably would have done that
14 for her.

15 Q. But other than those sorts of things, you 11:56AM
16 would have waited for Mr. Beauford to give you
17 instructions.

18 A. Yeah.

19 Q. Did he do that?

20 A. Did he do that? 11:56AM

21 Q. Yes.

22 A. Yes. He would call me back.

23 Q. And ask you to do things?

24 A. If he needed me to do it, yeah.

25 Q. Do you remember him asking you to do 11:56AM

1 anything as a result of these communications from
2 Ms. Rickborn?

3 A. I don't remember. He could have, but I just
4 don't remember.

5 Q. I want to get back then -- so you saw
6 yourself as the administrative person -- and
7 correct me if I'm wrong -- that would retain
8 experts and investigators. And by that, you mean
9 contacting them --

10 A. To get them on board to work.

11 Q. And getting the orders done, approving them
12 being hired.

13 A. Right.

14 Q. Is that accurate or inaccurate, that last --

15 A. Yeah, that's accurate.

16 Q. And the mental health experts that did get
17 involved, you said was Donna Swartz-Watts and her
18 boss, who I believe was Dr. Donald Morgan.

19 A. Right.

20 Q. Whose decision was it to get mental health
21 experts involved?

22 A. I dealt with them in previous cases, so
23 basically I brought them aboard.

24 Q. No. Whose decision was it to get any mental
25 health experts involved?

1 A. Ask that question again. I mean --

2 Q. Well, somebody made a decision in this case
3 to get mental health experts involved.

4 A. Okay.

5 Q.. Who made that decision, whether it was Donna
6 Swartz-Watts or the man on the moon?

11:58AM

7 A. Okay. My question is, if I was working on
8 the case before Percy got involved, I would have
9 gotten them involved irregardless. The question
10 is, I can't tell you if I did that before he got
11 the -- got appointed.

11:58AM

12 Q. Okay.

13 A. But I know that they were not involved when
14 -- like beforehand.

15 Q. Beforehand?

11:58AM

16 A. Before -- like before I was involved.
17 Basically I didn't walk into a situation where they
18 were already in the case.

19 Q. Okay. So you think you -- maybe -- I'm not
20 sure I heard that correctly. You might have made
21 the decision to get mental health experts involved
22 in this case?

11:59AM

23 A. Yeah. I mean, I've dealt with them in other
24 cases, also. So if I have a laundry list of people
25 that I've worked with in cases, those are the same

11:59AM

1 people that I work with.

2 Q. I'm not talking about specific
3 personalities. I'm talking about who made the
4 decision to get mental health involved.

5 A. Well, like I'm trying to tell you, if I
6 worked with them beforehand, I would have gotten
7 them involved in this case, along with any other
8 death penalty case.

11:59AM

9 Q. Why?

10 A. That's something that I would have done,
11 period, investigators and mental health people.

11:59AM

12 Q. Was there something about Mr. Weik that led
13 you to believe that mental health experts would be
14 appropriate?

15 A. Not knowing everything about the case, I
16 would let them tell me that.

11:59AM

17 Q. Okay. When you got appointed in this
18 case -- and I don't know when that was, and I know
19 you don't remember when that was, but I gather that
20 would be in the clerk's file.

12:00PM

21 A. Yes.

22 Q. Are you saying that nobody had been hired to
23 be investigators or mental health experts as far as
24 you know?

25 A. If there was somebody --

12:00PM

1 Q. Prior to the time you got involved.

2 A. If there was somebody -- I don't remember
3 anybody.

4 Q. Okay.

5 A. I really don't.

12:00PM

6 Q. So let me then go back. Prior to the trial,
7 did you and Mr. Beauford discuss the theory of the
8 case, the defense of the guilt phase?

9 A. Like I said, I don't remember sitting down
10 and having that discussion with Mr. Beauford. I
11 really don't. I believe that I was there to assist
12 him in anything that he needed, but I don't
13 remember him talking to me about a theory, where he
14 was going or --

12:01PM

15 Q. Did you suggest anything to him?

12:01PM

16 A. I may have talked to him about, you know,
17 information that I found out from Donna
18 Swartz-Watts or, you know, the other doctors
19 regarding what they had.

20 Q. Right. But what about a defense, whether it
21 was a mental health defense -- I'm not talking
22 about the penalty phase. I'll get to that in a
23 moment. But I'm talking about a defense that would
24 have either led to a potential not guilty verdict
25 or to just having Mr. Weik found guilty of a crime

12:01PM

12:01PM

1 less than murder or having him found guilty but
2 mentally ill.

3 A. I never remember sitting down at any time
4 discussing any of that with Mr. Beauford.

5 Q. Okay.

12:02PM

6 A. I really don't.

7 Q. Do you remember hearing anything about a
8 theory that he had about using a -- or pursuing a
9 guilty but mentally ill verdict and having that
10 somehow translated into a manslaughter verdict?

12:02PM

11 A. I don't remember that. I don't remember
12 sitting down and having a -- like we're sitting
13 down, we're discussing aspects about a case. I
14 don't remember ever having to sit down with
15 Mr. Beauford with regards to discussing, "Okay.
16 This is what we have with regards to this expert.
17 This is what we have with regards to this expert."
18 I never remember doing anything like that with him.

12:02PM

19 Q. Okay.

20 A. I remember calling him telling him, you
21 know, "This is what the experts are saying." You
22 know, "Do you need any more information? Do you
23 need me to do anything else," like that.

12:02PM

24 Q. And you're pretty sure that that's the way
25 it happened.

12:03PM

1 A. Yeah.

2 Q. Because you seemed sure last week as well --

3 A. Yeah.

4 Q. -- when you described your role two weeks
5 ago.

12:03PM

6 A.. I mean yes.

7 Q. I think yeah and yes mean the same thing.

8 A. Okay.

9 Q. Why didn't that happen? Why didn't you sit
10 down and say, "What's our theory of this case? How
11 are we going to get this guy found -- maybe get
12 this guy found guilty of something other than
13 murder or maybe getting him found guilty of
14 mentally ill"?

12:03PM

15 A. I think early on it was basically -- early
16 on, it was basically indicated, I guess, what my
17 role would be, and I stuck to that. I didn't --
18 how do I say this?

12:03PM

19 Q. Sort of a don't-ask-don't-tell.

20 A. It wasn't a sort of don't-ask-don't-tell.
21 It was a situation where he actually represented
22 this guy beforehand, and he continued to maintain
23 that control with regards to representing him, even
24 though he was appointed.

12:03PM

25 Q. Did you ever take it upon yourself to

12:04PM

1 attempt a discussion with Mr. Beauford about these
2 things?

3 A. No.

4 Q. Now, let's talk about the theory at the
5 penalty phase. What was the theory of the penalty
6 phase? Did you and Mr. Beauford ever discuss that?

12:04PM

7 A. No, sir.

8 Q. Did you ever take it upon yourself to
9 attempt that discussion with him?

10 A. No, sir, not at all.

12:04PM

11 Q. Do you recall discussing with Mr. Beauford
12 -- and I'm going back again to the guilt phase --
13 do you remember discussing with Mr. Beauford
14 whether Mr. Weik should testify at the guilt phase?

15 A. I probably would -- being in there with
16 the -- I guess the mental health experts or any of
17 the experts, I asked him, you know, "Where do you
18 think you're going with this," something like that.

12:04PM

19 Q. Would have asked whom?

20 A. Percy Beauford.

12:05PM

21 Q. Okay.

22 A. "Where are you going to go with this"?

23 Q. I'm talking about whether -- the decision
24 that Mr. Weik would testify in the guilt phase.
25 Did you discuss that with Mr. Beauford before it

12:05PM

1 happened, about whether that was a good idea or a
2 bad idea?

3 A. We didn't have a discussion like that.

4 Q. Did you take part in any of the preparation
5 of Mr. Weik's testimony?

12:05PM

6 A. When you say preparation, anything I needed
7 to do to help him with regards to possibly getting
8 him ready, getting information from, say, Donna
9 Swartz-Watts or any other experts with regards to
10 what it would -- you know, could he testify,
11 couldn't testify, what was going on with him, I
12 provided to Mr. Beauford. Other than that, no.

12:05PM

13 Q. You don't recall taking any part in any
14 discussions with Mr. Weik, either with Mr. Beauford
15 present or not, where you said, "Okay. What is
16 your story? This is -- you're going to testify at
17 the trial or we're thinking it would be a good idea
18 for you to testify"?

12:06PM

19 A. I probably sat down with him, with
20 Mr. Beauford. But for me to take a lead role like
21 that and say, "Okay," hmm...

12:06PM

22 Q. So you're saying that if that occurred, it
23 would have been at Mr. Beauford's instigation.

24 A. Yeah. We would have been in the room
25 talking to Mr. Weik at the time.

12:06PM

1 Q. Do you remember any such discussion?

2 A. We probably sat down with Mr. Weik with
3 regards to where we were in the case. Discussing
4 with him whether or not he was going to testify, I
5 don't remember specifically, you know, going into
6 that.

12:06PM

7 Q. When you say you probably did that, do you
8 remember doing it?

9 A. I don't remember.

10 Q. Okay.

12:06PM

11 A. Put it this way. I remember talking with
12 Mr. Weik with Mr. Beauford in the room. Now --

13 Q. Talking about?

14 A. About the case.

15 Q. In the room being during the trial or prior
16 to the trial?

12:07PM

17 A. Prior to the trial, we had to go over there
18 to him at the jail.

19 Q. All right. But you don't remember the
20 substance of any of those conversations?

12:07PM

21 A. To specifically tell you we talked about him
22 testifying? No.

23 Q. Did you have any of your own thoughts about
24 whether he should testify, whether you shared them
25 with Mr. Beauford or not?

12:07PM

1 A. Probably in the presence of Mr. Weik, I
2 probably would have talked to Mr. Beauford about
3 mental health matters and how that would relate to
4 him, you know, testifying, if you wanted to go that
5 direction, are you sure, something like that. And,
6 you know, bouncing off what the results would be or
7 something like that. I probably did that at the
8 jail.

12:07PM

9 Q. Do you remember doing it?

10 A. I probably would.

12:08PM

11 Q. No. Do you remember doing it?

12 A. No, I don't remember any of this.

13 Q. Okay.

14 A. I remember that if I'm sitting down -- if I
15 know something that Donna Swartz-Watts would have
16 said regarding Mr. Weik, I probably would have
17 addressed this with Mr. Beauford in front of
18 Mr. Weik.

12:08PM

19 Q. Okay. What about preparation -- you didn't
20 question any witnesses during the trial.

12:08PM

21 A. No.

22 Q. And you didn't question any of the jurors at
23 the voir dire portion of the trial.

24 A. No, but I was there, believe me.

25 Q. I don't know if I just called them witnesses

12:08PM

1 or jurors.

2 A. Jurors, yeah.

3 Q. Why? First of all, why didn't you question
4 any witnesses?

5 A. Because this is the role that I was placed
6 in. He's lead, and I'm -- I was second, but I
7 didn't have any, you know, I guess, say with
8 regards to -- I wasn't a participant with regards
9 to how he was trying the case.

12:08PM

10 Q. Well, you believe that you tried two or
11 three death penalty cases before this trial.

12:09PM

12 A. I do believe that, yeah, because I remember
13 five, five or six.

14 Q. And Mr. Beauford hadn't tried any?

15 A. I don't know how many he tried. I really
16 don't.

12:09PM

17 Q. Let's assume for the moment that he hadn't
18 tried any. Actually, that's what he told me. But
19 let's assume that to be true. And you're the one
20 who had two or three trials before this trial,
21 death penalty trials.

12:09PM

22 A. Uh-huh.

23 Q. Did you ever say to him, "By the way, Percy,
24 I've got more experience in this than you do"?

25 A. No.

12:09PM

1 Q. Why?

2 A. Because I -- you have to understand, in this
3 particular case, I was placed in a position where
4 this was his client and he wanted to work towards
5 his client, and I was just a helper, a worker bee.

12:10PM

6 Q. Okay. It was almost -- it was really like
7 you -- you really weren't participating as a lawyer
8 in this case; you were participating as an
9 administrator.

10 A. I wouldn't say that because there were some
11 legal aspects that I provided, but I just couldn't
12 testify. I just didn't cross-examine. He did --
13 he chose to do that.

12:10PM

14 Q. During the trial, is it fair to say that you
15 did not act as a lawyer?

12:10PM

16 A. No, I wouldn't say that. I wouldn't say
17 that. I think I was more of a silent party.

18 Q. What do you mean by that?

19 A. There's always two people working together
20 with regards to one particular goal, but I was more
21 of the silent aspect than the person that's
22 actually speaking.

12:10PM

23 Q. Silent to Percy?

24 A. Yeah.

25 Q. Okay. And silent to the jury and silent to

12:11PM

1 the judge?

2 A. Well, there were discussions that were made
3 with regards to certain aspects. And I made that
4 to Percy and possibly in front of the judge,
5 because I went back to chambers whenever they went
6 back with regard to discussions, and I participated
7 in that aspect. But I never --

12:11PM

8 Q. I want to go back to something. I
9 understand that you view this as having been placed
10 in a position of being a worker bee in this case
11 between you and Mr. Beauford. And I understand
12 that's the position he placed you in. You didn't
13 complain about that to him.

12:11PM

14 A. Well, the only aspect my concern was, was if
15 this was his client, then he wanted to try it a
16 certain way. If -- what was my role? I just
17 needed to know what role I had.

12:11PM

18 Q. I understand that. But when he assigns you
19 this role of being a worker bee --

20 A. I called myself a worker bee.

12:12PM

21 Q. Okay. I mean that -- I understand that.
22 That's why I used the word.

23 A. Okay.

24 Q. You didn't complain to him.

25 A. I mean --

12:12PM

1 Q. That was okay with you.

2 A. What was I going to say?

3 Q. I'm just asking. Being placed in that
4 position as you have described it was okay with
5 you; is it fair to say?

12:12PM

6 A. We'll put it this way: If -- I didn't
7 complain to him with regards to saying, "Well, why
8 am I placed in the situation if he wanted to try
9 the case because he originally was hired by, you
10 know, the family to work on this case. That's the
11 way I saw it. I saw them as helping him in any
12 way, but he wanted me to do, I guess, certain
13 things while he did certain things.

12:12PM

14 Q. I understand.

15 A. And I felt I was more of a worker bee.

12:13PM

16 Q. And that was okay with you.

17 A. Well, not necessarily, I mean, but the only
18 person I had to complain to was Percy at that
19 point, based on what he wanted to do.

20 Q. Right.

21 A. I mean, I didn't go in front of the judge --

22 Q. It wasn't necessarily okay with you -- was
23 it or wasn't it?

24 A. Put it this way: I was placed in that
25 position, and the only person I had to work with

12:13 PM

1 was him, and he and I were trying this case. And I
2 didn't go to the judge or anybody else about it.

3 Q. Why?

4 A. Well, like I said, I felt that he -- this
5 was his client. That's the way I felt, and I was
6 just appointed to help.

7 Q. That was acceptable to you.

8 A. No, it wasn't necessarily acceptable.
9 That's the position I was placed in.

10 Q. I understand that, you were placed in it,
11 but you're a South Carolina Bar member, lawyer, who
12 tried two or three death penalty cases, and he
13 hadn't tried any.

14 A. I had no knowledge of that.

15 Q. He acceded to what he wanted you to do.

16 A. I acceded -- I don't know if that's the
17 word. I did exactly what he wanted me to do in
18 this particular position.

19 Q. Okay. Why didn't you ever complain to the
20 judge and say, "I'm being shut out of this case.
21 This guy didn't have" --

22 A. What would I have said?

23 Q. "I'm being treated like a worker bee by
24 co-counsel." Why wouldn't you do that?

25 A. I wouldn't think that a judge would be the

12:13PM

12:13PM

12:14PM

12:14PM

12:14PM

1 person that would take a relief in this regard. I
2 think Percy would be the one that would have to
3 say, "Well, I want you to do this or that." I just
4 didn't --

5 Q. You were put in a position that certainly --
6 by Mr. Beauford -- as you described it, certainly
7 was inferior to his as far as this case is
8 concerned.

12:14PM

9 A. Well, it's a question of when you say it's
10 inferior, because if I'm working, I don't think
11 that's inferiority. I believe that if I'm just cut
12 out, that would be inferiority, but I was working
13 as much as him.

12:15PM

14 Q. You were doing what he asked you to do,
15 right?

12:15PM

16 A. Yeah, but I was still working still.

17 Q. I wasn't saying that you weren't working,
18 because you described what you have done. But he
19 put you in this position where you had more
20 experience than he did in death penalty cases. And
21 why wouldn't you have gone to the judge and say, "I
22 don't think this is the right way for this to be
23 handled"?

12:15PM

24 A. First of all, I didn't think I was in a
25 position to complain about me being in the second

12:15PM

1 chair compared to him being the person who was
2 appointed to this guy beforehand -- I mean, excuse
3 me, asked to work on this guy's case beforehand. I
4 just didn't see it as a point of going to a judge
5 or anybody else to complain about it. I really
6 didn't. But my question is --

12:16PM

7 Q. Why?

8 A. I just didn't.

9 Q. Did you ever think about it?

10 A. Of course I thought about it, like why am I
11 here?

12:16PM

12 Q. But did you ever think about going to the
13 judge and complaining and saying --

14 A. No.

15 Q. Why?

12:16PM

16 A. What would he have done?

17 Q. I'm just asking the questions.

18 A. I never even thought about going to any
19 judge or anybody else about my position and how
20 Percy wanted to try a case.

12:16PM

21 Q. So is it fair to say you were content with
22 your role?

23 A. I wouldn't say I was content.

24 Q. How would you describe it?

25 A. I was doing what I had to do.

12:16PM

1 Q. Were you unhappy about that?

2 A. When you say unhappy --

3 Q. Let's put it this way: Were you
4 dissatisfied with that role?

5 A. Of course I was dissatisfied.

12:16PM

6 Q. And why was that?

7 A. Because I'm placed in a position where I'm
8 just a worker bee.

9 Q. Not a lawyer. I'm not saying you placed
10 yourself --

12:16PM

11 A. In no way I was saying that I was not a
12 lawyer. I was just told to do certain things,
13 because I definitely was doing lawyering aspects
14 regarding the case. I just wasn't standing up in
15 front of the jury arguing or looking -- asking
16 questions to the jurors.

12:17PM

17 Q. Okay. Let's get back then. There was no
18 discussion of any theory of the penalty phase.

19 A. Not with me.

20 Q. If not you, then who?

12:17PM

21 A. I have no idea.

22 Q. Okay.

23 A. It was just the two of us.

24 Q. All right. Were you present during any
25 conversations between Mr. Beauford and your client

12:17PM

1 about what the theory of the penalty phase was, how
2 you were going to get this guy found -- or not
3 sentenced to death?

4 A. I believe I was in conversations with
5 Mr. Weik and Mr. Beauford and myself with regards
6 to where he was going. 12:17PM

7 Q. What were the substance of
8 those conversations -- you're talking about the
9 penalty phase.

10 A. Well, both. I mean, what he was planning on
11 doing -- 12:17PM

12 Q. Let's concentrate on the penalty phase. All
13 right. Go back. Where he was going. Let's talk
14 about the guilt phase. You said that you were
15 present during conversations with Mr. Weik and 12:18PM
16 Mr. Beauford when Mr. Beauford discussed with the
17 client where he was going. What do you remember
18 about those discussions?

19 A. Just telling him how he wanted to proceed in
20 the case and what he had and what he was going to
21 be using and trying to do. 12:18PM

22 Q. What were those things? Do you remember any
23 of them?

24 A. Not right off.

25 Q. Excuse me? 12:18PM

1 A. Not right off.

2 Q. Okay.

3 A. I couldn't specifically tell you, "Well, he
4 said this, this, this, and this." No, I couldn't.

5 Q. Was there anything about the way the guilt
6 phase was handled that you would have done
7 differently?

8 A. Sitting back in hindsight?

9 Q. No. I mean, at the time, where you said, "I
10 wouldn't do it this way" --

11 A. I didn't.

12 Q. To yourself.

13 A. I didn't sit back and do any of that to,
14 like -- I didn't sit back and secondguess anything
15 that Percy did to say, "Well, I could have done it
16 this way," because this is the way he wanted to try
17 the case.

18 Q. In the penalty phase, you don't recall there
19 being any theory of the penalty case being
20 discussed between you and Mr. Beauford. You didn't
21 discuss it with him.

22 A. No.

23 Q. And were you present during any
24 conversations he had with Mr. Weik about how --
25 what his goals were and how he was going to get to

1 those goals in the penalty phase?

2 A. I was present when he talked about the case
3 and where he wanted to go, but to tell you what it
4 was, I just couldn't because I don't remember.

5 Q. All right. What do you remember about
6 Mr. Weik's personality?

7 A. I hate to say it, but I don't remember. I
8 really don't.

9 Q. Do you remember him being a fairly odd
10 person?

11 A. Strange, yeah. When you say odd, I'd say
12 strange.

13 Q. Why did you think he was strange?

14 A. Certain -- I mean, how he lived, things he
15 did.

16 Q. Anything else?

17 A. I remember I thought he was slow.

18 Q. Potentially mentally retarded?

19 A. I don't know, but looking -- I mean, I'm
20 looking at his father. I wouldn't say that,

21 because of his father's situation, he was the same
22 way. I just thought he was slow.

23 Q. What about his father's situation? What do
24 you mean by that?

25 A. I think there were some mental health issues

1 regarding his father. I didn't want to necessarily
2 contribute that to him, but I just felt he was
3 slow.

4 Q. What did you know about that?

5 A. What I found out through the investigators
6 was that I think the father had some type of mental
7 health issues.

8 Q. Did you ever meet the father?

9 A. I can't remember if I did or not. I
10 remember going out to where the parents lived. I
11 don't remember if I directly met the father and
12 mother or not, but I remember seeing them.

13 Q. Talking to them?

14 A. Probably the mom or something. I don't
15 remember anything about seeing the father directly.

16 Q. You don't remember meeting the father.

17 A. I don't. I may have, but I don't know. I
18 remember meeting the mom.

19 Q. The mom testified.

20 A. Yeah.

21 Q. She testified at the guilt phase, but she
22 did not testify at the penalty phase. Do you
23 recall why that was the case?

24 A. I would have to say probably Mr. Beauford's
25 decision.

1 Q. Do you remember any reason he gave for not
2 using Mr. Weik's mother at the penalty phase as a
3 witness?

4 A. The only thing I can think of is he may have
5 thought that she would probably say something that
6 she shouldn't have. That's the only thing I can
7 think of.

8 Q. Do you remember that being a potential
9 problem with Ms. Weik based on your conversations
10 with her?

11 A. No.

12 Q. Do you remember that -- what is your memory
13 of her? Was she a pleasant lady?

14 A. Yeah.

15 Q. Loved her son?

16 A. Yeah. And let me tell you. I didn't
17 realize who she was until -- I think I met her,
18 because I have -- I know her daughter, I believe.
19 Her daughter's married to my mechanic, who's a
20 German guy that fixes cars. And I didn't realize
21 the two until I met her. And I don't know if she
22 mentioned it or if my mechanic's wife mentioned it.

23 Q. Is this before the trial or after the trial?

24 A. This was a little bit after, because I don't
25 know if she came to the trial or not, but this was

1 her brother.

2 Q. Okay. You don't know if you met Mrs. Weik
3 before -- I'm sorry. You were beginning to say --
4 I don't want to put words in your mouth.

5 A. The lady's name is Pam Filbert, and she's my
6 mechanic's wife. And I've had my car for a long
7 time. So I think I met the mom first, and she may
8 have mentioned that her daughter -- I knew her
9 daughter. She apparently knew about me before I
10 knew her.

12:23PM

11 Q. So you talked with Mrs. Weik before the
12 trial?

13 A. I believe I did.

14 Q. Did you -- anything that you observed about
15 her leads you to believe that she would be a
16 problematic witness for her son at the penalty
17 phase?

12:24PM

18 A. I don't know if I got the impression, but
19 I'm thinking Mr. Beauford may have thought that she
20 may be a problem, like a weak witness with regards
21 to the guilt phase.

12:24PM

22 Q. That's when she testified.

23 A. (Moves head up and down.)

24 Q. What about in the penalty phase?

25 A. I mean the penalty phase, not the guilt

12:24PM

1 phase. If he didn't put her up, where Mr. Beauford
2 could ask her questions with regards to -- because
3 she didn't know anything of what happened as far as
4 the -- with her son.

5 Q. She didn't know anything about the crime.
6 She wasn't there.

7 A. No.

8 Q. You're talking about the penalty phase.

9 A. Exactly. I got it confused.

10 Q. Do you have any reason why you believe
11 Mr. Beauford would not have called her as a witness
12 in the penalty phase?

13 A. Other than he's spoken to these people
14 before I did he knew them before I did, because he
15 hired them, and he may have had some type of
16 information.

17 Q. Did he ever discuss anything like that with
18 you?

19 A. No, he never discussed any of that.

20 Q. Based on your understanding of the South
21 Carolina law, what could his mother have testified
22 to at the penalty phase?

23 A. I have no idea. Seriously. I mean, in
24 remembering what she could or could not possibly
25 talk about, I think Mr. Beauford was concerned

1 about what she may have said. That's the thing.

2 Q. I'm not talking about what could she have
3 said. I'm not talking about necessarily facts, but
4 is there anything else that she could have done,
5 when she was talking during her direct examination
6 that she could have said to the jury, based on your
7 understanding of the South Carolina law?

12:26PM

8 A. She could have -- I mean, she could have
9 said a lot, but I mean -- my concern with the
10 witnesses was who's going to testify, what they're
11 going to say and how was it beneficial. And if
12 Mr. Beauford felt that she was only good in, you
13 know, one phase as compared to the next, then, you
14 know, I did not question his judgment or anything
15 like that.

12:26PM

16 Q. Let's talk about death penalty cases in
17 general. What can mothers of defendants at penalty
18 phases on trial for their lives, what kind of
19 things can they say to a jury? What sort of things
20 are they allowed to say?

12:27PM

21 A. Plead for their son's lives. They can do
22 that.

23 Q. Okay.

24 A. Save my son.

25 Q. Ask for mercy.

12:27PM

1 A. Yeah, but --

2 Q. Did you discuss that with Mr. Beauford that
3 that's something she could have done?

4 A. Did I discuss that? No.

5 Q. Did he discuss that with you?

12:27PM

6 A. No.

7 Q. Do you even know that he knew that was the
8 law?

9 A. I'm assuming he did.

10 Q. No. Do you know that?

12:27PM

11 A. Know that he knew that that was the law?

12 Q. Yeah.

13 A. I don't know if he knew. I'm assuming he
14 did.

15 Q. And that was because --

12:27PM

16 A. That's what any mother would do for their
17 child.

18 Q. No, no. I'm talking about the fact that the
19 South Carolina law would have allowed her to plead
20 for her son's life in front of the jury. You don't
21 know if Mr. Beauford knew that that was allowable
22 under South Carolina law.

12:27PM

23 A. I mean, we didn't sit down and say, "Well,
24 did you know this was the law." No; I'm assuming
25 he knew.

12:28PM

1 Q. When he didn't elicit that from her to put
2 her on the witness stand, did you say to him, "Why
3 don't we do that, have her testify and ask the jury
4 to spare her son's life, ask for mercy"?

5 A. There's nothing that shows -- at least
6 nothing in the transcript that would show if I
7 tapped him on the shoulder or, you know, passed him
8 a note saying, you know, why don't you ask her this
9 question, but --

12:28 PM

10 Q. Well, this is in the penalty phase, where
11 she was never a witness, to begin with.

12:28 PM

12 A. I know.

13 Q. So that would have been a discussion, I
14 assume, other than a tap on the shoulder or passing
15 of a note; that would have been something you would
16 have plodded beforehand, right?

12:28 PM

17 A. That's if I was part of a discussion
18 regarding the case, which I wasn't.

19 Q. At some point, you knew that she wasn't
20 going to be called as a witness in the penalty
21 phase.

12:28 PM

22 A. Yeah. He indicated what he was going to do.
23 He indicated who he was going to call, get
24 witnesses prepared and stuff like that.

25 Q. When that didn't include Mr. Weik's mother,

12:29 PM

1 did you say -- you don't recall saying, "Why don't
2 we have her testify and plead for her son's life"?

3 A. Specifically, I don't remember, but I
4 probably would have asked the question, you know,
5 "Why aren't we using her to plead for his life"?

12:29PM

6 Q. You don't really remember that conversation.
7 You're just thinking that maybe that's what you
8 did.

9 A. Exactly.

10 Q. And you don't remember Mr. Beauford saying
11 anything in response to that.

12:29PM

12 A. I hate to say, the only thing I remember is
13 I think that there was some type of fear that she
14 may say something that she shouldn't have said.

15 That's my only concern.

12:29PM

16 Q. But you don't know of anything like that.

17 A. What it was, I couldn't express to you at
18 this point, but that's what I -- I think --

19 Q. I'm sorry. Your answer was you couldn't
20 express that point?

12:29PM

21 A. I could not express that to you at this
22 point as to what it is or what it was.

23 Q. Why is that?

24 A. Because I don't know.

25 Q. Okay.

1 A. I can't remember.

2 Q. Okay.

3 A. But I'm sure that's a discussion that was
4 made, probably.

5 Q. Okay. Do you remember that there was some
6 discussion about Mr. Weik testifying in the penalty
7 phase?

12:30PM

8 A. I don't remember.

9 Q. The record reflects that you -- or excuse
10 me, I'm sorry -- Mr. Beauford told the judge during
11 -- in the transcript that he wanted to testify.

12:30PM

12 A. Okay.

13 Q. And then the judge talked -- the Solicitor
14 brought up some things about admonishing Mr. --
15 asked the judge to admonish Mr. Weik that he had to
16 only testify about things that were in the record.

12:30PM

17 A. Got you.

18 Q. Do you remember that?

19 A. I don't, but if you say it happened, it
20 happened.

12:31PM

21 Q. Then the judge agreed and then, in fact,
22 told Mr. Weik in several different ways that he had
23 to limit himself to the evidence that was in the
24 record.

25 A. Okay.

12:31PM

1 Q. Is that -- is there anything else -- based
2 on your understanding of the South Carolina law, is
3 there anything else that Mr. Weik could have said
4 to the jury if he had testified at the penalty
5 phase?

12:31 PM

6 A. I think it was Mr. -- it was a concern in
7 regards to what he would be saying, period, that he
8 could, you know, say something he shouldn't have
9 said. And I think that was a concern for he and
10 his mom.

12:31 PM

11 Q. What is it that you remember about that?
12 You mean -- explain.

13 A. Even though the judge -- if the judge
14 basically indicated that he was placed in a scope
15 of certain things that he could say and could not
16 say, I don't believe he could stay in that realm.
17 And I don't believe mom could stay in the realm,
18 either. I just remember something was going on
19 with regards to concern with regards to what these
20 people would actually say.

12:32 PM

21 Q. Well, the record reflects that there was
22 a -- after this colloquy with the judge about what
23 he could and couldn't say -- what he could say --
24 what he had to limit himself to during his
25 testimony, a short recess was taken, and then

12:32 PM

1 Mr. -- they go back on the record, and Mr. Beauford
2 says he's decided -- he's changed his mind. He
3 doesn't want to testify -- don't want to make a
4 final statement to the jury.

5 A. Uh-huh.

12:32PM

6 Q. I may have been using the wrong term.

7 A. I think I understand what you're saying.

8 Q. The issue wasn't him not testifying, but
9 making a final argument to the jury.

10 A. Right.

12:33PM

11 Q. Do you remember that --

12 A. I don't remember --

13 Q. -- at one point Mr. Weik wanted -- and
14 expressed on the record that he wanted to make a
15 final statement to the jury, make a final argument.

12:33PM

16 A. Do I remember when he wanted to --

17 Q. Yeah.

18 A. What he wanted --

19 Q. That he wanted to do that.

20 A. If Mr. Beauford said it, that's what I
21 remember.

12:33PM

22 Q. No. It's in the record, that it was stated
23 that Mr. Weik wanted to make a final argument to
24 the jury.

25 A. Okay.

12:33PM

1 Q. Do you remember that occurring?

2 A. That he actually made a final argument?

3 Q. No, that he wanted to.

4 A. At this point, no.

5 Q. Okay.

12:33PM

6 A. I really don't.

7 Q. If the judge had said to him, "You have to
8 limit yourself to the evidence that's in the record
9 when you make your final statement," is that a
10 correct proposition of law?

12:33PM

11 A. Yes.

12 Q. Could he have said -- could he have gone
13 beyond that to Mr. Weik in any respect, gone beyond
14 talking about the evidence that was in the record?

15 A. Oh, yes.

12:33PM

16 Q. What could he have done?

17 A. Oh, Lord.

18 Q. No, no. Legally.

19 A. I think, legally, if he had -- if he
20 testified, we probably would have said something --

12:34PM

21 Q. No. What would the law have allowed him to
22 have done had he chosen to make a final argument,
23 other than comment on the evidence that was in the
24 record at the penalty phase?

25 A. What the law would have allowed him?

12:34PM

1 Q. Yes.

2 A. Say that question -- I'm confused. Would
3 the law have allowed him to say anything --

4 Q. I asked you a moment ago if it was a correct
5 proposition of law that when he made his final
6 statement to the jury, final argument to the jury,
7 that he was confined, as the judge told him, to
8 commenting on evidence that was in the record.

12:34PM

9 A. Right.

10 Q. Do you believe that to be a full explanation
11 of South Carolina law on that issue?

12:34PM

12 A. Well, I'd say yeah.

13 Q. All right. Is there anything else that the
14 law would have allowed him to do beyond commenting
15 on the evidence during his final argument?

12:35PM

16 A. Saving his life.

17 Q. Okay.

18 A. Yeah.

19 Q. He could have appealed --

20 A. For mercy.

12:35PM

21 Q. -- to the jury for mercy.

22 A. Yeah.

23 Q. Okay.

24 A. I believe he would have gotten into
25 something that he wasn't supposed to have gotten

12:35PM

1 into, just because he wanted to express himself,
2 everything he heard in the trial, and he would not
3 have done what the judge asked him to do.

4 Q. When the judge gave that -- told Mr. Weik
5 that he was limited to those things that he -- that
6 were in the record, that is, when he made his final
7 argument, that he was limited to those things that
8 were already in the record --

12:35PM

9 A. Uh-huh.

10 Q. -- no one corrected the judge --

12:35PM

11 A. No.

12 Q. -- to say, "Judge, he can appeal to the jury
13 for mercy."

14 A. Right.

15 Q. Why didn't you object and say, "Judge, you
16 need to explain to him that he can ask for mercy"?

12:36PM

17 A. I didn't.

18 Q. Do you know why you --

19 A. Why I didn't?

20 Q. Yeah.

12:36PM

21 A. Because I wasn't basically arguing
22 with regards to -- I wasn't participating in the
23 discussions with regards to arguing back and forth
24 with the judge, jury or anybody. I probably would
25 have, you know, hit Percy to say, "Well, he can beg

12:36PM

1 for mercy at any time." That's not in the record,
2 but he could beg for mercy.

3 But the question, I guess, Percy probably
4 had thought about was would it have been worth it
5 for him to do that, knowing that something else
6 probably could have been said. I think he probably
7 would have weighed, "Well, would Mr. Weik say
8 something he's not supposed to and say he's begging
9 for mercy?"

12:36PM

10 Q. You say he probably would. Do you happen to
11 know if he did or not?

12:37PM

12 A. No.

13 Q. Do you happen to know whether Mr. Beauford
14 even knew that Mr. Weik could plead for mercy in
15 his final argument?

12:37PM

16 A. I'm sure he did.

17 Q. Why are you sure?

18 A. Because that's common sense. That's not
19 law; that's common sense.

20 Q. Well, they don't always intersect, the law
21 and common sense.

12:37PM

22 A. Come on, now. I mean, anybody can get up
23 there -- I'm sorry; excuse me. The person who's on
24 trial can get up there and beg for mercy. That's
25 not in the record. They didn't beg for mercy

12:37PM

1 during the trial. That didn't come up during the
2 trial, but they can beg for mercy. I mean, you
3 don't need a law book to tell you that.

4 Q. I understand that. Why didn't you object?
5 I understand you said that you were not doing that
6 during the trial; you weren't objecting; you
7 weren't questioning witnesses. That's a pretty
8 fundamental thing. The Defendant doesn't know
9 that. He doesn't know what the law is. He knows
10 what the judge says the law is, right?

12:37 PM

12:38 PM

11 A. Right.

12 Q. And the judge told him the law was, "You're
13 limited to what's in the record," right?

14 A. When you say, "I'm limited to what's in the
15 record" --

12:38 PM

16 Q. No, no, no. He told Mr. Weik, "You're
17 limited in your final argument to what's in the
18 record."

19 A. Got you.

20 Q. He never told him he could ask for mercy.

12:38 PM

21 A. He left that out.

22 Q. Right. Why didn't you object?

23 A. I didn't object because I wasn't a part of
24 the objecting aspect. I was basically helping
25 Percy with regards to arguing the case. Now,

12:38 PM

1 whether or not I talked to Mr. Beauford about that,
2 I'm sure I would have, but I wouldn't -- just like
3 we're trying a case and you're lead counsel, I'm
4 not going to jump up and basically say, "Well, Your
5 Honor, you're wrong," because he can argue for
6 mercy. I'm going to basically approach it by
7 talking to the other attorney or the attorney who's
8 basically doing the trial.

12:38 PM

9 Q. Why?

10 A. Because I think that's the proper thing to
11 do based on the situation that I was in.

12:39 PM

12 Q. If you see your co-counsel potentially
13 making a blunder in a death penalty case, don't you
14 think you have an obligation, when it can't
15 possibly be prejudicial to the Defendant because
16 the jury is not there, to stand up and say, "Judge
17 that's not a correct proposition of law. You need
18 to instruct Mr. Weik that he can ask for mercy."

12:39 PM

19 A. All right. I would never --

20 Q. Because for page after page, Mr. Weik is
21 saying, "I want to make a final statement." And
22 then after the judge instructs him about what he is
23 limited to, he comes back after recess, and
24 Mr. Beauford says, "He's decided he's changed his
25 mind."

12:39 PM

12:39 PM

1 A. I would never create a situation where the
2 attorneys are, you know, bickering or arguing with
3 each other to create a record for the client to
4 say, "Well, look they couldn't get it right, so I
5 can't -- you know, I can't be represented properly,
6 because they can't even get along." No, I've never
7 put myself in a situation like that.

12:40PM

8 Q. Where you didn't make an objection?

9 A. I didn't make a verbal objection to the
10 court, but I'm sure I said something to
11 Mr. Beauford.

12:40PM

12 Q. Do you remember doing so?

13 A. I probably would have because --

14 Q. Do you remember doing so?

15 A. I couldn't tell you what I did and didn't do
16 at this point.

12:40PM

17 Q. Okay.

18 A. I mean, the only thing I probably have is if
19 the court reporter said that the defense took a
20 moment or something like that and couldn't answer
21 because they were discussing amongst themselves.
22 And I don't know if they knew that.

12:40PM

23 Q. I'm sorry. What did you just say?

24 A. Like if the court reporter would say that
25 the defense counsel is taking a moment, they're,

12:40PM

1 you know, discussing something amongst themselves.
2 That's the only way I would -- give you an idea of
3 what I did at that point. I couldn't tell you what
4 I did with regards to that particular matter.

5 Q. And the reason you wouldn't have done it on
6 the record to the judge was that wasn't appropriate
7 protocol in your view.

12:41 PM

8 A. I wouldn't think that -- no, I wouldn't have
9 interrupted, or anything like that, Mr. Beauford's
10 soliloquy. I would have talked to him like passing
11 a note, you know, hitting him to say, "Well, he can
12 argue for mercy." And if he choosed not to say
13 that, then I'm lost. I mean, my argument was just
14 not heard.

12:41 PM

15 Q. And the reason you wouldn't have done that,
16 you don't believe that would have been appropriate
17 protocol in this case to have done that directly to
18 the judge.

12:41 PM

19 A. Well, I wouldn't think it would be proper
20 for me to, you know, create a controversy between
21 answering something that I didn't basically hit
22 him, hit Mr. Beauford on beforehand. I wouldn't
23 have jumped up and said anything, "Well, this is
24 not a matter of law."

12:41 PM

25 Q. I know you wouldn't have. But the reason

12:42 PM

1 you wouldn't have is that you didn't think it was
2 appropriate protocol given the relationship between
3 you and Mr. Beauford.

4 A. Well, if you call it a relationship. I
5 mean, I thought it was just --

12:42PM

6 Q. It was the nice thing to do.

7 A. There you go.

8 Q. What, in your view -- I read the
9 cross-examination that Mr. Bailey did of Mr. Weik,
10 and I think it was pretty effective. Would you
11 agree?

12:43PM

12 A. Pretty effective for what?

13 Q. It was devastating to the defense, put it
14 that way.

15 A. Devastating to the defense in what regard?
16 Meaning bringing a point across that he wanted to
17 make? I don't understand what you're --

12:43PM

18 Q. He made, in my view, Mr. Weik out to be an
19 extremely dangerous, unpredictable person who
20 needed to be put to death, all right? Is that your
21 memory of his cross-examination?

12:43PM

22 A. No.

23 Q. It's not?

24 A. No.

25 Q. What is your memory of the effects, in your

12:43PM

1 mind, of the cross-examination and the probable
2 effect on the jury?

3 A. I believe Mr. Bailey was able to get across
4 as to what happened in the event. I just think it
5 goes to someone's interpretation with regards to
6 the -- I guess the final effect of what he did.
7 But I didn't -- it didn't come across to me as what
8 you just said.

12:43PM

9 Q. You didn't think it was that bad.

10 A. When you say "didn't think it was that bad,"
11 I think Mr. Bailey got his point across with
12 regards to what happened as far as the facts are
13 concerned.

12:44PM

14 Q. Those have been established by then. There
15 wasn't any dispute about the facts in this case, at
16 least the way this case was tried. Isn't that fair
17 to say?

12:44PM

18 A. Right.

19 Q. Y'all didn't really contest the facts of
20 what happened. Isn't that fair to say?

12:44PM

21 A. I don't believe there was any contesting.

22 Q. Right. So by the time Mr. Weik testified,
23 what was the purpose of him testifying?

24 A. I couldn't tell you.

25 Q. You weren't involved in that decision?

12:44PM

1 A. No.

2 Q. Do you know what the goal was that
3 Mr. Beauford had in having him testify?

4 A. No.

5 Q. In retrospect, would you have put him on the
6 witness stand?

12:44PM

7 A. I was afraid for -- I probably wouldn't
8 have, but it's kind of hard when -- I believe he
9 wanted to testify. I really do. And I believe he
10 would have testified against the attorney's wishes.

12:45PM

11 Q. Do you remember that?

12 A. I remember he wanting to testify, bad.

13 Q. All right. Do you remember that there was a
14 discussion with him that y'all were not able to
15 dissuade him from testifying? Do you remember?

12:45PM

16 A. The only thing I remember is it was hard
17 probably keeping him from testifying.

18 Q. Right. But you don't remember it being
19 something that neither of you was able to
20 accomplish; you just weren't able to dissuade him.

12:45PM

21 A. No.

22 Q. You don't remember that happening?

23 A. I remember talking to him at the jail with
24 regards to testifying and not testifying. And he
25 adamantly wanted to testify.

12:45PM

1 Q. Okay.

2 A. But the question is, you know, would it be
3 beneficial to him to do that? And I'm telling you
4 I do not believe that we could have kept him from
5 not testifying, because if we would have gotten up
6 there and said that our client's not testifying, he
7 would have testified anyway.

12:46PM

8 Q. Do you remember that?

9 A. I remember him very forcefully wanting to
10 testify.

12:46PM

11 Q. The day he testified, he was that forceful?

12 A. Every day, he was --

13 Q. Do you remember that to be -- the day he
14 testified, was he that forceful about --

15 A. Telling his point of view, telling his side.

12:46PM

16 Q. Do you remember those conversations with
17 Mr. Beauford back in lockup during any of the days
18 of the trial about whether he was going to testify
19 or not?

20 A. I just remember Mr. Weik saying that he was
21 going to testify. And so that's how, --

12:46PM

22 Q. And you thought it was a bad idea.

23 A. Well...

24 Q. Y'all didn't want him testifying.

25 A. When you say "y'all" --

12:46PM

1 Q. You and Mr. Beauford.

2 A. Well, I didn't make the decision for him to
3 testify or not.

4 Q. Did you independently say you think that was
5 a bad idea for him to testify?

12:47PM

6 A. I'm trying to weigh the pros and cons at
7 this point.

8 Q. I'm asking you not to reconstruct what you
9 would have done.

10 A. I have no way of not doing that.

11 Q. I want to know what you did do. If you
12 remember -- if you don't remember, you don't
13 remember.

14 A. I just remember there was no way for you not
15 -- there was no way for us not -- saying that he
16 was not going to testify, because he was going to
17 testify anyway. That's what I remember.

12:47PM

18 Q. And you thought it was a bad idea.

19 A. I didn't present that to Mr. Beauford with
20 regards to bad idea because --

12:47PM

21 Q. Did you present it to Mr. Weik?

22 A. Well, talking to him, like, you know, "What
23 is this going to accomplish if you testify and talk
24 about the facts? You are only basically stating
25 what the Solicitors are going to provide as far as

12:48PM

1 evidence."

2 Q. You thought it was a bad idea for him to
3 testify.

4 A. I probably said that to him at the jail.

5 Q. And Mr. Beauford -- you probably -- do you
6 remember?

12:48 PM

7 A. No.

8 Q. But you probably did.

9 A. Yeah.

10 Q. Do you remember Mr. Beauford trying to talk
11 him out of it?

12:48 PM

12 A. I believe so.

13 Q. Okay.

14 A. I believe so, at the jail.

15 Q. Mr. Beauford thought it was a bad idea.

12:48 PM

16 A. I believe so.

17 Q. He went ahead and did it anyhow.

18 A. (Moves head up and down.)

19 Q. Is that correct?

20 A. That's what happened.

12:48 PM

21 Q. I'm sorry?

22 A. That's what happened. He testified.

23 Q. And it was not good.

24 A. No.

25 Q. It was bad.

12:48 PM

1 A. We knew he was going to be bad.

2 Q. Okay. So what possibly did you have to lose
3 by him doing the final argument? What did y'all
4 have to lose?

5 A. You keep saying "y'all."

12:49PM

6 Q. I mean, you were one of the lawyers in the
7 case.

8 A. I understand, but you also know that I have
9 no say with regards to if someone testifies or not
10 testifies. I have no say with regards to theory or
11 non-theory. That wasn't discussed. So for me to
12 come up and say, "Well, you and Mr. Beauford did
13 this," I was there. I didn't control whether or
14 not someone testified or not testified. I didn't
15 control what was the argument regarding the issue
16 of the case or any of that.

12:49PM

12:49PM

17 MR. O'CONNELL: Okay. I need to take a
18 break.

19 (A recess transpired from 12:59 p.m.
20 through 1:04 p.m.)

01:04PM

21 BY MR. O'CONNELL:

22 Q. I've got your file, and I have some notes,
23 handwritten notes, but they don't look like your
24 handwriting. Have you found your file?

25 A. No. I mean, I've got it to give to you, but

01:04PM

1 where it is now? It's got to be somewhere in here.
2 I'm just misplacing it. It's got to be somewhere
3 here, because if I had to copy them for you, I
4 would have kept them.

5 Q. And this was copies because they were just
6 stacked, and they had those purple pieces of paper.

01:05PM

7 A. It's got to be -- it's in here somewhere,
8 and I'm thinking probably in those boxes.

9 Q. Do you mind -- I don't want to necessarily
10 -- you don't need to do it today, but I would like
11 you -- if you could find your notes. Do you think
12 you have a file of notes that you took during the
13 trial or during the preparation?

01:05PM

14 A. Yeah, because voir dire, you know, I would
15 take notes then.

01:05PM

16 Q. Would those be things you would have kept?

17 A. I guess. I mean, what reason would I have
18 to throw them away? I don't know. I mean, you're
19 open to see what I have.

20 Q. I just couldn't tell whose notes were whose,
21 whether -- because the handwriting of the notes I
22 have doesn't look like yours, based on what I know
23 your handwriting looks like. Yours is kind of
24 loopy.

01:05PM

25 A. Okay. I don't --

1 Q. People have loopy handwriting, and I'm not
2 one of those, but yours, there's one piece of --

3 A. Right. I usually write small but -- except
4 for fax papers.

5 Q. If you would, at some point in the next
6 week, try to find your notes and call me and I'll
7 come up and get it and copy them.

8 A. Okay.

9 Q. Y'all hired somebody to assist you -- do you
10 remember hiring somebody to assist you in jury
11 selection?

12 A. Yeah.

13 Q. Who was that?

14 A. Jeff Bloom.

15 Q. How long before the trial did you contact
16 Mr. Bloom?

17 A. Probably a month.

18 Q. A month?

19 A. Month.

20 Q. That would have been your responsibility?

21 A. Yeah.

22 Q. Did you know Jeff previously?

23 A. No. I knew he did that, jury selection.

24 Q. And you think you contacted him a month
25 ahead of time to come down and help y'all with jury

01:06PM

01:06PM

01:06PM

01:06PM

01:06PM

1 selection?

2 A. Yeah. Now, if -- I don't know if Percy
3 dealt with him before. I mean, I wouldn't
4 necessarily call him. I've never called him on
5 another case. I've got -- there was one case,
6 Bowman, I believe, that -- well, how do I say this?
7 I think Weik probably would have been the only one
8 that he was called on. There was another case that
9 I was appointed to this year that I had to get off
10 of because of my pregnancy, but he was listed on
11 there as selecting a jury.

01:07PM

01:07PM

12 Q. Okay. Whose idea was it to hire someone to
13 assist y'all in selecting a jury?

14 A. See, that's the thing. I don't know,
15 because this is the thing. If I had gone up to
16 Columbia and talked with, you know, Appellate
17 Defense or Indigent Defense or something like that
18 and they gave a suggestion, I don't know if it was
19 to Percy or somebody suggested we call him --

01:07PM

20 Q. Okay.

01:08PM

21 A. -- during that conversation.

22 Q. What did Jeff Bloom do in this case for
23 y'all?

24 A. Help -- basically helped pick the jury.

25 Q. Did he do anything else?

01:08PM

1 A. He had to have gotten who the jury panel was
2 beforehand.

3 Q. Right. Aside from whatever he had to do to
4 help y'all select the jury, did he do anything
5 else? Did you ask him to do anything else?

01:08PM

6 A. Probably -- I say a month beforehand -- when
7 the questionnaires are sent out, like six weeks or
8 a month before the trial, he probably would have
9 had the aspect in regards to what questions to
10 raise with regards to the jury voir dire.

01:08PM

11 Q. You mean -- would he -- the questionnaire
12 that went out in this case, is that -- who prepares
13 the questionnaire?

14 A. Well, that's the thing. Both defense and
15 the Solicitor would come up with certain aspects of
16 what to ask. And it has to be agreed upon by both
17 parties. So if that's the case, then he probably
18 would have been involved with regards to that.

01:09PM

19 Q. Apparently -- it seems to me that the
20 questionnaires were sent out in this case, because
21 there's some reference to them in the record.

01:09PM

22 A. Uh-huh, by the clerk's office.

23 Q. So there would have been --

24 A. But they would have to have been agreed upon
25 by both sides.

01:09PM

1 Q. I understand. Would that -- you think that
2 Jeff was involved in formulating some questions on
3 that questionnaire?

4 A. What we could -- what questions we could
5 ask, yes, of course, yeah.

01:09PM

6 Q. So you think he was hired before those
7 questionnaires went out to the jury --

8 A. Right.

9 Q. -- and the venire at voir dire is summoned
10 in.

01:09PM

11 A. Right.

12 Q. Had you ever hired a jury selection --
13 someone to help you select the jury in your other
14 death penalty cases before Mr. Weik's trial?

15 A. No.

01:10PM

16 Q. Have you since?

17 A. I didn't want to hire him this time with
18 this one, but that wasn't my choice.

19 Q. That's two questions. First of all, did you
20 -- have you ever hired anybody to help you select a
21 jury in any death penalty case?

01:10PM

22 A. Other than Weik, no.

23 Q. Okay. And you didn't want to hire Mr. Bloom
24 in this case.

25 A. No. And the last death penalty case that I

01:10PM

1 was appointed to, no.

2 Q. Why?

3 A. I was advised by Ms. Murphy -- she and I
4 were working together.

5 Q. Who is Ms. Murphy?

01:10PM

6 A. Maite' Murphy.

7 COURT REPORTER: I'm sorry?

8 THE DEPONENT: She's another -- an
9 attorney in Summerville. She and I were
10 picked to be on this death penalty case that
11 I got off of. I was advised by her that it
12 probably would not be a good idea because
13 he's very controlling. We had two women on
14 the --

01:10PM

15 BY MR. O'CONNELL:

16 Q. He's very controlling?

17 A. That's what she said.

18 Q. Was that your impression from his work on
19 the Weik case?

20 A. No. I mean, he -- as far as the Weik case,
21 he can -- Weik, Wiek. But, anyway, as far as that
22 case, he helped with regards to picking a specific
23 type jury.

01:11PM

24 I was just told in this particular case that
25 we were on that it would be a good idea for him to

01:11PM

1 be as a jury person -- to select a jury on.

2 Q. On the Weik case?

3 A. No.

4 Q. I'm sorry.

5 A. The recent case that I was just appointed
6 to.

7 Q. The recent case that you got out of because
8 of your pregnancy.

9 A. Right.

10 Q. You were told that he was or was not --

11 A. It was not a good idea to choose him for the
12 death penalty -- choosing the jury, because he was
13 a very controlling type person.

14 Q. And this -- and your co-counsel, what's her
15 name, again?

16 A. Maite' Murphy, M-a-i-t-e, apostrophe,
17 Murphy.

18 Q. M-a-i-t-e, apostrophe?

19 A. M-a-i --

20 Q. Oh, accent mark.

21 A. Yes, M-a-i --

22 Q. Murphy?

23 A. Murphy.

24 Q. And she is a sole practitioner here?

25 A. Yes.

01:11PM

01:11PM

01:12PM

01:12PM

01:12PM

1 Q. How long has she been a lawyer?

2 A. I'd say over five years. I'd say over five
3 years.

4 Q. Longer than you?

5 A. I don't know, but I know she had to qualify
6 to be death penalty qualified. She made the
7 qualification. You have to be at least -- practice
8 felony cases over three years or something like
9 that. I'd say over five. I don't know exactly.

10 Q. She said that Jeff was too controlling. Did
11 she have previous experience with him?

12 A. I have no idea. I mean, she used to be a
13 prosecutor.

14 Q. In this First Circuit?

15 A. Yes.

16 Q. In this county?

17 A. Yes.

18 Q. And she thought he was too controlling.

19 What -- you don't know if she had any previous
20 experience with him.

21 A. No.

22 Q. You said if there would be two women on a
23 case and he'd be too controlling. What did that
24 mean?

25 A. I got that to mean that he tried to control

01:12PM

01:12PM

01:13PM

01:13PM

01:13PM

1 the case.

2 Q. Because there were two women?

3 A. Yeah.

4 Q. That didn't appear to be -- that was not
5 your experience in the Weik case.

01:13PM

6 A. No.

7 Q. Did you find Mr. Bloom's assistance of value
8 in selecting the jury?

9 A. Everybody has a value. His --

10 Q. I'm asking whether you found his assistance
11 to be of value to you and Mr. Beauford.

01:13PM

12 A. I said everybody has a value. With what he
13 did, yes.

14 Q. In this case, in the Weik case.

15 A. In the Weik case.

01:13PM

16 Q. Everybody has a value.

17 A. Yeah.

18 Q. I don't know what that means.

19 A. Why would you -- why would you get somebody
20 involved as an investigator if they didn't have
21 something, you know, positive to give towards the
22 case.

01:14PM

23 Q. I'm asking your experience.

24 A. Oh, okay, after he was involved.

25 Q. Did you find that what he did for you was of

01:14PM

1 value?

2 A. Beneficial, yeah.

3 Q. In what respect or respects?

4 A. Basically his angle was to choose specific
5 type jurors because of the case.

01:14P

6 Q. Like what kind?

7 A. Say, for a case where, you know, like this,
8 you have somebody murdered, he would get specific
9 type jurors based on what their beliefs are,
10 certain type jurors to stay away from as far as
11 capital punishment is concerned that we may not
12 know or may not be aware of.

01:14P

13 Q. Well, you hired him because it was a death
14 penalty case.

15 A. That's right.

01:14P

16 Q. And in a death penalty case, was his advice
17 to you specifically tailored for the Weik case, the
18 facts of the Weik case or --

19 A. I believe so.

20 Q. -- or was it tailored to a death penalty
21 case?

01:15P

22 A. I believe it was Mr. Weik's case and a death
23 penalty case.

24 Q. Well, explain to me how it was tailored for
25 the Weik case.

01:15P

1 A. Well, I mean, he was able to tell us certain
2 jurors to stay away from based on the things that
3 they read, listened to, and also capital.

4 Q. I'm asking you, he's there for a death
5 penalty case. And you said he was a value in this
6 specific death penalty case.

01:15PM

7 A. Right.

8 Q. What value did you find him -- and I think
9 you said, based on the facts of the Weik's case --
10 it wasn't a death penalty case -- but based on the
11 specific facts, he was of assistance in --

01:15PM

12 A. What questions we should look out for as far
13 as -- what questions we should ask. I'm going to
14 say what questions we should ask in certain aspects
15 regarding the voir dire that we sent out.

01:16PM

16 Q. Right. What I am asking is, in this
17 specific case, given specific facts, what did he
18 bring to you, not just in death penalty cases in
19 general, because you want people on the jury in
20 death penalty cases that you hope won't put your
21 client in the electric chair, right?

01:16PM

22 A. Right.

23 Q. But in this case, you said that his
24 assistance was tailored to the specific facts in
25 this case. And that's what I'm interested in.

01:16PM

1 What specific facts are you talking about?

2 A. I believe he was helping us in regards to
3 voir dire questions with regards to what we should
4 look out for regarding our case specifically.

5 Q. How? What?

01:16PM

6 A. Certain questions that we had on the voir
7 dire.

8 Q. What was it about your case?

9 A. I'm saying the fact of someone being killed,
10 a female being killed in that regard.

01:17PM

11 Q. What do you remember that he told you about
12 that specific instance where a female was killed?

13 A. I just remember certain questions that
14 you're trying to elicit from people who are just
15 trying to hide, like, agendas and stuff like that.

01:17PM

16 Q. Okay. But specifically where you had a
17 female killed, what was he --

18 A. I can't remember specifically what it was.
19 I just remember it being mentioned. But
20 specifically what voir dire questions and how it
21 was raised or what was asked, I just remember
22 something of that nature; that's all.

01:17PM

23 Q. You obviously met with Mr. Bloom after
24 you-all retained him, which you said was at least
25 before the questionnaires went out to the jury; is

01:18PM

1 that correct?

2 A. Yes.

3 Q. And you met with him from time to time after
4 that up until the time of the trial?

5 A. I couldn't tell you how many times I met
6 with him.

01:18PM

7 Q. I guessed that was probably the case. But
8 did you meet with him from time to time, whether it
9 was once, twice or three times prior to the time
10 that jury selection began?

01:18PM

11 A. I couldn't tell you how many times.

12 Q. I understand that. But did you meet with
13 him at all before jury selection began?

14 A. I'm sure we did.

15 Q. And it wouldn't have been -- the first time
16 you would have met with him wouldn't have been
17 three days before the trial; it would have been --

01:18PM

18 A. I have no idea. I could not tell you. I
19 couldn't specifically tell you that on this day, I
20 met with Mr. Bloom, and on this day, I met with
21 Mr. Bloom. I'm assuming that we met before.

01:18PM

22 Q. And you're sure that he was hired prior to
23 the time the jury questionnaires went out.

24 A. I'm thinking so, yeah.

25 Q. Did you consult with any other death penalty

01:19PM

1 lawyers in regards to the preparation for this
2 trial?

3 A. I remember -- to me, it's all mixed up. But
4 I remember going to Delgado. I remember going to,
5 I believe, Appellate Defense. And there's another
6 Bloom involved in Appellate Defense. I remember
7 talking -- and I think he teaches at Cornell or
8 something like that. And there was a --

01:19PM

9 Q. You believe him to be Appellate Defense?

10 A. I believe so.

01:19PM

11 Q. Do you know who the lawyers at Appellate
12 Defense are now?

13 A. No.

14 Q. And you believe that you talked to somebody
15 whose last name is Bloom who teaches at Cornell?

01:19PM

16 A. Yeah.

17 Q. Okay.

18 A. And then I remember speaking to another -- a
19 lady. I think she's short.

20 Q. Where was she?

01:20PM

21 A. I think at Appellate Defense. Indigent
22 Defense or Appellate Defense. Not Appellate
23 Defense. Indigent Defense. It's in Columbia on --
24 I think it's --

25 Q. The Office of Indigent Defense?

01:20PM

1 A. Yeah. I think it's on Gervais Street.

2 Q. All right. Did they -- does the -- when I
3 was a public defender, they didn't have an office
4 of Indigent Defense.

5 A. I don't know what it's called.

6 Q. I know that that's been something that's
7 been relatively -- I don't know when it was
8 created, to tell you the truth.

9 A. Okay.

10 Q. Do they maintain a staff of lawyers there or
11 a lawyer there who is knowledgeable about death
12 penalty defense?

13 A. Well, I think they have gone through enough
14 death penalty defenses that you could basically
15 talk to them about their experiences.

16 Q. At the office of Indigent Defense.

17 A. I believe so.

18 Q. I'm not talking about Appellate Defense.

19 A. I'm getting it confused because I'm calling
20 it the same thing because I don't -- I know it's on
21 Gervais Street. I remember going there, and I
22 remember who we spoke to.

23 Q. The money that you get -- or the Public
24 Defender Corporation gets from the state comes from
25 the Office of Indigent Defense.

01:20PM

01:20PM

01:21PM

01:21PM

1 A. Right.

2 Q. You believe it was that office where you met
3 with some people who assisted you in the
4 preparation of this death penalty.

5 A. I don't know what it's called. I know their
6 office is on Gervais Street.

01:21PP

7 Q. Was it the same office that funds part of
8 your --

9 A. Don't know.

10 Q. Don't know?

01:21PP

11 A. Don't know.

12 Q. And you believe that the office is on
13 Gervais Street.

14 A. I know it's on Gervais Street.

15 Q. And do you think you talked to a short lady
16 there and somebody named Bloom who also teaches at
17 Cornell?

01:21PP

18 A. It was a female, skinny, tall -- I'd say
19 tall lady.

20 Q. I thought you said the woman was a short
21 lady.

01:22PP

22 A. Yeah.

23 Q. A tall and a short lady.

24 A. No, leave the short out. She's tall.

25 Q. There was no short lady.

01:22PP

1 A. No. She's sitting down. She's tall. She's
2 short when she's sitting down, but she's tall.

3 Q. I just wondered why you mentioned short.

4 A. Because I remember her sitting down, but
5 then when she stood up, I remember her being skinny
6 and tall.

7 Q. Okay. Anybody else?

8 A. Not that I remember.

9 Q. Did you know John Delgado before this trial,
10 the Weik case?

11 A. Did I know him?

12 Q. Yeah.

13 A. No. I heard of him.

14 Q. Did you know him?

15 A. No, I don't know him at all now.

16 Q. Well, you said you met with him.

17 | A. Yeah.

18 Q. How did you happen to go to John Delgado?

19 A. Well, I mean, I had gone with him with Norb
20 to talk about some of the death penalty cases that
21 we've had. So, I mean, it wouldn't be the first
22 time.

23 Q. Well, did you find Mr. Delgado to be of any
24 assistance to you in this case?

25 **A.** In regards to preparing for a defense?

1 Q. Of any sort.

2 A. Yeah.

3 Q. Do you recall specifically how?

4 A. I guess he was basically informing us of
5 pitfalls that, you know, a defense can get into
6 with regards to trying cases but --

01:23PM

7 Q. Did Mr. Beauford meet with him as well?

8 A. I don't know.

9 Q. Do you think he went to Columbia to meet
10 with John Delgado?

01:23PM

11 A. I know we went to Columbia. He didn't come
12 here.

13 Q. All right. When -- the other trips to
14 either the Office of Indigent Defense or Appellate
15 Defense --

16 A. Uh-huh.

17 Q. -- when you met John Bloom and the --

18 A. We went there.

19 Q. -- skinny and tall lady, who that -- you
20 went there, did Mr. Beauford go with you?

01:23PM

21 A. I don't know. I don't know.

22 Q. Okay. Do you remember that Mr. -- during
23 the trial, that Mr. Weik was shackled, his legs
24 were shackled?

25 A. Not specifically.

01:24PM

1 Q. If that had been the case, would you --

2 A. During the trial?

3 Q. Yeah.

4 A. Where the jury could see him? That couldn't
5 possibly happen.

01:24PM

6 Q. The record indicates that he was shackled.
7 And apparently, as far as I can tell, it was
8 shackled to -- his legs were shackled.

9 A. If we had a trial and Mr. Weik was shackled,
10 I don't believe -- I don't believe -- nobody could
11 stop me from having him go -- not go into court,
12 because I don't think that would have happened.

01:24PM

13 Q. You would have objected.

14 A. Not only objected; I would have said -- I
15 would have probably acted fool with the judge. I
16 mean --

01:24PM

17 Q. What do you mean?

18 A. Meaning -- I mean, before he went out in
19 front of the jury, "Judge, this cannot happen." I
20 just don't remember something like that occurring.
21 I mean, I just can't even -- I don't even think I
22 could sleep knowing that something like that would
23 have occurred.

01:25PM

24 Q. Look at page 1656 of the transcript.

25 A. Okay. I stop at 14.

01:25PM

1 Q. Okay.

2 A. 1656, John Weik Examination?

3 Q. Yeah.

4 A. Okay.

5 Q. And this is direct exam. And if you then
6 turn -- it seems this is part of it -- this is a
7 selection of it. It goes over to 1658 at line 6.
8 And I gather Mr. Beauford did direct examination of
9 Mr. Weik; is that correct?

01:26P

10 A. Sure did.

01:26P

11 Q. All right. And at line 6, Mr. Beauford
12 says, "No further questions."

13 A. What page?

14 Q. 1658, at the end of the direct examination,
15 line 6.

01:26P

16 A. "No further questions"?

17 Q. Right. And then Mr. Bailey says he wants to
18 take a break before cross-examining.

19 A. Okay.

20 Q. All right. Then the court says, "Let's take
21 ten minutes, Ladies and Gentlemen."

01:26P

22 "Mr. Weik, you may step down, if you would
23 do that."

24 "Yes, sir."

25 Then the record reflects the jury was

01:26P

1 excused; is that correct?

2 A. Uh-huh.

3 Q. So Mr. Weik --

4 A. Yes.

5 Q. -- got off the stand, went and sat by the
6 counsel table with you, and then the jury was taken
7 out of the courtroom. At least that's what this
8 transcript indicates.

01:27PA

9 A. Oh, okay.

10 Q. So he must have walked back to the counsel
11 table after this, because the judge says, "Step
12 down," so he walked back to counsel table.

01:27PA

13 A. Okay.

14 Q. Then on the next page, 1659 -- I'm sorry.
15 After the recess was taken, which is on line 17, it
16 indicates on line 18 that you addressed the Court
17 and said that you had talked to Mr. Weik after his
18 direct testimony but it was not about his
19 testimony?

01:27PA

20 A. Okay.

21 Q. And then you go to the next page, page 1659,
22 and the judge says, "Sure."

23 And then Mr. Bailey says -- this is on lines
24 2 and 3 -- "Judge, could he take the stand before
25 the jury comes in?"

01:28PA

1 A. Uh-huh.

2 Q. And the Court says, "That's fine. He
3 doesn't need to walk up there with those things on
4 his legs."

5 A. All right. You assume that that was
6 shackles?

01:28PA

7 Q. What else would it be?

8 A. Basically when they take you into -- well,
9 in Dorchester County, they have things underneath
10 their legs that make them look as if they're
11 walking as stiff, but they're actually like
12 restraints to keep them from running. But, sir, I
13 could tell you they were not shackles that
14 people --

01:28PA

15 Q. Okay. I know what those things are, and
16 they keep your legs straight.

01:28PA

17 A. Right.

18 Q. And if you bend your legs, they lock.

19 A. Right.

20 Q. He had those on the whole trial?

01:29PA

21 A. He had to have.

22 Q. So when he took the witness stand, he had
23 them on.

24 A. He had to have.

25 Q. And the jury would have seen him walk up

01:29PA

1 there with those things on.

2 A. Unless he was there before the jury got
3 there.

4 Q. If he wasn't, would you have objected -- or
5 do you think an objection would have been
6 appropriate to him having to walk up to the stand
7 like that?

01:29PM

8 A. Depending on -- it depends, because he would
9 have to step up on a step to get on the stand. It
10 depends on if it could visibly be seen that it was
11 a restraint where it would lock and he would
12 then -- and they would see that he was being
13 restrained.

01:29PM

14 Q. Right. Those things are pretty apparent
15 when you stand up.

01:30PM

16 A. Some -- well, it depends on the person and
17 who's wearing them.

18 Q. You can't bend your knees.

19 A. Well --

20 Q. Right? I mean, that's the point.

01:30PM

21 A. Well, there's -- how do I say this? There's
22 a mechanism, like if you're sitting down, that you
23 have to hold something before you can get them from
24 being unlocked.

25 Q. The Solicitor was concerned that the jury

01:30PM

1 didn't see that whatever he had on, that the jury
2 didn't see it.

3 A. Okay.

4 Q. Isn't that what this indicates on page 1659?

5 A. "Judge, could he take the stand before the
6 jury comes in?"

7 "That's fine. He doesn't need to walk up
8 there with those things on his legs."

9 He -- I guess he was concerned about how he
10 would look to the jury, but he didn't have shackles
11 on.

12 Q. He was concerned that the jury would have
13 figured out that he had some restraints on his
14 legs, right?

15 A. They probably felt sympathetic for him.

16 Q. Mr. Bailey felt sympathy for anybody --

17 A. No, no, no.

18 Q. -- on trial for --

19 A. I didn't say that. I said the jury probably
20 would have felt sympathetic. He didn't want that
21 being imposed.

22 Q. You think that's really true? You felt the
23 jury would have been sympathetic to Mr. Weik?
24 That's why --

25 A. I think so, if he's concerned about how he

01:30PM

01:30PM

01:30PM

01:31PM

01:31PM

1 looks.

2 Q. Okay. He was -- why do you think he would
3 have been -- he would have felt the jury would have
4 been sympathetic?

5 A. Well, I mean, those things make you look
6 cripple-like.

01:31 PM

7 Q. And that's your reason that you think --
8 rather, that the jury think that this is a very
9 dangerous guy and needs to be shackled?

10 A. That could be a possible reason, too, but I
11 mean --

01:31 PM

12 Q. It was even -- I mean, what do you think --
13 what -- you're projecting Mr. Bailey's reasons. He
14 had reasons -- he didn't want the jury to see this
15 guy was in some way restrained -- he didn't want
16 the jury to see that.

01:31 PM

17 A. Right.

18 Q. Okay.

19 A. Underneath his clothes.

20 Q. It was obviously apparent that whatever was
21 -- he was restrained with was apparent to the jury
22 or apparent to anybody seeing it.

01:31 PM

23 A. Apparent to him, that he didn't want
24 anything imposed from that.

25 Q. What?

01:31 PM

1 A. Apparent to him that he didn't want anybody
2 taking anything away from whatever they saw.

3 Q. I don't understand. Taking anything away
4 from anyone they saw?

5 A. Well, I'm assuming that Mr. Bailey didn't
6 want anybody to be sympathetic towards the way he
7 looked. Basically he looked as if he was crippled.
8 I'm sure they couldn't see any shackles. I'm sure
9 -- because they're usually underneath his clothes.
10 If they saw how he bent his legs or how couldn't
11 bend his legs or if he fell down -- he could have
12 possibly have fallen down if he didn't know how to,
13 you know, stand --

01:32PM

01:32PM

14 Q. What about when he took the stand? The jury
15 was in there. I mean, the record indicates that
16 the jury was in the jury room before he started
17 direct examination.

01:32PM

18 A. Okay.

19 Q. So the jury must have seen it then.

20 A. Probably could have seen how he walked, but
21 these items are underneath his pants.

01:32PM

22 Q. I understand that, but Mr. Bailey was
23 concerned about it, for one reason or the other. I
24 don't notice y'all objecting to that, or asking for
25 him to be put on the stand before the jury comes

01:33PM

1 in.

2 A. If there's no objection, then there probably
3 was nothing on our side that, you know, we would be
4 objecting to.

5 Q. Obviously that's true. I mean, Mr. Bailey
6 was concerned enough about it.

01:33PM

7 A. Probably because he didn't want the jury to
8 feel sympathetic towards him.

9 Q. And you say that because?

10 A. That's -- if we didn't --

01:33PM

11 Q. That's Mr. Bailey's habit?

12 A. I wouldn't say that's his habit, but if he
13 sees something that's contradicting towards what he
14 probably wants the jury to see, he's going to
15 comment on it. And if we didn't comment on it,
16 basically we found it was okay.

01:33PM

17 Q. Oh, yeah, I'm sure that's true. But could
18 it also have been because you didn't make an
19 objection, he didn't want that to be an issue in
20 the record of post-conviction relief?

01:33PM

21 A. Make an objection?

22 Q. Y'all failed to object to this, obviously.

23 A. Well, we didn't --

24 Q. You didn't -- for whatever reason, you
25 didn't object. Is that fair to say?

01:33PM

1 A. If we didn't object, then we didn't find
2 anything wrong. We didn't find anything to object
3 to.

4 Q. Do you remember that?

5 A. If we didn't object -- I mean, to me it's
6 self-apparent if we didn't say anything.

7 Q. Do you remember that?

8 A. No.

9 Q. Okay. So --

10 A. And I don't even remember how he looked, but
11 the point is, I know no restraints were on the
12 outside of his clothes.

13 Q. I know that.

14 A. It was inside. So --

15 Q. Mr. Bailey could also have been concerned
16 that the defense had not objected to something that
17 he felt was prejudicial to the defendant.

18 A. I doubt that.

19 Q. Why?

20 A. In this situation, because if we thought --
21 if I thought -- or if there was anything that we
22 should have objected to, I don't think this was
23 one. I think it was something that was not
24 beneficial on his part.

25 Q. Okay. Mr. Bailey could have thought that --

01:34PM

01:34PM

01:34PM

01:34PM

01:34PM

1 when you failed to object -- that he thought he
2 better do something about it so it wouldn't become
3 an issue later on, because you guys not being --
4 paying attention to what you're supposed to be
5 doing?

01:35PM

6 A. I don't think that's the case.

7 Q. Why is that?

8 A. I just don't.

9 Q. Why?

10 A. We would have said something.

01:35PM

11 Q. If you --

12 A. If the comment was made with regards to him
13 taking the stand before the jury, and we elicited
14 nothing, then that tells me that it was a benefit
15 to us.

01:35PM

16 Q. But you don't remember.

17 A. No.

18 Q. And you really don't know, do you?

19 A. No.

20 Q. Okay. Did you have any reason to believe
21 that Mr. Weik would not have expressed remorse had
22 he made a final argument to the jury?

01:35PM

23 A. As I said, again, I think Mr. Beauford was
24 concerned about what Mr. Weik would have said,
25 period.

01:35PM

1 Q. I want to know what you thought. Did you
2 have any concern that he would not have expressed
3 remorse had he made a final argument to the jury?

4 A. I think Mr. Weik was trying to express
5 everything else except for sympathy. He probably
6 would have gotten that in after he said what he
7 wanted to say, but that would be a risk to his
8 case.

01:36PM

9 Q. I'm talking about remorse. Different from
10 sympathy.

01:36PM

11 A. I understand.

12 Q. I'm asking you, did you have any reason to
13 believe that he would not have asked or expressed
14 remorse in front of the jury when he gave his final
15 argument?

01:36PM

16 A. As I said, he would have expressed
17 everything else probably with the exception of
18 that. He may have included it, but he would have
19 expressed something other than that, which in
20 hearing it --

01:36PM

21 Q. I'm sorry. I don't understand what you just
22 said.

23 A. I don't believe he -- I believe Mr. Weik
24 would have expressed everything else --

25 Q. But remorse.

01:36PM

1 A. He could have expressed that, but basically
2 saying something else, you probably wouldn't have
3 heard the remorse or believed it.

4 Q. Why do you think that?

5 A. Because he was too adamant in regards to
6 saying something that he wanted to say.

7 Q. Like what?

8 A. Everything.

9 Q. What?

10 A. About the case.

11 Q. Tell me what those things were that he was
12 adamant about wanting to express to the jury.

13 A. Facts, just basically facts about his side
14 of what happened.

15 Q. Well, he said that in his direct
16 examination.

17 A. Exactly.

18 Q. So in his final argument to the jury --

19 A. I believe he would have brought up either
20 aspects with regards to things that's not even
21 relevant.

22 Q. So what?

23 A. Well, if --

24 Q. What difference would that have made?

25 A. Well, if your client is deemed he's like a

01:36PM

01:37PM

01:37PM

01:37PM

01:37PM

1 live wire and -- it does make a difference when
2 you're trying to defend somebody and they're saying
3 anything that they want to say, and it's not
4 helpful to their case.

5 Q. Do you think he might have expressed
6 remorse? Is there any reason to believe -- did you
7 think that he wouldn't do it?

8 A. That's what I was trying to tell you. I
9 believe he was like a live wire. You didn't know
10 where he was going to go.

11 Q. What did you have to lose?

12 A. His case.

13 Q. At that point in the case -- you saw the
14 whole trial, I'm gathering.

15 A. (Moves head up and down.)

16 Q. What did you have to lose, given the way the
17 trial had gone up to that point, to having him do
18 his final argument?

19 A. Well, I mean, how could you say it could
20 have gotten worse with him saying something that
21 was just -- you, you -- just outlandish. You just
22 didn't know what he was going to say. That was my
23 concern.

24 Q. What were those things that you were
25 concerned about that he would say?

1 A. I have no idea. He could have said
2 anything, something crazy.

3 Q. Well, that was the point that y'all were
4 trying to make, that he was crazy.

5 A. So what you're saying is, "Okay. Because he
6 was crazy, he can just get up there and just say
7 anything" --

8 Q. I'm not saying anything. Your point in this
9 case was that y'all wanted -- isn't it true that
10 you wanted the jury to believe that he was crazy?

11 A. I have no idea.

12 Q. You don't know if that's what the theory of
13 the case was.

14 A. No.

15 Q. When Mr. Weik -- was there anything during
16 his direct examination that he said that you didn't
17 expect him to say and that was damaging?

18 A. I think Mr. Beauford talked to him with
19 regards to what he was going to be saying. I
20 believe I was there when that was going on in the
21 jail.

22 Q. So Mr. Weik was able to answer the questions
23 that were asked by Mr. Beauford, as they planned
24 ahead of time?

25 A. I wouldn't say he planned them ahead of

1 time. I just believe that --

2 Q. No, I'm not talking about planning the
3 answers; I'm talking about planning the questions,
4 the lawyer knowing what the answer is going to be
5 before he asks the questions.

01:40 PM

6 A. I don't believe he asked the questions in
7 the jail that Mr. Weik answered. Basically, I
8 don't believe it was a controlled situation.

9 Q. You remember that from the direct
10 examination.

01:40 PM

11 A. Right.

12 Q. You don't think he answered the questions
13 that he was asked by his own lawyer.

14 A. I believe he answered some of them, but some
15 of the questions Mr. Beauford didn't ask him, and
16 he just answered, you know --

17 Q. That's not unusual in court, is it?

18 A. Well, in this situation, if he's concerned
19 about what he said, then he's got to have an idea
20 of what he's going to say. So if you're going to
21 ask somebody a question, like Mr. Weik, you're
22 going to basically know what area -- what he's kind
23 of going to roundabout say.

01:40 PM

24 Q. Look at page 2107 of the transcript. The
25 judge is talking to you and the other lawyers.

01:41 PM

1 A. Where are we?

2 Q. On page --

3 A. "As I say, is there any evidence"?

4 Q. Line 14.

5 A. Okay.

01:41PM

6 Q. It says, "Y'all might tell Mr. Weik, just
7 explain to him, I'm not in any way advising him of
8 what exactly to say, by no means, but obviously
9 he's limited to what he's heard here in court. And
10 at this point, there shouldn't be any discussion of
11 the fact he's not guilty. Obviously he needs to
12 concentrate on -- what he needs to concentrate on
13 is the sentence he feels would be appropriate --
14 the appropriate sentence for what he's done. I
15 mean, that's all you're supposed to talk about.
16 You're supposed to hear -- to talk about, of
17 course."

01:41PM

01:41PM

18 And then Mr. Bailey says that he wants to
19 protect the record.

20 Do you see that, Line 2108, line 2?

01:42PM

21 A. You're talking about Mr. Bailey now?

22 Q. Yeah. He says, "Just to protect the record,
23 there is law to the fact that the Defendant can't
24 be prohibited from claiming his innocence even in
25 the penalty phase."

01:42PM

1 Now, Mr. Bailey is doing what there?

2 A. He's protecting the record.

3 Q. And what does that mean to you?

4 A. Basically preserving the fact of law of
5 something the judge said.

01:42PM

6 Q. What do you mean by that? In this instance,
7 what does that mean?

8 A. Well, he's -- "Your Honor, just to protect
9 the record, I think there's some law to the effect
10 that the Defendant can't be prohibited from
11 claiming his innocence, even in the penalty phase."

01:42PM

12 Q. Why does it appear he made that comment in
13 the context of what the judge said?

14 A. To correct him.

15 Q. And for what purpose?

01:42PM

16 A. The law -- the record.

17 Q. What end would that have served -- what end
18 of Mr. Bailey would that have served?

19 A. Him not coming back and saying something
20 later on that he wasn't able to.

01:43PM

21 Q. I'm sorry?

22 A. Coming back later on and saying something
23 that he wasn't able to do when --

24 Q. You mean Mr. Weik coming back and saying, "I
25 was improperly instructed."

01:43PM

1 A. Right.

2 Q. And so Mr. Bailey was concerned that the
3 record be protected for appellate purposes on
4 behalf of the state of South Carolina.

5 A. In that aspect.

01:43PM

6 Q. All right. Then the Court goes on, at line
7 13, they talk about residual doubt and that -- at
8 line 17, he says, "I'll tell you the safe thing to
9 do is to let him talk about anything he wants to
10 talk about in the evidence."

01:43PM

11 Nothing there about asking for mercy or
12 expressing remorse.

13 A. No.

14 Q. Then the court finally, on 2109 says, Line
15 6, "What I am simply saying for the record is that
16 if it's in evidence in this case, he can talk about
17 it. Let's take five minutes."

01:44PM

18 Okay?

19 "A recess was taken."

20 Do you see that?

01:44PM

21 A. Yeah.

22 Q. The first thing out of Mr. Beauford's mouth
23 after the recess is over is that "Mr. Weik
24 indicated he will not make a closing."

25 A. Right.

01:44PM

1 Q. What happened during that recess? I would
2 really like you -- if you can't remember, you can't
3 remember, but I don't want you to say, "Well, we
4 probably did such and such."

5 A. Well, that's what I am going at. I mean --

01:44PM

6 Q. Do you remember?

7 A. We had to talk to him in the back.

8 Q. Do you remember what that -- what happened
9 in that recess?

10 A. I remember we talked to him. What he talked
11 about, I couldn't tell you.

01:44PM

12 Q. Do you know why that Mr. Weik changed his
13 mind?

14 A. No. I could probably tell you that in
15 talking between he and Mr. Beauford, Mr. Beauford
16 probably said something to him, but I couldn't tell
17 you what it was, advising him of his rights or
18 something like that, but I couldn't tell you what
19 it was. I couldn't tell you what the conversation
20 was about.

01:44PM

01:45PM

21 (Off-the-record conference.)

22 MR. O'CONNELL: That's all I have. I
23 believe this gentleman wants to ask you some
24 questions. I mean, I don't -- I'm not
25 suggesting you need to.

01:47PM

1 MR. ZELENKA: I do want to ask a few,
2 but I know you've got -- do you need to make
3 a call?

4 THE DEPONENT: No, I already called.

5 EXAMINATION

6 BY MR. ZELENKA:

7 Q. First, are you going to be available during
8 the week that the post-conviction hearing is
9 scheduled?

10 A. I don't know when that is.

01:47PM

11 Q. That's the week of September 17th.

12 A. I think that's General Sessions. All you
13 have to do is do a Subpoena and I'm there, just
14 like this situation.

15 Q. Have you gotten my e-mails about that?

01:47PM

16 A. If I don't know you, I won't answer your
17 e-mail. I'm serious. I'm sorry.

18 Q. I understand that.

19 Did you get by e-mail a copy of the amended
20 return that I did, let's see, about three weeks
21 ago?

01:47PM

22 A. Sir, seriously. I mean, you could say
23 you're President Reagan. If I don't know you, I
24 will not answer your e-mail.

25 Q. Okay.

1 A. And to tell you the truth, I usually don't
2 get my information off of the Internet with regards
3 to -- unless somebody tells me that it's there.
4 You've to call me and let me know under what -- you
5 know, I just don't open e-mails that I don't know.

01:48PM

6 Q. Okay. Well, the e-mail was styled John
7 Weik, State's Return to Amended Application and
8 Status Update, PCR Hearing set for September 18th.
9 That went to you on July 21st.

10 A. No.

01:48PM

11 Q. Okay.

12 A. I know I wouldn't have gotten that. I
13 wouldn't have opened it up, put it that way.

14 Q. So you have not read the return then,
15 obviously.

01:48PM

16 A. No.

17 Q. So you aren't aware of any of the
18 allegations that have then been made to you
19 concerning your representation.

20 A. No.

01:48PM

21 Q. Okay. And by direct testimony, it appears
22 that you have not reviewed your file recently.

23 A. I couldn't even tell you when I got in
24 contact by his office. I remember getting it.
25 It's got to be up there if I was able to copy it

01:49PM

1 for him, but the question is where it is now. It's
2 in here. I can tell you that.

3 Q. But then, obviously, when was the last time
4 you reviewed the trial transcript?

5 A. I haven't. I have not.

01:49PM

6 Q. You've never reviewed the trial transcript.

7 A. No, I have not.

8 Q. So any of the information you're testifying
9 about is essentially based upon solely your
10 recollection of the trial itself?

01:49PM

11 A. Exactly.

12 MR. O'CONNELL: Object to the form of
13 the question. Go ahead and answer it. I
14 just wanted to object.

15 BY MR. ZELENKA:

16 Q. You have not reviewed any notes prior to
17 your testimony prior to today.

18 A. I have not.

19 MR. O'CONNELL: Same objection.

20 BY MR. ZELENKA:

01:49PM

21 Q. Is it true, as you've previously stated,
22 that you never read the trial transcript?

23 A. I have not.

24 Q. Have you read the opinion of the South
25 Carolina Supreme Court affirming the conviction?

01:50PM

1 A. I have not.

2 Q. Now, you've been a public defender since
3 1995?

4 A. Yes, September 1995.

5 Q. Okay. And according to the transcript --
6 let me ask you to review -- I believe it's page 42.
7 Excuse me, not page 42. Page 4, lines 8 through
8 14.

9 A. "This is my second death penalty, yes."

10 Q. Does that refresh your recollection of --

11 A. It really does.

12 Q. -- the status of your death penalty
13 experience at the time of this trial?

14 A. It really does.

15 Q. And having read that, what is your
16 recollection now about how many capital cases you
17 had handled at that time?

18 A. This was my second one. My first one was
19 with Calvin Schuler, and that one was with Norbert
20 Cummings.

21 Q. Okay. And in the case you did with
22 Mr. Cummings, what was your status on that case,
23 State versus Schuler.

24 A. Second chair.

25 Q. Okay. And what Schuler was that?

01:50 PM

01:51 PM

01:51 PM

01:51 PM

01:51 PM

1 A. Okay. The Schuler that did the armored car
2 robbery in Orangeburg.

3 Q. Okay. And that was Calvin Schuler?

4 A. Yes, Calvin Schuler.

5 Q. Okay. And when you became involved in this
6 case, you testified on direct examination, if I'm
7 correct, that it occurred approximately three
8 months before the actual trial?

01:51PM

9 A. Uh-huh.

10 Q. And is it your testimony that at that time
11 you were more involved in Indigent Defense than you
12 are now?

01:52PM

13 A. Yeah.

14 MR. O'CONNELL: Objection to the form
15 of the question.

01:52PM

16 BY MR. ZELENKA:

17 Q. Restate how much you were involved in
18 Indigent Defense at that time, or what's your
19 recollection, back in 1999?

20 A. I'm more involved now, 2006, with my -- with
21 regards to public defender and private practice
22 more so than I was back then.

01:52PM

23 Q. Okay.

24 A. I wasn't necessarily known. I just did -- I
25 was hired to do public defender work. I did that.

01:52PM

1 And, of course, I did private practice, but I
2 wasn't, I guess, as busy now (sic) as I am now.

3 Q. And is it correct that you began as a public
4 defender at 32,500 and you're currently being
5 provided 47,500?

01:53PM

6 A. Yes.

7 Q. Approximately where would that salary have
8 been back in 1999?

9 A. Probably 37.5.

10 Q. Okay.

01:53PM

11 A. Because we went a long time before there was
12 a raise. But -- well, if it's three years -- 30 --
13 '95, '96, '97, '98 -- I'd say between 32.5 and
14 37.5, during that time period.

15 Q. And is it correct to state, as I think you
16 stated, that Mr. Beauford was clearly the lead
17 counsel on this case?

01:53PM

18 A. Yes.

19 Q. Assumed responsibility -- that he had
20 assumed responsibility for the factual
21 investigation of this case?

01:54PM

22 A. He was lead counsel. When you say assume
23 responsibility, I'm assuming that's part of what he
24 did. I don't understand.

25 Q. Okay. Let me rephrase. Did you visit the

01:54PM

1 crime scene?

2 A. Yes, I did.

3 Q. And what did you learn from the crime scene?

4 A. What -- where -- I mean, just a visual in
5 regards to what happened.

01:54PM

6 Q. Did you visit the crime scene with
7 Mr. Beauford, or did you go independently?

8 A. I think I went with him. I remember going
9 to a trailer that was very high woods area. I
10 mean, there was grass that was halfway -- it was --
11 how do I say this? I remember going to what I
12 understand Mr. Weik -- where Mr. Weik lived. I
13 can't remember if it was where he lived or where
14 his family lived. But I remember the grass was
15 very high. And it was like trash or garbage on the
16 outside leading up to the trailer or something like
17 that. It was a very strange area.

01:54PM

18 Q. Okay. Did you discuss the facts of the case
19 with Mr. Weik?

20 A. Yes.

01:55PM

21 Q. Did he give you a version as to how this
22 event occurred?

23 A. Yes. When I was appointed, I met with him,
24 and that's where I would have gotten that.

25 Q. Okay. Was the version he gave to you

01:55PM

1 shortly after your appointment consistent with his
2 own testimony at trial?

3 A. Yeah, yes.

4 Q. Was there anything that stood out to you
5 that varied from his testimony at trial to the
6 version that he gave you?

01:55PM

7 A. Not that I can remember.

8 Q. Okay. Did Mr. Weik ever express to you
9 remorse for the crime?

10 A. I don't remember that.

01:56PM

11 Q. You don't remember him expressing remorse?

12 A. I don't even remember having that
13 conversation. I really don't.

14 Q. Okay. How did he feel about the crime?

15 A. I couldn't tell you. I'm sorry.

01:56PM

16 Q. Now, there was some questions on direct
17 about the amount of time you spent on your work --

18 A. Yes.

19 Q. -- generally at that time period. Did your
20 workload impact or cause you to be unable to do
21 anything that Mr. Beauford asked you to do in
22 preparation for this case?

01:56PM

23 A. No.

24 Q. Did your salary impact, in any manner, in
25 causing you not to do anything that Mr. Beauford

01:57PM

1 asked you to do in this case?

2 || A. No.

3 Q. Now, the expert witnesses that testified in
4 the case that you've already spoken of briefly,
5 Dr. Donald Morgan, Dr. Donna Schwartz-Watts, and
6 there's a forensic psychiatrist, Dr. Jeffrey
7 McKee --

8 A. Right.

9 || 0. -- that was involved in this case --

10 || A. Uh-huh.

11 Q. -- who testified, were those the witnesses
12 that you were commenting that you had retained?

13 A. Right.

14 Q. Okay.

15 A. And there was an investigator, Bobby Mentor.
16 He usually works with us on death penalty cases.

17 Q. And what was Bobby Mentor's role?

18 A. He was more of the investigator, going out
19 and talking to people; whereas, the other lady, I
20 believe, was a social worker.

21 Q. You mean Patti Rickborn?

22 | A. Yeah.

23 Q. So was Mr. Mentor doing a factual
24 investigation about the crime --

25 | **A.** Right.

1 Q. -- itself?

2 A. Right.

3 Q. Was he involved at all in even soliciting
4 information about mitigation witnesses, what I call
5 mitigation witnesses? Family members.

01:58PM

6 A. He kind of was.

7 Q. So he kind of had a blended role; is that
8 correct?

9 A. Yeah.

10 Q. And after Ms. Rickborn sent her letter in
11 April, did Mr. Mentor assume more responsibility,
12 less responsibility, or the same?

01:58PM

13 A. He just did his job. He didn't counteract
14 with hers at all.

15 Q. And there was another individual that was
16 named by Mr. Beauford at the time of that hearing
17 that had been retained, a Coy --

01:59PM

18 A. He definitely got that person. I don't even
19 know who that person is.

20 Q. Okay. You don't recall any interaction with
21 that person?

01:59PM

22 A. No.

23 Q. Do you remember any information that you
24 might have received from that person?

25 A. (Moves head from side to side.)

01:59PM

1 Q. Now, as the trial progressed, at the
2 conclusion of the guilt phase, was there any
3 evidence presented by the state that surprised you,
4 that you were not aware of that was going to come
5 in?

01:59PM

6 A. Not that I can recall.

7 Q. Okay. In part of your role as the attorney,
8 were you aware of the nature of the state's case
9 against your client?

10 MR. O'CONNELL: Object to the form of
11 the question.

01:59PM

12 BY MR. ZELENKA:

13 Q. Please answer.

14 A. Go.

15 MR. O'CONNELL: Go on and answer. I
16 just have to make these objections.

01:59PM

17 THE DEPONENT: Okay. Say that again
18 now and --

19 MR. ZELENKA: I'll probably rephrase
20 it, pending his objection.

02:00PM

21 THE DEPONENT: Was I aware of any state
22 information?

23 MR. O'CONNELL: This is off the record.

24 (Off-the-record conference.)

25 BY MR. ZELENKA:

02:00PM

1 Q. Let me ask it this way. Were you aware of
2 the state's evidence that was going to be presented
3 in the case?

4 A. Okay, meaning got discovery from the state
5 in regards to what they were going to present?

02:01 PM

6 Q. Yes.

7 A. We got discovery.

8 Q. Did you review that discovery yourself?

9 A. Yes.

10 Q. And that review of the discovery is done
11 independent of Mr. Beauford.

02:01 PM

12 A. Yeah.

13 Q. And was there any testimony or evidence that
14 was presented in the guilt phase of the case that
15 surprised you, that you were not expecting, in
16 hindsight?

02:01 PM

17 A. I can't remember.

18 Q. Okay. Was there anything about the
19 testimony that was presented through Mr. Beauford
20 in the guilt phase of the case that was different
21 than the type of testimony that you expected?

02:01 PM

22 A. I can't remember.

23 Q. Or was it consistent with what you thought
24 was going to happen?

25 A. Meaning if something was presented by the

02:01 PM

1 state's case -- say that question again now. I'm
2 sorry.

3 Q. That's okay.

4 What I am asking is, was there anything
5 about the state's case that surprised you at the
6 time it was given based upon your understanding of
7 the nature of the state's case in pretrial
8 information?

02:02PM

9 A. No, but then again -- I mean, I'm going to
10 tell you. I can't remember -- if there was
11 something different, I couldn't tell you what it
12 was that was different. I couldn't.

02:02PM

13 Q. Okay. But in hindsight, I guess you're
14 saying there wasn't anything that stands out at
15 this time that was a surprise.

02:02PM

16 A. That's correct; there's nothing that stands
17 out.

18 Q. And similarly in the penalty phase?

19 A. Correct; there's nothing to stand out that I
20 can remember.

02:02PM

21 Q. Were you aware of the nature of the
22 testimony that Dr. Donald Morgan, Dr. Donna
23 Schwartz-Watts, Jeffrey McKee were going to give in
24 your case?

25 A. Aware of their testimony? They didn't tell

02:03PM

1 me exactly what they were going to be saying, but
2 they kind of told us what they were going to be
3 arguing.

4 Q. Okay, that your client suffered from some
5 mental illness.

02:03PM

6 A. Right.

7 Q. It impacted upon his ability to conform his
8 conduct.

9 A. Right.

10 Q. Did it impact -- did you have any
11 information at that time that insanity was a valid
12 defense in this case?

02:03PM

13 A. After we spoke to Donna Schwartz-Watts, I
14 think they were trying to -- I have no idea.

15 Q. Okay.

02:03PM

16 A. I have no idea.

17 Q. Let me ask you to look again at 2107 of the
18 transcript. Particularly look at lines 22 through
19 25 of that.

20 Now, does that indicate to you that your
21 client, in his closing statement, can make a
22 statement about what the appropriate sentence he
23 thinks he should receive is?

02:04PM

24 MR. O'CONNELL: Object to the form of
25 the question.

02:04PM

1 THE DEPONENT: Say that again. I'm
2 sorry.

3 BY MR. ZELENKA:

4 Q. Okay. Let me say it in a different way.

5 A. I'm sorry.

6 Q. At page 2107, the judge is advising all
7 concerning the Defendant's right to make a closing
8 argument that, quote, Obviously what he needs to
9 concentrate on is the sentence and what he feels
10 would be an appropriate sentence for what he's
11 done.

12 A. Uh-huh.

13 Q. End of quote.

14 What did that indicate to you your client
15 could discuss in his closing argument to the jury?

16 A. I've heard it two ways, but what evidence
17 has been presented in court.

18 Q. Okay. As to what the appropriate -- what he
19 feels would be an appropriate sentence for what
20 he's done?

21 A. What he's done, what he's done.

22 Q. And that clearly would allow him to assert
23 that he thinks he should receive a life sentence,
24 correct?

25 MR. O'CONNELL: Object to the form of

02:05PM

02:05PM

02:05PM

02:06PM

1 the question.

2 THE DEPONENT: With him, I don't know.

3 I really don't.

4 BY MR. ZELENKA:

5 Q. Explain that.

02:06PM

6 A. I just don't -- I mean, what the judge told
7 him his parameters are, and not knowing whether or
8 not he could beg for mercy, I just don't know what
9 he felt he could possibly do, but I believe what I
10 was trying to say is I didn't -- I think we were
11 concerned about what he would do.

02:06PM

12 Q. Okay. Let me -- that's a different
13 question. What I am asking you is, you would
14 interpret, wouldn't you, that the judge is saying
15 that he could ask for a life sentence?

02:06PM

16 MR. O'CONNELL: Object to the form of
17 the question.

18 THE DEPONENT: It's basically
19 concentrating on the sentence and what he
20 feels he is -- what the appropriate sentence
21 for what he's done, the sentence.

02:07PM

22 BY MR. ZELENKA:

23 Q. Right.

24 A. Now, whether or not it's life --

25 Q. But he could say it wouldn't restrict him

02:07PM

1 from not asking for a life sentence, would it --

2 MR. O'CONNELL: Object to the form.

3 BY MR. ZELENKA:

4 Q. -- based on what the judge has told him --

5 A. Based on --

02:07PM

6 MR. O'CONNELL: Object to the form of
7 the question.

8 THE DEPONENT: I mean, the judge is
9 saying one thing. But what he actually
10 does, that's -- we don't know.

02:07PM

11 BY MR. ZELENKA:

12 Q. I agree. But by that language, that didn't
13 indicate to you that he couldn't ask for a life
14 sentence, did it?

15 MR. O'CONNELL: Object to the form of
16 the question.

02:07PM

17 BY MR. ZELENKA:

18 Q. The judge.

19 A. No.

20 Q. Okay. So if that didn't indicate to you
21 that he could not ask for a life sentence, what
22 would your objection have been to that language
23 that the judge gave?

02:07PM

24 A. He could plead for mercy, other than life
25 sentence.

02:07PM

1 Q. And then he would be allowed to plead for
2 mercy under that; isn't that correct?

3 MR. O'CONNELL: Object to the form of
4 the question.

5 THE DEPONENT: I don't know what he
6 feels -- I don't know what he felt he could
7 have done.

8 BY MR. ZELENKA:

9 Q. Okay. I'm not asking him what he felt. I'm
10 asking you what you thought this language meant.
11 I'm not trying to interpret what Mr. Weik
12 understood that as, what you understood it as.

13 A. Well, I mean, just reading it -- just what
14 the judge says. He needs to concentrate on -- is
15 the sentence and what he feels would be an
16 appropriate sentence for what he's done.

17 Q. Okay.

18 A. I feel it closes him in a little bit, but...

19 Q. Okay. The testimony that you hired Jeffrey
20 Bloom as a -- to assist you in the jury; is that
21 correct?

22 A. I don't know if I did or Mr. Beauford did.
23 I don't know.

24 Q. Okay. And --

25 A. That would be the first time that I probably

02:08 PM

02:08 PM

02:08 PM

02:09 PM

02:09 PM

1 dealt with him.

2 Q. And his role is to provide you questions to
3 ask the jurors?

4 A. Voir dire.

5 MR. O'CONNELL: Object to the form of
6 the question.

7 BY MR. ZELENKA:

8 Q. Is that correct?

9 A. That would be one, one aspect, and then
10 helping pick a jury.

11 Q. And help you pick a jury?

12 A. Uh-huh.

13 Q. Is it my understanding then that he would
14 analyze the jurors individually?

15 A. Yes.

16 Q. And provide that information to you?

17 A. Well, help us in regards to picking the
18 jurors, because he would be part of the voir dire.

19 Q. Were you aware of his scoring or how he
20 rates jurors in advance?

21 A. I believe he went over that.

22 Q. Okay. Do you know whether that scoring or
23 how he did it was based upon any stereotypes?

24 A. No.

25 Q. Well, how was it done then?

02:09PM

02:09PM

02:09PM

02:09PM

02:10PM

1 A. I believe he's an expert in regards to
2 picking juries on death penalty and not death
3 penalty. That's one aspect.

4 Q. Did he advise you how he had that expertise?

5 A. I don't remember.

02:10PM

6 Q. Do you know if he used racial stereotypes or
7 any stereotypes in making his decisions?

8 A. I don't think he does.

9 Q. How do you know?

10 A. I just don't think he does. It never came
11 up. I don't remember --

02:10PM

12 Q. It was never discussed.

13 A. I don't remember hearing it.

14 Q. So if he rated one some way, you just
15 assumed his rating was free of any stereotypes in
16 any 'manner?

02:10PM

17 MR. O'CONNELL: Object to the form of
18 the question.

19 BY MR. ZELENKA:

20 Q. Is that correct?

21 A. I don't know.

22 Q. Did you just accept his rating system and
23 then apply that to your jury selections?

24 MR. O'CONNELL: Object to the form of
25 the question.

02:11PM

1 THE DEPONENT: We accepted him as an
2 expert in his field.

3 BY MR. ZELENKA:

4 Q. Okay. Did he make specific recommendations
5 on whether to strike or seat jurors? 02:11 PM

6 A. He could have, but it was up to the attorney
7 to -- Mr. Beauford to decide whether or not he
8 wanted to strike that person or not.

9 Q. Did you vary from Mr. Bloom's
10 recommendations with the jurors that you seated? 02:11 PM

11 A. That would be a question for Mr. Beauford.

12 Q. Okay.

13 A. Because he has the final say.

14 Q. Okay. Your consultations with various
15 people, one of them with John Delgado, how long was
16 your meeting with Mr. Delgado in Columbia? 02:11 PM

17 A. Thirty minutes to an hour.

18 Q. And at that time, did you go over the facts
19 of the case as Mr. Weik had indicated to you?

20 A. Yeah. 02:11 PM

21 Q. At the time you met with Mr. Delgado, had
22 you already had mental health evaluations done of
23 your client; do you remember?

24 A. Usually when -- I can't remember. Usually
25 when I'm going to see Delgado, it's kind of like 02:12 PM

1 close to the -- at the beginning or the end, but I
2 don't remember which.

3 Q. You don't remember which one it was at this
4 time?

5 A. No, I don't.

02:12PM

6 Q. Most likely, it was near the end because you
7 hadn't been in the case much before the trial.

8 MR. O'CONNELL: Object to the form of
9 the question.

10 THE DEPONENT: I presume. I just
11 couldn't tell you.

02:12PM

12 BY MR. ZELENKA:

13 Q. Your meeting with individuals at Appellate
14 Defense back in 1998 --

15 A. Or Indigent Defense; I don't know. I don't
16 know.

02:12PM

17 Q. Do you know --

18 A. I know they're on Gervais Street.

19 Q. Okay. Do you know who the members of
20 Appellate Defense were in 1999?

02:13PM

21 A. (Moves head from side to side.)

22 Q. Do you remember if Ms. Kimbrough was a law
23 clerk for a lawyer over there at that time?

24 A. Kimbrough, who's that?

25 Q. This one. (Indicating.)

02:13PM

1 A. I don't remember seeing her.

2 Q. I can't remember when she was there or not.

3 A. I don't remember seeing her.

4 Q. Do you know if you met with Joe Savitz?

5 A. No.

6 Q. Bob Duddick?

7 A. Unh-unh.

8 Q. Wanda Hail?

9 A. No. Well, then I know that that's not the
10 place.

11 MR. O'CONNELL: What?

12 THE DEPONENT: I know for sure that's
13 not -- I know Wanda Hail. She does the
14 finances.

15 MR. ZELENKA: No.

16 THE DEPONENT: She doesn't?

17 MR. ZELENKA: She's a lawyer there.

18 THE DEPONENT: Okay. Well, I didn't --
19 I thought she did finance stuff. I don't
20 remember any.

21 BY MR. ZELENKA:

22 Q. Do you know if it was -- if you met in
23 Columbia with folks at the Center for Capital
24 Litigation?

25 A. That's -- yes, without question. I'm sorry,

02:13PM

02:13PM

02:13PM

02:13PM

02:13PM

1 but that's who it was.

2 Q. And would that have --

3 A. Are they on Gervais Street?

4 MR. O'CONNELL: Object to the form of
5 the question. I object to the question.

02:14PM

6 BY MR. ZELENKA:

7 Q. Could it have been Theresa Norris?

8 A. That's right, exactly.

9 Q. Is that who you met with?

10 A. That's right, exactly.

02:14PM

11 Q. Okay.

12 A. I feel embarrassed. Sorry.

13 Q. So is that the tall lady you were talking
14 about?

15 A. Exactly, exactly.

02:14PM

16 Q. Okay. Was there another person who you met
17 somewhere else like Appellate Defense?

18 A. Bloom was in there, also.

19 Q. John Bloom?

20 A. Not Jeff Bloom, John Bloom.

02:14PM

21 Q. Okay. And Mr. Bloom's office was in the
22 same building?

23 A. Yes.

24 Q. Did you meet with anyone else there?

25 A. I think when we sat down, there were some

02:14PM

1 people in the office.

2 Q. They all came in?

3 A. Well, with Ms. Norris, there was another
4 person.

5 Q. Male or female; do you recall?

02:14PM

6 A. Male. I remember her being as the only
7 female.

8 Q. Do you know if it was Keir Weyble?

9 A. No, I don't remember that name.

10 Nettles was never with them, was he? He was
11 never --

02:15PM

12 Q. Bill Nettles?

13 A. Yeah.

14 Q. When you met with John Delgado, did you also
15 meet with Bill Nettles --

02:15PM

16 A. I remember --

17 Q. -- at that time?

18 A. I remember -- I remember talking to him, I
19 guess.

20 Q. Do you know if they share office spaces?

02:15PM

21 A. I don't know, but I do remember him.

22 Q. Let me move to the issue about the break
23 between direct and cross-examination of your
24 client, John Weik. Do you have any recollection
25 now whether he stepped down in front of the jury

02:15PM

1 before they were excused or after they were
2 excused?

3 A. I can't even remember. I really don't.

4 Q. Could you let me know when your file is
5 located?

02:16PM

6 A. Sure.

7 Q. Do you have any objection to me reviewing
8 your file?

9 A. No, sure don't.

10 Q. Okay.

11 A. I'm sure it's right up here.

12 MR. ZELENKA: I believe that's all the
13 questions I have at this time.

14 MR. O'CONNELL: I just have a few.

15 (Off-the-record conference.)

02:17PM

16 EXAMINATION

17 BY MR. O'CONNELL:

18 Q. Do you remember that there was a second
19 competency hearing requested during the trial?

20 A. With Mr. Weik?

02:17PM

21 Q. Yeah.

22 A. No.

23 Q. That Mr. Beauford asked for another
24 competency hearing after the trial started?

25 A. No. I can't remember that. Schuler, yes.

02:17PM

1 Q. What do you mean? Are you talking about
2 Calvin Schuler or Dwayne Schuler?

3 A. Calvin.

4 Q. I don't care about Calvin.

5 A. I remember one being asked.

02:17PM

6 Q. Okay. But not in this trial?

7 A. No.

8 Q. Okay. You said you didn't read the
9 appellate opinion in this case. Do you subscribe
10 to the South Carolina Advance Sheets?

02:18PM

11 A. This year, no.

12 Q. Okay. Did you subscribe to them in 1998,
13 1999?

14 A. Yes.

15 Q. Did you have -- otherwise have a library
16 available in 1998, 1999?

02:18PM

17 A. A library meaning?

18 Q. Law library.

19 A. I have books, but when you say law
20 library --

02:18PM

21 Q. What books did you have?

22 A. The ones that are up in my wall in the
23 secretarial office.

24 Q. What are they?

25 A. Codes.

02:18PM

1 Q. Did you have the Southeastern Reporter?

2 A. No.

3 Q. South Carolina Reporter?

4 A. No.

5 Q. You're not subscribing to the Advance Sheets
6 now. How long has it been that you --

7 A. Just this year.

8 Q. Why have you not --

9 A. Because I knew I was going to be on -- I
10 knew I was going to be on pregnancy leave, and
11 there was going to be a lot of things that I was
12 not going to be able to --

13 Q. Okay.

14 A. After I found out I was pregnant, I just --

15 Q. When you did subscribe to them, did you keep
16 up with them?

17 A. Yeah, uh-huh.

18 Q. Why didn't you read the opinion in this
19 case?

20 A. I just don't remember doing that. I mean,
21 I'm sure if it was before 2005, I'm sure I did, but
22 I just don't remember doing it. I couldn't tell
23 you I read it on September 2, 2006 or something
24 like -- I couldn't tell you that.

25 Q. Mr. Zelenka asked you if Percy ever rejected

02:18PM

02:18PM

02:19PM

02:19PM

02:19PM

1 any of Jeff Bloom's recommendations about whether
2 or not to seat a specific juror. And you said that
3 was a question for Percy?

4 A. Yeah, because I can't remember, all right,
5 okay, if he said, no, don't pick that jury -- or
6 that juror, then I couldn't remember -- I can't
7 remember if Percy went on his own to pick the
8 juror. I mean...

9 Q. How do you think you and Mr. -- did you and
10 Mr. Bloom -- did you welcome his assistance?

11 A. Yeah, I welcome every expert's assistance.

12 Q. Did you find that he was helpful?

13 A. Yeah.

14 Q. In this case.

15 A. Uh-huh.

16 Q. That's a yes?

17 A. Yes.

18 Q. Did Mr. Beauford find him helpful?

19 A. Yes.

20 MR. O'CONNELL: I think that is all
21 I've got, unless you want me to ask some
22 more.

23 THE DEPONENT: My thing is if I've got
24 you copies of a document, where could those
25 documents be?

1 MR. O'CONNELL: See that stack up there
2 on the left, what you gave me was about
3 twice as high as that, the left stack.

4 (Off-the-record conference.)

5 (The deposition concluded at 2:22 p.m.)

02:22PM

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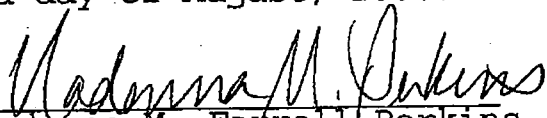
CERTIFICATE OF REPORTER

I, Madonna M. Farrell-Perkins, Registered Professional Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the deponent, MARVA HARDEE-THOMAS, was duly sworn by me to testify to the truth, and that the above deposition, pages 1 through 175, inclusive, was recorded stenographically by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said witness at the time and place specified.

I FURTHER CERTIFY that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, or financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 22nd day of August, 2006.


Madonna M. Farrell-Perkins
Registered Professional Reporter
Notary Public
My commission expires
September 19, 2015

1 VERIFICATION OF DEPONENT

2
3 I, MARVA HARDEE-THOMAS, have read the
4 foregoing deposition consisting of 176 pages, which
5 was reported by Madonna M. Farrell-Perkins,
6 Registered Professional Reporter and notary public
7 in and for the State of South Carolina, on August
8 17, 2006.

9 I find the transcript of this deposition to
10 be a true and accurate transcript according to my
11 testimony on that date with the exception of _____
12 corrections as listed on the attached correction
13 sheet, which was filled in by me.
14
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23 _____
24 MARVA HARDEE-THOMAS

25 _____, 2006

ERRATA PAGE

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PAGE # - LINE # CHANGE AND/OR CORRECTION
(AND EXPLANATION)

THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA
PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF
DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA
PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO
ATTACH THIS PAGE AND MY VERIFICATION TO THE
ORIGINAL TRANSCRIPT.

DATED: _____ MARVA HARDEE-THOMAS

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6	BY MR. ZELENKA		
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12 **REQUESTED INFORMATION INDEX**
13 (No Information Requested)

14	E X H I B I T S		
15		PAGE	LINE
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18	PETITIONER EXH. 2, 4/29/99 Rickborn Investigations Letter to Percy Beauford & Marva Hardee-Thomas	43	7
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20	PETITIONER EXH. 3, 4/30/99 Letter to Patti Rickborn from Marva A. Hardee-Thomas	48	23
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National Criminal Defense College

Mercer Law School
Macon, Georgia

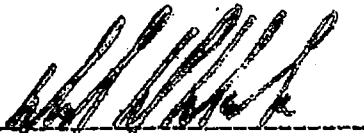
This Certificate is awarded to

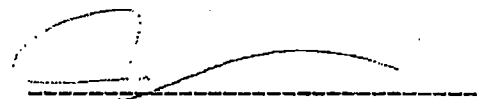
Marva Hardee-Thomas

for the successful completion of
the nineteen hundred and ninety-seven

Trial Practice Institute

This twenty-eighth day of June, nineteen hundred and ninety seven.


Deryl D. Dantzler
Dean


James M. Shellow
Chairman, Board of Regents



3328

Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

APRIL 29, 1999

PERCY BEAUFORD AND MARVA HARDEE-THOMAS
ATTORNEYS AT LAW

RE: JOHN EDDIE WEIK

I HAVE BEEN WORKING ON THIS CASE SIX TO SEVEN WEEKS. DURING THIS TIME I HAVE ASKED THAT CERTAIN STEPS BE TAKEN BY YOU AS ATTORNEYS TO ASSIST ME WITH PREPARING THE BEST DEFENSE POSSIBLE FOR MR. WEIK SHOULD HIS CASE REACH THE PENALTY PHASE.

I HAVE ASKED THAT YOU TRY TO OBTAIN A COURT ORDER FOR THE CLIENT' S MEDICAL RECORDS. SINCE IT WAS SO LATE IN THE CASE WHEN I BECAME INVOLVED I FELT THIS WOULD EXPEDITE COLLECTION OF MEDICAL RECORDS. IT WOULD ALSO HAVE ALLOWED ME TO COVER A WIDE AREA OF MEDICAL FACILITIES TO TRY TO BE SURE THAT WE HAD ALL RECORDS OF THE CLIENT' S TREATMENT FOR THE HEAD INJURIES THAT HE REPORTED. SINCE I DID NOT RECEIVE THAT I OBTAINED DORCHESTER COUNTY SUBPOENAS AND SPENT A GREAT DEAL OF TIME TRYING TO OBTAIN ANY RECORDS THAT MAY EXIST FOR THE CLIENT.

I HAVE ASKED THAT YOU TRY TO OBTAIN A COURT ORDER FOR MEDICAL AND PSYCHIATRIC RECORDS FOR RUSSELL WEIK, THE CLIENT' S FATHER. SINCE THESE RECORDS WOULD BE MAINTAINED BY THE VETERAN' S HOSPITAL, PART OF THE UNITED STATES MILITARY, I KNEW THAT WE COULD NOT GET A COPY OF THESE RECORDS WITHOUT A COURT ORDER. THESE RECORDS COULD HAVE BEEN IMPORTANT TO ESTABLISH THE CONDITION OF RUSSELL WEIK AND SUBSTANTIATE THE CLIENT' S SIBLINGS STORIES. EVEN IF WE PRESENTED A COURT ORDER TO OBTAIN THOSE RECORDS TODAY WE WOULD PROBABLY NOT GET THESE RECORDS UNTIL THE TRIAL IS UNDERWAY. THE MENTAL HEALTH EXPERTS NEED SOME TIME TO REVIEW RECORDS LIKE THESE TO PRESENT A FULL PICTURE OF THE CLIENT' S SOCIAL HISTORY.

THE SINGLE MOST POTENTIALLY DAMAGING WITNESS THAT THE STATE HAS IN THE PENALTY PHASE OF THIS TRIAL IS DANIEL, THE CLIENT' S SON. I HAVE REPEATEDLY REQUESTED, FROM THE FIRST DAY THAT WE MET,



ALWAYS IN A RUSH AND HANGS UP BEFORE I CAN DISCUSS THE CASE WITH HER.

I HAVE FOUND REPORTS OF EMOTIONAL, PSYCHOLOGICAL AND PHYSICAL ABUSE IN THE CLIENT' S FAMILY. I HAVE PREPARED REPORTS AND FORWARDED THEM TO THE DOCTORS. I HAVE SUPPLIED YOU WITH A POTENTIAL WITNESS LIST. MOST OF THEM HAVE BEEN CONTACTED.

WHEN I ACCEPT A CASE IT IS WITH THE INTENT OF ASSISTING THE ATTORNEYS PREPARE THE BEST POSSIBLE DEFENSE FOR THE CLIENT. I DO NOT FEEL THAT I CAN DO THIS WITHOUT THE CO-OPERATION OF THE ATTORNEYS. I AM FORWARDING COPIES OF THE INFORMATION THAT I HAVE OBTAINED TO DR. MORGAN AND DR. SHWARZ-WATTS AND A COPY TO YOUR OFFICE.

AT THIS TIME I DO NOT KNOW IF I NEED TO RESIGN FROM THIS CASE BECAUSE I DO NOT KNOW IF AN ORDER WAS EVER APPROVED BY THE JUDGE FOR ME TO WORK ON THIS CASE. IN FACT, I TOOK MYSELF OFF OF ANOTHER CASE TO WORK ON THIS CASE. I WILL NOT BE ABLE TO ASSIST YOU FURTHER WITH THIS CASE.

SINCERELY,


PATTI RICKBORN

WEIK/MAIN FILE

3331

130 East Richardson Avenue
Summerville, SC 29183

P.O. Box 50503
Summerville, SC 29185

Dorchester County Public Defender
Marva A. Hardee-Thomas

Tel: (843) 873-8622
Fax: (843) 873-1123



April 30, 1999

Ms. Patti Rickborn
933 Brandon Avenue
Columbia, SC 29209

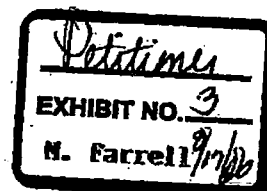
Dear Ms. Rickborn:

In response to your letter dated April 29, 1999 which I received via United States Mail on April 30, 1999, I am shocked and surprised.

On March 12, 1999 you sent me a fax regarding a need for a court order to release medical and psychological records for Russell Weik. I forwarded that request to Attorney Percy Beauford the same day. On March 26, 1999 you faxed me a letter regarding locating records on Edward Weik's case that had been destroyed in the Berkeley County Hospital. You also stated in your letter that you would continue to locate and obtain records on Edward Weik. I faxed this also to Mr. Beauford. Other than going to the Hall Institute for an evaluation, I know nothing of an order to obtain medical records on Mr. Weik from any other facility or source. He has never gone to any other facility in the past. You had informed us, both Mr. Beauford and myself, as to what we needed to ask the Hall Institute after Mr. Weik was evaluated; but I know of no other records we needed to obtain that would require an order regarding Mr. Edward Weik. Please note that Mr. Beauford is the lead attorney in this matter, I am obligated in giving him all information. He decides how, when and what is to be done.

In response to your statement regarding Daniel and you asking Mr. Beauford and myself the first day that we met to allow a mental health expert from the Defense team to interview the children, we never addressed this issue because it was not an issue. If you remember, you asked Walter Bailey during our defense meeting if he was going to use the children, he said no. It was not until most recent that we received a Motion Hearing from the Solicitor's office that he wanted to have the child to possibly testify. On April 8, 1999 when I received your letter requesting an interview of the children, I faxed this information directly to Mr. Beauford. Mr. Beauford needs to make a decision on these issues, not me. I never knew you were waiting on an answer. If I had known, I would have referred you directly to Mr. Beauford.

You must know that I sent Dr. Donna Swartz-Watts and Dr. McKee all the documents for this case. I only asked you to deliver the video tapes to Donna, which she has never seen. I did



3332

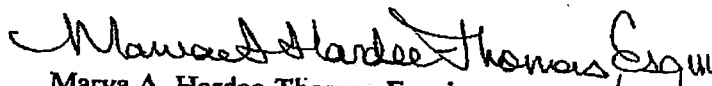
not tell you to give her anything but the three videos I sent you. Dr. Morgan was just brought into this case within less than one week of this letter. I never asked you to give him anything. I never had a chance to since he is so new in this case.

The only time I was ever short with you over the telephone was the day Dr. Swartz-Watts was leaving to see Mr. Weik. However, we had spoken to each other twice on the same day and I asked you to do two things. You had agreed to take the tapes to Donna and to subpoena the Hall records. A copy of a signed order was never sent to you because we never got it. Mr. Beauford and I found out on April 30, 1999 that Judge Schuler already signed the order and it was lost in transit between his office and the Clerk of Court. We would not have known this information until we called the Judge to find out about it.

In response to faxed documents not getting responses, all I can do is forward the items to Mr. Beauford and wait for a response.

We hardly ever talked on the telephone. I have always received fax copies from you or I would call you when things are very important. I remember speaking to you in total 2 or 3 times. If you want to get out of the case that is your choice, but to use the excuses that I have read about demand an explanation and a response.

Sincerely,


Marva A. Hardee-Thomas, Esquire

MAHT/skf
cc: Percy Beauford
File

PATRICIA D. RICKBORN
PRIVATE INVESTIGATOR
933 BRANDON AVENUE
COLUMBIA, S. C. 29209

803-783-7884

MARCH 1, 1999



TO WHOM IT MAY CONCERN:

I AM A LICENSED PRIVATE INVESTIGATOR IN THE STATE OF SOUTH CAROLINA. IN FEBRUARY OF 1992 I WENT INTO PRIVATE PRACTICE WITH MY PRIMARY CONCENTRATION IN CRIMINAL INVESTIGATIONS. PRIOR TO ESTABLISHING MY OWN BUSINESS I WAS EMPLOYED AS A CRIMINAL DEFENSE INVESTIGATOR BY THE RICHLAND COUNTY PUBLIC DEFENDER'S OFFICE FROM FEBRUARY OF 1986 UNTIL FEBRUARY OF 1992.

I HAVE MORE THAN TEN YEARS EXPERIENCE IN INVESTIGATING CRIMINAL CASES FOR THE DEFENSE. IN THAT TIME I HAVE BEEN INVOLVED IN THE INVESTIGATIONS OF WELL OVER ONE HUNDRED FELONIES AND MURDER CASES AND OVER TWENTY CAPITAL MURDER CASES. IN ADDITION TO INVESTIGATING THESE CASES, I HAVE ASSISTED THE ATTORNEYS PREPARE FOR TRIAL AND PRESENT THE CASE DURING THE TRIAL. IN CAPITAL MURDER CASES I HAVE CONDUCTED FULL INVESTIGATIONS FOR THE GUILT PHASE OF THE TRIAL AND EXTENSIVE SOCIAL HISTORY INVESTIGATIONS FOR THE PENALTY PHASE OF THE TRIAL.

DURING MY CAREER AS AN INVESTIGATOR I HAVE RECEIVED TRAINING THAT INCLUDES THE FOLLOWING AREAS: MEDICO-LEGAL ASPECTS OF DEATH INVESTIGATION, GENERAL CRIMINAL INVESTIGATION TRAINING, INVESTIGATIVE REPORTING, FORENSIC PATHOLOGY, FORENSIC CRIME SCENE ANALYSIS, METHODS FOR CONDUCTING INTERVIEWS, PSYCHOLOGICAL EFFECTS OF SUBSTANCE ABUSE, UNDERSTANDING CHEMICAL DEPENDENCY, DELAYED STRESS SYNDROME, BATTERED WOMAN SYNDROME, BATTERED CHILD

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 3/12/99

AFTER WE RECEIVE THE REPORT FROM THE STATE HOSPITAL REGARDING THEIR EVALUATION OF EDDIE UNDER THE MCNAUGHTON ORDER EITHER YOU OR MR. BEAUFORD SHOULD CONTACT THE DOCTORS WHO SIGN OFF ON THE REPORT AND ASK THEM IF THEY ASSESSED EDDIE BASED ON FINDING ISSUES THAT COULD BE MITIGATING FACTORS IN EDDIE'S CASE. IF THEY SAY THAT THEY DID ADDRESS ISSUES THAT CONCERN FACTORS THAT COULD BE USED AS MITIGATION FOR EDDIE ASK THEM WHAT OPINIONS THEY FORMED BASED ON THEIR FINDINGS ALONG THE LINES OF MITIGATING CIRCUMSTANCES. IF THEY SAY THAT THEY DID NOT EXPLORE FACTORS THAT COULD BE MITIGATING ISSUES, THEN WHEN THEY TRY TO TESTIFY DURING THE PENALTY PHASE WE CAN OBJECT TO THEIR TESTIMONY BASED ON THE FACT THAT THEY ONLY EXPLORED ISSUES THAT ADDRESSED COMPETENCY TO STAND TRIAL AND CRIMINAL RESPONSIBILITY AND DO NOT HAVE TESTIMONY PERTINENT TO THE PENALTY PHASE OF THE TRIAL. EVEN IF WE ARE OVER RULED IT IS PRESERVED FOR APPEAL.

ALSO, AFTER WE RECEIVE THE FINAL REPORT FROM WILLIAM S. HALL I WILL SERVE A SUBPOENA TO THEM REQUESTING ALL RAW DATA AND DOCTOR'S NOTES AND PSYCHOLOGICAL TESTS THEY MAY HAVE CONDUCTED.

FIRST, WE MUST HAVE THE REPORT SO THAT IT CAN NOT BE ADJUSTED IN ANY WAY AFTER Y'ALL TALK TO THE DOCTORS AND I SERVE THE SUBPOENA.

WILL THE DORCHESTER COUNTY CLERK OF COURT ISSUE SUBPOENAS IN BLANK? IF SO, WOULD YOU, PLEASE, SEND ABOUT FIFTEEN OR TWENTY TO ME? IF NOT, WHAT PROCEDURE SHOULD I FOLLOW TO OBTAIN SUBPOENAS FOR THIS CASE?

THANKS!

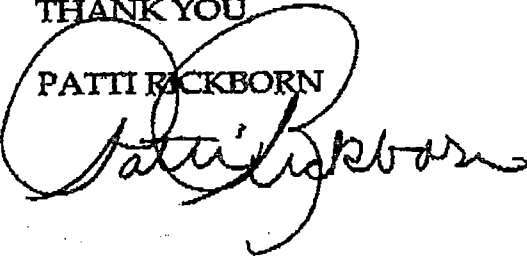
SYNDROME, EFFECTS OF PHYSICAL, PSYCHOLOGICAL AND SEXUAL ABUSE, LOCATING MISSING PERSONS, FINGERPRINT ANALYSIS, THE INVESTIGATOR'S ROLE IN DNA FORENSICS, THE INVESTIGATOR'S ROLE IN CAPITAL MURDER CASES AND ASSISTING THE ATTORNEYS PREPARE FOR TRIAL AND DURING THE TRIAL.

I HAVE WORKED ON CASES ON BOTH THE TRIAL AND POST CONVICTION LEVELS IN THE STATE COURT.

MY FEE FOR CONDUCTING AN INVESTIGATION IS FORTY DOLLARS (\$40.00) PER HOUR PLUS EXPENSES. I ASK FOR A RETAINER OF ONE THOUSAND DOLLARS (\$1,000.00).

THANK YOU

PATTI RICKBORN

A handwritten signature in cursive script, appearing to read "Patti Rickborn", written over the printed name.

188958 3336

I HAVE CONDUCTED AN INITIAL INTERVIEW WITH MS. WEIK BY PHONE. DO YOU WANT MY MEMOS REGARDING INFORMATION THAT I GARNER FROM INTERVIEWS SENT TO YOU AND THE MENTAL HEALTH EXPERTS OR SHOULD I SEND THEM TO YOU TO FORWARD TO THE MENTAL HEALTH EXPERTS? IF YOU WANT ME TO SEND INFORMATION DIRECTLY TO THE MENTAL HEALTH EXPERTS WOULD YOU BRING THE ADDRESSES ON MONDAY AND I CAN PICK THEM UP FROM YOU AT THAT TIME.

3337

7760958

P. 01

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 3/23/99

I HAVE OBTAINED SUBPOENAS FROM THE DORCHESTER COUNTY CLERK OF COURT. I AM SERVING SUBPOENAS TO BERKELEY COUNTY HEALTH DEPARTMENT AND BERKELEY HIGH SCHOOL. THE BERKELEY COUNTY HOSPITAL, WHERE THE CLIENT WAS BORN AND LATER TREATED, CLOSED IN 1976. I AM TRYING TO LOCATE THESE RECORDS AND RECORDS KEPT BY DR. PETE MYERS, DECEASED.

4-11

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: MARCH 26, 1999

I HAVE CONTACTED CAROLYN BRITT OF THE BERKELEY COUNTY HEALTH DEPARTMENT AND PAM POWELL AT BERKELEY COUNTY ADMINISTRATION. BOTH TELL ME THAT AFTER THE BERKELEY COUNTY HOSPITAL CLOSED IN 1976 THE BERKELEY COUNTY HEALTH DEPARTMENT USED OFFICE SPACE IN THAT BUILDING FOR A TIME. HOSPITAL RECORDS THAT WERE STORED IN THE BASEMENT BECAME MILDEWED AND WERE DESTROYED.

WHILE TRYING TO LOCATE ANY STAFF THAT MAY HAVE BEEN PRESENT WHEN THE RECORDS WERE DESTROYED OR RELOCATED I CONTACTED THE EXTERMINATOR WHO SERVICED THAT BUILDING. HE SAID THAT THE OLD HOSPITAL IS NOW BEING RENOVATED, BUT, WHEN HE WAS SPRAYING A FEW SUMMERS AGO THERE WERE SOME RECORDS STILL IN THE BASEMENT. I WILL TRY TO GET PERMISSION FROM THE COUNTY OR FROM THE CONTRACTOR TO GO INTO THE BASEMENT TO LOOK AT THE RECORDS ON THE CHANCE THAT THERE ARE ANY BIRTH OR TREATMENT RECORDS FOR THE CLIENT.

WHILE TRYING TO LOCATE RECORDS MAINTAINED BY DR. PETE MYERS, DECEASED, FOR THE CLIENT I CONTACTED HIS SISTER-IN-LAW, LIB MYERS. HER HUSBAND IS DR. RHETT MYERS, RETIRED. SHE TOLD ME THAT THEY STILL HAVE SOME RECORDS AND SINCE OFTEN BOTH BROTHERS TREATED THE SAME PATIENTS SHE WILL SEE IF THEY HAVE ANY FOR THE CLIENT OR FAMILY MEMBERS OF THE CLIENT.

I AM CONTINUING TO TRY TO LOCATE AND OBTAIN EDUCATION RECORDS FOR THE CLIENT.

I HAVE INTERVIEWED LILLIE WEIK, THE CLIENT'S MOTHER. I WILL BE SCHEDULING ADDITIONAL INTERVIEWS NEXT WEEK.

3339

Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: APRIL 13, 1999

I HAVE INJURED MY RIGHT FOOT AND I HAVE TO KEEP IT ELEVATED FOR A FEW DAYS. I AM CONTACTING MRS. WEIK AND SCHEDULING INTERVIEWS WITH FAMILY MEMBERS, FAMILY FRIENDS AND CHURCH MEMBERS BEGINNING THE WEEK OF APRIL 19, 1999.

WOULD YOU PLEASE SEND A COPY OF THE JUDGE'S ORDER APPROVING FUNDS FOR MY SERVICES FOR MY FILE? THANKS!

Patti

Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 4/20/99

ATTACHED IS A LIST OF POTENTIAL WITNESSES FOR THE PENALTY PHASE OF THE TRIAL. MANY OF THEM WILL BE CUMULATIVE BUT, WE SHOULD BE ABLE TO GET SOME USEFUL WITNESSES FROM THIS GROUP. THIS WILL BE IMPORTANT DUE TO THE LACK OF MEDICAL AND DETAILED SCHOOL RECORDS FOR THE CLIENT. WE CAN GET FIRST HAND INFORMATION ON THE HISTORY OF THE CLIENT THROUGH THE PEOPLE WHO WERE THERE.

I HAVE INCLUDED A LIST OF THE CLIENT'S FAMILY MEMBERS.

IN ADDITION I WOULD LIKE TO INTERVIEW THE CLIENT'S EMPLOYERS AND CO-WORKERS AT BOTH THE BOAT COMPANY AND BROYHILL. YOU HAVE ALREADY PROVIDED THOSE RECORDS.

IS THERE ANY WORD ON AN ORDER FOR THE MEDICAL RECORDS FOR THE CLIENT'S FATHER FROM THE V. A. HOSPITAL?

MONCKS CORNER, S.C.

843-761-2345

COUSIN

BETTY LOU RISHER
SUMMERVILLE, S.C.
843-688-4526

FRIEND

EMMA BROWN
169 FOUR WIND ROAD
HOLLY HILL, S.C.
803-496-5494

FRIEND

REGGIE UNDERWOOD
843 (?) 873-8593

GATEWAY COMMUNITY CHURCH

PASTOR: LEGRAND DUPREE
LADSON, S.C.
RESIDENCE 843-572-8121
CHURCH 843-761-1705

CHURCH MEMBERS

BERNICE AUSTIN
205 BENJAMIN DRIVE
MONCKS CORNER, S.C.
843- 761-6238 OR 843-761-5090

IRVIN VARNER

DOB: 1/1/71
PLACE OF BIRTH: MONCK'S CORNER, S.C.

LOT 8 WHITE OAK DRIVE
MONCK'S CORNER, S.C.
843-761-3236

MATERNAL GRANDPARENTS

JOHN VARNER
DOB: 5/7/1885
PLACE OF BIRTH: MONCK'S CORNER, S.C.

DIED IN SEPTEMBER OF 1956 AS THE RESULT OF A HEART ATTACK

MARTHA VARNER
DOB: 9/9/ 1892
PLACE OF BIRTH: MONCK'S CORNER, S.C.

DIED IN NOVEMBER OF 1976 AS THE RESULT OF A HEART ATTACK

PATERNAL GRANDPARENTS

EDWIN WEIK
DOB: 1885
PLACE OF BIRTH: VIRGINIA

DIED IN 1964 AS THE RESULT OF HEART FAILURE

BERTHA CRUISE WEIK
DOB: 1906
PLACE OF BIRTH: BALTIMORE, MARYLAND

DIED IN 1976 AS THE RESULT OF CANCER

AUNT

GRACIE BUGAUISAH
BENJAMIN DRIVE

POTENTIAL WITNESSES FOR THE PENALTY PHASE FOR EDDIE WEIK

MOTHER

LILLIE VARNER FERRER WEIK

DOB: 7/4/31

PLACE OF BIRTH: MONCK'S CORNER, S.C.

350 ST. JOHN BETHEL CHURCH ROAD

MONCK'S CORNER, S.C.

843-761-3214

FATHER

RUSSELL CASSELL WEIK

DOB: 6/12/43

PLACE OF BIRTH: BALTIMORE, MARYLAND

ADDRESS AND PHONE SAME AS ABOVE

HALF BROTHER

DR. LAUREAN TOMAS FERRER

DOB: 10/17/49

PLACE OF BIRTH: MONCK'S CORNER, S.C.

9596 BLACK HORSE RUN

FT. MILL, S.C.

803-548-3185

HALF SISTER

MAGDALENA FERRER GUNTER
DOB: 2/25/51
PLACE OF BIRTH: MONCK'S CORNER, S.C.

RT. 3 BOX 86
PERRY, FLORIDA
850-584-5069

HALF BROTHER

JOSE C. FERRER
DOB: 1/21/53
PLACE OF BIRTH: MONCK'S CORNER, S.C.

162 ASHLEY CIRCLE
MARTINEZ, GA.
706-860-2327

HALF SISTER

RAMONDA ELAINE FERRER KLOCEK
DOB: 12/3/54
PLACE OF BIRTH: MONCK'S CORNER, S.C.

545 HUSE RD
MANCHESTER, NEW HAMPSHIRE
603-644-7101

BROTHER

CHRISTOPHER WEIK
DOB: 5/12/68
PLACE OF BIRTH: MONCK'S CORNER, S.C.

112 JOHNNY REB ROAD
MONCK'S CORNER, S.C.
843-899-2576

SISTER

AMY WEIK

Name (Last)		Name (First)		Name (Middle)		Birth Date		Place of Birth		Clinic #	39014	
RT 6 B 24		998		D. D. C. S.		W. M.				Medical #		
dress										Medicare #		
										Fam. Folder #		
										St. Cl. Reg. #		
										Soc. Sec. #	Russell	
Telephone				Mother-Wife				Father-Husband				

me on Folder

SERVICES

D.P.T.	P.T.d	Tetanus	Polio	Smallpox	Rubella	MR	FKU	Health Card	Misc.
7-21-68	1 5-16-73	1	12-21-68		(Ger. Measles)				
5-29-68	2 9-19-82	2	25-29-68		3-15-72		Feces		
7-24-68	B	3	37-24-68			MMR	1-87 neg.		
3-31-71	B	B	B 3-31-71	Other	Rubeola				
	B	B	B 5-16-73		(Red Measles)	Mumps			
	B	B	B		8-22-68	12-15-71			

CRJ. 6/11/50 9-29-82

PPD			X-Ray		STS			GC Culture		Other	Allergic to Penicillin? Yes No
Date Given	Date Read	Result	Date	Result	Date	Reason	Result	Date	Result	Other Allergies?	
											Health Programs
											Cancer HHS
											Heart VD
											C.C. TB
											Maternity Diabetes
											Fam. Plan Med. Nutr.
											Child & Youth Other

Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

ATTACHED ARE COPIES OF IMMUNIZATION RECORDS SUPPLIED BY THE BERKELEY COUNTY HEALTH DEPARTMENT FOR THE CLIENT. THIS IS THE EXTENT OF RECORDS THAT THE HEALTH DEPARTMENT HELD FOR EDDIE. I AM STILL TRYING TO OBTAIN OTHER HEALTH RECORDS. I HAVE PREPARED SUBPOENAS FOR THE CLIENTS RECORDS AT THE DORCHESTER COUNTY JAIL.

YOU MAY HAVE ALREADY ADDRESSED THIS ISSUE, BUT I WAS THINKING THAT WE SHOULD PROBABLY REQUEST FROM THE JUDGE THAT A PSYCHOLOGIST OR PSYCHIATRIST ON THE DEFENSE TEAM BE ALLOWED TO INTERVIEW THE SON OF OUR CLIENT. ONE OF THE MOST IMPORTANT ISSUES THAT WE MUST ADDRESS IN THE PENALTY PHASE OF THIS TRIAL WILL BE TO MINIMIZE THE IMPACT ON THE JURY OF THE TESTIMONY OF THE CHILDREN. IN FACT, I THINK MR. BAILEY WILL RELY ON THE TESTIMONY OF THE CHILDREN AS THE TOOL TO GET A SENTENCE OF DEATH FOR EDDIE. THEREFORE, IT WOULD BE GREAT IF WE COULD GET ANY UTTERANCE FROM THE CLIENT'S SON THROUGH AN INTERVIEW WITH MENTAL HEALTH EXPERTS THAT HE DOES NOT WANT HIS FATHER EXECUTED. OF COURSE, THERE IS NO WAY OF KNOWING WHAT THE CHILD IS THINKING WITHOUT AN OPPORTUNITY TO SPEAK WITH HIM.

I AM STILL SCHEDULING A TIME TO MEET WITH THE FAMILY OF THE CLIENT AS WELL AS MEMBERS OF THE CONGREGATION AT HIS CHURCH. SOME OF THE CLIENT'S SIBLINGS ARE OUT OF STATE AND MRS. WEIK WAS ILL WITH THE FLU THE LAST TIME I SPOKE WITH HER.

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF DORCHESTER

4 JOHN WEIK,

5 Petitioner(s),

6 vs.

CIVIL ACTION NO.
CP-18-575

7 JON OZMINT, COMMISSION OF THE
8 SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS & THE STATE OF
9 SOUTH CAROLINA,

10 Defendant(s).

COPY

11 DEPOSITION OF: GEOFFREY R. MCKEE, PhD, ABPP

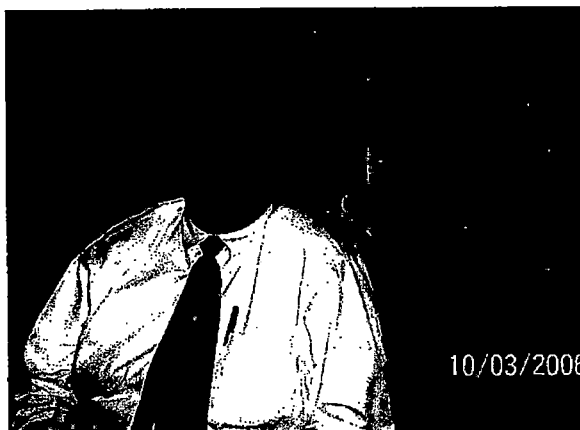
12 DATE: Tuesday, October 3, 2006

13 TIME: 11:12 a.m. through 12:11 p.m.

14 LOCATION: Law Offices of
15 Melissa J. Kimbrough
16 1811 Pickens Street
Columbia, South Carolina

17 TAKEN BY: Attorneys for the Petitioner(s)

18 REPORTED BY: MADONNA M. FARRELL-PERKINS
19 Registered Professional Reporter



10/03/2006

APPEARANCES OF COUNSEL

On behalf of the Petitioner:

STIRLING & O'CONNELL
BY: MICHAEL P. O'CONNELL
145 King Street, Suite 411
P.O. Box 882
Charleston, SC 29402
(843) 577-9890

-and-

AND: MELISSA J. KIMBROUGH
1811 Pickens Street
Columbia, SC 29201
(803) 765-2796

On behalf of the Respondent:

OFFICE OF THE ATTORNEY GENERAL
BY: DONALD J. ZELENKA
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION: It is stipulated by and
2 between Counsel that this deposition is
3 being taken in accordance with the South
4 Carolina Rules of Civil Procedure; and that
5 the deponent does not waive reading and
6 signing of this deposition.

7 * * * * *

8 GEOFFREY R. MCKEE, PhD, ABPP, being
9 first duly sworn, testified as follows:

10 EXAMINATION

11 BY MS. KIMBROUGH:

12 Q. Dr. McKee, I have to tell you at the
13 beginning of this deposition that you're under oath
14 throughout direct and cross. Any questions that
15 you have during the course of your testimony should
16 be directed at the attorney that's doing the
17 questioning, be it the Respondent or the Applicant.
18 And appropriate objections can be made, but the
19 question put forward should be answered, regardless
20 of the objection.

21 A. Yes.

22 Q. Okay. Dr. McKee, what do you do for a
23 living?

24 A. I am a criminal forensic psychologist and a
25 clinical professor in the Department of

1 Neuropsychiatry at the University of South
2 Carolina, School of Medicine. And I am chief
3 psychologist in the Sexually Violent Predator
4 Treatment Program of the South Carolina Department
5 of Mental Health.

11:13AM

6 Q. Okay. How long have you been a practicing
7 clinical psychologist?

8 A. Well, technically, I'm a counseling -- I'm a
9 licensed counseling psychologist in South Carolina.

10 Q. Okay.

11:13AM

11 A. I have been practicing in psychology since
12 1970.

13 Q. Has that practice been active the entire
14 time?

15 A. Yes. It's been principally a part-time
16 private practice, but then I've either taught in
17 psychology departments at universities or worked as
18 a psychologist in a community mental health center.

11:13AM

19 Q. Okay. And have you been involved in jury
20 trials?

11:14AM

21 A. I have.

22 Q. Okay. How about death penalty jury trials?

23 A. Death penalty jury trials, yes, I have as
24 well.

25 Q. Okay. Have you conducted evaluations for

11:14AM

1 death penalty jury trials?

2 A. Yes, I have.

3 Q. About how many?

4 A. In terms of the number of evaluations, I've
5 evaluated over 500 persons charged with murder.

11:14AM

6 And probably 40 percent of those have been death
7 penalty cases. And I have testified either for the
8 state or the defense in probably 50 death penalty
9 cases at some particular point, either at
10 competency, the trial in chief, or sentencing, or
11 post-conviction relief, and competency to be
12 executed, for example.

11:14AM

13 Q. Okay. So you've testified for both the
14 state as well as the defense.

15 A. I have.

11:14AM

16 Q. And that would be approximately 50 to 60
17 trials?

18 A. That's what I would estimate.

19 Q. Okay. Were you involved in the case of John
20 Edward Weik?

11:15AM

21 A. I was.

22 Q. Excuse me, John Edwin Weik.

23 How did you become involved?

24 A. I received a call from Marva Hardee-Thomas,
25 a defense attorney for Mr. Weik, and was retained

11:15AM

1 by her and Mr. Beauford, Percy Beauford, who was
2 her co-counsel in February of 1999.

3 Q. Okay. Do you recall what you did after
4 being retained?

5 A. I interviewed Mr. Weik, conducted
6 evaluations of Mr. Weik in the Dorchester County
7 Detention Center on 3-6-99 and 5-15-99.

11:15AM

8 Q. Okay.

9 A. And in addition to the interviews on both of
10 those dates, I administered a variety of
11 psychological tests.

11:16AM

12 Q. Okay. And did you make the results of your
13 tests known to defense counsel?

14 A. I did.

15 Q. What information were you provided by
16 defense counsel in -- to supplement your own
17 findings?

11:16AM

18 A. Very little, as I recall. I -- there may
19 have been a -- some summary of his history, but I
20 don't recall that specifically. I do recall
21 reviewing a written report by Dr. Pamela Crawford
22 who was, at the time, a forensic psychiatrist at
23 Hall Psychiatric Institute. And I recall doing a
24 verbal consultation, a telephone consultation, with
25 Dr. Steven Shay, a forensic psychologist, at the

11:16AM

11:17AM

1 Hall Institute, regarding his psychological
2 evaluation of Mr. Weik.

3 Q. All right. How much -- you said -- I
4 believe I'm summarizing here -- that you got a
5 summary of Mr. Weik's history here, but you're not
6 certain about that? 11:17AM

7 A. I'm not certain about that. I did collect
8 on my own, as I would anyway, as part of my workup
9 and my own history from Mr. Weik, but I really
10 don't recall receiving any kind of social work
11 summary. 11:17AM

12 Q. All right. I just wanted to confirm that.
13 Once you received this information, what
14 were you advised your role would be in this case?

15 A. Well, I'm not sure that I was advised as to
16 what my role is. Anytime that I'm retained, either
17 by the state or the defense, to become involved in
18 a death penalty case, I essentially do the same
19 workup, which is address issues of competency to
20 stand trial -- 11:18AM

21 Q. And let me stop you there briefly. You were
22 getting ready to talk about the other things, but
23 the competency to stand trial, did you address that
24 in this case?

25 A. I certainly did. In terms of my evaluation, 11:18AM

1 though, I did not testify at his competency
2 hearing.

3 Q. Do you recall why you did not testify?

4 A. Well, as I recall, I drafted an Affidavit on
5 the 16th and 17th of May of 1999, the date prior to
6 his competency hearing, giving a summary of my
7 findings to Mr. Beauford and Ms. Hardee-Thomas and
8 explaining why I was not going to be available for
9 the competency hearing.

11:18AM

10 Q. Okay. Did you have an opinion as to
11 Mr. Weik's competency?

11:19AM

12 A. At that time, I would have said that he was
13 incompetent to stand trial.

14 Q. Okay. Is this the Affidavit you're
15 referring to, Dr. McKee? And I'll provide a copy
16 to Mr. Zelenka.

11:19AM

17 A. Yes.

18 MS. KIMBROUGH: I'd like to mark this
19 as Applicant's Exhibit 1.

20 MR. ZELENKA: No objection.

11:19AM

21 (APPLICANT EXH. 1, Affidavit, was
22 marked for identification.)

23 BY MS. KIMBROUGH:

24 Q. Do you recall why you drafted this
25 Affidavit?

11:19AM

1 **A.** I believe that I drafted the Affidavit at
2 the request of Mr. Beauford and Ms. Hardee-Thomas,
3 again, because I was not going to be able to attend
4 his hearing because of prior commitments.

5 **Q.** Okay. If the competency hearing had been
6 continued, would you have made yourself available
7 to testify as to your findings?

11:20AM

8 **A.** Absolutely.

9 **Q.** Do you recall making that fact known to
10 defense counsel?

11:20AM

11 **A.** I don't recall that.

12 **Q.** Okay. Do you recall them asking?

13 **A.** I don't recall them asking.

14 **Q.** Okay. But you do recall advising them that
15 you could not be available for that date; is that
16 correct?

11:20AM

17 **A.** That's correct. And Item 4 of this
18 Affidavit on Page 1 outlines why.

19 **Q.** Okay. After the competency hearing, but
20 before your testimony in the penalty phase, can you
21 describe what kind of preparation you had as
22 between yourself and defense counsel?

11:20AM

23 **A.** I -- candidly, I don't recall any
24 preparation, other than a telephone call, most
25 likely from Ms. Hardee-Thomas, asking me to come to

11:21AM

1 Dorchester County to testify in the case.

2 Q. Okay. Did she advise you as to what type of
3 testimony or in what phase you would be testifying?

4 A. I went to Dorchester County with the
5 understanding that I would be testifying in the
6 penalty phase.

11:21AM

7 Q. Did that -- did you learn otherwise?

8 A. When I got there on that -- the morning that
9 I testified, I found out I was to be testifying in
10 the trial in chief.

11:21AM

11 Q. How did you discover this?

12 A. I believe that it was Ms. Hardee-Thomas who
13 told me that they were still in the trial in chief
14 phase --

15 Q. Okay.

11:22AM

16 A. -- of the case.

17 Q. I apologize; I didn't mean to interrupt you.

18 Were you surprised by this?

19 A. I was very surprised by this, because I had
20 prepared my notes for testimony in terms of
21 sentencing issues.

11:22AM

22 Q. Okay. And did you prepare notes?

23 A. I did.

24 Q. I'd like to show you what is to be
25 pre-marked Applicant's Number 2, and ask if this

11:22AM

1 document accurately reflects --

2 **A.** This document reflects the notes that I
3 drafted on the morning that I was to testify, in
4 preparation for testifying to the -- during the
5 trial in chief.

11:23AM

6 MS. KIMBROUGH: Okay. Mr. Zelenka, do
7 you have an objection to those?

8 MR. ZELENKA: I haven't seen this
9 before.

10 MS. KIMBROUGH: Okay. I'll provide you
11 a copy.

11:23AM

12 MR. ZELENKA: No objection.

13 MS. KIMBROUGH: Thank you.

14 (APPLICANT'S EXH. 2, Dr. McKee's Notes,
15 was marked for identification.)

16 (APPLICANT'S EXH. 3, Dr. McKee's Notes,
17 was marked for identification.)

18 BY MS. KIMBROUGH:

19 Q. I'm going to show you what's been marked
20 Applicant's Exhibit Number 3 and ask you if you can
21 identify that.

11:24AM

22 **A.** Applicant's Exhibit Number 3 are the notes
23 that I had drafted a day or two before I went to
24 Dorchester County that outlined the points that I
25 would be testifying to in the sentencing phase.

11:24AM

1 Q. Okay. And is there a difference between
2 these two sets of notes?

3 A. Very much so.

4 Q. Can you describe what that difference is?

5 A. Well, the primary difference is -- are my --
6 the primary difference is my opinions regarding
7 adaptability and the focus of my testimony on
8 issues of adaptability to prison that are on
9 Applicant's Number 3 that are not on Applicant's
10 Number 2.

11:25AM

11:25AM

11 Q. And would adaptability be something that you
12 would address during the trial in chief?

13 A. Very much so.

14 Q. I mean, during the penalty phase.

15 A. During the penalty phase, I would address
16 issues of adaptability. I don't recall ever
17 addressing issues of adaptability in the trial in
18 chief.

11:25AM

19 Q. Do you recall testifying in this case?

20 A. I do recall testifying in this case.

11:25AM

21 Q. Okay. Do you recall -- what, if any,
22 testimony did you provide on adaptability?

23 A. I did not provide any opinions regarding
24 adaptability. I was never asked about issues of
25 adaptability.

11:26AM

1 Q. Is it customary in your profession to
2 provide testimony on adaptability in death penalty
3 cases?

4 A. Yes, I have done so on a number of
5 occasions.

11:26AM

6 Q. Okay. What were your opinions about Eddie's
7 adaptability?

8 A. Well, I felt that his likelihood of
9 adaptability would be quite good, principally, if
10 his serious mental illnesses could be treated with
11 medications, principally, and possibly with
12 counseling, but principally with medications.

11:26AM

13 Q. Okay. Obviously if that's what you had been
14 asked, that's what you would have testified to?

15 A. Yes, along with a number of other issues as
16 well that go to issues of adaptability.

11:27AM

17 Q. Okay. Is there anything about the testimony
18 that you provided, believing it, erroneously, to be
19 in the trial in chief phase -- was there anything
20 that was not asked of you that you believe should
21 have been asked?

11:27AM

22 A. If I was testifying in the trial in chief
23 or --

24 Q. Correct.

25 A. As I -- yes. I think that had I been asked

11:27AM

1 more about, in my opinion, Mr. Weik's major
2 depressive disorder with psychotic features that I
3 felt that he had at the time when I saw him, I
4 could have given opinion -- more information to the
5 Court about that diagnosis.

11:28AM

6 Q. Okay. And what about -- had you been
7 advised that you were testifying in the penalty
8 phase, what types of information would you have
9 provided that -- in that phase -- that you did not
10 provide as a result of the erroneous belief that
11 you were testifying in the trial in chief?

11:28AM

12 A. Well, I would have testified to issues of
13 procedures of conducting risk assessments, which
14 essentially is adaptability to prison: What's the
15 likelihood that an inmate is going to engage in
16 subsequent violent behavior while confined? And I
17 would have talked about three different approaches
18 to risk assessment and the approach that I took,
19 which was essentially a combination of clinical
20 impressions and empirical data, called the
21 Anamnestic Approach, A-n-a-m-n-e-s-t-i-c,
22 Anamnestic Approach.

11:28AM

11:29AM

23 And I would have cited data on the
24 likelihood of murders of other inmates and/or staff
25 committed by South Carolina Department of

11:29AM

1 Corrections' inmates from 1984 to 1990.

2 Q. And what were those statistics?

3 A. Those statistics were that the likelihood --
4 that no staff person of the Department of
5 Corrections during that period was killed by a
6 South Carolina Department of Corrections' inmate;
7 and that the number of inmates, SCDC inmates,
8 killed by other SCDC inmates was a total of 11
9 during that time, that seven-year period.

11:29AM

10 Q. Okay.

11:30AM

11 A. Which were exceedingly low rates of violence
12 compared to rates of murders in South Carolina in
13 the general community.

14 Q. Okay. What other additional information had
15 you prepared for the penalty phase that you were
16 not asked to provide to the jury, if any?

11:30AM

17 A. Well, I would have reinforced my testimony
18 about the absence of antisocial personality
19 disorder in Mr. Weik, and I would have amplified my
20 testimony on the absence of malingering of
21 psychiatric symptoms.

11:31AM

22 Q. Okay. And why are those important, the
23 absence of any social personality disorder, as well
24 as malingering?

25 A. Well, a person who has a social personality

11:31AM

1 disorder tend to have higher rates of criminal
2 behavior. It's often one of the factors or the
3 elements in defining antisocial personality
4 disorder. And from the -- those with lower rates
5 of antisocial personality -- the absence of
6 antisocial personality disorder tend to have lower
7 rates of violence, both in the community and also
8 within prison.

11:31AM

9 Q. Okay. What about the malingering aspect?

10 A. Well, the malingering aspect addresses the
11 validity of the symptoms that I saw, signs and
12 symptoms that I saw in Mr. Weik, that confirmed for
13 me that he was seriously mentally ill, that he was
14 not trying to portray himself as being mentally ill
15 or crazy.

11:32AM

11:32AM

16 Q. So that goes more to the mitigation than to
17 adaptability?

18 A. It does, but, also, malingerers can have
19 higher rates of complaints for psychiatric care,
20 for example, wishing to get into the psychiatric
21 hospital in the Department of Corrections, thereby
22 tying up staff time and beds for those who really
23 need inpatient psychiatric care while confined.

11:33AM

24 Q. So would it be fair to say that malingerers
25 are a greater management problem than those who

11:33AM

1 don't malingering?

2 A. They can be.

3 (Off-the-record conference.)

4 BY MS. KIMBROUGH:

5 Q. Dr. McKee, in the over 50 cases you've been
6 involved in, how typical is it to not have any
7 preparation with an attorney prior to being placed
8 on the stand?

11:34AM

9 A. It's very rare, in my experience.

10 Q. Do you believe that lack of preparation
11 affected your testimony in this case?

11:34AM

12 A. Well, it affected the types and numbers of
13 questions -- content of the questions that would
14 have been asked of me.

15 (Off-the-record conference.)

11:34AM

16 MS. KIMBROUGH: Can we take a brief
17 break?

18 (A recess transpired from 11:34 a.m.
19 through 11:37 a.m.)

20 BY MS. KIMBROUGH:

11:37AM

21 Q. Dr. McKee, let me talk a little bit about
22 your qualifications as an expert. Have you ever
23 been qualified as an expert in adaptability?

24 A. I have.

25 Q. And can you discuss your academic and

11:38AM

1 professional backgrounds, sort of from college
2 forward?

3 **A.** Received a bachelor's degree from Coe
4 College, C-o-e, in Cedar Rapids, Iowa, in 1965; a
5 master's degree from University of Illinois at
6 Champagne-Urbana in counseling psychology; in 1967,
7 PhD from the University of Missouri at Columbia; in
8 1969, in counseling psychology; and in 1983, I
9 earned the diplomate in forensic psychology with
10 the American Board of Professional Psychology.

11:38AM

11 **Q.** Okay. And have you previously been
12 qualified as an expert in the field of forensic
13 psychology?

14 **A.** I have.

15 **Q.** Is that in state as well as federal court?

11:39AM

16 **A.** It's in state court here in South Carolina,
17 North Carolina, Minnesota, North Dakota, Arizona,
18 Indiana, California; and federal courts in South
19 Carolina and Kentucky.

20 **Q.** Okay.

11:39AM

21 **A.** And North Dakota.

22 MS. KIMBROUGH: I would offer Dr. McKee
23 in the field of forensic psychology. Do you
24 have any voir dire?

25 MR. ZELENKA: No objection.

11:39AM

1 BY MS. KIMBROUGH:

2 Q. How about in the field of adaptability?
3 Have you been qualified as an expert in the field
4 of adaptability?

5 A. I have.

11:39AM

6 Q. Which courts have you been so qualified?

7 A. In state courts here in South Carolina. Off
8 the top of my head, I can't think of a federal case
9 where I've addressed issues of adaptability.

10 Q. Okay.

11:40AM

11 A. Just South Carolina, circuit courts.

12 Q. All right.

13 MS. KIMBROUGH: I would offer Dr. McKee
14 as an expert in the field of adaptability.

15 MR. ZELENKA: No objection.

11:40AM

16 MS. KIMBROUGH: Thank you.

17 BY MS. KIMBROUGH:

18 Q. Dr. McKee, you had previously testified as
19 to Eddie Weik's level of adaptability. Did you or
20 -- and do you hold those opinions to a reasonable
21 degree of certainty in the field of forensic
22 psychology?

11:40AM

23 A. I did at the time. I have not seen Mr. Weik
24 since -- well, I have not evaluated Mr. Weik since
25 May 15th of 1999, so I don't have an opinion about

11:40AM

1 his current adaptability.

2 Q. Okay. But had you been asked concerning his
3 adaptability in 1999, could you and would you have
4 testified that you held those beliefs to a
5 reasonable degree of forensic psychological
6 certainty?

11:41AM

7 A. I would have so testified.

8 Q. And one last question. This prior
9 commitment that you referenced in Applicant's
10 Exhibit Number 1, at what point did you make that
11 commitment known to defense counsel?

11:41AM

12 A. I'm sorry. The prior commitment? What did
13 you say?

14 Q. I apologize. In your Affidavit, the paper
15 that you presented --

11:41AM

16 A. Yeah.

17 Q. -- or had to present in 1999, do you recall
18 when you first advised defense counsel of this
19 prior commitment? Would it have been at the time
20 of your hire or sometime --

11:41AM

21 A. No, it would not have been in February of
22 '99. It would have probably been within the week
23 of May 17, 1999. It could have been a couple of
24 days before. I don't have a clear recollection.
25 But it could have been close to the date when I was

11:41AM

1 asked to testify.

2 Q. Okay. And --

3 A. I'd say within a few days of the competency
4 hearing.

5 Q. Okay. And just one follow-up question. Do
6 you recall having any discussions with Percy
7 Beauford concerning your testimony?

11:42AM

8 A. I do not.

9 Q. Do you recall having any meetings with Percy
10 Beauford before you testified?

11:42AM

11 A. I do not.

12 Q. Do you recall having any contact, either by
13 phone or in person, with Mr. Beauford prior to your
14 testimony?

15 A. I may have. I don't recall whether I may
16 have, but I may have. I just -- I'm thinking that
17 it was Ms. Hardee-Thomas that I talked with on the
18 telephone prior to the competency hearing.

11:42AM

19 Q. Okay.

20 A. But it may have been Mr. Beauford.

11:42AM

21 Q. All right. But you do not recall a prep
22 meeting for your testimony?

23 A. I do not recall any face-to-face meetings
24 with the attorneys.

25 Q. Okay.

11:42AM

1 (Off-the-record conference.)

2 BY MS. KIMBROUGH:

3 Q. Do you recall at all what you talked about
4 on the telephone with either of the attorneys?

5 A. I most likely told them what my findings
6 were here, as I outlined them in the Affidavit.

11:43AM

7 Q. Okay. And do you recall discussing with
8 them which phase of the trial your testimony would
9 be most beneficial?

10 A. Well, as I say, I prepared for testimony for
11 adaptability and went there -- went to Dorchester
12 that day with the anticipation I would be
13 testifying in the sentencing phase.

11:43AM

14 Q. All right. A follow-up to the phone
15 conversation that you believe you had with one of
16 the two attorneys. I believe you testified that
17 you would have discussed your findings. Were those
18 findings, would it be your custom and practice to
19 discuss adaptability as part of your findings?

11:44AM

20 A. Yes.

11:44AM

21 Q. Do you recall whether you specifically had a
22 conversation with defense counsel on adaptability?

23 A. I likely -- I likely did. I mean, when I
24 have these consultations -- and they're not always
25 face-to-face consultations -- but when I have them,

11:45AM

1 I give them the benefit of my opinions and the
2 major issues that are relevant to the case.

3 Q. Okay.

4 MS. KIMBROUGH: I have nothing further.
5 Please answer any questions that Mr. Zelenka
6 may have.

11:45AM

7 EXAMINATION

8 BY MR. ZELENKA:

9 Q. Dr. McKee, let me provide you a with a
10 document and see if you can identify that.

11:45AM

11 A. That is a bill that I submitted to
12 Ms. Hardee-Thomas outlining my services on the
13 case.

14 Q. Okay.

15 MR. ZELENKA: We'd like to move that in
16 as Respondent's Exhibit 1 in this
17 deposition.

11:46AM

18 MS. KIMBROUGH: No objection.

19 (RESPONDENT. EXH. 1, Dr. McKee's Bill,
20 was marked for identification.)

21 BY MR. ZELENKA:

22 Q. Dr. McKee, I hand you back Respondent's
23 Exhibit 1. That doesn't include all of your
24 contact with defense counsel, does it?

25 A. It does not?

11:46AM

1 Q. I'm asking.

2 A. I believe it does.

3 Q. Does it reflect the retention conversation
4 that you had with Marva Hardee-Thomas in February?

5 A. It does not.

11:47AM

6 Q. Does it include conversations that you had
7 with defense counsel prior to your preparation of
8 an Affidavit and a report?

9 A. It does not.

10 Q. So it is not, in and of itself, complete; is
11 that correct?

11:47AM

12 A. That is correct.

13 Q. Okay. And Dr. McKee, it does reveal a
14 conversation on May 27, 1999, at least two days
15 prior to your testimony, with both defense counsel;
16 isn't that correct?

11:47AM

17 A. It does.

18 Q. And it also includes on that an interview or
19 a consultation with Mr. Jeffrey Blume?

20 A. It does.

11:47AM

21 Q. Do you recall any conversation with Jeffrey
22 Blume who was acting as the jury selection expert
23 in this case?

24 A. I don't have a specific memory. I see here
25 that I did bill for it, but I don't have a specific

11:48AM

1 memory. It's seven, eight years ago now.

2 Q. Okay. So there are matters and clearly some
3 discussions that reflect that you had with defense
4 counsel and, essentially, the defense team, of over
5 an hour that you do not recall at this time; is
6 that correct? 11:48AM

7 A. That's correct.

8 Q. Do you know -- does it refresh your
9 recollection that Mr. Blume would have had an
10 opinion that they not call you as a witness? 11:48AM

11 A. I don't have that recollection.

12 Q. Okay. So you don't know if that occurred
13 within that discussion.

14 A. That's correct.

15 Q. Okay. And obviously then, you don't know
16 any reasons why Mr. Blume would have made that
17 suggestion; is that also correct? 11:48AM

18 A. That's also correct.

19 Q. Now, in your testimony at trial, you
20 testified in the penalty phase of the trial; isn't
21 that correct? 11:49AM

22 A. Apparently so. I was -- my recollection --
23 was coming there and finding out on the day that I
24 testified --

25 Q. Okay. 11:49AM

1 **A.** -- that it was the trial in chief.

2 **Q.** That was your recollection, but you since
3 learned it was erroneous; is that correct?

4 **A.** I learned today that it's erroneous, yes.

5 **Q.** And when you testified and appeared in
6 court, were you present in court when other
7 witnesses were testifying in court?

11:49AM

8 **A.** I was present when whoever it was that
9 testified before me testified, and then I believe
10 that -- it's certainly my custom -- I believe I
11 asked to be excused and was.

11:49AM

12 **Q.** Okay. Do you remember any consultation that
13 you had with Dr. Swartz-Watts at all in this
14 matter?

15 **A.** I may have. I don't recall specifics other
16 than disclosing -- I probably disclosed to her my
17 findings. I was rather careful.

11:50AM

18 **Q.** And when you were present in court, that day
19 when the witness who appeared before you,
20 Dr. Augustus Rogers, the social worker, you
21 recalled Dr. Augustus Rogers testifying about his
22 opinion on adaptability in the prison system in
23 general, don't you?

11:50AM

24 **A.** I don't recall that. He may have, but I
25 don't recall it now, seven years later.

11:50AM

1 Q. Okay. So because you don't recall it, you
2 don't recall whether -- this is very difficult to
3 ask this. Understand, I have to ask this question,
4 without kind of suggesting an answer. But are you
5 saying that at the time you testified, throughout
6 the entirety of the testimony, you were unaware
7 that Mr. Weik had already been convicted of murder?

11:51AM

8 A. That's what I recall.

9 Q. Okay. Could your recollection now be wrong,
10 or was it something that you made notes on about
11 this, preserved some information about it?

11:51AM

12 A. I made no notes subsequent to the hearing.

13 Q. Okay.

14 A. And have not made any notes, you know, prior
15 to my contact that this post-conviction relief
16 litigation was occurring.

11:51AM

17 Q. Okay. And you specifically don't recall the
18 -- apparently the examination that Walter Bailey --
19 cross-examination -- had of Mr. Rogers about prison
20 conditions and the like?

11:51AM

21 A. I don't recall that, no.

22 Q. Okay. Did you have any discussion with
23 Dr. Augustus Rogers about his social work summary?

24 A. Not that I recall.

25 Q. Yet you testified you were present in court

11:52A

1 when he testified in front of you and gave some
2 information about the social history.

3 A. Yes.

4 Q. Okay. Did any of that information support
5 or revise your opinion on whether your client, in
6 fact, suffered from schizophrenia of any type or
7 major depressive disorder?

11:52AM

8 A. It did not change my opinion that he was
9 schizophrenic and had major depressive disorders
10 with psychiatric features.

11:52AM

11 Q. And were you present in court when
12 your client -- not your client -- I guess it was
13 your patient --

14 A. (Moves head from side to side.)

15 Q. -- your evaluated individual -- testified in
16 the guilt phase of the trial?

11:52AM

17 A. I was not present for that, not that I
18 recall.

19 Q. So you were unaware whether he was able to
20 rationally respond to questions presented to him?

11:53AM

21 A. I'm sorry?

22 Q. So you were unaware as to whether, at that
23 moment, he was able to rationally respond to
24 questions.

25 A. That's correct.

11:53AM

1 Q. And you do not have an opinion, in fact, as
2 to whether, at the time he testified, that he was
3 competent to stand trial.

4 A. I do not have an opinion about that.

5 Q. And you do not have an opinion that at the
6 start of the trial, on May 24, 1999, he was
7 competent to stand trial, do you?

11:53AM

8 A. No.

9 Q. Let me return you to Respondent's Exhibit
10 Number 1. It does reflect, on 5-27-99, a
11 consultation with Mr. Beauford, and on 5-29-99, a
12 consultation with Mr. Beauford; is that correct?

11:54AM

13 A. That's correct.

14 Q. And in your ordinary course of business,
15 you -- at the time you made that information, as
16 part of your voucher, you would have had some
17 supporting information that, in fact, you did meet
18 with Mr. Beauford, did meet with Hardee-Thomas, and
19 Mr. Blume or consult with them by telephone.

11:54AM

20 A. Yes. It likely would have simply been, you
21 know, my recollection of those -- of those
22 episodes. My bill is dated May 30th, so it would
23 have been the day after I testified that I drafted
24 this.

11:54AM

25 Q. Okay. Do you have any other notes,

11:55AM

1 calendars or anything which would reflect more
2 accurately what occurred on those occasions?

3 A. No.

4 Q. Is it that you don't keep them, or you
5 didn't make them, or you do not make them?

11:55AM

6 A. I typically do not make notes of -- well,
7 let me say that -- I do make -- I will make notes
8 of what I would discuss with an attorney subsequent
9 to that. I don't recall whether in my folder here
10 on this case that I have such notes.

11:56AM

11 Q. Where is your folder?

12 A. It's right here.

13 Q. Okay. Can you review that?

14 A. Certainly.

15 Q. I'm not trying to keep you from reviewing
16 it.

11:56AM

17 A. I do not see in the materials that I have
18 any notes from the consultations either on 5-27-99
19 or 5-29-99.

20 Q. Okay. The two documents that you prepared,
21 Applicant's Exhibit Number 2 and Applicant's
22 Exhibit Number 3, do you have a recollection as to
23 whether you gave those to defense counsel?

11:57AM

24 A. I do not have a recollection as to --

25 Q. Do you normally do that in your normal

11:57AM

1 course of practice?

2 A. I do not.

3 Q. Why don't you do that?

4 A. I do not simply because I do not. I go
5 over -- you know, I typically will go over what I
6 am going to say, but I don't make copies of my
7 notes for attorneys.

11:57AM

8 Q. Okay. On Respondent's Exhibit Number 1, the
9 February 22, 1999 record review of three hours, do
10 you know what records you were reviewing at that
11 time?

11:58AM

12 A. Not that I recall.

13 Q. Okay. Do you know how you received the
14 records?

15 A. I probably would have received them from
16 Ms. Hardee-Thomas and/or Mr. Beauford.

11:58AM

17 Q. Okay. Do you know if they were mailed to
18 you, hand delivered to you?

19 A. I don't recall.

20 Q. Do you know if you had any contact with
21 Patti Rickborn?

11:58AM

22 A. I don't recall any contact with Patti
23 Rickborn.

24 Q. If you had contact with her -- who was the
25 mitigation investigator -- prior to May of 1999,

11:58AM

1 would that have been reflected on your voucher?

2 A. Typically not. It is not. And I don't
3 always bill for that.

4 Q. Okay. Did you ever review the tapes of the
5 statements that Mr. Weik gave, the audiotapes?

11:59AM

6 A. I don't believe that I did. As I reread my
7 testimony in the transcript, I noticed that I did
8 not, but I had, apparently, transcripts of those
9 that I reviewed.

10 Q. And in your Affidavit, Applicant's Exhibit
11 Number 1, which was prepared prior to the date of
12 the competency exam, you noted that you had
13 reviewed the May 13th, 1999 report of Pamela
14 Crawford, correct?

11:59AM

15 A. Yes.

12:00PM

16 Q. Do you know how that report would have been
17 received by you?

18 A. It was apparently received by fax to me --
19 from at least the cover form -- the cover sheet was
20 from Ms. Hardee's -- Hardee Thomas's office. And
21 the date sent was 17th of May of 1999.

12:00PM

22 Q. According to your Affidavit, you received
23 materials that had been delivered around January
24 25th, 1999. And then you also note this material
25 dated after that time, May 15, 1999. Did you

12:01PM

1 receive any material in the interim from February,
2 your record review in February, up until the time
3 of your Affidavit, May 17th?

4 A. Not that I recall.

5 Q. Okay. And, again, you do not recall any
6 discussions with -- specific discussions with
7 Dr. Swartz-Watts or Dr. Augustus Rogers about their
8 testimony or your potential testimony or opinions;
9 is that correct?

10 A. Not with Dr. Rogers. I quite sure I
11 probably talked -- I quite sure? I probably talked
12 with Dr. Swartz-Watts about my findings. But
13 exactly when I did that, I don't have a specific
14 recollection.

15 Q. Okay. And if she said she had a
16 psychological consultation with you that was
17 reflected in your sworn testimony at trial, you
18 would not dispute that.

19 A. I would not.

20 Q. And a psychological consultation is more
21 than a passing discussion, isn't it?

22 A. Very much so. Well, when I do it, yes.

23 Q. Okay.

24 A. Much more so, yes.

25 Q. And she would understand the way you would

12:01PM

12:02PM

12:02PM

12:02PM

12:02PM

1 normally do it?

2 A. I -- yes.

3 Q. So, again, that's not reflected in your
4 notes, also.

5 A. No.

12:03PM

6 MR. ZELENKA: I think that's all I
7 have. Thank you, Dr. McKee.

8 EXAMINATION

9 BY MS. KIMBROUGH:

10 Q. Dr. McKee, I believe --

11 MR. O'CONNELL: Before we start, let's
12 take a short break.

13 (A recess transpired from 12:03 p.m.
14 through 12:05 p.m.).

15 EXAMINATION

16 BY MS. KIMBROUGH:

17 Q. Dr. McKee, just briefly, I believe you were
18 handed a cover sheet and a fax?

19 A. Yes.

20 Q. Hmm...

12:05PM

21 A. Well, no. It was part of my -- I believe
22 you're referring to this? (Indicating.)

23 (Tendered document.)

24 BY MS. KIMBROUGH:

25 Q. Yes.

12:05PM

1 It would appear that contained in your file
2 is a fax cover sheet dated May 17, 1999 with the
3 message that this is Dr. Crawford's evaluation of
4 John E. Weik.

5 A. Yes.

12:05PM

6 MS. KIMBROUGH: I'd like to mark this
7 as Applicant's Exhibit Number 4.

8 MR. ZELENKA: No objection.

9 (APPLICANT'S EXH. 4, Dr. Crawford's
10 Evaluation of John E. Weik, was marked for
11 identification.)

12 BY MS. KIMBROUGH:

13 Q. Is it your recollection that you received
14 this report dated May 13th on May 17th, the date of
15 the facsimile?

12:06PM

16 A. Seeing that, yes, I would say that I
17 received it on the 17th.

18 Q. All right. I believe Mr. Zelenka asked you
19 about some records review that was reflected on
20 your bill, which was marked as Respondent's Exhibit
21 Number 1, the records review date of 2-22-99?

12:06PM

22 A. Yes.

23 Q. Do you recall whether or not the records
24 that you reviewed would have been from the state
25 hospital evaluations prior to those dates?

12:07PM

1 **A.** I don't recall exactly what records this
2 reflected in that charge of three hours.

3 **Q.** Okay. Do you recall receiving the records
4 from the state hospital evaluations, one in '98,
5 one in '99?

12:07PM

6 **A.** I don't recall receiving those.

7 **Q.** All right. And let me ask you a question
8 about your adaptability testimony. I believe
9 Mr. Zelenka asked you if you were present during
10 Dr. Rogers' testimony which was given within the
11 context of being a social worker.

12:07PM

12 Your conclusions about adaptability, what
13 criteria were they based on? Was it the
14 psychological testing or --

15 **A.** Well, it was a combination of the base rates
16 of violent behavior in prison, in South Carolina
17 prisons at least, the data that we have from 1984
18 to 1990, which at that time would have been the
19 most recent available data, as I recall. Those
20 base rates, to just give an idea of what the rates
21 of murder and assaults with weapons are, against
22 SCDC inmates and SCDC staff by SCDC inmates.

12:07PM

23 **Q.** Okay. So would it be fair to say -- or
24 would it be a fair characterization that your
25 testimony on adaptability would have concerned

12:08PM

12:08PM

1 rates of violence in other management types of
2 statistics versus discussing the living conditions
3 of inmates?

4 A. Yes. Well, it would pertain to the rates of
5 murder, rates of assaults with weapons, as reported
6 by the Department of Corrections, at least under
7 these conditions -- under -- by SCDC inmates during
8 that time period, along with other psychological
9 test data that's relevant to issues of adaptability
10 in prison.

12:08PM

11 Q. So the focus of your adaptability testimony
12 would have been those types of statistics.

13 A. That's correct.

14 Q. Not living conditions.

15 A. That's correct.

12:09PM

16 MS. KIMBROUGH: I have no further
17 questions.

18 MR. ZELENKA: I just have one brief
19 matter.

20 EXAMINATION

21 BY MR. ZELENKA:

22 Q. You did testify at trial that you had a
23 social history for review; isn't that correct? And
24 let me refer you to record page 1967.

25 A. Lines 3 through 5, I responded that I did

12:10PM

1 have a social history and that type of information
2 but did not have the medical record from Hall.

3 Q. Okay.

4 A. If that's what you've referring to.
5 Apparently I did testify to that.

12:10PM

6 Q. Okay.

7 MR. ZELENKA: No further questions.

8 MS. KIMBROUGH: One final question.

9 EXAMINATION

10 BY MS. KIMBROUGH:

12:10PM

11 Q. Dr. McKee, the basis of your testimony would
12 have been psychological tests; is that correct?

13 A. That's correct.

14 Q. Okay. How important is social history
15 information to your testimony?

12:10PM

16 A. It's somewhat important. It's somewhat
17 important.

18 Q. Okay. Do you recall what social history
19 information you had?

20 A. No.

12:11PM

21 Q. Interviews or reports?

22 A. Candidly, I do not.

23 Q. Okay. Do you recall receiving a social
24 history from the state hospital?

25 A. No, I do not.

12:11PM

1 Q. Okay. Because you never received those
2 records prior to your testimony?

3 A. I just candidly don't recall.

4 Q. Okay.

5 MS. KIMBROUGH: I believe that's all I
6 have.

12:11PM

7 EXAMINATION

8 BY MR. ZELENKA:

9 Q. But you did say you had reviewed the social
10 history from the state hospital?

12:11PM

11 A. Okay. But I --

12 Q. That's all -- in 1999, when the case was
13 tried, correct?

14 A. I guess I testified to that. I don't
15 recall.

12:11PM

16 MR. ZELENKA: Okay.

17 MS. KIMBROUGH: No further questions.

18 (The deposition concluded at 12:11 p.m.)
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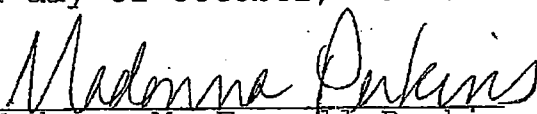
1 CERTIFICATE OF REPORTER

2 I, Madonna M. Farrell-Perkins, Registered
3 Professional Reporter and Notary Public in and for
4 the State of South Carolina, do hereby certify that
5 the deponent, GEOFFREY R. MCKEE, Ph.D., ABPP, was
6 duly sworn by me to testify to the truth, and that
7 the above deposition, pages 1 through 39,
8 inclusive, was recorded stenographically by me and
9 transcribed through computer-aided transcription by
10 me to the best of my ability.

11 I FURTHER CERTIFY that the foregoing
12 transcript is a true and correct transcript of the
13 testimony given by the said witness at the time and
14 place specified.

15 I FURTHER CERTIFY that I am neither attorney
16 or counsel for, nor related to or employed by any
17 of the parties to the action in which this
18 deposition is taken, or financially interested in
19 this action.

20 IN WITNESS WHEREOF, I have set my hand and
21 seal this 4th day of October, 2006.

22 
23 Madonna M. Farrell-Perkins
24 Registered Professional Reporter
25 Notary Public
My commission expires
September 19, 2015

1 VERIFICATION OF DEPONENT
2

3 I, GEOFFREY R. MCKEE, PhD, ABPP, have read
4 the foregoing deposition consisting of 40 pages,
5 which was reported by Madonna M. Farrell-Perkins,
6 Registered Professional Reporter and notary public
7 in and for the State of South Carolina, on October
8 3, 2006.

9 I find the transcript of this deposition to
10 be a true and accurate transcript according to my
11 testimony on that date with the exception of _____
12 corrections as listed on the attached correction
13 sheet, which was filled in by me.
14
15
16
17
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19
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21
22

23 _____
24 GEOFFREY R. MCKEE, PhD, ABPP

25 _____, 2006

ERRATA PAGE

PAGE # - LINE # CHANGE AND/OR CORRECTION
(AND EXPLANATION)

THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA
PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF
DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA
PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO
ATTACH THIS PAGE AND MY VERIFICATION TO THE
ORIGINAL TRANSCRIPT.

DATED: _____

GEOFFREY R. MCKEE, PhD, ABPP

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REQUESTED INFORMATION INDEX

(No Information Requested)

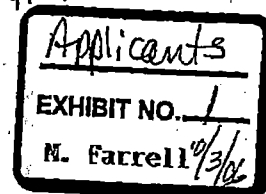
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Geoffrey R. McKee, PhD, ABPP

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AFFIDAVIT

3391



COMES NOW GEOFFREY R. McKEE, PhD, ABPP WHO DEPOSES AND STATES THAT:

1. I am a Board-certified forensic psychologist of the American Board of Forensic Psychology, hold the rank of Clinical Professor in the Department of Neuropsychiatry and Behavioral Science of the University of South Carolina School of Medicine, and from 1985-1998 I was the Chief Psychologist of the Forensic Psychiatry Service of the William S. Hall Psychiatric Institute. A summary of my most recent Curriculum Vita is attached.
2. That I was retained by Percy Beaufort, Esq. and Marva Hardee-Thomas, Esq. in February, 1999 to conduct a forensic psychological examination of John E. Weik to assess his current mental status and diagnosis relevant to capital charges of murder and first degree burglary.
3. That I understand that Mr. Weik will have a hearing regarding his competency to stand trial tomorrow, May 17, 1999.
4. That I will be unable to attend tomorrow's hearing because I will be presenting a paper at the annual meeting of the American Psychiatric Association in Washington, DC; a two-month-old commitment predating the recently-confirmed scheduling of Mr. Weik's hearing.
5. That I conducted clinical interviews and psychological testing including the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Trail Making Test (TMT), Wechsler Memory Information & Orientation Scale (I&O), Structured Interview of Reported Symptoms (SIRS), and Psychopathy Checklist-Revised (PCL-R) on Mr. Weik on 3/6/99 and 5/15/99 for a total of 9.5 hours of direct contact with the defendant. Prior to the examination, I reviewed a copy of the file materials from Solicitor Bailey's office hand-delivered to Ms. Hardee-Thomas' office on 1/25/99; following the last interview, I reviewed a 5/13/99 report by Pamela Crawford, MD of the William S. Hall Institute and obtained a verbal report from Steven Shea, PhD of the results of Mr. Weik's psychological tests including the Wechsler Adult Intelligence Scale-III (WAIS-III), Bender Visual-Motor Gestalt Test (BVMGT), Wide Range Achievement Test-Revised (WRAT-R), Neurobehavioral Cognitive Status Examination (NCSE), Personality Assessment Inventory (PAI), and Structured Interview of Reported Symptoms (SIRS).

Geoffrey R. McKee, PhD
5/17/99

6. That on clinical examination that Mr. Weik was alert and oriented, though initially very suspicious declaring that he was not "crazy" and would not take "retarded tests like they tried to do at Hall Institute; they were taping the evaluations with their beepers". Though he became more cooperative as the interview progressed, his answers to open-ended questions were frequently tangential, confused, and loosely associated indicating a significant disturbance in thinking. He reported that the CIA and the Government are watching him "everyday because of what I know" and what his father has told him about: 1) his father's Special Forces Devil's Brigade military service in Viet Nam as "an assassin of Army colonels"; 2) "aliens in lead containers in Area 51"; and 3) "aliens and spacecraft Jones and Smith showed him, Jones and Smith wanted him to learn about aliens". It was unclear who "Jones and Smith" were and what relevance they had to the Government, CIA, or his father's service in Viet Nam--Mr. Weik's description of these matters was very confused. He stated that the CIA would come around their house "in Blazers and unmarked cars" to monitor him and his family and that he would hear voices (which he thought "might be angels fighting over me") tell him "they're watching you". He stated that the CIA was trying to make him crazy to "shut me up" about his knowledge of his father's Viet Nam acts in the same way the CIA had said his "father had a nervous breakdown to cover their (CIA's) acts in Viet Nam". These beliefs appear to be persecutory delusions which pre-date his arrest and are indicative of a severe psychotic disorder.

That Mr. Weik's MMPI-2 results of high scores on scales measuring schizophrenic, depressed, and paranoid processes and PAI results of high scores on scales measuring schizophrenic, anxiety-related (obsessive-compulsive), depressed, manic, and paranoid processes are consistent with his clinical presentation and responses to interview questions. Mr. Weik has no insight into his mental illness ("there's no such thing as crazy people") and consistently rejected suggestions that he might be mentally ill; he adamantly opposed recommendations for antipsychotic medications.

That Mr. Weik's mood was significantly depressed reflected in suicidal thinking measured by the PAI, at least 3 suicide efforts by gun or hanging since January, 1998, and elevations on MMPI-2 and PAI scales measuring depression. Mr. Weik wishes to die and hopes that he will be given the death penalty: "I will not take lethal injection, I want 'old Sparky' (electric chair) to light me up!" (he then began singing 'You Light Up My Life' while laughing inappropriately). Mr. Weik stated "there will be no plea bargain in this case, I've given them everything to make it easier for the Solicitor so I get the death penalty". His affect was often inappropriate and incongruent to the issue or topic being discussed such as laughing when defining the Solicitor's role as "to fry me at any cost" or stating that his father had "a quota of five pairs of Viet Cong ears a night, that's 10!".

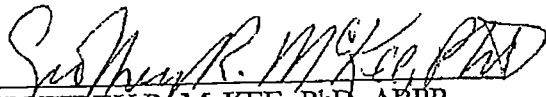
That his scores on the MMPI-2 and PAI do not suggest malingering or symptom exaggeration when compared to published research studies of WSHPI adult male

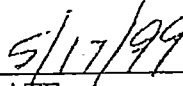
Geoffrey R. McKee
9/17/99

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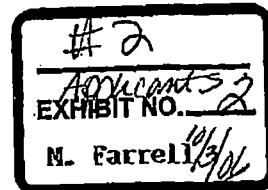
pre-trial criminal defendants. Further, none of the SIRS scales fell in the Definite Malingering range in either Dr. Shea's or my administration of the SIRS. Although Mr. Weik had 3 SIRS scales in the Probable range in Dr. Shea's administration which might suggest malingering (no scales in the Probable range in my SIRS administration) Mr. Weik's consistent denial of psychiatric symptoms and adamant refusal of a diagnosis of mental illness indicates that he is not malingering. Lastly, Dr. Crawford's report did not indicate malingering as a diagnosis.

7. That it is my opinion that Mr. Weik's clinical presentation and psychological testing indicates that he suffers from symptoms consistent with diagnoses of schizophrenia, paranoid type and a history of recurrent major depression with psychotic features.
8. That although Mr. Weik will adamantly refuse psychotropic medication, that his active mental illness, significantly impaired judgment, confused reasoning, and wishes to die by electrocution will likely persist without such treatment.


GEOFFREY R. MCKEE, PhD, ABPP


DATE

3394
WELK, JOHN
32 Wm
M + B10 4/30/91
① Susan Krasae 271
② Daniel Wade Krasae



3/6/99 Interview + PAI Attempted
4 hrs 2 hrs = 71 items
3/15/99 Suspicious, defensive, paranoid, 3 incomplete
Delusions re CIA & gov't watching him
- because of what he knows re (F) as
assassin, aliens in lead containers,
space craft
- CIA monitoring him - come around house
in glasses & unmarked cars
- CIA trying to make them crazy
Hears voices (might be angels fighting over me)
'they're watching you' SUI 103
mood sig depressed - 3 attempts to jump (down)
or hanging (jail) since Jan 98
Affect inappropriate: "I would spazky-
give you lightning my life!"
- "I'm gonna kill everything to make it easier
for solicitor so I get death penalty!"
No insight to mental illness: "I'm crazy
there's no such thing as crazy people!"
adamantly opposed recommendations
for antipsychotic meds.

q. 5
Hrs
direct
conduct

5/15/99

TMT: A < 100 sec B 313 sec
140: RS=14 not malingering SUI 103

SIRS: 0/0/0 PROB 5 HEN

MMPI-2: Highly defensive, 40% F 7028/82

BIZ 81T most common Dx: BIPAD, Schizoaffective
- chronic MI, dependent, depressed,
anxious, confused T2, underestimates
mental D/D

Interview
Test Data c/w Dx of Schiz, PT
Hx MDD recurrente psychotic
features

PCL-R: RS=3 47%ile Adult Male 1/MS

NOT Antisocial - PCL-R/PA 59T MA 56T ASP46T/ANT 54T

NOT Malingering: Denies MI illness
Rejects Dx of MI illness
MMPI-2 & PAI not c/w malingering
in adult male pretrial Δ
at WSH PI
SIRS: No scales in Probable
140: RS=14/14
In Crawford's report: No Dx of
malingering
No Dx of personality D/D

DR SHEA HPI No Report / Verbal Consult

WAIS-III V 91
P 97
FS 94

BUMGT: wnl 2 errors

WRAT-R RGS: 85-98

SIRS: PROB RS, BL/SEV

MY SIRS

People that are
unbearable
often answered
"EX" - "substance
c/w irritability
& complete PAI

NCSE:
mem 2/4 recall
+1 E prompt
+1 E recognition

PAI X 2

1st PAI: "Argued to himself - after
several hours it's valid"

2nd PAI:

INC/INT wnl
NIM 73T
PIM 48T
SCZ - 95
ARD - 90
DEP - 82
PAR - 72
MAN - 76
SUI - 103

3395, JUN 10
32 WFM
M + B10

Applicants
EXHIBIT NO. 3
M. Farrell 10/3/06

3/5/99 - Interview 4 hrs PAI attempt
Suspicious, defensive, paranoid
Tangential speech - Confused Tg
Delusions re CIA & (F) V. A. but no assassin
"aliens in lead containers" Area 51
Mood sig depressed - SI and suicidal Hx
of 3 attempts to losing job 1/98
Affect in approp: DW old spunky - you light
up my life

5/15/99 TMT A < 100%ile B = 137%ile Lenor
140 RS = 14 Not malingering, intact LTM
SIRS 0 Def 0 Prot - 5 Honor
MMPI-2: Highly defensive yet FT 28/82
DX BPAD Schizoaffective

~~PAI~~ Chronic MI, dependent, depressed
anxious, Confused Tg, underestimates
mental D/O

Doda C/W DX Schiz, PT
Hx MDD recurrent & psychotic
FX

Refuses MI DX: I'm crazy or retarded
No such things as crazy people
Refuses medications

3 APPROACHES TO RISK ASSESS

EXAMPLE
CIVIL Comm

CLINICAL - Estimates based on
interviews

ACTUARIAL Estimates on
Base rates of B in for certain
setting for certain people
over certain time period

* CDC m & assaultive
morbidity
rates in mt
Side effects of
medication

ANAMNESTIC Estimates
based on Base Rates
adjusted for individuals
unique Risk Factors
eg Mesangia, DX, Personality
PCL-R

Adjustments
discrimination
mesangia, PCL
& CDC Base R

ADAPTABILITY

* CDC BASE RATES FOR m & Assaultive
84-90 m & assaultive: .00125 1/mo = .0
m & assaultive: .0001 (per 1000) = 1 per 1000
Mesangia: How 20 Schiz PT & Recurrent MDD

MMPI-2: Pd < 70 (T59) Pd2 (Authority) 487
Antisocial Practices (ASP) 46T
O-H 45T

PAI (HPI) ANT 54T ALC DRG N/L

PCL-R: RS = 3 < 10%ile Adult Male V/M
Cutoff = 30

20 item Post-Interviews
Attitudes
Behav
Personal Hx: No p arrests
Adult abstinence A

Dr Shen WAIS-III < 91
V 91
P 97
F 44
BVMGT WNL
WRAT-R Rds 8E-9B
NCSE 2/4 Recall + 1E prompt + 1E negog
SIRS 3 Prot: RS, BL, SEW
PAI - Valid
Schiz 95, ARD 90, DEP 82, PAR 72
MAN TG SVI 103
ANT 54

Community 30
m & assaultive 2.6 per 10K
Avg 166 per 10K

3396

**Marva A. Hardee-Thomas**ATTORNEY AT LAW

Applicants
EXHIBIT NO. <u>4</u>
M. Farrell <u>10/1/99</u>

FAX**FAX FROM**

SENT BY:

Sandra Fishman

DATE SENT:

5/17/99

TIME SENT:

TOTAL NUMBER OF PAGES:

*5***FAX TO**

COMPANY:

DELIVER TO:

Dr. McKee

FAX NUMBER:

803-935-6980

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Message:

*Dr. Crawford's evaluation of John P. Weil***130 EAST RICHARDSON AVENUE, SUMMERVILLE, SC 29483****PHONE (843) 873-8622 • FAX (843) 873-4123**

FORENSIC UNIT STAFFING**DATE OF EXAMINATIONS:** April 27, 1999, May 1, 1999, May 3, 1999, and May 6, 1999**DATE OF REPORT:** May 13, 1999**PRESIDING:** Pamela M. Crawford, M.D.**OTHERS PRESENT:** (On April 27, 1999 - Stephen J. Shea, Ph.D., Thomas Behrmann, M.D.)
(On May 6, 1999 - Stephen J. Shea, Ph.D.)**DIAGNOSES:** **AXIS I:** No Diagnosis
AXIS II: Schizotypal Personality Disorder
AXIS III: No Diagnosis**COMPETENCY TO STAND TRIAL:** Yes**CRIMINAL RESPONSIBILITY:** Yes**CAPACITY TO CONFORM:** Yes**DISPOSITION:** Mr. Weik was returned to the Dorchester County Detention Center to await disposition of his charges.**PERTINENT STATEMENTS:** Mr. John Weik is a 31-year-old Caucasian male who was seen at our hospital pursuant to a court order from the Dorchester County Court of General Sessions. The court order requests an evaluation of his competency to stand trial, his criminal responsibility pursuant to the McNaghten Test for his actions on or about April 30, 1998, and if responsible, a determination of his capacity to conform his conduct to the requirements of the law. He is currently charged with Murder and Burglary First Degree.

The evaluation consisted of a review of a copy of the affidavit, arrest warrants, an autopsy report of the victim, incident reports, supplemental incident reports, case notes from Detective T.M. Marshall, witness statements, statement of the defendant, case notes from a police interview with the defendant, medical records from William S. Hall Psychiatric Institute, discussion with Mr. Weik's attorney, Percy Beauford, a social history obtained by the Carlos Torres, LMSW, and interview with the defendant's mother, Lillie Weik; clinical tests performed at William S. Hall Psychiatric Institute to include an EEG, an MRI of the head, psychological testing performed by Steven Shea, Ph.D. and a neurological consultation, a clinical forensic interview with the defendant of 90 minutes on April 27, 1999, a clinical interview with the

WEIK, JOHN EDMOND

981-0536

ADMITTED: 04/30/99

MENTAL STATUS EXAM: Mr. Weik was calm, pleasant, and cooperative with the interview. He exhibited no involuntary movements. His speech was generally logical, clear, and coherent, but he could become over inclusive and circumstantial at times. He was fully oriented to person, place, time, and situation. He exhibited no psychomotor agitation or psychomotor retardation. He described his mood as "all right." His affect was appropriate to his mood. He denied auditory or visual hallucinations. He related some paranoid thoughts regarding the CIA following his father but reported that this was a belief held by his entire family. At the time of the interview, he possessed no suicidal or homicidal ideations. He has a number of odd or bizarre thoughts, none of which met the threshold for being considered delusional. His thoughts were logical and linear for the majority of the interview, but when he became anxious his thoughts became somewhat circumstantial. He was able to register three/three objects and recall one/three objects in five minutes. He was able to repeat three digits forwards and three digits backwards. He was able to perform serial sevens from one hundred to sixty-five. He was able to spell the word world correctly forwards and backwards. He was able to give an appropriate response to a hypothetical question. He was able to name the capitals of South Carolina and the United States. He was able to give the number of days in the year. He was able to say the month in which Labor Day falls. He was able to adequately interpret similarities. He gave a concrete interpretation of a proverb. Based on his educational history, his fund of knowledge, and his performance on the cognitive portion of the mental status exam, Mr. Weik appears to have an intelligence in the average range.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Weik was able to read his Miranda Warnings without difficulty. He was able to restate them in his own words and he understood their meaning. He was able to state his charges and to define his charges. He was aware of the seriousness of his charges. He was able to state pleas made available to him. He was able to spontaneously define plea bargaining. He was able to state possible consequences of conviction. He was able to state that he knew that the prosecution was seeking the death penalty in his case. He was able to define the roles of participants in the trial. He said that the judge "makes it equal, he is neutral." He said that the job of the defense attorney is to "defend me -- take everything into account." He said that the job of the solicitor is "supposed to get me to be found guilty." He said the job of the jury is to "make sure justice is done, hear the evidence." He knew the number of jurors on a jury. He was able to state his desired outcome of his case to be to receive the death penalty. He was able to give a rational explanation for his desired outcome and was able to demonstrate that this desire to receive a death sentence is not based in delusion. He was able to indicate his understanding of the importance appropriate courtroom behavior when given a hypothetical situation involving the courtroom. He was able to name his attorneys. He stated he felt he could trust and work with his attorneys. He felt he could ask his attorneys questions regarding the legal proceedings. It is our opinion that Mr. Weik has a sufficient factual understanding of the legal system and the present ability to rationally consult with his attorneys. Therefore, it is our opinion that he is currently competent to stand trial.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: Mr. Weik has a diagnosis of Schizotypal Personality Disorder. He was able to discuss and describe his thoughts, feelings and actions prior to, during and after the alleged events. He reported hearing a voice telling him to kill himself prior

WEIK, JOHN EDMOND

951-0536

ADMITTED: 04/30/99

WILLIAM S. HALL PSYCHIATRIC INSTITUTE

BIRMINGHAM, ALABAMA 35293

defendant of 15 minutes on May 2, 1999; a clinical interview with the defendant for 10 minutes on May 3, 1999, and finally a clinical interview of two and one half hours with the defendant on May 6, 1999.

Mr. Weik has no history of psychiatric inpatient or outpatient treatment prior to the alleged incidents. He has no history of alcohol or illicit substance use or dependence. Mr. Weik's history reveals a pattern of social and interpersonal deficits. He appears to have had limited friendships and intimate relationships. He described having problems with peers in his school years and was "made fun of" as a child. During his evaluation, he at times demonstrated ideas of reference, for example hearing someone laughing in the hall during the clinical interview and wondering aloud if it might have something to do with him. His ideas of reference do not reach delusional proportions. He reported a history of vivid dreams and on two or three occasions experienced hypnagogic hallucinations. He has at times felt he could sense events before they would happen. He has experienced two episodes of depersonalization, both of which related to traumatic events. He has a belief that he and his family have been monitored by the CIA and the government. This is a belief shared by his family. His speech is significant for being vague and circumstantial at times, particularly when under stress. He also appears to interact with others in a guarded or constricted fashion, however, once he is comfortable with those with whom he is talking he is more relaxed and appropriate, can engage well in conversation and relate in an appropriate manner. Mr. Weik had a period of dysphoria after being fired from his job in January 1998, but these feelings subsided once he again became gainfully employed. He has also experienced periods of significant dysphoria since the alleged murder, but these periods, too, have been self-limiting. He has had suicidal thoughts during these times of dysphoria, but has not made serious suicide attempts. There is no evidence of a primary disorder of thought or mood. Based on these findings, Mr. Weik's symptoms are most consistent with a diagnosis of Schizotypal Personality Disorder.

Mr. Weik's social history reveals he was the third child in a family of six. He was raised in an intact family by his mother and father. He was the product of an uncomplicated pregnancy. He achieved developmental milestones in an unremarkable fashion. His mother related that he grew up in a "loving, stable home." She reported he seemed to be a "happy" child and presented no behavioral challenges for her. He has no history of head trauma. He has no history of physical or sexual abuse. His mother reported he had been in "lower learning" classes as a child. He dropped out of high school in the 11th grade after having been suspended for fighting. Following his termination of his education, he worked steadily and gainfully. He worked for an eight-year period as a machine operator in a factory. He was fired from this factory job after having been accused of threatening a coworker. Prior to his incarceration, he had been employed full time at a factory making fiberglass boats. Prior to his incarceration, Mr. Weik had been actively involved in his church. His hobbies included hunting and fishing. Mr. Weik has a history of one significant romantic relationship. This relationship was with the alleged victim. He became involved with her when he was in his twenties. They were involved for about two years until the birth of their son. Their relationship terminated reportedly because the alleged victim did not wish to marry Mr. Weik. Mr. Weik has no history of legal charges. Mr. Weik's family psychiatric history is significant for his father and paternal grandfather having been hospitalized for psychiatric illness.

WEIK, JOHN EDMOND
981-0536

ADMITTED: 04/30/99

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1000 W. 10TH STREET, SUITE 100
DENVER, CO 80202

is the attack on his ex-girlfriend. He was vague in his description of the voice and unsure of whether it originated from inside or outside of his head. He stopped hearing the voice prior to the shooting. He reported "feeling as if I were in a dream." He reported feeling as if he were "watching" the shooting happen from afar. These feelings of detachment constitute an episode of depersonalization, a common experience in a stressful or traumatic situation. Mr. Weik's experiences preceding the incident and during the incident are not consistent with a major mental illness. Following our evaluation, there is no evidence of a major mental illness or defect which would have prevented Mr. Weik from appreciating the nature of his acts or from differentiating between legal and moral right and legal and moral wrong at the time of the alleged offenses. It is our opinion, therefore, pursuant to the McNaughten Standard that Mr. Weik is currently responsible toward his charges.

CONCLUSION REGARDING CAPACITY TO CONFORM: There is no evidence that Mr. Weik was suffering from a major mental illness which would have substantially impaired his ability to control his behavior on the date of the alleged offenses. It is our opinion, therefore, that he did possess the capacity to conform his conduct to the requirements of the law on the day of the alleged offenses.

RECOMMENDATIONS: There are no psychiatric recommendations.

Pamela M. Crawford

Pamela M. Crawford, M.D.
Acting Director, Forensic Services

PMC/rba

D: 05/11/99
RT/EM: 05/12/99
F/EM: 05/13/99(pmc)

WEIK, JOHN EDMOND
981-0536
ADMITTED: 04/30/99

WILLIAMS HALL PSYCHIATRIC INSTITUTE

3401

Geoffrey R. McKee, PhD, ABPP
 Forensic Psychological Services
 P.O. Box 7471 • Columbia, SC 29202
 Voice Mail (803) 749-9065

May 30, 1999

Marva Hardee-Thomas, Esq.
 P.O. Box 50503
 Summerville, SC 29485

Re: State v. John Edward Weik

Dear Ms. Hardee-Thomas:

Pursuant to your request, below is an accounting of my time in the above-referenced case:

<u>Date</u>	<u>Description of Service</u>	<u>Hours</u>	<u>Amount</u>
2/22/99	Records review	3	\$ 450.00
3/6/99	Travel Columbia-Dorchester CDC/return; Interview Mr. Weik; attempted PAI	2 5	300.00 750.00
5/15/99	Travel Columbia-Dorchester CDC/return; Interview Mr. Weik; TMT, I&O, SIRS, MMPI-2, PCL-R; test scoring/interpretation	2 6	300.00 900.00
5/17/99	Affidavit, report	1	150.00
5/27/99	Consultation w/ Mr. Beauford, Ms. Hardee-Thomas, & Mr. Bloom	1	150.00
	SUBTOTAL	20	\$ 3,000.00
5/29/99	Travel Columbia-Dorchester Court House; Consultation w/ Mr. Beauford, Ms. Hardee-Thomas Expert testimony		
		Full-day flat fee	1,200.00
	FINAL TOTAL		\$ 4,200.00

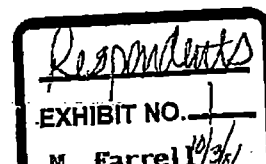
Check #1946

Please make the check of \$4,200.00 payable to my private practice, Forensic Psychological Services, and mail to the address above. For tax purposes, my TIN is: 57-0818621.

Thank you for your prompt attention to this account.

Geoffrey R. McKee, PhD

Geoffrey R. McKee, PhD, ABPP
 Diplomate in Forensic Psychology



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF DORCHESTER

3 JOHN WEIK,

4 Petitioner(s),

5 CIVIL ACTION NO.
6 CP-18-575

7 vs.

8 JON OZMINT, COMMISSION OF THE
9 SOUTH CAROLINA DEPARTMENT OF
10 CORRECTIONS & THE STATE OF
11 SOUTH CAROLINA,

12 Defendant(s).

COPY

13 DEPOSITION OF: PATRICIA D. RICKBORN

14 DATE: Tuesday, October 3, 2006

15 TIME: 2:23 p.m. through 3:47 p.m.

16 LOCATION: Law Offices of
17 Melissa J. Kimbrough
18 1811 Pickens Street
19 Columbia, South Carolina

20 TAKEN BY: Attorneys for the Petitioner(s)

21 REPORTED BY: MADONNA M. FARRELL-PERKINS
22 Registered Professional Reporter
23
24
25



APPEARANCES OF COUNSEL

On behalf of the Petitioner:

STIRLING & O'CONNELL
BY: MICHAEL P. O'CONNELL
145 King Street, Suite 411
P.O. Box 882
Charleston, SC 29402
(843) 577-9890

-and-

AND: MELISSA J. KIMBROUGH
1811 Pickens Street
Columbia, SC 29201
(803) 765-2796

On behalf of the Respondent:

OFFICE OF THE ATTORNEY GENERAL
BY: DONALD J. ZELENKA
Post Office Box 11549
Columbia, SC 29211
(803) 734-6305

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION: It is stipulated by and
2 between Counsel that this deposition is
3 being taken in accordance with the South
4 Carolina Rules of Civil Procedure; and that
5 the deponent does not waive reading and
6 signing of this deposition.

7 * * * * * * * * * * * * * * *

8 PATRICIA D. RICKBORN, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY MR. O'CONNELL:

12 Q. State your full name, ma'am.

13 A. Patricia D. Rickborn.

14 Q. Ms. Rickborn, I previously explained your
15 right to read and sign the deposition. Is it your
16 position that you do not wish to exercise that
17 right?

18 A. No.

19 Q. You don't want to do it?

20 A. No, I don't want to do it.

21 Q. During this deposition, this is as if you
22 were actually in court on the stand. So if we take
23 breaks, you can't discuss the substance of your
24 testimony with either me or Mr. Zelenka or
25 Ms. Kimbrough. You can talk about the weather or

02:23PM

02:23PM

02:23PM

1 anything else, but you can't talk about the
2 substance of your testimony.

3 You also -- if there's a question you have
4 about a question that I ask, or if there's
5 something unclear, then you need to direct that
6 question to me. The same is true when Mr. Zelenka
7 questions you; if you have a question that you want
8 to ask about anything he asks you, then you need to
9 direct that to him and not to me or Ms. Kimbrough.
10 Okay?

02:24PM

02:24PM

11 A. Okay.

12 Q. Ms. Rickborn, what do you do for a living?

13 A. I'm a private investigator.

14 Q. And I want to take you through your
15 educational background, your professional
16 experience. Tell me about your education after
17 high school.

02:24PM

18 A. I went to school at USC at Irvine in
19 California for two years; and the third year, I
20 returned home and went to work for Pope Ravenel.

02:24PM

21 Q. "Home" being South Carolina?

22 A. I'm sorry, yes, South Carolina. Beaufort,
23 then later Columbia.

24 Q. Beaufort?

25 A. Yeah.

02:25PM

1 Q. After you finished working for Mr. Ravenel,
2 what did you do?

3 A. I went to work for the Richland County
4 Public Defender's Office.

5 Q. Do you recall what year that was?

02:25PM

6 A. 1985.

7 Q. And what did you do for the Richland County
8 Public Defender?

9 A. At first, I headed the law clerks. My plan
10 was to finish my undergrad and go to law school,
11 but I got involved in doing investigation with
12 investigators in the office, so I went that way.

02:25PM

13 Q. Who was the Public Defender at that time?

14 A. John Young.

15 Q. And you later worked for -- after Mr. Young
16 left the Public Defender's Office?

02:25PM

17 A. Doug Strickler was the acting Public
18 Defender for a time. Then David Bruck was the
19 Public Defender for a time. Then Doug was acting
20 Public Defender again. Then a gentleman named Tom
21 Quinn became the Public Defender.

02:25PM

22 Q. This was all while you were working there?

23 A. Yes.

24 Q. How long did you work for the Public
25 Defender?

02:25PM

1 **A.** 1992.

2 **Q.** In 1992, what did you do?

3 **A.** Went into private practice.

4 **Q.** And private practice, you mean private
5 investigation?

02:26PM

6 **A.** Private investigation, yes.

7 **Q.** You need to tell me if you get
8 uncomfortable, physically uncomfortable, because I
9 know you've recently had surgery. So if you need
10 to take a break --

02:26PM

11 **A.** Thank you.

12 **Q.** -- you need to tell me, or Mr. Zelenka when
13 he asks questions.

14 **A.** I'm just kind of pushing right now.

15 **Q.** All right. You went into private practice
16 in 1992.

02:26PM

17 **A.** Uh-huh.

18 **Q.** Did you become license by the State Law
19 Enforcement Division?

20 **A.** Yes.

02:26PM

21 **Q.** You've been continuously licensed since
22 1992?

23 **A.** Yes, sir.

24 **Q.** When you worked at the Public Defender, were
25 you actually licensed or was that --

02:26PM

1 **A.** You couldn't actually be licensed and work
2 for the Public Defender's Office.

3 **Q.** During your time at the Public Defender's
4 Office, did you begin working on death penalty
5 cases?

02:26PM

6 **A.** Yes.

7 **Q.** Do you recall when that was, approximately?

8 **A.** Oh, probably '85 or '86. It was the Donell
9 Williams' case.

10 **Q.** What did you -- what kind of investigation
11 did you do?

02:27PM

12 **A.** I did pretty much -- probably law clerk
13 work, but I did a lot of tracking down potential
14 witnesses, a lot of things that I later found out
15 were mitigation work on the case. Tracking down
16 records and that sort of thing, mental health
17 records.

02:27PM

18 **Q.** Tell me what a mitigation investigator is in
19 death penalty cases.

20 **A.** Well, the role of a mitigation investigator
21 is to do a social history, find out the background
22 of family health, work, mental health, history of
23 the client, preferably even before birth, to see
24 how the mother was during the pregnancy, if
25 anything happened, if she took any sort of drugs

02:27PM

02:27PM

1 or, you know, any injuries.

2 Q. Right.

3 A. So even before birth, try to do the whole
4 life of the --

5 Q. At some point, did your job at the Public
6 Defender's Office evolve into being the mitigation
7 investigator for death penalty cases?

8 A. Yes.

9 Q. And you think that was approximately what
10 year?

11 A. During -- while I was at the Public
12 Defender's Office? Well, I only -- I worked three
13 capital murder cases while I was at the Public
14 Defender's Office, but I still maintained -- did
15 major crime, murder and felony cases. So I wasn't
16 just a mitigation investigator.

17 Q. During the time when you were at the Public
18 Defender's Office, you said you worked three
19 capital murders.

20 A. Yes.

21 Q. Was that as a mitigation investigator?

22 A. Primarily.

23 Q. Did you receive any formalized training in
24 mitigation investigation?

25 A. I studied in San Francisco -- I'm going to

02:28PM

02:28PM

02:28PM

02:28PM

02:28PM

1 think a four-, maybe five-day seminar with people
2 who were teaching what you do to prepare for the
3 investigator's role in preparing for a capital
4 murder case.

5 Q. A mitigation investigator.

02:29PM

6 A. Right, mitigation.

7 Q. When you left -- you said by the time you
8 left the Public Defender's Office, you said you
9 worked on three capital murders. Did you -- when
10 you went into private practice in 1992, did you
11 continue to work on death penalty cases?

02:29PM

12 A. Yeah. I -- my first case in private case
13 was a capital murder case on an appellate phase,
14 Andy Smith, with Frank Draper.

15 (Off-the-record discussion.)

16 BY MR. O'CONNELL:

17 Q. Prior to 1999 and your involvement in this
18 case, which as I understand began in 1999, how many
19 capital cases had you been involved in or in which
20 you were the mitigation investigator?

02:29PM

21 A. I'm going to say 15 to 20 at that point.

22 Q. That includes in private practice and at the
23 Public Defender's Office.

24 A. Yes.

25 Q. When do you remember becoming involved in

02:30PM

1 this case?

2 Actually, let's do this before we get that
3 far. I've marked what's been marked as
4 Petitioner's -- or Exhibit Number 1. Do you
5 recognize that?

02:30PM

6 **A.** Yes. That's the Affidavit that I sent to
7 attorneys whoever inquire about using my services.

8 **Q.** I only have one page of this. Apparently
9 there is more than one page. Is that fair to say?

10 **A.** Yeah, there is two pages. That is the first
11 page of the Affidavit.

02:30PM

12 **Q.** Is this a -- is this Affidavit that's been
13 marked as Petitioner's Exhibit 1 tailored to death
14 penalty cases?

15 **A.** Yes.

02:30PM

16 **Q.** And what is the purpose of you preparing
17 that document?

18 **A.** To -- so the attorney can review what my
19 experience is and what training or on-hands
20 experience...

02:31PM

21 **Q.** Do you have a file anymore in this case?

22 **A.** No. I took my file to -- I'm only required
23 to keep them for three years. And I took my file
24 to what was then -- I still call it the Death
25 Penalty Resource Center, but I think it was Capital

02:31PM

1 Litigation at the time.

2 (PETITIONER'S EXH. 1, 3/1/99 Letter
3 from Patti Rickborn, was marked for
4 identification.)

5 MR. O'CONNELL: Move to admit
6 Petitioner's Exhibit Number 1. Any
7 objection?

02:31 PM

8 MR. ZELENKA: No objection. Where did
9 you get that, defense counsel file?

10 MR. O'CONNELL: Everything that I have
11 came out of defense counsel's file for Patti
12 Rickborn.

02:31 PM

13 MR. ZELENKA: Okay. No objection.

14 MR. O'CONNELL: In fact, I don't know
15 that that's clear from the record, but can
16 you enter into a stipulation that this stuff
17 all came from defense counsel's files, that
18 is, all of her reports?

02:31 PM

19 MR. ZELENKA: If you tell me that's
20 where you got them, I don't have any -- I'll
21 stipulate to that.

02:31 PM

22 MR. O'CONNELL: Okay. That's where I
23 got them. Well, they weren't in my file in
24 this case.

25 BY MR. O'CONNELL:

02:32 PM

1 Q. Now, Petitioner's Exhibit Number 1, that is
2 dated March 1, 1999. Do you know if you -- that
3 this was submitted to them prior to the time you
4 became involved in this case?

5 A. Yes.

02:32PM

6 Q. Typically, in your experience -- you said
7 you've worked 15 to 20 -- 15 to 20, I believe,
8 prior to 1999. What about since then, death
9 penalty cases?

10 A. I'm probably up to about -- I currently have
11 two cases pending, and that would bring me up to
12 33.

02:32PM

13 Q. All right. What is the point of a
14 mitigation investigator? What is it for?

15 A. In the event the client is convicted in the
16 penalty phase -- I mean, in the guilt phase of the
17 trial, to try to show the jury that this person may
18 have had things that occurred to them physically,
19 mentally, growing up in their life, may have had
20 brain damage -- to give the explanation to the jury
21 of why this person may have committed this crime.

02:32PM

22 Q. Are there any other uses that, in your
23 experience, that defense lawyers make of the
24 investigation results that you produce in death
25 penalty cases?

02:33PM

02:33PM

1 A. Well, they send them to the mental health
2 expert so that they can know the background. And
3 sometimes I set up interviews with people with
4 mental health experts. Certainly use some of the
5 witnesses that I interviewed. Sometimes they're
6 friends, neighbors. Lay witnesses.

02:33PM

7 Q. In your experience in being a mitigation
8 investigator in death penalty cases, would you
9 describe to me the methodology that you use,
10 particularly in interviewing family members?

02:34PM

11 A. Well, when I first meet the family members,
12 I don't even start taking notes at that time. My
13 initial contact, I talk to them; I, you know,
14 empathize; and I do -- with the trouble they
15 have -- their child or sibling or niece or nephew
16 has been charged with a pretty heinous crime for it
17 to warrant the death penalty.

02:34PM

18 And, you know, sometimes they're -- they
19 feel very guilty and they're reticent to talk about
20 anything, or they come from a bad background, and
21 there's fear in discussing any abuse that may have
22 occurred.

02:34PM

23 Q. Now, you described family members of
24 criminal Defendants that you've been involved with
25 in death penalty cases being reticent to talk about

02:34PM

1 family history, and you also mentioned things about
2 -- along -- as part of the family history would
3 be --

4 A. Shame and fear.

5 Q. -- shame and fear of abuse and things like
6 that?

7 A. Yeah.

8 Q. What do you do to overcome that? If people
9 don't want to talk to you about this stuff when you
10 first talk to them, what do you do?

11 A. I don't know. Well, I spend a great deal of
12 time. I go back and -- I don't start out writing
13 down like a lab experiment. I try to get to know
14 them and find out what has happened in their lives.
15 And it takes a while to --

16 Q. What do you have to do to get people to open
17 up?

18 A. Spend a good deal of time with them and talk
19 to them and don't look down on them, so they
20 eventually feel comfortable enough to open up.

21 Q. In your experience, what is the desirable
22 amount of time that you want to have to prepare a
23 mitigation case in a death penalty case?

24 A. A year.

25 Q. Why so long?

1 **A.** Well, if there are allegations of abuse and
2 things like that, it takes a long time for the
3 people to really trust you and open up to talk to
4 you. Plus there are locating records. You know,
5 if your client is 40 years old, you've got a lot of
6 records to try to locate and obtain, if possible.
7 And those things take -- they take time.

02:36PM

8 **Q.** Okay. In the death penalty cases -- and I'm
9 not talking about this case specifically -- but in
10 the other death penalty cases that you've been
11 retained as a mitigation expert -- investigator,
12 have you ever been hired less than three months
13 prior to trial?

02:36PM

14 **A.** I don't think less than three months ever.

15 **Q.** In this case, the Petitioner's Exhibit
16 Number 1 is the letter -- or the Affidavit that you
17 prepared -- is part of the Affidavit that you
18 prepared. It's dated March 1, 1999. And you said
19 that that was before you started working on it.

02:36PM

20 **A.** That would have been my first contact.

02:37PM

21 **Q.** Who was it that first contacted you to work
22 in this case?

23 **A.** Marva Hardee-Thomas.

24 **Q.** Did you know her before?

25 **A.** No, sir.

02:37PM

1 Q. Have you ever worked with her since then?

2 A. No, sir.

3 Q. How did she know to contact you?

4 A. She telephoned me and told me that I had
5 been referred by Capital Litigation -- either
6 Capital Litigation or the Death Penalty Resource
7 Center. I don't recall what it was at that time.

02:37PM

8 Q. Did you know, when she called you and asked
9 you to become involved, when the trial was
10 scheduled?

02:37PM

11 A. No, I didn't know a trial date at that time.

12 Q. When did you find out that the trial date
13 was March 24, 1999?

14 A. Probably -- well, I'm going to think that it
15 was after I had started doing -- it was after I
16 started doing the interviews and even before I knew
17 it was that close to time. I was getting upset
18 because I was not getting any return phone calls
19 back from Ms. Thomas --

02:39PM

20 Q. Marva Hardee-Thomas.

02:39PM

21 A. Marva Hardee-Thomas.

22 Q. Okay.

23 A. -- regarding anything I contacted her about.
24 And I was really getting anxious about knowing who
25 the mental health experts were, because as I did

02:39PM

1 these interviews, I could tell that there were
2 going to be a bunch of allegations of abuse, and
3 that they were probably going to involve getting
4 government records which are hard and long. And
5 right about that time that I found out that it
6 was -- the trial was going to go in March --

02:39PM

7 Q. You found out in March or -- the trial was
8 actually May 24th.

9 A. I think I started -- yeah.

10 Q. It looks like you started to work in March
11 of '99, and the trial was actually May 24th.

02:39PM

12 A. May, okay. Yeah, that was confusing to me.
13 It wasn't in March. I think that it was -- it was
14 well into doing my interviews when I found out that
15 the trial was going to be in May.

02:39PM

16 Q. When you found out the trial was going to be
17 in May, did that -- what was your reaction?

18 A. I was even more alarmed, because I wasn't
19 getting any return phone calls, and I did not know
20 who to send the stuff I was getting to.

02:39PM

21 Q. Now, you said that the first contact you had
22 was with Marva Hardee-Thomas, when she called you
23 up and asked you to become involved.

24 A. Uh-huh.

25 Q. Who was your contact person between the two

02:39PM

1 lawyers?

2 **A.** Beauford Percy and Marva Hardee-Thomas. The
3 one time I met with them both together, Beauford
4 Percy told me that Marva Hardee-Thomas was going --
5 would be the contact person.

02:40PM

6 **Q.** The lawyer's name is actually Percy
7 Beauford.

8 **A.** I'm sorry; I'm sorry. I had very little
9 contact with him.

10 **Q.** So your contact person then -- it was clear
11 to you from the beginning that it was Marva
12 Hardee-Thomas.

02:40PM

13 **A.** Absolutely.

14 **Q.** And do you recall how you found out that the
15 trial was scheduled for March 24th -- May 24th?

02:40PM

16 **A.** It was by phone. I had called the office.

17 **Q.** Whose office?

18 **A.** Marva Hardee-Thomas' office. And sometimes
19 a young lady answered the phone; sometimes it was
20 just an answering machine. This time, the young
21 lady said Ms. Marva Hardee-Thomas was heading out
22 of the office.

02:40PM

23 The two or three times I actually talked to
24 her, she was always heading somewhere and, you
25 know, gave me, like, two seconds on the phone.

02:40PM

1 This time, I said, you know, "These people aren't
2 going to have time to -- the mental health experts
3 aren't going to have time to get this information"
4 -- I'm sorry -- "and make interviews with the
5 people they need to to run the tests that they need
6 to do."

02:41PM

7 And it was right about that time, I'm not
8 sure if she told me the trial date or the young
9 lady on the phone, during one of those phone
10 calls --

02:41PM

11 Q. Young lady in her office?

12 A. Yes.

13 Q. Okay.

14 A. -- told me the trial date. And that's when
15 I -- I become sort of stunned that it may have
16 taken me to the next day. But I called both she
17 and Percy Beauford and told them that I did not
18 feel comfortable working on this case. Not only
19 was I getting no response, I didn't know who the
20 mental health experts were. And with it being this
21 -- you know, coming up that quickly, I was not
22 comfortable that I could get a mitigation case
23 together by that time. And I wanted -- I would not
24 be working on the case.

02:41PM

02:41PM

25 Q. What was -- the obvious question to me is

02:42PM

1 why you didn't just stick in there with this --

2 A. Because I didn't see how it could possibly
3 be prepared appropriately to -- I didn't think
4 there was anything I could do to get it ready by
5 myself. And I wasn't getting any cooperation from 02:42PM
6 attorneys. I didn't know the name of a mental
7 health expert. I didn't know anybody else involved
8 in the case. You know, not any other crime scene
9 investigator, not -- you know, I'm sorry. There
10 was an investigator who was handling some of the 02:42PM
11 guilt phase stuff that I met. I can't remember his
12 name.

13 Q. Robert Minner?

14 A. Yes. And -- but that was the only other
15 person. And I was not getting any cooperation, and 02:43PM
16 I'll say the attorneys, but for Marva
17 Hardee-Thomas, who was supposed to be my contact
18 person.

19 Q. Did Marva Hardee-Thomas or Percy Beauford
20 provide you with any investigative leads? 02:43PM

21 A. No, I got those myself.

22 (PETITIONER'S EXH. 2, Patti Rickborn's
23 File, was marked for identification.)

24 BY MR. O'CONNELL:

25 Q. I want to show you what's been marked as 02:43PM

1 Petitioner's Exhibit Number 2 and ask you -- these
2 are -- several is probably an understatement -- but
3 a number of reports that have various dates, some
4 of which are undated. Do you recognize those? And
5 I'd like for you to go through -- page through to
6 make sure that they're all reports that you
7 recognize. You don't need to read every one out
8 loud, but if you would just go through those and
9 tell me whether those are things you recognize.

02:43PM

10 A. These are reports and notes from me.

02:48PM

11 Q. All right. Did you provide these to
12 Ms. Hardee-Thomas or -- and Mr. Beauford?

13 A. To Marva Hardee-Thomas.

14 MR. O'CONNELL: Okay. Move to admit
15 Petitioner's Exhibit Number 2.

02:48PM

16 MR. ZELENKA: No objection.

17 BY MR. O'CONNELL:

18 Q. Okay. Now, I want to go through some of
19 these reports with you, not all of them, you'll be
20 glad to know.

02:49PM

21 A. Okay.

22 Q. The first one is not dated. And that -- it
23 starts, "Attached are copies of immunization
24 records supplied by Berkeley County." Are you with
25 me on that?

02:49PM

1 **A.** Yeah.

2 **Q.** In the second paragraph of that, it appears
3 you are giving directions to Ms. Hardee-Thomas
4 about preparation and what she could expect the
5 Solicitor to do insofar as the testimony of the
6 children was concerned.

02:49PM

7 **A.** Yes.

8 **Q.** Why did you find it necessary to give this
9 sort of direction to the trial attorney --

10 **A.** She wasn't --

02:49PM

11 **Q.** -- or was this something -- no, go on.

12 **A.** She didn't seem to know what to do with the
13 information that I was giving her, you know, that I
14 was telling her we needed from the state hospital.
15 And so I wanted them to know that they needed to
16 follow up on this stuff and try to see if they can
17 get our mental -- whoever they were going to be --
18 mental health experts -- to try to see if, you
19 know -- I guess I was trying to give her direction.

02:50PM

20 **Q.** Because?

02:50PM

21 **A.** Because I didn't think she knew what to do.

22 **Q.** Okay. If you look at the fourth page, which
23 starts -- a report beginning -- it's dated
24 March 12, 1999 -- starts, "After we received the
25 report from the state hospital."

02:50PM

1 **A.** Yes.

2 **Q.** All right. Now, that is -- if you could
3 just take a second and read that for me. I want to
4 ask you some questions about it.

5 **A.** Yes, I am.

02:51PM

6 **Q.** All right. You just testified that the
7 first page was -- why you gave those sorts of
8 directions to Ms. Marva Hardee-Thomas. Is this
9 report dated March 12th also an example of giving
10 them directions or giving her directions because
11 she didn't seem to know what she was doing?

02:51PM

12 **A.** It didn't seem important to her that we get
13 the state hospital report, we review the state
14 hospital report, any mental health doctors we have,
15 get the mental health report. It just did not seem
16 important to her. So I was trying to tell them
17 what needed to be done, why it was important.

02:51PM

18 **Q.** All right. Look at the next page, also a
19 report dated March 12, 1999.

20 **A.** Uh-huh.

02:51PM

21 **Q.** It's "We need to get records for Eddie
22 from" -- and then go down to the paragraph that
23 starts, "We will need medical and psychological
24 records for Russell Weik."

25 **A.** Uh-huh.

1 Q. Are you with me?

2 A. Uh-huh.

3 Q. Now, look at the last sentence in that
4 paragraph. It states that "Ms. Weik told me that
5 one of the drugs that Mr. Weik was taking was
6 Thorazine."

02:52PM

7 A. Uh-huh.

8 Q. Why did you point out to Ms. Hardee-Thomas
9 that Mr. Weik was taking Thorazine? What did that
10 mean to you?

02:52PM

11 A. It meant that it was -- and I'm a layperson.
12 It sort of hits me as an antipsychotic, but it's
13 used to treat people who were having very serious
14 mental health problems.

15 Q. Why did you think it was important to point
16 that out to Ms. Hardee-Thomas?

02:52PM

17 A. Well, the social history of the client and
18 that I was -- feared that this man had heaped abuse
19 on the siblings --

20 Q. Okay.

21 A. -- and was -- thought maybe we should find
22 out what happened to him.

23 Q. Okay. Now, if you go to the report dated
24 March -- I'm sorry -- April 20, 1999, it starts,
25 "Attached" -- it's a several page report. And it's

02:53PM

1 got attached -- I'm sorry -- a list of potential
2 witnesses attached to it?

3 A. Yes.

4 Q. Are you with me?

5 A. Yes.

02:53PM

6 Q. All right. Then there are several pages of
7 names, addresses and phone numbers of witnesses.

8 A. Uh-huh.

9 Q. How did you find out about these people?

10 A. Talking to Eddie and his family.

02:53PM

11 MR. ZELENKA: Michael, which page are
12 we on?

13 MR. O'CONNELL: It's on -- a report
14 dated March -- April 20, 1999. It starts,
15 "Attached is a list of potential witnesses
16 for the penalty phase of the trial."

02:54PM

17 MR. ZELENKA: Okay. So Page 11 and 12.

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

19 MR. ZELENKA: Okay.

20 BY MR. O'CONNELL:

02:54PM

21 Q. I'm sorry. The question was, how did you
22 find out about these people?

23 A. From Eddie and his family.

24 Q. Now, is this -- and why did you point out
25 to Ms. Hardee -- or give this list to Marva

02:54PM

1 Hardee-Thomas?

2 A. Told her these are the number of potential
3 witnesses that I would need to interview, and
4 probably this information that I get from them
5 needs to go to mental health experts.

02:54PM

6 Also, I was still trying to see what they
7 were doing about getting a court order for the
8 father's military and hospital records.

9 Q. Did you ever get a court order for those?

10 A. Not that I ever knew of.

02:54PM

11 Q. Did you ever get those records?

12 A. No.

13 Q. Talk to me about the ease or difficulty of
14 getting military and -- records and military health
15 records.

02:55PM

16 A. It is very difficult. You know, I worked on
17 a case that we finally got some loose, but it took
18 over two years. They are protected every way
19 possible, even from court orders. I mean, you can
20 even get court orders, and they have some, you
21 know, other protection that comes in to shield you
22 from getting records on military personnel and
23 their health records.

02:55PM

24 Q. Are they -- have you obtained them in other
25 cases in which you've worked?

02:55PM

1 **A.** Yes, but, again, it took over two years.

2 **Q.** Okay. Does it always take two years or does
3 it sometimes take --

4 **A.** Sometimes I never get them.

5 **Q.** Does it ever take less time?

02:55PM

6 **A.** Never.

7 **Q.** That same report, on the last paragraph --
8 the one dated April 20th -- it says, "Is there any
9 word on an order from the medical records for the
10 client's father from the V.A. Hospital?"

02:56PM

11 **A.** Uh-huh. My concern was getting his mental
12 health records, you know, in hopes that that's
13 where they would.

14 **Q.** All right. Now, you're asking this question
15 of Ms. Marva Hardee-Thomas about a court order.

02:56PM

16 **A.** It was probably the fourth or fifth time I
17 asked her.

18 **Q.** Okay. Did she ever respond?

19 **A.** Never.

20 **Q.** So you don't know whether she got a court
21 order or not.

02:56PM

22 **A.** I do not know.

23 **Q.** Now, I want you to look at the interview --
24 I don't have the pages numbered -- but the
25 interview of Amy Weik which is dated April 21st,

02:56PM

1 1999. It's part of Petitioner's Exhibit Number 2.
2 It has her name, "Interview, Amy Weik," in the
3 upper left-hand corner.

4 **A.** I have it.

5 **MR. ZELENKA:** I have it as Page 18.

02:57PM

6 **MR. O'CONNELL:** Okay.

7 **BY MR. O'CONNELL:**

8 **Q.** Now, do you remember talking with Ms. Weik?

9 **A.** Yes.

10 **Q.** What kind of interview was that? How would
11 you describe it in terms of whether it was a
12 difficult interview, an easy interview?

02:57PM

13 **A.** This was probably not the first time I
14 had -- as a matter of fact, I'm going to say it's
15 not the first time that I spoke with her. I spoke
16 with her several times on a daily basis before she
17 started telling me things. I don't really do a
18 report, a data report, until I start getting some
19 information.

02:57PM

20 **Q.** Okay.

02:58PM

21 **A.** And, yeah. I mean, it's -- it was very hard
22 for her to talk about it, very long. It was stop
23 and start. She cried. And she was in a great deal
24 of fear still that had been drilled into her by her
25 father all her life.

02:58PM

1 Q. When -- you have dated these reports, all
2 but the first two. What is the significance of
3 that date?

4 A. That probably just means it was a --

5 Q. It says, "On 4-21-99, I interviewed the
6 client and his sister." When would this report
7 typically have been given to the defense lawyers?

8 A. Oh, I probably faxed it to them as soon as I
9 printed it out.

10 Q. Which would have been within --

11 A. Maybe by the 22nd.

12 Q. Okay. Now, I want you to go to the report
13 dated April 22, 1999. It's about three pages.
14 It's Amy's report, and then there's Joan Ferrer.

15 A. Okay.

16 Q. And the next one is, "After speaking with
17 client's mother, Lillie Weik"?

18 A. Yes.

19 Q. Now, it says there that, "After speaking
20 with client's mother, Lillie Weik, on several
21 occasions I felt that she had shared all the
22 information with me that she intends to share at
23 this time. She is very protective of her husband,
24 Russell Weik."

25 When you said that this was all she was

1 going to share with you at this time, what sort of
2 expectations did you have about getting information
3 from her in the future?

4 A. I felt like I would be able to, but it would
5 take a good many meetings, conversations.

02:59PM

6 Q. Do you know whether, at this point -- I know
7 we are going back quite a bit of time --

8 A. That's all right.

9 Q. -- but do you know at this point whether you
10 knew that the trial was then scheduled for
11 May 24th?

03:00PM

12 A. I honestly don't recall.

13 Q. Did you get any reply to this, or do you
14 remember getting any reply from Ms. Hardee-Thomas
15 about this report when you said, you know, "At this
16 time, this is all she's going to give me"? Was
17 there any reply such as, "You need to get back with
18 her; the trial is coming up"?

03:00PM

19 A. No.

20 Q. All right. Now, the very next report -- I'm
21 sorry; not the next one. The next one is with
22 Stephen Walker. Then the one right after that is
23 dated April 23, 1999.

03:00PM

24 A. Uh-huh.

25 Q. And it's a memo to Donna Swartz-Watts.

03:01PM

1 A. Uh-huh.

2 Q. And if you would just read that first
3 paragraph.

4 A. "I spoke to Ms. Hardee-Thomas this
5 morning" --

03:01PM

6 Q. You can read it to yourself. I just want
7 you to be familiar with it, okay?

8 A. Uh-huh, yes. Yeah.

9 Q. All right. It says, "I asked her who the
10 mental health experts are for this case, and she
11 gave me your name and numbers."

03:01PM

12 A. Uh-huh.

13 Q. Prior to that time, had you been given any
14 information from either attorney as to who their
15 mental health experts were?

03:01PM

16 A. None.

17 Q. Had you made previous inquiries, prior to
18 April 23, 1999, as to who the mental health experts
19 were?

20 A. Yes.

03:01PM

21 Q. And when you made those kind of inquiries,
22 what kind of response did you get?

23 A. None.

24 Q. I mean, none as in --

25 A. I didn't get return calls. My faxes weren't

03:01PM

1 answered.

2 Q. Faxes were or weren't?

3 A. Were not answered.

4 Q. Faxes asking what?

5 A. Well, sending these things to her. I was
6 sending these things by fax.

03:02PM

7 Q. Okay. When you would call down there, you
8 said that you would either -- who did you do --

9 A. I don't know who the young lady was.

10 Q. You either talked to some person who worked
11 in her office --

03:02PM

12 A. (Moves head up and down.)

13 Q. Did you ever have an opportunity to leave a
14 voice mail?

15 A. Oh, yes. I left many voice mails.

03:02PM

16 Q. When you would leave a message with either
17 the lady who answered the phone or voice mails,
18 would you ask -- would your practice then -- did
19 you ask specific questions?

20 A. I began to. When I was not getting any
21 response, I would ask, on the machine or leave a
22 message with the young lady, "I must know who the
23 mental health experts are. Please contact me."

03:02PM

24 And when I would -- got her on the phone,
25 the maximum two or three times, I would ask her

03:02PM

1 specific questions, and she would just put me off.

2 Q. What would she say?

3 A. "I'm on my way somewhere. I'll get back
4 with you," you know, always on the way out the
5 door. And, you know, it started becoming clear to
6 me that she did not -- she was not going to be able
7 to prepare this case for trial.

03:03PM

8 Q. Had you ever run into that before or since,
9 where a lawyer didn't respond?

10 A. Not to -- oh, to not respond at all? No.

03:03PM

11 Q. The last report that I've got -- I'm sorry
12 -- the last report from you in that Exhibit
13 Number 2 is dated April 29th, 1999. And it's
14 address to Percy Beauford and Marva Hardee-Thomas.

15 A. Uh-huh.

03:03PM

16 Q. Now, this is a clearly -- make sure you are
17 on the same page with me -- but this is clearly a
18 letter of resignation.

19 A. Yes.

20 Q. Is that a fair characterization?

03:04PM

21 A. Yes.

22 Q. Do you think this was the -- had you given
23 them any clue, before April 29th, 1999, that you
24 were going to resign?

25 A. Yes. And at that time, I left a message for

03:04PM

1 Percy Beauford as well, not just Marva
2 Hardee-Thomas. I was completely frustrated with
3 it. I did not feel at that point I could do -- I
4 could -- anything I did was going to help John
5 Weik, because reports that don't get to mental
6 health experts and don't get, you know -- I was
7 getting no response from them, and I simply -- I
8 had left -- actually, I think I left two with Marva
9 Hardee-Thomas and one with Percy Beauford.

03:04PM

10 Q. Messages to the effect --

03:05PM

11 A. Yeah, saying that I had never been retained.
12 I never even seen an order, you know, appointing me
13 on this case. I was getting no response from them.
14 I mean, as far as I was concerned, I wasn't working
15 with anybody. There was nobody to work with.

03:05PM

16 Q. Did you ever experience that before this
17 case?

18 A. Not to this degree.

19 Q. How would you characterize your relationship
20 with attorneys in cases prior to this case? Are
21 you the sort of investigator that was shy about
22 telling people what you think?

03:05PM

23 A. No.

24 Q. How would you characterize yourself?

25 A. In dealing with the attorneys I work for?

03:05PM

1 Q. Sure.

2 A. I tell them what I see and what I think it
3 looks like, is going on when I interview people and
4 situations I see and -- I tell them what I think
5 and what my opinion is, what's out there.

03:06PM

6 Q. Prior to this case in 1999, even going to
7 the extent of reporting -- or pointing out to the
8 lawyers their shortcomings?

9 A. I had done that.

10 Q. Never had a problem doing that?

03:06PM

11 A. No, no. But -- and not that I would say,
12 you know, "You're just stupid," no. Something that
13 I may have done before in a case and I would
14 recognize it and say, "We might want to try this or
15 do this, you know, in a case. I learned this doing
16 another case."

03:06PM

17 Q. Look at the last paragraph of the April 29th
18 memo.

19 A. Yes.

20 Q. It says, "I do not know if I need to resign
21 in this case because I do not know if an order was
22 ever approved by the judge for me to work on this
23 case. In fact, I took myself off of another case
24 to work on this case."

03:07PM

25 A. Uh-huh.

1 Q. "I will not be able to assist you further
2 with this case." Did you ever see an order --

3 A. Never.

4 Q. -- to hire -- approving your hiring?

5 A. Never.

03:07PM

6 Q. Was this the first inquiry you made about an
7 order as to -- whether an order had been signed by
8 a judge approving your hiring?

9 A. No. I asked about it right up front because
10 of trouble I had had in the past with not getting
11 orders signed.

03:07PM

12 Q. Okay. Actually, the last part of that
13 exhibit -- not actually part of the exhibit. If I
14 may, it's a letter -- Don, with your permission,
15 what I want to do is the last -- that was clipped
16 to this -- was a letter from Marva Hardee-Thomas
17 dated April 30th. I want to make that a separate
18 exhibit, if that's okay with you.

03:08PM

19 MR. ZELENKA: We could, but we could
20 refer to it from the trial record.

03:08PM

21 MR. O'CONNELL: Do you know what the
22 exhibit number is? I don't have any idea.

23 (Off-the-record conference.)

24 MR. O'CONNELL: Do you need to take a
25 break?

03:08PM

1 THE DEPONENT: I'm just leaning
2 forward. It's okay for right now.

3 (Off-the-record conference.)

4 (PETITIONER'S EXH. 3, 4/30/99 Letter to
5 Patti Rickborn from Marva Hardee-Thomas, was
6 marked for identification.)

7 BY MR. O'CONNELL:

8 Q. I want to show you what's been marked as
9 Petitioner's Exhibit Number 3. Do you recognize
10 this letter?

03:16PM

11 A. Yes.

12 Q. Did you receive that letter --

13 A. Yes.

14 Q. -- on or about April 30th, 1999?

15 A. Yes.

03:16PM

16 Q. I can't tell -- can you tell whether it was
17 faxed or mailed?

18 A. It was mailed to me.

19 Q. I want you to look at the last sentence in
20 the second full paragraph.

03:16PM

21 A. Last sentence?

22 Q. Yes, I'm sorry. "Please note that
23 Mr. Beauford" -- would you read that to yourself?

24 A. "Is the lead attorney in this matter. I am
25 obligated in giving him all information. He

03:16PM

1 decides how, when and what is to be done."

2 Q. Was that your impression --

3 A. No.

4 Q. -- based on your contact with the two
5 lawyers?

03:17PM

6 A. No, sir.

7 Q. What was your impression about who was going
8 to be making decisions in this case?

9 A. Well --

10 Q. If you had an impression. First, did you
11 have an impression based on your contact with the
12 lawyers?

03:17PM

13 A. Well, I don't know that I had an impression
14 who was lead attorney. I do know that I was told
15 that Marva Hardee-Thomas was to be my contact
16 person.

03:17PM

17 Q. Did you understand that she was a lawyer?

18 A. Yes.

19 Q. Did she act like a lawyer?

20 A. Well --

03:17PM

21 MR. ZELENKA: Object to leading.

22 BY MR. O'CONNELL:

23 Q. How would you characterize her as -- did
24 she -- I don't think it's leading. You can answer
25 the question.

03:17PM

1 A. She didn't seem very serious, and she didn't
2 seem very knowledgeable.

3 Q. Okay. It says on the last sentence of the
4 first page, "You must know that I sent Donna
5 Swartz-Watts and Dr. McKee all the documents for
6 this case."

03:18PM

7 A. I have no idea how I must know that. I
8 never knew it.

9 Q. One of the reports in Petitioner's Exhibit
10 Number 2 is a memo by you to Donna Swartz-Watts
11 that we previously talked about dated April the
12 23rd.

03:18PM

13 A. Uh-huh. That would have -- you know, the
14 day I heard about it was the day Chris bundled the
15 stuff and took it to her.

03:18PM

16 Q. And Chris is?

17 A. I'm sorry, Chris Fredrick. And she was
18 working in my office at the time.

19 Q. Do you know or did you have any information
20 -- maybe I'll just ask you if you asked her. Did
21 you have any information that Ms. Marva
22 Hardee-Thomas delivered to Dr. Swartz-Watts and
23 Dr. McKee all the documents in this case?

03:18PM

24 A. None.

25 Q. Or did you have any information that they

03:19PM

1 delivered the documents you produced?

2 A. None.

3 Q. Did you -- it says, "I asked you" -- "I only
4 asked you to deliver the videotapes to Donna, which
5 she has never seen."

03:19PM

6 A. I don't recall any videotapes. I just read
7 that earlier when I was looking at this, and I
8 thought about it. I don't recall any videotapes,
9 having any, seeing any. I know I didn't see any.

10 Q. Do you recall being asked by
11 Ms. Hardee-Thomas to transport any videotapes to
12 Donna Swartz-Watts?

03:19PM

13 A. No, I don't recall that at all.

14 Do we know what these videos were supposed
15 to be of?

03:19PM

16 Q. I'm afraid that I can't answer you.

17 A. I'm sorry.

18 Q. That's all right.

19 In the second page, second to last
20 paragraph, "In response to" -- she writes, "In
21 response to faxed documents not getting responses,
22 all I can do is forward the items to Mr. Beauford
23 and wait for a response."

03:20PM

24 Was that -- that indicates that she's a
25 conduit -- well, what does that indicate to you

03:20PM

1 about her role?

2 **A.** Well, it is a direct -- you know, direct
3 disagreement what I was told, that she would be the
4 contact person, that I would send those things to
5 her, and she would do stuff with them.

03:20PM

6 **Q.** Do stuff with them?

7 **A.** Like give them to the mental health experts
8 or try to get court orders that we needed or go to
9 the state hospital and talk to the doctors, you
10 know, the staff that did the evaluation, those
11 sorts of things.

03:20PM

12 **Q.** Have you ever gotten somebody, a lawyer that
13 said something like this to you, "All I can do is I
14 forward the items to Mr. Beauford and wait for a
15 response"?

03:21PM

16 **A.** Never.

17 **Q.** I'm talking about from a lawyer.

18 **A.** Yes, that's what -- I assumed you were, yes.

19 **Q.** In this letter, she also states on the first
20 page -- this is in Petitioner's Exhibit Number 3
21 again -- on the third full paragraph, in the middle
22 -- about two-thirds down, it says, "On April 8,
23 1999, I received your letter requesting an
24 interview of the children. I faxed this
25 information directly to Mr. Beauford. Mr. Beauford

03:21PM

03:22PM

1 needs to make a decision on these issues, not me.
2 I never knew you were waiting for an answer."

3 Her statement that she forwarded them to
4 Mr. Beauford and that he would make a decision on
5 these issues and not her, what did you make of
6 that?

03:22PM

7 A. I thought she was passing the buck.

8 Q. After the -- you said that you had -- how
9 many conversations do you think you had when Percy
10 Beauford was present?

03:22PM

11 A. One.

12 Q. And that was in terms of when you were
13 hired?

14 A. Uh-huh.

15 Q. When? Not specifically four days after --

03:22PM

16 A. Oh, when was it? It was just before I went
17 -- they introduced me to the client, who was being
18 held in -- I'm not sure in what town.

19 Q. Did you have any other contact with him
20 after this?

03:23PM

21 A. Only when I called him to resign. I sent
22 them both registered letters, telling them --
23 again, when apparently they weren't getting the
24 message -- that I was not going to be involved in
25 this case.

03:23PM

1 Mr. -- he called me on the phone when they
2 were in trial and said something to the effect of,
3 "The judge wants to know why you aren't in this
4 case -- in court."

5 I was absolutely stunned, and I said, "Well,
6 because I'm not on this case. I never saw an order
7 on this case. I -- you know, I never got any
8 cooperation. I called you. I sent you registered
9 mail saying I wasn't involved in this case. And
10 please tell the judge that I will be glad to show
11 up. I would also like the time to contact all the
12 other people who have left this case who worked on
13 it."

14 Q. What did you know about that?

15 A. I knew about that because I spoke with
16 someone I was working with on another case named
17 Donnie Gardner who told me that an entire -- at
18 least one whole set of people had been on this case
19 and had left the case.

20 Q. Okay.

21 A. I don't know who they were. That's all I
22 knew about it. But it pretty much seemed to hit
23 the spot.

24 Q. I want you to look at two documents. If you
25 go back to the first page of Exhibit 2, which I'm

03:23PM

03:24PM

03:24PM

03:24PM

1 handing you.

2 A. Okay.

3 Q. And it says, in the second full paragraph --
4 in fact, it's about half of the way down -- "In
5 fact, I think Mr. Bailey will rely on the testimony
6 of the children as the tool to get a sentence of
7 death for Eddie. Therefore, it would be great if
8 we could get any utterance from the client's son
9 through an interview with mental health experts
10 that he does not want his father executed. Of
11 course, there is no way of knowing what the child
12 is thinking without the opportunity to speak with
13 him."

03:25PM

14 And then -- this is an undated memorandum.
15 Does the next paragraph help you place it in
16 context as far as when you did this -- when you
17 made this report to the lawyers?

03:25PM

18 A. I'm --

19 Q. It says, you know, that I'm still scheduling
20 a time to meet with the family and the client. And
21 then there are several --

03:25PM

22 A. I had met with the client once before before
23 I sent this.

24 Q. It says here that you wanted to meet -- "I'm
25 still scheduling a time to meet with the family of

03:25PM

1 the client."

2 A. Of the client, okay.

3 Q. So --

4 A. I'm sorry.

5 Q. The first -- you correct me if I'm wrong.

03:25PM

6 There's a letter to Mrs. Weik dated April 13th in
7 Plaintiff's Exhibit Number 2.

8 A. Is it to Mr. and Mrs. Weik?

9 Q. Well, the first -- let me do this. I should
10 have done this before.

03:26PM

11 (Off-the-record conference.)

12 BY MR. O'CONNELL:

13 Q. Let's go back and reinvent the wheel. I'm
14 going to show you Petitioner's Exhibit 2, which is
15 on the 13th page, dated April 13th, 1999. What I
16 am trying to do is place the front sheet of
17 Exhibit 2, to date it as best we can.

03:28PM

18 A. It was probably either just the same date or
19 right around that date.

20 Q. All right. So the front page of Exhibit 2
21 was probably written either within a day of April
22 13th, if not on April 13th, 1999.

03:29PM

23 A. Yeah. Sometimes when I do the memos, it's
24 less formal.

25 Q. In Plaintiff's Exhibit Number 3 -- move to

03:29PM

1 admit this into evidence.

2 MR. ZELENKA: No objection.

3 MR. O'CONNELL: Never mind. I'll
4 withdraw it.

5 MR. ZELENKA: Don't withdraw 3.

03:30PM

6 (A recess transpired from 3:30 p.m.
7 through 3:31 p.m.)

8 MR. O'CONNELL: Would you answer any
9 questions Mr. Zelenka has?

10 THE DEPONENT: Sure.

03:30PM

11 EXAMINATION

12 BY MR. ZELENKA:

13 Q. In your direct examination, you stated that
14 you took your file to the Center for Capital
15 Litigation, who was not in any way involved in this
16 case; is that correct?

03:31PM

17 A. Yeah.

18 Q. Why would you turn over your file which may
19 include some privileged matters to a third party?

20 A. Well, I kept it for three years, which is as
21 long as I have to keep it. And I was very worried
22 about this case, so I wanted someone to have it.

03:31PM

23 Q. Is that what you normally do with your
24 cases --

25 A. No.

03:31PM

1 Q. -- or do you turn it over to lawyers that
2 were involved in the case?

3 A. I'm sorry?

4 Q. Or do you turn them over to the lawyers that
5 are involved in the case?

03:31PM

6 A. You mean the file, when I'm through with it?

7 Q. Yes.

8 A. I don't keep it or turn it over to anyone.
9 I assume the attorneys have their own files.

10 Q. Do you know what the Center for Capital
11 Litigation did with the materials you provided to
12 them?

03:31PM

13 A. I don't know.

14 Q. Do you know if they forwarded it to the
15 lawyer or anything?

03:31PM

16 A. I don't know.

17 Q. In -- let me see if I'm doing this right.
18 In your memorandum that is on Page 1 in Plaintiff's
19 2, you addressed a question from Mr. O'Connell,
20 that you were providing this information to the
21 lawyers, to some extent, in guidance because you
22 had an impression that they didn't think it was
23 important, and it was something that they needed to
24 know, correct?

03:32PM

25 A. Uh-huh.

03:32PM

1 Q. What types of discussions had you had with
2 the lawyers, consistent with your direct testimony,
3 with Marva Hardee-Thomas which gave you the
4 impression that she didn't think that information
5 was important at that stage, which is now around
6 April 13th?

03:33PM

7 A. Probably the lack of her response. And I
8 had already met her.

9 Q. Okay. The lack of response on what?

10 A. Well, as -- I mean, I'm -- response to
11 telephone calls and later faxes.

03:33PM

12 Q. Okay. But as I understand it, the materials
13 that you had provided the defense team then was the
14 March 12th, 1999 memo, which is at page 5, correct?

15 A. Uh-huh.

03:33PM

16 Q. And that memo, at that time, on March 12,
17 1999, "Mrs. Weik told me that one of the drugs that
18 Mr. Weik was taking was Thorazine."

19 A. Uh-huh.

20 Q. Correct?

03:34PM

21 A. Uh-huh.

22 Q. But there's no memo which has any discussion
23 prior to that date of any opinion that there was a
24 mental health problem with the father; is that
25 correct?

03:34PM

1 **A.** Well, as I told Mr. O'Connell, I don't
2 always -- as I get the information, I don't always
3 write a report right then. I talk to the people
4 several times, phone calls. Then when I write a
5 report, I date it and put it into written form. I
6 may have already had the knowledge and left her
7 messages and not gotten any response.

03:34PM

8 **Q.** Okay. When you did this memo on page 5,
9 March 12th, 1999, what kind of discussions had you
10 had with Mr. Weik at that time? Mr. Weik,
11 meaning --

03:34PM

12 **A.** The client?

13 **Q.** -- the client.

14 **A.** I had probably met with him twice.

15 **Q.** Okay. When you met with him, did you talk
16 about the facts of the case?

03:35PM

17 **A.** Yes.

18 **Q.** Did he tell you about his confession?

19 **A.** I don't recall.

20 **Q.** So if you don't recall that, then you
21 obviously don't recall that the confession was
22 taped.

03:35PM

23 **A.** Is that what the tape was? I'm sorry.

24 **Q.** But you never reviewed the tapes.

25 **A.** No.

03:35PM

1 Q. Did you ever see any written summaries of
2 the confessions that he had given in your work in
3 this case?

4 A. I don't recall. I know I recall he
5 confessed.

03:35PM

6 Q. How was he -- in your meetings with
7 Mr. Weik -- was his demeanor? How was he able to
8 discuss matters with you?

9 A. He was -- he was quiet, he seemed to be
10 remorseful, and he gave me the facts as he recalled
11 them. You know, I remember him trying to be
12 cooperative.

03:36PM

13 Q. Do you remember what the facts in this case
14 were?

15 A. Only vaguely.

03:36PM

16 Q. Vaguely, what do you remember?

17 A. I remember that --

18 Q. From him.

19 A. Okay. I remember that he had become
20 concerned about his child, and I believe that it
21 had to do with how he was being raised by his -- I
22 think it was just his ex-girlfriend, I don't think
23 they were ever married, and her either live-in
24 boyfriend or husband. And he became more and more
25 anxious and things had built up. And I'm sure his

03:36PM

03:37PM

1 impressions weren't completely normal, because of
2 his background, but he seemed to think that he had
3 to save his son by doing this killing.

4 Q. Did you share that information, based upon
5 your interview, with the defense counsel?

03:37PM

6 A. That first interview, they were there with
7 me --

8 Q. Okay.

9 A. -- for a good long time.

10 Q. You did not take any steps, yourself, to
11 obtain the medical records or the military
12 records --

03:38PM

13 A. No.

14 Q. -- of Russell Weik, correct?

15 A. No. I can't get court orders signed, as a
16 rule.

03:38PM

17 Q. You discussed, in your earlier examination,
18 how you had worked in other cases one to two years
19 to get those records.

20 A. (Moves head up and down.)

03:38PM

21 Q. What did you do in those cases?

22 A. Well, you just have to be diligent. And
23 most of the work was done by the attorneys. I just
24 tell them where and what we're looking for, and
25 they try to get orders.

03:38PM

1 Q. So you don't do anything.

2 A. Well, like, I try to locate where the
3 records would be held and --

4 Q. But did you do that in this case, try to
5 locate where the records would be held?

03:38PM

6 A. Yes, that's why I was asking for a court
7 order for the V.A. Hospital.

8 Q. The V.A. Hospital being the V.A. in Columbia
9 or --

10 A. I think it was the one in Charleston, if I
11 recall correctly.

03:38PM

12 Q. Okay. And did you specifically provide that
13 information to the lawyers, whether it was the one
14 in Charleston?

15 A. I imagine, because they probably would have
16 given them that information to ask for the court
17 order.

03:39PM

18 Q. Okay. In reviewing the documents in Exhibit
19 Number 2, do you have a recollection if these were
20 the entirety of the documents that you sent to the
21 lawyers, or not?

03:39PM

22 A. To me, they seem to be -- they certainly are
23 memos I sent. I don't recall sending any others,
24 and I didn't have my own file available to check.

25 Q. Okay. So the only family interviews that

03:39PM

1 were done were with Lillie Weik, with the client,
2 and with Amy Weik; is that correct?

3 A. And I think Amy Weik's husband, and I think
4 there was another sister that I spoke with out of
5 state.

03:40PM

6 Q. Correct, correct.

7 A. And I think I may have had an initial phone
8 call in to one of the brothers. I don't think --
9 again, I think it was a contact warm-up call.
10 Didn't get much information. I may not have done a
11 report on it yet.

03:40PM

12 Q. Did you ever interview Chris?

13 A. Who is Chris?

14 Q. The brother.

15 A. I'm not sure if that's the brother. It
16 seems like I talked to a brother on the phone. I
17 don't really recall the names of the siblings, but
18 I have a list in here.

03:40PM

19 Q. It's his younger brother, is who I'm
20 speaking of.

03:40PM

21 A. I'm not sure if I spoke to Christopher Weik
22 or Jose Ferrar or Ferrer.

23 Q. Okay.

24 A. Honestly, I don't recall.

25 Q. Do you know why you didn't speak with him?

03:41PM

1 A. Probably left the case, didn't complete my
2 investigation.

3 Q. When you left the case -- I want to go back
4 before that.

5 You said you took this case and got off of
6 another case so you could work on this case; is
7 that correct?

03:41PM

8 A. Uh-huh.

9 Q. What was the other case you were working on
10 at the time?

03:41PM

11 A. Gosh, I don't remember.

12 Q. Why did you choose to sacrifice one case in
13 lieu of working on this case?

14 A. Because it was referred from the -- again, I
15 don't know if it was the Death Penalty Resource
16 Center or Capital Litigation at the time. And I
17 did not know as well the people that I was referred
18 to on the other case, so --

03:41PM

19 Q. You did not know as well the people --

20 A. Yeah. I knew the people better at the
21 Resource Center than I did the case that I was
22 thinking -- the other case that I was thinking
23 about taking at that time. So I chose the one that
24 had been referred by the Death Penalty Resource
25 Center or Capital Litigation.

03:42PM

03:42PM

1 Q. Was the other case a death penalty case?

2 A. Yes.

3 Q. But you were never retained on that case, is
4 what you're now saying.

5 A. Right, right.

03:42PM

6 Q. I got you.

7 And your memo dates on here, particularly --
8 let's refer to Amy's interview, which is at
9 Page 18. We have already pointed out you talked
10 about -- second paragraph -- "Amy is the daughter
11 that Russ mistook for a Vietnamese girl and
12 choked." Do you see that in there?

03:43PM

13 A. Yes.

14 Q. And that interview is dated 4-21-99, isn't
15 it?

03:43PM

16 A. Yeah.

17 Q. The way that's written suggests that you may
18 have had information from another source at that
19 time that Amy had been choked, or a daughter had
20 been choked by Russell Weik; is that correct?

03:43PM

21 A. It seems like it.

22 Q. Okay. And, in fact, if you go over to the
23 mother's interview, which is at Page 23, dated
24 4-22-99, and if you go down, it looks like, one,
25 two, three, four, five, six -- eight lines, let me

03:44PM

1 ask you to read that and see if that refreshes your
2 recollection.

3 A. "She told me about an incident when Russ
4 mistook one of her daughters for a Vietnamese girl
5 and picked her up off of the ground by her neck and
6 choked her until she, Lillie, intervened."

03:44PM

7 Q. Okay.

8 A. 22 and 21. It's pretty close together. It
9 was probably -- I can only say what might have
10 happened. I may have had these notes written down,
11 jotted down by the 21st but didn't write -- I'm
12 pretty sure that I spoke to the mother before this.

03:44PM

13 Q. Before the date?

14 A. Yeah, because this was -- at this time -- if
15 I've already said, "This is all she's going to
16 share with me at this time," it wouldn't have been
17 because I only talked to her once. I probably
18 talked to her a couple of times --

03:44PM

19 Q. Okay.

20 A. -- and just not prepared a report yet.

03:45PM

21 Q. So based on the report, maybe the date you
22 typed it up was on the other one, the date of the
23 interview.

24 A. Right.

25 Q. Okay.

03:45PM

1 **A.** I might have jotted it down before but not
2 prepared the interview.

3 **Q.** Now, after you wrote your letter of April
4 29th, 1999, did you ever prepare any vouchers or
5 anything to get paid --

03:45PM

6 **A.** No.

7 **Q.** -- for your work on this case?

8 **A.** No.

9 **Q.** Why did you not attempt to seek
10 reimbursement for the work that you actually did on
11 this matter?

03:45PM

12 **A.** I had never seen an order signed. I didn't
13 even know if they had an order signed. And I
14 honestly didn't think it would do any good, so I
15 just let it go.

03:46PM

16 **Q.** So you never did a voucher or anything.

17 **A.** Never, never.

18 **MR. ZELENKA:** Okay. I have no further
19 questions.

20 **THE DEPONENT:** It was kind of one of
21 those things, kind of up to...

03:46PM

22 **MR. O'CONNELL:** Let me get the exhibits
23 -- all the exhibits. Okay. I want to make
24 clear for the record that Plaintiff's
25 Exhibit -- Petitioner's Exhibit 1 is in

03:46PM

1 evidence. You have no objection, Don? This
2 is that first page of the --

3 MR. ZELENKA: I don't have any
4 objection.

5 MR. O'CONNELL: Petitioner's Exhibit 2
6 is the series of reports done by
7 Ms. Rickborn in evidence. No objection?

8 MR. ZELENKA: No objection,
9 understanding it all came out of defense
10 counsel's file.

11 MR. O'CONNELL: Right. And
12 Petitioner's Exhibit Number 3, which is a
13 letter from Marva Hardee-Thomas --

14 MR. ZELENKA: No objection.

15 MR. O'CONNELL: -- dated April 30th.
16 What I'd like to do --

17 MR. ZELENKA: I think I've got -- no,
18 no.

19 MR. O'CONNELL: Do you need -- I have
20 several hundred copies of that.

21 What I would like to do is, with your
22 permission, on Plaintiff's Exhibit 2, is
23 number the pages, which is what I should
24 have done to begin with.

25 MR. ZELENKA: No objection.

1 MR. O'CONNELL: And you've got how many
2 pages?

3 MR. ZELENKA: Thirty-three.

4 THE DEPONENT: Thirty-three. And with
5 that, I'm done.

03:47PM

6 (The deposition concluded at 3:47 p.m.)
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1 CERTIFICATE OF REPORTER

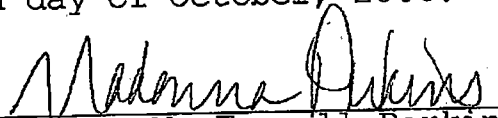
2 I, Madonna M. Farrell-Perkins, Registered
3 Professional Reporter and Notary Public in and for
4 the State of South Carolina, do hereby certify that
5 the deponent, PATRICIA D. RICKBORN, was duly sworn
6 by me to testify to the truth, and that the above
7 deposition, pages 1 through 58, inclusive, was
8 recorded stenographically by me and transcribed
9 through computer-aided transcription by me to the
10 best of my ability.

11 I FURTHER CERTIFY that the foregoing
12 transcript is a true and correct transcript of the
13 testimony given by the said witness at the time and
14 place specified.

15 I FURTHER CERTIFY that I am neither attorney
16 or counsel for, nor related to or employed by any
17 of the parties to the action in which this
18 deposition is taken, or financially interested in
19 this action.

20 IN WITNESS WHEREOF, I have set my hand and
21 seal this 9th day of October, 2006.

22
23
24
25


Madonna M. Farrell-Perkins
Registered Professional Reporter
Notary Public
My commission expires
September 19, 2015

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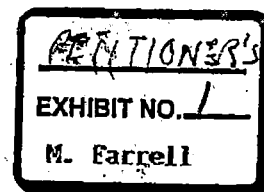
3463

7760958

P. 02

PATRICIA D. RICKBORN
PRIVATE INVESTIGATOR
933 BRANDON AVENUE
COLUMBIA, S. C. 29209

803-783-7884



MARCH 1, 1999

TO WHOM IT MAY CONCERN:

I AM A LICENSED PRIVATE INVESTIGATOR IN THE STATE OF SOUTH CAROLINA. IN FEBRUARY OF 1992 I WENT INTO PRIVATE PRACTICE WITH MY PRIMARY CONCENTRATION IN CRIMINAL INVESTIGATIONS. PRIOR TO ESTABLISHING MY OWN BUSINESS I WAS EMPLOYED AS A CRIMINAL DEFENSE INVESTIGATOR BY THE RICHLAND COUNTY PUBLIC DEFENDER'S OFFICE FROM FEBRUARY OF 1986 UNTIL FEBRUARY OF 1992.

I HAVE MORE THAN TEN YEARS EXPERIENCE IN INVESTIGATING CRIMINAL CASES FOR THE DEFENSE. IN THAT TIME I HAVE BEEN INVOLVED IN THE INVESTIGATIONS OF WELL OVER ONE HUNDRED FELONIES AND MURDER CASES AND OVER TWENTY CAPITAL MURDER CASES. IN ADDITION TO INVESTIGATING THESE CASES, I HAVE ASSISTED THE ATTORNEYS PREPARE FOR TRIAL AND PRESENT THE CASE DURING THE TRIAL. IN CAPITAL MURDER CASES I HAVE CONDUCTED FULL INVESTIGATIONS FOR THE GUILT PHASE OF THE TRIAL AND EXTENSIVE SOCIAL HISTORY INVESTIGATIONS FOR THE PENALTY PHASE OF THE TRIAL.

DURING MY CAREER AS AN INVESTIGATOR I HAVE RECEIVED TRAINING THAT INCLUDES THE FOLLOWING AREAS: MEDICO-LEGAL ASPECTS OF DEATH INVESTIGATION, GENERAL CRIMINAL INVESTIGATION TRAINING, INVESTIGATIVE REPORTING, FORENSIC PATHOLOGY, FORENSIC CRIME SCENE ANALYSIS, METHODS FOR CONDUCTING INTERVIEWS, PSYCHOLOGICAL EFFECTS OF SUBSTANCE ABUSE, UNDERSTANDING CHEMICAL DEPENDENCY, DELAYED STRESS

3464

PETITIONER'S
EXHIBIT NO. <u>2</u>
N. Farrell

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

ATTACHED ARE COPIES OF IMMUNIZATION RECORDS SUPPLIED BY THE BERKELEY COUNTY HEALTH DEPARTMENT FOR THE CLIENT. THIS IS THE EXTENT OF RECORDS THAT THE HEALTH DEPARTMENT HELD FOR EDDIE. I AM STILL TRYING TO OBTAIN OTHER HEALTH RECORDS. I HAVE PREPARED SUBPOENAS FOR THE CLIENTS RECORDS AT THE DORCHESTER COUNTY JAIL.

YOU MAY HAVE ALREADY ADDRESSED THIS ISSUE, BUT I WAS THINKING THAT WE SHOULD PROBABLY REQUEST FROM THE JUDGE THAT A PSYCHOLOGIST OR PSYCHIATRIST ON THE DEFENSE TEAM BE ALLOWED TO INTERVIEW THE SON OF OUR CLIENT. ONE OF THE MOST IMPORTANT ISSUES THAT WE MUST ADDRESS IN THE PENALTY PHASE OF THIS TRIAL WILL BE TO MINIMIZE THE IMPACT ON THE JURY OF THE TESTIMONY OF THE CHILDREN. IN FACT, I THINK MR. BAILEY WILL RELY ON THE TESTIMONY OF THE CHILDREN AS THE TOOL TO GET A SENTENCE OF DEATH FOR EDDIE. THEREFORE, IT WOULD BE GREAT IF WE COULD GET ANY UTTERANCE FROM THE CLIENT'S SON THROUGH AN INTERVIEW WITH MENTAL HEALTH EXPERTS THAT HE DOES NOT WANT HIS FATHER EXECUTED. OF COURSE, THERE IS NO WAY OF KNOWING WHAT THE CHILD IS THINKING WITHOUT AN OPPORTUNITY TO SPEAK WITH HIM.

I AM STILL SCHEDULING A TIME TO MEET WITH THE FAMILY OF THE CLIENT AS WELL AS MEMBERS OF THE CONGREGATION AT HIS CHURCH. SOME OF THE CLIENT'S SIBLINGS ARE OUT OF STATE AND MRS. WEIK WAS ILL WITH THE FLU THE LAST TIME I SPOKE WITH HER.

3465

LIB MYERS
P. O. BOX 127
MONCK'S CORNER, SOUTH CAROLINA 29461

DEAR MS. MYERS;

AS PER OUR TELEPHONE CONVERSATION I AM SENDING ALL THE INFORMATION THAT I HAVE TO HELP US LOCATE MEDICAL RECORDS FOR JOHN "EDDIE" WEIK. MR. WEIK IS A WHITE MALE, DOB: 4/26/67. HIS SOCIAL SECURITY NUMBER IS 249-39-7374. PRIOR TO HIS ARREST HE LOVED WITH HIS PARENTS AT THE SAME ADDRESS ALL OF HIS LIFE. THAT ADDRESS IS 350 ST. JOHNS BETHEL ROAD IN MONCK'S CORNER, SOUTH CAROLINA. HIS PARENTS STILL RESIDE AT THAT ADDRESS. HIS FATHER IS RUSSELL WEIK, WHITE MALE, DOB: 6/12/43 AND HIS MOTHER IS LILLIE WEIK, WHITE FEMALE, DOB: 7/4/31. THIS WAS LILLIE'S SECOND MARRIAGE.

MR. WEIK WAS BORN AT THE BERKELEY COUNTY HOSPITAL AND THE ATTENDING PHYSICIAN WAS DR. PETE MYERS.

THANK YOU FOR YOUR HELP TRYING TO FIND THESE RECORDS.

SINCERELY,

PATTI RICKBORN

MHT
D
MARCH 9, 1999

RUSSELL AND LILLIE WEIK
350 ST. JOHN' S BETHEL ROAD
MONK' S CORNER, S.C. 29461

DEAR MR. AND MRS. WEIK;

C
I HAVE BEEN ASKED BY YOUR SON, JOHN' S, ATTORNEYS, MS. THOMAS AND MR. BEAUFORD, TO HELP THEM PREPARE FOR HIS TRIAL. SPECIFICALLY, THEY HAVE ASKED ME TO INVESTIGATE AREAS PERTAINING TO THE PENALTY PHASE OF HIS TRIAL. THIS IS THE SECOND PHASE OF A CAPITAL MURDER TRIAL THAT IS ENTERED IF THERE IS A CONVICTION OF MURDER IN THE GUILT PHASE OF THE TRIAL. THE PENALTY PHASE WILL ADDRESS AGGRAVATING CIRCUMSTANCES AND MITIGATING CIRCUMSTANCES REGARDING THIS INCIDENT AS WELL AS OTHER FACTORS IN JOHN' S LIFE. THE SOLICITOR, WALTER BAILEY, WILL PRESENT AGGRAVATING EVIDENCE TO TRY TO CONVINCE THE JURORS THAT THE DEATH PENALTY IS THE APPROPRIATE SENTENCE FOR JOHN AND THE DEFENSE ATTORNEYS WILL PRESENT EVIDENCE TO THE JURORS TO TRY TO CONVINCE THE JURORS THE JOHN DESERVES A SENTENCE OF LIFE IN PRISON. MY JOB IS TO FIND MITIGATING EVIDENCE TO PROVIDE TO THE DEFENSE ATTORNEYS SO THEY CAN ARGUE HIS CASE EFFECTIVELY SHOULD WE REACH THE PENALTY PHASE OF THE TRIAL.

I WILL NEED YOU AND YOUR FAMILY' S HELP TO PREPARE FOR TRIAL. I WILL NEED TO INTERVIEW FAMILY MEMBERS, FAMILY FRIENDS, TEACHERS, MINISTERS, COACHES AND OBTAIN SCHOOL, MEDICAL, MILITARY AND PSYCHOLOGICAL RECORDS FOR JOHN. SINCE THIS TRIAL IS SCHEDULED FOR MAY 24, 1999 WE SHOULD GET STARTED LOCATING AND REQUESTING JOHN' S RECORDS AS SOON AS POSSIBLE. MS. THOMAS HAS PROVIDED COPIES OF JOHN' S RECENT WORK RECORDS.

MY PHONE NUMBER IN COLUMBIA IS 803-783-7884. PLEASE LEAVE A MESSAGE AND LET ME KNOW WHEN IT WOULD BE A GOOD TIME TO CALL YOU AND SPEND A LITTLE TIME TALKING ABOUT JOHN. I LOOK FORWARD TO SPEAKING WITH YOU.

SINCERE REGARDS,

PATTI RICKBORN
3

3467

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 3/12/99

AFTER WE RECEIVE THE REPORT FROM THE STATE HOSPITAL REGARDING THEIR EVALUATION OF EDDIE UNDER THE MCNAUGHTON ORDER EITHER YOU OR MR. BEAUFORD SHOULD CONTACT THE DOCTORS WHO SIGN OFF ON THE REPORT AND ASK THEM IF THEY ASSESSED EDDIE BASED ON FINDING ISSUES THAT COULD BE MITIGATING FACTORS IN EDDIE'S CASE. IF THEY SAY THAT THEY DID ADDRESS ISSUES THAT CONCERN FACTORS THAT COULD BE USED AS MITIGATION FOR EDDIE ASK THEM WHAT OPINIONS THEY FORMED BASED ON THEIR FINDINGS ALONG THE LINES OF MITIGATING CIRCUMSTANCES. IF THEY SAY THAT THEY DID NOT EXPLORE FACTORS THAT COULD BE MITIGATING ISSUES, THEN WHEN THEY TRY TO TESTIFY DURING THE PENALTY PHASE WE CAN OBJECT TO THEIR TESTIMONY BASED ON THE FACT THAT THEY ONLY EXPLORED ISSUES THAT ADDRESSED COMPETENCY TO STAND TRIAL AND CRIMINAL RESPONSIBILITY AND DO NOT HAVE TESTIMONY PERTINENT TO THE PENALTY PHASE OF THE TRIAL. EVEN IF WE ARE OVER RULED IT IS PRESERVED FOR APPEAL.

ALSO, AFTER WE RECEIVE THE FINAL REPORT FROM WILLIAM S. HALL I WILL SERVE A SUBPOENA TO THEM REQUESTING ALL RAW DATA AND DOCTOR'S NOTES AND PSYCHOLOGICAL TESTS THEY MAY HAVE CONDUCTED.

FIRST, WE MUST HAVE THE REPORT SO THAT IT CAN NOT BE ADJUSTED IN ANY WAY AFTER Y'ALL TALK TO THE DOCTORS AND I SERVE THE SUBPOENA.

WILL THE DORCHESTER COUNTY CLERK OF COURT ISSUE SUBPOENAS IN BLANK? IF SO, WOULD YOU, PLEASE, SEND ABOUT FIFTEEN OR TWENTY TO ME? IF NOT, WHAT PROCEDURE SHOULD I FOLLOW TO OBTAIN SUBPOENAS FOR THIS CASE?

THANKS!

4

MEMO

TO: MARVA HARDEE -THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 3/12/99

WE NEED TO GET RECORDS FOR EDDIE FROM:

- BERKELEY COUNTY SCHOOL SYSTEM TO INCLUDE:

WHITESVILLE ELEMENTARY
BERKELEY MIDDLE
BERKELEY HIGH
GUIDANCE RECORDS
DISCIPLINARY RECORDS
PSYCHOLOGICAL TESTING RECORDS
SCHOOL HEALTH RECORDS

BERKELEY COUNTY HOSPITAL TO INCLUDE:

BIRTH RECORDS
FOLLOW UP CARE
EMERGENCY ROOM TREATMENT

RECORDS HELD BY DR. PETE MYERS (DECEASED) AND DR. RHETT MYERS (RETIRED)

WE WILL NEED MEDICAL AND PSYCHOLOGICAL RECORDS FOR RUSSELL WEIK. I KNOW THAT VERY IMPORTANT RECORDS WILL BE HELD BY THE NAVAL HOSPITAL (S) WHERE HE WAS TREATED AFTER HIS RETURN FROM VIET NAM. THESE ARE U. S. GOVERNMENT RECORDS THAT WILL REQUIRE A COURT ORDER FOR RELEASE. THE SOONER WE GET STARTED TRYING TO OBTAIN THESE RECORDS THE SOONER WE GET THROUGH THE GOVERNMENT RED TAPE. MS. WEIK TOLD ME THAT ONE OF THE DRUGS THAT THAT MR. WEIK WAS TAKING WAS THORAZINE.

COURT ORDERS WILL RELEASE THESE RECORDS TO US MUCH FASTER THAN RELEASES OR A SUBPOENA. WE WILL NOT GET THE RECORDS FROM THE GOVERNMENT WITHOUT A COURT ORDER.

5

3469

I HAVE CONDUCTED AN INITIAL INTERVIEW WITH MS. WEIK BY PHONE. DO YOU WANT MY MEMOS REGARDING INFORMATION THAT I GARNER FROM INTERVIEWS SENT TO YOU AND THE MENTAL HEALTH EXPERTS OR SHOULD I SEND THEM TO YOU TO FORWARD TO THE MENTAL HEALTH EXPERTS? IF YOU WANT ME TO SEND INFORMATION DIRECTLY TO THE MENTAL HEALTH EXPERTS WOULD YOU BRING THE ADDRESSES ON MONDAY AND I CAN PICK THEM UP FROM YOU AT THAT TIME.

MARCH 22, 1999

CAROLYN BRITT
BERKELEY COUNTY HEALTH DEPARTMENT
227 FIRST STREET
MONCK'S CORNER, SOUTH CAROLINA

DEAR MS. BRITT;

I AM ASSISTING THE ATTORNEYS FOR THE DEFENSE PREPARE FOR TRIAL IN THE CASE OF THE STATE OF SOUTH CAROLINA - V - JOHN E. WEIK. THIS IS A CAPITAL MURDER TRIAL THAT IS SCHEDULED TO BEGIN IN MAY OF 1999.

I AM TRYING TO LOCATE BIRTH RECORDS AND OTHER MEDICAL RECORDS FOR MR. WEIK. HE WAS BORN IN THE BERKELEY COUNTY HOSPITAL BEFORE IT CLOSED IN 1976. HE WAS ALSO TREATED AT THE EMERGENCY ROOM.

THE DOCTOR WHO DELIVERED MR. WEIK WAS DR. PETE MYERS WHO IS NOW DECEASED.

COULD YOU TELL ME IF THE BERKELEY COUNTY HEALTH DEPARTMENT MAY HAVE ANY OF THESE RECORDS? I CAN SUPPLY A SUBPOENA FOR THESE RECORDS BEFORE THEY ARE RELEASED. AT THIS TIME I AM TRYING TO VERIFY WHO MAINTAINS THESE RECORDS.

THANK YOU FOR YOUR HELP WITH THIS MATTER.

SINCERELY,

PATTI RICKBORN

7

3471

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 3/23/99

I HAVE OBTAINED SUBPOENAS FROM THE DORCHESTER COUNTY CLERK OF COURT. I AM SERVING SUBPOENAS TO BERKELEY COUNTY HEALTH DEPARTMENT AND BERKELEY HIGH SCHOOL. THE BERKELEY COUNTY HOSPITAL, WHERE THE CLIENT WAS BORN AND LATER TREATED, CLOSED IN 1976. I AM TRYING TO LOCATE THESE RECORDS AND RECORDS KEPT BY DR. PETE MYERS, DECEASED.

8

MEMO

TO: MARVA HARDEE-THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: MARCH 26, 1999

I HAVE CONTACTED CAROLYN BRITT OF THE BERKELEY COUNTY HEALTH DEPARTMENT AND PAM POWELL AT BERKELEY COUNTY ADMINISTRATION. BOTH TELL ME THAT AFTER THE BERKELEY COUNTY HOSPITAL CLOSED IN 1976 THE BERKELEY COUNTY HEALTH DEPARTMENT USED OFFICE SPACE IN THAT BUILDING FOR A TIME. HOSPITAL RECORDS THAT WERE STORED IN THE BASEMENT BECAME MILDEWED AND WERE DESTROYED.

WHILE TRYING TO LOCATE ANY STAFF THAT MAY HAVE BEEN PRESENT WHEN THE RECORDS WERE DESTROYED OR RELOCATED I CONTACTED THE EXTERMINATOR WHO SERVICED THAT BUILDING. HE SAID THAT THE OLD HOSPITAL IS NOW BEING RENOVATED , BUT, WHEN HE WAS SPRAYING A FEW SUMMERS AGO THERE WERE SOME RECORDS STILL IN THE BASEMENT. I WILL TRY TO GET PERMISSION FROM THE COUNTY OR FROM THE CONTRACTOR TO GO INTO THE BASEMENT TO LOOK AT THE RECORDS ON THE CHANCE THAT THERE ARE ANY BIRTH OR TREATMENT RECORDS FOR THE CLIENT.

WHILE TRYING TO LOCATE RECORDS MAINTAINED BY DR. PETE MYERS, DECEASED, FOR THE CLIENT I CONTACTED HIS SISTER-IN-LAW, LIB MYERS. HER HUSBAND IS DR. RHETT MYERS, RETIRED. SHE TOLD ME THAT THEY STILL HAVE SOME RECORDS AND SINCE OFTEN BOTH BROTHERS TREATED THE SAME PATIENTS SHE WILL SEE IF THEY HAVE ANY FOR THE CLIENT OR FAMILY MEMBERS OF THE CLIENT.

I AM CONTINUING TO TRY TO LOCATE AND OBTAIN EDUCATION RECORDS FOR THE CLIENT.

I HAVE INTERVIEWED LILLIE WEIK, THE CLIENT'S MOTHER. I WILL BE SCHEDULING ADDITIONAL INTERVIEWS NEXT WEEK.

3473

APRIL 13, 1999

MRS. LILLIE WEIK
350 ST. JOHN' S BETHEL ROAD
MONCK'S CORNER, SOUTH CAROLINA 29461

DEAR MRS. WEIK,

I HAVE BEEN TRYING TO COLLECT AS MANY MEDICAL AND EDUCATION RECORDS AS I COULD PRIOR TO STARTING INTERVIEWS FOR POSSIBLE MITIGATION WITNESSES. ALTHOUGH I HAVE NOT BEEN ABLE TO LOCATE MANY RECORDS I WOULD LIKE TO START SETTING UP INTERVIEWS WITH YOUR FAMILY.

I WOULD LIKE TO MEET IN PERSON WITH THE FAMILY MEMBERS THAT LIVE IN THE AREA AND SET UP TELEPHONE INTERVIEWS WITH THE PEOPLE WHO LIVE OUT OF STATE. I HAVE HAD A FOOT INJURY THAT I MUST KEEP ELEVATED FOR THE NEXT FEW DAYS SO I WOULD LIKE TO SET UP ANY INTERVIEWS STARTING ANYTIME AFTER MONDAY APRIL 19, 1999. I CAN COME TO SEE YOU ON THE WEEK- ENDS OR IN THE EVENINGS. WHENEVER IS MOST CONVENIENT FOR YOU AND YOUR FAMILY.

I AM ENCLOSING SOME FORMS THAT I WOULD LIKE FOR YOU TO FILL OUT AND SEND TO ME. THIS IS JUST INFORMATION THAT WILL BE USED BY THE MENTAL HEALTH EXPERTS TO PREPARE A SOCIAL HISTORY FOR EDDIE.

I WOULD LIKE TO SPEAK TO THE MINISTER OF YOUR CHURCH AS WELL AS ANY CHURCH MEMBERS OR FAMILY FRIENDS THAT WOULD BE WILLING TO SPEAK ON EDDIE' S BEHALF IN COURT.

THANK YOU FOR YOUR HELP AND I LOOK FORWARD TO SEEING YOU SOON.

SINCERE REGARDS,

PATTI RICKBORN

10

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 4/20/99

ATTACHED IS A LIST OF POTENTIAL WITNESSES FOR THE PENALTY PHASE OF THE TRIAL. MANY OF THEM WILL BE CUMULATIVE BUT, WE SHOULD BE ABLE TO GET SOME USEFUL WITNESSES FROM THIS GROUP. THIS WILL BE IMPORTANT DUE TO THE LACK OF MEDICAL AND DETAILED SCHOOL RECORDS FOR THE CLIENT. WE CAN GET FIRST HAND INFORMATION ON THE HISTORY OF THE CLIENT THROUGH THE PEOPLE WHO WERE THERE.

I HAVE INCLUDED A LIST OF THE CLIENT' S FAMILY MEMBERS.

IN ADDITION I WOULD LIKE TO INTERVIEW THE CLIENT'S EMPLOYERS AND CO-WORKERS AT BOTH THE BOAT COMPANY AND BROYHILL. YOU HAVE ALREADY PROVIDED THOSE RECORDS.

IS THERE ANY WORD ON AN ORDER FOR THE MEDICAL RECORDS FOR THE CLIENT' S FATHER FROM THE V. A HOSPITAL?

CONTACT SHEETS FOR POTENTIAL WITNESSES FOR THE PENALTY PHASE
FOR EDDIE WEIK:

FAMILY INFORMATION

MOTHER

LILLIE VARNER FERRER WEIK
DOB: 7/4/31
PLACE OF BIRTH: MONCKS CORNER, S.C.

350 ST. JOHN BETHEL CHURCH ROAD
MONCKS CORNER, S.C.
843- 761-3214

FATHER

RUSSELL CASSELL WEIK
DOB: 6/12/43
PLACE OF BIRTH: BALTIMORE, MARYLAND

ADDRESS AND PHONE SAME AS ABOVE

HALF BROTHER

DR. LAUREAN TOMAS FERRER
DOB: 10/17/49
PLACE OF BIRTH: MONCKS CORNER, S.C.

9596 BLACK HORSE RUN
FT. MILL, S.C.
803-548-3185

HALF SISTER

MAGDALENA FERRER GUNTER
DOB: 2/25/51
PLACE OF BIRTH: MONCK'S CORNER, S.C.

RT. 3 BOX 86
PERRY, FLORIDA
850-584-5069

HALF BROTHER

JOSE C. FERRER
DOB: 1/21/53
PLACE OF BIRTH: MONCK'S CORNER, S.C.

162 ASHLEY CIRCLE
MARTINEZ, GA.
706-860-2327

HALF SISTER

RAMONDA ELAINE FERRER KLOCEK
DOB: 12/3/54
PLACE OF BIRTH: MONCK'S CORNER, S.C.

545 HUSE RD
MANCHESTER, NEW HAMPSHIRE
603-644-7101

BROTHER

CHRISTOPHER WEIK
DOB: 5/12/68
PLACE OF BIRTH: MONCK'S CORNER, S.C.

112 JOHNNY REB ROAD
MONCK'S CORNER, S.C.
843-899-2576

SISTER

AMY WEIK
DOB: 1/1/71

3477

PLACE OF BIRTH: MONCKS CORNER, S.C.

LOT 8 WHITE OAK DRIVE
MONCKS CORNER, S.C.
843-761-3236

MATERNAL GRANDPARENTS

JOHN VARNER

DOB: 5/7/1885

PLACE OF BIRTH: MONCKS CORNER, S.C.

DIED IN SEPTEMBER OF 1956 AS THE RESULT OF A HEART ATTACK

MARTHA VARNER

DOB: 9/9/ 1892

PLACE OF BIRTH: MONCKS CORNER, S.C.

DIED IN NOVEMBER OF 1976 AS THE RESULT OF A HEART ATTACK

PATERNAL GRANDPARENTS

EDWIN WEIK

DOB: 1885

PLACE OF BIRTH: VIRGINIA

DIED IN 1964 AS THE RESULT OF HEART FAILURE

BERTHA CRUISE WEIK

DOB: 1906

PLACE OF BIRTH: BALTIMORE, MARYLAND

DIED IN 1976 AS THE RESULT OF CANCER

AUNT

GRACIE BUGAUISAH

BENJAMIN DRIVE

MONCKS CORNER, S.C.

843-761-2345

COUSIN

BETTY LOU RISHER
SUMMERVILLE, S.C.
843-688-4526

FRIEND

EMMA BROWN
169 FOUR WIND ROAD
HOLLY HILL, S.C.
803-496-5494

FRIEND

REGGIE UNDERWOOD
843 (?) 873-8593

GATEWAY COMMUNITY CHURCH

PASTOR: LEGRAND DUPREE
LADSON, S.C.
RESIDENCE 843-572-8121
CHURCH 843-761-1705

CHURCH MEMBERS

BERNICE AUSTIN
205 BENJAMIN DRIVE
MONCK'S CORNER, S.C.
843-761-6238 OR 843-761-5090

IRVIN VARNER
136 BENJAMIN DRIVE

MONCKS CORNER, S.C.
843-761-3439

HAROLD BROAD
WHITESVILLE ROAD
MONCKS CORNER, S.C.
843-899-3308

REV. BRUCE SCOTT
2425 S. LIVE OAK DRIVE
MONCKS CORNER, S.C.
843-761-5633

DOUGLAS RICAFFRENT
122 LIENBY DRIVE
MONCKS CORNER, S.C.
864-761-2594

GLORIA JEAN VARNER
BENJAMIN DRIVE
MONCKS CORNER, S.C.
843-761-5073

ALBETA VARNER
BENJAMIN DRIVE
MONCKS CORNER, S.C.
843-761-3311

TAMMY BACKOUS
SYCAMORE DRIVE
MONCKS CORNER, S.C.
843-761-2897

APRIL 20, 1999

DEAR REVEREND SCOTT,

I AM WORKING FOR THE DEFENSE TEAM FOR EDDIE WEIK. I AM PREPARING FOR THE PENALTY PHASE OF HIS TRIAL. THIS IS THE PART OF THE TRIAL WHEN THE DEFENSE WILL HAVE AN OPPORTUNITY TO TELL THE JURY THE REASONS THAT EDDIE SHOULD NOT BE SENTENCED TO DEATH.

PART OF THIS DEFENSE SHOULD INCLUDE PEOPLE WHO HAVE KNOWN EDDIE BEFORE THIS INCIDENT OCCURRED. I WOULD LIKE TO TALK WITH YOU ABOUT YOUR OBSERVATIONS OF EDDIE DURING THE TIME THAT YOU HAVE KNOWN HIM. I UNDERSTAND THAT EDDIE WAS VERY ACTIVE IN THE GATEWAY COMMUNITY CHURCH AND I THINK IT WOULD BE OF GREAT BENEFIT TO THE JURY TO KNOW THIS ABOUT EDDIE.

I WILL BE MAKING SEVERAL TRIPS TO YOUR AREA BEFORE THIS CASE GOES TO TRIAL ON MAY 24, 1999. I WOULD LIKE TO VISIT WITH YOU ON ONE OF THESE TRIPS. I WILL CONTACT YOU BY TELEPHONE TO ARRANGE A TIME THAT WOULD BEST SUIT YOU OR YOU CAN CALL ME IN COLUMBIA, SOUTH CAROLINA AT 803-783-7884.

I LOOK FORWARD TO MEETING YOU AND I THANK YOU IN ADVANCE FOR ANY HELP YOU MAY OFFER.

SINCERELY,

PATTI RICKBORN

note: sample of contact letters
sent to non family members
on my potential witness list.

4/21/99
INTERVIEW
AMY WEIK

ON 4/21/99 I INTERVIEWED THE CLIENT' S YOUNGER SISTER, AMY WEIK. SHE IS 28 YOA AND HAS TWO CHILDREN THAT ARE 3 YOA AND 4 YOA. SHE LIVES IN MONCK'S CORNER. AFTER TALKING ABOUT EDDIE FOR A WHILE I ASKED HER WHAT EDDIE' S RELATIONSHIP WITH HIS FATHER WAS LIKE. AFTER A SHORT HESITATION SHE BEGAN TO TELL ME ABOUT THE GENERAL NATURE OF THEIR FATHER' S INTERACTION WITH THE CHILDREN AND SOME SPECIFIC INCIDENTS THAT OCCURRED DURING HER CHILDHOOD. SHE TOLD ME THAT THE PERVASIVE FEELING IN THE HOUSEHOLD WAS OF CONSTANT FEAR THAT THE FATHER WOULD BE TRIGGERED INTO A RAGE. WHEN HE DID GO INTO A RAGE SHE JUST HOPED THAT SHE WOULD NOT BE THE TARGET OF THAT RAGE.

AMY IS THE DAUGHTER THAT RUSS MISTOOK FOR A VIETNAMESE GIRL AND CHOKED.

SHE RECALLS SEVERAL INCIDENTS WHEN EDDIE WAS TOOK THE BRUNT OF HIS FATHER' S ABUSE. ONCE EDDIE HAD FAILED TO GET HIS HAIRCUT WHEN HIS FATHER TOLD HIM TO. EDDIE WAS A TEENAGER AT THE TIME. AMY SAW HER FATHER BEND EDDIE' S HAND BACK AT THE WRIST AS FAR AS IT WOULD BEND WHILE POKING EDDIE IN THE CHEST AND TELLING EDDIE THAT HE HAD BEEN TRAINED IN THE MILITARY TO SHOVE HIS HAND IN TO A MAN' S CHEST A RIP HIS HEART HIS HEART OUT. HE TOLD EDDIE THAT IF HE FAILED TO GET A HAIRCUT AGAIN THAT HE WOULD RIP HIS HEART OUT. IN ADDITION TO THE THREAT OF PHYSICAL ABUSE THERE WAS VERBAL ABUSE. EDDIE WAS CONSISTENTLY BERATED BY HIS FATHER AS WERE ALL OF THE CHILDREN.

AMY SAID THAT HER FATHER DEMANDED MOST OF HER MOTHER' S TIME AND THAT HER DAD WANTED TO BE THE CENTER OF HER MOTHER' S ATTENTION.

THE STANDING REASON FOR THE FATHER' S OUTBURSTS WAS THAT HE HAD BEEN AFFECTED BY THE WAR IN VIETNAM. THE FAMILY STORY IS THAT RUSS WAS A MEMBER OF SOME ELITE SPECIAL FORCE IN VIETNAM AND NEVER RECOVERED FROM THE TRAUMA OF THE WAR. AMY TOLD ME THAT THERE WERE CERTAIN THINGS THAT YOU COULD NOT SAY AROUND HER DAD BECAUSE IT COULD TRIGGER AN EPISODE. WHEN I TOLD AMY

29/15

THAT I WAS TRYING TO GAIN ACCESS TO HER FATHER'S MILITARY RECORDS BY COURT ORDER SHE WAS FRIGHTENED. SHE TOLD ME THAT THE FAMILY KNEW NEVER TO DISCUSS ANYTHING ABOUT HER FATHER'S ACTIVITIES IN THE VIETNAM WAR. SHE TOLD ME THAT HE HAD TOLD THEM THAT THERE WOULD BE NO RECORDS OF HIS TRUE MILITARY RECORD BECAUSE IT WAS CLASSIFIED. AMY SAID, "WE KNEW NOT TO TALK ABOUT IT IF WE WANTED TO LIVE."

DURING THE TIME AMY WAS GROWING UP HER DAD HAD SEVERAL JOBS. ON ONE OF THESE JOBS HE SUSTAINED AN INJURY THAT RESULTED IN THE LOSS OF ABOUT HALF OF HIS FOOT. SHE THINKS THAT THIS MADE THE SITUATION WITH HER FATHER WORSE BECAUSE NOW HE WAS DAMAGED BY THE WAR AND HANDICAPPED. HER FEELING IS THAT WHEN HE COULD NOT WORK TO SUPPORT HIS FAMILY HE DID NOT "FEEL LIKE A MAN" SO HE WAS MORE FRUSTRATED THAN EVER.

AMY TOLD ME THAT HER MOTHER AND HER HALF BROTHERS AND SISTERS CAME FROM A "GOOD" FAMILY (THE FERRERS) BEFORE LILLIE WAS WIDOWED AND MARRIED HER FATHER. AMY SAID THAT THEY WERE ALWAYS POOR AND STRUGGLING. SHE STATED THAT SHE IS NOT AS CLOSE WITH HER HALF SIBLINGS AS SHE WOULD LIKE TO BE. THEY EACH LEFT HOME AS SOON AS THEY WERE ABLE TO LEAVE. AMY WAS JUST A CHILD AT THE TIME BUT SHE IS SURE THAT THE HALF SIBLINGS DID NOT HAVE A GOOD RELATIONSHIP WITH RUSS. AMY SAID THAT THEY COULD SEE HOW BADLY LILLIE WAS TREATED BY RUSS AS OPPOSED TO WHAT HER LIFE WAS LIKE BEFORE THEIR FATHER DIED.

AMY TOLD ME THAT SHE DOES NOT THINK HER MOTHER WILL EVER TELL THE TRUTH ABOUT THE SITUATION IN THEIR HOME. SHE TOLD ME THAT IF HER MOTHER ADDRESSED THE SITUATION SHE WOULD HAVE TO ADDRESS "LAYERS AND LAYERS" OF PROBLEMS.

AMY STATED THAT EDDIE ALWAYS LOVED CHILDREN. SHE SAID THAT WHEN THEY WOULD VISIT EDDIE WOULD COME TO HER KIDS FIRST AND GREET THEM WITH THEIR SPECIAL NICKNAMES HE HAD FOR THEM. SHE TOLD ME THAT EDDIE HAD ALWAYS WANTED TO BE IN HIS SON'S LIFE BUT THAT SUSAN DID NOT WANT EDDIE TO HAVE ANYTHING TO DO WITH THE CHILD'S LIFE. SHE TOLD ME THAT THE HAPPIEST DAY IN EDDIE'S LIFE WAS THE FATHER'S DAY THAT SUSAN LET THEIR SON CALL EDDIE AND ACKNOWLEDGE HIM AS THE FATHER OF THE CHILD. AFTER THAT EDDIE'S LIFE CENTERED AROUND HIS CHILD AND HIS JOB. AFTER EDDIE LOST HIS JOB AT BROYHILL HE BECAME DEPRESSED AND WITHDRAWN. STILL THE FOCUS OF HIS LIFE WAS HIS SON AND HIS TIME WITH DANIEL WAS THE MOST IMPORTANT THING TO HIM. AMY TOLD ME THAT SHE WAS AWARE THROUGH EDDIE THAT SUSAN HAD BEEN INCONSISTENT IN ALLOWING EDDIE HIS VISITATION.

AMY SAID THAT EDDIE WAS ALWAYS TRYING TO HELP PEOPLE IN THE FAMILY AND IN THE COMMUNITY. SHE TOLD ME ABOUT A MAN WHO WAS DYING OF CANCER AND HIS WIFE WAS CARING FOR HIM AT HOME. HE WAS A LARGE MAN SO EVERY DAY EDDIE WOULD GO HELP HER MOVE HER HUSBAND OUT OF BED AND SUCH. AMY SAID THAT RIGHT AFTER EDDIE WAS ARRESTED SHE WENT TO SEE THIS WOMAN (MS. MORRIS) TO SEE IF SHE WOULD BE A CHARACTER WITNESS FOR EDDIE (I ASSUME FOR A BOND HEARING). MS. MORRIS SAID THAT SHE DID NOT LIKE TO GET INVOLVED WITH THIS SORT OF THING. AMY WAS VERY HURT BY THIS. AMY TOLD ME THAT AT THE SAME TIME MS. MORRIS TOLD HER THAT EVERYBODY KNEW THAT RUSSELL HAD LOST HIS MIND AFTER THE WAR. AMY SAID THAT SHE HAD NEVER REALIZED THAT ANYONE ELSE KNEW ABOUT HER DAD. SHE SAID THAT SHE HAD ALWAYS KNOWN THAT HER DAD "WAS NOT RIGHT IN THE HEAD".

THESE THINGS ARE VERY HARD FOR AMY TO TALK ABOUT AND SHE GETS A LITTLE EMOTIONAL. STILL SHE EFFECTIVELY RECOUNTS HER STORY. SHE WILL BE A VERY GOOD WITNESS. SHE IS WORRIED THAT HER MOTHER AND FATHER WILL BE ANGRY AT HER WHEN SHE TELLS THE TRUTH. AT THIS TIME I ASK THAT NO ONE TALK TO LILLIE OR RUSSELL WEIK ABOUT WHAT AMY HAS TOLD ME. I NEED TO GET THE OTHER SIBLINGS TO OPEN UP BEFORE LILLIE TELLS THEM NOT TO TELL ME.

FILE/PATTI RICKBORN

4/21/99
INTERVIEW
JOAN FERRER

JOAN IS THE WIFE OF DR. LARRY FERRER. LARRY IS EDDIE' S OLDEST HALF BROTHER. AFTER I LEFT VOICE MAIL FOR LARRY HIS WIFE, JOAN, RETURNED MY CALL. SHE TOLD ME THAT LARRY IS NOT REALLY COMFORTABLE TALKING ABOUT HIS CHILDHOOD.

SHE AND LARRY STARTED DATING AS TEENAGERS ABOUT THE TIME THAT LILLIE MARRIED RUSS WEIK. SHE TOLD ME THAT THE FERRERS WERE AN UPPER MIDDLE CLASS FAMILY IN THE COMMUNITY BEFORE MR. FERRER DIED AND LILLIE MARRIED RUSS. AFTER THAT THEY WERE VERY POOR AND RUSS GOT FIRED FROM EVERY JOB HE HAD AFTER A SHORT TIME BEFORE OPENING THE LOCKSMITH COMPANY.

JOAN SAID THAT THE MINUTE THAT LARRY GRADUATED FROM HIGH SCHOOL HE MOVED OUT OF THE WEIK HOUSEHOLD. EXCEPT FOR ANNUAL VISITS TO SEE HIS MOTHER AND THE OTHER CHILDREN HE NEVER WENT BACK.

JOAN IS AWARE OF THE STORY ABOUT RUSSELL' S SECRET MISSIONS IN VIETNAM THAT LEFT HIM EMOTIONALLY SCARRED. SHE TOLD ME THAT THE FIRST TIME THAT SHE HEARD THIS STORY RUSS SAID THAT IT WAS WORLD WAR II AND THAT HE LATER CHANGED THE STORY TO VIETNAM. SHE DOES NOT BELIEVE THAT ANY OF THIS IS TRUE. SHE TOLD ME THAT HER SISTER, MAGGIE, IS MARRIED TO A MAN WHO WAS IN THE SERVICE AND KNEW RUSS AND THAT HE TOLD THEM THAT RUSS NEVER SAW COMBAT.

JOAN IS GOING TO TALK TO LARRY AND SEE IF HE WILL TALK TO ME OVER THE WEEKEND.

THEY WILL TRY TO SCHEDULE TO HAVE TIME OFF DURING THE TRIAL. I AM ASKING THE PEOPLE WHO WILL NOT BE WITNESSES TO BE PRESENT WHENEVER POSSIBLE TO SHOW THE JURY FAMILY AND COMMUNITY SUPPORT FOR EDDIE.

FILE/PATTI RICKBORN

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NOTE:

I HAVE CONTACTED THE OUT OF STATE SIBLINGS BY MAIL AND WILL BE CONDUCTING TELEPHONE INTERVIEWS WITH THEM. I AM ASKING THEM TO TRAVEL TO SOUTH CAROLINA FOR THE TRIAL WHETHER TO TESTIFY OR JUST SHOW SUPPORT.

PLEASE FORWARD THIS INFORMATION TO THE MENTAL HEALTH EXPERTS AS SOON AS POSSIBLE. I WILL SEND MORE INFORMATION AS IT IS OBTAINED.

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Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 4/22/1999

AFTER SPEAKING WITH THE CLIENT'S MOTHER, LILLIE WEIK, ON SEVERAL OCCASIONS I FELT THAT SHE HAD SHARED ALL THE INFORMATION WITH ME THAT SHE INTENDS TO SHARE AT THIS TIME. SHE IS VERY PROTECTIVE OF HER HUSBAND, RUSSELL WEIK. SHE WOULD TELL ME A STORY ABOUT BEING AFRAID TO GO INTO HER BEDROOM BECAUSE RUSS WOULD BE IN THE BEDROOM SITTING WITH A LOADED GUN FOR LONG PERIODS OF TIME. THEN SHE WOULD INSIST THAT HE WAS NOT ABUSIVE. SHE TOLD ME ABOUT AN INCIDENT WHEN RUSS MISTOOK ONE OF HER DAUGHTERS FOR A VIETNAMESE GIRL AND PICKED HER UP OFF OF THE GROUND BY HER NECK AND CHOKED HER UNTIL SHE (LILLIE) INTERVENED. THEN SHE WOULD TELL ME THAT HER HUSBAND WAS A GOOD FATHER AND NEVER ABUSED EDDIE. WHAT ULTIMATELY HAPPENS WITH EACH CONVERSATION IS THAT LILLIE WILL START TO TALK AT LENGTH ABOUT EDDIE'S CHURCH ACTIVITIES AND WHAT A GOOD FATHER EDDIE WAS TRYING TO BE PRIOR TO THE INCIDENT. ALTHOUGH THESE ARE IMPORTANT POINTS I DO NOT FEEL THAT SHE IS DISCLOSING OTHER INFORMATION THAT IS OF EQUAL OR GREATER IMPORTANCE.

ATTACHED ARE NOTES FROM INTERVIEWS WITH AMY WEIK AND JOAN FERRER. NOW THAT THE BARRIER HAS BEEN BROKEN WITH THESE TWO I FEEL THAT THE OTHER SIBLINGS WILL OPEN UP TO ME. I WILL SEND MORE INFORMATION AS SOON AS I CONDUCT MORE INTERVIEWS.

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4/23/1999

MEMO

TO: DR. DONNA SHWARTZ-WATTS

FROM: PATTI RICKBORN

RE: JOHN "EDDIE" WEIK

I SPOKE TO MS. HARDEE-THOMAS THIS MORNING TO ADVISE HER OF SOME INFORMATION THAT I HAVE OBTAINED REGARDING THE HOME LIFE OF EDDIE WHILE HE WAS GROWING UP. I ASKED HER WHO THE MENTAL HEALTH EXPERTS ARE FOR THIS CASE AND SHE GAVE ME YOUR NAME AND NUMBERS. SHE TOLD ME THAT YOU ARE GOING TO SEE EDDIE TODAY. I HOPE THAT THIS INFORMATION REACHES YOU BEFORE YOU LEAVE.

IF IT IS ALRIGHT WITH YOU, I WOULD LIKE TO FORWARD A COPY OF INFORMATION FOR THE MITIGATION PHASE DIRECTLY TO YOU AS WELL AS THE ATTORNEYS. THANK YOU!

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MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

DATE: 4/23/99

INTERVIEW

STEPHEN WALKER

STEPHEN IS THE COMMON LAW HUSBAND OF AMY WEIK. HE WORKED AT BROYHILL FURNITURE AS A SECURITY GUARD FOR A TIME. HE WAS NOT WORKING AT BROYHILL WHEN EDDIE WAS FIRED.

STEPHEN TOLD ME THAT HE (STEPHEN) STARTED HIS SHIFT AT BROYHILL AT MIDNIGHT. EDDIE WAS SUPPOSED TO GET OFF OF WORK AT ABOUT 12:30 A.M. STEPHEN SAID THAT MOST OF THE TIME THAT EDDIE WOULD STAY LATE (2:00 A.M. TO 3:00 A.M.) TO CLEAN UP THE AREA WHERE EDDIE WORKED SO IT WOULD BE ORGANIZED THE NEXT DAY WHEN EVERYONE ARRIVED FOR WORK. EDDIE WAS NOT REQUIRED TO DO THIS EXTRA WORK. HE DID IT BECAUSE HE WAS A DEDICATED EMPLOYEE.

EDDIE WOULD STOP BY THE GUARD SHACK WHERE STEPHEN WORKED ON HIS WAY HOME AND VISIT FOR AWHILE. WHEN EDDIE BEGAN TO BE ALLOWED TO VISIT HIS SON THAT WAS ALL EDDIE TALKED ABOUT. THE CHILD MEANT THE WORLD TO EDDIE. EDDIE WOULD TELL STEPHEN ABOUT THE PROBLEMS THAT HE WAS HAVING WITH SUSAN IN REGARD TO REGULAR VISITATION WITH HIS SON. EDDIE TOLD STEPHEN THAT THE ONLY TIME THAT SUSAN WOULD CALL EDDIE TO LET HIM SEE HIS SON IT WOULD BE BECAUSE SHE WANTED MONEY OR A HIGH PRICED ITEM THAT SHE COULD NOT AFFORD. EDDIE KNEW THIS BUT TOLD STEPHEN THAT HE DID NOT CARE IF HE WAS BEING USED FOR MONETARY VALUE AS LONG AS HE COULD SEE HIS SON.

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INTERVIEW

PASTOR LEGRAND DUPREE
GATEWAY COMMUNITY CHURCH
MONCK'S CORNER, S.C.

DATE: APRIL 26, 1999

EDDIE BEGAN TO ATTEND THE GATEWAY BAPTIST CHURCH IN EARLY 1997. AT FIRST PASTOR DUPREE NOTICED THAT EDDIE WAS COMING TO CHURCH AND SITTING ON THE BACK ROW THEN QUICKLY LEAVING AFTER THE SERVICE WAS OVER. THE PASTOR APPROACHED EDDIE AND TRIED TO MAKE EDDIE FEEL A PART OF THE CHURCH. EDDIE TOLD THE PASTOR THAT HE DIDN'T LIKE CROWDS. PASTOR DUPREE BAPTIZED EDDIE IN APRIL OF 1997. EDDIE BEGAN TO BRING HIS SON, DANIEL, TO CHURCH. IN ONE ATTEMPT TO INCLUDE EDDIE AS A MEMBER OF THE CHURCH HE GAVE EDDIE THE JOB OF BEING ONE OF THE CHURCH USHERS. EDDIE WAS AN USHER FOR ONLY A FEW MONTHS BEFORE THE INCIDENT OCCURRED AND EDDIE WAS ARRESTED.

PASTOR DUPREE SAID THAT HE WAS SHOCKED WHEN HE HEARD ABOUT EDDIE'S ARREST FOR THE MURDER OF SUSAN KRASAE. THE NIGHT BEFORE THE INCIDENT EDDIE CAME TO THE WEDNESDAY NIGHT SERVICE AT THE CHURCH. EDDIE DID NOT USUALLY ATTEND THE WEDNESDAY NIGHT SERVICE. HE ASKED THE PASTOR TO PRAY FOR HIM (EDDIE) BECAUSE HE (EDDIE) WAS SO ANGRY THAT HE (EDDIE) WAS AFRAID THAT HE (EDDIE) WAS GOING TO HURT SOMEONE. THE PASTOR PRAYED WITH EDDIE. THE PASTOR DID NOT FEEL THAT EDDIE WAS ANY CALMER SO HE TOOK EDDIE ASIDE AND PRAYED WITH HIM AGAIN. HE TOLD EDDIE THAT HURTING SOMEONE WOULD ONLY CAUSE TROUBLE THAT MAY KEEP EDDIE FROM VISITATION WITH HIS SON. PASTOR DUPREE KNEW FROM PREVIOUS TALKS WITH EDDIE THAT EDDIE WAS NOT HAPPY ABOUT HIS SON'S MOTHER'S BOYFRIEND. THE PASTOR THOUGHT THAT THE VIOLENCE THAT EDDIE WAS TALKING ABOUT WAS BEATING UP THE BOYFRIEND NOT SHOOTING ANYONE.

THE PASTOR SAID THAT HIS OBSERVATIONS ABOUT EDDIE IN GENERAL WERE THAT EDDIE WAS A LONER AND EDDIE WOULD RAMBLE WHEN HE WAS HAVING A CONVERSATION WITH EDDIE. HE WOULD JUMP FROM SUBJECT TO SUBJECT. THE MAIN TOPICS OF CONVERSATION WITH EDDIE WERE EDDIE'S JOB, DANIEL AND FISHING.

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ANOTHER OBSERVATION THAT THE PASTOR MADE WAS THAT EDDIE DID NOT HANDLE STRESS WELL. ON A CHURCH TRIP TO FLORIDA EDDIE DROVE ONE CAR OF YOUNG PEOPLE AND THE PASTOR DROVE ANOTHER CAR OF YOUNG PEOPLE. EDDIE'S SON WAS ON THIS TRIP. SOMETIME INTO THE TRIP SOME OF THE KIDS THAT WERE IN EDDIE'S CAR HAD TO BE SWITCHED OUT WITH SOME OF THE KIDS FROM THE PASTOR'S CAR BECAUSE EDDIE WAS BECOMING ANGRY AND FRUSTRATED WITH SOME OF THE KIDS WHO WERE ACTING OUT IN HIS CAR.

SEVERAL MONTHS AFTER EDDIE'S ARREST THE PASTOR WENT TO SEE EDDIE IN THE JAIL. EDDIE TOLD THE PASTOR THAT HE HAD COMMITTED THE MURDER AND WAS PREPARED TO TAKE THE CONSEQUENCES. THE PASTOR STATED THAT HE TOLD EDDIE THAT IF YOU TAKE A LIFE YOU HAVE TO BE READY TO GIVE YOUR LIFE. EDDIE AGREED.

PASTOR DUPREE BELIEVES IN THE DEATH PENALTY.

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Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

MEMO

TO: MARVA HARDEE THOMAS

FROM: PATTI RICKBORN

RE: EDDIE WEIK

APRIL 27, 1999

ATTACHED IS A COPY OF MY NOTES FROM MY INTERVIEW WITH
RAMONDA "RAY" FERRER KLOCEK. I AM FORWARDING A COPY TO DR.
SHWARZ-WATTS AND DR. MORGAN.

I AM ALSO SENDING THE DOCTORS A COPY OF MY CONTACT LIST SO
THEY WILL BE ABLE TO CONTACT AND INTERVIEW THE SIBLINGS.

- P.S. Also attached are
- my notes from my interviews
- with Stephen Walker and
- Pastor Legrand Dupree.

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INTERVIEW

RAMONDA "RAY" FERRER KLOCEK
HALF SISTER

DATE: APRIL 27, 1999

RAY IS THE YOUNGEST OF THE FOUR CHILDREN THAT LILLIE WEIK HAD WITH HER FIRST HUSBAND. SHE REPORTS THAT HER FATHER, FERRER, WAS A VERY INVOLVED FATHER WHO PREPARED MOST OF THE FAMILY'S MEALS. FERRER WAS ABOUT THIRTY YEARS OLDER THAN LILLIE. HE DIED AS A RESULT OF A HEART ATTACK WHEN HE WAS IN HIS SIXTIES. RAY WAS ABOUT TWELVE YEARS OLD WHEN HER MOTHER MARRIED RUSS WEIK.

RAY TOLD ME THAT HER LIFE DRASTICALLY CHANGED FOR THE WORSE AFTER RUSS WEIK MARRIED HER MOTHER. SHE STATES THAT SHE WAS ALWAYS AFRAID OF RUSS. HE WAS OBSESSED WITH GUNS AND WAS ALWAYS TALKING ABOUT KILLING. SHE IS VERY FAMILIAR WITH THE STORY THAT ATTRIBUTED RUSS' RAGES TO HIS BAD EXPERIENCES IN VIET NAM. AS AN ADULT SHE GIVES VERY LITTLE CREDIBILITY TO THIS CLAIM OF VIET NAM "FLASHBACKS" BUT AS A CHILD SHE WAS TERRIFIED OF RUSS. SHE RECALLS THAT EVERY TIME SHE HEARD RUSS RUNNING THROUGH THE HOUSE SHE WOULD HIDE BECAUSE SHE ASSUMED THAT RUSS WAS GOING FOR ONE OF HIS GUNS. SHE KNEW THAT HE WAS CAPABLE OF USING A GUN. THE KIDS HAD A LITTLE DOG THAT THEY HAD FOR MANY YEARS. ONE DAY RUSS GOT MAD AT THE DOG. HE SHOT THE DOG TO DEATH. RAY REMEMBERS COWERING IN THE HOUSE WITH HER FINGERS IN HER EARS WHILE RUSS KILLED HER PET.

RAY RECALLS THAT EDDIE HAD A LARGE HEAD AS A BABY AND TODDLER. SHE SAID THAT HE DID NOT BECOME POTTY TRAINED UNTIL HE WAS AN OLDER TODDLER. EDDIE WAS ALWAYS VERY SLOW. SHE REMEMBERS WHEN EDDIE WAS STILL IN DIAPERS RUSS GOT MAD AT EDDIE AND STRUCK EDDIE SO HARD THAT EDDIE CAME OFF THE GROUND AND SLAMMED AGAINST THE WALL.

SHE TOLD ME ABOUT A TIME WHEN SHE WAS STANDING NEAR THE SLOP BUCKET AND SHE THREW SOMETHING LIKE A RIND OF MELON INTO THE SLOP BUCKET. SOME OF THE SLOP SPLASHED OUT OF THE BUCKET. RUSS BEGAN TO RAGE THAT SHE HAD DONE IT ON PURPOSE. HE HIT HER ON THE HEAD SO HARD THAT SHE BLACKED OUT. SHE THINKS HE HIT HER WITH

HIS FIST BUT SHE IS NOT SURE. WHEN SHE REGAINED HER SENSES SHE WAS WALKING TOWARD A NEIGHBOR'S HOUSE WHICH WAS DOWN A DARK ROAD THAT SHE WAS TOO AFRAID TO WALK DOWN WHEN SHE WAS IN HER RIGHT MIND. THE NEIGHBORS LOOKED AT HER HEAD AND FOUND A BIG GOOSE EGG KNOT ON HER HEAD. THEY DID NOT WANT HER TO GO BACK HOME BUT SHE INSISTED ON GOING HOME. SHE SAID THAT SHE WAS AFRAID THAT IF HE FOUND HER AT THE NEIGHBORS SHE WOULD BE PUNISHED MORE SEVERELY.

IN ADDITION TO THE RAGES AND THE PHYSICAL ABUSE RUSS ALSO CONSISTENTLY BERATED THE CHILDREN. DUE TO THE FACT THAT EDDIE WAS SLOW HE WAS AN EASY TARGET. RUSS CALLED HIM WORTHLESS AND STUPID AND TOLD HIM THAT HE WOULD NEVER BE GOOD FOR ANYTHING. RUSS YELLED AND RAGED A LOT.

SHE SAID THAT THERE WAS ALWAYS TURMOIL WHEN RUSS WAS AT HOME. RAY TOLD ME THAT SHE WOULD TRY TO BE ANYPLACE BESIDES HOME WHEN RAY WAS HOME. SHE BECAME PREGNANT AT SIXTEEN YEARS OF AGE. THIS IS WHEN SHE LEFT HOME AND NEVER LIVED IN THE WEIK HOUSEHOLD AGAIN. ON ONE OCCASION SHE WAS STAYING OVERNIGHT AT HER MOTHER'S HOUSE. SHE WAS SLEEPING ON THE COUCH AND AWOKE TO RUSS TRYING TO KISS HER. SHE WAS ABLE TO REBUFF HIM BY TELLING HIM SHE WAS TIRED. SHE WAS AFRAID TO YELL AT HIM FOR FEAR THAT HE WOULD BECOME VIOLENT. SHE NEVER TOLD HER MOTHER. SHE STATED THAT HER MOTHER CATERED TO RUSS AND SHE DID NOT THINK THAT HER MOM WOULD BELIEVE HER AGAINST RUSS. SHE DEVELOPED PROBLEMS WITH DRUGS AND ALCOHOL BUT SHE HAS BEEN CLEAN FOR TEN YEARS. SHE TOLD ME THAT SHE HAS HAD TROUBLE WITH HER RELATIONSHIPS WITH MEN.

WHEN I ASKED RAY HOW LILLIE REACTED WHEN RUSS WOULD GO INTO RAGES. SHE TOLD ME THAT LILLIE WOULD TRY TO SOOTHE RUSS AND CALM RUSS DOWN. RAY REMEMBERS THINKING THAT IT WAS EITHER ONE OF HER SIBLINGS OR HER THAT HAD BEEN INJURED AND THAT HER MOM SHOULD BE COMFORTING THEM AND NOT RUSS.

RAY TOLD ME THAT SHE LIVES ON A MODEST INCOME AND DOES NOT HAVE ANY SAVINGS TO USE TO TRAVEL FROM HER HOME IN NEW HAMPSHIRE TO SOUTH CAROLINA FOR EDDIE'S TRIAL. I DON'T THINK THAT WE WILL BE ABLE TO GET FUNDS TO PAY FOR HER TRAVEL AT THIS LATE DATE. IF WE ARE UNABLE TO BRING RAY AS A LIVE WITNESS SHE COULD BE INTERVIEWED BY PHONE BY DR. SHWARZ-WATTS OR DR. MORGAN AND THEY COULD TESTIFY ABOUT INTERVIEWING RAY. I THINK HER MEMORIES OF LIFE IN THE WEIK HOUSEHOLD ARE VERY IMPORTANT.

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Rickborn Investigations

933 Brandon Avenue Columbia, South Carolina 29209

APRIL 29, 1999

PERCY BEAUFORD AND MARVA HARDEE-THOMAS
ATTORNEYS AT LAW

RE: JOHN EDDIE WEIK

I HAVE BEEN WORKING ON THIS CASE SIX TO SEVEN WEEKS. DURING THIS TIME I HAVE ASKED THAT CERTAIN STEPS BE TAKEN BY YOU AS ATTORNEYS TO ASSIST ME WITH PREPARING THE BEST DEFENSE POSSIBLE FOR MR. WEIK SHOULD HIS CASE REACH THE PENALTY PHASE.

I HAVE ASKED THAT YOU TRY TO OBTAIN A COURT ORDER FOR THE CLIENT' S MEDICAL RECORDS. SINCE IT WAS SO LATE IN THE CASE WHEN I BECAME INVOLVED I FELT THIS WOULD EXPEDITE COLLECTION OF MEDICAL RECORDS. IT WOULD ALSO HAVE ALLOWED ME TO COVER A WIDE AREA OF MEDICAL FACILITIES TO TRY TO BE SURE THAT WE HAD ALL RECORDS OF THE CLIENT' S TREATMENT FOR THE HEAD INJURIES THAT HE REPORTED. SINCE I DID NOT RECEIVE THAT I OBTAINED DORCHESTER COUNTY SUBPOENAS AND SPENT A GREAT DEAL OF TIME TRYING TO OBTAIN ANY RECORDS THAT MAY EXIST FOR THE CLIENT.

I HAVE ASKED THAT YOU TRY TO OBTAIN A COURT ORDER FOR MEDICAL AND PSYCHIATRIC RECORDS FOR RUSSELL WEIK, THE CLIENT' S FATHER. SINCE THESE RECORDS WOULD BE MAINTAINED BY THE VETERAN' S HOSPITAL, PART OF THE UNITED STATES MILITARY, I KNEW THAT WE COULD NOT GET A COPY OF THESE RECORDS WITHOUT A COURT ORDER. THESE RECORDS COULD HAVE BEEN IMPORTANT TO ESTABLISH THE CONDITION OF RUSSELL WEIK AND SUBSTANTIATE THE CLIENT' S SIBLINGS STORIES. EVEN IF WE PRESENTED A COURT ORDER TO OBTAIN THOSE RECORDS TODAY WE WOULD PROBABLY NOT GET THESE RECORDS UNTIL THE TRIAL IS UNDERWAY. THE MENTAL HEALTH EXPERTS NEED SOME TIME TO REVIEW RECORDS LIKE THESE TO PRESENT A FULL PICTURE OF THE CLIENT' S SOCIAL HISTORY.

THE SINGLE MOST POTENTIALLY DAMAGING WITNESS THAT THE STATE HAS IN THE PENALTY PHASE OF THIS TRIAL IS DANIEL, THE CLIENT' S SON. I HAVE REPEATEDLY REQUESTED, FROM THE FIRST DAY THAT WE MET,

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THAT YOU START TAKING MEASURES TO GET COPIES OF THE RECENT PSYCHOLOGICAL EVALUATIONS ON DANIEL AND AMBER. I TOLD YOU THAT YOU SHOULD START PETITIONING THE JUDGE TO ALLOW A MENTAL HEALTH EXPERT FROM THE DEFENSE TEAM TO INTERVIEW THOSE CHILDREN, PARTICULARLY DANIEL. I HAVE NEVER RECEIVED A RESPONSE TO MY REQUESTS.

IN MY FIRST MEMO TO YOU I ASKED IF YOU WANTED ME TO SEND MY FINDINGS TO YOU AND THE MENTAL HEALTH EXPERTS OR TO YOU SO YOU COULD FORWARD THEM TO THE MENTAL HEALTH EXPERTS. I ASKED IF YOU COULD SUPPLY ME WITH THE NAMES AND ADDRESSES OF THE MENTAL HEALTH EXPERTS. SINCE I NEVER RECEIVED A RESPONSE TO THAT REQUEST I ASSUMED THAT YOUR OFFICES WERE FORWARDING PERTINENT INFORMATION, LIKE THE CLIENT'S STATEMENTS, TO THE MENTAL HEALTH EXPERT. I CALLED MS. HARDEE-THOMAS LATE LAST WEEK TO TRY TO DETERMINE WHAT THE STATUS WAS ON THE ORDERS AND OTHER THINGS THAT I HAD REQUESTED. AT THAT TIME MS. HARDEE THOMAS TOLD ME WHO THE MENTAL HEALTH EXPERTS ARE ON THIS CASE. SHE TOLD ME THAT DONNA SHWARZ-WATTS WOULD BE ON THIS CASE AND THAT DR. SHWARZ WATTS WAS GOING TO SEE THE CLIENT THAT DAY. SHE THEN TOLD ME TO TRY TO GET MY INFORMATION TO DR. SHWARZ-WATTS BEFORE SHE LEFT FOR THE JAIL. I FAXED MY INFORMATION TO DR. SHWARZ-WATTS' S OFFICE. I OFFERED TO DELIVER THE VIDEO AND AUDIO TAPES THAT I WAS SENT TO THE DOCTOR'S OFFICE THE NEXT WEEK. ON MONDAY I SPOKE TO MS. HARDEE THOMAS REGARDING DELIVERING THESE ITEMS. I ASKED IF THE DOCTORS HAD TRANSCRIPTS OF THE TAPES OR IF I NEEDED TO MAKE A COPY FOR THEM. SHE TOLD ME THAT THE DOCTORS DID NOT HAVE ANY INFORMATION RELATING TO THIS CASE. I WAS VERY SURPRISED BUT I MADE COPIES OF DOCUMENTS THAT I KNOW THE DOCTORS NEED TO REVIEW TO DELIVER TO THEM.

I HAVE REQUESTED BUT NEVER SENT A COPY OF THE ORDER APPROVING PAYMENT FOR MY SERVICES ON THIS CASE. I AM VERY LIBERAL IN THAT I DO NOT DEMAND A RETAINER BEFORE I START TO WORK ON A CASE. AS A RULE I DO EXPECT TO HAVE A SIGNED ORDER. I WENT AHEAD AND STARTED WORK ON THIS CASE IN GOOD FAITH BECAUSE THE TRIAL DATE WAS SO NEAR.

I HAVE DOCUMENTED THE MEMOS THAT I HAVE MAILED AND FAXED TO MS. HARDEE-THOMAS. I HAVE NEVER GOTTEN A SATISFACTORY RESPONSE. I WAS SENDING THESE THINGS TO MS. HARDEE-THOMAS BECAUSE MR. BEAUFORD TOLD ME, IN HER PRESENCE, THAT SHE WOULD BE HANDLING THE "PAPERWORK" ON THIS CASE. WHEN I HAVE BEEN ABLE TO SPEAK WITH MS. HARDEE THOMAS ON THE PHONE SHE IS

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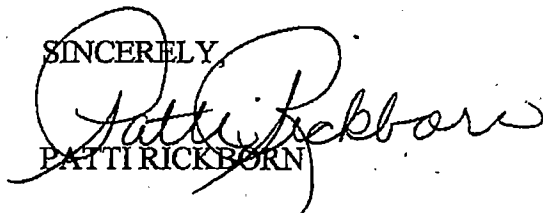
ALWAYS IN A RUSH AND HANGS UP BEFORE I CAN DISCUSS THE CASE WITH HER.

I HAVE FOUND REPORTS OF EMOTIONAL, PSYCHOLOGICAL AND PHYSICAL ABUSE IN THE CLIENT' S FAMILY. I HAVE PREPARED REPORTS AND FORWARDED THEM TO THE DOCTORS. I HAVE SUPPLIED YOU WITH A POTENTIAL WITNESS LIST. MOST OF THEM HAVE BEEN CONTACTED.

WHEN I ACCEPT A CASE IT IS WITH THE INTENT OF ASSISTING THE ATTORNEYS PREPARE THE BEST POSSIBLE DEFENSE FOR THE CLIENT. I DO NOT FEEL THAT I CAN DO THIS WITHOUT THE CO-OPERATION OF THE ATTORNEYS. I AM FORWARDING COPIES OF THE INFORMATION THAT I HAVE OBTAINED TO DR. MORGAN AND DR. SHWARZ-WATTS AND A COPY TO YOUR OFFICE.

AT THIS TIME I DO NOT KNOW IF I NEED TO RESIGN FROM THIS CASE BECAUSE I DO NOT KNOW IF AN ORDER WAS EVER APPROVED BY THE JUDGE FOR ME TO WORK ON THIS CASE. IN FACT, I TOOK MYSELF OFF OF ANOTHER CASE TO WORK ON THIS CASE. I WILL NOT BE ABLE TO ASSIST YOU FURTHER WITH THIS CASE.

SINCERELY,


PATTI RICKBORN

WEIK/MAIN FILE

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130 East Richardson Avenue
Summerville, SC 29483

P.O. Box 50503
Summerville, SC 29485

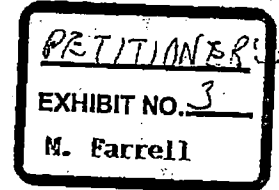
Dorchester County Public Defender
Marva A. Hardee-Thomas



3497

Tel: (843) 877

Fax: (843) 873-412



April 30, 1999

Ms. Patti Rickborn
933 Brandon Avenue
Columbia, SC 29209

Dear Ms. Rickborn:

In response to your letter dated April 29, 1999 which I received via United States Mail on April 30, 1999, I am shocked and surprised.

On March 12, 1999 you sent me a fax regarding a need for a court order to release medical and psychological records for Russell Weik. I forwarded that request to Attorney Percy Beauford the same day. On March 26, 1999 you faxed me a letter regarding locating records on Edward Weik's case that had been destroyed in the Berkeley County Hospital. You also stated in your letter that you would continue to locate and obtain records on Edward Weik. I faxed this also to Mr. Beauford. Other than going to the Hall Institute for an evaluation, I know nothing of an order to obtain medical records on Mr. Weik from any other facility or source. He has never gone to any other facility in the past. You had informed us, both Mr. Beauford and myself, as to what we needed to ask the Hall Institute after Mr. Weik was evaluated; but I know of no other records we needed to obtain that would require an order regarding Mr. Edward Weik. Please note that Mr. Beauford is the lead attorney in this matter, I am obligated in giving him all information. He decides how, when and what is to be done.

In response to your statement regarding Daniel and you asking Mr. Beauford and myself the first day that we met to allow a mental health expert from the Defense team to interview the children, we never addressed this issue because it was not an issue. If you remember, you asked Walter Bailey during our defense meeting if he was going to use the children, he said no. It was not until most recent that we received a Motion Hearing from the Solicitor's office that he wanted to have the child to possibly testify. On April 8, 1999 when I received your letter requesting an interview of the children, I faxed this information directly to Mr. Beauford. Mr. Beauford needs to make a decision on these issues, not me. I never knew you were waiting on an answer. If I had known, I would have referred you directly to Mr. Beauford.

You must know that I sent Dr. Donna Swartz-Watts and Dr. McKee all the documents for this case. I only asked you to deliver the video tapes to Donna, which she has never seen. I did

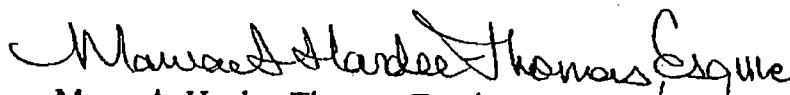
not tell you to give her anything but the three videos I sent you. Dr. Morgan was just brought into this case within less than one week of this letter. I never asked you to give him anything. I never had a chance to since he is so new in this case.

The only time I was ever short with you over the telephone was the day Dr. Swartz-Watts was leaving to see Mr. Weik. However, we had spoken to each other twice on the same day and I asked you to do two things. You had agreed to take the tapes to Donna and to subpoena the Hall records. A copy of a signed order was never sent to you because we never got it. Mr. Beauford and I found out on April 30, 1999 that Judge Schuler already signed the order and it was lost in transit between his office and the Clerk of Court. We would not have known this information until we called the Judge to find out about it.

In response to faxed documents not getting responses, all I can do is forward the items to Mr. Beauford and wait for a response.

We hardly ever talked on the telephone. I have always received fax copies from you or I would call you when things are very important. I remember speaking to you in total 2 or 3 times. If you want to get out of the case that is your choice, but to use the excuses that I have read about demand an explanation and a response.

Sincerely,


Marva A. Hardee-Thomas, Esquire

MAHT/skf

cc: Percy Beauford

File

3499

May 11, 1999



To: Percy Beauford
Marva A. Hardee Thomas

From: Bobby Minter
Subject: Potential Witness list.

The following named people have been interviewed as potential witnesses for the defense of John E. Weik. This is only a partial list at this time with additional names to follow:

- 1) Abraham Nelson Rodriguez, Jr.
h/m dob 8/15/53 ssn# 073-46-5993
105 Jackson Rd.
Ladson, SC
843-832-8917
- 2) Alton Huggins
w/m dob 10/5/35 ssn# 249-56-3337
199 Ridge Lake Rd.
Summerville, SC
843-871-4506
- 3) Pastor Bruce Scott
w/m dob 11/18/51 ssn# 248-90-7961
2425 S. Live Oak Dr
Moncks Corner, SC
- 4) Ervin Varner
w/m dob 2/26/40 ssn#248-64-3850
136 Benjamin Dr.
Moncks Corner, SC
- 5) Paston Legrand Dupree
202 Gail More Dr.
Ladson, SC 572-8121
- 6) Bernice Austin
w/f
205 Benjamin Dr
Moncks Corner, SC
843-761-6238

May 9, 1999

TO: Percy Beauford
Marva A. Hardee-Thomas

From: Bobby Minter
Subject: Edward Weik

I spoke to Abraham Nelson Rodriguez, Jr. tonight at his home in Ladson. Mr. Rodriguez is the Master Electrician at Broyhill and has been there since 1991. Mr. Rodriguez knew Eddie Weik very well and described him as a very good worker who was dependable and would help out anytime. He described Eddie as a friendly guy who loved his job. He remembers that Eddie would joke around with you and was very pleasant to be around. He told that he feels that Eddie was railroaded out of his job and it devastated him when he lost it. He says that Broyhill was Eddie's life and he loved working there. During the time that Eddie worked there, Eddie would do whatever it took to get the job done. He would volunteer for jobs that no one else wanted and would work over at any time asked. He remembers commenting to Eddie one time about his devotion to the job.

He thinks Eddie was set up by management on the incident that eventually caused him to lose his job. He described Eddie's supervisor, David Lindsay, as a mouthy kind of guy who would routinely curse at his subordinates and abuse them. David Lindsey came from North Carolina, where the Broyhill Headquarters is located and has the reputation as a hatchet man for the company. He states that several people have been run off from Broyhill by Lindsey and there have been discrimination suits filed by some of them. He seems to target the low educated minority workers with 15-20 years service with the company.

Mr. Rodriguez told me that he talked with Eddie many times about various things but Eddie didn't speak much about his personal life except that he didn't like the thought of his son living with his mom and another man who was no married. Mr. Rodriguez told me that Daniel's mother must have really punched with right button with Eddie to get him to commit such a terrible act because it was so totally out of his character. He states that he has never seen Eddie mad nor heard of him threatening anyone until this incident happened.

Mr. Rodriguez also told me that Eddie's boy Daniel didn't know that Eddie was his father until his mom started action to get child support from Eddie.