

Appendix B to
Respondent's Brief in Opposition
Post-Conviction Evidentiary Hearing Transcript

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

VERSUS

CAUSE NO. 25,945

ALAN DALE WALKER

DEFENDANT

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE
RECORD OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE
THE HONORABLE JOHN C. GARGIULO, CIRCUIT COURT JUDGE OF
THE SECOND CIRCUIT COURT DISTRICT OF THE STATE OF
MISSISSIPPI, ON APRIL 7, 2014.

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1 THE COURT: We're on the record Cause
2 Number 25,945, State of Mississippi versus
3 Alan Dale walker. And I note for the record
4 that Mr. walker is present in the courtroom
5 with both of his counselors of record,
6 Mr. James Craig and Mr. David Voisin. Did I
7 pronounce that correctly?

8 MR. VOISIN: Yes, sir, Your Honor.

9 THE COURT: And the case is set for
10 status. If the defense could please just
11 give a short procedural posture before we
12 begin.

13 MR. CRAIG: Yes, Your Honor, very simply
14 this is a case that arises from an event in
15 1990. Mr. walker was originally tried,
16 convicted of capital murder, and sentenced to
17 death. He had appealed both his direct
18 appeal and his first state post-conviction
19 petition.

20 During the pendency of federal habeas
21 proceedings some new cases emerged from the
22 United States Supreme Court and the
23 Mississippi Supreme Court. So Mr. Voisin and
24 I filed a successive or second petition for
25 post-conviction relief under those new
26 rulings.

27 The Mississippi Supreme Court in, I
28 believe, January of this year entered its
29 opinion and order remanding the allegation in

1 the second petition for post-conviction
2 relief to this court for an evidentiary
3 hearing.

4 As we appreciate the procedural posture,
5 what is now to be done is for Mr. Voisin and
6 myself to file a motion to vacate in this
7 court setting forth the factual legal grounds
8 of the petition that will track what we filed
9 in the Mississippi Supreme Court. The state
10 then has an opportunity to file --

11 (BRIEF INTERRUPTION)

12 THE COURT: Sorry to interrupt you. Go
13 ahead.

14 MR. CRAIG: Not at all. Thank you. So
15 as I appreciate the posture we're in now,
16 Your Honor, what should be done is for us to
17 set a time for defense to file a motion to
18 vacate which would contain the factual and
19 legal bases for the evidentiary hearing, that
20 the state would be given a number of days to
21 file a answer or reply, and then at that
22 point, there may or may not be other
23 procedural motions to take up.

24 I would note for the court in this
25 particular case the witnesses who had been
26 contacted on the claims in this petition are
27 almost all outside the State of Mississippi,
28 and so there will ultimately have to be
29 process issued or depositions taken.

1 So our position is that the court could
2 enter its order directing us to file the
3 motion to vacate two weeks from today, that
4 the state be given 30 days to file a
5 response, and then if the case be set for a
6 further status to see when it could be set
7 for evidentiary hearing, Your Honor.

8 Mr. Voisin and I also have filed today
9 an entry of appearance reaffirming that we
10 are serving as counsel for Mr. Walker. That
11 is under the aegis of the Mississippi Office
12 of Post-Conviction Counsel, Your Honor. So
13 that he will be paid by the state appropriated
14 funds to that agency, not by county funds.
15 Although, from time to time we may have to
16 request the court to approve invoices that
17 will then be sent to the state office for
18 payment.

19 THE COURT: All right. What says the
20 state?

21 MR. OWEN: Your Honor, it's my
22 understanding, and I'm standing in
23 momentarily for Mr. White with the attorney
24 general's office. I contacted him Friday.
25 He was unaware of this hearing because I
26 believe the ball, so to speak, was in the
27 defense's court like he said.

28 He's waiting for them to file their PCR
29 in order for him to properly respond. And he

1 is going to be handling that matter for the
2 attorney general's office, and I agree with
3 them. He's just waiting for them to file
4 theirs, and then he's going to respond
5 appropriately.

6 THE COURT: How much time do you think
7 you need to file your PCR?

8 MR. CRAIG: We'd ask for two weeks, Your
9 Honor. It's going to be based very largely
10 on what we've already filed.

11 THE COURT: I presume no objection on
12 behalf of the state?

13 MR. OWEN: No, Your Honor.

14 THE COURT: All right. You've got two
15 weeks to file your PCR, and do we need to
16 get, for lack of a better word, a scheduling
17 order?

18 MR. CRAIG: We have done that in the
19 past, Your Honor, setting out a time for the
20 state to respond to the PCR, and then perhaps
21 setting a deadline if there are any motions
22 that go to anything beyond the merits of the
23 case.

24 THE COURT: Is that something you want
25 to meet with Mr. White to discuss?

26 MR. CRAIG: We have no objection to
27 that, Your Honor. We can present it to the
28 court through the court's staff attorney.

29 THE COURT: All right. So at this time

1 I'll order that the defense file its
2 successive PCR within two weeks of today's
3 date. Is that enough time for you?

4 MR. CRAIG: Yes, Your Honor.

5 THE COURT: Within two weeks of today's
6 date, and then also, as officer of court,
7 you're to contact Sonny White and find out an
8 agreeable time in which he's to respond?

9 MR. CRAIG: That's absolutely acceptable
10 to us, Your Honor.

11 THE COURT: I won't unilaterally set
12 that. I'll at least give him a chance to be
13 heard on it.

14 MR. CRAIG: Yes, Your Honor.

15 THE COURT: And then you can propose or
16 present an agreement with that date and any
17 other dates that you want commemorated in
18 that order.

19 MR. CRAIG: Yes, Your Honor.

20 THE COURT: With that being said, is
21 there anything else required on the record on
22 behalf of the defense?

23 MR. CRAIG: No, Your Honor.

24 THE COURT: How about on behalf of the
25 state?

26 MR. OWEN: No, Your Honor.

27 THE COURT: Okay. That will be the
28 order of the court.

29 (END OF PROCEEDINGS)

1 STATE OF MISSISSIPPI
2 COUNTY OF HARRISON

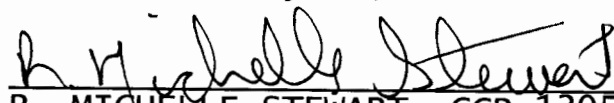
3 CERTIFICATE OF COURT REPORTER

4 I, R. Michelle Stewart, CCR 1305, official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 6 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of the
9 RECORD had on the 7 day of April, 2014, before the
10 Honorable John C. Gargiulo, Circuit Court Judge of the
11 Second Circuit Court District of the State of
12 Mississippi, being a regular day in the April Term of
13 Harrison County Circuit Court at Gulfport.

14 This is to further certify that I have this date
15 filed the original and one copy of said transcript,
16 along with one CD in PDF language, for inclusion in the
17 record on appeal, with the Clerk of the Circuit Court
18 of Harrison County, Mississippi, and have notified the
19 attorneys of record and the Supreme Court of my actions
20 herein.

21 I do further certify that my certificate annexed
22 hereto applies only to the original and certified
23 transcript and electronic disks.

24 WITNESS MY SIGNATURE, July 30, 2018.

25 
26 R. MICHELLE STEWART, CCR 1305
27 Official Court Reporter

28 COURT REPORTER'S FEE: \$16.80
29

R. Michelle Stewart, CCR - Official Court Reporter

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

NO. 2018-TS-01059

VERSUS

CAUSE NO. 25,945

ALAN DALE WALKER

DEFENDANT

=====
Transcript of the proceedings had and done in the above
styled and numbered cause before the Honorable Christopher
L. Schmidt, Circuit Court Judge of the Second Circuit Court
District of Mississippi, on September 3, 2015.
=====

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Reported By:

Huey L. Bang, CSR #1147, RMR, CRR,
Official Court Reporter

Record

1 THE COURT: On the record in Cause Number
2 25,945, Harrison County Circuit Court, State of
3 Mississippi versus Alan Dale walker. And at the
4 same time, Supreme Court Cause Number
5 2012-DR-102-SCT, Alan Dale Walker versus State
6 of Mississippi. Counsel, please make your
7 appearance for the record.

8 MR. CRAIG: Jim Craig, counsel for
9 petitioner Alan walker.

10 MR. VOISIN: David Voisin, also counsel for
11 Mr. Walker.

12 MR. WHITE: Marvin White for the attorney
13 general's office, special assistant attorney
14 general.

15 MR. DAVIS: Jason Davis, also with the
16 attorney general's office.

17 THE COURT: Good morning, everyone.

18 MR. WHITE: One preliminary matter I must
19 bring up right at this time is Mr. Voisin cannot
20 participate in this case. He entered an
21 appearance in the original post-conviction case,
22 on 3/27/02 entered an appearance of counsel. So
23 he cannot participate in this case. He was
24 involved in the case where counsel was held
25 ineffective.

26 MR. CRAIG: Please the court, first, in the
27 first instance, I don't think that's an
28 automatic bar. I think that is -- if that was
29 something the state was going to raise, we would

Record

1 have appreciated knowing it prior to this point.
2 Mr. Walker has the right to waive that conflict
3 under the rule.

4 THE COURT: Let me stop you right there.
5 Mr. Walker is not present at this hearing.

6 MR. CRAIG: That's correct.

7 THE COURT: Please don't interrupt me. As
8 I understand from correspondence with my
9 judicial assistant, is that you have an
10 affidavit or some type of personal waiver you
11 want to present to the court waiving his
12 appearance for this hearing?

13 MR. CRAIG: We do not have the affidavit
14 yet, Your Honor, but we will get it to the
15 court. He has, in personal conversation with
16 me, Jim Craig attorney for the petitioner,
17 waived his appearance at this hearing. That is
18 not a problem.

19 MR. WHITE: I don't believe we can proceed,
20 Your Honor.

21 MR. CRAIG: That's not correct, Your Honor.
22 He can waive his appearance, and --

23 THE COURT: He can waive his appearance,
24 but can you waive his appearance on his behalf
25 is what Mr. White, I guess, is suggesting.

26 MR. WHITE: You know, if he hasn't waived
27 it by affidavit or in person, waived his
28 appearance, I don't think we can proceed.

29 MR. CRAIG: I don't know the authority that

Record

1 requires that, Your Honor. Perhaps I'm
2 mistaken.

3 MR. WHITE: This seems to be a critical
4 stage of the proceeding. If he -- the motions
5 they filed, he has asked to do a dispositive
6 ruling on part of the claim. Mr. Walker has got
7 to be here or have affirmatively waived it with
8 a notice, or affidavit, or something.

9 THE COURT: I can't disagree with that, Mr.
10 Craig. We had issued, I think, a transport
11 order for your client to be brought from the
12 penitentiary here. At some juncture, I guess we
13 called the sheriff off because of the
14 announcement that you would be supplying -- or
15 have an affidavit to that effect at the hearing
16 according to an August 21st, 2015 e-mail from
17 you to Ms. Ingram, my law clerk. What's the
18 status of the affidavit?

19 MR. CRAIG: We have sent it up to the
20 penitentiary. We have not received it back from
21 Mr. Walker yet. But that's only because of the
22 distance and the time, Your Honor. I'm located
23 in New Orleans, and I did not go all the way to
24 the penitentiary to get it myself. I don't know
25 -- I agree that Mr. Walker needs to waive his
26 presence. I do not know the authority for
27 saying that his presence may not be waived by
28 counsel, particularly in a hearing where no
29 evidence is to be taken.

Record

1 THE COURT: I think that one of the motions
2 you have is a dispositive motion of summary
3 judgment on the claims that post-conviction
4 claim he received ineffective assistance of
5 counsel at his sentencing phase. You know,
6 everything is reviewed with heightened scrutiny
7 on my rulings. I wouldn't want him to later
8 claim against you that he wanted to be here, but
9 for my direction to the sheriff not to pick him
10 up, that's caused some heartache and we have to
11 do this again.

12 MR. WHITE: And I'm a little more
13 concerned, too, because in a prior instance, Mr.
14 Walker tried to dismiss Mr. Craig as counsel.
15 So I don't --

16 THE COURT: Y'all have a lot more history
17 with this case, of course, than I do. I came on
18 January 1st.

19 MR. WHITE: That was in federal court. We
20 had to have a hearing on whether or not he
21 wanted to dismiss him or not, actually. So,
22 know, Mr. Walker seems to be changeable about
23 that. So I don't know -- he is not a dummy. He
24 may be gaming the system. So this is a death
25 penalty case, and it is way down the road. So I
26 don't think we can proceed without affirmative
27 notice that he has -- he has waived his
28 appearance.

29 MR. CRAIG: I'm deeply apologetic for that,

Record

1 Your Honor. I feel personally responsible for
2 having not made sure I had the affidavit in
3 hand. I don't agree that we need the affidavit
4 to be able to proceed, but if that's the court's
5 belief, then we adhere to it.

6 THE COURT: We have gathered for naught.

7 MR. CRAIG: I'm very sorry about that.

8 THE COURT: Well, is it his, your client's,
9 insistence not to be present for whatever
10 reason, doesn't want to come, travel to Harrison
11 County, or whether there is some personal reason
12 that he doesn't wish to be physically present in
13 the courtroom? is it just for this hearing or
14 just in any of these post-conviction hearings?

15 MR. CRAIG: It is for hearings that don't
16 involve the taking of testimony. For his own --
17 for the actual evidentiary hearing, he does want
18 to be present. But it is personal reasons,
19 having to do with being at Parchman and not
20 wanting to be transported unless his presence is
21 necessary.

22 THE COURT: Short of -- does the state have
23 any objection to a properly executed affidavit
24 by Mr. Walker waiving his right to be present
25 for this non-evidentiary hearing, will that
26 suffice for the state? Will you accept that?

27 MR. WHITE: An affidavit?

28 THE COURT: Yes.

29 MR. WHITE: Yes. As long as he has sworn

Record

1 to something. But, you know, as it stands right
2 now, we have nothing.

3 THE COURT: Well, I'm not going to proceed.
4 I think it will be fool hearted at this
5 juncture, given the nature of the case and its
6 long history, that without an affidavit or him
7 present, we're not going to proceed. And, Mr.
8 Craig, only thing I ask you to do is when you
9 receive the affidavit, file it with the clerk,
10 and get with Mr. White and the court and we have
11 to reschedule. Everybody's got to come back.

12 MR. CRAIG: I'm terribly sorry, Your Honor.
13 And we will tend to that immediately when we get
14 back to the office.

15 THE COURT: Insofar as Mr. Voisin's
16 participation, this kind of hit me, of course,
17 this morning as it did you, Mr. Craig.

18 MR. WHITE: The thing is, I didn't know Mr.
19 Voisin was involved in the case, really. I
20 mean, he signed on to something, but it didn't
21 hit me until this morning that he had been with
22 the office of post-conviction counsel. So
23 that's when, as soon as I could get to a
24 computer this morning, that's when I checked and
25 saw that he had entered an appearance of
26 counsel. Which complicates the matter because
27 his office was held ineffective.

28 THE COURT: Was it the office or the
29 individual attorney?

Record

1 MR. WHITE: Well, he was counsel on the
2 case. They specifically mention Bob Ryan. But
3 if his name is included on the pleadings, which
4 if memory serves me, his name was on the
5 pleadings, there is a conflict. Now,
6 presumably, because they don't speak to that in
7 the context of a successive petition for
8 post-conviction relief, presumably Mr. Walker
9 can waive that, also. But if he does that, he
10 waives any future claim of ineffective
11 assistance of this post-conviction counsel.

12 MR. CRAIG: If I may respond.

13 THE COURT: Yes.

14 MR. CRAIG: In the first instance, Your
15 Honor, I think something of this seriousness, we
16 would, especially if we are reconvening, we
17 would appreciate it being done by written motion
18 to which we can file a response. For example, I
19 don't agree with counsel's last statement that
20 waiving a conflict under *Tyler versus Schuler*,
21 those kinds of cases, would necessarily waive
22 all post-conviction -- all possible ineffective
23 assistance of counsel remedies. But that's
24 something we can research and present to the
25 court. The -- I would say, Your Honor, that the
26 issue of ineffective assistance of counsel of
27 post-conviction counsel has already been -- that
28 issue has already been determined by the
29 Mississippi Supreme Court in its December 12th,

Record

1 2013 opinion. They specifically found Mr. Ryan,
2 the director of the post-conviction office, to
3 have been ineffective. And the focus of the
4 hearing for which this matter has been remanded
5 to Your Honor is a claim of ineffective
6 assistance against trial counsel.

7 So I don't know, in order for there to be a
8 conflict of interest, there would have to have
9 been some prior action of Mr. Voisin's that
10 would create a conflict of interest. And since
11 the Supreme Court has already foreclosed that
12 issue by ruling in our favor, I don't think
13 there really is a conflict. I would also point
14 out that, and if given an opportunity to write a
15 counter-motion on this we would, that there is a
16 considerable body of case law about a party
17 allowing a purported conflict to take place for
18 a significant period of time before objecting to
19 it.

20 In this case, Mr. Voisin filed, with me,
21 the original successive petition for
22 post-conviction relief way back in 2012. And
23 this three years later is the first we're
24 hearing this objection. And there are cases on
25 that. I'm not here to argue it.

26 THE COURT: Well, let's --

27 MR. WHITE: If I may, Rule 22(d)(4), about
28 counsel have not previously represented the
29 capital petitioner in the case, either in the

Record

1 trial court or the direct appeal, unless the
2 petitioner and counsel expressly request
3 continued representation and waive all potential
4 issues that are foreclosed by continued
5 representation. That's Rule 22(d)(4).

6 THE COURT: That's very familiar to the
7 court in the last couple of days. We had
8 another hearing with another post-conviction
9 matter yesterday under Rule 22. And the state
10 was present.

11 MR. CRAIG: I understand, Your Honor.

12 THE COURT: Well, Mr. White, Rule 22 (d)(4)
13 is what you are pointing the court to?

14 MR. WHITE: Yes, sir.

15 THE COURT: Did Mr. Voisin represent Mr.
16 Walker in the direct appeal?

17 MR. WHITE: He represented him on the first
18 post-conviction. But we would, you know, while
19 that is true, that post-conviction is there,
20 this is a second post-conviction and he is
21 entitled to conflict free effective
22 post-conviction counsel under *Grayson versus*
23 *State*. So if we have this, and then when this
24 gets decided, then we get back into this circle
25 again of somebody coming in and saying, well,
26 they were not effective, raising another
27 successive. And if there was conflict of
28 counsel, because he represented him previously,
29 and was found to be -- the office was found to

Record

1 be ineffective.

2 THE COURT: I think it would be prudent
3 that this is a preliminary matter we have to
4 resolve, inasmuch as the state has raised it
5 and, Mr. Craig, you are objecting to it,
6 although it's not been pled and memoranda have
7 not been submitted for the court's
8 consideration. How much time do you all need to
9 file -- I presume, Mr. White, are you going to
10 file a motion to disqualify him?

11 MR. WHITE: I will. I will file one
12 tomorrow, as far as that goes, when I get back
13 to the office.

14 THE COURT: So, Mr. Craig, how much time do
15 you need to -- why don't we say a week, in case
16 you get back to Jackson and you find termites in
17 your house or something. Something to give you
18 a little time. On or before the 11th -- or the
19 4th is tomorrow, so the 11th, Mr. Craig, can you
20 file a response by the 25th? Which is two
21 weeks?

22 MR. CRAIG: Yes, Your Honor, we can.

23 THE COURT: And maybe within that time you
24 will receive the affidavit. And if appearing
25 from the pleadings or the submissions, I feel
26 that it would be more appropriate to have Mr.
27 Walker present since we're dealing now with his
28 lawyers as opposed to discovery issues, I will
29 either accept the affidavit or direct that he be

Record

1 transported for the hearing. And we can
2 reschedule the hearing after the submissions are
3 in.

4 MR. CRAIG: Yes, Your Honor. And I will
5 inquire of my client whether -- it may be given
6 this issue, that he would prefer to be present
7 in terms of the question of whether he does
8 waive. If the court finds that there is a
9 conflict, he would be in a position of waiving
10 the conflict and the court might want to conduct
11 a colloquy with respect to that.

12 THE COURT: Exactly. I agree. So we will
13 look for everything to be briefed on or before
14 the 25th of September, and we will get a new
15 date. I'm back in this courthouse throughout
16 the fall, October, November, December. And
17 hopefully we can have something heard relatively
18 soon.

19 MR. CRAIG: Yes, Your Honor. And I have
20 hearings the second week of October in another
21 case, but other than that, anytime after that I
22 would be available.

23 THE COURT: All right. Do y'all want to go
24 ahead and get a date then now, Mr. White, Mr.
25 Davis, Mr. Craig? Thursdays are generally
26 allocated to my civil docket, but I don't know
27 what they are in October. Is a Friday more
28 convenient to y'all? I would rather dedicate as
29 much time to this case and not try to plow

Record

1 through while waiting on a bunch of judgment
2 debtor exams following. How about the 16th of
3 October?

4 MR. VOISIN: I believe I have a conflict on
5 that date, Your Honor.

6 MR. CRAIG: I believe we both have the 29th
7 through the 30th.

8 THE COURT: I have a senior in high school.
9 So I don't know if we're on the road that
10 weekend or not. The 30th?

11 MR. CRAIG: Yes, Your Honor, for the
12 petitioner.

13 THE COURT: Mr. White?

14 MR. WHITE: Resuming this hearing we're
15 having today, right?

16 THE COURT: Pardon?

17 MR. WHITE: That's the resumption of this
18 hearing?

19 THE COURT: Correct. The hearing scheduled
20 and we will have to take on the additional
21 preliminary matter of disqualification. Do we
22 need to reduce this to another scheduling order?

23 MR. CRAIG: We don't have to, Your Honor,
24 but we don't object to that. However the court
25 wants to proceed.

26 THE COURT: I will just enter an order
27 saying the dates so we're clear the 11th for the
28 state's motions, and any motions you want to
29 file, Mr. Craig, and then within two weeks the

Record

1 responses thereto.

2 MR. DAVIS: Thank you, Your Honor. And we
3 do anticipate needing a transport order for the
4 30th for Mr. Walker.

5 THE COURT: We'll prepare one. We'll be in
6 recess if there is nothing else.

7
8 (Whereupon the proceedings were concluded)
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Reporter's Certificate

1 STATE OF MISSISSIPPI

2 COUNTY OF HARRISON

3
4 I, HUEY L. BANG, CSR No. 1147, Official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 14 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of my
9 stenographic notes of the Hearings had on the 3rd day of
10 September, 2015 before the HONORABLE CHRISTOPHER L.
11 SCHMIDT, Circuit Court Judge of the Second Circuit Court
12 District of the State of Mississippi, being a regular day
13 in the September Term of Harrison County Circuit Court at
14 Gulfport.

15 This is to further certify that I have this date
16 filed the original and one copy of said transcript, along
17 with one CD in PDF language, for inclusion in the record
18 on appeal, with the Clerk of the Circuit Court of
19 Harrison County, Mississippi, and have notified the
20 attorneys of record and the Supreme Court of my actions
21 herein.

22 WITNESS MY SIGNATURE on this, the 24th day of
23 August, 2018.

24 
25 HUEY L. BANG, CSR #1147

26 Official Court Reporter

27
28 Court Reporter's Fee: \$36.00

29

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

NO. 2018-TS-01059

VERSUS

CAUSE NO. 25,945

ALAN DALE WALKER

DEFENDANT

Transcript of the proceedings had and done in the above
styled and numbered cause before the Honorable Christopher
L. Schmidt, Circuit Court Judge of the Second Circuit Court
District of Mississippi, on October 30, 2015.

APPEARANCES:

Representing the State:

MARVIN WHITE, ESQUIRE
CAMERON BENTON, ESQUIRE
Assistant Attorney General
P.O. Box 220
Jackson, Mississippi 39205-0220

Representing the Defendant:

JIM CRAIG, ESQUIRE
DAVID PAUL VOISIN, ESQUIRE
MacArthur Justice Center
4400 S. Carrollton Avenue
New Orleans, Louisiana 70119

Reported By:

Huey L. Bang, CSR #1147, RMR, CRR,
Official Court Reporter

Motion

1 THE COURT: This is Alan Dale Walker versus
2 the State of Mississippi in Supreme Court Cause
3 Number 2012-DR00102-SCT, trial court Cause
4 Number 25,945. Counsel for Mr. Walker please
5 make your appearance for the record.

6 MR. CRAIG: Thank you, Your Honor. I'm
7 James Craig from New Orleans, counsel for Mr.
8 Walker.

9 MR. VOISIN: I'm David Voisin of Jackson.

10 MR. CRAIG: And may the record reflect that
11 Mr. Walker is physically present.

12 THE COURT: I see him this morning. And
13 for the state?

14 MR. WHITE: Marvin White, special assistant
15 attorney general. And then Cameron Benton, also
16 special assistant attorney general.

17 THE COURT: Good morning. There are
18 several motions on the docket this morning which
19 was continued over from the hearing we had in
20 August, maybe, September, to allow the
21 petitioner, Mr. Walker, to be present because he
22 wasn't at the last hearing. At that time, the
23 state made an observation that Mr. Voisin had
24 previously appeared in a post-conviction
25 petition which was ruled by the Supreme Court to
26 be -- he was of counsel or had entered his
27 appearance and had later left the office of the
28 indigent appeals, I think it was called.

29 MR. CRAIG: State post-conviction.

Motion

1 THE COURT: Which was later ruled by the
2 Supreme Court to be ineffective on behalf of Mr.
3 Walker at that hearing. So Mr. White made that
4 observation that there could be a conflict. And
5 has sense filed a motion to disqualify Mr.
6 Voisin from appearing in this matter. I've read
7 the motion and the response. Is there anything,
8 Mr. White, you want to add beyond what you
9 filed?

10 MR. WHITE: Other than to say that in his
11 reply he says he is willing to waive it. So why
12 don't we just waive it. Because I still think
13 there is a conflict otherwise. Once -- they
14 make the argument, well, since the office has
15 already been found ineffective and remanded for
16 a hearing here, that whatever the office of
17 post-conviction counsel did, doesn't matter
18 anymore. Well, it does, since the office where
19 Mr. Voisin says in his motion that he was the
20 lead counsel up until two months before the
21 thing was filed, that that was the actions by
22 the post-conviction office were ineffective and
23 we're sticking somebody else, the same person
24 who has already been found ineffective in the
25 case, back in the case. And we think that that
26 is a still a conflict.

27 THE COURT: Mr. Craig, have you had an
28 opportunity to speak with your client regarding
29 the alleged or potential conflict which may

Motion

1 arise regarding this issue?

2 MR. CRAIG: Yes, Your Honor. And
3 obviously, for the record, since Mr. White
4 addressed a couple points on the merits, we
5 dispute those points for the reasons set forth
6 in our written pleadings. Mr. Walker is here.
7 Mr. Walker wants Mr. Voisin to remain on the
8 case. And the issue for us, Your Honor, with
9 respect to waiver, is that the -- any waiver
10 that Mr. Walker gives is as to any conflict pre
11 Mr. Voisin and what was said about Mr. Voisin's
12 prior office with respect to the filing of the
13 prior post-conviction petition. We frankly
14 don't think those issues are in the case
15 anymore, but in any event, in order to move this
16 case along, Mr. Walker does want Mr. Voisin to
17 continue in the case with him, and is here.

18 THE COURT: Mr. Walker, will you please
19 stand. I need you to raise your right hand,
20 face the clerk, and take the oath to tell the
21 truth.

22 (Oath administered by the Clerk)

23 THE COURT: Mr. Walker, have you had an
24 opportunity to discuss with Mr. Craig the issues
25 we're talking about now about the state moving
26 to disqualify Mr. Voisin from your case?

27 THE DEFENDANT: Yes, sir.

28 THE COURT: Have you had sufficient time to
29 speak with him about that?

Motion

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Have you talked to anyone else
3 about that issue?

4 THE DEFENDANT: No, just these two.

5 THE COURT: Have you had time to reflect on
6 it and make a decision whether or not you want
7 Mr. Voisin to continue to represent you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What's that decision?

10 THE DEFENDANT: I would like David to stay
11 on my case.

12 THE COURT: You understand that it could
13 create a conflict of interest in the future? I
14 can't read into the future, but someone could
15 allege in the future that it was a conflict for
16 Mr. Voisin to represent you based upon the prior
17 post-conviction petition which was heard at the
18 Supreme Court.

19 THE DEFENDANT: I understand it all. I
20 don't see where there would be a conflict.

21 THE COURT: You understand that could
22 happen?

23 THE DEFENDANT: Yes.

24 THE COURT: You are willing to waive any
25 future conflict on that?

26 THE DEFENDANT: Yes.

27 THE COURT: Does anyone wish to put
28 anything further on the record about the waiver?

29 MR. CRAIG: No, Your Honor.

Motion

1 THE COURT: I believe that's an adequate
2 waiver on the record.

3 MR. CRAIG: We agree with that, Your Honor.

4 THE COURT: Okay. So the motion will be
5 overruled then, based upon the waiver.

6 Now, that leaves us with the meat of the
7 matter why we're here, which were the motions
8 which were filed by Mr. Craig on June the 19th,
9 and the state's motion for disclosure, which was
10 filed sometime around there as well, June 19th
11 as well. We'll take them up one at a time. And
12 let me just say as a preliminary matter, I'm
13 looking at these motions against the backdrop of
14 the very narrow direction from the Supreme Court
15 that I'm to conduct a hearing to determine
16 whether or not counsel at the trial level was
17 ineffective on the sentencing phase only.
18 Supreme Court gave no further direction or
19 elaborated how any preliminary matters should be
20 addressed. So I'm just traveling against that
21 backdrop.

22 So against that, Mr. Craig, I will allow
23 you to begin. Let's hear them one at time.

24 MR. CRAIG: Yes, Your Honor. Does the
25 court have a particular order that the court
26 pleases?

27 THE COURT: I have them in my mind and from
28 my notes in the manner in which you articulated
29 or itemized them in your cover letter, which is

Motion

1 the first one. And you should have that as
2 well. The first one is your motion for access.

3 MR. CRAIG: Mr. Voisin is going to address
4 the motion for access. Thank you.

5 MR. WHITE: Your Honor, as the Supreme
6 Court has fully instructed us, we don't have a
7 dog in that hunt. So, you know, we can object.
8 But if it goes and if you rule in our favor, the
9 Supreme Court has said too bad, so sad, he has a
10 right to have access.

11 THE COURT: Let me ask this then, Mr.
12 Voisin, and maybe we should just put all the
13 cards on the table. From what I'm thinking is
14 that as I can appreciate from the directive of
15 the Supreme Court, the matters which were
16 attached and submitted to the Supreme Court are
17 the affidavits, the reports, et cetera. All of
18 those exhibits form the basis of the Supreme
19 Court to make a preliminary decision that a
20 hearing should be had wherein those people can
21 testify, subject to cross-examination, et
22 cetera. But I did not appreciate from that that
23 that record, we'll call it that record, would be
24 expanded to include additional witnesses,
25 additional evaluations, additional information.
26 If I'm appreciating that wrong or if you have a
27 position other than that, I would like to hear
28 it. But I'm kind of tracking towards thinking
29 we're going to go have this hearing based upon

Motion

1 what is the record now. Mr. Voisin or Mr.
2 Craig?

3 MR. VOISIN: Yes, Your Honor. To respond
4 to that, when we filed our petition with the
5 Mississippi Supreme Court, we had a burden to
6 show that the claims were procedurally viable,
7 and also to make a substantial showing of the
8 denial of a state or federal right. And to that
9 end, we attached a number of affidavits,
10 including a report from Dr. Mendel, who did an
11 evaluation of Mr. Walker, I believe in 2008.
12 And the Supreme Court found that we satisfied
13 that showing. But when the Supreme Court
14 conducted that review, as it said in prior
15 cases, it's akin to a -- from a hybrid of a Rule
16 12 or a rule summary judgment motion to review,
17 it's looking to see that the claims are
18 substantial and that there's record support.
19 But the Supreme Court has never said that you're
20 strictly confined to the evidence presented.

21 The Supreme Court has said that, you know,
22 the circuit judge is limited to the issue on
23 remand, and as long as our evidence applies to
24 the specific grounds for which there has been a
25 remand, we could continue to develop the proof.
26 And the post-conviction statute also allows for
27 the expansion of the record to include
28 additional material.

29 So what we wanted to do here is, first,

Motion

1 since Dr. Mendel has already seen Mr. Walker
2 back in 2008, we think he needs to see him one
3 more time before the hearing. In part because
4 it's been so long since he's seen him, and also,
5 since when he saw him back then, he was not able
6 to have a contact visit and to explore.

7 THE COURT: To do evaluation or testing.

8 MR. VOISIN: Correct. So we think with
9 respect to Dr. Mendel, this is entirely
10 encompassed within what we've pled before, and
11 it would enable him to prepare to give testimony
12 at the evidentiary hearing.

13 Dr. Mendel is a psychologist who
14 specializes in the effects of childhood abuse.
15 He is not a neuropsychologist, but based on his
16 review and evaluation of Mr. Walker, Dr. Mendel
17 recommended additional neuropsychological
18 testing. And that's a different type of expert,
19 but it's based upon Dr. Mendel's observations
20 that suggest Mr. Walker may have some
21 neurological impairment, and he noted evidence
22 in Mr. Walker's school records, and his early
23 alcoholism, drug abuse, things that could have
24 easily had an influence or adverse impact on his
25 neurological development. And so what we would
26 like to do is have Dr. Shaffer come in and do
27 some neuropsychological testing to screen to see
28 if Mr. Walker has any of those problems. And
29 then Dr. Mendel could also then incorporate

Motion

1 those findings to see if that would enable him
2 to develop his report further. But I think all
3 of those claims go to whether Mr. Walker
4 suffered prejudice as a result of trial
5 counsel's deficient performance.

6 So I think they're both completely
7 encompassed within what the Mississippi Supreme
8 Court has asked this court to do. And that's to
9 determine whether Mr. Walker suffered prejudice
10 at the penalty phase due to trial counsel's
11 performance.

12 THE COURT: Let me ask Mr. White, not so
13 much as it pertains to the instant motion, but
14 on the overall issue on remand of whether or not
15 this court should proceed to allow petitioner's
16 counsel to expand the evidence, expand the
17 record by way of things such as Mr. Walker being
18 evaluated by a Dr. Shaffer, I believe.

19 MR. WHITE: Shaker, Shaffer, what?

20 MR. VOISIN: Shaffer.

21 THE COURT: Et cetera. So I will hear you
22 on that.

23 MR. WHITE: Your Honor, he's been examined
24 by this Dr. Mendel, and I think it's, you know,
25 of course discovery in these cases is to the
26 extent that the trial court allows. You know,
27 it's concomitant with our motion for disclosure
28 that we would want everything that they get. If
29 the court grants this, we want --

Motion

1 THE COURT: I guess I'm asking more whether
2 or not you agree that -- with Mr. Voisin's
3 argument that, on remand, I have the authority
4 to open very widely where they -- petitioner's
5 counsel can go with further evaluations, further
6 discovery, versus having a hearing limited to
7 those matters which were pled at the Supreme
8 Court?

9 MR. WHITE: I think clearly the rulings,
10 especially from that man right there, Judge
11 Grant, when all this started in a case of
12 *Culberson* said that it is strictly limited to
13 what is contained in the remand.

14 Now, the court was not real clear or not --
15 sometimes they are very specific as to what they
16 say, but -- right now I don't recall what the
17 exact words were that they used when they
18 remanded this.

19 THE COURT: On this case?

20 MR. WHITE: It says circuit court of First
21 Judicial District of Harrison County shall
22 conduct A hearing to determine whether Alan Dale
23 Walker's trial counsel was ineffective in
24 searching for and presenting mitigating evidence
25 during the penalty phase of the trial and
26 whether Walker suffered prejudice from such
27 deficient performance, if any, sufficient to
28 undermine the confidence in the outcome. So it
29 is only in this area of presenting and searching

Motion

1 for mitigating evidence.

2 Now, in this particular case, in our
3 defense, you know, he was examined prior to
4 trial. So -- and, of course, Mendelson or
5 Mendel, whatever it is, you know, he's already
6 examined him. And so what his -- you know,
7 that's got to be compared as to what trial
8 counsel did prior to. They're going to go and
9 say, oh, we can go get this, and this, and this.
10 I think there is a limit to how far it can go.
11 And whether or not that includes going further
12 with, you know, you have to look at it in the
13 light of 25 years ago or whenever this case was.
14 Was that kind of testimony even available at
15 that time? And so if these -- I would say that
16 it's limited.

17 THE COURT: To the record presented to the
18 petition?

19 MR. WHITE: Not necessarily to the record.

20 THE COURT: Maybe that's a poor choice of
21 words. But to say that the matters which were
22 submitted to the Supreme Court in support of
23 their petition?

24 MR. WHITE: Yes, I would think so. That
25 there -- I think we now, as we now know very
26 clearly from the Supreme Court, the state has
27 not had a right of discovery until now, under
28 the *Carothers* decision that they came down with
29 and said we don't have in a pre-petition, in

Motion

1 other words, in his pre-petition, we could not
2 have gotten any information, we don't have any
3 way to rebut anything he said other than from
4 what's in the record. So now, I mean, of
5 course, we can get discovery and things like
6 that. You know, I think it has to be pretty
7 succinctly tailored to what was raised in the
8 Mississippi Supreme Court. It's not just a free
9 wheeling everything. If it didn't go into that
10 area of mitigation, it's not before this court.

11 THE COURT: To that end, if it were
12 unlimited, I think you could-- any case, you
13 could go to the ends of the Earth to look for
14 evidence --

15 MR. WHITE: Oh, absolutely.

16 THE COURT: -- which would be presented to
17 show that trial counsel didn't diligently look
18 for mitigating evidence, and argue prejudice as
19 a result thereof.

20 MR. WHITE: And the thing is, it's, you
21 know, counsel, and of course this is an argument
22 on the merits, so I don't think I need to get
23 into that about that counsel is not charged with
24 knowing everything. That they have a right to
25 rely on the medical and psychological and
26 psychiatric personnel that they had at the time.

27 THE COURT: All right. Mr. Voisin, Mr.
28 Craig, any reply? I'm thinking more of the
29 global issue that the court brought up for you

Motion

1 than just the limited doctor's evaluation.

2 MR. VOISIN: Sure, Your Honor. A couple of
3 quick points on that. First, I believe with
4 respect to Dr. Mendel, I think he's already
5 before the court, so I'm not really -- I don't
6 know if the court has a concern about him having
7 another opportunity to see Mr. Walker to prepare
8 for the hearing. As I understand it, the bigger
9 concern is with Dr. Shaffer and
10 neuropsychological testing.

11 THE COURT: Who, as I understand, would do
12 the evaluation as Dr. Mendel said needed to be
13 done.

14 MR. VOISIN: He would do some that Dr.
15 Mendel could not do because Dr. Mendel does not
16 have that specialty. But one point I would like
17 to point out that we did present to the
18 Mississippi Supreme Court Dr. Mendel's
19 affidavit, and in Dr. Mendel's affidavit, he
20 wrote in paragraph four of his affidavit, I
21 believe, additional psychological testing is
22 warranted. I also believe that Mr. Walker's
23 school performance and lengthy history of
24 substance abuse, neuropsychological testing, and
25 assessment of his intellectual functioning is
26 also warranted. So that express need for
27 additional testing along those lines was
28 presented, you know, to the Mississippi Supreme
29 Court.

Motion

1 Also, Your Honor, I could say from personal
2 experience, and also just from familiarity with
3 post-conviction decisions following evidentiary
4 hearings, that it is very common for petitioners
5 to present additional evidence that supports the
6 grounds that were raised. So although the legal
7 theory is set by the Mississippi Supreme Court
8 when it remands, there is an allowance for
9 additional evidence so long as that evidence
10 supports the legal theory. And I know there are
11 cases that have been decided by the Mississippi
12 Supreme Court, some granting relief and some
13 denying relief, where additional testimony was
14 taken, testimony that went beyond what was
15 initially presented. In the *Anthony Doss* case,
16 which I believe the Mississippi Supreme Court
17 cited in its remand order here, at the
18 post-conviction hearing, *Doss* presented evidence
19 that was not in his initial petition.

20 I believe in the *Jeff Davis* case where the
21 Mississippi Supreme Court granted relief --

22 THE COURT: Was that perhaps because the
23 trial judge gave that ability to counsel to do
24 that versus was required by precedent or
25 statute?

26 MR. VOISIN: As far as I'm aware, there was
27 no issue because the evidence went to the claims
28 that were pled. And I know just from -- I did a
29 hearing in Willie Russell's case in Sunflower

Motion

1 County, and the evidence we presented went
2 beyond what was in the initial petition, you
3 know, had different experts. So it's not
4 uncommon at all, in fact, as long as the
5 evidence goes to the claims pled, and I think it
6 goes back to the initial thing. The Supreme
7 Court considers that the original submission
8 before it to be there to decide whether we've
9 made a prima facie case. But it's like in a
10 summary judgment case, once it got past the
11 summary judgment stage, the parties in a civil
12 case are not confined to the evidence in their
13 summary judgment papers. They can include
14 additional things, as long as they are -- the
15 evidence goes to the claims in the complaint.

16 THE COURT: Let me hear Mr. White.

17 MR. WHITE: The problem with the examples
18 Mr. Voisin gives us is that those were *Atkins* --
19 you know, *Atkins versus Virginia* cases, where
20 the court specifically remanded for them to be
21 tested to see whether they have a hearing to
22 determine whether they were mentally retarded.
23 That's *Willie Russell* and the *Doss* case, both of
24 those, that was the situation. And he has given
25 us those where no such testing was -- had been
26 done in a previous time. So yes, they were
27 basically ordered to find out, and the only way
28 they could find out was to have them tested and
29 examined. So this is a different situation.

Motion

1 Dr. Mendel has already seen him. I don't see
2 there is any need for him to see him again.

3 THE COURT: Or to conduct further
4 evaluations by Dr. Shaffer?

5 MR. WHITE: I think that's in the
6 discretion of the court.

7 THE COURT: Let me take that motion -- any
8 further argument?

9 MR. VOISIN: Yeah, Your Honor, just real
10 quick. *Anthony Doss*, the Supreme Court granted
11 relief on ineffective assistance of counsel
12 claim, the *Atkins* claim they denied relief on.
13 *Jeff Davis, Davis versus State*, that was an
14 ineffective assistance of counsel claim. In
15 another case, this *Fred Spicer*, that was an
16 ineffective assistance claim where the record
17 was substantially expanded. I don't believe
18 that was appealed by the state after the circuit
19 court granted relief. I believe that was a
20 Jackson County case.

21 THE COURT: Let me review those cases and I
22 will issue an order on that. In the instance,
23 Mr. Voisin, that the court grants the motion,
24 what type of -- because I'm looking calendar
25 wise for the hearing date, when do you -- would
26 you think that evaluation and report to be
27 prepared?

28 MR. VOISIN: Your Honor, I would have to
29 check with Dr. Shaffer and Dr. Mendel, but I

Motion

1 would guess within 90 days they could make
2 arrangements to come see him.

3 THE COURT: To evaluate?

4 MR. VOISIN: Evaluate.

5 THE COURT: And prepare a report?
6 Sufficient time for state to have it and I guess
7 they would have the right to have a rebuttal
8 evaluation if they so chose.

9 MR. WHITE: That's what I was standing up
10 for, Your Honor. We want reserve the right, if
11 the court does that, to have him examined by our
12 own experts.

13 THE COURT: I understand. And I'm just
14 calendar thinking here. This case is 26 years
15 old, and it's been remanded since January of
16 2014, and we're just now having a preliminary
17 motion hearing. We'll come back to that.

18 So let's go to the second motion, which is
19 for leave of court to take out of state witness
20 depositions.

21 MR. CRAIG: Yes, Your Honor, I'm going to
22 address that. Thank you, Your Honor,

23 THE COURT: Let me just confirm, this is
24 just to preserve the testimony, trial testimony
25 of the witnesses whose affidavits were
26 submitted?

27 MR. CRAIG: Or, I think it's the same point
28 as with the expert witnesses, if there were
29 other witnesses, but who were going to testify

Motion

1 specifically about mitigating evidence that they
2 could have testified to.

3 THE COURT: Have you identified other
4 people beyond those?

5 MR. CRAIG: Yes, Your Honor, there are
6 other people that could perhaps be selected for
7 testimony. We haven't -- we've interviewed
8 other witnesses. We haven't made a decision as
9 to who to call, that -- I'm just pausing for the
10 court.

11 THE COURT: I think you cited to the out of
12 state witness subpoena statutes for criminal
13 prosecutions. They don't apply here, this is a
14 civil matter. And they're your witnesses, they
15 are the criminal defendant witnesses. So Mr.
16 White, is there any other way to compel the
17 appearance of these out of state witnesses?

18 MR. WHITE: None that I know of.

19 THE COURT: Is the state objecting to --

20 MR. WHITE: Certainly. This is just,
21 again, if we've got how many more?

22 THE COURT: Limited to the witnesses who
23 gave affidavits, how else could he present them
24 if live testimony -- if they don't voluntarily
25 appear?

26 MR. WHITE: That would have been the same
27 thing back at trial. If they won't voluntarily
28 appear, they wouldn't have come to trial. And
29 so how could counsel, our counsel, be held

Motion

1 ineffective for not compelling them to be there.
2 They couldn't do it.

3 MR. CRAIG: May I respond, Your Honor?

4 THE COURT: Sure.

5 MR. CRAIG: In the first instance, the
6 motion really covers two separate points. I
7 really don't think any of the witnesses we would
8 like to call will fail to voluntarily appear.
9 We said if necessary, in paragraph five of the
10 motion, talking about that statute. Of course,
11 that's statute would have been available to
12 trial counsel. So I think the point that Mr.
13 White just made is not correct.

14 THE COURT: I don't think that applies to
15 defense witnesses.

16 MR. CRAIG: In any event, Your Honor, if I
17 may pass on that. The point, I think, is that
18 we think it would be a matter of convenience for
19 the court for us to take what we used to call,
20 when I was first a lawyer, trial depositions,
21 where both sides could question the witness, a
22 transcript could be made, that witness then
23 would not have to attend here, and the hearing
24 before this court would be abbreviated by at
25 least that one witness.

26 Now, witnesses do travel and Mr. Walker's
27 family, in particular, have been in several
28 different places during their life and still
29 are. So his mother, who is closer to the

Motion

1 jurisdiction, is still around. There are other
2 people who were available at the time, but who
3 aren't living in Mississippi now. We're simply
4 trying to find a way to ease the burden on those
5 witnesses, and to have testimony already
6 prepared which the state would have an
7 opportunity to examine and know who those people
8 were in advance. And then present the
9 depositions at the very beginning of the
10 evidentiary hearing. And the court would take
11 them and then add them to the witnesses the
12 court hears through live testimony.

13 MR. WHITE: May I respond to that?

14 THE COURT: Yes.

15 MR. WHITE: Your Honor, as the trier of
16 fact in this case, I want you to see those
17 people and make your own evaluation of them from
18 the stand. I don't want to go to someplace and
19 sit in a room and talk to somebody where he has
20 control over the witnesses. I want them in the
21 courtroom to testify. That's what an
22 evidentiary hearing is all about. This is not a
23 paper hearing. This is a live hearing.

24 THE COURT: I will admit that in reviewing
25 the motion, this is in my mind, this is not a
26 taking a deposition of a doctor in a medical
27 malpractice case, or a slip and fall, or
28 whatever it is. This is a highly charged very
29 emotional underlying case that the court needs

Motion

1 to evaluate the credibility of the witnesses and
2 judge their demeanor on the stand to give
3 whatever effect their testimony is to me. So I
4 agree with that state here that it's preferred
5 that the testimony be live. But if the
6 petitioner has witnesses, family members, those
7 who voluntarily were to give testimony, I don't
8 know that it would be judicially efficient or
9 required that we allow deposition testimony to
10 take place at everyone's expense, the state's
11 expense, your expense, when it's preferred that
12 they appear voluntarily, but they appear they're
13 going to do that anyway, and present live
14 testimony. I think it adds to the overall
15 evaluation of the claim that they appear live.

16 Now, if there is absolutely some witness
17 who by age or infirmity cannot travel and must
18 be -- their testimony must be preserved, I know
19 that has occurred in the past at the trial court
20 level that some type of videography takes place.
21 So that it's better than a cold read of the
22 record. But I would limit it to just those
23 instances, if any. Can you designate -- I'm not
24 asking you to tell me who you are going to call
25 right now, but if you want to reurge the motion
26 as to any particular witness because of
27 infirmity or that they cannot travel, I'll
28 reconsider the motion on that. But right now,
29 the motion for leave to take a deposition of out

Motion

1 of state witnesses will be overruled in that
2 regard.

3 MR. CRAIG: Yes, Your Honor, we understand.

4 THE COURT: Number three is a motion to
5 leave to take discovery.

6 MR. CRAIG: Yes, Your Honor. There is a
7 motion that we filed and a motion that the state
8 filed. And if I may suggest that we take them
9 up at the same time because the truth of the
10 matter is, I believe, with respect to everything
11 but one paragraph of the state's motion that
12 we're basically asking for the same information.

13 THE COURT: Exchange of witnesses and --

14 MR. CRAIG: We did, Your Honor, and we
15 grounded it slightly differently. We grounded
16 ours in the civil procedure rules through the
17 post-conviction statute. The state grounded
18 theirs through Rule 22. As Mr. White pointed
19 out, Rule 22, which is really talking about
20 pre-petition discovery, has been found not to
21 apply to the state. But it's really -- that's a
22 distinction without a difference at this point
23 because the statute really gives the court the
24 power to allow discovery, and we don't contest
25 that. In fact, we want discovery, too.

26 The one paragraph in the state's motion
27 that does not -- that does not appear in ours
28 and that which we do object to, is paragraph
29 seven. I don't see -- it looks to me that this

Motion

1 paragraph seven, which is asking for -- I won't
2 read it, I see the court is looking at it,
3 parties including but not limited to people
4 working for the Office of Capital
5 Post-Conviction Counsel, but it's not limited to
6 that. The people who gather, elicit, obtain,
7 volunteer, or provide evidence, and to the
8 extent that that's asking for work product, in
9 other words, my talking to witnesses, Mr.
10 Voisin, an investigator, that sort of thing, I
11 just don't see where this is permissible under
12 the --

13 THE COURT: Any rules.

14 MR. CRAIG: Under any rules. So we do
15 object to that. We do not object, and in fact
16 we have asked for and would agree reciprocally,
17 for the names of witnesses, statements of
18 witnesses if they exist, and information about
19 experts, and that we set a time sufficient prior
20 to whatever hearing date the court designates
21 for that exchange to happen so both sides can
22 reasonably prepare for the evidentiary hearing.
23 We have no problem with that. And Mr. White, I
24 see in his motion, has said no less than 30 days
25 prior to the date set for the evidentiary
26 hearing.

27 THE COURT: To exchange.

28 MR. CRAIG: Yes, sir. And that's
29 acceptable to us as well.

Motion

1 THE COURT: Mr. White, any further comment
2 or comment about the objection of paragraph
3 seven in your motion?

4 MR. WHITE: Other than in the past that we
5 have, when we've dealt with these, we have these
6 unnamed people going out and speaking to these
7 witnesses before, and basically schooling them
8 on how to respond when we try to interview them
9 or anything. That's the only reason I want to
10 know who all has contact with, who their
11 investigator is, things like that. I think that
12 that is not unreasonable to know who the
13 investigator --

14 THE COURT: To identify the names of those
15 who may have interviewed the witness, but not to
16 get into the --

17 MR. WHITE: The substance of what they
18 interview --

19 THE COURT: That would be disclosed, but
20 the work product, or the impressions, or the
21 investigator's notes or anything of that nature?

22 MR. WHITE: Yeah, I mean, the thing is,
23 some of these people are known to us and some of
24 them we don't think are too honest.

25 THE COURT: That could be the subject of
26 cross-examination or things of that nature.

27 MR. WHITE: Well, they will never hit the
28 stand, and we won't know that they are the ones
29 who -- you know.

Motion

1 THE COURT: Mr. Craig, do you object to
2 disclosing names of investigators or personnel
3 who were acting on your behalf or co-counsel's
4 behalf that may have interviewed these
5 witnesses?

6 MR. CRAIG: As a matter of principle I do,
7 Your Honor. I've been doing these kinds of
8 cases for over 20 years, and I have never been
9 accused of having an investigator tell a witness
10 what to say, or that an investigator was less
11 than honest.

12 THE COURT: Mr. White, I don't need the
13 theatrics.

14 MR. CRAIG: I mean, in an absence of a
15 showing of good cause for that, I don't really
16 think they're entitled to it. But if the court
17 -- I think the court has discretion to order us
18 to disclose the names of people who interviewed
19 witnesses, and I don't -- as long as it is not
20 asking, you know, the work product of those
21 people because they're extensions of us as the
22 court knows.

23 THE COURT: Yes?

24 MR. WHITE: That will be fine.

25 THE COURT: That's what I'll order.

26 MR. CRAIG: Thank you, Your Honor.

27 THE COURT: And we'll be thinking about
28 another scheduling order as we go through these.

29 MR. CRAIG: Yes, sir.

Motion

1 THE COURT: Next motion is a motion for
2 partial summary judgment.

3 MR. CRAIG: Yes, sir. This motion, Your
4 Honor, is as the court knows, the court has the
5 authority under the post-conviction statute to
6 grant whole or part summary judgment in the same
7 manner as it could in a civil case under Rule
8 56. And I'm not going to belabor the Rule 56
9 standard. We all know it and I know the court
10 knows it.

11 The court also knows that the issue that
12 has been remanded to the court, ineffective
13 assistance of counsel, has two basic prongs.
14 The first one being whether trial counsel
15 performed deficiently, and the second being
16 whether the defendant suffered prejudice from
17 the deficient performance. So this motion for
18 partial summary judgment focuses very narrowly
19 on the deficient performance prong.

20 At the time that we filed the
21 post-conviction petition in the Mississippi
22 Supreme Court, we had attached two affidavits
23 from lead counsel for the defendant, Mr.
24 Stegall. And in the two affidavits, Mr. Stegall
25 says very forthrightly that he did very little
26 -- did little, not very little, sorry. "I did
27 little preparation for the penalty phase prior
28 to trial because I believed that there was a
29 high likelihood of getting an acquittal." He

Motion

1 also said, "I did not interview anyone in Mr.
2 Walker's family until we were in Vicksburg for
3 the trial." That's paragraphs one and two. In
4 paragraph four of Mr. Stegall's 2012 affidavit,
5 Your Honor, Mr. Stegall says, this is on the
6 second page, "I would have wanted to develop the
7 type of information contained in Dr. Mendel's
8 psychological report. I believe he did an
9 excellent job of developing and explaining
10 factors that were important in shaping Mr.
11 Walker's life." Then he gives a statement that
12 goes to prejudice, that's not before the court
13 in this motion.

14 THE COURT: Isn't Mr. Stegall's second
15 affidavit -- wasn't that prepared or provided
16 after Judge Starrett ruled on the habeas and
17 ruled on this very claim, although it was not
18 properly before the federal court?

19 MR. CRAIG: That's correct, Your Honor. It
20 was after Judge Starrett raised the issue of
21 whether the first affidavit was ambiguous on the
22 question of when family members might have been
23 interviewed and whether Mr. Stegall had
24 considered putting on expert testimony in the
25 sentencing phase. So that's exactly right. So
26 we went back to Mr. Stegall to ask him those
27 questions, and he gave this testimony.

28 We have attached the other affidavits
29 simply for the purpose of the fact that those

Motion

1 lay witnesses confirm Mr. Stegall's statement
2 that he did not interview them. And we attached
3 Dr. Mendel's affidavit strictly for the purposes
4 of the fact that Mr. Stegall says I've read it
5 and this is the kind of report I would have
6 liked to have had. So, again, whether those --
7 that testimony would have made a difference in
8 the sentencing phase goes to the second prong,
9 we're not concerned with that in this motion.

10 Now, Mr. Stegall did move for a competency
11 evaluation, but he moved for that evaluation on
12 July 26th, '91 and, trial was set and began on
13 August 5th, a week later, '91. And there was a
14 co-counsel, Robin Midcalf, but she was also
15 appointed on July 26th, 1991, just a week before
16 trial. So the fact that Mr. Stegall says he did
17 not prepare for the sentencing phase, he did
18 little to prepare for it, he did not interview
19 these family members, and then he would have
20 sought this expert and used this expert if he
21 had had the opportunity would -- is very highly
22 relevant. It is a sworn statement of the type
23 that one would present under Rule 56, and the
24 state has not filed anything in opposition to it
25 that I know of since we filed the motion for
26 summary judgment.

27 I'm just going to mention a couple of
28 cases, Your Honor. *Williams versus Taylor* we
29 cited in our motion at paragraph 50, which is a

Motion

1 US Supreme Court case as to deficient
2 performance. It's on all fours with this case
3 because counsel began preparing for the penalty
4 phase in *Williams against Taylor* a week before
5 trial, presented a couple of witnesses, but the
6 United States Supreme Court said that that was
7 deficient performance.

8 The point really at the end of the day,
9 Your Honor, is where there is no response or
10 rebuttal by state to what Mr. Stegall has
11 testified to in affidavit, Rule 56 allows this
12 court to narrow the issues prior to trial. It
13 will focus us at the hearing so we're starting
14 right away on the question of whether there was
15 mitigating evidence that could have been
16 presented and whether in the court's judgment it
17 undermines confidence in the outcome. We don't
18 have to be trying both prongs when there's no
19 issue of material fact.

20 The last thing I would like to say is that
21 under the post-conviction statute, there is a
22 little wrinkle because the Mississippi Supreme
23 Court has made clear that because
24 post-conviction comes after a full trial, the
25 court is permitted to look at the whole rest of
26 the record to determine if there are genuine
27 issues of material fact. We submit, however,
28 that with respect to this narrow issue, there
29 are none. And that, certainly, it could have

Motion

1 been incumbent upon the state to have pointed
2 those out under Rule 56 prior to today, at least
3 by yesterday, as I appreciate Rule 56, 24 hours
4 before. This court, though, as the court knows,
5 is not required ever to grant summary judgment.
6 But --

7 THE COURT: There will be no real
8 prejudice, as I can appreciate it, if I don't,
9 so that the full hearing would be developed as
10 to first prong first, of the *Strickland* kind of
11 standard.

12 MR. CRAIG: And that's why summary judgment
13 is rarely appealable, Your Honor. It is
14 sometimes appealed in an interlocutory manner.
15 We would simply suggest that it would -- Rule 56
16 is an available mechanism to this court. We
17 have a witness who has given two affidavits,
18 they're very clear. It lines up perfectly with
19 *Williams against Taylor*, and this court should
20 enter partial summary judgment, in our view, and
21 narrow the issues so we can start right away on
22 the significant factual issue of prejudice.
23 There is going to be a lot on that. And we
24 think that would be helpful.

25 THE COURT: Mr. White?

26 MR. WHITE: We go simply back to what the
27 Mississippi Supreme Court remanded this case
28 for. Was to make a determination of whether
29 trial counsel was ineffective in searching for

Motion

1 and presenting. In other words, make that
2 determination of whether there was deficient
3 performance. And we submit that we have never
4 had an opportunity to cross-examine Mr. Stegall.
5 Two affidavits. You know, that's -- I've been
6 in this, as Mr. Craig says or one of them said,
7 20 something years, I've been in it for 38
8 years. Affidavits are rarely conclusive on a
9 matter once that person, again, I want a live
10 witness, I want to be able to question Mr.
11 Stegall, what did he do, when did he do it, and
12 what his involvement was. I don't think that
13 that is sufficient -- affidavits are sufficient
14 to determine this matter. And, of course, the
15 Supreme Court has said many times, you know, and
16 has ruled many times, if they can determine an
17 issue, and they determined some issues in this
18 case already, if they can determine an issue
19 themselves, they will. So if they could have
20 sent it back for a mere hearing on prejudice.
21 They did not do that. They sent it back for a
22 hearing to determine whether there was deficient
23 performance and prejudice.

24 So I submit that granting a motion for
25 summary judgment in this case would be contrary
26 to the mandate of the Supreme Court. And also,
27 further, that as this *Carothers* case as I said,
28 there's been no opportunity for discovery on the
29 part of the state whatsoever at this point.

Motion

1 We've had no entitlement to discovery, and in
2 the *Carothers* says if the petitioner is able to
3 demonstrate a substantial showing of denial of a
4 state and federal right, it is allowed to
5 proceed to the trial court. The state is then
6 allowed to access the full spectrum of civil
7 discovery, which it may employ to prepare and
8 defend the case. We're not even -- I wasn't
9 even entitled to talk to Mr. Stegall prior to
10 this time, although I've known Mr. Stegall for
11 -- since junior college.

12 MR. CRAIG: May I make a brief response?

13 THE COURT: Yes, Mr. Craig.

14 MR. CRAIG: Thank you, sir. Well,
15 certainly the state did not have an opportunity
16 for discovery before the post-conviction
17 petition was filed. That's correct. And before
18 the remand, that's also correct. But we filed
19 our motion to vacate sentence in this court on
20 April 29th, 2014. And we filed our motion for
21 summary judgment, as the court knows, June of
22 this year, and we interviewed Mr. Stegall. So
23 those points are actually indistinguishable from
24 any summary judgment situation that a party can
25 go interview the witness and get a
26 counter-affidavit if they think the witness has
27 something more to say. And that has been done
28 before. But -- so I don't think that's -- I
29 don't think that's a pertinent point here. The

Motion

1 post-conviction statute specifically provides
2 summary judgment can be moved for. And so we
3 cited cases in our motion where, indeed, state
4 motions for summary judgment were granted even
5 after a remand. So the remand order itself does
6 not command a hearing if summary judgment is
7 moved for and is otherwise appropriate. And,
8 indeed, the treatise that the chapter of the
9 Mississippi Encyclopedia of Law that counsel
10 opposite authored points out, which we cited,
11 points out the summary judgment is available.

12 I think the real question is whether in the
13 court's discretion that summary judgment should
14 be granted, or whether in the court's discretion
15 that it should not be. We submit that it should
16 be because it will narrow the issues for the
17 evidentiary hearing, and enable the court to get
18 to the meat of this issue, which is the actual
19 mitigating evidence and whether that would have
20 made a difference or not. I think that's the
21 real issue before the court. And we submit to
22 the court for exercise of its discretion on that
23 issue.

24 THE COURT: I think that it's incumbent on
25 me to hear and have developed all issues, both
26 prongs of the *Strickland* standard. So at this
27 point I think the motion for summary judgment as
28 to partial summary judgment, I'll deny that and
29 allow you to reserve making that argument,

Motion

1 substantive argument, at the conclusion of the
2 hearing in the form of a judgment as a matter of
3 law, I guess, directed verdict, on that partial
4 directed verdict, however the rule plays out.
5 But allow you to reurge it then.

6 MR. CRAIG: Thank you, Your Honor.

7 THE COURT: I just out of an abundance of
8 caution, I want to hear everything.

9 MR. CRAIG: Yes, sir, I appreciate that.
10 That's why we said it was within the court's
11 discretion.

12 THE COURT: The last motion is to preserve
13 the right to file additional motions?

14 MR. CRAIG: Yes, Your Honor. And the way
15 that we structured that was to say there was a
16 pleading deadline. We filed motions, the state
17 filed motions, but if there is a showing of good
18 cause for why it could not have been filed by
19 that time, and I would also suggest that when
20 we're doing scheduling, which I think we'll
21 probably take up imminently, that we set a time
22 for some kind of prehearing or pretrial
23 conference at which any kind of issues can be
24 aired so that the date the court sets for the
25 hearing is the date that we have the hearing.

26 THE COURT: Any objection to that, Mr.
27 White?

28 MR. WHITE: No, Your Honor.

29 THE COURT: I'll grant that motion.

Motion

1 MR. CRAIG: Thank you, Your Honor.

2 THE COURT: Regarding scheduling, we've had
3 one or two before, but does anybody object to
4 having telephonic conferences to discuss
5 administrative scheduling matters?

6 MR. WHITE: Prefer it.

7 THE COURT: Prefer it.

8 MR. CRAIG: No objection.

9 THE COURT: That leaves Mr. Walker out of
10 the earshot of what's going on, but since it's
11 strictly administrative matters, I don't see any
12 necessity that he be a party to the
13 conversations.

14 MR. CRAIG: Yes, Your Honor. And moreover,
15 Mr. Walker, you know, it can be very difficult
16 to be transported here back and forth. And that
17 was why he didn't want to be transported before.
18 And no evidence will be taken at a telephonic
19 conference. So we don't think his presence is
20 necessary.

21 THE COURT: During this housekeeping
22 matters, y'all can remain seated during any
23 responses. I'm thinking it's premature to start
24 talking about dates until I make a decision on
25 the first motion about the doctor. But we can
26 talk about spans of time. You know, you are
27 saying 90 days to have an evaluation and get a
28 report to the state. Sounds reasonable?

29 MR. VOISIN: Yes, Your Honor.

Motion

1 THE COURT: In the instance I grant the
2 motion.

3 MR. VOISIN: Yes, sir.

4 THE COURT: If it's not granted, let's just
5 talk about maybe two tracks here. If it's not
6 granted, when do you all think we could
7 reasonably prepare or have the hearing, and I'll
8 say that the 22nd of February is the date the
9 court is looking at as the date to conduct the
10 hearing.

11 MR. CRAIG: I'm going to look at my phone
12 for the purposes of looking at my calendar, Your
13 Honor.

14 MR. WHITE: Your Honor, the only thing
15 about that is if they are going to have him
16 evaluated and --

17 THE COURT: No, this is if I deny that
18 motion.

19 MR. WHITE: Oh, okay.

20 THE COURT: That's the date I'm looking at.
21 If I grant it, then we're going to be further
22 into the spring.

23 MR. CRAIG: We we're both available on the
24 22nd, Your Honor. I'm sorry, I didn't realize
25 the court was looking at us first.

26 THE COURT: Mr. White, is that date
27 available for the state?

28 MR. WHITE: I'm looking right now, trying
29 to get to that point. The only thing I would

Motion

1 say, though, Your Honor, I'm sure I'm clear that
2 week, but if you -- even if you don't grant the
3 motion, since they have already, and we have not
4 had a right to have this done prior to this,
5 since Dr. Mendel has already examined him, we
6 would like our psychologist to examine him,
7 also, to rebut any kind of statement like that.

8 THE COURT: You want to have Mr. Walker
9 evaluated regardless of whether I sustain their
10 motion?

11 MR. WHITE: I mean, if further -- for
12 further testing with them, but since they've
13 already had him examined, I think we have a
14 right to have him examined by our psychologist
15 to rebut what Dr. Mendel has already said.

16 MR. CRAIG: Please the court, we would
17 object to that in that the court has set
18 scheduling deadlines. Dr. Mendel's affidavit
19 has been in the record for some time. There is
20 a June 19th deadline for filing motions, and
21 that would have been a motion for mental
22 examination under, I believe, Rule 35.
23 Certainly would have been available. But the
24 contours of that is all supposed to be set forth
25 by motion under Rule 35 and no motion has been
26 filed. And I certainly agree with Mr. White, if
27 the court were going to entertain that motion,
28 there is no way that we would be ready by the
29 22nd of February.

Motion

1 THE COURT: Even just with one more
2 evaluation, no matter who's it is?

3 MR. CRAIG: That would be our view, yes,
4 sir.

5 THE COURT: Well, at this point, I think
6 conducting further conversation about a
7 scheduling order or scheduling a hearing is
8 futile until I rule on your written motion and
9 your ore tenus motion. So I will take that
10 under advisement and get a decision to you
11 hopefully within week. I don't think we're in
12 trial next week. Then we'll schedule a phone
13 conference thereafter. On the whole, how long
14 do you think this hearing, when ultimately it
15 kicks off, will last, two days, three days.

16 MR. CRAIG: I would say three days if both
17 issues, given the court's denial on the motion
18 for summary judgment, I think three days. I
19 don't know if counsel opposite agrees or
20 disagrees.

21 THE COURT: For you to put on your proof?

22 MR. CRAIG: I think so, Your Honor.

23 THE COURT: Just for scheduling purposes,
24 trying to dedicate a whole week to this.

25 MR. CRAIG: Your Honor, if I may inquire,
26 could we reserve that week, the week of the
27 22nd, just in the short term? I know the
28 court's calendar is probably going to fill up.

29 THE COURT: That is a week that I'm

Motion

1 designated as what they call a second chair.
2 I'm not assigned to a courtroom, I have to go
3 reserve one to have the hearing. If we can't
4 have one in Gulfport, we can go to Biloxi, or
5 Bay St. Louis, or Wiggins or somewhere to sit.
6 But I have nothing calendared that week. That's
7 why I reserve those weeks for particular cases.

8 MR. CRAIG: Thank you, Your Honor. We will
9 keep it on our calendar.

10 THE COURT: So let's keep that date right
11 now. Now, who is going to prepare the orders
12 from what we did today?

13 MR. CRAIG: We're happy to do a draft and
14 submit them to Mr. White for his review, and
15 then submit them to the court. Could we have a
16 week for that?

17 THE COURT: That will be fine. Anything
18 further we need to take up?

19 MR. CRAIG: There is only one matter, Your
20 Honor, it's entirely housekeeping in the literal
21 sense of the word. I believe that Mr. Walker is
22 being held on suicide watch in the custody of
23 the sheriff.

24 THE COURT: It's my understanding if we are
25 done before noon, the sheriff is going to
26 transport him back to Parchman this afternoon.

27 MR. CRAIG: That will handle our problem,
28 Your Honor.

29 THE DEFENDANT: That's fine. In the

Motion

1 future, if they can't have the cells cleaned,
2 because when I go down there the cells are
3 extremely nasty and I'm sleeping on the floor.

4 THE COURT: That's why they had a sheriff's
5 election this year to see if they could change
6 that.

7 THE DEFENDANT: I mean, if they gave me
8 something to clean it with, I would clean it.

9 THE COURT: We will get you back to where
10 you need to be in about an hour and a half.

11 MR. CRAIG: Thank you, Your Honor.

12 THE COURT: Anything else on the record?

13 MR. CRAIG: No, Your Honor.

14 THE COURT: We'll be in recess:
15

16 (Whereupon the proceedings were concluded)
17
18
19
20
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24
25
26
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28
29

Reporter's Certificate

1 STATE OF MISSISSIPPI

2 COUNTY OF HARRISON

3
4 I, HUEY L. BANG, CSR No. 1147, Official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 41 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of my
9 stenographic notes of the Hearings had on the 30th day of
10 October, 2015 before the HONORABLE CHRISTOPHER L.
11 SCHMIDT, Circuit Court Judge of the Second Circuit Court
12 District of the State of Mississippi, being a regular day
13 in the October Term of Harrison County Circuit Court at
14 Gulfport.

15 This is to further certify that I have this date
16 filed the original and one copy of said transcript, along
17 with one CD in PDF language, for inclusion in the record
18 on appeal, with the Clerk of the Circuit Court of
19 Harrison County, Mississippi, and have notified the
20 attorneys of record and the Supreme Court of my actions
21 herein.

22 WITNESS MY SIGNATURE on this, the 28th day of
23 August, 2018.

24 
25 HUEY L. BANG, CSR #1147

26 Official Court Reporter

27
28 Court Reporter's Fee: \$100.80
29

1 IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
2 FIRST JUDICIAL DISTRICT

3 STATE OF MISSISSIPPI

4
5 NO. 2018-TS-01059

6 VERSUS

 CAUSE NO. 25,945

7 ALAN DALE WALKER

 DEFENDANT

8
9 =====

10 Transcript of the proceedings had and done in the above
11 styled and numbered cause before the Honorable Christopher
12 L. Schmidt, Circuit Court Judge of the Second Circuit Court
 District of Mississippi, on February 22, 2016.

13 =====

14 APPEARANCES:

15 Representing the State:

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19
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24
25 Reported By:

26 Huey L. Bang, CSR #1147, RMR, CRR,
27 Official Court Reporter

28
29

Preliminary Matters

1 THE COURT: This is Cause Number 25,945,
2 State of Mississippi versus Alan Dale Walker on
3 remand from the Mississippi Supreme Court in
4 Cause Number 2012-DR-00102-SCT. This matter was
5 remanded in January of 2014 after the
6 Mississippi Supreme Court, on a second
7 successive or a successive post-conviction writ
8 found that there was a need for an evidentiary
9 hearing to determine whether or not Mr. Walker
10 received effective assistance of counsel during
11 the sentencing phase after being convicted of
12 capital murder, rape, and kidnapping in August
13 of 1991, and received the death penalty and 65
14 years.

15 Counsel for the state please make your
16 appearance for the record.

17 MR. WHITE: Marvin White special assistant
18 attorney general for the state.

19 MS. BENTON: I'm Cameron Benton, Your
20 Honor, also special assistant attorney general.

21 THE COURT: And on behalf of the petitioner
22 defendant?

23 MR. CRAIG: Yes, Your Honor, I'm Jim Craig.
24 I'm one of the lawyers for Mr. Walker.

25 MR. VOISIN: David Voisin, V-O-I-S-I-N,
26 also representing Mr. Walker.

27 THE COURT: Good morning, counsel. Before
28 we begin the evidentiary hearing, is there any
29 housekeeping matters we need to take up before

Preliminary Matters

1 we take anything else up? There was the matter
2 of the interlocutory appeal and the order, the
3 motion which was granted by the Supreme Court
4 granting Dr. Shaffer access to your client. I
5 have not yet received an order from counsel in
6 that regard. Do you have one with you today?

7 MR. VOISIN: Yes, Your Honor, we brought a
8 proposed order. We've given a copy to Mr.
9 White. I can hand a copy to the Court, or to
10 Ms. Ingram.

11 THE COURT: Mr. Craig, Mr. Voisin, looking
12 through the court file there were four subpoenas
13 issued for witnesses today. Do you anticipate
14 during this first phase, we'll call it the
15 evidentiary hearing, witnesses beyond those four
16 people?

17 MR. CRAIG: Yes, Your Honor, we believe we
18 will have six witnesses today. We may have
19 seven. We do think, because they're fact
20 witnesses, Your Honor, that we will be able to
21 complete in one day. Obviously, I'm not in a
22 position to promise that, but that's our belief.

23 THE COURT: And then we will follow at a
24 date which we'll look at later, at the
25 conclusion of these hearings today or tomorrow,
26 when we can relatively look at a new date for
27 the second phase or the second part of this
28 hearing.

29 MR. CRAIG: Yes, Your Honor, we're prepared

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1 with our calendars for that.

2 THE COURT: And so we are all on the same
3 page here, the mandate from the Supreme Court is
4 two-fold. One is an inquiry by the Court to
5 determine whether or not counsel was ineffective
6 in searching for and presenting mitigating
7 evidence. And the second part, whether the
8 defendant suffered prejudice from such deficient
9 performance, if any, sufficient to undermine the
10 confidence of the outcome actually at
11 sentencing. Everyone agrees that's the scope of
12 the mandate?

13 MR. WHITE: Yes, Your Honor.

14 MR. CRAIG: Yes, Your Honor.

15 THE COURT: And since this is a PCR
16 hearing, the burden of proof by the petitioner
17 is by a preponderance of the evidence.

18 MR. CRAIG: Yes, Your Honor.

19 THE COURT: And what's the standard on
20 review of my decision?

21 MR. CRAIG: Factual findings, Your Honor, I
22 believe it's manifest error or clearly erroneous
23 factual findings on the application of the
24 Strickland standard, which is the standard Your
25 Honor referenced. It's, I believe, a mixed
26 question, and so the Court looks at it as a
27 mixed question of law.

28 THE COURT: So the heightened scrutiny does
29 not apply at this hearing as it would apply at

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1 trial. Just going through my notes here. Do
2 you all have any exhibits you want to premark?

3 MR. VOISIN: We have one exhibit, Your
4 Honor, for today.

5 THE COURT: Has Mr. White seen it on behalf
6 of the state?

7 MR. VOISIN: Yes, it's the map.

8 MR. WHITE: I was just shown this this
9 morning. It wasn't furnished in discovery
10 timely.

11 THE COURT: I don't even know what it is.

12 MR. WHITE: We will get to that when they
13 try to offer it.

14 MR. VOISIN: Judge, I have another copy if
15 you would like.

16 (Defense Exhibit 1 marked for identification)

17 THE COURT: We'll reserve talking about it
18 until we get there. Since the first part of the
19 analysis, or maybe it could be considered both
20 parts, the testimony of the witnesses that you
21 present now, that petitioner's argument should
22 have been presented in 1991, or could have been
23 presented, what is the position of the parties
24 as to the application of the rules of evidence
25 to their testimony today versus what -- to the
26 application of the rules of evidence in 1991?
27 Considering that I'm the trier of fact here and
28 I can consider what I think is relevant and
29 whatnot, but just for the record, I would like

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1 to hear from the petitioner and the state as to
2 -- generally, sentencing hearings the rules are
3 somewhat relaxed. But maybe you can just tell
4 me what your position is, Mr. Voisin.

5 MR. VOISIN: Yes, Your Honor. Our position
6 is that this should be treated as though it were
7 a sentencing hearing, what should have or could
8 have been presented. And the Mississippi
9 Supreme Court has held that in a couple of cases
10 that the rules of evidence are not as strictly
11 applied as they are in an ordinary trial, for
12 example, rules about hearsay don't apply. And
13 there are a couple of cases that the Mississippi
14 Supreme Court has held that with, including
15 *Randall versus State*, and I believe it was
16 *Wilson versus State*.

17 THE COURT: To be sure, it's not a wide
18 open. There are some parameters of
19 admissibility.

20 MR. VOISIN: There are, but both the
21 Mississippi Supreme Court and the United States
22 Supreme Court have held that there's a very low
23 threshold to establish relevance, and it's very
24 broad. Anything about the defendant's character
25 or background can be admissible. And it's all
26 been viewed very broadly so that it allows a
27 wide range of information about a defendant's
28 background, family history, and so forth.

29 THE COURT: I'm not necessarily asking or

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1 thinking in terms of that not being admissible,
2 but the mechanism by which it -- is it admitted
3 by hearsay within hearsay, by speculation, by
4 affidavit, I mean, there has to be some
5 constraints upon which that evidence can be
6 admitted into the record, do you agree?

7 MR. VOISIN: I'm sure there are.

8 THE COURT: Maybe I'm getting too far
9 afield without even having heard the testimony
10 yet, because we may not get there. But I'm just
11 trying to reconcile in my mind right now, I'm
12 going to be sitting as a fact finder and issuing
13 an opinion, but at the same time, I have to look
14 at it from the perspective of what that juror
15 might have heard in 1991.

16 MR. VOISIN: Yes, Your Honor. I guess it's
17 difficult to give a global answer. Maybe we
18 should take it --

19 THE COURT: As it arises.

20 MR. VOISIN: As it arises.

21 THE COURT: Mr. White?

22 MR. WHITE: Well, I disagree with that, of
23 course. The Mississippi Supreme Court has
24 clearly held on several instances that hearsay
25 is not admissible. Hearsay evidence regarding a
26 capital defendant's upbringing in mitigation can
27 properly be objected under Mississippi Rules of
28 Evidence 602, as *Jordan versus State*, which came
29 out of this district, by the way. And the

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1 defendant is not entitled to call family members
2 to testify to the impact of the death sentence.
3 The rules of evidence apply as far as hearsay
4 goes.

5 Now, he said United States Supreme Court
6 has relaxed that. I presume, since he didn't
7 cite any cases, that he is talking about a case
8 called *Green versus Georgia*, which the
9 Mississippi Supreme Court has held in three
10 cases does not say that. And that is *Turner*
11 *versus State*, *Ballenger versus State*, and *Connor*
12 *Versus State*. And it says in *Turner*, it says if
13 hearsay evidence is ruled inadmissible the
14 offering party must make a proffer what that
15 witness said in order to preserve any point for
16 appeal.

17 So the rules of evidence apply. And, you
18 know, I don't even know that they are relaxed in
19 that regard because I know there is even a case
20 that, you know, one of the rules I think says
21 something about them being -- not applying to a
22 sentencing hearing. The Supreme Court,
23 Mississippi Supreme Court has held that doesn't
24 apply in capital sentencing. The rules,
25 especially the hearsay rule, because we
26 anticipate hearing that objection coming up many
27 times today.

28 THE COURT: I was going to say, you make
29 sure, if you find something to be objectionable,

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1 make your objection contemporaneous with the
2 question, and --

3 MR. WHITE: Sure.

4 MR. VOISIN: Your Honor, I do have the
5 specific case citation if the Court would like.
6 In *Randall versus State*, 806 So. 2d 185, at
7 Paragraph 131, the Court noted as the state
8 argues, Rules 101 and 1101(b)(3) state that the
9 rules of evidence do not apply to sentencing
10 hearings. Thus, you know, the assignment that
11 *Randall* made is without merit. So that was the
12 state's position that the Court accepted in
13 *Randall versus State*. In *Wilson versus State*,
14 21 So. 3rd 572, at Paragraph 42, the Court
15 reaffirmed that holding from *Randall* and wrote
16 in *Randall versus State*, this court succinctly
17 stated that Rules 101 and 1101(b)(3) state that
18 the rules of evidence do not apply to sentencing
19 hearings.

20 So we've got two decisions from the
21 Mississippi Supreme Court accepting the state's
22 position that the rules of evidence do not
23 apply. Additionally, we have in the courtroom,
24 Dr. Mendel, who is going to be observing the
25 witnesses. He has reviewed their affidavits,
26 but this will offer him an opportunity to see
27 the live testimony and the cross-examination.
28 And he is doing just what the state's expert
29 over here is doing. And Dr. Mendel can rely on

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1 a wide range of statements that are necessary
2 for him to reach his expert conclusions, even if
3 they would otherwise be inadmissible.

4 So because the Mississippi Supreme Court
5 has found that the hearsay rule does not apply,
6 because it's going to be necessary and important
7 as a basis for our expert opinion, we think that
8 the witnesses should be allowed to give
9 testimony even if it might be hearsay.

10 MR. WHITE: As far as his argument about
11 Dr. Mendel or Mendel or whatever his name is, he
12 can -- if he can rely on hearsay, which he's
13 evidently done in his -- what they've already
14 furnished us, he -- you know, they can have him
15 talk to these witnesses outside this courtroom.
16 What we hear today from this stand is supposed
17 to be what would have -- the jury would have
18 heard, and the jury would not have heard what
19 Dr. Mendel can rely on or anything like that as
20 far as hearsay and stuff like that. But what we
21 submit that what they hear from there and that
22 the rules of evidence do apply, if he has a
23 conflict, we have a conflict of the thing
24 because these cases that I have here all say the
25 rules of evidence apply. And these are from the
26 book.

27 THE COURT: I don't know what the book is,
28 but, Mr. White, make your objection timely and I
29 will decide whether or not to allow it into the

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1 record, but even if -- if there is something
2 that may be objectionable and may have been --
3 the objection may have been sustained as to the
4 -- what a jury would have heard, I think the law
5 recognizes the trier of fact, if it's the Court,
6 can wade through those matters and exclude from
7 its consideration those things which are
8 otherwise inadmissible.

9 I don't want to exclude anybody from making
10 a record, but I will tell you that I will form
11 my opinion based upon those things that are only
12 admissible as if it were in front of a jury.

13 MR. WHITE: May I ask this one thing
14 because we anticipate quite few of those
15 objections, do I have to be like a Jack In The
16 Box?

17 THE COURT: You may remain seated.

18 MR. WHITE: All right. Thank you.

19 THE COURT: Mr. Craig or Mr. Voisin, do you
20 have your witnesses in the courtroom?

21 MR. VOISIN: They are not in the courtroom.
22 They are in a witness room down the hall.

23 THE COURT: Why don't you bring them all
24 in, we don't have a clerk, so I would like to
25 swear them all in at one time.

26 MR. WHITE: And then I would invoke the
27 rule.

28 THE COURT: And then the rule will be
29 invoked.

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1 MR. VOISIN: I will let them know what's
2 going to happen.

3 THE COURT: Otherwise, are y'all ready for
4 testimony?

5 MR. CRAIG: Yes, Your Honor.

6 MR. WHITE: We have six witnesses today,
7 and how many more?

8 MR. CRAIG: I think we actually have more
9 than six people here today, but I think six is
10 what we're calling and then we'll stop at this
11 phase of the testimony. Some of them are
12 duplicative, so I don't see a reason for us to
13 call more than one on different topics, Your
14 Honor.

15 MR. WHITE: How long do we anticipate this
16 going?

17 MR. CRAIG: I think we will be done with
18 this phase today. How long, I don't know.

19 MR. WHITE: What phase today?

20 THE COURT: When I stated phase, I mean our
21 phone conference two or three weeks ago, we
22 decided to split the hearing up.

23 MR. WHITE: Right. I understand that.

24 THE COURT: These lay witnesses will be
25 testifying today and/or tomorrow. And then
26 after we have the report from Dr. Schaeffer and
27 if you have an opportunity to have a rebuttal
28 report prepared, then we will look at a calendar
29 for those witnesses and any other, Mr. Stegall,

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1 whoever else was supposed to have testified.

2 MR. WHITE: I understand that, Your Honor.
3 What I'm asking, we've made reservations, not
4 knowing how long this was going to take, for
5 tonight and tomorrow night. If we need to stay
6 tomorrow night, that's what I need to know.

7 THE COURT: I don't think so.

8 MR. WHITE: We will cancel those.

9 MR. CRAIG: You can cancel them, I believe.
10 We will -- I can't predict your
11 cross-examination, obviously, but the -- but in
12 terms of what we're prepared to do, we have
13 every reason to think we will be done at the end
14 of the court day today with all of the lay
15 witnesses, excluding the attorneys who
16 participated in the trial, and the expert
17 witnesses from either side, Judge.

18 THE COURT: All right.

19 MR. WHITE: So no witnesses tomorrow?

20 MR. CRAIG: If we get through these six
21 today, that's correct.

22 MR. WHITE: Okay.

23 MR. CRAIG: Judge, the witnesses are going
24 through the screening process to get into the
25 courtroom, so they're on their way.

26 MR. VOISIN: Two of our witnesses went out
27 for a smoke break, but those weren't going to be
28 witnesses we intended to call in the morning.

29 THE COURT: The clerk is stretched thin, so

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1 many dockets going, so I thought it would be
2 quicker to -- I will administer the oath to
3 everyone at one time. Will you all be
4 referencing any of the exhibits that was part of
5 the PCR at the Supreme Court?

6 MR. CRAIG: If we do, Your Honor, we have
7 them separately designated on our exhibit list
8 for this hearing, but I'm not sure we will even
9 be using any of those today.

10 THE COURT: Line them up to your left, Mr.
11 Craig.

12 MR. VOISIN: One of our witnesses --

13 THE COURT: We can take it up. If you all
14 would please stand.

15 MR. VOISIN: One of our witnesses, since
16 she is local, we had told her we would call her
17 this afternoon.

18 THE COURT: That's fine. If you would
19 introduce yourself by name, starting on the
20 left.

21 AMANDA FREDERICK: Amanda Frederick.

22 NELLIE RICHARDS: Nellie Richards.

23 ANITA FREDERICK: Anita Frederick.

24 RONALD WALKER: Ronald Walker.

25 THE COURT: I need each of you to raise
26 your right hand and take the oath to tell the
27 truth.

28 (Oath administered by the Court)

29 THE COURT: For the record, all have

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1 affirmed their oath.

2 MR. WHITE: I would like you to instruct
3 these witnesses not to discuss, because I see
4 that they have people that they've come in with,
5 not to discuss anything that went on or the
6 people out here too not to discuss anything that
7 went on in this courtroom with these witnesses,
8 will talk together about what they've testified
9 to.

10 THE COURT: I've got it. Ladies and
11 gentlemen, the witnesses, as well as anyone in
12 the courtroom, the rule is being invoked, which
13 means that anyone who is a witness in this
14 hearing has to remain outside of the courtroom
15 until it's your turn to testify, okay. That
16 further means that you are not allowed to talk
17 to each other or anyone else about your
18 testimony or anyone else's testimony, all right.
19 Are we ready?

20 MR. CRAIG: Your Honor, this is the fifth
21 witness that we have that's not a local witness.
22 He needs to step forward and be sworn as well.

23 THE COURT: What's your name?

24 TERRY WALKER: Terry Walker.

25 THE COURT: MR. Walker, I need you to raise
26 your right hand.

27 MR. VOISIN: Your Honor, I'm sorry, we have
28 one other.

29 THE COURT: Bring him up. Mr. Leon

Amanda Frederick - Direct Examination

1 Frederick. Mr. Frederick your right hand.

2 (Oath administered by the Court)

3 THE COURT: The same rule, listen to me,
4 the same rule applies to you all as these folks.
5 You will be excused from the courtroom until
6 it's your turn to testify. While you are
7 outside the courtroom, you are not to discuss
8 your testimony or anyone else's testimony at
9 all. And nor is anyone else allowed, who might
10 be in the courtroom, to talk to you about what
11 they heard in the courtroom, understand? So you
12 all may be excused and petitioner call your
13 first witness.

14 MR. VOISIN: Our first witness will be
15 Amanda Frederick.

16 THE COURT: Everyone but Ms. Frederick will
17 be excused.

18 For the benefit of everyone in the
19 audience, so it's not to be a distraction to the
20 parties, the lawyers, the Court, staff, or
21 anyone else, please remain seated until there is
22 a break in the testimony. Mr. Voisin.

23 MR. VOISIN: Thank you, Your Honor.

24 AMANDA FREDERICK

25 Having been duly sworn testified as follows:

26 DIRECT EXAMINATION

27 BY MR. VOISIN:

28 Q. Ms. Frederick, would you introduce yourself to
29 the Court?

Amanda Frederick - Direct Examination

1 A. Amanda Frederick.

2 Q. And.

3 THE COURT: Scoot up close to the
4 microphone, and do this for me, allow the lawyer
5 to finish his question before you answer, so
6 that the court reporter only takes down one
7 person at a time. And you have to answer
8 verbally. You can't say uh-uh or uh-huh or
9 shake your head. You have to say yes or no.
10 And try to relax.

11 BY MR. VOISIN:

12 Q. Amanda Frederick. Amanda, how do you know Alan
13 Walker?

14 A. He is my brother.

15 Q. Okay. I would like to ask you a few questions
16 about yourself. Where are you currently living?

17 A. Colorado.

18 Q. And how long have you lived in Colorado?

19 A. Almost ten years.

20 Q. And where were you from originally?

21 A. Long Beach, Mississippi.

22 Q. And what's your occupation now?

23 MR. WHITE: That's irrelevant, Your Honor.
24 What -- we need to talk about what she was 20
25 something years ago.

26 THE COURT: Overruled.

27 BY MR. VOISIN:

28 Q. What's your occupation?

29 A. I work with the mentally disabled.

Amanda Frederick - Direct Examination

1 Q. And that's in Colorado?

2 A. Correct.

3 Q. And are you married?

4 A. I am.

5 Q. And do you have any children?

6 A. I do.

7 Q. How old are your children?

8 A. Nineteen, 16, 14, and 12.

9 Q. Okay. Now, you said you grew up in Long Beach
10 and that Alan Walker is your brother?

11 A. Correct.

12 Q. Do you have other siblings?

13 A. I do.

14 Q. Who are they?

15 A. Terry Walker and Leon Frederick.

16 Q. And where are you in that order of your
17 siblings?

18 A. I'm the last one.

19 Q. Okay. Where is Alan?

20 A. He is the first one.

21 Q. What's the age difference between you and Leon?

22 A. Seven years.

23 Q. Okay. And who is Terry and Alan's father?

24 A. Ronnie Walker.

25 Q. Did you know Ronnie Walker?

26 A. No, I didn't.

27 Q. Did he play any part of your life when you were
28 young?

29 A. No, he didn't.

Amanda Frederick - Direct Examination

- 1 Q. And who is Leon's father?
- 2 A. Winfred Frederick.
- 3 Q. And was your mom married to Winfred Frederick?
- 4 A. She was.
- 5 Q. Were they married when you were born?
- 6 A. No.
- 7 Q. Did Winfred play any part in your life?
- 8 A. No, sir.
- 9 Q. How much contact did you have with him?
- 10 A. Hardly any that I know of.
- 11 Q. Okay. And who is your father?
- 12 A. Michael Shavers.
- 13 Q. Did your mother date him?
- 14 A. No.
- 15 Q. What was your mother's relationship with him?
- 16 A. One night stand.
- 17 Q. Was Michael Shavers involved in your life at
- 18 all?
- 19 A. Not until I turned 18.
- 20 Q. How far away from you did he live?
- 21 A. Two streets.
- 22 Q. He was close by?
- 23 A. Correct.
- 24 Q. Did you have contact with his family?
- 25 A. Sometimes.
- 26 Q. Do you know a Paula Shavers?
- 27 A. I do.
- 28 Q. And where is she now?
- 29 A. She is deceased.

Amanda Frederick - Direct Examination

1 Q. Do you know when she died?

2 A. Almost three years ago.

3 Q. When you were young, who grew up in the house
4 with you?

5 A. Alan and my brother Leon.

6 Q. Where was Terry?

7 A. He was with his father in Alaska.

8 Q. About how old were you when Terry went to
9 Alaska?

10 A. Around two.

11 Q. What contact did you have with Terry after he
12 went to Alaska?

13 A. None.

14 Q. Did he visit?

15 A. I have seen him one time since he left. That
16 was when my brother Leon got married.

17 Q. So just to be clear, it was you, your mother,
18 Alan, and Leon in the house?

19 A. Correct.

20 Q. Was your mother involved with any man at the
21 time?

22 A. No.

23 Q. So it was just the four of you?

24 A. Correct.

25 Q. Where did your mother work?

26 A. She worked at South Mississippi Regional Center
27 for one job, and she worked, I believe, at a casino for
28 her second job.

29 Q. Was she holding down two jobs during your

Amanda Frederick - Direct Examination

1 childhood?

2 A. That's correct.

3 Q. What shifts did she work?

4 A. She worked ten to six, so ten at night until six
5 in the morning, and then she came home and rested a few
6 hours, and went to her second job.

7 THE COURT: Mr. Voisin, what time reference
8 are you looking at here?

9 MR. VOISIN: This is Ms. Frederick's
10 childhood from when, I guess, her earliest
11 memories up until the time of the -- Mr. Walker
12 was arrested.

13 THE COURT: Which I've got to have some
14 years.

15 MR. VOISIN: Okay.

16 BY MR. VOISIN:

17 Q. You were born in 1980?

18 A. Correct.

19 MR. VOISIN: So it would be roughly from
20 the early '80s up until 1990.

21 THE COURT: Mr. White?

22 MR. WHITE: We submit that her childhood is
23 not relevant to his background and character.

24 MR. VOISIN: Your Honor, they were being
25 raised in the same household, so a lot of the
26 factors --

27 THE COURT: If that's an objection, I will
28 overrule the objection.

29 BY MR. VOISIN:

Amanda Frederick - Direct Examination

1 Q. What kind of physical toll did working two jobs
2 have on your mother?

3 MR. WHITE: Objection, Your Honor. She was
4 less than 11 years old when this took place, and
5 I don't think she is competent to testify what
6 her mother was doing and what physical toll it
7 took on her. She is not a doctor, she is not a
8 medical expert.

9 MR. VOISIN: I will rephrase the question.

10 BY MR. VOISIN:

11 Q. Did your mother help you become involved in
12 various activities outside of school?

13 A. She did.

14 Q. And did you observe -- or what signs did you
15 observe from her that indicated that she was having a
16 hard time?

17 A. She was always sleeping.

18 Q. Like where would she sleep?

19 A. In her car when I would do cheerleading
20 practice.

21 Q. Now, when she was working these jobs, who looked
22 after you?

23 A. Alan and Leon.

24 Q. What did Alan do?

25 A. Cooked, cleaned, took care of me.

26 Q. Was he ever mean to you?

27 A. No.

28 Q. Were you familiar, again, this is just based on
29 what you remember at that time, were you familiar with

Amanda Frederick - Direct Examination

1 how much -- whether Alan drank alcoholic beverages?

2 A. He did.

3 Q. What did he drink?

4 A. Busch beer in a blue can.

5 Q. How often did he drink?

6 A. When he was around his friends.

7 Q. Now, did Alan work, also, at this time?

8 A. I'm not really for sure.

9 Q. Okay, that's fine. So going back to the
10 drinking, how often would his friends come around?

11 A. Quite often.

12 Q. And what would they do when they came to your
13 house?

14 A. Drink, played volleyball, bonfires.

15 Q. Did you ever see Alan drunk?

16 A. Yeah.

17 Q. How often?

18 A. Not for sure. Quite a few times.

19 Q. Okay. And what about his friends?

20 A. They would drink, too.

21 Q. And who were some his friends?

22 A. The Maloney brothers.

23 Q. Is that Dwayne and Donald?

24 A. Dwayne and Donald.

25 Q. Okay. And who else?

26 A. Their father, Duke. Jack Collins, Senior.
27 Billy Davenport.

28 Q. Okay. Thank you. Now, you mentioned Frank
29 Potter. Can you describe him?

Amanda Frederick - Direct Examination

1 A. He was an older man, long beard, scruffy hair.

2 Q. When you say older, was he Alan's age or older
3 than that?

4 A. He was older than Alan.

5 Q. Can you give a ballpark?

6 A. Maybe in his 50s.

7 Q. And what did he do when he came around the
8 house?

9 A. He drank.

10 Q. With Alan and his friends?

11 A. Correct.

12 Q. Did he do anything inappropriate?

13 A. Flashed my mother once.

14 Q. And what do you mean by flashed?

15 MR. WHITE: Objection, Your Honor. Unless
16 she actually saw that, that's hearsay.

17 THE COURT: Lay a foundation.

18 BY MR. VOISIN:

19 Q. Did you see Mr. Potter do anything
20 inappropriate?

21 A. Yes, I did.

22 Q. And what did you see?

23 A. Him flashing my mother.

24 Q. And when you say flash, what do you mean,
25 dropped his pants?

26 A. Yes.

27 Q. How did Alan respond?

28 A. He got upset about it.

29 Q. What did he do?

Amanda Frederick - Direct Examination

1 A. He, I guess, talked to him, kind of got on to
2 him about how it was inappropriate.

3 Q. Now, who is Jack Collins?

4 A. He was the, I guess, neighborhood -- the older
5 man that had them do things that they probably shouldn't
6 have.

7 Q. Like what types of things?

8 A. Steal stuff.

9 Q. For him?

10 A. Correct.

11 MR. WHITE: Objection. Unless she saw them
12 do that, it's hearsay.

13 THE COURT: Lay a foundation.

14 BY MR. VOISIN:

15 Q. Were you familiar -- were you aware of this
16 going on of Alan stealing for Jack Collins at the time?

17 MR. WHITE: Objection of whether she was
18 aware of it.

19 THE COURT: I overrule the objection.

20 BY MR. VOISIN:

21 Q. Can you please answer the question?

22 A. What was it again?

23 Q. Were you aware at the time that Jack Collins was
24 having Alan and his friends steal things for him?

25 A. Yes.

26 Q. Did Jack Collins drink around Alan and his
27 friends?

28 A. Yes.

29 Q. How often did that happen?

Amanda Frederick - Direct Examination

1 A. Every time they were together.

2 Q. And based on your recollection, at what point in
3 your life do you remember seeing Jack Collins being
4 around?

5 A. He was there quite often.

6 Q. That was from when you were very young?

7 A. Uh-huh.

8 Q. I want to ask you, did you know Robin Marroy?

9 A. I did.

10 Q. What was her involvement with Alan?

11 A. That was his girlfriend at the time.

12 Q. Did they have a child together?

13 A. They did.

14 Q. Who is that?

15 A. Michelle Walker.

16 Q. And when was Michelle born?

17 A. March the 20th, 1990.

18 Q. And did Robin live close to you?

19 A. At one point she lived with us, but she did live
20 close to us.

21 Q. When she was -- did you know Leroy Marroy?

22 A. Yes.

23 Q. Where did he live?

24 A. Next to her parents.

25 Q. Next to Robin's parents?

26 A. Yes.

27 Q. And what was Leroy's relationship to Robin
28 before Alan started seeing Robin?

29 A. They were together, like husband and wife.

Amanda Frederick - Direct Examination

1 Q. And how old was Leroy?

2 A. Quite a few years -- he was probably in his 50s,
3 she was in her teens.

4 Q. And how old was Robin?

5 A. In her teens.

6 Q. And she lived next to his family?

7 A. Her family's house was on one side, and his
8 place was right next door.

9 Q. Okay.

10 MR. WHITE: Objection, Your Honor, to
11 relevancy.

12 THE COURT: Overruled.

13 BY MR. VOISIN:

14 Q. Do you know about how old Robin was when she
15 married?

16 A. In her teens. I'm not exactly sure the exact
17 age.

18 Q. Now, after Michelle was born, who ended up with
19 custody of her?

20 A. We did, my mother.

21 Q. And how was Alan with Michelle?

22 A. He was fine with her. Really attentive.

23 Q. Amanda, I would like you to -- may I approach
24 the witness?

25 THE COURT: Yes.

26 MR. VOISIN: I would like to show her the
27 map.

28 BY MR. VOISIN:

29 Q. I would like to show you, Amanda, what has been

Amanda Frederick - Direct Examination

1 premarked as Exhibit 1 for identification, and I would
2 like to ask you a few questions about that.

3 A. Okay.

4 Q. Are you familiar -- first, can you identify
5 that?

6 A. It's the map that I drew.

7 Q. You drew that?

8 A. I did.

9 Q. When did you draw it?

10 A. Yesterday.

11 Q. Okay. What were you doing when you drew it?

12 A. Just showing you where everyone lived, proximity
13 in the neighborhood.

14 Q. And what neighborhood was this?

15 A. Off of 28th Street.

16 Q. And that's where your family lived in the 1980s?

17 A. I don't think we lived there in the '80s, but
18 I'm not for sure.

19 Q. About how old were you when you moved to --

20 A. Six, five or six.

21 Q. You were six when you moved here?

22 A. Yeah.

23 Q. And what year were you born in?

24 A. I was born in '80.

25 Q. And I want to --

26 MR. VOISIN: At this point, Your Honor, I
27 would like to introduce this, Ms. Frederick's
28 hand-drawn map into evidence to show the area
29 where she lived and the proximity of most of the

Amanda Frederick - Direct Examination

1 people she identified in her testimony, for
2 example, Dwayne and Donald, Frank Collins -- I
3 mean Jack Collins, Frank Potter, the Marroys,
4 and all of that. It shows just what a close
5 insular community this was.

6 THE COURT: Mr. White?

7 MR. WHITE: Objection. Wasn't furnished in
8 discovery timely.

9 THE COURT: Beyond that objection, do you
10 have any further objection?

11 MR. WHITE: You know, I haven't had a
12 chance to have somebody who is familiar with
13 this area verify that this is even correct.
14 This woman hadn't lived here -- evidently she
15 lives in Colorado somewhere, and I don't live
16 here so I don't know if this map is anywhere
17 near correct.

18 THE COURT: Mr. Voisin, why wasn't this map
19 prepared prior to the discovery cutoff?

20 MR. VOISIN: I did not have a chance to
21 talk to Ms. Frederick face-to-face until
22 Saturday morning. She flew in -- we spoke on
23 the phone, but she flew in Friday night. And
24 just in the course of talking with her, she just
25 offered me -- we were trying to review where
26 everybody was living and just how close by
27 everything was, and she offered to draw a map,
28 and she took my pad of paper and produced this.

29 THE COURT: Mr. Ladner, let me see that

Amanda Frederick - Direct Examination

1 exhibit.

2 MR. VOISIN: I thought it would be helpful
3 to the Court.

4 THE COURT: I understand. I will overrule
5 the objection, even though it is untimely
6 produced, and for what it's worth, I think her
7 testimony about the proximity of the parties or
8 rather the witnesses and the families living
9 near each others, to me, is more -- has greater
10 impact than a hand-drawn map some 20 plus years
11 later. But I will allow you to mark it into
12 evidence at this time. Mr. Ladner give it to
13 the court reporter.

14 (Defense Exhibit 1 marked into evidence)

15 BY MR. VOISIN:

16 Q. Ms. Frederick, did you know a Jason Riser?

17 A. I did.

18 Q. And how often did he come around your house?

19 A. As often as everyone else did.

20 Q. What did he do when he was there?

21 A. He would drink.

22 Q. Now, Ms. Frederick, do you remember in 1991 when
23 you testified at your brother's trial?

24 A. Uh-huh.

25 Q. You have to say yes or no.

26 A. Yes.

27 Q. How old were you at the time?

28 A. I was 11.

29 Q. Did anyone -- any of your brother's lawyers come

Amanda Frederick - Cross-Examination

1 talk to you at your house?

2 A. No, they didn't.

3 Q. When was the first time you remember meeting
4 with them?

5 A. When we were in Vicksburg.

6 Q. And who was there?

7 A. My mother, myself, and my brother, Leon.

8 Q. Did they talk to you one on one?

9 A. No.

10 Q. What did they tell you before trial about your
11 testimony?

12 A. Nothing.

13 Q. If they had spoken to you, would you have
14 answered their questions?

15 A. Yes.

16 Q. And would you have been willing to testify as
17 you've done today?

18 A. Yes.

19 MR. VOISIN: Indulge.

20 THE COURT: All right.

21 MR. VOISIN: No further questions.

22 THE COURT: All right. Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. WHITE:

25 Q. Ms. Frederick, I'm sorry, I've forgotten your
26 married name, your last name?

27 A. Frederick.

28 Q. It's still Frederick?

29 A. Uh-huh.

Amanda Frederick - Cross-Examination

1 Q. So you are not married?

2 A. Well, common law married.

3 Q. And you were how old when this happened?

4 A. When it happened or I went to trial?

5 Q. I don't care about Colorado because it has
6 nothing to do with this. I'm talking about when this
7 murder occurred, when your half brother murdered Konya
8 Edwards, how old were you?

9 A. I was ten.

10 Q. And what do you remember about that?

11 A. That the police officers came to our house and
12 was looking for my brother.

13 Q. Did you get the black dress?

14 A. No.

15 Q. Tell me, you said you were aware, you used the
16 term "aware," I think was the question. How did you know
17 they were stealing goods?

18 A. Because they would bring them to my mother's
19 house.

20 Q. How did you know where they were from?

21 A. They said they were stolen.

22 Q. They what?

23 A. They said they were stolen.

24 Q. They said they were stolen. So you didn't know,
25 you didn't see them steal anything, did you?

26 A. No, I did not.

27 Q. Okay. Now, and everybody that came there just
28 drank, is that all they did?

29 A. Smoked pot, too.

Amanda Frederick - Cross-Examination

1 Q. I didn't ask you that. You are volunteering
2 things. You answer my questions. They just drank beer?

3 THE COURT: Mr. White, you asked them is
4 that all they did, and she said smoked pot, too.
5 That's a fair answer to your wide open question.

6 BY MR. WHITE:

7 Q. Okay. Smoked pot. So what else did they do?
8 Did they just sit there and smoke pot and drink beer all
9 the time, all of them, everybody that came to your house?

10 A. Pretty much.

11 Q. Didn't do anything else, huh, just sat around
12 and smoked and drank pot -- I mean drank beer and smoked
13 pot?

14 A. Played volleyball.

15 Q. Okay. They played volleyball. What else?

16 A. Bonfires.

17 Q. Bonfires. What else?

18 A. Hung out at the house.

19 Q. Just hung out in the house. And what did you do
20 all this time?

21 A. I was there, too.

22 Q. You drank beer and smoked pot, too?

23 A. No.

24 Q. No? Well, reading your declaration, everybody
25 just drinks, everybody in your family drinks all the
26 time; is that correct?

27 A. You could say that.

28 Q. Your mother drink?

29 A. No, my mother does not drink.

Amanda Frederick - Cross-Examination

1 Q. Did she then?

2 A. No, she didn't.

3 Q. Did you?

4 A. No.

5 Q. You never had anything to drink, huh?

6 A. No, sir.

7 Q. Uh-huh. And now, you said that nobody came to
8 see you and talk to you about your testimony; is that
9 correct?

10 A. That's correct.

11 Q. That's correct. Did they talk to your mother?

12 A. I am not for sure.

13 Q. You don't know whether they talked to your
14 mother without you. Wouldn't it kind of stand to reason
15 that they weren't looking or discussing legal matters
16 with an 11 year old?

17 A. No, no one did.

18 Q. So as far as this -- now, you're not really,
19 other than your mother, you all have different fathers,
20 right?

21 A. Correct.

22 Q. You don't have the same father as any of the
23 rest of them?

24 A. No, I do not.

25 Q. Okay. So you were 11 years old -- 10 years old
26 when this happened and 11 years old when you testified?

27 A. Correct.

28 Q. Okay.

29 MR. WHITE: I don't have any further

Amanda Frederick - Examination by the Court

1 questions of this witness, Your Honor.

2 THE COURT: Any redirect?

3 MR. VOISIN: No, Your Honor.

4 THE COURT: Does either party object to the
5 Court asking some follow-up questions?

6 MR. WHITE: No, Your Honor.

7 MR. VOISIN: No, Your Honor. No objection.

8 EXAMINATION

9 BY THE COURT:

10 Q. Ms. Frederick, this Frank Potter that you talked
11 about, is this a boyfriend of your mother's?

12 A. No.

13 Q. Who was he again?

14 A. Alan's friend.

15 Q. Alan's friend. But he was older than Alan?

16 A. Correct.

17 Q. And you said you witnessed Mr. Potter flash your
18 mother?

19 A. Correct.

20 Q. And I think you said that -- or did that upset
21 Alan?

22 A. It did.

23 Q. Such that he had a talk with him?

24 A. Yes.

25 Q. Did he get physical with Mr. Potter?

26 A. No, he didn't.

27 Q. So he was -- is it fair to say that from your
28 perspective, your brother was protective of your mother?

29 A. Correct.

Amanda Frederick - Examination by the Court

1 Q. And he knew that that type of behavior towards,
2 at least his mother, was inappropriate?

3 A. Correct.

4 Q. Would you say that your brother knew that that
5 type of behavior would be inappropriate towards any
6 female?

7 A. I would believe so.

8 Q. All right. Was that type of -- that type of
9 behavior on Alan's part, your brother's part, taught at
10 home, how to treat people right, not how to do people
11 wrong?

12 A. I believe so.

13 Q. Okay.

14 THE COURT: If my questions spurred any
15 questions by either counsel, you may follow up
16 at this time. Mr. Voisin?

17 MR. VOISIN: No questions, Your Honor.

18 THE COURT: Mr. White?

19 MR. WHITE: No questions, Your Honor.

20 THE COURT: You may step down. Call your
21 next witness.

22 MR. CRAIG: Call Anita Frederick, Your
23 Honor.

24 THE COURT: There used to be some witness
25 room off to the side.

26 MR. CRAIG: That's where they are, Your
27 Honor.

28 THE COURT: So they don't have to go
29 through security every time?

Anita Frederick - Direct Examination

1 MR. CRAIG: I assume so, Your Honor.

2 THE COURT: This is Anita?

3 MR. CRAIG: Yes, Your Honor, Mr. Walker's
4 mother.

5 THE COURT: Ms. Frederick, come forward.
6 Ms. Frederick, sit up close to the microphone,
7 try to relax so that your testimony comes out
8 such that everybody can hear you in the
9 courtroom. Allow the lawyers to finish their
10 questions before you answer. And try not to
11 speak when someone else is speaking so that the
12 court reporter only takes down one person at a
13 time. And make sure that you answer audibly,
14 yes or no, he can't take down head shakes or
15 uh-huhs or uh-uhs, you understand? Mr. Craig.

16 ANITA FREDERICK

17 Having been duly sworn testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CRAIG:

20 Q. And remember, you've been sworn already, Ms.
21 Frederick.

22 THE COURT: Keep your voice up.

23 Q. Please introduce yourself to the Court.

24 A. My name is Anita Frederick.

25 Q. And where do you live, Ms. Frederick?

26 A. I didn't hear you.

27 Q. Yeah, because I coughed. I apologize. Where do
28 you live?

29 A. I live in Grand Junction, Colorado.

Anita Frederick - Direct Examination

1 Q. And how do you know Alan Walker?

2 A. Alan Walker is my son.

3 MR. CRAIG: Your Honor, I'm moving just a
4 little bit closer so she can hear me, and I will
5 try to speak up.

6 BY MR. CRAIG:

7 Q. Are you married, Ms. Frederick?

8 A. No.

9 Q. Have you been married before?

10 A. Yes.

11 Q. To whom have you been married?

12 A. To Alan's dad, Ronnie Walker. And to Leon and
13 them's dad, Winfred Frederick.

14 Q. Do you have children?

15 A. Four.

16 Q. Please tell us the names of your children and
17 their fathers.

18 A. Alan Walker, Terry Walker, Ronnie Walker is the
19 dad. Leon is Winfred Frederick. And Amanda Frederick is
20 Michael Shavers.

21 Q. Where did you grow up?

22 A. Pensacola, Florida.

23 Q. How did you meet Alan's father?

24 A. I used to sell magazines all over the United
25 States, and I met him that way.

26 Q. How old were you when you started selling
27 magazines?

28 A. About 16.

29 Q. And why were you selling magazines for a living?

Anita Frederick - Direct Examination

1 A. Just to get away from home.

2 Q. When did you leave home, how old were you?

3 A. About 16, 17.

4 Q. Why did you leave home at age 16?

5 MR. WHITE: Objection. Relevancy, Your
6 Honor. Why she left home at 16 has nothing to
7 do with Mr. Walker.

8 THE COURT: Mr. Craig?

9 MR. CRAIG: Yes, Your Honor. Dr. Mendel's
10 report, which has been furnished to all parties
11 and was also furnished to the Mississippi
12 Supreme Court, talks about the background of
13 this family. It's commonly recognized as the
14 background of Ms. Frederick, the way she was
15 raised, and the way that she raised her children
16 is directly relevant to the formation of her
17 son, and is admissible, would have been
18 admissible in 1991.

19 THE COURT: I will overrule the objection
20 for what it's worth.

21 MR. CRAIG: Thank you, Your Honor.

22 THE COURT: You might need to re-ask your
23 question.

24 MR. CRAIG: Yes, thank you, Your Honor.

25 BY MR. CRAIG:

26 Q. So tell us again why you left home at age 16?

27 A. Just to get out and make some money.

28 Q. Did your mom know you were leaving home?

29 A. No.

Anita Frederick - Direct Examination

1 Q. How long were you gone?

2 A. Three months.

3 Q. And when you came back, was there any discussion
4 with your mother about where you had been?

5 A. No.

6 Q. What was your mother's name?

7 A. Marie Richards.

8 Q. What was -- and you had siblings. Who were your
9 siblings?

10 A. My oldest sister was Ruth. My brother was
11 Howard. And then it was me, and then my brother John,
12 and then my sister Nellie.

13 Q. And who took care of you all at home during the
14 day?

15 A. We went to school.

16 Q. What about when you weren't in school?

17 A. My sister, Ruth, was in California. She got
18 married. My brother was -- left, and it was just me and
19 my sister and my brother.

20 Q. Where was your mom?

21 A. Out running the roads.

22 Q. For how many days at a time would your mom be
23 gone from the home?

24 MR. WHITE: Objection to relevancy, Your
25 Honor.

26 THE COURT: I sustain that objection.

27 BY MR. CRAIG:

28 Q. Was your mom around when you got injured or when
29 you needed her?

Anita Frederick - Direct Examination

1 A. No.

2 Q. Do you remember an occasion when you went to the
3 hospital and your mom wasn't around?

4 A. Well, I cut my foot open and the neighbors took
5 me to hospital. And I had 48 stitches, two cat guts, and
6 some buttons.

7 Q. Did your mom eventually show up at the hospital?

8 A. Yes.

9 Q. And were the doctors trying to do something more
10 severe than the stitching?

11 MR. WHITE: Objection, Your Honor. This is
12 just not relevant.

13 THE COURT: Sustained.

14 MR. CRAIG: Please the Court, if I can make
15 a record. This is in her affidavit that was
16 submitted to the Supreme Court. It goes
17 directly to her mother's lack of treatment, lack
18 of being present in the home, which Dr. Mendel
19 is going to talk about in terms of the overall
20 dynamic under which Mr. Walker was raised. We
21 think it is relevant, but --

22 THE COURT: As to whether or not a
23 physician wanted to do additional type medical
24 procedure on this witness?

25 MR. CRAIG: Yes, Your Honor, because I'm
26 going to go through what happened after that. I
27 mean, obviously, I'm asking one question at a
28 time. But as the affidavit points out, you
29 know, there then was a later discussion that

Anita Frederick - Direct Examination

1 related to Ms. Frederick's father.

2 MR. WHITE: First, it's not an affidavit.

3 THE COURT: Pardon?

4 MR. WHITE: First, it's not an affidavit so
5 it's not competent in a post-conviction in this
6 state. You might have a declaration in federal
7 court, but they are not recognized as support of
8 a PCR in the State of Mississippi.

9 MR. CRAIG: That's not correct, Your Honor.
10 Mr. White was given, and the Court was given,
11 with the motion to vacate, these same statements
12 in affidavit form. They are affidavits for
13 whatever that's worth.

14 MR. WHITE: Well, I mean, the thing is, you
15 know, the fact --

16 THE COURT: Let me just say this, Mr. White
17 -- go ahead, finish your objection.

18 MR. WHITE: The fact that he is relying on
19 what some doctor is going to testify to at some
20 later date, that's not what he can do here. He
21 can have that and get that stuff with the doctor
22 outside the court, but that's not relevant to
23 the character and background of this capital
24 defendant. That might be relevant to her
25 background and character, but it's not relevant
26 to his background and character, which is the
27 core of what we're looking at here.

28 THE COURT: I understand that. I will just
29 note that I had a preliminary understanding of

Anita Frederick - Direct Examination

1 what my task was and how I thought I was going
2 to frame the issues for this hearing, and in
3 doing so, I overruled Mr. Craig's motion to
4 allow Dr. Schaeffer access. The Supreme Court
5 obviously told me I was wrong in an
6 interlocutory order. So at this point, I'm not
7 going to sustain your objection to elicit
8 testimony if it was contained in the affidavit
9 or the declaration, or whatever it was that was
10 filed in the successive writ at the Supreme
11 Court which caused this remand and this
12 evidentiary hearing. I can wade through it in
13 reaching a decision, but I will allow a record
14 to be made. So I will sustain -- overrule your
15 objection, I apologize.

16 MR. WHITE: May I continue to make the
17 objection or will you overrule everything I do?

18 THE COURT: I want you to make your
19 objection so it's noted so that when I review
20 back on the transcript I see the state has
21 objected. You can continue.

22 MR. CRAIG: Thank you, Your Honor.

23 BY MR. CRAIG:

24 Q. Who was your father, Ms. Frederick?

25 A. Ezekiel Richards.

26 Q. What do you know about him?

27 A. I don't know much about him. He had one leg
28 that was cut off.

29 MR. WHITE: Objection, relevancy.

Anita Frederick - Direct Examination

1 THE COURT: Overruled.

2 BY MR. CRAIG:

3 Q. And how old were you when your mom and dad
4 separated?

5 A. About seven or eight.

6 Q. Do you have any clear recollections of what it
7 was like to live with your father?

8 MR. WHITE: Objection, relevancy.

9 THE COURT: Overruled. You can answer it.

10 BY MR. CRAIG:

11 Q. Do you have -- tell us what you remember about
12 living with your mother and your father?

13 A. Well, when I was three years old, I drank
14 kerosene. They took me to the hospital.

15 MR. WHITE: Objection relevancy.

16 THE COURT: Overruled.

17 A. And I had my foot messed up. My mother always
18 said that the meanest man in the world is a one-legged
19 man.

20 MR. WHITE: Objection, hearsay.

21 THE COURT: Overruled.

22 MR. CRAIG: It's not offered for the truth
23 of the purpose asserted.

24 THE COURT: It's overruled.

25 MR. CRAIG: Thank you, Your Honor.

26 BY MR. CRAIG:

27 Q. Did that relate to the operation that you had on
28 your leg, Ms. Frederick?

29 A. Yes. My mother said my leg couldn't be cut off.

Anita Frederick - Direct Examination

1 Q. Okay. Did you have occasion to take care of
2 your siblings later in life?

3 A. Yes.

4 Q. And who did you take care of?

5 A. Alan and Terry, when they was little.

6 Q. Yes, ma'am. I was asking about your brothers or
7 sisters?

8 A. I took care of my sister, Nellie.

9 Q. And how old were you when you took care of her?

10 MR. WHITE: Objection.

11 THE COURT: Overruled.

12 A. How old was she, about 15.

13 BY MR. CRAIG:

14 Q. Why was it that you were asked to take care of
15 your sister, Nellie?

16 A. She went to jail because she got drunk or
17 something in a car wreck and everything. And I took the
18 responsibility for her because my mother said she
19 couldn't -- you make your bed, you sleep in it.

20 Q. Was that pretty much her attitude toward raising
21 all of you?

22 A. Yes.

23 Q. I want to ask you about Ronnie Walker and your
24 relationship with him, Alan's father. How old were you
25 when you and Alan's father were married?

26 A. About 18, 19.

27 Q. Where did you live?

28 A. Panama City, Florida.

29 Q. When was Alan born in relation to when you were

Anita Frederick - Direct Examination

1 married?

2 A. '65.

3 Q. And you were -- how old were you when Alan was
4 born?

5 A. About 20, 21, something like that.

6 Q. Okay. And then how much later than that was
7 Terry born?

8 A. He was born in '67.

9 Q. So that would be two years?

10 A. Two years, 14 days.

11 Q. Did any of Ronnie Walker's family live with you
12 when you were a young married person with the two
13 children?

14 A. His brother Kenneth Walker, he lived with us.

15 Q. And was that -- was Kenneth Walker Ronnie
16 Walker's full brother, they shared both parents?

17 A. Yes.

18 Q. Thank you. And did you notice any strange
19 behavior on the part of Kenneth?

20 A. Yes.

21 MR. WHITE: Objection, relevancy.

22 THE COURT: Overruled.

23 BY MR. CRAIG:

24 Q. What kind of behaviors did you notice?

25 A. We lived in South Carolina, and when I was
26 pregnant with Terry and -- he locked himself up in his
27 bedroom with a dog And didn't want me to come in because
28 he thought I was going to kill him.

29 Q. Did he only lock the door with a lock or did he

Anita Frederick - Direct Examination

1 do anything else?

2 A. No, he put a chest of drawers on it where nobody
3 could get in.

4 Q. Was there any reason why -- had you done
5 anything to give him reason to think you were going to
6 hurt him?

7 A. No.

8 Q. Do you remember any other incident in public
9 regarding Kenneth when he was living with you?

10 A. He left South Carolina and come down to
11 Pensacola and stayed with my mother. And he was at
12 K-Mart's or Wal-Mart's and acting crazy.

13 MR. WHITE: Objection, relevancy.

14 A. I didn't know what was wrong with him. He had
15 schizophrenia.

16 BY MR. CRAIG:

17 Q. Were you told that he had schizophrenia?

18 A. His dad did, told me.

19 MR. WHITE: Objection, hearsay.

20 A. His brother did.

21 THE COURT: I sustain that objection.

22 BY MR. CRAIG:

23 Q. Where was Mr. Walker, Ronnie Walker, when
24 Kenneth was living with you all?

25 A. In Hawaii.

26 Q. What was he doing in Hawaii?

27 A. He was a meat cutter.

28 Q. But why was he in Hawaii cutting meat?

29 A. His job took him all over the place.

Anita Frederick - Direct Examination

1 Q. So was he present in the home during the time
2 that Alan and Terry were very small?

3 A. Yes.

4 Q. What about after Terry was born?

5 A. He went back to Hawaii.

6 Q. At some point you and Ronnie Walker split up; is
7 that correct?

8 A. Yes.

9 Q. What happened, why did that happen?

10 A. Well, he just traveled all over the place, and
11 we didn't, you know, see each other.

12 Q. Okay. And at some point, did you and Mr. Walker
13 file for divorce?

14 A. Yes.

15 Q. How old was Alan when his dad and you divorced?

16 A. I think he was around four.

17 Q. And then how old was Terry?

18 A. Two.

19 Q. Where did you go after the divorce?

20 A. I stayed with my mother for a couple of days or
21 a week or something. Then my mother told me to get up
22 off my hump and go to work and support my own kids. She
23 didn't have them, so I had to support them.

24 Q. So what did you do?

25 A. Well, Ronnie paid child support for one month.
26 I didn't see or hear anything else and so I left
27 Pensacola and went down to New Orleans. Then I went from
28 New Orleans back up here to Mississippi and got me a job.

29 Q. Where in Mississippi did you end up?

Anita Frederick - Direct Examination

1 A. Long Beach, Mississippi.

2 Q. And --

3 A. Well, Gulfport, really. First I came to
4 Gulfport, and we stayed on the beach.

5 Q. When you say stayed on the beach, where exactly
6 did you sleep?

7 A. In the car.

8 Q. What kind of car was it?

9 A. A station wagon.

10 Q. So that was you and your four year old son and
11 your two year old son?

12 A. Yes, and two other people.

13 Q. The two other people who were with you in New
14 Orleans?

15 A. Yes.

16 Q. Eventually, did you get a more secure place to
17 live on the Gulf Coast?

18 A. Yes.

19 Q. And how did that come about?

20 A. I worked at Moody's Restaurant for a year, and
21 the lady in back of me told me I could move in over
22 there. And the lady that was living with me at the time
23 moved back to Pensacola. And I had a one-room place for
24 me and the two boys.

25 Q. And during that time, after that first month,
26 did you receive any financial support from Alan and
27 Terry's father?

28 A. No.

29 Q. During that time when the boys were very young,

Anita Frederick - Direct Examination

1 did you hear at all from Ronnie Walker, Alan and Terry's
2 father?

3 A. No. When I left Pensacola, I went on my own. I
4 did not ask for Alan -- I did not ask for Ronnie to
5 support us because he did not know where I was at.

6 Q. Okay. Now, when Alan was very young, did you
7 have a baby sitter named Ms. Woodcock?

8 A. Yes.

9 Q. And do you remember an incident that occurred
10 when Alan was young involving Ms. Woodcock?

11 A. Yes.

12 Q. And tell us what that incident was.

13 A. He was just little, running around, and he --
14 she pulled his pants off or something like that.

15 Q. Okay. And --

16 MR. WHITE: Objection, hearsay. Unless she
17 actually saw it.

18 THE COURT: Lay a foundation.

19 BY MR. CRAIG:

20 Q. Were you later told by Alan -- let me ask you
21 this, how did you know that that happened?

22 A. Alan told me.

23 Q. And when Alan told you, what was his attitude
24 towards it?

25 A. He was kind of scared.

26 Q. Okay. And about how old was he when that
27 happened?

28 A. I don't remember.

29 Q. Was he in school yet?

Anita Frederick - Direct Examination

1 A. Yes.

2 Q. Okay. So older than five?

3 A. Well, he was like in kindergarten and things.

4 Q. Okay. When was -- I'm sorry, and did you say
5 anything to Ms. Woodcock about that, about that -- did
6 you have any conversation with her about it?

7 A. No, I didn't know anything about it until a
8 little later.

9 Q. Okay. And ultimately, whenever you did find out
10 about it, you never spoke to Ms. Woodcock?

11 A. No. She didn't watch him anymore.

12 Q. Okay. At some point, did Alan and Terry's
13 father make an appearance in their life?

14 A. Yes.

15 Q. Tell us the first time that that happened, how
16 old were the boys when their father saw them again?

17 A. They was about seven, six, some years old.

18 Q. That would be Alan would have been six or seven
19 years old?

20 A. Yes.

21 Q. And what was that occasion, what was the contact
22 with their father then?

23 A. I called him up to let him know where I was at.
24 If he wanted to see the boys he could. So he came over
25 from Alaska. He was living in Alaska. He brought them a
26 big box of toys.

27 Q. How long did he stay and spend time with his
28 sons that time?

29 A. Not very long.

Anita Frederick - Direct Examination

1 Q. Did ultimately he -- tell us about the next time
2 that Alan had contact with his father after that time
3 when he came and gave him the presents.

4 A. Well, one time he come and he said he had to
5 stay for about a year over in Alaska because it cost so
6 much money to bring them back and forth like that.

7 MR. WHITE: I didn't. That didn't make any
8 sense, Your Honor.

9 MR. CRAIG: I'll rephrase it, Your Honor.

10 BY MR. CRAIG:

11 Q. Did there come time when Alan went to live in
12 Alaska with his father?

13 A. Yes.

14 Q. And was that one time or more than one time?

15 A. More than one time.

16 Q. So let's talk about the first time. Where was
17 Alan's father living the first time that Alan went to
18 live with him?

19 A. In Alaska.

20 Q. Okay. And how did it come about that Alan lived
21 with his father in Alaska?

22 A. He said that he had to go up there and stay for
23 at least a year where, you know, bring them up there,
24 bring both of the two boys up there. And then they would
25 send him back.

26 Q. And so did Alan stay there in Alaska with his
27 dad for a year?

28 A. Yes.

29 Q. Ultimately, did he come back?

Anita Frederick - Direct Examination

1 A. Yes.

2 Q. Was there a second time then, you testified
3 already, I think, that Alan and Terry went to Alaska; is
4 that correct?

5 A. Yes.

6 Q. And how long was Alan there that second time?

7 A. A year. Around a year.

8 Q. What about Terry?

9 A. He stayed with Alan that year, and then he come
10 back.

11 Q. Terry came back the second time, too?

12 A. Yes.

13 Q. Did there come a time when Terry did not come
14 back from Alaska?

15 A. Yes. The last time, Alan came back and Terry
16 stayed.

17 Q. Did you remarry anybody after you divorced
18 Ronnie Walker?

19 A. Yes.

20 Q. And who did you marry?

21 A. Winfred Frederick.

22 Q. And you already testified you have one son with
23 Winfred Frederick named Leon?

24 A. Leon.

25 Q. Where did you and Winfred live?

26 A. We lived off of Marosa -- LaRosa Road in
27 Gulfport. And then we moved to Longridge Road. We had a
28 house built.

29 Q. And that was in Long Beach?

Anita Frederick - Direct Examination

1 A. Long Beach.

2 Q. Did Winfred play a role in your sons' lives?

3 A. In the beginning he did.

4 Q. And what happened after the beginning?

5 A. He was there as a father, and then later on, he
6 just worked all the time and never did have anything else
7 to do with them.

8 THE COURT: Give me a frame of reference in
9 the petitioner's age at this time.

10 MR. CRAIG: Yes, thank you, Your Honor.

11 BY MR. CRAIG:

12 Q. What year did you marry Mr. Frederick?

13 A. '72, I think.

14 Q. 1972. And Alan was born in 1965?

15 A. Yes.

16 Q. So Alan would have been seven then?

17 A. Uh-huh.

18 Q. You have to say yes or no, I'm sorry.

19 A. Yes.

20 Q. Thank you. And then just to give the Court a
21 reference, what year did you and Mr. Frederick divorce?

22 A. '79.

23 Q. So in '79, Alan would have been 14; is that
24 correct?

25 A. Yes.

26 Q. So from the time he was seven until time he was
27 14 you were married to Winfred Frederick?

28 A. Yes.

29 Q. Did Winfred have a drinking problem, ma'am?

Anita Frederick - Direct Examination

1 A. Yes.

2 Q. How much did he drink?

3 A. A whole case of beer every day.

4 Q. Every day?

5 A. Every day.

6 Q. That would be after he came home from work?

7 A. Yes.

8 Q. And what was he like when he drank that much?

9 A. He was okay. He drank. When he got tired he
10 went to sleep, went to bed.

11 Q. Okay.

12 A. Sometimes -- at one time he hit the wall, put a
13 hole in it.

14 Q. What do you mean by hit the wall?

15 A. He just hit the wall, you know, put a hole in
16 it. I put a picture over it where nobody could see it.

17 Q. Okay. How -- did he strike it with his fist or
18 some other way?

19 A. Yes, he hit it with his fist.

20 Q. Okay. And put a hole in the wall. You have to
21 say yes or no, I'm sorry.

22 A. Yes.

23 Q. Or something anyway. So when he was drunk, was
24 he -- and was sleeping, what contact did he have with
25 your sons Alan and Terry?

26 A. He didn't bother them.

27 Q. Did he have any influence in terms of the
28 day-to-day discipline of your sons?

29 A. No.

Anita Frederick - Direct Examination

1 Q. Let me turn to that. Did you -- how many jobs
2 were you working from the time that Alan -- at the same
3 time when Alan was younger until you married Mr.
4 Frederick? So from the time you moved here and was
5 working at Moody's until Alan was seven, did you just
6 work at Moody's or did you have more than one job?

7 A. At that time I just had that one job. I worked
8 every day for one year without a day off.

9 Q. And then later on, did you work just one job or
10 more than one job?

11 A. I worked two or three jobs.

12 Q. Okay. Was there a time when you were working at
13 the South Mississippi Regional Center?

14 MR. WHITE: Your Honor, he is just leading
15 and leading and leading, you know. He would not
16 be allowed to do this at the sentencing hearing.
17 I object on that basis.

18 THE COURT: Don't lead the witness.

19 MR. CRAIG: Thank you, Your Honor.

20 BY MR. CRAIG:

21 Q. What jobs did you have after you left Moody's?

22 A. Well, I worked at McDonald's for five years, off
23 of 49. And I worked at a clothing factory that you make
24 new pants and pull strings and stuff like that out. I
25 also worked at a 7-11 store.

26 Q. And did you sometimes work -- did you work those
27 jobs like one at time, or were there times when you
28 worked more than one job at a time?

29 A. Well, when I was working at the retardation

Anita Frederick - Direct Examination

1 center, I was also working at the clothing store.

2 Q. What was the retardation center?

3 A. The one that's in Long Beach. For mental
4 retarded.

5 Q. Do you remember the name of it?

6 A. The -- it used to be call the mental retardation
7 in Long Beach.

8 Q. Okay. Did you have -- during the time that Alan
9 -- let's say by the time Alan was six or seven, through
10 the time he was 14, did you have issues with disciplining
11 Alan?

12 A. Yes.

13 Q. Tell the Court what kinds of problems you had.

14 A. Sometimes he didn't listen, you know. And then
15 sometimes he would do what he wanted to do, basically.
16 But he kept -- stayed at the house a lot. Watched the
17 kids, you know, him and Terry both would watch the kids.
18 Other than that he run the roads.

19 Q. At what age would he start running the roads?

20 A. About 15, 16.

21 Q. And when you say running the roads, can you be a
22 little more specific. What do you mean by that exactly?

23 A. He stayed out, you know, a lot of nights and
24 come back home.

25 Q. What time would he come back home when he was
26 running the roads?

27 A. I really don't know. Most of the time I would
28 be asleep.

29 Q. Okay. And did you talk to him to tell him not

Anita Frederick - Direct Examination

1 to do that?

2 A. Sometimes I asked him where he was at, and he
3 would always say he was at a friend's house, one of his
4 friends.

5 Q. Okay. And did you find that it was difficult
6 for him -- to get him to do what you wanted him to do?

7 A. Sometimes.

8 Q. Talking about when you moved into the house that
9 you and your husband Winfred Frederick built, am I
10 understanding your previous testimony correctly, y'all
11 built a house on his family land?

12 A. Yes.

13 Q. And did his family live close by there, his
14 being Winfred's?

15 A. Yes.

16 Q. Did that cause problems for you all?

17 A. A lot.

18 Q. What kind of problems did it cause?

19 A. All his family was around us. I'm not
20 originally from here, so I didn't have no family here
21 originally.

22 Q. Did -- was there issues between Mr. Frederick's
23 family and your sons Alan and Terry.

24 MR. WHITE: Objection to leading?

25 THE COURT: Let him finish the question.

26 Don't lead the witness. Sustain the objection.

27 MR. CRAIG: Thank you, Your Honor.

28 BY MR. CRAIG:

29 Q. What problems, if any, did your sons Alan and

Anita Frederick - Direct Examination

1 Terry have?

2 A. Well, we lived over there by the Reyers.

3 Q. Yes, ma'am. Who are the Reyers, please?

4 A. His -- Winfred Frederick's sister, Lydia Reyer.
5 She had a son named Alfred Reyer, Tommy Reyer, and Gene
6 Reyer. They used to like to come across the fence and
7 try to beat up the two boys, Alan and Terry. They never
8 bothered Leon.

9 Q. Leon was their cousin through Winfred?

10 A. Yes.

11 Q. Alan and Terry were Walkers?

12 A. Yes.

13 Q. What was the reason that you -- you and Winfred
14 ultimately divorced in 1979?

15 A. Yes.

16 Q. Why was that?

17 A. Because he drank a lot and he liked to run
18 around with other women, especially his ex-wife.

19 Q. Okay. And was there a particular event that
20 happened that caused you to split up with Winfred?

21 A. Yes. He used to like to sleep -- hang around
22 and sleep with his niece, Brenda Reyer.

23 Q. And --

24 A. In the backseat -- in the camper of the truck
25 that he had.

26 Q. Were Alan and Terry and Leon around when that
27 happened?

28 A. Well, I was at work, and when I came home, I
29 asked where their dad was at.

Anita Frederick - Direct Examination

1 Q. Let me stop you right there. What time was
2 that, what time of day did you come home from work?

3 A. About maybe 11, 10, 11:00 at night. All the
4 lights were on. The air conditioner was on, and I asked
5 where your dad was at. And Alan said he didn't know.
6 Leon said he didn't know. Terry said he was in the back
7 end of the truck blankety blank Brenda Reyer.

8 Q. You are saying blankety blank.

9 MR. WHITE: Objection, Your Honor, to
10 relevancy again.

11 THE COURT: Overruled.

12 BY MR. CRAIG:

13 Q. Did he use an obscene word where you said
14 blankety blank?

15 A. Yes.

16 Q. What did you do?

17 A. I went out there to look where he was at, and he
18 was in the back end of the truck with his whities on,
19 which is his underwear, and that was it.

20 Q. Okay. And did he commonly just sleep in the
21 back of the trailer at night?

22 A. No.

23 Q. Y'all had a bedroom?

24 A. Yes.

25 Q. So after the divorce, did you live in the same
26 neighborhood for a while?

27 A. Yes.

28 Q. And ultimately, you moved and ended up in the
29 neighborhood around 28th Street in Long Beach?

Anita Frederick - Direct Examination

1 A. No.

2 Q. I said ultimately, but go ahead, why don't you
3 tell us the different places you lived after you left Mr.
4 Frederick?

5 A. I lived in the house on Longridge road for a
6 little while. And when I came back, I went to
7 Mississippi -- not -- Pensacola for just a visit. Came
8 back. My house was broken into by Winfred Frederick and
9 Sidney Reyer. They broke into my house, took what they
10 wanted out of the house, put the door back onto the
11 house. When I found out, and then I decided I would get
12 me a Section 8 house and move.

13 Q. Okay.

14 A. And I moved to O'Neal Road.

15 Q. How long were you at O'Neal Road?

16 A. About a year, because the house that I moved to
17 was not supposed to be sold, but the people that wanted
18 -- had the house, wanted to sell it.

19 Q. Where did you live after O'Neal Road?

20 A. I moved to -- I got in a car wreck real bad. A
21 real bad car wreck. Alan and Terry was with their dad at
22 one time. Leon was at the house, and his dad Winfred
23 took him to raise for a little bit while I was hurt real
24 bad. And then he took Amanda and watched her. And then
25 after I got better after a year, I got better, and then I
26 moved to 28th Street, down there by the three-way stop
27 sign off of 28th Street in Long Beach. It was called --
28 started with a K, I forgot.

29 Q. Okay. And then after you were divorced from Mr.

Anita Frederick - Direct Examination

1 Frederick, was there another man in your life living with
2 you in the home with the boys and with your daughter?

3 A. No.

4 Q. So at that point you were raising the family
5 alone?

6 A. Yes.

7 Q. Did you grow up going to church, Ms. Frederick?

8 A. When I was young, yes.

9 Q. Okay. When you were raising Alan and Terry, did
10 you all go to church on Sundays?

11 A. Sometimes.

12 Q. Okay. And when Alan was, say, a teenager, 14,
13 15, 16, 17, were you going to church during those years?

14 A. Sometimes.

15 Q. Okay. Did the boys go to church with you?

16 A. Sometimes they did.

17 Q. Okay. Did Alan, I want to focus now on the time
18 when Alan -- after Alan was 14, which would have been
19 after you divorced Mr. Frederick, okay. That's just for
20 you thinking about when I'm asking this next set of
21 questions. Did Alan have guy friends his own age?

22 A. Yes.

23 Q. What were some of the names of the friends that
24 he had?

25 A. Billy Davenport.

26 Q. Okay.

27 A. Donald Maloney. Dwayne Maloney. Jason Riser.
28 Aaron Castleberry. And there was about four or five
29 other ones. I don't remember their names.

Anita Frederick - Direct Examination

1 Q. Besides the boys his own age, did Alan also have
2 friends who were older men?

3 A. Yes.

4 Q. Who -- what were some of the older men that were
5 friends of Alan's?

6 A. Frank Potter. Duke Maloney. And big Jack
7 Collins.

8 Q. Okay. These older men, how much older than Alan
9 were they?

10 A. Old enough to be their dad -- his dad.

11 Q. And in the case of Duke Maloney, did he have
12 children Alan's age?

13 A. Dwayne Maloney and Donald Maloney.

14 Q. And Mr. Collins, did he have children Alan's
15 age?

16 A. Two, a girl and a boy, little Jack and I don't
17 know the girl's name.

18 Q. Did these older men, did you come to know them
19 or to have contact with them as friends of Alan's?

20 A. Yes.

21 Q. Did you know them or -- and see them drinking in
22 front of your son, Alan, as a teenager?

23 A. Yes.

24 Q. And did the boys drink in front of these older
25 men?

26 A. Yes.

27 Q. Did you know any of these older men to smoke or
28 grow marijuana?

29 A. Yes.

Anita Frederick - Direct Examination

1 Q. During that time period?

2 A. Yes.

3 Q. Did you have occasion --

4 MR. WHITE: Objection to hearsay on that.

5 MR. CRAIG: That's my next question, if I
6 may say.

7 THE COURT: Ask the question, let's see.

8 BY MR. CRAIG:

9 Q. How do you know that -- what do you know of your
10 own knowledge with your own eyes about one or more of
11 these older men and use of marijuana?

12 A. They was just one that I knew, that I seen, was
13 Duke Maloney.

14 Q. Yes, ma'am. What did you see?

15 A. In his house, in a closet, he growed his own
16 marijuana.

17 Q. You saw that with your own eyes?

18 A. With my own eyes.

19 Q. And how did you come to see that, who showed it
20 to you?

21 A. My son, Alan.

22 Q. Okay. And that was at Mr. Maloney's house?

23 A. Yes, off of Bosarge Road.

24 Q. Did any of these men that we're talking about
25 tell you that they were involved in criminal activity
26 with your son?

27 A. Yes.

28 Q. Who was that?

29 A. Big Jack Collins.

Anita Frederick - Direct Examination

1 Q. Please tell the Court about that.

2 A. He would have all these little boys off of 28th
3 Street to go out and go steal stuff from other people's
4 houses and bring it back.

5 MR. WHITE: Objection, unless she has
6 personal knowledge of that.

7 THE COURT: I think he laid that foundation
8 just now.

9 A. And they have people come into the house one
10 night, I lived on Hardy Avenue in Gulfport off of
11 Railroad Street. And all these cops was out there by my
12 house, but I didn't know what it was for because I was in
13 bed sleeping. And then I woke up and I seen all the cops
14 and I seen Alan coming in one night. He had a broke leg
15 for some reason. And little Dwayne Maloney was in my
16 bathroom in the shower hiding. I did not know he was
17 there. And I had went to the bathroom and was using the
18 bathroom, and that's when I found out Dwayne Maloney was
19 in the bathroom.

20 BY MR. CRAIG:

21 Q. Okay. And then you were going to tell us about
22 Mr. Collins. So what happened with Mr. Collins?

23 A. Alan went outside and the cops took him and put
24 him in the police car, took him to jail. A few minutes
25 later --

26 THE COURT: Him who? Him who in the police
27 car?

28 A. Alan, Alan Walker. They put him in the police
29 car, took him to jail. Big Jack Collins and Linda

Anita Frederick - Direct Examination

1 Collins was coming down in the truck, and he told me,
2 which is Jack Collins, told me that my son almost got him
3 caught. And I said caught from what? And he said --

4 MR. WHITE: Objection to hearsay.

5 MR. CRAIG: That's against penal interest
6 in any event, Your Honor.

7 MR. WHITE: Against Jack Collins.

8 MR. CRAIG: And he is the one who said it.

9 THE COURT: I sustain the objection. You
10 can continue with the next question.

11 MR. CRAIG: Yes, Your Honor. I was just
12 making sure that the proffer had been made and I
13 think it has been through her testimony before
14 the Court sustained the objection.

15 BY MR. CRAIG:

16 Q. Did Alan become involved with a woman named
17 Robin Marroy? Do you know a woman named Robin Marroy?

18 A. Yes.

19 Q. How do you know her?

20 A. I used to live right next door to the Sauciers.

21 Q. And was she one of the Sauciers?

22 A. Yes.

23 Q. Okay. And did she later become married before
24 she knew Alan?

25 A. Yes.

26 Q. Who was she married to?

27 A. She was married to Leroy Marroy, Senior. She
28 was 11 years old when she started living with him.

29 Q. How old was he?

Anita Frederick - Direct Examination

1 A. Leroy?

2 Q. Yes, ma'am.

3 A. He was about 40, 50.

4 Q. And they lived in the same neighborhood where
5 you lived?

6 A. They had a house built. It was upstairs on
7 Longridge Road, and they lived together. When they seen
8 the cops or the juvenile people coming around, they left
9 and went to Louisiana. They had a place over there,
10 Leroy did.

11 Q. And during this time, your son Alan knew about
12 that couple, correct?

13 A. Yes.

14 Q. And then ultimately, what relationship did Robin
15 have with you?

16 A. What relationship?

17 Q. Yes, ma'am.

18 A. Well, when I had a car wreck, she took care of
19 me some.

20 Q. Okay. Do you have -- let me take that back.
21 What relationship did she and Alan have?

22 MR. WHITE: Objection, Your Honor. There
23 is no context here. We don't know when any of
24 this happened. He is not asking any dates. And
25 she jumps from one thing to the other as where
26 she is living. I can't keep track of where she
27 is talking about. It's just like a stream of
28 consciousness that has no context.

29 THE COURT: Put it into context as to the

Anita Frederick - Direct Examination

1 age of the defendant.

2 MR. CRAIG: Yes, Your Honor.

3 BY MR. CRAIG:

4 Q. How old was Alan when Ms. Robin was living with
5 Mr. Marroy?

6 A. Robin was 11 years old.

7 Q. And how old was Alan? How much older is Alan
8 than Robin or younger?

9 A. Right. Well, she was born July the 31st. Alan
10 was born August the 31st.

11 Q. Of which year, I'm sorry? Is she older than
12 Alan or younger?

13 A. Younger.

14 Q. How much younger, approximately?

15 A. I don't really know. I know they're right about
16 the same age. But she didn't really get married to Leroy
17 Marroy until she got 18 years old. She had her marriage
18 license changed from Crystal Marroy to Robin Marroy.

19 Q. Yes, ma'am. I'm going to interrupt you right
20 there.

21 MR. WHITE: Objection, Your Honor.

22 THE COURT: One at time. Ms. Frederick,
23 only answer the question that's asked of you,
24 okay. You don't need to volunteer additional
25 information. So listen very carefully to
26 question, and answer only that question, you
27 understand?

28 THE WITNESS: Yes.

29 THE COURT: Thank you.

Anita Frederick - Direct Examination

1 MR. CRAIG: Thank you, Your Honor.

2 BY MR. CRAIG:

3 Q. How old was Alan when he and Robin became
4 involved as boyfriend and girlfriend?

5 A. Around 23 -- about 23.

6 Q. So this is when he was 23. He was born in '65,
7 so this would have been about 1988; is that correct?
8 Close?

9 A. Yes.

10 Q. Not a history test, I'm just asking you to put
11 it in some context.

12 MR. WHITE: We object to him constantly
13 leading the witness.

14 MR. CRAIG: I was just trying to establish
15 the context.

16 THE COURT: Move along.

17 BY MR. CRAIG:

18 Q. Did they have a child together, Robin and Alan?

19 A. Yes.

20 MR. WHITE: Leading again.

21 THE COURT: Mr. White, how else is he going
22 to ask if they have any children. Overruled.

23 BY MR. CRAIG:

24 Q. Did Alan take care of his daughter, Michelle?

25 A. Yes.

26 Q. In what ways did he do that?

27 A. She was born in March of '90, and from the March
28 of '90 to September he was with her, took care of her.

29 Q. He was arrested then; is that correct?

Anita Frederick - Direct Examination

1 A. Yes.

2 Q. Okay. And who took care of her after that?

3 A. Robin Marroy.

4 Q. Okay. Ultimately, did a member of Alan's family
5 take care of her?

6 A. Yes.

7 Q. Who was that?

8 A. Myself.

9 Q. We talked about Alan's -- you just now mentioned
10 Alan's arrest in September of 1990. You testified at the
11 trial; is that correct?

12 A. Yes.

13 Q. And where was the trial held?

14 A. Vicksburg, Mississippi.

15 Q. Do you remember that Alan had two lawyers, Mr.
16 Stegall and Ms. Midcalf?

17 A. I knew of them.

18 Q. You remember that they were your son's lawyers?

19 A. Yes.

20 Q. Did you have any, before Vicksburg, before the
21 trial in Vicksburg, was there an occasion when you met
22 with Mr. Stegall or Ms. Midcalf to talk about you
23 possibly testifying at the trial?

24 A. No.

25 Q. When did you first talk to Mr. Stegall and Ms.
26 Midcalf about what you might say in testimony at the
27 trial?

28 A. We didn't talk. He told us not to talk to
29 nobody.

Anita Frederick - Direct Examination

1 Q. Did you not even talk to him?

2 A. No, I did not talk to him either.

3 THE COURT: Him who?

4 MR. CRAIG: I'm sorry. Thank you, Your
5 Honor.

6 A. To either one of the lawyers.

7 BY MR. CRAIG:

8 Q. So how did you know what they were -- did you
9 know what they were going to ask you before you
10 testified?

11 A. No.

12 Q. If you had been asked the questions that you've
13 been answering today, if you had been asked those in
14 1991, would you have testified about those things?

15 A. Yes.

16 MR. CRAIG: Court's indulgence.

17 THE COURT: All right.

18 MR. CRAIG: Just a few more, Your Honor.

19 THE COURT: All right.

20 BY MR. CRAIG:

21 Q. Ms. Frederick, I want to talk to you about Alan,
22 now again, as a teenager between the years of, say, 14
23 and 18, okay.

24 A. Yes.

25 Q. Did you know him to drink either with his
26 friends or by himself during those years?

27 A. Yes.

28 Q. Did he drink in front of you?

29 A. Yes.

Anita Frederick - Direct Examination

1 Q. Did you know him to smoke marijuana during those
2 years?

3 A. Yes.

4 Q. And did he do that in front of you? Did he
5 smoke marijuana in front of you, I'm sorry?

6 A. I don't remember.

7 Q. You don't remember. Are you familiar with the
8 smell of marijuana, Ms. Frederick?

9 A. Yes.

10 Q. During the time that Alan was between 14 and 18
11 years old --

12 MR. WHITE: Objection, Your Honor, this is
13 just far fetched. She said she never saw him
14 smoke it. It could have been somebody else
15 smoking it in that house. It doesn't have to be
16 him.

17 THE COURT: And that's proper
18 cross-examination. Ask your question.

19 BY MR. CRAIG:

20 Q. Between the time that Alan was 14 to 18 years
21 old, did you smell the smell of marijuana on his person,
22 in other words, in proximity to him?

23 A. Yes.

24 Q. Was there a time that you told him -- did you
25 ever tell him that it was not proper, that you did not
26 want him drinking as a teenager?

27 A. When I lived on Hardy Avenue, he was smoking
28 marijuana, him and some of his friends. I don't remember
29 the boy's name. They had them wrapped up in little

Anita Frederick - Direct Examination

1 packages, and I found them. And he was like selling it
2 or giving it to somebody.

3 Q. He who?

4 A. Alan.

5 Q. Alan was. Okay. How old was Alan, I'm sorry?

6 MR. WHITE: Object. This is just --

7 THE COURT: Overruled. This could cut both
8 ways, Mr. White. You can use it however you
9 choose, but I'm going to allow it in.

10 BY MR. CRAIG:

11 Q. Thank you, Your Honor. How old was Alan when
12 you saw the packet of marijuana?

13 A. About 17, 18.

14 Q. And then did you talk to him about it? Alan,
15 did you talk to Alan and tell him not to do that?

16 A. Well, I was talking to him to find out what he
17 was doing and everything.

18 Q. Okay. Did you object -- let me just ask you,
19 putting yourself back when he was 17 and you found this
20 packet of marijuana, did you as his mother want him to do
21 that or did you want him not to do that?

22 A. Well, I don't smoke and I didn't like for nobody
23 to be smoking marijuana or anything else.

24 Q. Okay. And the fact that it was marijuana mean
25 anything more significant to you than if it had been
26 tobacco that he was smoking?

27 A. Yes.

28 Q. So did you tell him that he was not to --

29 MR. WHITE: Objection, Your Honor. This

Anita Frederick - Direct Examination

1 part of the leading is --

2 THE COURT: I sustain the leading.

3 BY MR. CRAIG:

4 Q. What conversation did you have with Alan about
5 him smoking marijuana and you finding marijuana in your
6 home when he was 17 years old, do you remember any part
7 of that conversation?

8 A. No, I don't remember.

9 Q. Okay. Did he continue using marijuana after
10 that conversation?

11 A. Probably outside the house.

12 MR. WHITE: Objection.

13 THE COURT: Don't speculate. If you know,
14 answer. If you don't know, say I don't know.

15 BY MR. CRAIG:

16 Q. Did you see him smoke after that?

17 A. No.

18 Q. We talked about you smelling marijuana on his
19 person. Did you smell marijuana on him after that?

20 A. Yes.

21 Q. As Alan's mother during those years between 14
22 and 18, did you feel like you had control of him as the
23 disciplinarian of your son, Alan?

24 A. No.

25 Q. Why was that? Why didn't you have control?

26 A. Because I worked a lot. And he did what he
27 wanted to do.

28 Q. You weren't able to stop it?

29 A. No.

Anita Frederick - Cross-Examination

1 MR. CRAIG: Court's indulgence. We tender
2 the witness, Your Honor. Thank you, Ms.
3 Frederick, please answer the prosecutor.

4 THE COURT: Mr. White, about how long do
5 you think your cross will be?

6 MR. WHITE: You know --

7 THE COURT: 30?

8 MR. WHITE: At the most.

9 THE COURT: Does anybody want a comfort
10 break at this time, or do you want to wait until
11 her examination is over?

12 MR. WHITE: I don't.

13 THE COURT: You may continue with cross.

14 CROSS-EXAMINATION

15 BY MR. WHITE:

16 Q. Now, when did -- you said that the -- that Alan
17 and Terry went to Alaska and lived, when was that?

18 A. The first time?

19 Q. What years?

20 A. What year?

21 Q. Yeah.

22 A. Well, Alan was about five -- about six or seven
23 years old.

24 Q. You don't know the years?

25 A. What year? He was born in '65. So about '72,
26 '73.

27 Q. So it was when he was seven years old or eight
28 years old?

29 A. Yeah, somewhere like that.

Anita Frederick - Cross-Examination

1 Q. And stayed a year?

2 A. He stayed one year.

3 Q. When did he go back?

4 A. About two or three years later.

5 Q. And stayed a year?

6 A. Stayed a year.

7 Q. And at that time, Terry stayed?

8 A. No. The third time he stayed.

9 Q. When was that?

10 A. He -- they came back from Alaska.

11 Q. How long was it between the second time and the
12 third time?

13 A. About two, three years.

14 Q. So how old was he then? The answer is not over
15 there.

16 MR. CRAIG: I object to that statement,
17 Your Honor.

18 THE COURT: I can't --

19 MR. CRAIG: I object to that statement,
20 Your Honor. Mr. White is implying that I'm
21 giving an answer to the witness, and I
22 completely deny that. It's improper, and I ask
23 that that remark be stricken from the record.
24 I've never been excused of suggesting to the
25 witness what to say.

26 THE COURT: Gentlemen, one at a time. Mr.
27 White.

28 MR. WHITE: I was not accusing him at all.

29 THE COURT: Mr. White, for the record,

Anita Frederick - Cross-Examination

1 articulate for me what it is that you saw this
2 witness --

3 MR. WHITE: She is constantly looking at
4 him. I'm not worried about Mr. Craig. But she
5 is looking over there to get --

6 THE COURT: Ms. Frederick, you are to
7 direct your observations to counsel, Mr. White.
8 If you know the answer, answer it. If you don't
9 know, say you don't know. But your son, sitting
10 at counsel table, is not allowed to give you any
11 non-verbal communications, understand?

12 THE WITNESS: Yes.

13 THE COURT: Move along.

14 BY MR. WHITE:

15 Q. How old was he the second time he went?

16 A. I don't remember.

17 Q. How old was he the third time he went?

18 A. I don't remember.

19 Q. So you don't know -- you can't give us any --
20 was he ten, 12, 14, 16?

21 A. The first time he went to Alaska he was about
22 five or six years old.

23 Q. You just told us he was eight.

24 A. He might have been eight. He might have been
25 five or six or anything else. He went to Alaska when he
26 was little. And then he came -- he stayed over there one
27 year. He came back and stayed about two or three years.
28 I did not get a piece of paper and write it down what I,
29 you know, how many years it was. Whenever his dad

Anita Frederick - Cross-Examination

1 contacted me and wanted him to go up there and stay for
2 another year, he did. He went up there another year.
3 And then he came back and stayed at home. Then he went
4 back up there and stayed.

5 Q. How old was he then?

6 A. About three years later.

7 Q. How old was he then?

8 A. Well, if you give me a piece of paper and a
9 pencil I'll figure it all up for you.

10 Q. But you don't have any idea just independent of
11 how --

12 A. How old they were, no, I don't.

13 Q. Well, I mean --

14 A. I don't sit here and -- give me a pencil and a
15 piece of paper and I will write it down for you.

16 Q. Did you know you were coming here to testify
17 today?

18 A. Yes.

19 Q. You didn't think about this?

20 A. No, I did not.

21 Q. Although they had gone over with you in your
22 testimony, had they not, about when they were up there
23 and when they --

24 A. They didn't ask me exactly what date and year.
25 They just asked me when he went up there and how long he
26 stayed up there.

27 Q. Well, when he went up there?

28 A. He went up there when he was about five or six
29 years old.

Anita Frederick - Cross-Examination

1 Q. The first time.

2 A. He stayed up there for one whole year. Then he
3 came back and stayed here for three years, then he left.
4 He came back and went up to Alaska again and stayed
5 another year. And then he --

6 Q. How long was it between the second and third?

7 MR. CRAIG: Please the Court, she is trying
8 to answer the question.

9 THE COURT: Mr. White, you have to allow
10 her to answer your question.

11 BY MR. WHITE:

12 Q. How long was it between the second and third
13 time?

14 A. About two or three years.

15 Q. You can't be any more certain than that then,
16 just two or three years?

17 A. Well, I don't know the dates. I didn't write
18 down the dates when they left.

19 Q. How old was he when he came back the last time?

20 A. A year older. And then he left and went back up
21 there.

22 Q. How old was he when he came back the last time?

23 A. The very last time that he came back?

24 Q. That's what I'm asking you.

25 A. The very last time, he was about 24 years old,
26 about 23 years old.

27 Q. Twenty-three years old?

28 A. Yes.

29 Q. So how old was he when this crime happened?

Anita Frederick - Cross-Examination

1 A. When he was 25.

2 Q. Okay. So he had just gotten back from Alaska,
3 right?

4 A. Yes. He came back August the 31st, on his
5 birthday. Got pregnant with another baby and came back.

6 Q. Answer my question, don't volunteer anything.
7 Now, you said that he -- that he smoked marijuana or you
8 think he smoked marijuana, you never saw him smoke
9 marijuana. And he drank. When did he start drinking?

10 A. I don't remember.

11 Q. You remembered when you were talking to the
12 other side.

13 A. When he started drinking, I don't remember
14 exactly how old he was.

15 Q. What were you doing at the time?

16 A. I was working.

17 Q. Where were you working?

18 A. Which time?

19 Q. When he started drinking?

20 A. I was -- most of the time I worked at
21 McDonald's. I worked there for five years. I went to --

22 Q. From when to when?

23 A. What year?

24 Q. Yeah.

25 A. Okay. I had a car wreck in '82. I was working
26 at McDonald's. Five years.

27 Q. After the car wreck or before?

28 A. Before. I was working there at McDonald's.

29 Q. And in '82, so how old was he then?

Anita Frederick - Cross-Examination

1 A. Well, he was born in '65.

2 Q. So he is what, 17 years old?

3 A. Yes, something like that.

4 Q. And so he was drinking then?

5 A. Yes.

6 Q. And how much before that did he start drinking?

7 A. I don't know.

8 Q. Now, you said that you found some packet of what
9 you thought to be marijuana joints or something in his
10 room?

11 A. No, little buds that they sold or they had in
12 their room.

13 Q. Little buds. What kind of little buds?

14 A. Little round marijuana buds in a little package.

15 Q. And you thought they were selling it?

16 A. I didn't know if they was or not. They just had
17 about three or four in there in their room.

18 Q. How do they smoke those?

19 A. I don't know. I didn't see them.

20 Q. So how did you know what they were?

21 A. Well, I wasn't born yesterday, so I do know what
22 they look like.

23 Q. Well, how do you know?

24 A. How do I know?

25 Q. Yes.

26 A. I see it on TV.

27 Q. Huh?

28 A. I see it on TV all the time.

29 Q. If you said he was hanging around with all these

Anita Frederick - Cross-Examination

1 people that were supposedly smoking marijuana and
2 drinking, why did you let him do that?

3 A. Why?

4 Q. Uh-huh.

5 A. Because I was working and he would be messing
6 around with these other men, other boys and all that.

7 Q. But you didn't tell him to stop?

8 A. He was a grown person.

9 Q. How old was he?

10 A. Most of the time he was about like 17, 18 years
11 old.

12 Q. But now, I mean, these are people he -- how long
13 had he been hanging around with these people now?

14 A. I lived on 28th Street, it was since 1971. And
15 then 1971 all the boys hung around together, they all did
16 the same thing together. Whatever you want to do, that's
17 what they did.

18 Q. In 1971, right?

19 A. That's when I moved to Longridge Road.

20 Q. And how old was Alan then?

21 A. Alan was born in '65. Subtract '65 from '71.

22 Q. So he was seven years old?

23 A. Yes.

24 Q. So he was drinking then?

25 A. No, he wasn't drinking. That's when we moved to
26 Long Beach, Longridge. Then we moved to over there off
27 of Turner Road, and that's where he was drinking at.

28 Q. And when was that?

29 A. Exactly what day, I don't know.

Anita Frederick - Cross-Examination

1 Q. What year?

2 A. What year, I don't know.

3 Q. How long did you live at the -- at this other
4 place on 28th Street?

5 A. Off of 28th Street?

6 Q. Yeah.

7 A. I lived there for 25 years.

8 Q. Twenty-five years.

9 A. Uh-huh.

10 Q. From '71 to '96?

11 A. No, I lived -- '71 on Longridge Road until '79.

12 Q. You just said 25 years.

13 A. And then I got a divorce and then I moved to the
14 other places and then I moved to Long Beach, back over to
15 Long Beach because I bought some land over there.

16 Q. How long did you live -- you said you lived on
17 28th Street for 25 years. How long did you live there?

18 A. I lived in different places.

19 MR. WHITE: Your Honor, would you instruct
20 the witness to answer the question.

21 THE WITNESS: I am telling you exactly like
22 I know. I lived in Long Beach off of 28th
23 Street on Longridge Road in the Jim Walter
24 house. I moved over there in '71 when I got
25 married and everything I lived there. I lived
26 from there -- when I moved from there --

27 BY MR. WHITE:

28 Q. When?

29 A. When I got my divorce --

Anita Frederick - Cross-Examination

1 Q. What year?

2 A. -- in '79. I got a divorce in '79, and I moved
3 to O'Neal Road. I stayed there for about a year, two
4 years, over there in a house that I rented from Section
5 8. Then I moved from there, after I got through, I moved
6 from there because I had a car wreck and I could not take
7 care of myself and two kids. I moved from there and then
8 I moved to Long Beach.

9 Q. What year?

10 A. Hardy Avenue. I moved over there.

11 Q. What year?

12 A. I bought a trailer.

13 Q. What year?

14 A. What year, I don't know. I didn't keep count of
15 what year I moved from here to here. I moved from Hardy
16 Avenue, I moved back from there. I moved over there on
17 Turner Road, on 327 Road. It's by Turner Road.

18 Q. So this -- when you lived at 28th Street for
19 about seven years, I guess, the time you were married,
20 right?

21 A. Yes.

22 Q. To Mr. Frederick?

23 A. From Mr. Frederick, yes.

24 Q. And then you moved away from there?

25 A. Yes.

26 Q. Did Alan move with you?

27 A. Yes.

28 Q. So he wasn't living in that neighborhood
29 anymore?

Anita Frederick - Cross-Examination

1 A. Not at the time. He left and went to Alaska, I
2 know that.

3 Q. And you said that when you divorced his father,
4 Ronald Walker, that you moved away from Pensacola or
5 Panama City, wherever it was you were living at the time?

6 A. Pensacola.

7 Q. And you didn't leave any way for him to get in
8 touch him?

9 A. No.

10 Q. And you finally some two or three years later
11 let him know where you were?

12 A. Yes.

13 Q. So you were withholding the kids from him,
14 right?

15 A. Yes.

16 Q. Okay.

17 MR. WHITE: Your Honor, I don't have
18 anymore.

19 THE COURT: Any redirect?

20 MR. CRAIG: Just very briefly, Your Honor.
21 I'm sorry if he has another question.

22 MR. WHITE: One more thing, before I sit
23 down.

24 BY MR. WHITE:

25 Q. You said you knew about these stolen goods. Did
26 you ever get any of them?

27 A. No.

28 Q. Were they in your house?

29 A. As far as I know they wasn't.

Anita Frederick - Cross-Examination

1 Q. How do you know they were stolen?

2 A. What were they?

3 Q. You are the one that said there were stolen
4 goods, not me.

5 A. They wasn't in the house, they was like four
6 wheelers and stuff like that outside the house.

7 Q. You knew they were stolen and they were sitting
8 in your yard?

9 A. I didn't know they were stolen until the cops
10 came up to the house and got Alan and took him to jail.

11 Q. Did he steal them?

12 A. As far as I know he did. I did not see him
13 steal them. But they was out there in the yard and the
14 cops took them.

15 THE COURT: When is this relative to the --
16 his being arrested for this crime, for the
17 murder?

18 MR. WHITE: I'm not sure.

19 THE COURT: Could you ask that?

20 MR. WHITE: She can't tell me.

21 BY MR. WHITE:

22 Q. When did that happen?

23 A. I don't remember what year. I was living on
24 Hardy Avenue when I first found out.

25 THE COURT: Maybe how old was her son at
26 the time?

27 BY MR. WHITE:

28 Q. How old is Alan when he was supposedly stealing
29 this stuff?

Anita Frederick - Cross-Examination

1 A. He was about 20, 21.

2 Q. So he was grown?

3 A. Yes.

4 Q. So that would have been beyond the time you
5 could tell him not to hang around somebody, right?

6 A. Yes.

7 Q. So when he was 11 years old and hanging around
8 these people or 12, 13 years old hanging around these
9 people that were drinking all the time and smoking
10 marijuana, you didn't ever tell him to stay away from
11 them?

12 A. He wasn't 11 years old when he was drinking.

13 Q. But you never could tell me just when that
14 started, though, other than when you were living on 28th
15 Street, he was hanging around with these bad people.

16 A. All of those people on 28th Street is bad.

17 Q. You --

18 A. They all do the same thing.

19 Q. And what is that?

20 A. They all smoke marijuana and steal.

21 Q. You see them?

22 A. Do I know?

23 Q. You see them do it?

24 A. No, I didn't see them steal it.

25 Q. Okay. So you don't know.

26 A. No. I've got ears.

27 THE COURT: Redirect.

28 MR. CRAIG: Yes, Your Honor.

29 REDIRECT EXAMINATION

Anita Frederick - Redirect Examination

1 BY MR. CRAIG:

2 Q. Ms. Frederick, where did you live with your
3 husband Winfred Frederick?

4 A. Off of Longridge Road.

5 Q. In what city is that in?

6 A. Long Beach.

7 Q. What years were you married to Winfred
8 Frederick?

9 A. '71 to '79.

10 Q. Okay. Where is Hardy Road?

11 A. Hardy Avenue is in Gulfport. Off of Railroad.

12 Q. And did you live at Hardy Road after you
13 divorced Mr. Frederick, maybe not right after, but at
14 anytime, was it after you divorced Mr. Frederick or
15 before?

16 A. After.

17 Q. Okay. After you lived at Hardy Road, did you
18 live off of Turner Road?

19 A. Yes.

20 Q. And what city is Turner Road in?

21 A. Long Beach.

22 Q. Is the place you lived in -- on Turner Road, how
23 close is it to the place you lived on Longridge Road
24 previously?

25 A. About half a mile.

26 Q. Okay. So you lived in Long Beach with Mr.
27 Frederick, then Hardy, and then back in Long Beach, but
28 off of Turner Road?

29 A. Yes.

Anita Frederick - Redirect Examination

1 Q. Okay. And in 1979, when you divorced Mr.
2 Frederick, Alan was 14 years old, because he was born in
3 '65?

4 A. Yes.

5 Q. And how long -- was Alan still a teenager or was
6 he past being a teenager when you moved back to Turner
7 Road?

8 A. I don't understand what you are saying.

9 Q. When was your daughter Amanda born?

10 A. '80.

11 Q. Where were you living when Amanda was born?

12 A. Longridge Road.

13 Q. You were still living in the area with Mr.
14 Frederick?

15 A. Yes. But Winfred Frederick wasn't living there.

16 Q. No, I understand. So the young men that we
17 talked about, the Maloney brothers and Billy Davenport,
18 what neighborhood were you living in when Alan met them?

19 A. Off of Longridge Road.

20 Q. When you were married to Mr. Frederick?

21 A. Yes.

22 Q. And I understand Alan was in Alaska some of this
23 time, but when you were living on Hardy Road in Gulfport,
24 did you have occasion to see any of those young men with
25 Alan while you were living on Hardy?

26 A. Yes.

27 MR. WHITE: I'm going to object. To what
28 young men?

29 MR. CRAIG: I thought I said, but I'm

Anita Frederick - Redirect Examination

1 sorry.

2 BY MR. CRAIG:

3 Q. Billy Davenport, Dwight Maloney, and the other
4 Maloney?

5 A. Yes.

6 Q. And when you moved back to Long Beach off of
7 Turner Road, was Alan hanging out with those three young
8 men as his friends?

9 A. Yes.

10 Q. Okay.

11 MR. WHITE: Leading, excuse me.

12 THE COURT: Overruled.

13 BY MR. CRAIG:

14 Q. When you were living -- in what neighborhood --
15 do you know where Mr. Collin, big Jack Collins lived?

16 A. Yes.

17 Q. What neighborhood did he live in?

18 A. Same as mine.

19 Q. Well, which one? You've lived a lot of
20 different places, so which one?

21 A. Off of Turner. He lived on the road between
22 Turner Road and Longridge Road -- well, Longridge Road
23 and Bonanza, that's where he lived at at the end.

24 Q. Okay. And tell the Court whether Alan knew Mr.
25 Collins, big Jack Collins when you were living with Mr.
26 Frederick on Longridge.

27 MR. WHITE: Objection, leading.

28 A. Yes.

29 MR. CRAIG: I thought I said whether.

Anita Frederick - Redirect Examination

1 THE COURT: Overruled.

2 MR. CRAIG: Thank you, Your Honor.

3 BY MR. CRAIG:

4 Q. Yes, he did?

5 A. Yes.

6 Q. Did you have occasion to see Alan with big Jack
7 Collins during the years you lived on Hardy in Gulfport?

8 A. Yes.

9 Q. And did you have occasion to see Alan with Mr.
10 Collins when you were back on Turner Road?

11 A. Yes.

12 Q. What neighborhoods did you all live in when Alan
13 knew Mr. Rollins?

14 A. Mr. Who?

15 Q. Frank Potter, I'm sorry, my bad. Frank Potter?

16 A. What neighborhood?

17 Q. Yes, ma'am.

18 A. I lived on Turner Road and he lived on Bosarge
19 Road.

20 Q. So that was when you moved back to Long Beach?

21 A. Yes.

22 Q. Did you know Mr. Potter when you lived on
23 Longridge with Mr. Frederick from '71 to '79?

24 A. No.

25 Q. Okay. And Duke Maloney you referred to. Did
26 you know Duke Maloney when you were living from '71 to
27 '79 in Long Beach?

28 A. Yes.

29 Q. Did Alan know Mr. Maloney then?

Anita Frederick - Examination by the Court

1 A. Yes.

2 Q. So you testified what -- what neighborhoods were
3 you -- or neighborhood or neighborhoods, whether it's one
4 or more than one, were you living at during the time that
5 you've already testified about when Alan was drinking in
6 front of these older men and they were drinking in front
7 of him, do you remember which neighborhood that was in or
8 was it more than one?

9 A. I think it was off of Turner Road on 327.

10 Q. That was when you moved back to Turner Road?

11 A. Yes.

12 Q. That was not when he was seven when you were
13 there the first time?

14 A. No.

15 Q. But those boys and their dads that he knew, he
16 knew some of them from that first time?

17 A. Yes.

18 MR. CRAIG: That's all we have.

19 THE COURT: Any objections to the Court
20 following up with any questions?

21 MR. CRAIG: No, Your Honor.

22 THE COURT: Mr. White?

23 MR. WHITE: No, Your Honor.

24 EXAMINATION

25 BY THE COURT:

26 Q. Going back to Mr. Potter, Ms. Frederick. Was
27 there an occasion where he exposed himself to you?

28 A. Yes.

29 Q. Was it in Alan's presence?

Anita Frederick - Examination by the Court

1 A. Yes.

2 Q. And did Alan respond appropriately to that? Let
3 me rephrase that. Did he respond to protect you from
4 that type of behavior?

5 A. Well, he didn't like it because he showed his
6 butt. Like mooning you.

7 Q. Mr. Potter did?

8 A. Mr. Potter.

9 Q. And were you offended by that?

10 A. Yes.

11 Q. And so was Alan's response to that appropriate
12 in your mind? Do you think he did the right thing by
13 telling Potter not to do that?

14 A. Yes.

15 Q. Is that the type of behavior you tried to teach
16 Alan when you were raising him?

17 A. Yes.

18 Q. I understand from your testimony you -- your
19 testimony at the beginning was that you had a difficult
20 childhood with your mother and father?

21 A. Yes.

22 Q. You left home at the age of 16?

23 A. Yes.

24 Q. Notwithstanding that, you -- is it your
25 testimony that you tried to do the best for your
26 children?

27 A. Yes.

28 Q. Would that include teaching them respect of
29 other people?

Anita Frederick - Examination by the Court

1 A. Yes.

2 Q. And other people's property?

3 A. Yes.

4 Q. I think you said you took your children to
5 church on and off or sometimes?

6 A. Yes.

7 Q. Why would you take someone to church?

8 A. His dad Winfred Frederick took them to church.

9 Q. What's the purpose of going to church? I know
10 why I go, but why would you go?

11 A. I was raised in a Catholic church.

12 Q. And myself.

13 A. And so I didn't go to regular churches, a
14 Baptist church, so I basically went to a Catholic church.

15 Q. It reinforces right from wrong, right?

16 A. Yes.

17 Q. And is that why you wanted Alan, perhaps, to
18 know respect and those values that you wanted to impress
19 upon him because that could be reinforced at church?

20 A. Yes.

21 Q. I know Alan ran around with some guys, your
22 testimony was that he was drinking and smoking marijuana?

23 A. Yes.

24 Q. Did you condone any of that behavior, did you
25 approve of it?

26 A. No.

27 Q. Would there be occasions when you would say,
28 Alan, I don't like these kids you are running with, and I
29 want you to stop behaving this way?

Anita Frederick - Examination by the Court

1 A. Yes.

2 Q. And would that be at a time when he was of age,
3 late teens, early 20s?

4 A. Yes.

5 Q. Were you at the trial in Vicksburg to hear the
6 testimony in the guilt phase? Did you hear the proof
7 that the state put on of what Alan was convicted of doing
8 to Ms. Edwards, did you hear that testimony?

9 A. No, because I was in a room.

10 Q. Okay. You are familiar with the accusations and
11 the verdict based upon those accusations?

12 A. Yes.

13 Q. Is that type of behavior any type of behavior
14 that you would believe was learned in your household when
15 Alan was living under your roof?

16 A. No.

17 THE COURT: All right. If that generates
18 any further questions by the parties, you are
19 free to ask those questions.

20 MR. CRAIG: None for the petitioner, Your
21 Honor.

22 THE COURT: Mr. White?

23 MR. WHITE: No.

24 THE COURT: You can step down. Let's take
25 about a 15 minute recess.

26 (Recess)

27 MR. VOISIN: We call Nellie Richards.

28 THE COURT: Captain Pitts, the courtroom
29 will be closed until this witness' testimony is

Nellie Richards - Direct Examination

1 concluded, according to my rule announced
2 earlier. You may proceed.

3 MR. VOISIN: Thank you.

4 NELLIE RICHARDS

5 Having been duly sworn testified as follows:

6 DIRECT EXAMINATION

7 BY MR. VOISIN:

8 Q. Ms. Richards, please introduce yourself to the
9 court.

10 A. Hello. My name is Nellie Richards.

11 Q. And, Ms. Richards, how do you know Alan Walker?

12 A. I am his aunt. I am Anita's sister.

13 Q. Okay. Thank you. Where do you currently live?

14 A. I live in Florida, The Villages.

15 Q. The Villages?

16 A. Yes.

17 Q. How long have you lived there?

18 A. We moved there in November of 2004.

19 Q. You said we, who is the other person you are
20 referring to?

21 A. Edmund Loverty. E-D-M-U-N-D.

22 Q. And are you currently employed?

23 A. I am retired.

24 Q. What did you do before you retired?

25 A. I worked for CBS.

26 Q. In what capacity?

27 A. Administration. I was the credit manager for
28 WCBS-AM radio.

29 Q. Where is that?

Nellie Richards - Direct Examination

1 A. New York City.

2 Q. Where are you originally from?

3 A. Pensacola, Florida.

4 Q. Is that where you grew up?

5 A. Yes. I was born and raised there, but I lived
6 my adult life in the north.

7 Q. Okay. Who are your parents?

8 A. My father was Ezekiel Richards and my mother was
9 Marie.

10 Q. And did you -- I know you mentioned Anita. I
11 wonder if you could give us the names of any other
12 siblings and in the order, from like oldest to youngest?

13 A. My oldest sister, her name is Ruth Alee, and she
14 is the oldest girl. My mother then had a boy, his name
15 is Howard Ezekiel, and he was the second born. The third
16 born is my sister, Anita, and her name is Anita Louise.
17 The fourth born is my brother, John Dee, and he is the
18 fourth born. The fifth born is myself, and my name is
19 Nellie Jean. That's it.

20 Q. Okay. And what's the age difference between you
21 and Anita?

22 A. About six years. She was born in '41 and I was
23 born in '50.

24 Q. In '41?

25 A. I'm sorry, in '44, I think it is.

26 Q. Okay. Now, you are currently -- you've been
27 living in New York and currently in Florida. Throughout
28 your life, did you have -- describe how much contact you
29 had with Anita over years.

Nellie Richards - Direct Examination

1 A. Well, we talked on the phone quite a bit. And
2 also -- well, to me quite a bit is -- I guess it's the
3 wrong term because I know a lot of people who talk all
4 the time. But anyway, I would say on my vacations.

5 Q. You would see her on your vacation?

6 A. I would go down and spend my vacations, and I
7 would fly in directly to New Orleans and she would come
8 over and pick me up and take me to her home, and I would
9 stay there. Or, I would fly into Pensacola and she would
10 come down and bring the boys with her. And we would all
11 spend time down in Pensacola.

12 Q. Okay. Do you know Ronald Walker?

13 A. Yes.

14 Q. And who is he?

15 A. He is the father of Alan and Terry.

16 Q. Okay. Now, we've heard that Alan was born in
17 1965?

18 A. Yes.

19 Q. So Anita then would have been about 20, 21 years
20 old?

21 A. Around there, yes.

22 Q. Was there a time that you stayed with Anita and
23 Ronald?

24 A. Yes.

25 Q. About how old were you at the time?

26 A. Let me see, I was about 15.

27 Q. Okay. And why weren't you staying with your
28 mother?

29 A. The man that she was married with, I don't know,

Nellie Richards - Direct Examination

1 for some reason he slammed a bowl down one day and had a
2 hissy fit and that was it. My mother said I had to
3 leave.

4 Q. Okay. But that wasn't your father, that was
5 your mother's -- a second husband?

6 A. Yes.

7 Q. About when did your parents divorce?

8 A. I was three years old.

9 Q. And is there any incident that you recall that
10 stands out just before the divorce?

11 MR. WHITE: Your Honor, we would object to
12 hearsay. She was three years old?

13 A. Around three, yes.

14 MR. VOISIN: Your Honor, I did ask her what
15 she recalls. So if she can recall.

16 THE COURT: If she can independently recall
17 something that happened when she was, evidently,
18 three years old, I will allow it. But if she is
19 relying on someone else as the basis for her
20 memory, then I will sustain the objection.

21 A. What I remember.

22 THE COURT: What you personally remember.

23 A. What I personally remember is my mother was sick
24 at that time. And a bed, a twin bed had been moved to
25 the front door of the place where we were living, and
26 this way you had -- the children, okay, could play in the
27 front and she could like watch them, even though she was
28 sick, all right. But this particular Sunday, the other
29 four were playing in the front yard, and I was playing --

Nellie Richards - Direct Examination

1 she asked my father to take care of me. So we went into
2 the back and he had sat down on the back porch and we
3 were playing Indians -- cowboys and Indians, and he tied
4 my hands behind me back, and he told me to get them
5 undone. And I went into the door, into the house that
6 is, and I went to my mother, you know, and asked her to
7 untie my hands. She asked me who tied my hands behind my
8 back, and I said daddy. And when I turned around for her
9 to untie my hands, he was standing there at the door.
10 And the next day, she got out of her sick bed and she
11 went down and she filed for divorce. And that's what
12 happened.

13 BY MR. VOISIN:

14 Q. Was it uncommon for your father -- was it common
15 for your father to tie your hands?

16 A. Well, see, that's -- well, talking about memory,
17 okay. That's something I'm not sure on memory because I
18 didn't remember all the other times when he tied us up.

19 MR. WHITE: Objection.

20 THE COURT: I can accept that she doesn't
21 remember other times. So that would be hearsay.

22 A. I know about the times that he would tie my
23 brother John Dee and I up.

24 THE COURT: Wait just a second. Let him
25 ask the questions.

26 BY MR. VOISIN:

27 Q. Do you remember any other times where your
28 father would tie you and your brother John up?

29 A. No, I don't. I was only told that later by my

Nellie Richards - Direct Examination

1 brother.

2 Q. Okay. And what did he tell you?

3 A. He told me.

4 MR. WHITE: Objection.

5 THE COURT: I sustain that.

6 MR. VOISIN: I would like to proffer her
7 answer for the record, Your Honor.

8 THE COURT: All right.

9 BY MR. VOISIN:

10 Q. What did John Dee tell you about that?

11 A. He told me that my father used to tie the two of
12 us up and lock us in the closet and turn the light out.

13 Q. Okay. Thank you. That's my proffer.

14 MR. WHITE: Further objection to relevance.

15 THE COURT: All right.

16 BY MR. VOISIN:

17 Q. Now, after your parents -- I'm sorry?

18 A. May I say something?

19 MR. WHITE: Objection.

20 MR. VOISIN: I have to ask a question.

21 BY MR. VOISIN:

22 Q. Now, what -- after your father left, how was
23 your family supported?

24 A. My mother applied for welfare, I believe. And
25 she also went to work cleaning peoples homes and taking
26 care of people who could not take care of themselves.
27 Doing grocery shopping, cooking their meals, cleaning
28 their homes, maybe giving them a bath. I remember Mr.
29 Foster, she used to have to take care of him that way,

Nellie Richards - Direct Examination

1 have to bathe him because he couldn't get out of bed.
2 Stuff like that.

3 Q. And when your mother was gone, who took care of
4 you?

5 A. My brother, John.

6 Q. Was Anita still in the house?

7 A. Anita left early.

8 Q. Why did Anita leave?

9 MR. WHITE: Objection, unless she
10 personally knows why she left.

11 THE COURT: Overruled.

12 BY MR. VOISIN:

13 Q. What do you know about Anita leaving?

14 A. Anita left because she said no one was home.

15 Q. Where was your mother?

16 A. She was working during the daytime and at
17 nighttime she was with Mr. Nelson.

18 Q. Who is Mr. Nelson?

19 A. Her boyfriend.

20 Q. Was he someone you knew?

21 A. Yes.

22 Q. Now, did you receive any -- did your family
23 receive any financial support from your father?

24 A. No.

25 Q. And did he visit you?

26 A. No.

27 Q. Where was your father?

28 A. He was in prison.

29 Q. Okay. What was he in prison for?

Nellie Richards - Direct Examination

1 A. He was involved with a black woman.

2 Q. And that was illegal at the time?

3 A. Yes.

4 Q. How long did he have to stay in prison?

5 A. It took my Uncle Steve Bruce over eight years to
6 get him out of jail.

7 Q. So you grew up, for the most part, without a
8 father in the home?

9 A. Correct.

10 Q. And for a lot of that time, Anita had no father
11 in the home?

12 A. Correct.

13 Q. Did you and Anita discuss the effect on the boys
14 of Ronnie living in Alaska?

15 MR. WHITE: Objection, Your Honor. That's
16 hearsay.

17 A. Yeah.

18 MR. VOISIN: Your Honor, I only asked her
19 if they had a discussion. I didn't ask her any
20 particular statements.

21 A. Yes.

22 THE COURT: Overruled.

23 BY MR. VOISIN:

24 Q. From your perspective, having interacted with
25 Anita, what were the benefits as you saw it of the boys
26 being able to see Ronnie?

27 A. Well, we talked about not having a relationship
28 with our father growing up. And we thought it would be
29 beneficial to go -- for the boys to go to Alaska and to

Nellie Richards - Direct Examination

1 have that relationship with Ronnie because he was the
2 natural father. It wasn't that Ronnie was an abusive
3 father or anything like that. Everything we felt would
4 be good.

5 Q. Okay.

6 A. So.

7 Q. Had Ronnie remarried by this time?

8 A. Yes, he had remarried.

9 Q. And who was his wife?

10 A. He had married a woman by the name of Sally, I
11 don't know her last name.

12 Q. Did you ever meet Sally?

13 A. No, but I did talk with her on the phone many
14 times.

15 Q. Okay. Based on your interaction, did you have
16 any -- did you feel Alan was having a good experience in
17 Alaska?

18 A. To my knowledge, I thought so.

19 Q. Okay.

20 MR. WHITE: Your Honor, this is just --

21 THE COURT: If there is a foundation. You
22 need to lay a foundation.

23 MR. VOISIN: Okay, Your Honor.

24 BY MR. VOISIN:

25 Q. You were able to see Alan on occasion?

26 A. Yes.

27 Q. And you saw Anita on occasion?

28 A. Yes, when I -- I went down to New Orleans and
29 Anita would pick me up and bring me over. I mean, Alan

Nellie Richards - Direct Examination

1 and Terry, they were both happy. They got great gifts,
2 you know, at Christmastime when they were up there
3 because they would stay for a year, it was alternating.
4 And they seemed to do well. The school up there was very
5 good. They enjoyed that. They enjoyed their time with
6 their father. And they seemed to love Alaska from what I
7 could tell. I mean, you know, you talk to the boys. I
8 always liked to do things one on one, you know, with the
9 kids. With all the kids. I loved all my nieces and
10 nephews. I don't have any children.

11 Q. Did you ever meet Winfred Frederick?

12 A. Yes.

13 Q. Did you have much interaction with him?

14 A. I only met him once, and he was very nice to me.
15 I stayed a week at his house, and for those seven or
16 eight days, it was really nice.

17 Q. After Anita divorced Winfred, how did she
18 support her children?

19 A. Anita always worked. Always.

20 Q. How many jobs would she work?

21 A. Yes. She always worked a couple of jobs to --
22 she always supported her kids. They came number one.

23 Q. And what did she do to prepare for Christmas for
24 them?

25 A. For Christmas, come September, she always found
26 another job just so she could start saving, putting that
27 money aside so that she could have Christmas gifts to put
28 underneath the tree for the kids. She always made sure
29 that she had something for the kids to make sure they had

Nellie Richards - Direct Examination

1 a good Christmas.

2 MR. WHITE: Objection unless she knows this
3 personally. This is hearsay.

4 THE COURT: Overruled.

5 BY MR. VOISIN:

6 Q. You mentioned you got to spend time, even some
7 one on one time with your nieces and nephews. Would that
8 include Alan?

9 A. Of course.

10 Q. And how was Alan around you?

11 A. Pardon?

12 Q. How was Alan around you?

13 A. Oh, great. We got along very well.

14 Q. Did you have any problems with him?

15 A. Never, not one.

16 Q. Was there anything he did that in particularly
17 impressed you?

18 A. You could ask him to do something for you, and
19 he would always do it. Whereas some of the other nieces
20 or nephews, you know, you may ask them to do, go do
21 something, and they might say no. That has happened on
22 occasion.

23 Q. Now --

24 A. But Alan always said yes. He was always great.

25 Q. Were you aware of Alan and his use of alcohol?

26 A. I didn't know anything about it until, I would
27 say maybe -- I don't know, it was in the teens, late
28 teens.

29 Q. His late teens?

Nellie Richards - Direct Examination

1 A. Yeah. I think around there. I know he was
2 having -- he was drinking around that time. I'm not sure
3 when, or how much, or anything like that. But he was
4 never drinking when I was there or around me. And I was
5 there -- we were there for a good week or so, and he
6 didn't have any alcohol with me.

7 Q. Okay. Now, Alan was tried in 1991. I want to
8 ask you a little bit about that. Were you -- did Alan's
9 lawyers at the time make any contact with you?

10 A. No.

11 Q. Did anyone call you?

12 A. No.

13 Q. If one of his attorneys had called you, would
14 you have spoken to them about Alan?

15 A. Yes.

16 Q. And would you have been willing to come to
17 Mississippi to testify for him?

18 A. Yes.

19 Q. When did you first learn about his charges?

20 A. I didn't learn until after he had already been
21 sentenced and he was in Parchman at the time. He had
22 just arrived at Parchman.

23 Q. You didn't hear anything from Anita about it?

24 A. Well, what happened was, in April, Anita had
25 sent me a letter. She told me that she had a big problem
26 and she would solve it herself. And that's the kind of
27 thing my sister would say to me, and that means that she
28 has this problem and for me to just, you know, back off.
29 But she wants me to know. So after a few months, it was

Nellie Richards - Cross-Examination

1 like at the end of August I think it was, or
2 beginning of September, that's when I called. And when I
3 called her number, I found out that -- about these
4 things. I found out that she was not taking her medicine
5 at the time, and she was under tremendous stress. She
6 even ended up in the emergency room because she was not
7 taking her medicine because she was always in court, you
8 know, during this period.

9 MR. WHITE: Objection. This is hearsay.

10 THE COURT: I sustain that. That doesn't
11 touch on the issue of the mandate.

12 MR. VOISIN: Beg the Court's indulgence.

13 A. All right.

14 MR. VOISIN: I don't have anymore
15 questions. Mr. White will get a chance to ask
16 you some questions.

17 A. Oh, okay. Thank you.

CROSS-EXAMINATION

18 BY MR. WHITE:

19 Q. Good morning, Mrs. Richards, I'm Marvin White
20 with the attorney general's office.
21

22 A. Good morning.

23 Q. You said -- how long did you live in New York?
24 You said you lived there, I believe.

25 A. I lived in New York from -- New York City.

26 Q. Yeah.

27 A. Okay. Because I did live in New York state, up
28 state. All right. New York City, I lived there from
29 around 1969 up until 1985.

Nellie Richards - Cross-Examination

1 Q. Where did you go then?

2 A. Pardon?

3 Q. Where did you move then?

4 A. To New Jersey. Then I lived there for like 20
5 years -- yeah, about 20 years. And then we moved to
6 Florida.

7 Q. Okay. And before you lived in New York City, is
8 that when you lived in up state New York?

9 A. Yes. Yes.

10 Q. How long did you live up there?

11 A. Well, off and on for about a year.

12 Q. Okay. So, say from '68, '69, 1968, '69, you've
13 lived in New York or New Jersey?

14 A. Yeah.

15 Q. And then later in Florida?

16 A. Then I lived about a year in Alabama,
17 Montgomery. And then I was in Florida. I mean, I was a
18 teenager.

19 Q. Okay. Right. But I'm talking about --

20 A. You are talking about the '60s.

21 Q. Yes. I was there. 1965 Alan is born, where
22 were you then?

23 A. When Alan was born, I was in California.

24 Q. Okay. And then you came back from there and
25 moved to up state New York?

26 A. When I -- from California I returned to
27 Pensacola, Florida.

28 Q. Okay.

29 A. And I was here for six months. From Pensacola,

Nellie Richards - Cross-Examination

1 Florida, I moved to Montgomery. From Montgomery I was
2 there for almost -- about a year and a couple of months,
3 something like that. And then I returned to Pensacola.
4 I wanted to live there. But for some reason my mother
5 told me I couldn't live there. And --

6 Q. And when was that, do you have any idea what
7 year that was?

8 A. Yeah, that was I think '67. I think it was '67
9 or maybe '68. And I was told that my brother, John, had
10 died. And somebody called and wanted to know if we
11 wanted the body to be shipped home. Well, I loved my
12 brother very much, and since I didn't really have any
13 other place to go, I just bought a bus ticket and went to
14 Syracuse, New York, because he lived in Marcellus, so I
15 would go and find out what's going on.

16 Q. Now, so you have basically lived somewhere else
17 since '68, '67, '68, '69, somewhere?

18 A. Uh-huh.

19 Q. And your association with Alan has been sporadic
20 at best, right?

21 A. Yeah. When I came back to Florida from
22 California, I did live with Alan, he was a baby at the
23 time.

24 Q. Yeah.

25 A. Yes.

26 Q. But you didn't have anything really -- you
27 weren't there long, were you?

28 A. No, no, I wasn't.

29 Q. And you said that you would come on vacations

Nellie Richards - Cross-Examination

1 occasionally, fly into New Orleans or Pensacola, and you
2 would see him briefly then?

3 A. Yes.

4 Q. So you really never had anything to do with his
5 discipline or his rearing or anything like that, other
6 than just from a distance?

7 A. Yeah, I guess in a way you could say that.

8 Q. So you didn't have any really hands-on raising
9 of the child, and most everything you knew about Alan was
10 through your sister?

11 A. Yes.

12 Q. What she told you?

13 A. Yes. And also what Alan told me.

14 Q. Well, yeah, but --

15 A. Because we would sit down and, you know, I like
16 to have --

17 Q. That's not what I'm asking. So he told you some
18 things, his mother told you some things, but not much of
19 was firsthand knowledge, in other words, you seeing and
20 being there when it happened?

21 A. Correct.

22 Q. Now, do you have a drinking problem?

23 A. No.

24 Q. Why would your niece say that you did?

25 A. I don't know.

26 Q. In one of her statements that she gave said you
27 were a heavy drinker?

28 A. No, I don't drink. Well, I very seldom drink,
29 that is.

Nellie Richards - Cross-Examination

1 Q. Okay. So that would not be the case that you
2 would be a heavy drinker and not have all of your
3 faculties about you?

4 A. Well, I think I have them.

5 Q. Okay. How often do you talk to your sister?

6 A. Well, lately we've been talking.

7 Q. No, let's go back. No, everything we're talking
8 about today is we're talking about prior to 1991.

9 A. Oh, okay.

10 Q. So wind your mind back. And how often did you
11 talk to her back then?

12 A. Every few months or so. I tried to keep in
13 touch.

14 Q. Yeah.

15 A. I mean, she didn't really have money for long
16 distance phone calls. But on occasion she would, you
17 know, like make that call. But seldom. So it was always
18 up to me, and I didn't call. You know, when I could, I
19 would call.

20 MR. WHITE: Have the Court's indulgence
21 just one minute.

22 BY MR. WHITE:

23 Q. Did you ever personally observe Alan drinking or
24 smoking marijuana prior to all of this, prior to 1991?

25 A. I don't think so.

26 Q. Okay.

27 A. I would have to say no. I know with marijuana
28 it's no.

29 MR. WHITE: Your Honor.

Nellie Richards - Cross-Examination

1 THE COURT: If she is explaining her
2 answer, she is allowed to. You can follow up
3 thereafter. If you need to explain your answer,
4 you may.

5 A. Yes, please. Thank you.

6 THE COURT: Reminding you the question is
7 whether you observed it with your own personal
8 eyes.

9 A. That's what I'm trying to say, because it's
10 two-part. He asked about two things.

11 BY MR. WHITE:

12 Q. Okay, let's take them apart. One at a time.
13 You ever see him smoke marijuana or use marijuana?

14 A. No.

15 Q. What about did you ever see him drink?

16 A. I'm not sure on that.

17 Q. Not sure on that.

18 A. I think he may have had a beer, I'm not sure.

19 MR. WHITE: Thank you, Your Honor. No
20 other questions.

21 THE COURT: Redirect?

22 MR. VOISIN: No further questions, Your
23 Honor.

24 THE COURT: Ms. Richards you may step down.
25 Who do you have next?

26 MR. CRAIG: Ronald Walker. Mr. Walker's
27 father.

28 THE COURT: He will be a while?

29 MR. CRAIG: I would think a little while.

Nellie Richards - Cross-Examination

1 Not as much as Ms. Frederick probably, but a
2 little while.

3 THE COURT: Y'all want to take the noon
4 recess at this time?

5 MR. CRAIG: That would be appreciated.

6 THE COURT: Let's reconvene about 1:20. We
7 will be in recess until 1:20.

8 (Recess)

9 MR. CRAIG: Judge, could we approach, just
10 very briefly?

11 THE COURT: Sure.

12 MR. CRAIG: It's very simple, actually.
13 Mr. Walker, Alan's father, is the next person to
14 testify in this case. He has a bladder problem,
15 and I worry a little bit. So I told him to let
16 us know. I didn't want anyone --

17 THE COURT: We can take a comfort break if
18 we need to.

19 MR. CRAIG: I wanted everyone to know
20 before we got started. They can take him back
21 there, that's up to y'all. But I wanted to let
22 -- make sure everyone knew before we got
23 started.

24 We call Ronald Walker.

25 THE COURT: Mr. Walker, scoot up close to
26 the microphone so everybody can hear you. Allow
27 the lawyers to finish their questions before you
28 respond so that the court reporter takes down
29 everything being said. And you have to respond

Ronald Walker - Direct Examination

1 audibly, not with a shake of the head or uh-uh
2 or uh-huh. Try to relax. You may proceed.

3 MR. CRAIG: Thank you, Your Honor.

4 RONALD WALKER

5 Having been duly sworn testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CRAIG:

8 Q. State your name, please, sir.

9 A. Ronald D. Walker.

10 Q. You recall that you are under oath from this
11 morning, correct?

12 A. Yes, I do.

13 Q. Where do you currently live, Mr. Walker?

14 A. I live in Panama City, Florida.

15 Q. Where were you born?

16 A. I was born in Panama City, Florida.

17 Q. Are you currently working?

18 A. I am retired.

19 Q. What did you do before retirement?

20 A. I'm a carpenter, union carpenter.

21 Q. And do you know Mr. Walker, Alan Walker?

22 A. Yes, he is my son.

23 Q. What other children do you have, sir?

24 A. Terry. And I have two stepsons.

25 Q. Okay. Let's talk very briefly, if we can, about
26 how you met Anita Frederick. Was she your wife?

27 A. Yes, she was.

28 Q. How old were you when you met Ms. Frederick?

29 A. Probably about 19, the best of my recollection.

Ronald Walker - Direct Examination

1 I think 19.

2 Q. And where were you, how did you come to meet Ms.
3 Frederick?

4 A. Well, it was a group of people selling magazines
5 and I got approached by them and everything. They asked
6 me if I wanted a job, and I said sure. It was a travel
7 job, and I thought that would be great, you know. And
8 that's how we met.

9 Q. Okay. She was working the same job?

10 A. Yeah.

11 Q. And so you said you were 19 when you met her.
12 How old were you when you married?

13 A. Twenty-one.

14 Q. And where was Alan born?

15 A. Panama City, Florida.

16 Q. What work were you doing back in those days?

17 A. I was a meat cutter.

18 Q. And where were you living?

19 A. I think it was McKenzie Avenue.

20 Q. I'm sorry, what city were you living in?

21 A. Panama City.

22 Q. Okay. Did there come a time when you left
23 Panama City while you were still married to Ms.
24 Frederick?

25 A. We did. We moved to Pensacola.

26 Q. How long were you married to Anita Frederick?

27 A. About seven years.

28 Q. And what were the circumstances of the two of
29 you separating and ultimately divorcing?

Ronald Walker - Direct Examination

1 A. Just incompatible. Incompatibility, that's
2 about it. And I was young, you know, and I really didn't
3 know what I wanted in life, you know. I made a lot of
4 mistakes in my life. And that was one of them.

5 Q. How old was -- were Alan and Terry when you and
6 their mom broke up?

7 A. I think Alan was around -- I think he was around
8 maybe two, yeah.

9 Q. Was Terry born?

10 A. Yes, he was. I guess they both were born, so
11 Alan had to be a little older than that, maybe about
12 three, three and a half. Terry was probably about a year
13 and a half or a year.

14 Q. And during that time that you were married and
15 living together, were you also living -- who else was
16 living with you, anybody?

17 A. No. My brother stayed with me a little bit,
18 probably for about a month, you know, and that's about
19 it.

20 Q. Do you have just the one brother?

21 A. No, I have lots of brothers, but the brother I'm
22 speaking of is deceased, my older brother.

23 Q. What's his name?

24 A. Kenneth.

25 Q. Is he your full brother, you share both parents?

26 A. He is my full brother, yes.

27 Q. And did he have issues with respect to his
28 mental health that you became aware of?

29 A. Yes, he did. He was a paranoid schizophrenia.

Ronald Walker - Direct Examination

1 Q. Yes, sir, go ahead, I'm sorry.

2 A. But he didn't develop that until later, you
3 know. Once he got out of the service, it was full blown
4 after that. Yeah.

5 Q. Was there -- do you remember, you said you and
6 your wife were incompatible. Do you remember an incident
7 while you were married and while, after Alan was born,
8 involving Anita Frederick and -- that caused the law
9 enforcement to call upon you?

10 A. Yes, I do.

11 Q. Tell us about that, please.

12 A. Well, I was at work one day, and I got
13 approached by some police officers. They called me and
14 they said that your wife was in jail. I said, what? And
15 I asked for what. And she knew this neighbor, I guess
16 she knew this neighbor for years, I didn't know, when she
17 was -- she used to live there before we were married, and
18 so she would call this woman and just harass her on the
19 phone. And I guess they kind of tapped the phone and
20 found out it was her.

21 Q. Okay. What kind of things did you say?

22 A. You know, I have no idea. I questioned her
23 about it, you know. She said it was a foolish thing she
24 did, you know, but I never questioned her about it, you
25 know. Just one of those things, you know. I don't know.

26 Q. Yeah. So when you and your wife separated,
27 where were you living at that time, Mr. Walker?

28 A. I was living in Alaska.

29 Q. Okay. And where -- when did you, after you

Ronald Walker - Direct Examination

1 moved to Alaska, when was the next you saw or heard from
2 the boys and your former wife?

3 A. It was probably -- God, that's a long time ago,
4 but I'm guessing it was probably about three and a half
5 years. It's probably about three and a half years, once
6 I was in Alaska, since I seen the kids again.

7 Q. Were you trying to find out where they were
8 during those years?

9 A. Most definitely I was. And that really hurt me
10 because I wanted to see my kids and I didn't know where
11 they were. And I found out later that she did get in
12 touch with me, and she moved to Mississippi, and that's
13 how I got in contact with the kids then.

14 Q. And did you, after you found out where they
15 were, did you do anything to try to see them again?

16 A. Yes, I did.

17 Q. What did you do?

18 A. I came down and took them to Alaska with me.

19 Q. Okay. Was that the very next time that you saw
20 your son, you came and brought them to Alaska?

21 A. That was the first time in three and a half
22 years that I saw them.

23 Q. Okay.

24 A. Yeah.

25 Q. Is that when they were in school?

26 A. They were out of school at the time, you know, I
27 think, and it was in the summer. And I think I come down
28 in a motor home and got them in my motor home.

29 THE COURT: Mr. Craig, can you maybe put a

Ronald Walker - Direct Examination

1 context of a year.

2 MR. CRAIG: I was trying, yes. Thank you,
3 Your Honor.

4 MR. WHITE: Thank you.

5 BY MR. CRAIG:

6 Q. Let me just ask it, I might need to kind of back
7 up a little bit if you don't mind, Your Honor. How many
8 times did Alan come to see you in Alaska? And we will
9 try to put a chronology to it.

10 A. Three, maybe four, yeah.

11 Q. And the very first time he came to see you, did
12 he enroll in school in Alaska?

13 A. Yes, we did, we had them enrolled in school.

14 MR. CRAIG: May I approach the witness,
15 Your Honor?

16 THE COURT: Yes.

17 BY MR. CRAIG:

18 Q. I'm looking at what's called -- what we have
19 listed in our exhibit list as Exhibit 7. I don't know,
20 Your Honor, I can give Your Honor another copy.

21 THE COURT: Is this it?

22 MR. CRAIG: Yes, it is.

23 BY MR. CRAIG:

24 Q. I'm going to show you that document, if you can
25 look at it carefully. Does that document mean anything
26 to you, can you identify that?

27 A. That is -- Creekside School is a school that the
28 kids were going to. Date of birth, Panama City, Alan was
29 born in Panama City. My name is correct. My address is

Ronald Walker - Direct Examination

1 286 Fern Street. My phone number is correct.

2 Q. Okay. That all sounds good. Does it say there
3 what year that is at Creekmore School -- Creekside
4 School?

5 A. Yes, it says '75, 1975.

6 Q. Okay. And does that help you remember the first
7 time that Alan Walker came and stayed with you for a year
8 in Alaska, or do you think there was a time before then?

9 MR. WHITE: Objection, unless he has a --

10 A. I think the first time that they came up is when
11 they stayed a year.

12 Q. Yes, sir. And enrolled in school?

13 A. Yeah.

14 Q. So if this is the earliest record of his school
15 years in Alaska?

16 A. Yeah.

17 Q. Then would 1975 be the year?

18 A. Yeah, I think so.

19 Q. So before they stayed the whole year in school,
20 did you have occasion to visit them in Mississippi?

21 A. No, I didn't.

22 Q. Okay. Tell me what -- so you hadn't seen Alan
23 and Terry for some time?

24 A. Yes.

25 Q. And Alan was -- 1974 -- was nine years old?

26 A. Right.

27 Q. Tell us about Alan at nine years old in 1974,
28 what do you remember about him?

29 A. A great kid. Yeah. Very great kid. Had a lot

Ronald Walker - Direct Examination

1 of compliments of him.

2 Q. What kinds of compliments would you get?

3 A. You know, sometimes he used to go to my place of
4 work and I would get compliments on him, how well behaved
5 he was. I thought that was great.

6 Q. In your household -- I'm sorry, were you living
7 alone at the time or were you married by the time that
8 Alan and Terry came up to see you in Alaska?

9 A. I was remarried.

10 Q. Okay. And who all was living in the home with
11 you and your wife and Alan and Terry in Alaska that year,
12 1974/75 when they were living with you?

13 A. My wife and I, my two stepsons, and Alan and
14 Terry.

15 Q. Okay. Tell us about how you structured -- how
16 your home life was there. Tell us whether Alan and Terry
17 were required, for example, to do chores?

18 A. Yes, they were. They were required to clean
19 their rooms and stuff, and occasionally vacuum, stuff
20 like that. Yep. And, you know, help me with yard work
21 outside, stuff. We had chores for them. But they also
22 got allowances, too, you know.

23 Q. And did they comply with the rules of your home
24 during that time period?

25 A. Yes.

26 Q. And did you have -- do you remember any
27 incidents from that time period, any serious behavior
28 problems on the part of your son, Alan?

29 A. No.

Ronald Walker - Direct Examination

1 Q. Did you all do activities together as father and
2 son or father and your sons?

3 A. We did. Of course, I was working quite a bit.
4 We probably didn't do as much as we should have did, but
5 we did have activities. We went to the lake a lot, and
6 stuff like that, you know.

7 Q. What do you do at the lake, you are an
8 outdoorsman?

9 A. I am. I love to fish. I'm not much of a
10 hunter, but I do love to fish.

11 Q. And how about Alan?

12 A. He loves to fish, too.

13 Q. Did you teach him to fish or did he already know
14 when he got up there?

15 A. Well, I think he already knew.

16 Q. Okay. And they stayed with you for a year that
17 time?

18 A. The first time, that was the agreement that I
19 had with his mother, that they could come up for a year.
20 You know.

21 Q. Did there come to be a second time then when
22 Alan and Terry came to stay with you?

23 A. Yes.

24 MR. CRAIG: If I may approach the witness
25 again, Your Honor.

26 THE COURT: Sure.

27 BY MR. CRAIG:

28 Q. This is, again, from the exhibit list. It's
29 marked as Exhibit 7. Do you recognize the names on that

Ronald Walker - Direct Examination

1 document?

2 A. Yes, I do.

3 Q. This would be Page 4 of 14 on that exhibit.

4 What names do you recognize?

5 A. My wife and my name. And Alan's name.

6 Q. Okay. So your wife was Marcella Walker?

7 A. Yes, she was.

8 Q. And she's passed away?

9 A. She is deceased.

10 Q. May I ask, how long were you married to her
11 before she passed?

12 A. 43 years.

13 Q. Okay. And can you see on there what year that
14 says?

15 MR. WHITE: Could we know what he is
16 talking -- using from?

17 MR. CRAIG: The document I handed you, the
18 Exhibit 7, Page 4.

19 A. Does that say '83, '82/'83?

20 By MR. CRAIG:

21 Q. Yes, it does. Okay. So looking at that, does
22 that help you remember what year it was that Alan came
23 back to Alaska?

24 A. Definitely.

25 Q. Okay. So in 1982 or '83, if he was born in
26 1965?

27 A. '65 he was born, yeah.

28 Q. So he would have been 16 turning 17, or 17
29 turning 18 -- 17 turning 18?

Ronald Walker - Direct Examination

1 A. All right.

2 Q. So was the Alan Walker that came to your home in
3 Alaska that second time at 17 the same young man that you
4 said goodbye to at age 11 when he left your home?

5 A. No.

6 Q. In what way was he different, sir?

7 A. Let's see how you put this. Just a little bit
8 different in a stronger will. Wouldn't want to -- kind
9 of a little rebellious. I would say a little rebellion.

10 Q. But what kinds of things did he rebel about?
11 What did he do that was in rebellion with what you were
12 asking him to do?

13 A. Well, like my kids, neat, you know, he had long
14 hair. I asked him to get his hair cut. So we took him
15 down to get his hair cut. He rebelled about that. He
16 didn't like that too well, but he got his hair cut
17 anyway. And, you know, I noticed some changes in him.
18 But subtle changes, you know, that the --

19 Q. Yeah. I'm sorry.

20 A. Yeah.

21 Q. Tell us whether it was part of your regimen as a
22 father that your children would be home at night and stay
23 the night at your home?

24 A. Yes. Yes. We had curfews. You had to be in at
25 a certain time, yes.

26 Q. And were there any times when you discovered
27 that some of your children were not obeying curfew?

28 A. Yes.

29 Q. Please tell the Court about whatever time you

Ronald Walker - Direct Examination

1 most remember.

2 A. Well, they would -- I don't know, I got up to go
3 to work one morning and I'm normally an early riser. I
4 go to work at 6:00 in the morning. And I just so
5 happened to look in the kids bedrooms, there was nobody
6 in the bedrooms and everything. They had snuck out of
7 the house and was out all night, you know. And that
8 didn't approve with me too well.

9 Q. What did you do?

10 A. I stayed home from work and waited for them to
11 get home.

12 Q. Then what happened?

13 A. I spanked them.

14 Q. And what other kinds of things happened with
15 respect to Alan's behavior issues when -- that second
16 time when he was an older teenager?

17 A. I don't know. Just, you know, people that he
18 wanted to hang around with and stuff like that I didn't
19 quite too much care for that, you know.

20 Q. What was wrong with them?

21 A. Just didn't like their appearance and stuff.
22 You know, you kind of get a good judge of people by -- I
23 can judge a person by --

24 Q. By their appearance?

25 A. Yeah.

26 Q. Did you try to do something to control who Alan
27 was seeing?

28 A. Alan was at an age he just didn't want to take
29 on too much responsibility like that. He wouldn't want

Ronald Walker - Direct Examination

1 to listen to me.

2 Q. Had you, in the meantime, had you been in
3 contact with his mom to keep up with how he was doing
4 between the time he was in fourth grade and the time he
5 came to you in high school?

6 A. A couple of occasions, I think.

7 Q. Uh-huh. Did you know whether she was having
8 problems with him during that inbetween time between his
9 first and second visit?

10 A. The only time I knew she was having problems
11 with him is when she would want to ship him to Alaska,
12 you know. And that, you know, because he would -- she
13 would probably be a little protective of him, you know,
14 and wouldn't let him bump his nose. And so when he would
15 get into a little bash or something like that, maybe
16 could have been reconciled then, you know, back by the
17 proper authorities, and she would call me and send them
18 up to Alaska, you know.

19 Q. What do you mean by protective, if you don't
20 mind me -- it doesn't matter whether you mind, I suppose.
21 What do you mean by protective? What was she protecting
22 him from?

23 A. A little trouble he got into here in Mississippi
24 and everything. I don't know, just being a little wild,
25 a wild child, I guess.

26 Q. Are you talking about trouble with the law, or
27 just trouble in general?

28 A. Well, pretty much leading up to that, yeah.

29 Q. Okay. So did you become aware that Alan was in

Ronald Walker - Direct Examination

1 trouble with the law? We're talking about during these
2 teen years now, not this case.

3 A. Yeah. You know, like he was doing all the wrong
4 things, and she was wanting to get him away from
5 Mississippi because he was involved in too many wrong
6 things like fighting chickens and stuff like that, you
7 know. And she thought that the best thing for him to do
8 is to come to Alaska where he could have maybe a father
9 figure that could try to straighten him out and set him
10 on the right road.

11 Q. Okay. And did you try to be that person?

12 A. I most certainly did, yeah.

13 Q. How did it go?

14 A. Well, he was a little head strong, you know. He
15 wanted to come back to Mississippi and everything. And I
16 think if he would have stayed in Alaska, that things
17 would have been a lot different, you know. But Alan is
18 more like a momma's boy. My son Terry had enough -- was
19 up there at the same time, and he had enough wisdom to
20 stay in Alaska at the time.

21 THE COURT: Mr. White. Just a second.

22 You're talking too loud to co-counsel.

23 MR. WHITE: I'm sorry.

24 THE COURT: Go ahead.

25 BY MR. CRAIG:

26 Q. You were telling us about your son Terry.

27 A. Yes. He stayed in Alaska when Alan came back.
28 Alan, he probably didn't like my rules and stuff, so he
29 wanted to come home to momma. But Terry stuck it out

Ronald Walker - Direct Examination

1 with me, and I'm glad he did.

2 Q. Yes, sir. Did you all go to church there in
3 Alaska?

4 A. Yes, we did. I didn't go quite as often as I
5 should have because I worked quite a bit, but my wife and
6 the kids, they went quite often.

7 Q. And did Alan seem to know when you were taking
8 him, or you and your wife were taking him to church and
9 coming back on Sunday evenings, did he seem to have an
10 understanding from his life in Mississippi about the
11 church and the Bible and things like that?

12 MR. WHITE: Your Honor, unless he knows,
13 has personal knowledge of it.

14 THE COURT: Wait just a second.

15 MR. WHITE: I object.

16 THE COURT: You may want to try to lay a
17 different foundation.

18 MR. CRAIG: Thank you, Your Honor.

19 THE COURT: You don't have to thank the
20 Court for its rulings on evidentiary matters.

21 MR. CRAIG: Okay, I will just respond,
22 thank you. Old habits die hard.

23 THE COURT: I understand.

24 BY MR. CRAIG:

25 Q. When -- you testified that your wife and the
26 boys went to church and that sometimes you and your wife
27 and the boys went to church?

28 A. Yeah.

29 Q. Did you gain an understanding from that

Ronald Walker - Direct Examination

1 experience, from going to church with the boys, of the
2 level of Mr. Walker's spiritual and religious
3 understanding at that age?

4 A. I think it was great at the end that time.

5 Q. At the end of that time?

6 A. They were -- both the kids were baptized there.
7 Matter of fact, we were all baptized there. And I
8 noticed a difference in them, you know, and by going to
9 church and stuff like that, you know. They seemed to
10 like it, going to church, too.

11 Q. Even at that age?

12 A. Yeah.

13 Q. And what about -- so what I was asking
14 originally was the, before then, you know, you said
15 during the year he came to that point. What point was he
16 at at the beginning of that year, the second time he was
17 with you in 1982, in terms of his spiritual and religious
18 understanding?

19 MR. WHITE: Your Honor that calls for a
20 conclusion. What someone --

21 A. I don't know.

22 THE COURT: He doesn't know.

23 MR. CRAIG: He said he doesn't know.

24 BY MR. CRAIG:

25 Q. Mr. Walker, is there a reason why you were not
26 at the trial, and you understand that Alan had a trial in
27 Vicksburg in 1991 on a very serious homicide charge?

28 A. Yes, there is a reason. I was never known of
29 nothing on it. Only way I ever found out what was going

Ronald Walker - Cross-Examination

1 on is by through his mother. I was never contacted
2 by any authority or the court system whatsoever.

3 Q. So specifically, tell the Court whether you were
4 or were not contacted by anyone saying that they were Mr.
5 Walker's lawyers prior to his trial in 1991.

6 A. I was not contacted by anyone. No lawyer
7 whatsoever.

8 Q. And if you had been contacted by your son's
9 lawyers, would you have come to Vicksburg to testify?

10 A. Yes.

11 Q. Would you have testified truthfully and answered
12 the kind of questions you are being asked today?

13 A. Yes.

14 MR. CRAIG: Court's indulgence. We tender
15 the witness. Please answer the prosecutor's
16 questions, sir.

17 THE COURT: Cross.

CROSS-EXAMINATION

18 BY MR. WHITE:

19 Q. Mr. Walker, I'm Marvin White with the attorney
20 general's office. I need to ask you a few questions here
21 to clear some things up. So Alan came and lived with you
22 two times?
23

24 A. Three.

25 Q. When was the third time?

26 A. The third time -- the third time he come up, I
27 don't remember the exact date. I think it was about
28 maybe a year or so after they went back the second time.
29 Maybe a year or two after. I'm just guessing. It's been

Ronald Walker - Cross-Examination

1 a long time.

2 Q. Is the only reason you know what the date or
3 have any idea of what the dates are on the other two
4 times the fact that your recollection was refreshed by
5 looking at those school records?

6 A. Yes.

7 Q. And so otherwise you would not have known what
8 years they were?

9 A. I would not.

10 Q. Now, how old were you when Alan was born?

11 A. How old was I?

12 Q. Uh-huh.

13 A. Twenty-one.

14 Q. And how old was Anita?

15 A. Twenty-one.

16 Q. Y'all are the same age?

17 A. Well, she had to be 20, 20.

18 Q. So if someone had said that you were -- that she
19 was 17 when y'all got married?

20 A. No, that's not correct.

21 Q. That would not be correct?

22 A. No.

23 Q. And that you were 19. So that would be, y'all
24 were the same age?

25 A. I remember this because, at that time, you had
26 to be 21 to get married and had to have a parent's
27 signature, so I had to wait until I was 21 to get
28 married. I remember that.

29 Q. Now, you said you were about three and a half

Ronald Walker - Cross-Examination

1 when y'all divorced, and y'all were living where when
2 y'all got divorced?

3 A. I was living in Alaska. She was living in
4 Pensacola.

5 Q. I mean, did she -- when did y'all stop living
6 together?

7 A. Stop living together?

8 Q. Uh-huh.

9 A. Probably back in -- I want to say '67, '68.

10 Q. In other words, shortly after Alan was born, you
11 went on the road in your job and she did what?

12 A. It had to be -- it had to be later than that.
13 Probably '69 or so, yeah. Yeah, when I went on the road.

14 Q. So you don't know where -- you worked as a meat
15 cutter in Pensacola or Panama City?

16 A. I worked for a packing company in Pensacola,
17 yeah.

18 Q. And then you moved somewhere to South Carolina?

19 A. Yes.

20 Q. And how long were you there?

21 A. Probably about eight months.

22 Q. And then you went to Hawaii?

23 A. Yes.

24 Q. And Anita never went with you there?

25 A. No.

26 Q. Did she go with you to South Carolina?

27 A. She was with me in South Carolina.

28 Q. And you went to Hawaii, and how long did you
29 stay in Hawaii?

Ronald Walker - Cross-Examination

1 A. Probably about eight months.

2 Q. And did you come back to Pensacola or did you go
3 directly to Alaska?

4 A. No, I came back from Hawaii, went back to
5 Columbia, South Carolina.

6 Q. Back to South Carolina. And how long were you
7 there?

8 A. Probably about four or five months.

9 Q. Did Anita and the boys live with you then?

10 A. Yes.

11 Q. And then you left for Alaska?

12 A. No. We left South Carolina. We came back to
13 Florida.

14 Q. In Pensacola or Panama City?

15 A. I think it was Pensacola.

16 Q. Okay. Y'all -- Anita was still living with you
17 at that point?

18 A. Yes.

19 Q. And then when did you go to Alaska? Do you know
20 what year you went to Alaska?

21 A. I'm trying to think. I went to Alaska in '69.

22 Q. Okay.

23 A. '68 or '69.

24 Q. And y'all divorced when?

25 A. We divorced in -- shortly after that. Probably
26 about -- I think it was '68. I think we divorced in '68.

27 Q. When Alan was three?

28 A. Yeah.

29 Q. And then you were -- were you still living here

Ronald Walker - Cross-Examination

1 when you divorced, or had you already moved to Alaska?

2 A. I had moved to Alaska.

3 Q. Already moved to Alaska. So it was just a long
4 distance divorce then?

5 A. Yes.

6 Q. And at that point, how long was it then before
7 you saw the boys again?

8 A. Probably about three, maybe three, three and a
9 half years.

10 Q. And is that time that you saw them next is when
11 you came down to get them to take them to Alaska?

12 A. After three and a half years, I found out where
13 they were. Their mother agreed that I could come and get
14 them and take them -- she had them come up to visit me,
15 yes.

16 Q. That's not my question.

17 A. Okay.

18 Q. I said was that -- when you came down and got
19 them and took them back to Alaska, was that the first
20 time you had seen them since y'all got a divorce?

21 A. Yes.

22 Q. Or you moved to Alaska?

23 A. Yes.

24 Q. So that's in either '74 or '75, although the
25 school records say -- I think your attorney was saying
26 '74, '75, school records looks like it says maybe '75,
27 '76. So Alan was ten years old, nine years old the next
28 time you saw him after y'all got divorced?

29 A. Uh-huh.

Ronald Walker - Cross-Examination

1 Q. And he lived there for a year with you?

2 A. Uh-huh.

3 Q. No trouble, good kid?

4 A. No trouble at all.

5 Q. People patting you on the back saying you got a
6 great kid and everything like that?

7 A. Yes, sir.

8 Q. Then how long was it again before he came back?

9 A. Four or five years.

10 Q. Four or five years.

11 A. I'm just guessing because 25 years ago is a long
12 time. I'm just guessing that. I would say about four or
13 five years.

14 Q. I'm not casting aspersions at you, I just need
15 to know some things and the dates. I think the dates on
16 that other were what, '82. So no contact with you other
17 than -- any contact between you and Alan between the time
18 he went back and you came back and got him again?

19 A. No.

20 Q. Okay. So just basically you brought him back at
21 the end of that year and came down again four or five
22 years later and got him, and that was, I think you said,
23 because his mother wanted to get him out of her hair,
24 basically, right?

25 A. Repeat that, please.

26 Q. You said that you came back and got him the
27 second time because his mother was ---wanted to get him
28 out of the way or get him out of her hair and trouble
29 down here?

Ronald Walker - Cross-Examination

1 A. I think so, yeah.

2 Q. He would have been 15, 16, 17 years old,
3 somewhere in '82?

4 A. Yes.

5 Q. '82 he would be 17 years old.

6 A. Uh-huh.

7 Q. And so -- and then -- and he came again, right.
8 How long did he stay, he stayed a year that time, too?

9 A. No, he didn't. The last time he came he only
10 stayed about a month.

11 Q. No, I'm talking about the '82, the second trip,
12 did he stay a year then?

13 A. Pretty close to a year. I think, yeah.

14 Q. He checked into school and stayed in school the
15 whole year?

16 A. I think so.

17 Q. And then he came back down here?

18 A. Yeah.

19 Q. Okay. And then how long was it again before he
20 came again up there? Did you come get him that time or
21 did he come on his own?

22 A. No, he came on his own. I don't remember.

23 Q. And you said he was -- at which time are you
24 talking about that he was a little different, a little
25 rebellious?

26 A. Well, I noticed some changes in him.

27 Q. Which time?

28 A. When he came back the second time, I noticed
29 little changes in him.

Ronald Walker - Cross-Examination

1 Q. But he is 17 years old?

2 A. Yeah. Well, you are going to have changes in
3 kids, I guess, when they're 17.

4 Q. And you made him get his hair cut?

5 A. Yes.

6 Q. And that wasn't abusive, though, was it?

7 A. It was to him.

8 Q. Well, it might have been to him, but it's not
9 considered something that would be considered abuse,
10 would it?

11 A. I wouldn't think so.

12 Q. Did he ever complain about his mother abusing
13 him?

14 A. No.

15 Q. So did he ever complain about there being --
16 anything about living down here, to you, that why he
17 wanted to come up there and stay with you or anything?

18 A. No.

19 Q. So he just came to visit and everything was fine
20 down here as far as he was concerned, right?

21 A. I guess.

22 Q. He said he wanted to come. Now, you said that
23 you didn't know anything about this -- you knew nothing
24 about him being in trouble?

25 A. The only way I found out he was in trouble was
26 through his mother.

27 Q. When did you find out?

28 A. When she called me.

29 Q. You don't know when, was it before the trial, or

Ronald Walker - Cross-Examination

1 after the trial, or during the trial?

2 A. It was just before the trial. I didn't even
3 know when a court date or anything was.

4 Q. You didn't know that he had been charged?

5 A. I didn't know there was a court date until after
6 court was over.

7 Q. You didn't know that he had been charged with
8 capital murder?

9 A. She told me that. Yeah.

10 Q. And do you know if she told the lawyers about
11 you?

12 A. I don't know.

13 Q. Do you know -- you didn't talk to her on a
14 regular basis, did you?

15 A. No, I didn't.

16 Q. And she didn't bother to call you on a regular
17 basis?

18 A. No, she didn't.

19 MR. WHITE: Court's indulgence.

20 THE COURT: All right.

21 BY MR. WHITE:

22 Q. I believe you testified you had two stepsons?

23 A. I do.

24 Q. Is that from your second wife's children?

25 A. Yes.

26 Q. And did he and Alan and Terry all get along or
27 they and Alan and Terry all get along?

28 A. They got along great, yeah. They sure did.

29 MR. WHITE: All right.

Ronald Walker - Redirect Examination

1 THE COURT: Redirect.

2 MR. CRAIG: Very brief, Your Honor.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MR. CRAIG:

6 Q. Just to be clear, Mr. Walker, when did you first
7 meet -- how old were you when you first met Anita
8 Frederick, best you can remember?

9 A. I was probably -- I was probably 19.

10 Q. And then how old were you when you married her?

11 A. Twenty-one.

12 Q. And how long were you together romantically
13 before you were married?

14 A. We were together probably six months, five or
15 six months.

16 MR. CRAIG: Okay. That's all we have, Your
17 Honor.

18 THE COURT: You may step down. Call your
19 next witness.

20 MR. VOISIN: Our next witness, Your Honor,
21 is Terry Walker.

22 THE COURT: Come have a seat, Mr. Walker.
23 Sir, sit up close to the microphone and speak
24 into the microphone so everyone can hear you.
25 Allow the lawyers to finish their questions
26 before you answer. And make sure you respond
27 with a yes or a no and not a uh-huh or uh-uh so
28 the court reporter takes everything down.
29 Whenever you're ready.

Terry Walker - Direct Examination

1 MR. VOISIN: Thank you.

2 TERRY WALKER

3 Having been duly sworn testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VOISIN:

6 Q. Mr. Walker, please introduce yourself to the
7 Court?

8 A. My name is Terry Walker.

9 Q. And how do you know Alan Walker?

10 A. He is my brother.

11 Q. And, Mr. Walker, where do you currently live?

12 A. Colorado.

13 Q. And what do you do for a living?

14 A. Oil field worker.

15 Q. How long have you been an oil field worker?

16 A. Twelve years.

17 Q. And what did you do before that?

18 A. Work for an airline.

19 Q. Mr. Walker, how old are you?

20 A. Forty-eight, 49.

21 Q. And how much older is Alan than you?

22 A. Two years.

23 Q. And who is your father?

24 A. Ron Walker.

25 Q. Where were you born?

26 A. Columbia, South Carolina.

27 Q. Do you have other siblings?

28 A. Leon. Amanda.

29 Q. When did your parents divorce, do you have -- or

Terry Walker - Direct Examination

1 do you remember them being married at all?

2 A. No.

3 Q. So you were too young to remember them being
4 together?

5 A. Yes.

6 Q. Do you remember moving with your mother to
7 Mississippi?

8 A. No.

9 Q. What was the first contact that you remember
10 having with your father?

11 A. I remember going to Florida, visiting.

12 Q. And he was there?

13 A. Yes.

14 Q. Do you know about how old you may have been at
15 the time?

16 A. Maybe six or seven.

17 Q. Okay. Now, at some point, you moved to Alaska
18 to live with your father?

19 A. Permanently, yes. When I went to school in
20 seventh grade, I'm guessing in '80, '79.

21 Q. Did you go up to spend a year with him before
22 that time?

23 A. I think two years prior.

24 Q. Did you go to school in Alaska during that first
25 visit up there?

26 A. I went to second grade and fifth grade.

27 Q. And how did you get there to Alaska?

28 A. We flew and drove a Winnebago.

29 Q. So you had already started school in Mississippi

Terry Walker - Direct Examination

1 before you went to Alaska that first time?

2 A. Yes.

3 Q. Okay. Now, when you moved, had your father
4 remarried?

5 A. Yes.

6 Q. And what was his wife's name?

7 A. Marcella Walker.

8 Q. Did she go by Sally?

9 A. Yes.

10 Q. Did she have children?

11 A. Yes.

12 Q. How many?

13 A. Two.

14 Q. Boys or girls?

15 A. Boys.

16 Q. And how old were they in relation to you?

17 A. One is eight years older and the other is ten.

18 Q. That first time that you went to Alaska, did you
19 notice -- or what were the differences in your day-to-day
20 life of being in Alaska as opposed to being in
21 Mississippi?

22 A. I don't know how to answer that.

23 Q. Okay. In terms of, like, chores to do,
24 homework, other responsibilities?

25 A. I had chores to do in Alaska. My dad and
26 stepmother was pretty into school, thorough.

27 Q. So you had to do your homework?

28 A. A little more discipline, yes.

29 Q. And so after -- how long were you there before

Terry Walker - Direct Examination

1 you came back to Mississippi?

2 A. One year.

3 Q. Okay.

4 A. A school semester, year.

5 Q. And when you came back, did Alan come back with
6 you?

7 A. Yes.

8 Q. And at some time after you were back, did your
9 mom remarry?

10 A. I think she was married to Winfred the first
11 time I went to Mississippi. I don't recall them ever
12 getting married, but I believe they were married prior to
13 me going to Alaska for the first time.

14 Q. Okay. And Winfred, that's your brother Leon's
15 father?

16 A. Yes.

17 Q. Okay. What did Winfred do for a living?

18 A. He worked for C.E. Natco.

19 Q. And at the time, did your mother work?

20 A. Yes.

21 Q. Do you recall where she was working?

22 A. She worked at a hotel, McDonald's, and I
23 couldn't --

24 Q. So she was working two jobs at the same time?

25 A. Yes.

26 Q. So who watched you and Leon and Alan?

27 A. No one.

28 Q. Was Winfred home?

29 A. Sometimes.

Terry Walker - Direct Examination

1 Q. When he was home, how much supervision did he
2 provide?

3 A. None.

4 Q. So how much, you know, freedom did y'all have?

5 A. All of it.

6 Q. Okay. Is there anything that you would do that
7 made Winfred angry?

8 A. He was always drunk.

9 Q. How often did he drink?

10 A. Every day that I've known him.

11 Q. And about how much, do you remember?

12 A. I don't know how much.

13 Q. Okay. Mr. Walker, was Winfred ever abusive to
14 you, physically abusive I mean?

15 A. I can't remember on that right now. Physically,
16 I was timid as a child, but not -- I don't believe
17 physical that was ever the word. You know, he would
18 complain if we got into his soda or stuff like that, or
19 got into his work stuff. But I don't know for sure he
20 was ever physical abusive.

21 Q. Okay. Did you have any reason to fear him?

22 A. I don't -- maybe, yes, because he was drunk, but
23 I can't answer that. I don't recall him ever -- I mean,
24 it was a young childhood time.

25 MR. VOISIN: May I approach witness, Your
26 Honor?

27 THE COURT: Sure.

28 BY MR. VOISIN:

29 Q. Mr. Walker, I would like to hand you this

Terry Walker - Direct Examination

1 document, and I would like you to take a couple of
2 minutes to review it to see if you can identify it.

3 MR. WHITE: Your Honor, I mean, this is his
4 affidavit, what are we doing?

5 THE COURT: He is reading it, it appears.

6 MR. VOISIN: Have you finished that?

7 THE COURT: I don't know what the follow-up
8 question is going to be. Is there an objection?

9 MR. WHITE: Well, ask him a question, let's
10 -- he should know what's in it already. It's
11 his affidavit.

12 THE COURT: Let's see where it goes.

13 BY MR. VOISIN:

14 Q. Mr. Walker, do you recognize that document?

15 A. Yeah.

16 Q. Is that your signature on the last page?

17 A. Yeah.

18 Q. Okay. For the record, Your Honor -- what is
19 that document?

20 A. This is an affidavit.

21 Q. It's one you signed?

22 A. Yeah.

23 Q. Okay. Do you know -- can you go to the last
24 page and tell us the date?

25 A. 12/15 of 2/12/15.

26 Q. Above that, where it says sworn and subscribed,
27 is it September 26th, 2011?

28 A. Yeah, September 26th, 2011.

29 MR. VOISIN: Okay. Your Honor, I would

Terry Walker - Direct Examination

1 like to have this marked for identification.
2 This is the affidavit that Mr. Walker has
3 identified. We've attached it in the discovery
4 process, and it was attached to our
5 post-conviction petition that we filed with the
6 Mississippi Supreme Court. At the time, it was
7 marked before the Mississippi Supreme Court as
8 Exhibit 14. And in our exhibit list --

9 MR. WHITE: That was not what I was given
10 in discovery.

11 MR. VOISIN: I'm sorry, but it was. Mr.
12 Craig --

13 MR. WHITE: Here is what you gave me in
14 discovery right here.

15 THE COURT: Counsel, direct your comments
16 to the Court.

17 MR. WHITE: I'm sorry.

18 MR. VOISIN: No, Your Honor, Mr. White is
19 plainly wrong. We provided this affidavit.
20 This affidavit was attached to our petition that
21 we filed with the Mississippi Supreme Court in
22 2012. And it's the same affidavit that we
23 provided during discovery just a few months ago.

24 THE COURT: Give me just a second. Is this
25 exhibit, what you are asking to have marked for
26 ID, is it Exhibit 17 on your petitioner's
27 exhibit list?

28 MR. CRAIG: Yes.

29 THE COURT: Is that the same Exhibit 17

Terry Walker - Direct Examination

1 which was -- what I can see is Exhibit 14 as an
2 attachment to the successive writ that was filed
3 with the Supreme Court?

4 MR. VOISIN: That's correct.

5 MR. CRAIG: Yes.

6 THE COURT: Which was noticed in your
7 discovery response?

8 MR. CRAIG: Yes, sir.

9 THE COURT: Mr. White?

10 MR. WHITE: It wasn't attached to the
11 discovery.

12 THE COURT: The Court found it.

13 MR. WHITE: But it wasn't attached to the
14 discovery.

15 THE COURT: On the basis of that objection,
16 that basis it's overruled. But let me ask you,
17 for what purpose is it being offered? Are you
18 asking to be admitted into evidence at this
19 hearing or just marking it for ID?

20 MR. VOISIN: Marking for ID, Your Honor.

21 THE COURT: You can mark it for ID.

22 BY MR. VOISIN:

23 Q. Mr. Walker do you still have a copy of it?
24 (Defense Exhibit 2 marked for identification)

25 MR. CRAIG: May we have the Court's
26 indulgence for just a moment?

27 THE COURT: Sure.

28 BY MR. VOISIN:

29 Q. Mr. Walker, I would like to direct your

Terry Walker - Direct Examination

1 attention to Paragraph 8 on the bottom of Page 2. The
2 second sentence that begins, "when he was angry." Now,
3 you've had a chance to review that, and let me back up.
4 You and I spoke about this. When was the first time you
5 and I spoke about this?

6 A. I thought it was two days ago, but --

7 Q. What did you point out to me when we were going
8 over this?

9 A. I don't ever recall in getting hit by Winfred.
10 I mean, I was young, but -- I mean, I was scared of him,
11 but I don't recall him ever putting his hands on me.

12 Q. Okay. So basically, that second sentence there
13 is an error in it, therefore, as far as you can remember
14 today, that one sentence is incorrect?

15 A. Yes.

16 Q. What about, did your mother use a strap on you?

17 A. Yeah. I mean, I thought all kids got an ass
18 whipping.

19 Q. And the first sentence, "Winfred became angry if
20 we got into any of his stuff, such as the soft drinks."

21 A. Yeah.

22 Q. So the error came from saying that Winfred was
23 the one who beat you with a strap?

24 A. Yeah.

25 Q. Okay. Thank you, that's all. I wanted to just
26 clear that up for the Court.

27 When you were living with your mom, and Winfred,
28 and Alan, did you live near some people, last name was
29 the Reyers?

Terry Walker - Direct Examination

1 A. Yes.

2 Q. R-E-Y-E-R, I believe it is. Do you know whether
3 they were related to Winfred?

4 A. Maybe by marriage.

5 Q. Okay. Was there a Brenda Reyer?

6 A. Yeah.

7 Q. And was she older than you?

8 A. Yeah.

9 Q. And what time --

10 MR. WHITE: This is leading, leading,
11 leading.

12 THE COURT: Don't lead the witness.

13 MR. VOISIN: Okay, Your Honor.

14 BY MR. VOISIN:

15 Q. What type of relationship did Winfred have with
16 her, with Brenda Reyer?

17 A. I would tell you it was sexual.

18 Q. Okay. And how old was she?

19 A. I'm guessing around 16, 18, guessing.

20 Q. Are you aware of any other inappropriate
21 contact, conduct that Brenda had with you or anyone else
22 in your family?

23 A. Man, this is a real -- kind of things right now
24 I'm talking in front of a bunch of people I don't like
25 talking about that. But, I mean, now, as you are older,
26 it was childhood rape. So, I mean, if that's what you
27 are asking.

28 Q. Yes, I wonder if you -- I know it's a delicate
29 event, but if you could describe what happened.

Terry Walker - Direct Examination

1 A. They would -- well, when I say they, which means
2 all the Reyer sisters, I believe there was three of them,
3 they would all play with you and suck your penis, do
4 things of sexual -- sexual things.

5 Q. How often did that happen?

6 A. I don't recall how often it happened. But it
7 happened more than once and more than twice.

8 Q. And who else -- was Alan around or present for
9 any of this?

10 A. I believe we would go in two different bedrooms,
11 yes.

12 Q. And who would do this to you?

13 A. Marie, Mary, Brenda.

14 Q. Where would -- you mentioned Winfred being
15 involved with Brenda, where would they have sex?

16 A. He had a van.

17 Q. And where would the van be?

18 A. In the parking lot.

19 Q. Where would -- the parking lot where?

20 A. Right outside in front of the house.

21 Q. Of your house?

22 A. Yeah.

23 Q. Where was your mom at the time?

24 A. She was working.

25 Q. Did you tell any adult at the time about what
26 the Reyer girls had done?

27 A. No.

28 Q. Did anyone tell your mother about Winfred and
29 Brenda?

Terry Walker - Direct Examination

1 A. No.

2 Q. Not that you recall?

3 A. No.

4 Q. Was this happening before or after you went to
5 Alaska for the second time?

6 A. I don't think it happened the first time, but I
7 think it was the second. We were older, and I might have
8 been 12.

9 Q. Okay. When you went to Alaska for the second
10 time, did Alan go with you?

11 A. Yes.

12 Q. Now, you have a sister, Amanda; is that correct?

13 A. Yes.

14 Q. How old were you when she was born?

15 A. I think I'm 12 years older, maybe more.

16 Q. And how old was she when you moved away?

17 A. She was one.

18 Q. And how many times did you see her after you
19 moved away?

20 A. Not until Leon got married.

21 Q. When would that be, have been?

22 A. I don't know the exact date offhand. But --

23 Q. More than ten years?

24 A. Oh, yeah.

25 Q. How would you compare your life in Alaska to
26 what the situation you had in Mississippi?

27 A. We had a pretty good life. It was a pretty good
28 childhood.

29 Q. In Alaska?

Terry Walker - Direct Examination

1 A. I had good schooling. It was pretty good.

2 Q. How about your family situation with your dad?

3 A. It was a pretty good life. My stepmother, my
4 older brothers and -- it was -- I wouldn't pass it up for
5 the world.

6 Q. And when Alan returned after you went up and
7 stayed there permanently, why didn't you return?

8 A. I didn't even know Alan was leaving. So I was
9 riding my bike around the neighborhood.

10 Q. Did you know Alan's friends from the
11 neighborhood, like the Maloneys or --

12 A. Yeah.

13 Q. What did you know about them?

14 A. Oh, we got in a fight lots of times. I mean,
15 sun up/sun down.

16 Q. What kind of influence did they have on Alan?

17 A. Childhood friends in the neighborhood. We would
18 be corrupt and do things together.

19 Q. How did they compare to like the friends you
20 were able to find in Alaska?

21 MR. WHITE: Objection to the relevance
22 between his friends and the friends he had in
23 Alaska and the -- these were not Alan's friends
24 we're talking about.

25 THE COURT: I sustain that objection. If
26 you want to answer it for your proffer you may.

27 BY MR. VOISIN:

28 Q. Do you know who Robin Saucier or Robin Marroy
29 is?

Terry Walker - Direct Examination

1 A. Yeah.

2 Q. How long have you known her?

3 A. Since they first moved next door.

4 Q. That was in Mississippi?

5 A. Yes.

6 Q. About how old were you?

7 A. I'm guessing around 11 or 12.

8 Q. And about how old was she?

9 A. I think she was maybe a year younger, possibly a
10 year and a half, maybe two.

11 Q. Were you two like boyfriend and girlfriend?

12 A. I don't know if you would call it boyfriend and
13 girlfriend, but I would like to think so back then, you
14 know.

15 Q. And who was Leroy Marroy?

16 A. He was an older man that lived two houses down
17 from us.

18 Q. And what was his relationship to Robin?

19 A. At the time I was there, I'm going to tell you
20 there was -- I don't think there was a relationship.

21 Q. Okay. Now, before -- when Alan was arrested in
22 1990, where were you living?

23 A. I was in Alaska.

24 Q. Did Alan's lawyers contact you to talk to you
25 about Alan?

26 A. No.

27 Q. Would you have spoken to them if they had
28 contacted you?

29 A. Yeah, they would have contacted me, but yes, I

Terry Walker - Cross-Examination

1 would have spoke to them.

2 Q. Would you have come to testify on his behalf if
3 they would have asked you to?

4 A. I was in Alaska, he is in Mississippi, and yes,
5 I would have came.

6 MR. VOISIN: Beg the Court's indulgence. I
7 don't have anymore questions. Mr. White will
8 cross-examine.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. WHITE:

12 Q. Mr. Walker, I'm Marvin White with the attorney
13 general's office. I just want to ask you a few
14 questions. I think you said you went to Alaska and you
15 started the 7th grade?

16 A. Yeah.

17 Q. And you never came back?

18 A. I came back once after that when Leon got
19 married.

20 Q. Yeah, but that was what, 20 years later?

21 A. Yeah.

22 Q. So you really didn't -- after you moved up
23 there, I guess you were what, 11 or 12?

24 A. Yes, sir.

25 Q. And you didn't see Alan for any length of time
26 after that, right?

27 A. I was living in Cold Bay, Alaska and I purchased
28 him a place to live in Alaska, and he got a job at
29 Safeway. And I don't know how long he stayed there, but

Terry Walker - Cross-Examination

1 I'm guessing it was '89, and I just seen him for a short
2 period of time then.

3 Q. Okay. So he came back up there, you got him a
4 place to stay and everything and got him a job, and he
5 came up and then just left, huh?

6 A. No, he worked there and he didn't like it. He
7 wanted to live back here, I guess.

8 Q. Just left, just came on back and didn't --

9 A. Left for sure.

10 Q. And that was in '89?

11 A. I'm guessing '89, '90, before this crime
12 happened.

13 Q. Now, I know you didn't want to talk about it
14 much, but that thing about the sisters, were you in the
15 same room with Alan when this happened?

16 A. No.

17 Q. So you don't know what happened to Alan?

18 A. No.

19 Q. And you said -- how old were you then?

20 A. I wasn't old enough to have sex. So, I don't
21 know, guessing around 11, 12, younger.

22 Q. Alan is how much older than you?

23 A. He was 13.

24 Q. Okay.

25 A. Twelve.

26 Q. Did you tell your mother?

27 A. No.

28 Q. Why not?

29 A. I don't know.

Terry Walker - Cross-Examination

1 Q. Alan tell your mother?

2 A. No.

3 Q. And this happened more than once?

4 A. Oh, yeah.

5 Q. Did they threaten you or force you in any way?

6 A. No. I don't recall. Nope.

7 Q. And these girls, how old were they?

8 A. I think every one of them was older than I was.

9 Q. But, I mean, they weren't grownups, were they,
10 they were just older kids?

11 A. Yeah.

12 Q. Okay. Now, you say that -- were you ever beaten
13 by your mother?

14 A. I've been spanked.

15 Q. I know what a spanking is. I'm talking about
16 abused by your mother?

17 A. I've been spanked with a leather strap.

18 Q. A belt?

19 A. Well, you can call it a belt, but, I mean, I've
20 been spanked by a leather strap and a switch across the
21 street.

22 Q. You call it abuse?

23 A. Yeah.

24 Q. You do. You have children?

25 A. No.

26 Q. So you've never had to discipline a child?

27 A. No.

28 Q. Okay. Yet earlier you said it was not abusive,
29 yet I guess that was when you were talking about Winfred

Terry Walker - Redirect Examination

1 was never abusive to you?

2 A. True. I just -- he was never physically. I
3 don't remember Winfred ever hitting me or putting his
4 hands on me. I don't recall that.

5 Q. And you never saw him do anything to Alan?

6 A. Not that I remember.

7 Q. Do you know who I'm talking about when I say
8 Jack Collins?

9 A. I don't know him.

10 MR. WHITE: Court's indulgence. No further
11 questions, Your Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. VOISIN:

15 Q. Just a couple of questions, Mr. Walker. Mr.
16 White asked if you had moved back to Alaska the second
17 time for good, whether that was for the seventh grade.

18 A. I think I moved to Alaska three times. I went
19 to school in the second, I went to school in the fifth,
20 and the next time I came back I was in the seventh.

21 Q. Okay. And do you recall when the incidents with
22 the Reyer sisters would have taken place, would that have
23 been before the 7th grade?

24 A. I'm going to guess it's between the fifth grade
25 to the -- to the time I left for Alaska.

26 Q. And that would have been for the seventh grade?

27 A. Yeah.

28 MR. VOISIN: Thank you. No further
29 questions, Your Honor.

Terry Walker - Examination by the Court

1 THE COURT: Do y'all anticipate -- is Leon
2 Frederick going to testify?

3 MR. CRAIG: We do not anticipate calling
4 him.

5 THE COURT: Do the parties object to me
6 asking this witness any questions?

7 MR. CRAIG: Not at all.

8 THE COURT: I just want to get some things
9 right in my mind. Mr. White, do you have any
10 objections?

11 MR. WHITE: (Shakes head negatively).

12 THE COURT: He says no.

13 EXAMINATION

14 BY THE COURT:

15 Q. Mr. Walker, Leon Frederick is your half brother?

16 A. Yes.

17 Q. How much younger is he than you?

18 A. Seven years.

19 Q. Was he living -- do you have any relationship
20 with him now?

21 A. Yeah.

22 Q. Call, talk -- where does he live?

23 A. He lives --

24 Q. In Mississippi?

25 A. Well, he did live in Colorado, but I don't know
26 if he is moving here.

27 Q. So when you say you have a relationship,
28 Christmas, Thanksgiving?

29 A. He works for me.

Terry Walker - Examination by the Court

- 1 Q. He works for you. All right. Is he married?
- 2 A. No, his wife passed away.
- 3 Q. Okay. Does he have children?
- 4 A. Yes, he has two.
- 5 Q. How many times was he married?
- 6 A. He's only been married once.
- 7 Q. His wife died while they were married?
- 8 A. She had a heart attack, yes.
- 9 Q. About how long ago was that?
- 10 A. Three years ago.
- 11 Q. Okay. In 1990, '91, where was Leon living?
- 12 A. He was in Mississippi.
- 13 Q. Was he living with y'all's common mother?
- 14 A. Yes.
- 15 Q. And in the same environment, correct me if I'm
- 16 wrong, but would that be in the same environment which
- 17 your brother Alan was living, same neighborhood?
- 18 A. Yes.
- 19 Q. Same atmosphere?
- 20 A. Yes.
- 21 Q. And now, Leon moved out of that atmosphere,
- 22 married, had children, and sustained work up until now
- 23 when he is working for you?
- 24 A. Yeah. I helped him get a job in the oil field.
- 25 Q. I mean, is that a fair thing for me to say?
- 26 A. Yeah.
- 27 Q. Do you know if he had any run-ins with the law?
- 28 A. Leon?
- 29 Q. Yeah.

Terry Walker - Examination by the Court

1 A. No. Just DUI.

2 Q. Misdemeanor?

3 A. Yeah.

4 Q. And the paperwork that's in front of you, which
5 was marked as an exhibit for ID, is that 2?

6 THE REPORTER: Defense 2.

7 BY THE COURT:

8 Q. Defense 2. That was signed by you in 2011, I
9 think we established?

10 A. 2012.

11 Q. September 26th, 2011 is the date on it?

12 A. Yeah.

13 Q. Where were you when that was prepared, do you
14 know?

15 A. I was in Colorado.

16 Q. Did someone send that to you?

17 A. Yeah.

18 Q. Do you know who prepared that?

19 A. I thought the attorney/investigator.

20 Q. Did you read it before you signed it?

21 A. Yeah, pretty much everything on here right now.
22 Just after going over to review the case and actually
23 talking to them on the telephone, it's as a child I
24 didn't remember of Winfred ever -- I mean, I was scared
25 of him, but I don't recall him ever touching me. I just
26 -- I was pretty young.

27 Q. So part of that Paragraph 8 that Mr. Voisin was
28 talking to you about, that's wrong?

29 A. Yeah.

Terry Walker - Examination by the Court

1 Q. Okay. But if you had read that thoroughly in
2 2011, do you think you would have told whoever sent it to
3 you, said, that's wrong, I can't sign that part, or what?

4 A. Yeah. I mean, I was talking to him on the
5 telephone, but then after later, thinking about it, I
6 just -- I don't -- you know what I'm saying, I don't
7 recall that. It's been so long.

8 Q. All right.

9 THE COURT: If that generates any questions
10 from either party, now is the opportunity you
11 all have to follow up. I have another note
12 here.

13 BY THE COURT:

14 Q. In 1989, 1990, I think it was the timeframe you
15 said that your brother came to live with you in Alaska.
16 You had made arrangements for him to live.

17 A. I was in a bush town, and he was in Anchorage.
18 I lived in Cold Bay, Alaska, and I worked out of a bush
19 town, which means I had three hots and a cot. I worked
20 and I didn't transfer to Anchorage until 1992. And I
21 didn't live in Anchorage, my father lived in Anchorage,
22 my brothers, but I lived in a bush town. The only way to
23 get there is to fly.

24 Q. But in that timeframe, was Alan living -- your
25 brother living in Alaska, in Anchorage?

26 A. I purchased him a place, an apartment to stay
27 in. I think I paid one or two months, and he paid the
28 rest.

29 Q. How long was he in Alaska in that third trip of

Terry Walker - Examination by the Court

1 his lifetime to stay in Alaska?

2 A. That third trip now, that's when I was a child,
3 in seventh grade?

4 Q. Let me try again. 1989, 1990, Alan was in
5 Alaska; is that true?

6 A. Yes. I believe he finished out the lease
7 agreement with the apartment.

8 Q. Which would be about how long?

9 A. I'm guessing six or seven months.

10 Q. But y'all were in different cities?

11 A. Yeah.

12 Q. He is in Anchorage, you are in a bush town?

13 A. Yes.

14 Q. Would y'all have occasion to see each other on
15 weekends?

16 A. No.

17 Q. On occasions, anything like that?

18 A. I think I came to town once or twice. Within
19 three months, I'm pretty positive we came in and seen
20 each other. In three months, he was working. I think I
21 stayed with my father once or twice.

22 Q. Once or twice within that timeframe he is in
23 Alaska?

24 A. Yeah.

25 Q. The only other time you might have seen him
26 before that is earlier in the '80s?

27 A. Yeah.

28 Q. When you stayed and he went back to Mississippi?

29 A. Yeah.

Terry Walker - Further Redirect Examination

1 Q. Is that true?

2 A. Yeah.

3 Q. When you were around him in Alaska in late '80s,
4 for a little bit of time you got to spend with him, could
5 you tell any differences in his behavior any that gave
6 you suspicion or alarmed you in any way?

7 A. Not in my recollection, no.

8 Q. Did he -- I mean, can you -- do you recall his
9 behavior?

10 A. I thought it was the same.

11 THE COURT: That's all the questions I
12 have. Y'all may follow up.

13 FURTHER REDIRECT EXAMINATION

14 BY MR. VOISIN:

15 Q. Just a couple quick questions, Your Honor. Mr.
16 Walker, just to mention that affidavit, you know, we
17 talked about. No one pressured you to sign that?

18 A. No.

19 Q. Do you remember who you had contact with?

20 A. I think it was the investigator, and we went
21 over that on the Winfred thing, but as later comes
22 around, I just started thinking about it. I just never
23 recall when that happened. So if you are asking me right
24 now if I've got spanked by Winfred, maybe I have. I
25 would have to ask him, but -- and I thought as a child
26 when we had this conversation back in, which is four
27 years ago, so I changed that. I thought about it. I
28 didn't recall getting spanked, if that's what you are
29 asking.

Terry Walker - Re-Cross-Examination

1 MR. VOISIN: That's it. Thank you very
2 much. That's all the questions.

3 THE COURT: I wasn't trying to imply that
4 someone deliberately created information in the
5 affidavit for him to sign. I just wanted to
6 understand that he's impeached, perhaps, his own
7 affidavit, for what that's worth. Mr. White?

RE-CROSS-EXAMINATION

8
9 BY MR. WHITE:

10 Q. So you really had, until this time that he came
11 up and you got him the apartment from all of those
12 developmental years in the time whenever you went to
13 Alaska to stay permanently, until you saw him there, you
14 really didn't see him, you didn't grow up with him, you
15 don't know who his friends were, things like that, right?

16 A. Yep.

17 Q. So you really didn't know him, did you, other
18 than just being your brother?

19 A. Yeah. I mean, we talked, but yeah, we -- it's
20 not like we grew up together.

21 MR. WHITE: Thank you. No further
22 questions.

23 THE COURT: You may step down, Mr. Walker.

24 MR. CRAIG: Your Honor, we do propose, on
25 second reflection, to call Leon Frederick, who I
26 believe is still here. Your Honor had some
27 questions about him, and we just didn't want to
28 be cumulative, but I can be very brief with him.
29 And that would give the Court an opportunity, if

Leon Frederick - Direct Examination

1 it wanted to. So Leon Frederick, unless the
2 Court wants to take a break now.

3 THE COURT: Anybody need a quick break?
4 Mr. Voisin says yes. Let's take about a ten
5 minute recess.

6 (Recess)

7 MR. CRAIG: Your Honor, the petitioner
8 calls Leon Frederick as our next witness.

9 THE COURT: Mr. Frederick, sit up close to
10 the microphone, allow the lawyers to finish
11 their questions before you answer, and make sure
12 you respond yes or no or verbally so that the
13 court reporter can understand what you are
14 responding, okay?

15 THE WITNESS: Yes.

16 LEON FREDERICK

17 Having been duly sworn testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CRAIG:

20 Q. Thank you, Your Honor. What is your name, sir?

21 A. Leon Frederick.

22 Q. And when were you born?

23 A. 1973.

24 Q. Who are your parents?

25 A. Anita Frederick and Winfred Frederick.

26 Q. Do you have brothers and sisters?

27 A. Yes.

28 Q. Who are your brothers and sisters?

29 A. Troy Carpenter, Michael Barton.

Leon Frederick - Direct Examination

1 MR. WHITE: I'm sorry, I can't hear.

2 BY MR. CRAIG:

3 Q. Can you speak up a little bit, please?

4 THE COURT: Move the microphone closer to
5 you.

6 A. Brenda and Brent, and then I've got Alan, Terry,
7 and then I've got Amanda and Brent.

8 Q. Are there two Brents or just one?

9 A. I have brothers and sisters on my dad side and
10 brothers and sisters on my mom's side.

11 Q. I see. So there is -- I wanted to make sure I
12 have this right. I have Brenda, Brent, Alan, Terry, and
13 Brent?

14 A. Yeah.

15 Q. Okay. I wanted to make sure I wasn't mishearing
16 that. And have you lived with -- well, let me ask you
17 this, when did you leave your parents' home, how old were
18 you when you left your parents' home?

19 A. When I was 18.

20 Q. So between the time you were born to the time
21 you were 18, which parent were you living with?

22 A. My mom had custody of me, but I would stay at my
23 mom's and my dad's.

24 Q. Okay. And you were born in 1974. Was there a
25 time after you were born that your parents were divorced?

26 A. What is it?

27 Q. When Winfred Frederick and Anita Frederick were
28 divorced, are you old enough to remember that?

29 A. Yes.

Leon Frederick - Direct Examination

1 Q. And where were you living with both of your
2 parents, Winfred and Anita?

3 A. Off of 28th Street, until my dad moved into his
4 house.

5 Q. 28th Street in what city?

6 A. North of Long Beach. It's just Harrison County.

7 Q. North of Long Beach, it's unincorporated?

8 A. It's not a city.

9 Q. Okay.

10 A. It's city school district, but it's Harrison
11 County.

12 Q. And then after living in Long Beach, where did
13 you live?

14 A. After Long Beach?

15 Q. Yes, sir. I'm going to call that Long Beach,
16 even though I understand what you just said.

17 A. I moved to Gulfport, then I moved to Florida,
18 moved to New York, moved to Alaska. And then I moved to
19 Colorado, and lived in Texas.

20 Q. Okay. Did you ever live with your mom back
21 close to Turner Road back in Long Beach after Gulfport?

22 A. Yeah.

23 Q. Okay. So it would have been Gulfport, Long
24 Beach, Gulfport, then Florida?

25 A. I moved to Florida, or then I left Florida and I
26 went --

27 MR. WHITE: Your Honor, could we have some
28 context of time? I have, you know --

29 MR. CRAIG: That's what.

Leon Frederick - Direct Examination

1 MR. WHITE: Dates.

2 THE COURT: Go ahead and answer it.

3 A. I moved about every two years. So we're talking
4 probably 25 years, we moved probably 12 times.

5 BY MR. CRAIG:

6 Q. So if I told you that your mom and dad divorced
7 in 1979, would you have moved away from Long Beach the
8 first time sometime shortly after that?

9 A. No, I moved after I was 18.

10 Q. You didn't move out of Long Beach until you were
11 18?

12 A. Yes.

13 Q. And how old were you when you lived in Gulfport?

14 A. When I was living with my mom?

15 Q. Yes, sir.

16 A. Probably around 11, 12. I'm not exactly sure.

17 Q. Okay. So you lived?

18 A. I was in elementary.

19 Q. Yes, sir. So just to make sure I understand you
20 correctly, you lived in Long Beach from the time you were
21 born until you were maybe about 11?

22 A. Yes.

23 Q. Then you lived in Gulfport with your mom for a
24 while. And then back in Long Beach until you were 18?

25 A. Yes.

26 Q. Is that correct?

27 A. Yes.

28 Q. And do you remember about how old you were when
29 you moved to Gulfport and when you moved back to Long

Leon Frederick - Direct Examination

1 Beach from Gulfport?

2 A. I would have to think about stuff, I mean,
3 because I moved so much.

4 Q. It's hard for you to remember, okay. You were
5 18 -- you were a senior in high school when you testified
6 in your brother Alan's trial in Vicksburg; is that
7 correct?

8 A. Yes.

9 Q. Okay. So in what -- I want to talk to you about
10 -- I want you to focus, please, on the time period before
11 then. The time before Alan was arrested. So do you
12 understand that part?

13 A. Yes.

14 Q. Okay. Great. How much older is Alan than you?

15 A. I think it's six years or seven years I'm older
16 than my sister, and Terry I think is six years older, and
17 Alan is -- I'm not --

18 Q. I shouldn't have asked you like that. Alan was
19 born in '65, you were born in '74.

20 THE COURT: Mr. Frederick, keep your voice
21 up and speak clearly.

22 BY MR. CRAIG:

23 Q. First of all, I want to ask you about your
24 brother's friend, your brother Alan's friends.

25 A. Yes.

26 Q. I understand you were much younger than him at
27 the time. But what -- do you remember who some of Alan's
28 friends were that were his own age?

29 A. Yes.

Leon Frederick - Direct Examination

1 Q. Who were some of the people that were Alan's
2 friends that were his own age in either Long Beach or
3 Gulfport?

4 A. I would say the Maloneys and Davenports and
5 Castleberrys.

6 Q. Okay. Go ahead.

7 A. The Collins.

8 Q. Okay. So you are using the plural, which I
9 understand. There is more than one Maloney?

10 A. Yeah.

11 Q. Who were the Maloneys, what were their names?

12 A. There is a dad and the two sons, Dwayne and
13 Donald.

14 Q. Dwayne and Donald were the two sons?

15 A. Yes.

16 Q. Who was the father?

17 A. Just a minute.

18 Q. Yeah, take your time.

19 A. I think it might have been Duke.

20 Q. Duke, okay. The Davenports, what would be the
21 name of any Davenports that were your brother Alan's age?

22 A. Billy, Billy Davenport.

23 Q. Okay. And Castleberrys, who would have been the
24 Castleberrys?

25 A. I would say Aaron Castleberry.

26 Q. That was the one that was your brother's age?

27 A. Yes, sir.

28 Q. Excellent. Thank you. And Collins, what would
29 have been the name of the Collins that was your brother's

Leon Frederick - Direct Examination

1 age?

2 A. Jack. Little Jack was younger than big Jack, he
3 was a guy he hung out with, too.

4 Q. So was big Jack Collins the father of little
5 Jack Collins?

6 A. Yes.

7 Q. Yes?

8 A. Yes.

9 Q. And all of these boys that were your brother's
10 age were older than you?

11 A. Yes.

12 Q. They were much older than you?

13 A. Little Jack might be younger than me.

14 Q. Okay. Do you remember anything about them? Do
15 you remember what kind of things they did together? I'm
16 talking about the boys that were Alan's age, first. We
17 will talk about the men later. What kinds of things did
18 they do together?

19 A. I would say go fishing, work on cars, and go to
20 the river and stuff. And socialize.

21 Q. Okay.

22 A. Hang out.

23 Q. When they were socializing, did they do any
24 drinking?

25 A. Yes.

26 MR. WHITE: Your Honor, only if he was
27 there and saw them do it.

28 THE COURT: Lay a predicate.

29 BY MR. CRAIG:

Leon Frederick - Direct Examination

1 Q. Yes, I'm sorry. Were you ever present for the
2 activities that Alan and the boys that were Alan's age
3 would do together, were you yourself personally present?

4 A. If it was at the house, probably so, but other
5 than that, probably not.

6 Q. So at the lake, somebody your age wouldn't have
7 gone down while the older boys were there?

8 A. I had my friends. We would go down there, too.
9 It wasn't restricted to a certain group of people, so.

10 Q. Okay. Would you ever be down at the lake with
11 your friends when Alan and these friends that you
12 mentioned would be down there?

13 A. Yes.

14 Q. And when you were down there with your friends
15 and Alan and his friends were at the lake, socializing,
16 tell the Court whether or not you saw Alan and his
17 friends drinking?

18 A. I wouldn't say all the time, but sometimes.

19 Q. Sometimes. What would they drink?

20 A. Probably quarts.

21 Q. Quarts?

22 A. You buy case of quarts back in them days.

23 Q. What kind of -- I apologize for my ignorance.
24 What kind of beverage is a quarts?

25 A. Like Budweiser.

26 Q. I see, a quart of Budweiser?

27 A. Yeah.

28 Q. Did you -- tell the Court whether or not, when
29 you were down at the lake and saw Alan and his friends

Leon Frederick - Direct Examination

1 down at the lake, you saw Alan and his friends smoking
2 pot or using any other kinds of illegal drugs?

3 A. At that time?

4 Q. Yes, sir, which was when you were younger.

5 A. I know a lot of people did things, but I never
6 actually got to see it because I was still younger. But
7 I've heard of it.

8 Q. Yes, but I asked you what you saw.

9 A. I seen people smoke cigarettes and stuff. I
10 know I seen them drink and smoke cigarettes.

11 Q. Is that all that you remember seeing?

12 A. I mean, I didn't smoke weed at that time.

13 Q. I understand that.

14 A. But, I mean, there were cigarettes that were
15 rolled up.

16 Q. I'm not saying one way or the other. I'm just
17 asking you what you remember seeing?

18 A. I couldn't say yes or no that they were smoking
19 weed, but I know they were smoking.

20 Q. Okay. Fair enough. Thank you. Now, let me ask
21 you about two of these older men that you talked about,
22 Duke Maloney and big Jack Collins. You said they were
23 the fathers of boys that were your brother Alan's, is
24 that -- am I getting that correct?

25 A. Yes.

26 Q. Did you see them socializing, hanging out with
27 the boys that were your brother Alan's age, including
28 Alan?

29 A. Like my friends hanging out?

Leon Frederick - Direct Examination

1 Q. Not your friends. Let's take them one at a
2 time. Big Jack Collins, he had a son, Little Jack, who
3 was younger than you I think you said.

4 A. Yes.

5 Q. Did you have occasion to see big Jack Collins,
6 the older man, socializing, hanging out with the boys
7 that were Alan's age?

8 A. Yes.

9 Q. And then what about Duke Maloney?

10 A. He was kind of like somebody like Big Jack.

11 Q. Okay. Would he also socialize with the younger
12 -- not the younger boys, but the boys your brother's age?

13 A. Yes.

14 Q. And I'm only asking you now for what you
15 yourself know or what you saw, or heard what you yourself
16 got out of your five senses, Mr. Frederick, but do you
17 know about any illegal activity that big Jack Collins was
18 involved with, either with or without the boys that were
19 your brother's age?

20 A. He was kind of like a group -- like a leader,
21 kind of like. I mean, he was like the leader of the pack
22 kind of. What it seemed like.

23 Q. Big Jack Collins was the leader of the pack?

24 A. Or like the group of people kind of like.

25 Q. And do you recall, again, this is out of what
26 you yourself saw, or were around?

27 A. He wasn't like a follower, he was like a leader.

28 Q. He was a leader. Would he do any criminal
29 activity that the boys your brother's age would be

Leon Frederick - Direct Examination

1 involved in?

2 A. There was -- I would say there was stealing and
3 stuff going on.

4 Q. That you knew about?

5 A. Yes. But I never seen it.

6 Q. That was my question.

7 MR. WHITE: I'm sorry, I didn't hear what
8 he said. And then he said that he never saw it.

9 MR. CRAIG: He said there was stealing, but
10 "I didn't see it." But my question was
11 specifically whether he saw it out of his own
12 knowledge.

13 BY MR. CRAIG:

14 Q. Can I re-ask my question, Mr. Frederick, did you
15 see any activity by big Jack Collins?

16 A. No.

17 Q. That was involved with stealing or taking?

18 A. No, it was hearsay, I guess that's what you call
19 it.

20 Q. That is what you call it. And that's why I'm
21 asking it this way. What about Mr. Davenport -- not Mr.
22 Davenport, Mr. Maloney. Did you ever see him involved in
23 any criminal activity?

24 A. Which one, the Maloneys you said?

25 Q. Yes. I'm sorry, I probably misstated. Duke
26 Maloney?

27 A. Duke Maloney?

28 Q. Yes, sir.

29 A. I would say probably only criminal.

Leon Frederick - Direct Examination

1 THE COURT: I'm having trouble
2 understanding you. If I can't understand the
3 witness, then it's falling on deaf ears, so it's
4 your responsibility to make sure the witness is
5 speaking clearly.

6 BY MR. CRAIG:

7 Q. Please speak up as loudly as you can.

8 A. I have a bad habit of speaking low.

9 Q. You speak low and you mumble a little bit toward
10 the end. So try to keep your tone up as much as you can.

11 A. I would say the only thing I would say Duke
12 probably did illegal that I know of was probably smoke
13 weed.

14 Q. Did you actually see him smoking marijuana?

15 A. Yes.

16 Q. You did. And so, obviously, he smoked it in
17 front of --

18 A. I think he did it for pain. Like where I'm
19 from, in Colorado, it's a pain medication now.

20 Q. But aren't we talking about -- I was asking you
21 about the time before 1990, right, and is that when you
22 saw him smoking marijuana?

23 A. Yeah. He's -- always seen them smoking weed
24 over there.

25 Q. Okay. You used to always see them smoking weed
26 over there?

27 A. Like Duke and them.

28 Q. Duke Maloney specifically?

29 A. Yes.

Leon Frederick - Direct Examination

1 Q. What about Jack Collins?

2 A. Around that time, probably no. After the fact,
3 yes.

4 Q. After the fact we're not worried about, but
5 thank you for your testimony. What kind of man -- what
6 kind of father, and by this I mean discipline wise, what
7 kind of disciplinarian was your father, Winfred
8 Frederick?

9 A. If he said something, you'd do it. And he was
10 -- I never gotten whipped from him except maybe once in a
11 blue moon. But if you made him mad, he would whoop you.

12 Q. And how would he whoop you? What would he use?

13 A. With his hand.

14 Q. What about your mother, was your mother a
15 disciplinarian?

16 A. Yes.

17 Q. And what would your mother do?

18 A. She would use a belt.

19 Q. She would use a belt? That was yes?

20 A. Yes.

21 Q. You went to the trial, Alan's trial. You were
22 only -- were you in the courtroom during anything except
23 for when you testified?

24 A. I never was on the stand or anything. I just
25 sat back here in the back like everybody else.

26 Q. You don't remember testifying about being 18
27 years old?

28 A. I never --

29 Q. Okay. So do you remember any -- did you ever

Leon Frederick - Direct Examination

1 meet, and I just mean meet to say hello, even, the people
2 who were Alan Walker's lawyers during his trial in 1991?

3 A. I wasn't asked no questions from the lawyers or
4 anybody.

5 Q. But did you meet them and shake their hand, did
6 they ever say, hi, I'm your brother's lawyer?

7 A. My mom met them because we went to Vicksburg and
8 stayed in a hotel, I remember that. And then going and
9 sitting in the bleacher, the little wooden things back
10 there.

11 Q. Okay. And you were 18 at the time that this
12 happened?

13 A. Yes.

14 Q. At the time the trial happened?

15 A. Yes.

16 MR. CRAIG: Court's indulgence. Thank you,
17 Your Honor, for the indulgence.

18 BY MR. CRAIG:

19 Q. So, Mr. Frederick, and just drawing the parties'
20 attention to Page 1,609 and following of the trial
21 transcript. If I were to tell you, Mr. Frederick, that
22 according to the trial transcript, you very briefly did
23 testify in front of the jury, you don't remember that at
24 all?

25 A. I never did testify.

26 Q. Are you sure you never did testify?

27 A. I am now.

28 Q. Yes. Okay. You are now.

29 A. Yes.

Leon Frederick - Direct Examination

1 Q. You're absolutely right. And you said that your
2 mom did meet Alan's attorneys in Vicksburg?

3 A. Yes.

4 Q. Do you remember your mom meeting Alan's
5 attorneys any time before the trial in Vicksburg?

6 A. I remember her meeting the judge. The judge
7 paid her \$50 bucks and then meeting and talking to the
8 lawyers and stuff. But I never -- from what I
9 understand, they were kind of crooked.

10 Q. I'm not asking for your opinion of that I'm
11 sorry to say. I'm just asking you, so you are talking
12 about travel money to go to Vicksburg, \$50?

13 A. No, that was just, I guess -- I don't know what
14 it was for. He just gave it to her. That's all I
15 remember.

16 THE COURT: I want to make sure I
17 understand. Are you saying that the judge in
18 Vicksburg paid your mother \$50?

19 A. Yeah. I don't know, he just gave it to her.
20 Maybe just a courtesy. Or --

21 THE COURT: I don't know where to go with
22 it. He doesn't remember testifying. The record
23 is replete with his testimony.

24 MR. CRAIG: Yes. I was --

25 A. Maybe just being generous as I look at it.

26 MR. CRAIG: I don't know anything about
27 that, Mr. Frederick, but thank you.

28 BY MR. CRAIG:

29 Q. I asked you about -- let me just come back very

Leon Frederick - Direct Examination

1 briefly to Duke Maloney and big Jack Collins. I asked
2 about other activities. Did you see either Jack, big
3 Jack Collins, or Duke Maloney drinking alcohol with Alan
4 and the boys Alan's age?

5 A. I don't remember seeing it like everybody. I
6 know like when they go to the rivers or go to the lake
7 that they drink. And if they're over at the house at my
8 mom's place I would see them drink.

9 Q. Would that include big Jack Collins and Duke
10 Maloney?

11 A. I don't really recall big Jack coming over to
12 the house a lot. But I know they would go over to their
13 house.

14 Q. They being Alan and his friends would go over to
15 Jack, big Jack Collins' house?

16 A. Yes.

17 Q. But you wouldn't go with him?

18 A. I know -- it's hard to say.

19 Q. No, it's just what you remember. We just want
20 you to say what you truthfully remember.

21 A. I honestly don't remember.

22 Q. Okay. That answers the question.

23 MR. CRAIG: We tender the witness, Your
24 Honor. Please answer the prosecutor's questions
25 if they have any.

26 THE COURT: Mr. White?

27 MR. WHITE: May I approach the witness,
28 Your Honor?

29 THE COURT: Sure.

Leon Frederick - Cross-Examination

CROSS-EXAMINATION

1
2 BY MR. WHITE:

3 Q. I'm Marvin White, the attorney general
4 assistant. Would you mind looking at that, please?

5 MR. CRAIG: May I ask what it is, sir?

6 MR. WHITE: It's the transcript of this
7 record.

8 MR. CRAIG: Okay.

9 BY MR. WHITE:

10 Q. Okay.

11 A. You want me to read it and understand it?

12 Q. Do you recognize this?

13 A. No.

14 Q. You don't recognize it. You don't recognize
15 that as your testimony in Vicksburg in court?

16 A. Uh-uh.

17 Q. Were you -- let me ask it this way, were you
18 around Alan a lot with his friends and everything?

19 A. Sometimes.

20 Q. Did you run with them all the time, though?

21 A. No.

22 Q. So you really don't know what they did all the
23 time?

24 A. I know if they came over to the house I would
25 see it, like sometimes we might hang out at the river or
26 something. Might have a fire or something, or working on
27 their car. That's the times.

28 Q. Did they drink in your house, in your momma's
29 house?

Leon Frederick - Cross-Examination

1 A. I'm not sure.

2 Q. Was that allowed?

3 A. My dad's house, I would say no. But my mom's
4 house, if she was gone to work or something. I mean, I
5 didn't see it. As far as I know, I don't know.

6 Q. You don't know. So they wouldn't be just
7 drinking there all the time then?

8 A. No.

9 Q. And did they ever smoke marijuana in the house?

10 A. As far as I know they didn't.

11 MR. WHITE: Your indulgence, Your Honor.
12 No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MR. CRAIG: No, Your Honor.

15 THE COURT: Mr. Frederick, you may step
16 down. Thank you. Call your next witness.

17 MR. CRAIG: Yes, Your Honor, we call Vera
18 Faye Breland. Judge, if you will recall, Ms.
19 Breland, who was a local witness, was not here
20 this morning. She will need be to sworn.
21 (Oath administered by the Court)

22 THE COURT: You may have a seat. Ms.
23 Breland, I need you to speak up loudly close to
24 the microphone so that everyone can hear you.
25 Allow the lawyers to finish their questions
26 before you answer, and make sure you answer
27 audibly yes or no, or I don't know, and not a
28 head shake so that the court reporter takes
29 everything down, okay?

Vera Faye Breland - Direct Examination

1 THE WITNESS: Yes, sir.

2 THE COURT: All right. You are not doing
3 it so far, you have got to speak up.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. You may continue.

6 VERA FAYE BRELAND

7 Having been duly sworn testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CRAIG:

10 Q. Thank you, Your Honor. Ms. Breland get that
11 microphone as close to you as it will go because you've
12 got kind of a soft voice there. We need to hear you.

13 A. Not really.

14 Q. Not all the time? Okay, well, let's see. And
15 you shook your head, didn't you? So let's go. Please
16 tell the Court your full name.

17 A. My name is Vera Faye Breland.

18 Q. Where do you live, Ms. Breland?

19 A. I live at 3004 Audubon Drive, Gulfport,
20 Mississippi.

21 Q. How long have you lived at that address?

22 A. Twelve years.

23 Q. And how long have you lived in Harrison County?

24 A. About 40 years.

25 Q. Are you working presently?

26 A. Yes. I work three nights a week from 11 to 7,
27 Monday, Tuesday, and Wednesday.

28 Q. What kind of work do you do?

29 A. I'm at Cross Roads Recovery.

Vera Faye Breland - Direct Examination

1 Q. And previously -- well, let me ask this, do you
2 know a woman named Anita Frederick?

3 A. Yes.

4 Q. How do you know Ms. Frederick?

5 A. I worked with her at South Mississippi -- at
6 that time -- Retardation Center in Long Beach.

7 Q. Is it called something else now?

8 A. It's South Mississippi Regional Center.

9 Q. Okay. How long have you known Ms. Frederick?

10 A. For at least ten years or more.

11 Q. How long did you and Ms. Frederick work
12 together?

13 A. More than ten years because I'm retired from the
14 Regional Center after 28 years.

15 Q. I may not have asked my question well. How long
16 a period of time did you and Ms. Frederick both work at
17 the mental retardation center?

18 A. For at least 20 years. I'm not sure when Ms.
19 Frederick left the center, actually, and that's why I
20 can't give you a time period of that time because I'm not
21 sure. When she retired I was still there. But I don't
22 remember actually when she left.

23 Q. Okay. So what I'm trying to do, and I promise
24 this will be the last time I ask it, but I think -- are
25 you thinking I'm asking you how long ago it was that you
26 worked with Ms. Frederick, and that was 20 years ago?

27 A. No, sir. If I understand correctly, you were
28 asking me about how long did Ms. Frederick and I work
29 together at the Regional Center.

Vera Faye Breland - Direct Examination

1 Q. Okay. Yes. And that was for 20 years?

2 A. At least.

3 Q. Okay. And after she retired and/or you retired,
4 did you keep contact with Ms. Frederick?

5 A. Yes.

6 Q. How would you keep contact with her?

7 A. Well, at different times she would call me.

8 Q. Okay. Would you sometimes call her?

9 A. Well, only after she maybe have called me and I
10 missed her call and I would answer her back.

11 Q. Okay. When you were -- well, let me ask this,
12 did you have a work relationship with Ms. Frederick, was
13 one of you a supervisor and the other one an employee
14 being supervised?

15 A. I was a supervisor.

16 Q. Okay. So as her supervisor, did you know
17 whether Ms. Frederick worked more than one job? Did she
18 work outside of that regional health center?

19 A. Yes, at different times. I wasn't sure where
20 she was. I knew she worked another job.

21 Q. Okay. And did you know that Ms. Frederick --
22 did Ms. Frederick have young children or children under
23 the age of 18 during the time she worked at the
24 retardation center under your supervision?

25 A. Yes.

26 Q. What children did she have, do you remember?

27 MR. WHITE: Your Honor, that's going to be
28 hearsay, unless she can show that she knew that
29 -- or met them or anything. Her just telling

Vera Faye Breland - Direct Examination

1 her she had children, that's just hearsay.

2 MR. CRAIG: I suppose we could have her
3 bring the birth certificates.

4 THE COURT: Overruled. You can answer.

5 A. I actually, I knew of Amanda and Leon, and I
6 knew of Alan. But those are the only children that I
7 actually knew of.

8 Q. Okay. Did you meet Amanda?

9 A. Yes.

10 Q. Did you meet Leon?

11 A. Yes.

12 Q. Did you meet Alan?

13 A. Yes.

14 Q. Did you meet them at the place where you and Ms.
15 Frederick worked, or did you also see them outside work?

16 A. I saw Amanda quite often because of her being in
17 beauty pageants. Alan and Leon, I only saw frequently.

18 Q. Okay. And when you saw them frequently, would
19 you see them -- did they come to your place of employment
20 to see their mom, or did you see them outside of the
21 workplace?

22 A. I only saw Alan, maybe once or twice, when he
23 came to visit his mom at work.

24 Q. Okay. Did you see Alan and his mom on those
25 occasions interact with each other?

26 A. Yes, sometimes. It was more or less like they
27 would be talking, and sometimes he would be, you know,
28 playing with his mom, and -- but it was a short visit.
29 So it's more or less like, you know, him visiting his mom

Vera Faye Breland - Direct Examination

1 or picking up something from his mother.

2 Q. Did you see anything on any of those occasions
3 between Alan and his mom that you considered strange or
4 perhaps inappropriate?

5 A. Well, at one time I -- he was playing with his
6 mother, and I don't know whether he pinched her because
7 -- I mean, this is actually hearsay because I didn't
8 actually see him.

9 MR. WHITE: Objection, Your Honor. Not to
10 her knowledge.

11 MR. CRAIG: I'm retrying it, Your Honor.

12 BY MR. CRAIG:

13 Q. Did you see any touching between Alan and his
14 mother at your workplace?

15 A. I only seen him either tickling her or either he
16 pinched her. At that particular time -- and it was more
17 of a playful type situation. But at this same time, I
18 didn't actually see him actually pinch her
19 inappropriately, other than I thought at the time, and
20 speaking with her, you know, it was like he pinched her
21 on her breast, and I thought was inappropriate.

22 Q. So -- okay.

23 A. That's my opinion.

24 MR. WHITE: I object, Your Honor.

25 THE COURT: Basis?

26 MR. WHITE: This is hearsay. She said she
27 did not see it.

28 THE COURT: I think it's not hearsay, it's
29 just no foundation.

Vera Faye Breland - Direct Examination

1 MR. WHITE: It's no foundation.

2 THE COURT: I sustain the objection.

3 BY MR. CRAIG:

4 Q. Let me ask this question, can you describe
5 physically what you saw? Don't call it anything, but did
6 you see Alan's hand move towards his mother, you yourself
7 with your own eyes?

8 A. No, I can't say I did.

9 Q. Okay. Okay. So what did you mean when you said
10 just a second ago that you saw him pinch her but you
11 didn't see him pinch her? I just don't quite understand
12 what you yourself saw. That's what the judge needs to
13 know. If you -- what you didn't see is not for you to
14 testify to today.

15 A. Okay. What I was saying was the fact when he
16 was interacting with his mother, it was more or less -- I
17 don't know whether they were tickling or playing, you
18 know, and at the same time, his hand was around her up in
19 here, and that's why I thought when she mentioned or
20 talking with her afterwards. That was her words, that
21 actually was not my words.

22 Q. You saw him touch her?

23 A. Yes.

24 Q. In that area?

25 A. Yes.

26 Q. But whether it was a pinch or a tickle or some
27 other kind of touch, that's what you can't testify to?

28 A. Yes.

29 Q. Okay. Did you have occasion to know how Ms.

Vera Faye Breland - Direct Examination

1 Frederick handled the child care for her children while
2 she was working night shifts under your supervision or
3 any shifts under your supervision?

4 A. Actually, I believe, and like I said, to know, I
5 can't say I actually know who was actually keeping them,
6 other than I knew Leon at different times was there as
7 being an older child, and I knew different times that
8 Alan was there being an older person. And I don't know
9 whether -- I think at that time Alan might have been
10 married, and maybe his wife was there. But to say I
11 actually know who was actually keeping them, I don't.

12 Q. Okay. Do you recall a conversation with Ms.
13 Frederick about concerns about an older man who lived
14 close to them and his interest in Ms. Frederick's younger
15 child?

16 MR. WHITE: Objection, Your Honor. He is
17 asking her for a conversation about -- that's
18 hearsay.

19 MR. CRAIG: Yes, I am, Your Honor, but I
20 will not be asking this for the truth of the
21 matter asserted. I will ask it -- this line of
22 questioning will deal with Ms. Frederick's
23 perception, her sense of what is appropriate and
24 not appropriate, and her naivete when it comes
25 to the raising of her children. That's the
26 purpose of the question.

27 MR. WHITE: And I say that's irrelevant.

28 MR. CRAIG: It would be the matter that is
29 contained in her affidavit, Your Honor.

Vera Faye Breland - Direct Examination

1 THE COURT: Ms. Breland's affidavit?

2 MR. CRAIG: Yes, that's correct, sir.
3 Specifically Paragraph 4.

4 THE COURT: You would state that this
5 question, this line of questioning would be
6 appropriate in front of a trial jury?

7 MR. CRAIG: Yes, sir. Yes, Your Honor. To
8 establish the mode of Ms. Frederick, Ms. Anita
9 Frederick's naivete and/or lack of sense of
10 appropriate direction of her children and of the
11 people who were around her children, yes, sir.

12 THE COURT: All right. For what that's
13 worth, and the Court will make a consideration
14 of that at the appropriate time whether it is
15 impactful or not at the appropriate time. I
16 will allow you to answer question. So I will
17 overrule the objection.

18 BY MR. CRAIG:

19 Q. Ms. Breland, if I could redirect your attention,
20 you remember I was asking you, do you recall a
21 conversation with Anita Frederick about a person who was
22 taking an -- a potential inappropriate interest in Ms.
23 Frederick's younger daughter, Amanda?

24 A. Yes. I don't actually remember the neighbor's
25 name, and she basically was speaking to me as a mother to
26 a mother. And what she was speaking was, was the fact
27 that he had give her different gifts.

28 Q. Okay. He give her, which her?

29 A. Amanda.

Vera Faye Breland - Direct Examination

1 Q. What kinds of gifts?

2 A. One gift in particular was he had given her a
3 pair of bikinis or something like that.

4 Q. And do you recall approximately how old Amanda
5 would have been at that time?

6 A. Probably about 12.

7 Q. Okay. And you don't remember the man's name,
8 but from the conversation, do you remember generally were
9 we talking about an adult man or about a teenager?

10 A. He was an adult man because I remember her -- he
11 dealt with horses or something. I don't know his name.

12 Q. That's fine. His name is not what I'm asking
13 you. And in that conversation, what was Ms. Frederick's
14 general -- what was her attitude about this man and his
15 buying bikinis for a 12 year old girl.

16 MR. WHITE: Same objection, Your Honor.

17 THE COURT: Noted. It's overruled.

18 A. At that particular time, she didn't seem as if
19 it was something that she was worried about. And the
20 reasoning for that was the fact that, like any neighbor,
21 I guess he had been there for a while. And she didn't
22 seem as if she was, you know, she was threatened or felt
23 threatened by it.

24 Q. And did you disagree with her in that
25 conversation about that?

26 A. Of course.

27 Q. And you told her so?

28 A. Yes.

29 Q. Did she have any particular response to your

Vera Faye Breland - Direct Examination

1 saying that that should be a concern?

2 A. No. And that was because we have always been
3 able to say whatever we wanted to say to each other and
4 it was not like I was judging her or she didn't feel like
5 I was judging her.

6 Q. Do you feel as though -- well, did she say
7 anything to indicate to you that she had changed her mind
8 and agreed with you that it was a concern?

9 A. It was another time that it was either said to
10 her or maybe -- again, that was hearsay -- was the fact
11 that this particular person was guilty of peeping in her
12 window or something like that.

13 Q. And at that point, did Ms. Frederick say --

14 MR. WHITE: Same objection, Your Honor.

15 THE COURT: I get it. She says it's
16 hearsay, and the Court can consider that in the
17 vein in which it's offered. She admits she has
18 no firsthand knowledge.

19 MR. WHITE: You told me to object so that
20 it's on the record.

21 THE COURT: And I'm making my observations
22 about the testimony. I'm not getting on you,
23 Mr. White, for preserving your record.

24 BY MR. CRAIG:

25 Q. Can you just start again and tell us about that
26 conversation -- that other conversation. Was there
27 another conversation in which Anita Frederick and you
28 talked about this man where she was responding to the
29 concerns that you had raised?

Vera Faye Breland - Direct Examination

1 A. Other than where I said that I felt that the
2 gifts were inappropriate -- the gift that he had given
3 her was inappropriate?

4 Q. Was there another conversation other than that?

5 A. Other than the fact that either she heard it or
6 -- she didn't know that to be so. It was either a
7 neighbor told her or something of that nature that this
8 person was guilty of peeping in her window, but it wasn't
9 the fact that she said it as a fact that she knew.

10 Q. Okay. She said it to you?

11 MR. WHITE: This is double hearsay and we
12 object.

13 THE COURT: Overruled.

14 BY MR. CRAIG:

15 Q. And my question is, whether that happened or
16 not, when Ms. Frederick was talking to you about it, did
17 she show any awareness that that was a problem?

18 A. At that particular time, she did.

19 Q. At that point she saw it as a problem?

20 A. Yes.

21 Q. But the bikini buying she did not?

22 A. No.

23 Q. Tell the Court whether you, in terms of Alan
24 Walker himself, did Alan Walker ever do anything to
25 express thoughtfulness to you?

26 A. Yes.

27 Q. What did he do?

28 A. It was one time I believe Alan had went to a
29 crab boil or something of that nature, and he had bought

Vera Faye Breland - Cross-Examination

1 a doll, a wooden doll. And I thought that was
2 thoughtful because I didn't feel that we had a
3 relationship, you know. I didn't know him like I knew
4 his mother. And I thought that was thoughtful of him to
5 do that.

6 Q. When you say he bought a wooden doll, he then
7 gave it to you?

8 A. Yes.

9 MR. CRAIG: We tender the witness, Your
10 Honor. Please answer the prosecutor's question.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. WHITE:

14 Q. Ms. Breland; is that correct?

15 A. Yes.

16 Q. I'm Marvin White with the attorney general's
17 office. Did you know Alan -- how well did you know Alan?

18 A. I knew of him, just like a mother would have a
19 son, I knew of him. I can't say I personally knew Alan.

20 Q. You didn't personally know him?

21 A. No.

22 Q. So you don't know what he was like around home
23 and growing up and out in the neighborhood, all you know
24 is what somebody told you, right?

25 A. Yes, or like mothers talk. That's it.

26 Q. Okay.

27 MR. WHITE: We have no further questions,
28 Your Honor.

29 THE COURT: Redirect?

Vera Faye Breland - Examination by the Court

1 MR. CRAIG: None, Your Honor.

2 THE COURT: There is something unclear in
3 my mind I would like to ask if you have no
4 objection.

5 MR. CRAIG: No objection, Your Honor.

6 THE COURT: Mr. White?

7 MR. WHITE: No.

8 EXAMINATION

9 BY THE COURT:

10 Q. It has to do with knowing the defendant, Alan
11 Walker. I think you said you saw him frequently, but
12 then if I understood what you said, you saw him maybe
13 once or twice at the regional center?

14 A. Uh-huh, yes, sir.

15 Q. Did you see him outside of the regional center?

16 A. Only if -- I went by maybe his mother's house
17 and he was there or something of that nature.

18 Q. All right. So maybe what you mean by frequently
19 and what I think of frequently might be two different
20 things. I see my children frequently, every day.

21 A. Okay, no.

22 Q. Nothing like that?

23 A. No.

24 Q. I see people at work frequently because I go to
25 work every day. But that's not what you are talking
26 about?

27 A. No, sir.

28 THE COURT: Okay. Thank you. Any follow
29 ups?

Argument

1 MR. CRAIG: None from the petitioner, Your
2 Honor.

3 MR. WHITE: No, Your Honor.

4 THE COURT: You may step down, Ms. Breland.

5 MR. CRAIG: I'm sorry, can I ask one. This
6 was one thing following up directly from you,
7 from the Court's questions.

REDIRECT EXAMINATION

8
9 BY MR. CRAIG:

10 Q. Ms. Breland, do you recall whether Mr. Walker
11 has ever been to your house, Mr. Walker being Alan Walker
12 here?

13 A. I don't remember him ever coming to my house.

14 MR. CRAIG: Okay, that's all. Your Honor.

15 THE COURT: You may step down.

16 MR. CRAIG: Your Honor, one other matter
17 related to testimony. The witness, I believe
18 Amanda Frederick, testified that Paula Shavers,
19 who is Amanda's aunt, her father's sister,
20 remember her father is Michael Shavers, is
21 passed away. She had given previously an
22 affidavit in this matter that was attached to
23 the petition, both in the Mississippi Supreme
24 Court and I believe in the motion to vacate. It
25 is listed in our exhibit list as 19, affidavit
26 of Paula Shavers September 7th, 2011,
27 Mississippi Supreme Court Exhibit 19.

28 This witness is obviously not capable of
29 being here. The post-conviction statutes

Argument

1 specifically says that the Court can take notice
2 of affidavits and other matters in the record.
3 Obviously, we understand Ms. Shavers -- the
4 Court is not able to hear Ms. Shavers'
5 testimony. We think that goes to the weight
6 that the Court might give it, but we would
7 tender this affidavit for the Court's
8 consideration to be given the weight the Court
9 deems appropriate.

10 THE COURT: Mr. White?

11 MR. WHITE: Well, if it's attached to the
12 petition, it is already before the court.

13 THE COURT: It begs a different question
14 I'm thinking in my mind. Is my consideration on
15 the mandate from the Supreme Court limited to
16 just what I hear in open court from these
17 witnesses, or am I to consider all the
18 affidavits, even though some of those people may
19 not have testified?

20 MR. CRAIG: I think the answer, Your Honor,
21 is the latter. I think the Court does consider
22 it under the statute. And I think, for example,
23 when the Court is doing the prejudice inquiry
24 that's in the mandate, the Court will have to,
25 and I'm sure the state will assert, you know,
26 there's going to be stuff in the record, we
27 don't want to have the whole trial.

28 THE COURT: Sure, I understand. But as far
29 as the investigation and that testimony that, in

Argument

1 your argument, should have been presented to the
2 trial jury, is that limited just to what I hear
3 from this witness box?

4 MR. WHITE: Yes, sir.

5 MR. CRAIG: We say no, Your Honor. We're
6 happy to have a short brief on that. But I
7 would concede that the weight to be given paper
8 testimony is -- I mean, I think the Court does
9 things accordingly, but I do think the Court is
10 empowered to consider matters that are in the
11 record that the parties direct the Court. And I
12 understand we have a disagreement with our
13 opponent about that. We're happy to write a
14 brief about it.

15 THE COURT: Because the Supreme Court could
16 have ruled dispositively on this issue, on the
17 entire issue, based upon the exhibits, I guess,
18 if they thought the exhibits rang the bell of
19 ineffective assistance of counsel without the
20 necessity of trial testimony.

21 MR. CRAIG: That is also true, Your Honor.
22 I agree with that. But I don't think those are
23 mutually exclusive points.

24 THE COURT: Mr. White?

25 MR. WHITE: I was going to say that that's
26 our point all together. Didn't have to come
27 back down here if they could have ruled at that
28 point on this whole thing and not sent it back.
29 They wanted to hear live testimony. If they

Argument

1 don't care to call those other people that they
2 are relying on, we don't consider that they
3 would have been available to have testified at
4 the time, and, therefore, their testimony is not
5 relevant to this hearing. Because I mean, one
6 of the things about the whole thing is, that
7 they -- the people not only have to be present
8 to testify, but they have to be willing to
9 testify. And if they're not here to testify,
10 their testimony couldn't have been heard back
11 then, and certainly in a trial they couldn't
12 have given an affidavit or a deposition. They
13 had to be there in person.

14 THE COURT: If I were to grant, Mr. Craig,
15 your request to consider the affidavit of Ms.
16 Paula Shavers, and I sustain your application or
17 your motion to vacate the sentence, and part of
18 my rationale for doing that is contained --
19 hypothetically I'm thinking out loud here --
20 what Ms. Shavers said in her affidavit, how
21 could that testimony of Ms. Shavers be presented
22 to a trial jury?

23 MR. CRAIG: Well, it could have been in
24 1991, Your Honor. Ms. Shavers passed away
25 between the trial and now. So that's exactly
26 the point, is that Ms. Shavers -- the reason Ms.
27 Shavers is here is not because she doesn't want
28 to testify, it's because she is deceased. So
29 that's why this is in a different category.

Argument

1 That's why I'm offering it in the context of
2 this hearing. The other witnesses testified
3 live, and I think this -- I think this is a
4 different species of situation.

5 MR. WHITE: Could have deposed her.

6 THE COURT: Do you have any other
7 witnesses?

8 MR. CRAIG: No.

9 THE COURT: I'm going to reserve ruling on
10 Paula Shavers' affidavit. It's no secret, it's
11 in the record, and I've read it. To what
12 degree, if I let it in, it will have an impact
13 on the Court's ruling, again, I will reserve
14 ruling until later. Specifically whether or not
15 I will specifically consider it as part of this
16 evidentiary hearing's record.

17 MR. CRAIG: We understand, Your Honor. I
18 then marked it 3-ID, and that way we can at
19 least keep up with it in the Court's ruling, it
20 will have a way to identify it specifically.

21 THE COURT: With that, the petitioner rests
22 today?

23 MR. CRAIG: On the fact witnesses that are
24 not lawyers or experts.

25 THE COURT: All right.

26 (Defense Exhibit 3 marked for identification)

27 THE COURT: Turning back to the matter of
28 Dr. Shaffer, Mr. White, have you had occasion to
29 see the proposed order?

Argument

1 MR. WHITE: Yes.

2 THE COURT: Do you have any objection to
3 the timeliness of Dr. Shaffer having completed
4 his examination within -- or no later than 90
5 days.

6 MR. WHITE: Leave that up for the Court.

7 THE COURT: Mr. Voisin, was Dr. Shaffer --
8 excuse me, was Dr. Shaffer prepared to examine
9 your client back when the motion was argued,
10 which was in what, November? October?

11 MR. VOISIN: Yes, Your Honor. He was. We
12 had told him that we were going to -- that
13 initially we had told him that the discovery
14 deadline was 30 days before today, sometime in
15 January. But then whenever the Court denied
16 access for Dr. Shaffer, so we just informed him
17 about that. I think in the meantime, he has
18 picked up some other cases and I did have some
19 e-mails with him. I think he is going to be --
20 he has several obligations in March, but there
21 may be an opening in March, but we will shoot
22 for April.

23 THE COURT: Do we need to consider a
24 scheduling order limited to this examination and
25 any rebuttal examination and report?

26 MR. VOISIN: I think we could have a
27 schedule for him to issue his report. Perhaps
28 30 days after.

29 THE COURT: Because I'm trying to work

Argument

1 towards the next hearing date.

2 MR. VOISIN: Sure. Maybe 30 days after his
3 evaluation. Or 90 days to do everything.

4 THE COURT: 90 days to have the evaluation
5 and report to counsel for the state?

6 MR. VOISIN: I think we can shoot for that,
7 yes, sir.

8 THE COURT: Do you want to amend your order
9 to reflect that then, and you can e-mail it?

10 MR. VOISIN: Sure, that will be no problem.

11 THE COURT: Mr. White?

12 MR. WHITE: My problem is, that's going to
13 put -- I don't know how quickly you want after
14 that for us to respond.

15 THE COURT: That's what I'm asking, how
16 long will you --

17 MR. WHITE: I don't know at this point. My
18 schedule right now, June is -- latter part of
19 June, which this would fall in, 90 days, 30 days
20 after that would fall in the latter part of
21 June, and I'm out of the country.

22 THE COURT: I don't think we will be
23 reconvening the second portion of this
24 examination, this hearing, until late July,
25 probably, with everyone's schedules. Which will
26 be upon us before you know it. But I'm just
27 saying if you want to reserve the right to call,
28 have the state's experts either review the
29 report or --

Argument

1 MR. WHITE: Yes, we do that.

2 THE COURT: Then I think you should have 60
3 days from the receipt of Dr. Shaffer's report.
4 And then maybe we will have -- that's 150 days
5 from now.

6 MR. CRAIG: Right in the middle of July.

7 THE COURT: So let's look at an August
8 hearing date. And about another day of
9 testimony, day and a half?

10 MR. CRAIG: It could be two days. So one
11 of our experts is here, Your Honor. And so we
12 were hoping, after my brief consultation with
13 him, perhaps sometime after Labor Day. It could
14 be shortly after Labor Day, the first or second
15 week of September?

16 MR. WHITE: Our expert -- one of our
17 experts is tied up the last two weeks of August.

18 THE COURT: So you are looking at
19 September. I'm in the second district, Biloxi,
20 in September, but we can hear it over there.

21 MR. CRAIG: Certainly. We would not
22 object.

23 THE COURT: So why don't y'all just get
24 together and decide a date in September, and I
25 will give this a -- clear the calendar for a
26 Tuesday/Wednesday, Wednesday/Thursday, a
27 Thursday/Friday. And we will have to enter
28 another order transporting your client back down
29 for the hearing. Anything else we need to take

Argument

1 up?

2 MR. CRAIG: Not for the petitioner, Your
3 Honor.

4 THE COURT: Mr. White, for the state?

5 MR. WHITE: Not today, Your Honor. Thank
6 you.

7 THE COURT: Mr. Sheriff, Mr. Walker will be
8 transported back today or in the morning?

9 DEPUTY: In the morning.

10 THE COURT: All right. We are off the
11 record.

12

13 (Whereupon the proceedings were concluded)

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Reporter's Certificate

1 STATE OF MISSISSIPPI

2 COUNTY OF HARRISON

3
4 I, HUEY L. BANG, CSR No. 1147, Official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 205 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of my
9 stenographic notes of the Hearings had on the 22nd day of
10 February, 2016 before the HONORABLE CHRISTOPHER L.
11 SCHMIDT, Circuit Court Judge of the Second Circuit Court
12 District of the State of Mississippi, being a regular day
13 in the February Term of Harrison County Circuit Court at
14 Gulfport.

15 This is to further certify that I have this date
16 filed the original and one copy of said transcript, along
17 with one CD in PDF language, for inclusion in the record
18 on appeal, with the Clerk of the Circuit Court of
19 Harrison County, Mississippi, and have notified the
20 attorneys of record and the Supreme Court of my actions
21 herein.

22 WITNESS MY SIGNATURE on this, the 28th day of
23 August, 2018.

24 
25 HUEY L. BANG, CSR #1147

26 Official Court Reporter

27
28 Court Reporter's Fee: \$494.40
29

IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

STATE OF MISSISSIPPI

NO. 2018-TS-01059

VERSUS

CAUSE NO. 25,945

ALAN DALE WALKER

DEFENDANT

=====

Transcript of the proceedings had and done in the above
styled and numbered cause before the Honorable Christopher
L. Schmidt, Circuit Court Judge of the Second Circuit Court
District of Mississippi, on December 1, 2016.

=====

APPEARANCES:

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Reported By:

Huey L. Bang, CSR #1147, RMR, CRR,
Official Court Reporter

Earl Stegall - Direct Examination

1 THE COURT: Good morning, gentlemen.

2 MR. WHITE: Good morning, Your Honor.

3 THE COURT: Are y'all ready to proceed?

4 MR. VOISIN: Yes, Your Honor.

5 THE COURT: Any housekeeping matters we
6 need to take up, anything left unattended to
7 since March -- when were we here?

8 MR. CRAIG: February, Your Honor, I think,
9 but none for the petitioners.

10 THE COURT: By the state?

11 MR. WHITE: No.

12 THE COURT: Mr. Voisin, your witness is
13 next?

14 MR. VOISIN: We call Earl Stegall.

15 THE COURT: Mr. Stegall, raise your right
16 hand.

17 (Oath administered by the Court)

18 THE COURT: Have a seat. You may proceed.

19 EARL STEGALL

20 Having been duly sworn testified as follows:

21 DIRECT EXAMINATION

22 BY MR. VOISIN:

23 Q. Morning, Mr. Stegall. Please identify yourself
24 for the record.

25 A. My name is Earl Stegall.

26 Q. And how is that spelled?

27 A. S-T-E-G-A-L-L.

28 Q. And where do you currently live?

29 A. In Biloxi, Mississippi.

Earl Stegall - Direct Examination

1 Q. Are you currently employed?

2 A. No.

3 Q. Are you retired?

4 A. Yeah, I'm basically, you could say -- I had a
5 bad stroke back in 2005, and haven't done anything too
6 much since then.

7 Q. Okay. I wanted to ask you about that. You had
8 a stroke. How has that affected your ability to testify
9 at this hearing?

10 A. Worst thing is memory. At first I couldn't
11 remember literally my sons names. And but gradually, you
12 know, I've gotten a lot, lot better. At first I couldn't
13 think very clearly or anything. And they thought that I
14 might actually be feeble minded, and I guess somebody
15 could still say that I am. But I got over it, I think,
16 pretty good. And surprised all the doctors as well.

17 Q. Okay. Do you think you have sufficient
18 recollection of the facts of this case?

19 A. As best I can. I've reviewed things and tried
20 to remember everything, particularly talking with you in
21 recent times, and that refreshed my memory. Now, that's
22 not to say I will remember everything today because I
23 still have problems with memory. But I will do my best.

24 Q. Okay. Mr. Stegall, to remind you that if it
25 would help if I could show you some documents to refresh
26 your memory, we could do that.

27 A. If I get to that point I would appreciate that.

28 Q. Thank you. Now, Mr. Stegall, I understand at
29 one time you practiced law?

Earl Stegall - Direct Examination

1 A. That's correct.

2 Q. Beginning in when, what year did you begin to
3 practice?

4 A. About '72 or '3. I can't really remember the
5 exact time. That's one of the things I have trouble
6 with, years, for some reason.

7 Q. And about how long did you practice law?

8 A. About '92 or '3, something like that.

9 Q. Okay. And when you did practice law, did you
10 handle murder cases?

11 A. I did a lot of them, yes. Uh-huh.

12 Q. Did you handle death penalty cases?

13 A. Did a lot those.

14 Q. And those cases were tried to a jury?

15 A. Yes.

16 Q. Now, you said around '92, '93 you stopped
17 practicing law, what happened?

18 A. Well, two things happened. One, I was
19 disbarred, and two, I was arrested and charged with a
20 crime that eventually led to my going to jail.

21 Q. Okay. And why were you disbarred?

22 A. I was -- collecting a fee they said and not
23 performing the work for two individuals.

24 Q. What were you convicted of?

25 A. Embezzlement.

26 Q. Embezzlement of?

27 A. Of clients funds out of a trust account.

28 Q. And how much time did you serve for that?

29 A. Actual in time was two years, seven months, and

Earl Stegall - Direct Examination

1 18 days in jail. And then after that I was on house
2 arrest until the end of my sentence.

3 Q. Now, Mr. Stegall, did you represent Alan Walker
4 in his capital trial?

5 A. That's correct.

6 Q. And some of the problems you were having took
7 place, like if you were disbarred in '92 or '93, some of
8 the problems you were having took place during your
9 representation of Mr. Walker?

10 A. What would be the year he was convicted?

11 Q. If I said 1991?

12 A. I don't know that I was having the problems then
13 or not. I truthfully have a little trouble, like I just
14 said, with dates. I should have asked that question, I
15 guess, beforehand.

16 Q. I wanted to ask you, for your representation of
17 Mr. Walker, do you have a file?

18 A. Not anymore.

19 Q. What happened to your file?

20 A. I kept all the capital cases because they go on
21 forever, okay, if there is a death sentence. And I kept
22 the files that I had on them. And at the time of
23 Hurricane Katrina, I happened to be living in a warehouse
24 that my cousin owned, and we got -- everything was there,
25 everything I had, including where I lived. And got about
26 seven foot of water in it and destroyed, washed out
27 everything, lost everything.

28 Q. All right. Now, I wanted to ask you some
29 questions about Mr. Walker's particular case. Do you

Earl Stegall - Direct Examination

1 recall the name of the person who was indicted with Mr.
2 Walker?

3 A. I'm going to need some help with that one.

4 Q. Does Jason Riser ring a bell?

5 A. I'm sorry?

6 Q. Does the name Jason Riser ring a bell?

7 A. That's it, okay. Uh-huh.

8 Q. In your representation of Mr. Walker, did you
9 file any motions to have any statements suppressed?

10 A. Yes, I did.

11 Q. And what was the result of that?

12 A. That was a successful motion -- that was the
13 only capital case I ever had where I won a motion to
14 suppress a confession. I was really proud of that one
15 when it happened.

16 Q. Okay. Now, when the -- when that confession was
17 suppressed, how did you assess the strength of your case
18 at that time?

19 A. I -- well, my whole defense was going to be he
20 didn't do it, the other kid did, and he just happened to
21 be with him, okay. And so at that point, place in time
22 without the confession, I thought that really
23 strengthened because I knew or believed that that kid was
24 not going to testify. So there would have been nobody
25 there to dispute too much of, you know, what I was going
26 to argue.

27 Q. It was your understanding --

28 A. That he was not going to testify.

29 Q. That Riser was not going to testify?

Earl Stegall - Direct Examination

1 A. Because of pending charges. But, of course,
2 right at the last second they made some arrangement for a
3 plea, you know, agreement, and he did, obviously.

4 Q. Okay. And you had a change of venue in this
5 case, didn't you?

6 A. Yeah. I can't remember, we either went to
7 Vicksburg or to Natchez, one of the two.

8 Q. Okay. And where did you -- where were you when
9 you learned that Riser was going to testify against your
10 client?

11 A. The trial was to begin on a certain Monday, and
12 I learned of it on a Sunday, I'm pretty sure that that's
13 correct. It may have even been Monday, but more likely
14 Sunday, okay. I think. I can't say exactly. I don't
15 know.

16 Q. Okay. And what was your response when you
17 learned that?

18 A. Surprised in one sense and, you know, I really,
19 what I thought then what I would do is ask for a
20 continuance, you know, and get it continued. And go a
21 different direction than what I had intended.

22 Q. And I would like to show you a document that's
23 -- it's in the record already, Your Honor. It's a
24 handwritten motion. Have it marked for identification --
25 or see if you -- just look it over and tell me if you
26 recognize that.

27 A. I recognize it and recognize my printing.

28 Q. Okay.

29 A. Yeah, I recognize it. Of course, I did that --

Earl Stegall - Direct Examination

1 I couldn't type.

2 Q. Okay. Could you identify what this is?

3 A. This is a motion for continuance after I learned
4 of the arrangement that the co-defendant had made and was
5 going to -- I knew he was then going to be testifying
6 against my client, Mr. Walker. So because I couldn't
7 type, I had to hand do it. And didn't have any time, you
8 know, to get anybody to do it. So I handwrote it to get
9 it filed and argued.

10 Q. Okay. And what's the date stamp on there, can
11 you read that?

12 A. August 5th, 1991.

13 Q. Okay.

14 MR. VOISIN: Your Honor I would like to ask
15 this be marked for identification. It's already
16 in the record.

17 THE COURT: Mark it as an exhibit then into
18 evidence.

19 (Defense Exhibit 1 marked into evidence)

20 BY MR. VOISIN:

21 Q. Mr. Stegall, how did learning about Mr. Riser's
22 deal with the state change your theories about your case
23 going in?

24 A. In a sense about the theory, the major thing
25 that it did was this; I thought for sure that once I got
26 that confession suppressed, I thought for sure that I
27 would be offered a plea offer for him so that he would,
28 at worst, receive, you know, a life sentence rather than
29 facing the death penalty situation.

Earl Stegall - Direct Examination

1 Q. Okay. Now, you've done capital trials before?

2 A. Oh, yes, sure.

3 Q. And you've prepared for penalty phases?

4 A. Oh, yes. And I thought it truthfully, you know,
5 obviously the guilt phase until, okay, until the
6 confession was suppressed, I thought the guilt phase was
7 a foregone conclusion, but after that it kind of switched
8 right at the last there. And I thought I had a shot at
9 that case, you know.

10 Q. Up until the deal you thought you had a shot?

11 A. That's right. Uh-huh.

12 Q. Up until that point, had you done any mitigation
13 investigation?

14 A. That -- the thing that I was going to do, I
15 remember I was going to have him address the jury rather
16 than have him testify. I think that's exactly what we
17 did. And I wanted to -- my thing in death penalty cases
18 was to personalize them. Make them a person, you know.
19 And tell their life history as well as you could so the
20 jury could look at them and think of them as a person and
21 not just somebody sitting there charged as a murderer.
22 And I remember, I don't have an independent recollection
23 of this, but I know I must have done it. We had the
24 mother come and testify, that was the plan, and then a
25 sister or a brother was going to testify. And I don't
26 really have a good independent recollection of what they
27 said or anything to be truthful with you.

28 Q. Did you ever go to their house before the trial
29 to talk to them?

Earl Stegall - Direct Examination

1 A. I would say that very unlikely, okay, that I
2 did. I would have talked to them certainly before they
3 took the stand, but I didn't -- and almost certainly as
4 well talk to them on the phone, that sort of thing.

5 Q. But you wouldn't have met them in person until
6 trial?

7 A. I don't think I did. But if they said I did, I
8 would have to take their word, but I don't remember at
9 all.

10 Q. Did you have any contact with Alan's father or
11 brother in Alaska?

12 A. I don't know. I truthfully can't remember. I
13 don't have any recollection of it.

14 Q. What about any contact with family members in
15 Florida?

16 A. Again, I may have, but, you know, I can't say
17 one way or the other. I just don't have a memory of it.

18 Q. And did you file any motions to get an
19 investigator to help with mitigation evidence?

20 A. I don't have any -- I'm sorry to keep saying it,
21 but I just don't remember to be truthful.

22 Q. Okay. Now, in this case, you had co-counsel,
23 who was that?

24 A. Robin Midcalf.

25 Q. And where was she working at the time?

26 A. I'm pretty sure that's while she was still
27 working for me, I think. Again, I'm not 100 percent sure
28 of that, but I think so.

29 Q. How much experience as a lawyer did she have at

Earl Stegall - Direct Examination

1 the time?

2 A. She was a new lawyer.

3 Q. And what was her role in your office?

4 A. She did everything that she -- that I could get
5 her to do, and she did a good job at it in the office.
6 She was a good office lawyer. And I was never
7 dissatisfied with anything like that that she did.

8 Q. Do you recall if you had her do any
9 investigation on the case?

10 A. Yes, I'm sure. I can't -- I don't have an
11 independent recollection, but I know I would have used
12 her for all of that, okay.

13 Q. For investigation?

14 A. Yes.

15 Q. Then you would have sent her to see Alan's
16 family?

17 A. And I looked at what she found and that sort of
18 thing, you know.

19 Q. And do you recall what she found?

20 A. No. I know that's awful, but I can't remember
21 very well anymore.

22 Q. Would that have been her first capital case that
23 you are aware of or --

24 A. I can't say for sure. I think so. Okay. I
25 think so. She was an intern for Judge Thomas, as I
26 recall. And she -- that was really where I got to know
27 her best. She worked in the district attorney's office
28 years before that. And I met her, but there was a trial
29 of a capital case, a woman I represented involved in a

Earl Stegall - Direct Examination

1 shooting of a highway patrolman. And she was Judge
2 Thomas' intern during that trial. That was really where
3 I got to know her the best.

4 Q. And let's see, something I overlooked before,
5 but did you consult with any experts about mitigation
6 evidence in the case?

7 A. I don't think so.

8 Q. Now, Mr. Stegall, if your recollection is off, I
9 can refer you to your affidavit. But at the trial, Mr.
10 Walker's mother brought a photograph and a certificate to
11 the trial that was introduced?

12 A. Uh-huh.

13 Q. Do you have any recollection of that?

14 A. No, I don't, I'm sorry.

15 Q. Mr. Stegall, I would like you to take a look at
16 this document and see if you --

17 MR. WHITE: To which I object.

18 THE COURT: I don't even know what it is.
19 You object to him looking at a document?

20 MR. WHITE: I object to him going back with
21 this affidavit that he did and he has no
22 recollection of now.

23 THE COURT: Overruled. You can approach
24 the witness and ask him to identify a document.

25 Only one at a time on the record, please.

26 BY MR. VOISIN:

27 Q. Mr. Stegall, can you identify that document?

28 A. Oh, yeah, I just read this again. I didn't know
29 what you were speaking of. I remember this.

Earl Stegall - Direct Examination

1 Q. And what is that document?

2 A. It's an affidavit that you asked me questions
3 prior to preparing, and I think you prepared it or
4 somebody in your office brought this over. And then I
5 read it, agreed with what it said insofar as truthfulness
6 and accuracy. You -- things I couldn't remember you
7 provided me copies of to look at to refresh my memory
8 that are reflected in it. And then I signed it.

9 Q. I would like you to look at Paragraph 2 and see
10 if that refreshes your recollection about --

11 THE COURT: What affidavit is this?
12 There's two of them in the record, in the
13 appellate record.

14 MR. WHITE: Then I don't have it.

15 MR. VOISIN: This is an affidavit dated
16 April 19th, 2012.

17 THE COURT: Does it have an exhibit sticker
18 35 at bottom?

19 MR. VOISIN: My copy doesn't have an
20 exhibit sticker, but -- yes, it is.

21 THE COURT: It's the second affidavit then.

22 MR. VOISIN: Yes.

23 THE WITNESS: I'm sorry, what was your
24 question?

25 BY MR. VOISIN:

26 Q. Have you had an opportunity to read the second
27 paragraph?

28 A. Yes.

29 Q. Does that refresh your recollection about --

Earl Stegall - Direct Examination

1 A. I'm sure.

2 Q. -- the preparation you did?

3 A. I'm sure that I wouldn't dispute the correctness
4 of it, but I truly don't have a real good independent
5 today memory of it. That's why I wanted to look at it
6 again because I have real trouble with memory.

7 Q. Okay. But you have no reason to dispute it?

8 A. No. I'm sure that that would have been
9 something that, whatever the reason, that would have
10 jogged my memory so they could be entered into the
11 affidavit, and they may not understand this, not having
12 had a stroke, but tomorrow I might remember it exactly.
13 But I just don't as I look at it, okay.

14 Q. Okay. Thank you. Now, when I spoke to you
15 recently, do you recall me showing you a report prepared
16 by Dr. Mendel?

17 A. Yes, uh-huh.

18 Q. Did you have an opportunity to review that?

19 A. Yeah, but right at the moment, truthfully, I
20 can't remember what it says. That's off my -- I
21 apologize for not being able to remember, but I want to
22 be completely truthful as I can. I just can't remember.
23 I remember reading it, but I can't remember what it said
24 to be truthful. Fairly lengthy if I remember right.

25 Q. Right.

26 A. And talked about some past family history, if I
27 remember right. But I can't remember the specifics of
28 it, okay.

29 Q. Okay. Do you have an opinion as to whether

Earl Stegall - Direct Examination

1 that's the type of investigation that you would have
2 wanted to perform if you had had -- if you had known that
3 this was not -- you were going to need a penalty phase
4 case?

5 A. Let me just put it like this, once I got that
6 confession suppressed, I thought I had a lock on the life
7 sentence. At that point, place in time everything
8 changed a little bit. And I wasn't as worried about the
9 penalty phase at all at that point, place in time because
10 of that.

11 Q. Now, if you had gotten a continuance, how much
12 additional work would you have done on the penalty phase?

13 A. You would have obviously -- you know, if you are
14 going to have that kid testify against him, the fact that
15 you've got the suppression confessed is not so
16 significant. I would have still gone the same way, he
17 did it and not my client.

18 Q. So you would have still gone the same way at the
19 guilt phase?

20 A. At the guilt phase, that's right. But would
21 have affected the penalty phase obviously if he was
22 convicted and probably certainly would have been
23 convicted.

24 Q. And just to be clear, other than having the
25 expectation of a plea offer, did you have any other
26 strategic reason for not doing more of a mitigation
27 investigation?

28 A. I can't say that I did. I wish I could remember
29 better and I could answer your question, but I just can't

Earl Stegall - Cross-Examination

1 remember.

2 MR. VOISIN: Beg the Court's indulgence.

3 No further questions, Your Honor.

4 THE COURT: Mr. White.

5 CROSS-EXAMINATION

6 BY MR. WHITE:

7 Q. Long time no see.

8 A. We've both gained weight and gotten older.

9 Q. Haven't we, though. Mr. Stegall and I went to
10 Perk together back when it was Perk. Another day and
11 age.

12 A. Long time ago.

13 Q. So I don't guess I have to introduce myself to
14 you. But now, you talked about this affidavit where you
15 said -- did you know Dr. Mendel?

16 A. I don't know him. 99 percent certain I didn't
17 recognize him.

18 Q. Did you have any way to contact Dr. Mendel at
19 that time?

20 A. I don't think I knew he existed at the time. I
21 really got to be careful when I answer questions because
22 I can't remember it like I used to since I've had that
23 stroke. It affected my memory pretty bad.

24 Q. And were there -- did you have him examined?

25 A. I think I did. I think, okay. Now.

26 Q. If there's a motion in the record and a --

27 A. I did. For sure. Okay. I remember when I
28 talked to the attorney representing him. I had Dr.
29 Maggio represent him. Now, I don't have an independent

Earl Stegall - Cross-Examination

1 memory of that, but it was pointed out to me and I'm sure
2 that I would have -- that would have been the guy that
3 did it all the time back then.

4 Q. And you don't have any idea -- well, of course
5 we presume that that copy of that report, since it was
6 never put in the record, disappeared in Katrina, right?

7 A. That would be gone with the wind, that's
8 correct.

9 Q. So we don't know what -- but you did not use it
10 in the trial, so it was not favorable to you, was it?

11 A. No. I never got a good report in the sense of a
12 good report, I mean one that was favorable to the
13 defendant, in a capital case from Dr. Maggio, I can tell
14 you that for sure.

15 Q. Now, did you write either one of these
16 affidavits yourself?

17 A. I gave him the information and he would tell me
18 things to help me remember, and I'm not saying that he
19 put words in my mouth, because if I, like, am told
20 something, and that will help me to remember it. And
21 some days I can remember things really clearly, and I
22 know that sounds ridiculous, but the next day you may not
23 remember the same thing and it's just a weird thing when
24 having a stroke.

25 THE COURT: For the record, I'm sorry to
26 interrupt you, who were you referring to when
27 you say "he," because we've been using "he"
28 referencing different people in the last few
29 minutes. Who is "he?"

Earl Stegall - Cross-Examination

1 A. Ask me the question again.

2 BY MR. WHITE:

3 Q. Who prepared this?

4 A. I say he, I mean the attorney that represents
5 the defendant. He and I, he had questioned me. And he
6 typed it up. Had it typed up. I don't type. And he had
7 it typed up after we talked and I told him the best I
8 could remember it.

9 Q. And do you remember that attorney's name?

10 A. Gosh.

11 Q. Is it the one that was just questioning you?

12 A. Just up here, I'm sorry.

13 Q. Mr. Voisin. So he prepared this, you did not,
14 and you say your memory is such that you remember some
15 things some days and some things the others, so --

16 A. Yeah.

17 Q. So we don't know about this, if everything in
18 here that you said that you really remember from what you
19 told him, right?

20 A. As I'm sitting here right now, I can't say I
21 remember everything exactly. But when I read it it helps
22 me to remember, I can say that. Okay. And certainly I
23 would have not signed anything that we wouldn't have
24 discussed prior to and known that it was true when I was
25 signing it, okay.

26 Q. And you said earlier that you had done quite a
27 few capital cases?

28 A. Quite a few.

29 Q. Won some of them too, didn't you?

Earl Stegall - Cross-Examination

1 A. Oh, yeah, some good luck.

2 Q. At the time you tried this, you were doing
3 capital cases on a regular basis?

4 A. Yeah. I pretty much did all of them at Harrison
5 County at that time because, you know, they always want
6 you to have an experienced attorney do them, so that's
7 not raised as a potential defense. So I done most of
8 them in Harrison County. I did, I can't tell you the
9 number to be truthful, a large number of capital cases.
10 And was successful in getting them, either me or at some
11 further phase, some other attorney taking over when I
12 felt like they needed to allege ineffective assistance.
13 You know, everybody's got to be checked, you know, in a
14 capital case. You get a death sentence, you know, what
15 the judge did, what the jury did, what the attorney that
16 did it, and even eventually appellate attorneys and so
17 forth. So if you can't take that heat you don't go into
18 that kitchen, it's that simple, you know.

19 Q. Were you ever held ineffective?

20 A. No.

21 MR. WHITE: One moment, Your Honor, please.

22 BY MR. WHITE:

23 Q. So as we sit here today, you don't have any real
24 independent recollection of what took place at the time
25 of trial and what your decisions were at the time of
26 trial, do you?

27 A. I can't answer that direct yes or no. I can say
28 in part this. I can remember certain parts of it
29 perfectly clear. I can't say that I remember all of it

Earl Stegall - Cross-Examination

1 that way.

2 Q. Prior to this hearing, did you go over your
3 testimony with Mr. Voisin?

4 A. Yes, I did, uh-huh.

5 Q. When was that?

6 A. Last night, and then once a while back, okay.
7 There was another hearing, and you -- I think somebody or
8 you, I believe, got sick.

9 Q. I got sick.

10 A. And we did the same thing then. About a 45
11 minute thing where, you know, we would review
12 basically what I had said to him at the previous time we
13 met, which was about the case. And he had the same sorts
14 of questions that he asked me just a few minutes ago in
15 examination.

16 Q. So had a rehearsal for the --

17 A. Basically, yes.

18 MR. WHITE: No further questions, Your
19 Honor.

20 THE COURT: Mr. Voisin, any redirect?

21 MR. VOISIN: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. VOISIN:

24 Q. Mr. Stegall, I would -- I understand your memory
25 sometimes comes and goes. I would like to show you
26 again, since Mr. White referred to Dr. Mendel. Take
27 another look at your affidavit dated April 19th, 2012 and
28 review Paragraph 4 to see if that refreshes your
29 recollection.

Earl Stegall - Redirect Examination

1 A. I did read it, but I still, sitting here, don't
2 have a recollection of it, of having read it. I'm sorry.

3 Q. Now, Mr. White asked you some questions about
4 Dr. Maggio.

5 MR. WHITE: I didn't ask any questions
6 about Dr. Maggio, I just asked him if he
7 examined him.

8 MR. VOISIN: And he --

9 THE COURT: Is that an objection?

10 MR. WHITE: Yes.

11 THE COURT: Overruled. Continue your
12 examination.

13 BY MR. VOISIN:

14 Q. Mr. White mentioned your request for an
15 examination. Do you recall the purpose of that
16 examination or the basis for your request for that?

17 A. Well, like you would in any capital case, you
18 want to make sure that they're competent to stand trial,
19 assist you in their defense.

20 Q. And in your understanding, competency is not the
21 same as mitigation, is it?

22 A. No, not at all.

23 Q. So if you requested for competency, you weren't
24 thinking about mitigation at the time?

25 A. I'm 99 percent sure it would have just been for
26 competency. I don't really remember. I can't say. But
27 I know that's what I would have asked for.

28 Q. Mr. Stegall, I want to show you a page of the
29 trial record to see if it refreshes your recollection.

Earl Stegall - Redirect Examination

1 In particular, it's on the upper right-hand corner marked
2 Page 254 of the trial record.

3 THE COURT: Of the transcript?

4 MR. VOISIN: Of the transcript, yes,
5 pretrial transcript.

6 MR. WHITE: Do you have copy?

7 MR. VOISIN: Yes.

8 BY MR. VOISIN:

9 Q. Primarily, bottom of 254, and onto 255, lines
10 beginning at Line 22 and going on to the first three
11 lines of the next page.

12 A. I read it, but I truthfully don't remember ever
13 saying it. But I don't remember anything about it. I'm
14 sorry.

15 Q. That's okay. All right. So this didn't refresh
16 your recollection?

17 A. I truthfully can't remember.

18 Q. Okay. We will just stand on the record then.
19 Now, with respect to that examination, I would like to
20 show you the order that Judge Terry signed granting the
21 motion, and I wanted to ask you a couple of questions
22 about that. This is in the record, but the page number
23 didn't reproduce, but it's an order that Judge Terry
24 entered on July 26th of 1991.

25 A. Okay.

26 Q. Can you identify that order for us?

27 A. Again, I'm sorry, I don't have an independent
28 recollection of it. But on its face it's obviously an
29 order sustaining our motion for the psychiatric

Earl Stegall - Redirect Examination

1 evaluation.

2 Q. And when was that granted?

3 A. The date reflected on it is July 26th, 1991.

4 Q. Okay. Thank you. And before we were talking
5 about the trial began August 5th of '91?

6 A. No idea.

7 Q. Okay. Do you recall whether you provided Dr.
8 Maggio any materials to review?

9 A. No, I can't say I did or didn't. I just can't
10 remember. I'm sorry I have to keep saying that, but
11 that's the truth, okay.

12 Q. Okay. So you don't remember if you spoke to him
13 about Mr. Walker's case?

14 A. Oh, I know I would have, I just can't say that I
15 remember it. There is a difference, okay.

16 Q. Okay. It would have been about competency,
17 though?

18 A. That's correct.

19 MR. WHITE: I object to that, his comment
20 about what --

21 THE COURT: I sustain that. The records
22 will reflect what they will reflect. Was it a
23 competency motion or psychiatric evaluation?
24 Those are two different things.

25 A. I don't remember, I'm sorry.

26 MR. VOISIN: Right. Just in the record it
27 says he was asking for Mr. Walker to be examined
28 for competency.

29 THE COURT: In the motion?

Earl Stegall - Redirect Examination

1 MR. VOISIN: In the motion. It was an oral
2 motion. There was no written motion. I have no
3 further questions.

4 THE COURT: Hold on one second. To the
5 lawyers, the psychiatric evaluation, competency
6 evaluation, whatever y'all are putting on it,
7 there is no record of that report in any --
8 anywhere?

9 MR. VOISIN: I've never seen it, Your
10 Honor.

11 MR. WHITE: Of course, Your Honor, the
12 whole purpose was that the state not be able to
13 use it. And --

14 THE COURT: Privilege.

15 MR. WHITE: At that point, unless they used
16 it at trial, they were not going to get a copy
17 of it. And he didn't use it at trial. So the
18 state -- it's not in the state's record
19 anywhere. We have a motion and we have the
20 order paying Dr. Maggio, but we don't --

21 THE COURT: All right. As the petitioner,
22 do you have any objection to me asking Mr.
23 Stegall a few questions?

24 MR. VOISIN: No, Your Honor.

25 THE COURT: Mr. White?

26 MR. WHITE: No, of course.

27 EXAMINATION

28 BY THE COURT:

29 Q. Mr. Stegall, good morning.

Earl Stegall - Examination by the Court

1 A. Good morning to you, sir.

2 Q. The -- I don't have Dr. Mendel's report, the one
3 that you referenced. I think there is a new report, I
4 guess. It's the same one that's in the appellate record?

5 MR. VOISIN: Yes, Your Honor. Dr. Mendel's
6 initial report. He did file a supplement, but I
7 did not show that to Mr. Stegall.

8 THE COURT: All right.

9 BY THE COURT:

10 Q. I can't recall the context of the entire report.

11 A. I can't either, I'm sorry.

12 Q. But regardless of Dr. Mendel's report, would you
13 have wanted, as the trial attorney, to put before the
14 jury in sentencing any evidence or testimony of Mr.
15 Walker's other criminal activity or alcohol abuse or drug
16 abuse?

17 A. I don't have a recollection, but I know what I
18 would have done differently -- I really expected right at
19 the last to get that continuance when that boy decided --
20 you know, they worked the arrangement out to testify. I
21 would have then changed course, in a sense, to just do a
22 shotgun approach, you know what I mean, you just try
23 everything in the world you can think of to avoid that
24 death sentence. I would have almost certainly done
25 everything to do that, file that sort of motion.

26 Q. If a mitigation psychologist, psychiatrist had
27 presented a report that included criminal behavior on
28 behalf of your client, do you think the state would
29 have --

Earl Stegall - Further Redirect Examination

1 A. No, I don't know. It would have been according
2 to what the crime was. Been a misdemeanor, no problem.
3 If it had been a serious crime, that would have been a
4 totally different circumstance.

5 Q. Would it be something, do you think, as the
6 trial attorney you would not want the state to have in
7 their hands --

8 A. I wouldn't.

9 Q. Let me finish my question for the simple reason
10 the court reporter can't --

11 A. I understand.

12 Q. That you wouldn't want the state to be able to
13 use it against you or against your client in the
14 sentencing phase?

15 A. I would not have wanted them to see anything
16 about any violent or really serious crime in any phase
17 involving any other charges.

18 Q. That's across the board in all representations?

19 A. Sure.

20 Q. All right.

21 THE COURT: If that generates any questions
22 by either side, you are more than welcome to
23 reopen your examination.

24 MR. VOISIN: One minute, Your Honor. Just
25 a quick question, follow up.

26 FURTHER REDIRECT EXAMINATION

27 BY MR. VOISIN:

28 Q. Mr. Stegall, standing here now, or even then
29 since you hadn't done much in the way of mitigation, can

Earl Stegall - Further Cross-Examination

1 you really say exactly what you would or would not
2 have done since you don't have the complete picture or
3 the complete investigation?

4 A. I would have done everything I could have
5 thought of to do. That's the best answer I can give you.

6 Q. And only after you have all the facts can you
7 make a decision?

8 A. That's correct.

9 MR. VOISIN: Thank you.

10 THE COURT: Mr. White?

11 MR. WHITE: Yes.

FURTHER CROSS-EXAMINATION

12
13 BY MR. WHITE:

14 Q. Do you think that trial of capital cases and
15 what has -- is used in capital cases has changed in the
16 last 26 years?

17 A. Not to my knowledge that much. I still follow
18 them, you know. You don't ever lose the interest.

19 Q. But I mean as far as some of the mitigating
20 evidence and the intensity in that?

21 A. I don't think it has in Mississippi. I really
22 don't. I may be wrong about that. Maybe I shouldn't say
23 that without following it more. You never know what's
24 going to affect a jury, that's one thing I can say. I
25 learned that early on, that what you think may be so
26 significant for them to consider may, in fact, not be
27 significant at all. And what you think insignificant,
28 may be a big turning point for them, you never know.
29 That's why I said use that shotgun approach.

Matthew Mendel, Ph.D. - Direct Examination

1 Q. One other question is that, was there anything
2 about the defendant, Alan Dale Walker, that gave you
3 cause to think you should hire a psychologist?

4 A. Nothing at all.

5 MR. WHITE: Thank you.

6 THE COURT: You can step down. Who is
7 next?

8 MR. CRAIG: Dr. Mendel.

9 THE COURT: He will be a while?

10 MR. DAVIS: Yes, sir.

11 THE COURT: Y'all want to take a quick
12 break?

13 MR. CRAIG: Yes, sir.

14 (Recess)

15 (Oath administered by the Court)

16 THE COURT: Have a seat.

17 MR. CRAIG: Thank you, Your Honor.

18 MATTHEW MENDEL, PH.D.

19 Having been duly sworn testified as follows:

20 DIRECT EXAMINATION

21 BY MR. CRAIG:

22 Q. Please introduce yourself to the court?

23 A. I'm Dr. Matt Mendel.

24 Q. Where do you live?

25 A. In Raleigh, North Carolina.

26 Q. Please tell the Court about your education.

27 A. I received my undergraduate degree, my
28 bachelor's from Princeton, University in 1984 with a
29 major in psychology. I did my graduate work at the

Matthew Mendel, Ph.D. - Direct Examination

1 University of Michigan where I obtained my master's
2 degree and then my Ph.D. in clinical psychology. I
3 received my Ph.D. in 1992.

4 Q. What do you do for a living?

5 A. I do both clinical psychology and forensic
6 psychology. I have a private practice in Raleigh where I
7 do my clinical work. And then I also do forensic work
8 all over the country.

9 Q. Do you have any specialties within the field of
10 clinical psychology?

11 A. Yes, I do. My clinical work is primarily with
12 children and teenagers. And I work with a variety of
13 different types of issues, but a great deal of my work is
14 with people with children and teenagers with high
15 functioning autism. Or what -- they've recently changed
16 the name of the diagnosis, but until what recently was
17 referred to as Asperger's syndrome, so I do a lot of work
18 with kids and teenagers with that. And then I work in
19 terms of adults, I work a lot with adult men who were
20 sexually abused in their childhoods.

21 Q. And you've talked about doing forensic
22 evaluations. Is that in -- or forensic psychology work.
23 Is that in civil cases or criminal cases, or both?

24 A. Both. But the vast majority is criminal. I've
25 only been involved in six or seven civil cases. The rest
26 have been criminal.

27 Q. What percentage of your time or income is
28 devoted to clinical versus forensic work?

29 A. Time wise it's about 50/50. Forensic work pays

Matthew Mendel, Ph.D. - Direct Examination

1 a little bit better. So forensic is probably 60, 65
2 percent of my income. Basically I have a clinical
3 practice that, Monday, Tuesday, Wednesday, I see clients,
4 and as much as possible, I leave Thursday and Friday for
5 whether it's travel for evaluations, or for writing
6 reports and doing reading and so forth.

7 Q. In terms of your criminal forensic work, what
8 kind of cases are you involved in?

9 A. Well, as I've said, the vast majority are
10 criminal cases, and of those, the -- almost all are
11 capital murder death penalty cases. And without
12 exception, across both the capital murder, the death
13 penalty cases, across the criminal cases more generally,
14 and in the civil cases, it basically always involves
15 childhood trauma, impact of childhood trauma. I get
16 contacted, essentially, to evaluate individuals facing
17 criminal charges, or sometimes as in this case, in
18 appellate work, defendants having been previously
19 convicted of a crime to examine and assess for the
20 presence of childhood trauma, negative or destructive
21 experiences in their life, and to be able to assess the
22 impact upon them.

23 Q. How many times have you been offered to the
24 court as an expert in the field of evaluating the impact
25 of childhood trauma or experiences on persons accused of
26 a crime?

27 A. I believe this is my 18th time that I've
28 testified in court.

29 Q. Do you testify mostly for the defense, mostly

Matthew Mendel, Ph.D. - Direct Examination

1 for the prosecution, or both in criminal cases?

2 A. I have exclusively been hired, retained by the
3 defense. I've never been contacted by the prosecution in
4 any case. In civil cases, it's been the plaintiffs
5 attorneys that have contacted me.

6 Q. Have you ever been rejected as an expert by any
7 court?

8 A. No, I have not.

9 Q. You talked about 18 cases in which you've
10 testified. Have you been consulted or retained for
11 forensic work in cases in which you have not testified?

12 A. Yes. That's actually the majority of cases.
13 I've been involved all together in approximately 130
14 cases, not all of those are capital murder cases, but
15 that is the majority. I would estimate probably -- well,
16 I already said six or seven have been civil cases and
17 there may have been another ten that were murder cases
18 but not death penalty cases. So about 110 capital murder
19 death penalty cases in which I have not been -- either
20 not been called by the defense at the time of trial, or
21 in which a plea agreement was reached prior to trial, so
22 I have not testified.

23 Q. What professional memberships do you have?

24 A. I'm a member of the American Psychological
25 Association and its forensic division, which is called
26 the American -- I think of it as the APLS, American
27 Psychology-Law Society. I'm a member of the North
28 Carolina Psychological Association and its division of
29 Independent Professional Practice. I'm also a member of

Matthew Mendel, Ph.D. - Voir Dire Examination

1 an organization called the Male Survivor, which is a
2 support -- it's basically a professional network of
3 therapists who work with -- it's a variety of different
4 people involved with it, but they have a professional
5 directory of clinicians who work with adult male
6 survivors of childhood sexual abuse.

7 Q. Dr. Mendel, have you published on the topic of
8 the long-term effect of childhood trauma, including
9 sexual abuse, on adult men?

10 A. I have. I'm the author of a book entitled The
11 Male Survivor -- because it's an academic book, so it has
12 to have a colon. Male Survivor: Impact of Sexual Abuse.
13 That came out in 1995. I've written a few, three or four
14 articles related to sexual abuse, as well as
15 presentations at conferences on the topic.

16 MR. CRAIG: Your Honor, we tender Dr.
17 Mendel as an expert in psychology, and more
18 specifically, on the impact of childhood
19 traumatic factors on the psychological
20 development of adults.

21 THE COURT: Mr. White?

22 MR. WHITE: I have a question or two about
23 that.

VOIR DIRE EXAMINATION

24 BY MR. WHITE:

25 Q. Dr. Mendel, I'm Marvin White. Is there a
26 recognized specialty dealing with people, survivors of
27 sexual abuse under psychology, by the APA?
28

29 A. I'm not sure what you mean by a recognized

Matthew Mendel, Ph.D. - Voir Dire Examination

1 specialty. It's a topic.

2 Q. Is it a recognized specialty like forensics or
3 clinical?

4 A. No, no, no.

5 Q. So this a special --

6 MR. CRAIG: Your Honor, if he could be
7 allowed to answer the question.

8 THE COURT: Mr. White, let the witness
9 answer the questions. You can continue your
10 answer.

11 A. No, there is not any sort of -- the way I would
12 look at it is that's a much broader topic as in there's
13 the area of clinical psychology, the area of
14 neuropsychology, area of forensic psychology, but people
15 then specialize. Somebody might specialize in working
16 with anxiety disorders. Somebody might specialize in
17 working with children of divorce. Those are not
18 recognized fields of study, but somebody can certainly
19 have -- I think we all tend to have areas in which we
20 specialize.

21 BY MR. WHITE:

22 Q. But it is not a recognized specialty?

23 A. Under the terms that you are using, no.

24 Q. What's wrong with the terms I'm using?

25 A. I think you are talking apples and oranges. I
26 think that the --

27 Q. What are the specialties that the American
28 Psychological Association recognizes?

29 A. Well, I think there's actually quite a few. But

Matthew Mendel, Ph.D. - Voir Dire Examination

1 clinical psychology, forensic psychology,
2 neuropsychology. American Psychological Association,
3 since it's not exclusively related to clinical, but they
4 would also cover experimental psychology, developmental
5 psychology, but they are not going to be looking at
6 specializations in particular populations in working with
7 marital. They are not going to have a specialization in
8 those who do marital therapy, or those who do group
9 therapy, or those who work with anxiety disorders, or
10 those that work with abuse survivors, or those that work
11 with depression, or any other clinical area. Or for the
12 same -- in the same way, they are not going to have a
13 category of recognition of those who do cognitive
14 therapy, those who do behavioral therapy, those who do
15 psychodynamic therapy. That's just not -- that's why I'm
16 saying I think it's apples and oranges.

17 Q. So you are not board certified in this area that
18 you claim to be a specialist in?

19 A. No, I'm not.

20 MR. WHITE: Your Honor, we would accept him
21 as a psychologist, but this other expertise we
22 would object to.

23 THE COURT: I think for the record he was
24 offered by Mr. Craig as more specifically the
25 impact of childhood traumatic factors on the
26 psychological development of adults is what you
27 said?

28 MR. CRAIG: Yes, that's right, Your Honor.

29 THE COURT: The court will accept him as an

Matthew Mendel, Ph.D. - Direct Examination

1 expert in the field of psychology, and to
2 whatever area he touches on in that specialty, I
3 will give it what weight and credibility I think
4 it deserves. So you will be allowed to give
5 expert witness opinions in this regard.

6 MR. CRAIG: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. CRAIG:

9 Q. Dr. Mendel, please tell the Court what you were
10 asked to study with respect to Alan walker.

11 A. I was asked to address the -- to explore the
12 presence of possibly traumatizing factors in Alan
13 Walker's life, and to address the impact of those factors
14 upon him, how they contributed, if at all, to him, to his
15 childhood development, and to becoming the adult he
16 became.

17 Q. Can you define what you mean by traumatizing
18 factor?

19 A. I would define it as anything that is beyond the
20 normal range of experiences. So destructive, or painful,
21 or psychologically disturbing factors that are beyond the
22 regular bumps and bruises that we all experience in
23 childhood. It could be a very wide range of things. So
24 it could certainly cover physical abuse, sexual abuse,
25 emotional, verbal abuse. It could cover parental
26 neglect. It could cover severe poverty, family
27 instability, transitions, homelessness, could cover an
28 injury, a severe injury, that if somebody experienced
29 that. A physical disablement. It could cover if

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1 somebody grew up in an environment with very high levels
2 of lead, that could be a traumatizing factor. So a wide
3 -- any destructive disturbing factor in a person's life
4 that's beyond the normal range of experiences.

5 Q. How does a psychologist assess the presence or
6 absence of traumatizing factors in the life of the person
7 they're studying?

8 A. I believe that hopefully with by learning from
9 as many sources as possible. I certainly listened
10 closely to the defendant himself. I want to understand
11 the experiences he's had in his life. I want to
12 understand them from his point of view, and how he sees
13 them affecting him. But then I also want to learn them
14 from -- learn the perspective of as many collateral
15 sources as possible. So interviewing family members,
16 parents, siblings, childhood friends, people that knew
17 the defendant, contemporaneously knew him during his
18 childhood. School records, if they're available.
19 Medical records, criminal legal records. Sometimes
20 there's records from department of social services.
21 Whatever sort of background records, and I'm looking
22 there for either corroborating evidence, or in some cases
23 conflicting or contradictory evidence. Anything that can
24 help give me as full and balanced and comprehensive of a
25 sense of this defendant's childhood as possible.

26 Q. Turning then to Mr. Walker's case, did you
27 review any documents or speak to any people in preparing
28 to give an opinion about Mr. Walker in this case?

29 A. I spoke to a pretty large number of people.

Matthew Mendel, Ph.D. - Direct Examination

1 This was a good opportunity for me. I was grateful for
2 the chance to speak, actually, to more people than I
3 generally do. I spoke obviously with Alan Walker
4 himself. I think we met on -- initially on two separate
5 days for a total of about eight hours. And that was back
6 in -- I'm not sure if it was 2007 or 2008. 2008 was when
7 I wrote my report. So I don't recall the dates of our --
8 I probably have them. But yes, 2008 I spoke with him on
9 two separate days for a total of about eight hours. And
10 then I interviewed face-to-face in person Alan's mother,
11 Anita Frederick. Alan's daughter, Michelle Walker.
12 Alan's former girlfriend and mother of Michelle Walker,
13 that's Robin Saucier Marroy, S-A-U-C-I-E-R and then
14 M-A-R-R-O-Y, I believe.

15 Q. You don't need to pay attention. Counsel
16 opposite may consult with each other, but don't -- they
17 will have an opportunity to ask you questions.

18 A. Okay. I spoke with three people who grew up in
19 the same neighborhood as Alan. His -- these were three
20 sisters, Brenda, Marie, and Mary Reyer, R-E-Y-E-R. I
21 believe that's everybody I spoke with face-to-face, but
22 then I also spoke by telephone with his half sister,
23 Amanda Frederick. His half brother -- I can't remember
24 if I spoke with Leon. I think I spoke with Leon. Yes, I
25 spoke with his half brother Leon, and then Leon Frederick
26 and his full brother Terry Walker. And I realized seeing
27 here that there is one other person I spoke with, this is
28 his former girlfriend Sherry Schroeder. So those were
29 the individuals I spoke with.

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1 In terms of documents that I reviewed, I read
2 the declarations of numerous individuals, including many
3 of those that I just mentioned, but also in addition,
4 Faye Breland, who was Alan's mother's former employer,
5 who testified here back in February. Earl Stegall that
6 just testified now, his trial attorney. Michael Shavers,
7 who is Amanda's father, his sister Amanda's father.
8 Michael Shaver's sister, Paula Shavers. And all these
9 individuals grew up or lived in that same neighborhood.
10 And then finally, Nellie Richards, who also testified
11 here in February, that's Alan's maternal aunt, Anita's
12 sister.

13 Q. You talked about interviewing Mr. Walker in
14 2008. Did you have an opportunity to further interview
15 and evaluate Mr. Walker?

16 A. Yes. I returned in January of this year,
17 January 2016, and spoke with him and also conducted some
18 psychological testing, some more formal assessment with
19 him.

20 Q. In any of these interviews, including the one
21 with Mr. Walker, but any of the ones you've spoken about
22 in your testimony, were any of Mr. Walker's attorneys
23 present?

24 A. No, they were not.

25 Q. Were you present in February of this year for
26 the evidentiary -- the beginning part of the evidentiary
27 hearing before Judge Schmidt?

28 A. Yes, I was.

29 Q. After the hearing in February, after the hearing

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1 concluded in February, February 22nd, 2016, did you have
2 an opportunity to meet or talk with any people about Alan
3 Walker?

4 A. Yes. I spoke -- I don't recall the exact amount
5 of time, but in pretty -- at length with both Alan's
6 father, Ronald Walker and his brother, Terry Walker, were
7 both down here and testified in the -- in that portion of
8 the evidentiary hearing, and I had a chance to sit down
9 with them and interviewed them at that time.

10 Q. And you're familiar that there is another expert
11 in this case on behalf of Mr. Walker, Dr. Robert Shaffer?

12 A. Yes, I am.

13 Q. Have you had an opportunity to talk with Dr.
14 Shaffer about your report and his report?

15 A. Yes. Both Dr. Shaffer and I were here -- now
16 I'm blanking on the date of when this was initially
17 scheduled. But we were here in --

18 Q. September?

19 A. September. And so we had a chance to speak
20 then, and I received a copy of his report as well.

21 Q. Have you prepared any reports as a result of
22 your studies?

23 A. Yes. I prepared a report dated May 15th, 2008.
24 It's a 12 page report. And then I did a brief
25 supplementary report in January, January 27th of 2016
26 after my visit, visits with him that month.

27 Q. Very good. I've handed you a document, Dr.
28 Mendel. Do you recognize it?

29 A. Yes, I do.

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1 Q. What is it?

2 A. There is a cover page with an affidavit simply
3 stating that this is my report, and then the remainder is
4 the 12 pages of that report that I wrote in 2008.

5 MR. CRAIG: Your Honor, I would ask this be
6 marked for identification at this time.

7 THE COURT: All right.

8 (Defense Exhibit 2 marked for identification)

9 BY MR. CRAIG:

10 Q. Dr. Mendel, I'm now handing you another
11 document. Do you recognize that document?

12 A. Yes, I do.

13 Q. What is that?

14 A. That's my supplementary report, two-page report
15 dated January 27th, 2016.

16 MR. CRAIG: Your Honor, I would like that
17 to be marked for identification as well.

18 A. Please.

19 THE COURT: All right.

20 (Defense Exhibit 3 marked for identification)

21 BY MR. CRAIG:

22 Q. Dr. Mendel, earlier in your testimony, when you
23 were listing the people that you met with and
24 interviewed, you had occasion to look at a document to
25 confirm or to assist you in picking the date. Please
26 tell the Court what document you were looking at to help
27 you in that way.

28 A. It's the first of those two documents that you
29 just submitted for identification. It's my -- the first

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1 of the two reports that I wrote, the one dated May 15th,
2 2008.

3 Q. Okay. Thank you. And if you would look at your
4 first report, Page 2 of the 2008 report is what I will
5 call it. I believe in your testimony you referred to
6 Alan's former girlfriend and the mother of his daughter,
7 Michelle, as Robin Marroy. And this document says Robin
8 Martin. Can you just help me out with that, why the
9 discrepancy between what you testified and what's in this
10 document?

11 A. I do see that. I know that Saucier is Robin's
12 maiden name. That's the name she was born with. She had
13 been married previously to a man named Leroy Marroy,
14 which is why I recall the name that way. I am presuming
15 that Martin must mean that she is married again after her
16 divorce from Mr. Marroy and after her relationship with
17 Alan to someone of the last name Martin. The only other
18 possibility I can think of is that it was a
19 misrecollection and typo on my part. If that's the case
20 I apologize for that.

21 Q. But that is the person, the person listed in the
22 report here on Page 2, is the same person that you've
23 testified that you talked with?

24 A. That's correct.

25 Q. Okay. Dr. Mendel, do you have an opinion to a
26 reasonable degree of scientific or psychological
27 certainty whether Alan Walker experienced traumatic
28 factors or events in his childhood, or traumatizing
29 factors, I'm sorry, is the way you phrased it previously?

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1 A. Yes, I do. He experienced a -- I think the word
2 I used in my report was a plethora. So he experienced a
3 wide range of disturbing events that have had a profound
4 impact upon him.

5 Q. And do you have an opinion to a reasonable
6 degree of scientific or psychological certainty whether
7 these traumatizing factors had an impact on Alan Walker's
8 psychological development into adulthood?

9 A. Absolutely.

10 Q. And in particular, do you have an opinion to a
11 reasonable degree of psychological scientific certainty
12 whether these traumatizing factors had an impact on Alan
13 Walker's psychological development at the time of the
14 offense in this case, which I believe was September 8th,
15 1990?

16 A. I do. Yes, I do hold that to a very high degree
17 of certainty. It is my opinion, my belief, my conviction
18 that we can only understand Alan's behavior on that date
19 by understanding and taking into account this -- these
20 multiple factors, the traumas that he experienced in
21 childhood. That those are the direct antecedents of his
22 behavior on that date.

23 Q. Are you saying, and we will talk about those
24 further in your testimony, but do you mean by that that
25 the events of September 8th, 1990 were predetermined in
26 some fixed way by Alan's prior traumatizing
27 circumstances?

28 A. No. Absolutely not. And I apologize if I in
29 any way, if my answer gave that impression. I don't

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1 believe in predetermination. I believe in free will. I
2 also believe that factors in our lives, childhood events,
3 whether those be benign and positive events, or whether
4 those be traumatizing events, have profound impacts upon
5 us, and lead us in certain directions. That people who
6 have experienced abuse of various sorts have higher rates
7 of substance abuse, for example. Higher rates of
8 aggression or violence, for example. I think what --
9 this wasn't the wording of the question to me in the
10 referral, but to a large degree, the question came down
11 to, where does Alan Walker's rage, and rage at women in
12 particular, where did that come from? What are the
13 sources of that? And we can only understand that by
14 looking at this full range of factors in his childhood.

15 Q. And are the factors, the traumatizing factors
16 that you are referring to, discussed in your 2008 report?

17 A. Yes, they are.

18 Q. How did you organize the findings in your 2008
19 report? How is it laid out?

20 A. What I attempted to do is first to layout, to
21 present the different traumatizing factors in roughly
22 chronological order. It wasn't possible to do that in
23 entirety because, of course, the different factors
24 overlap and cover long ranges of time. But I tried to
25 present them roughly in chronological order, initially,
26 and I did that actually as bullet points with some sub
27 headings to go through. Here is the first one
28 chronologically, here is the next, and so forth. And
29 then I talked about their more immediate impact on him,

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1 how it affected him as a child, together, this
2 constellation of events. And then finally, it turned to
3 how they affected him over the course of his life. How
4 it affected him as an adult. How they affected his
5 sexual development, and his anger, his relationships with
6 women, and so forth.

7 Q. Okay. Turning then to a discussion of those
8 traumatizing factors, what is the first chronologically,
9 what is the first traumatizing factor that you believe
10 Alan Walker suffered?

11 A. The first one I referred to was extreme poverty
12 and instability. This would have been in the aftermath
13 of his parents' separation, subsequent divorce. But even
14 before they were legally separated, the father was away
15 working, I think in different states. And there was a
16 period of time early in Alan's life when he and his
17 mother and brother, and I believe Alan, would have been
18 three or four at the time, Terry would have been one or
19 two at the time, the three of them for a period of time
20 were actually homeless, living in a vehicle. At some
21 point in time it was the three of them and another
22 couple, all living in this vehicle. So not only did they
23 not have a home, they also didn't even have a stable city
24 or state where they were living. They were moving from
25 -- back and forth from Florida, to Louisiana, to
26 Mississippi, and I have no idea of the order of those
27 things. But moving about, living in the vehicle. So
28 this first factor is just poverty, instability,
29 transience.

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1 Q. And what were your sources of information for
2 that, for assessing that as a traumatizing factor?

3 A. Initially, Alan himself. It was then confirmed,
4 though I felt somewhat minimized, but confirmed to a
5 large degree by his mother, Anita. Terry spoke about it,
6 though he doesn't have the direct recollections of those
7 times. So he talked about it as something that he grew
8 up knowing about. Alan has some recollections from that
9 time because of being a couple years older. I'm trying
10 to recall if Ronald Walker, the father, spoke about it
11 here in the -- that wouldn't have been a source,
12 obviously, in my report in 2008, but I believe it may
13 have been corroborated.

14 MR. WHITE: Objection, Your Honor. If it's
15 not part of his report, we haven't had a chance
16 to deal with this. We object to him testifying
17 about that.

18 MR. CRAIG: I believe he is talking about
19 Mr. Walker's testimony, which was in open court
20 before Your Honor.

21 THE COURT: The brother?

22 MR. CRAIG: The father.

23 THE COURT: Excuse me, the father.

24 MR. WHITE: I think he said in talking with
25 is what he said, not what he heard in court.

26 THE COURT: You can answer. I will take it
27 for what it's worth.

28 A. What I was saying is I was trying to recall
29 whether Ronald Walker spoke about that. I actually was

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1 referring to here in court, and I just don't recall from
2 my recollection of that.

3 BY MR. CRAIG:

4 Q. Okay. What chronologically was the next, and we
5 will talk about the effects of these in more detail in
6 later questions, Dr. Mendel. But what is the next
7 chronologically set of traumatizing factors in Alan
8 Walker's childhood?

9 A. Lack of parental supervision and oversight.
10 That, essentially, there was no one there providing
11 supervision, taking care of these children. Alan was
12 actually placed in a role of looking out, even at age
13 four, five, six, for his younger brother. At an age when
14 he really wasn't prepared to do so. And this was even
15 after they were no longer homeless, that they had a home
16 in which they lived.

17 Q. Was there a particular incident that stands out
18 from Alan's early years as a traumatizing circumstance or
19 experience?

20 A. Well, there were a number, and I think first
21 regarding that parental supervision that I learned about
22 from Alan, but then perhaps even more powerfully so his
23 testimony here from Terry, his brother, who was asked, I
24 don't recall if it was on direct or on cross-examination,
25 he was asked who provided the -- who looked after the
26 kids when his mother was at work? And he said no one.
27 And he was asked, so, who -- what sort of supervision and
28 care did you all receive? And he said none. And I think
29 he was asked what about your stepfather, Winfred. He

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1 said nope, he would either be at work, or if he was home
2 he was drinking. And essentially, these kids were left
3 free to roam around, do whatever they wanted without
4 supervision.

5 Q. Was -- what was the next traumatizing factor or
6 event that you have discovered in your study of Alan
7 Walker's childhood?

8 A. This was a particular incident that Alan
9 recounted to me that was then corroborated by his mother,
10 or I guess to be more precise, his mother corroborated
11 that Alan told her about this event back at the time he
12 was five or six years old. He was taken to the home of a
13 woman who was, I believe, a friend of the mother. And he
14 told me about this event that -- what was really striking
15 about it was how intensely, vividly, and painfully he
16 recalled this event. He said that he was -- went to this
17 woman's house, and that she made him take off all of his
18 clothes. He made clear that she didn't mess with him,
19 that there was nothing sexual that went on, but that he
20 was utterly terrified and that he hid beneath the bed.
21 He said that he came home, told his mother about it, and
22 that she kind of treated it as a joke. When I spoke with
23 the mother about it, she said, yes, I do remember that
24 event. That woman was kind of a jokester or prankster,
25 and that she believes that this woman made him take off
26 his clothes and was threatening to give him a whipping or
27 spanking, but didn't end up doing so. And again, what
28 was so striking about this is that Alan doesn't -- isn't
29 able to recall a whole lot of things from his childhood.

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1 This came about -- this recollection came about in the
2 context of me asking him for an early childhood happy
3 memory. He couldn't come up with one. For an early
4 memory of being sad in childhood, and he couldn't come up
5 with one. An early memory of being angry, he couldn't
6 come up with one. I asked him for an early memory of
7 being scared, and he promptly described this incident and
8 talked about how terrified he was at the time.

9 Q. And is that series of questions about childhood
10 memories the kind of question that you ask subjects in
11 your clinical practice and in other parts of your
12 forensic practice?

13 A. I try to do it as much as possible. I find it
14 enormously valuable in getting a sense of what are
15 memories that to these, to each individual is most
16 salient, most important to them. So I usually actually
17 do it in that way, asking earliest memory, next earliest
18 memory, and then I run through earliest memory of this
19 emotion, that emotion, this emotion. Then I will go
20 through earliest memory involving mom, involving dad,
21 involving, you know, brother, sisters, any of the
22 important characters, individuals in their lives.

23 Q. And tell the Court whether there was anything,
24 when you ask this question in general in your clinical or
25 forensic practice, do you find that individuals are not
26 able to recall a happy memory, or a sad memory, or an
27 angry memory, but only a memory of something that scared
28 or terrified them?

29 A. This certainly isn't the first time in my

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1 experience this happened. It's fairly unusual in my
2 experience. Usually, they will be able to come up with
3 something, even if it's a little bit later than -- even
4 when I suspect they probably have some recollections
5 earlier on, they will be able to come up with something,
6 maybe it's at age nine or ten, which Alan ultimately was
7 able to do was to come up with a happy memory, though I
8 think he was already in middle school at the time of
9 that. So I certainly would view as significant that if
10 somebody can't recall a time when he felt happy as a
11 young child or scared or -- I'm sorry, scared he felt.
12 Sad or angry. I'm sorry to do this, Your Honor, is it
13 possible for me to get some water? I'm a diabetic, and
14 my blood sugar is kind of high.

15 THE COURT: Sure.

16 A. Having high blood sugar makes your mouth all
17 dry.

18 THE COURT: He will bring you some in.

19 MR. DAVIS: Your Honor, may I take a moment
20 to approach. I'm a fellow diabetic and I have
21 some dry mouth lozenges if you would like some.

22 THE WITNESS: Dry mouth?

23 MR. DAVIS: Yes, they're very good.

24 THE WITNESS: They're sugar free?

25 MR. DAVIS: Yes, for a diabetic.

26 THE COURT: You are not going to try to
27 poison him, are you?

28 MR. DAVIS: No. I'm taking them myself.

29 THE WITNESS: I would greatly appreciate

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1 that. I think I will swig the water down first.

2 Are you a fellow Type I?

3 MR. DAVIS: Type II.

4 MR. CRAIG: Here comes your water, too.

5 THE WITNESS: Thank you both. Much
6 appreciated.

7 THE COURT: You may proceed.

8 BY MR. CRAIG:

9 Q. So taking a step back with respect to this
10 particular incident, Dr. Mendel, with respect to this,
11 the incident of the woman who made Alan take his clothes
12 off at age five or six, are you saying that that's such a
13 traumatic event that that led to, by itself, led to or
14 caused the events that resulted in Ms. Edwards' death,
15 her murder?

16 A. No. Absolutely not. And I think that would be
17 kind of ridiculous if I were to assert something of that
18 sort. One of the tasks, one of my tasks, I believe, is
19 to try to get a full and comprehensive understanding of
20 someone's development, which involves pulling all of
21 these different factors together and looking at them in
22 context, that is, nothing occurs in a vacuum. Everything
23 is interrelated and is affected by all other aspects of
24 childhood development. So if somebody had a generally
25 benign or supportive life, if they went through and they
26 had a caring, loving parent, if they had a relative
27 degree of stability, if they didn't have any of these
28 other experiences that I will be getting to of sexual
29 abuse, and of then bad influences in their life. In an

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1 otherwise good, healthy, normal life, an event like that
2 would be basically no big deal. A, I don't think it
3 would have been experienced as so terrifying. Not to say
4 that it wouldn't have had -- if I would have had that
5 exact experience, I think I would have found it
6 disturbing. I think I would have found it kind of, what
7 the heck? Why did that -- I think I would have been
8 bothered by it. I might have been pretty upset about it.
9 I think I would have come home and told my parents and
10 they would have gotten on the phone to this person and
11 they would have done things to protect me and support me.
12 And I think it wouldn't have had any particular major
13 lasting impact on me. And I think that would be true for
14 most people. In and of itself it's not an enormous
15 event.

16 In the context of Alan's life, in the context of
17 all of the things he experienced, it was a very painful,
18 terrifying, overwhelming event that remained vivid in his
19 life -- remains vivid in his life to this day.

20 Q. So then let's turn to the next. What is the
21 next, in chronological order, traumatizing factor or an
22 experience that you discovered in studying Alan Walker's
23 life?

24 A. This -- there is a number of parts connected to
25 it, but the next one that I talk about is fatherlessness.
26 The absence of his father. And this I know obviously.
27 Ronald Walker spoke about here in court in February as
28 did Terry, as did Anita. The -- I'm sorry. I said
29 Terry, but he was mostly with the dad. But the parents

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1 separated and divorced when the children were very young,
2 I believe Alan was roughly three, three and a half,
3 somewhere in that range. And for several years there was
4 no contact whatsoever with the father. He didn't even
5 know where they were. And from that point forward, there
6 were, I believe, two separate years that he spent, that
7 Alan spent up in Alaska. But with that exception, with
8 those exceptions, his father was not a part of his life.
9 And so he grew up without a father. So with a single
10 mother who was pretty absent from his life was working
11 two or even three jobs at a time, and connected with the
12 absence of his father, there came, not surprisingly, a
13 great deal of longing for father figures, which left him
14 very vulnerable to the influence of some really unhealthy
15 father -- people of his father's age or perhaps older,
16 the fathers of his friends, who had a very damaging and
17 corrupting influence on Alan.

18 Q. And who were those people, in your study of Alan
19 Walker's life, who were these other men who played a role
20 in influencing Alan?

21 A. There were three of them. And I'm not -- I
22 don't believe they all had identical influences on him.
23 I think some had a more powerful, more central role in
24 his life. But they were Duke Maloney, who is the father
25 of two of his closest friends at the time, Darryl and
26 Dwayne Maloney. Big Jack Collins, who was the father of
27 Little Jack Collins who, I think was a friend, but I
28 think was a ways younger than Alan. And then the third
29 was Frank Potter. I don't believe he had a son who was a

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1 friend of Alan's. It was those three individuals.

2 Q. And what -- how did they come to have contact
3 with Alan or what was the contact they had with Alan, I
4 should say? You already said that they were -- two of
5 them were parents of people his age or age cohort?

6 A. I also think they lived right in that
7 neighborhood. So I'm not sure -- I'm not sure if he
8 initially met through his friends and then met their
9 parents, or if he just met them as people in the
10 neighborhood. But these adult men, men in their,
11 whatever they were at the time, 40s or thereabouts, were
12 apparently coming over and would be drinking with and
13 providing alcohol to Alan and his brother, Terry, and the
14 other boys in the group. Smoking, at least cigarettes,
15 and likely marijuana with them. And in the case of Jack
16 Collins, I don't believe in the case of the other two, to
17 my knowledge, involved him in stealing things for him.
18 Would get him to steal things for -- that Jack Collins
19 could then sell or fence so that he basically
20 incorporated, indoctrinated him into this thieving
21 activity.

22 Q. Alan, during part of this time, did have a
23 stepfather. How does that relate to the factors that you
24 were talking about that you've referred to in your
25 testimony as fatherlessness?

26 A. Yeah. Well, in a perfect world, a better
27 situation, that could have been a saving grace. That
28 could have been if he were a benign positive figure, a
29 good role model, that could have been a turning point in

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1 Alan's life. But instead, this man, when Frederick was,
2 by all accounts, a very -- furthest thing from a benign
3 figure. Was actually a very malevolent figure. There
4 were numerous stories told about him being -- about him
5 getting food and drinks that would be for him and his son
6 Leon, but Alan and Terry were not allowed to touch them.
7 Alan tells of a time when Winfred saw him and his friend
8 on the road and attempted to hit them with his car.
9 Winfred, I know we will get into this quite a bit, but
10 Winfred was one of several figures that exposed Alan to
11 extremely unhealthy pathological distorted sexual
12 activity, which was what ultimately led to the end of the
13 marriage between Winfred and Anita.

14 Q. And when you say pathological and distorted
15 sexual activity, what specifically are you talking about
16 with respect to Winfred Frederick?

17 A. Winfred Frederick was carrying on an ongoing
18 sexual relationship with his niece, Brenda Reyer, who was
19 approximately 14 years old at the time. This was
20 something that apparently Anita Frederick learned only
21 somewhat later when she came home and caught them in the
22 act. But this was an activity that, according to Alan,
23 according to Terry, according to Mary and Marie Reyer,
24 Brenda's younger sister, the kids in the neighborhood, at
25 least the four of them, all knew about and they used to
26 watch. They would go, and the sexual activities would
27 happen in Winfred's van, parked right in front of or in
28 back of their house, and the kids would go and push aside
29 the or peak through the curtains in the van, and watch

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1 their father/uncle/stepfather, whatever the particular
2 relationship was, have sex with their sister or neighbor,
3 Brenda Reyer. This was going on for quite some time. By
4 Anita's report, also here in open court, when she came
5 home and didn't know where he was and she asked, I think
6 the older kids feigned ignorance, but Terry said he's out
7 in the van, and I think Anita's terms was bleep, bleeping
8 Brenda, or that -- she censored herself -- indicating his
9 knowledge of what was going on.

10 Q. And was this significant to Alan's psychological
11 development in terms of his views of sexuality and sexual
12 boundaries?

13 A. I believe enormously so. And again, like my
14 previous answer, if it were an isolated incident, I think
15 we all as human beings are able to deal with single
16 isolated incidents, even if they're really bad. Even if
17 they're really traumatizing, we can kind of put them in
18 their place. We can kind of say, okay, here is how life
19 is, and this person did this bad thing or that was a
20 really painful awful event, whatever the event may be.
21 The problem here is that that was one among many, many
22 truly grossly pathological distorted boundaryless -- this
23 is an entire neighborhood that in which, I've never seen
24 a neighborhood, a small environment in which there was
25 this degree of crossing of sexual boundary, incestuous
26 with relationship, sexual relationships across
27 generations, and that entire constellation of sexual
28 events had a huge impact on Alan, on his brother Terry.
29 I believe on all of the kids in this neighborhood.

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1 Q. When you use -- I want to make sure in terms of
2 the term "pathological," can you define that, please,
3 what do you mean when you say pathological?

4 A. I'm glad you are asking that because there is
5 actually a couple meanings. I should probably be more
6 precise with it. On the one hand I'm meaning, by
7 pathological, that it's an indication of disturbance that
8 this is a -- this is a -- an unusual, distorted,
9 basically a sick behavior. But I'm also indicating by
10 pathological, probably pathonomic would be a better term,
11 that would mean something likely to produce pathology.
12 So I'm using it in kind of two, two, two senses. I
13 believe I can look at a neighborhood and say, huh, if
14 these six year olds and eight year olds are having sexual
15 intercourse with one another, if multiple uncles are
16 having sex with this 14 year old girl, if this girl was
17 -- is the daughter of her oldest sister, very likely by
18 her father, this is a pathological neighborhood. This is
19 an environment that is full of sexual disturbance,
20 distortions, and lack of boundaries. I can go further
21 and say someone growing up in that environment and
22 exposed to those influences is at enormous danger,
23 enormous risk of him or herself growing up with sexual
24 distortions and disturbances.

25 Q. Let's talk specifically then about these factors
26 in Alan Walker's childhood. Other than, you know, we've
27 talked about his stepfather, Winfred Frederick, did you
28 discover other issues related to crossing or
29 transgressing of sexual boundaries, or what you are

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1 talking about now as pathological sexual activity in
2 Alan's immediate circle in his childhood and formative
3 years?

4 A. Yes, I discovered an absolutely huge amount.
5 And probably to clarify, I should say that I had to
6 essentially adjust my usual frame of reference in dealing
7 with this situation. I usually basically look at a
8 family, you know. I say, okay, so here is this family,
9 and let's say we know that this individual was sexually
10 abused, and then we will look at was there incest within
11 this family? Let's extend it further and was there --
12 you know, if it's this parent or uncle doing things with
13 this kid, was there sexual abuse in the preceding
14 generation. I basically look at the family system and
15 sexual activity including sexual abuse within that
16 system. Here, I realized that, no, it's not this
17 particular family, it's this whole -- it's 28th Street,
18 as they talked about it. It's this whole neighborhood
19 where there's no boundaries between -- no boundaries
20 within families, no boundaries across generations.

21 So the examples that I learned of, Winfred and
22 his niece Brenda Reyer, but Mary and Marie Reyer say that
23 Brenda also had sexual relationships with several of her
24 other uncles. Mary, the youngest of the Reyer sisters,
25 who I will be talking about having sexual relations with
26 Alan and Terry, along with her sister, Marie, Mary grew
27 up believing she was simply the youngest of the Reyer
28 girls and learned, this is what -- she told me this
29 directly, she learned at about age 18 that she was

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1 actually the daughter of the woman that she believed was
2 her oldest sister, this is Linda Reyer, and that that
3 wasn't her sister, that was her mother. And Mary doesn't
4 know who her father is, but she believes that quite
5 likely her father is also her grandfather. That she was
6 fathered by Linda's father. This has never been
7 acknowledged or confirmed, and I don't know the truth of
8 that. Both Alan and Terry --

9 Q. When you say you don't know the truth of that,
10 you are speaking of the last piece that you talked about?
11 I want to clarify your point.

12 A. I'm sorry, I wasn't clear about that. I don't
13 have any way of knowing for sure who Mary Reyer's father
14 was -- father is, for the simple reason that Mary Reyer
15 doesn't know for sure who her father is. She believes it
16 may be the person she grew up with.

17 MR. WHITE: Objection, Your Honor. If he
18 doesn't know, he doesn't know.

19 THE COURT: Move on.

20 BY MR. CRAIG:

21 Q. That's fine, I wanted to clarify that one.
22 That's fine. So we were talking about the Reyers and I
23 think -- let me ask you about the events and the
24 significance of sexual activity between the two younger
25 Reyer sisters and Alan and his brother Terry?

26 A. Right. That's Marie and Mary Reyer and Alan and
27 Terry. To put it in a context of ages, Alan and Mary are
28 roughly the same age, I believe they're in the same grade
29 in school. Marie is about two or three years older than

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1 Alan and Mary. I believe three years older. Terry is
2 about two years younger than Alan and Mary. And they all
3 four engaged in sexual activity together, which my best
4 estimate, trying to piece together the reports, is that
5 this occurred when Alan and Mary were about eight, which
6 would have made Terry six and Marie about 11. And the
7 sexual activity was quite extreme. We're not talking
8 about kids -- we're not talking about you show me yours,
9 I will show you mine kind of things, which are pretty
10 common and pretty benign. We're talking about actual
11 attempted, possibly actually performed penile/vaginal
12 sexual intercourse, which is extremely unusual at this
13 sort of age. And it's an activity that says to me, okay,
14 if people are doing that, if kids are doing that, at
15 least one, if not more of them, have already had that
16 done to them by an older individual, or at the very
17 least, been exposed to a great deal of graphic sexual
18 material.

19 So that's the next set of sexual, inappropriate,
20 and premature sexual activity that went on.

21 Q. And so those children are within a couple years
22 of each other. Was there a -- did you discover that
23 there were -- was sexual activity between Alan and Terry
24 and an older member of that family?

25 A. Yes. This is the same Brenda Reyer that they
26 had seen having sex with their stepfather, Winfred, her
27 uncle. Both Terry and Alan report that Brenda Reyer
28 engaged in oral sex with them, when I believe she is
29 eight years older than Alan. So if these were at around

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1 the same age, Alan would have been about eight, and Terry
2 would have been about six, Brenda would have been about
3 16.

4 Q. At a different place in your report you talk
5 about, but I want to talk about it now because it's
6 relevant in the chronology, you talk about the issue with
7 respect to Brenda being an older female and Alan and
8 Terry being younger males. And whether that is -- is
9 that considered by psychologists in your field to be
10 sexual abuse, the equivalent of the reverse gender, an
11 older male with a younger female?

12 A. Yes. I can say that as an unequivocal yes. In
13 contrast to how it tends to be viewed by society at
14 large, including by the young boy victims of that sort of
15 event, Alan did not describe the interactions with Brenda
16 Reyer as being sexual abuse. Terry, here on the stand,
17 referred to what happened to him as child rape. He is
18 coming to the realization or has come to the realization,
19 wow, I was raped as a child. But for the most part, boys
20 who are victimized by older females very often do not see
21 that as abuse. Society at large tends to kind of laugh
22 at it or even think of it as, oh, those lucky guys. So
23 it's a boy, he must have really, really liked it or
24 wanted that. But the research is clear and unequivocal
25 about it. The impact of sexual abuse on kids, regardless
26 of gender, are very similar. That is a -- what I often
27 do in my reports is to ask the readers to simply perform
28 a mental exercise and reverse the genders and say how
29 would we view this if we learned about a 16 year old boy,

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1 16 year old teenage male engaging in oral sex with an
2 eight year old girl. And I think most of us would,
3 without hesitation, say that's sexual abuse. And then
4 say, well, the research says that has comparable effects
5 if the genders are reversed. That is, it's still sexual
6 abuse, and the long term impacts of sexual abuse are
7 still present.

8 Q. And did you come to -- have you come to
9 discover, for example, what some of the effects are with
10 Alan's brother, Terry, and for benefit of counsel who may
11 want to lodge an objection, please indicate whether this
12 came about in a discussion with Terry Walker after his
13 testimony on February 22nd of this year?

14 A. Okay. Well, like I said, here in court I heard
15 him say, and I think I have this quote.

16 MR. WHITE: I will lodge an objection
17 because it is irrelevant to what happened, or
18 how Terry processed this is irrelevant to how
19 Alan processed this. So it has no bearing on
20 whether -- on Mr. Walker's condition.

21 THE COURT: I sustain the objection.

22 MR. CRAIG: If I may ask a different
23 question that may be helpful to the Court in
24 that regard.

25 BY MR. CRAIG:

26 Q. Without talking about what Terry Walker said to
27 you, because the court has ruled on that, would it be
28 important for you to know the differences in how each of
29 those brothers experienced or how they processed that

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1 experience and why?

2 MR. WHITE: Same objection.

3 THE COURT: I sustain the objection. I'm
4 more interested to know what your client's
5 reaction to it was.

6 MR. CRAIG: Thank you, Your Honor. I don't
7 want to belabor the record, but we might want to
8 make a proffer of that at a later time.

9 THE COURT: Sure.

10 MR. CRAIG: Mr. Voisin can remind me of
11 that.

12 BY MR. CRAIG:

13 Q. What other events or occasions of pathological
14 sexual activity in Alan's childhood did you discover?
15 We've talked about that the situations with the two Reyer
16 sisters, and then the older Reyer sister, Brenda.

17 A. Right. Well, another one involved Robin
18 Saucier, who was, again, the mother of Alan's child. The
19 way basically everyone I spoke to describes it, this
20 includes Robin, she was essentially sold at age 11 to a
21 man in his 40s named Leroy Marroy, sold by her parents in
22 exchange for a sump pump, a washer and dryer, and a
23 refrigerator.

24 MR. WHITE: Here again, Your Honor. I
25 object to this. This is what happened to
26 somebody else that's not even related that he
27 said sometime later had a relationship with, is
28 not relevant to what he did in this case and his
29 psychological development.

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1 THE COURT: I think it's background to what
2 Ms. Saucier, his interaction, the witness'
3 investigation and discussions with Ms. Saucier
4 has to do with this defendant. So I will
5 overrule that objection. I think it's just
6 foundational into that.

7 MR. CRAIG: Thank you, Your Honor.

8 BY MR. CRAIG:

9 Q. How would that -- did you do any determination
10 of whether Alan and other members of his age cohort knew
11 about that relationship?

12 A. I heard about it from multiple people, including
13 Alan, Alan's mother, and at least one of the Reyer
14 sisters. And one of the things that was so striking to
15 me about it is this was viewed within the neighborhood
16 with sort of scorn and derision that basically all of
17 those Sauciers, they, you know, Leroy Marroy bought the
18 mom these things, so she let her daughter move in with
19 him. She moved in with him at age 11, I believe. And it
20 struck me that this was actually not that different than
21 what happened within Alan's family with Amanda, who
22 testified here, that Amanda talked about how this man,
23 Merlin Castleberry, who the age difference was not as
24 extreme, Merlin Castleberry was, I believe 21, Amanda was
25 13, perhaps, and Merlin ingratiated himself with Amanda's
26 mother by buying -- by fixing her car for her and buying
27 her things, and the mother allowed their relationship to
28 develop, despite warnings from multiple people, including
29 Alan. That Amanda said that her brother Alan warned her

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1 about this Merlin Castleberry, to stay away from him.
2 The mother allowed this relationship to continue. And
3 Amanda was in ninth grade when she became pregnant with
4 her first child. She had two children, I believe, by
5 Merlin Castleberry.

6 So, to me, part of the relevance of this is this
7 is a part of this, I usually say family system, this is
8 part of this neighborhood system and the life in which
9 Alan was raised.

10 Q. Let me ask you very specifically to explain to
11 the Court how Alan's knowledge of these different
12 transgressive pathological relationships affected his
13 psychological development, his views on sexuality, his,
14 for lack of another word, matrix, how he developed in
15 terms of thinking about women and sexuality? Did it make
16 a difference, should be my first question, but if it did,
17 please explain that.

18 A. Well, yes. I certainly believe it did. We are
19 -- we are creatures that learn from our environment. We
20 learn from our parents, we learn from our teachers, from
21 our peers, from our friends, we learn by the role models
22 that we're given. The role models that Alan had were
23 people who did not have the same sense of appropriate
24 boundaries as I believe most of us have. Did not have a
25 sense that one does not have sex with other members of
26 the family, other than husband and wife. It did not have
27 a sense that it's not appropriate for a 40 year old man
28 to have sex with an 11 year old girl. It's not
29 appropriate for a 21 year old man to have sex with a 13

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1 year old girl. So he grew up in a situation where he was
2 exposed multiple times to role modeling that says, no,
3 there aren't those kind of boundaries. One has sex with
4 whomever one wants to have sex with. So that's, I think,
5 one huge way that it affected him.

6 I also, and will probably get into this later,
7 Alan has a profoundly distorted view of sex and of
8 relationships, and I think much of it stems back to this,
9 to these situations. So he ends up in a situation where
10 he is torn between the -- these ideals of what he has of
11 these perfect women that he feels like he should be with,
12 and the women that he is drawn to, who are extremely,
13 extremely different.

14 Q. Thank you. What, if anything, did you learn
15 about the nature of sexual boundaries or -- sexual
16 boundaries or touching boundaries with respect to Alan
17 and his mother Anita Frederick?

18 A. This is a -- this is a question where there
19 unfortunately is a considerable amount of uncertainty.
20 There are some things that I know about for sure. There
21 are other things that are more of suspicions or red
22 flags.

23 Q. Let's talk about the things you know about
24 first.

25 A. Okay. So things that I know about, this is from
26 Alan, from his mother, there was this behavior that was
27 also observed by Faye Breland, the mother's employer at
28 the time, where Alan, as a teenage boy, came in to his
29 mother's place of employment and grabbed and squeezed her

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1 nipples. His statement and his mother's statement was
2 that she didn't reprimand him or anything of that sort,
3 that she giggled, and I think that's the term in Ms.
4 Breland's affidavit. Alan presents this as something
5 that was not sexual at all. He said, no, you know, I
6 would do that with different friends and it was just this
7 joking sort of thing. And I believed that that was his
8 view and that he didn't recognize that this was something
9 that others would view as strange or odd or
10 inappropriate. That he didn't have a sense of a boundary
11 that, no, one doesn't go up to one's mother at home, or
12 at work, and squeeze and grab her nipples.

13 It's not surprising that he didn't have a sense
14 of any inappropriateness from that because his mother
15 didn't have any sense that this was inappropriate. She
16 responded by giggling when he did this. So this is the
17 thing that I know for sure is that there was a lack of
18 appropriate boundaries and a sexualization of the
19 interactions between the mother and Alan.

20 Q. What do you mean by the term sexualization?

21 A. It may not be the best term. Probably better
22 term would be crossing of appropriate boundaries. The
23 reason I hesitate about that is, it's something that
24 seems to me, and I think probably to most people, that
25 this is kind of an obvious sexual thing. That this isn't
26 him going up and squeezing his mother by the ear or
27 something, but that it's by the nipples. But Alan and
28 his mother, at least Alan, didn't view that as sexual.
29 So that's why I'm hesitant about the term. It certainly

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1 is a profound boundary crossing or indication of a lack
2 of appropriate boundaries.

3 Q. And in your clinical practice, if you become
4 aware of that kind of public behavior, what kinds of
5 lines of questioning would you pursue further with
6 respect to the mother of the child?

7 A. Well, I would immediately become concerned about
8 what that might indicate about what goes on behind closed
9 doors. If that's happening in public, could there be
10 much more going on behind the scene? So I would want to
11 talk to each separately, and obviously it's a very
12 delicate topic, but to try to explore whether there is
13 any more overt physical sexual contact between the two of
14 them, or other ways in which their behavior may be
15 crossing boundaries, whether perhaps they are at risk of
16 it moving into a more overtly sexual relationship.

17 Q. And did you take that course of action in this
18 case with respect to Alan or his mother or people who
19 knew him?

20 A. Both Alan and his mother deny that there has
21 ever been any -- they both acknowledge that particular
22 behavior, the grabbing and twisting or squeezing of the
23 nipple, but they say that there was never any sexual
24 activity between them. That they never had a sexual
25 relationship. And that was something that came up
26 because a number of people have strongly suspected or
27 brought to my attention that possibility. So that's
28 something that is emphatically, adamantly denied by both
29 Alan and his mother.

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1 Q. Did any of the people that you interviewed,
2 other than Alan and his mother, describe any incidents
3 that suggested to them that there could have been
4 something more than the inappropriate touching that
5 you've testified about?

6 A. Yes. Mary Reyer and Robin Saucier Marroy.

7 Q. And what did they say?

8 A. Mary put it -- Mary's was very vague. She
9 basically referred to it being -- I don't remember her
10 term, but a sense, a rumor, that she, you know, people
11 thought that there might have been something --

12 MR. WHITE: Objection if he is making his
13 opinion on rumor or speculation. It's invalid.
14 And I object to it and him further testifying to
15 it.

16 MR. CRAIG: I will withdraw that part of
17 the question, Your Honor.

18 BY MR. CRAIG:

19 Q. Let me do ask you though, you said that about
20 one of the two people you talked with. Did the other
21 person you talked with describe a particular incident or
22 event that she personally witnessed?

23 A. Yes.

24 Q. Please tell us about that. Thank you.

25 A. So Robin, who was his girlfriend at the time and
26 was involved in a relationship with Alan, said that she
27 had felt for some time that there was an inappropriate
28 sexual relationship between Alan and his mother, and she
29 went to their home, Alan and his mother's home, and she

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1 said that the door, which as she pointed out, she said
2 the door was never locked. They just opened the door,
3 walked right in. This particular occasion, she said the
4 door was locked, she banged on the door, she banged on
5 the door, waited, an extended period of time passed. She
6 said Alan finally came to the door, shirtless, sweaty,
7 and looking disheveled, and then the mother came out
8 shortly thereafter also looking very disheveled. That
9 was the incident that she described that to her
10 confirmed, I don't know what happened, but to her
11 confirmed that there was, in fact, a sexual relationship
12 between the two.

13 Q. Okay. Let's take -- let's step back and assume
14 that there was, in fact, no relationship or sexual
15 activity between Alan and his mother, other than that
16 which has been testified to in this court, the public
17 touching. I believe if you could summarize, even
18 assuming there was no -- nothing further than that, in
19 your opinion, does that have an impact -- did that have
20 an impact on Alan's psychological development and, in
21 particular, his views of sex boundaries and of women?

22 A. Well, I think, obviously, yes, in the sense that
23 I think it's obvious in the sense that if we're talking
24 about boundaries, growing up with a relationship with
25 one's mother, in which it's okay to or giggled and
26 laughed at to -- when one grabs her nipples, one is going
27 to have a poor or distorted sense of appropriate sexual
28 boundaries.

29 Q. And are there studies that you're familiar with

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1 with respect to the effect of sexual behavior between
2 parents and their children on the psychological
3 development of their children?

4 A. Absolutely. There is a lot of research, and I
5 do want to give the caveat that I do not make an
6 assumption that there was an overt sexual relationship
7 between them beyond the behavior that we know about, the
8 nipple twisting behavior. I do not make an assumption
9 that there is something beyond that. I think that is a
10 possibility, but I do not assume it. In terms of
11 research about it, the -- what's known, this has been
12 researched for years, the closer the relationship between
13 perpetrator and victim, the more severe the impact.
14 There is a lot of research about the various factors
15 within sexual abuse that are predictive of poor outcome,
16 a negative prognosis. Those have to do with severity of
17 the abuse, duration of the abuse, frequency. One of the
18 biggies is closeness in relationship with the
19 perpetrator.

20 So basically, a parent or parental figure
21 sexually abusing a child is the worst case scenario that
22 has the most profoundly negative impact upon someone. If
23 there is sexual abuse by somebody considerably more
24 distant from the victim, that has less of an impact.

25 Q. But not no impact?

26 A. Certainly not no impact. The best scenario is
27 no sexual abuse. If there is sexual abuse, we can kind
28 of look at these factors and say it's better if it
29 happened one time than if it happened a whole bunch of

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1 times. It's better if it happened, you know, only over a
2 one month period of time, than over a several year period
3 of time. It's better if it happened by a stranger or
4 distant relative than by a parent.

5 Q. Okay. Did you study any other issues related to
6 Alan's understanding of love and physical affection that
7 began in his childhood?

8 A. Yeah. Basically, he didn't have any physical
9 affection outside of the context of sexual relationships.
10 He bemoans the fact that he says he was never hugged. He
11 said that when he went to jail and said goodbye to his
12 mother, and to his then girlfriend Trina Perry, he hugged
13 her, but he and his mother did not hug.

14 Q. You say he hugged her?

15 A. I'm sorry, Alan said that he and his girlfriend
16 Trina Perry, they hugged goodbye. But that he and his
17 mother did not. That just was not something they did.

18 Q. That could have been just because his mother was
19 in shock at that particular time, did you consider that?

20 A. Well, he described it as a characteristic
21 pervasive aspect of their relationship. That there
22 weren't hugs, there weren't affectionate, you know,
23 messing of the hair. There wasn't that kind of physical
24 non sexual displays of affection and want.

25 Q. And how does that or did that relate to Alan's
26 psychological development?

27 A. I think he was missing a fundamental human need.
28 We need warmth. We need contact. We need hugs. We need
29 nurturance. I mean, I'm a parent, I assume many people

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1 here are, and I think as a parent, you kind of just know
2 this, that it's helpful to hold one's baby. To cuddle in
3 a completely non-sexual way, but to provide that sort of
4 physical contact and warmth. Here is this very young
5 child, Alan, growing up with -- almost without parents,
6 mom, you know, at four raising his younger brother. And
7 when his mother was around, there just wasn't that kind
8 of -- the hugs, the comfort, nurturance, that sort of
9 physical non-sexual affection. And Alan ended up going
10 up through into his teenage years -- well, actually
11 before his teenage years, only getting physical contact
12 or affection, of whatever sort, in a sexual context.

13 Q. And do you have an opinion about how to put
14 those things together, do you have an opinion about how
15 the over sexualization of Alan's childhood experiences
16 and this deficiency of physical love and affection, do
17 you have an opinion about how they worked together to
18 form his understanding or psychological makeup when it
19 comes to matters of sex and a relationship between men
20 and women or people who love or have attachments to a
21 child?

22 A. This may just be repeating what I said, but I
23 think it's that his sense of how affection is displayed
24 is through sex, and he developed this sense of longing,
25 I'm sure exacerbated by years in prison and away from
26 healthy physical contact where he talked with me about
27 recurrent fantasies of these non-sexual interactions with
28 females that he fantasizes about taking a bath or a
29 shower with a woman. About there being touch and

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1 cleaning, and as he made clear, but no sex. Nothing
2 sexual. That's the sort of thing that he longs for. And
3 that's the sort of contact that he's never had in his
4 life.

5 Q. I would like to then turn to a different area of
6 traumatizing factors, and that is that the question of
7 alcohol and drugs. What is your understanding of Alan's
8 use of drugs and alcohol in childhood and adolescence?

9 A. He -- my understanding is that he started
10 drinking, smoking cigarettes, and using -- smoking
11 marijuana at a young age. I don't know precisely, but
12 somewhere between I believe 11 and 14, somewhere in that
13 range.

14 Q. And what permissions or role models did Alan
15 have in that regard?

16 A. Well, he was given -- provided alcohol by these
17 adults that -- I'm sorry. I think I misspoke about the
18 age because I just realized, these would have come about
19 after the mother's -- the relationships and interactions
20 with Duke Maloney, with Frank Potter, and with Jack
21 Collins began after the mother's divorce from Winfred
22 Frederick, I believe, which is when Alan was 14. So we
23 would totally be talking more like in the ages of 14 and
24 17. So I was in error when I said 11 to 14.

25 THE COURT: Mr. Craig, refresh my memory,
26 how old was your client when he was arrested?
27 Refresh your memory, I guess.

28 MR. VOISIN: Twenty-five.

29 MR. CRAIG: Twenty-five.

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1 THE COURT: Thank you.

2 MR. CRAIG: Thank you.

3 A. So, well -- so in that era when he is an early
4 to mid adolescent, mid teen, he was provided alcohol by
5 Mr. Maloney, Mr. Potter, Mr. Collins, provided
6 cigarettes, and likely provided marijuana. And they all
7 did this together. I say likely because there's been
8 conflicting reports with some saying it was, and some
9 saying it wasn't. So I don't know how to reconcile that.

10 BY MR. CRAIG:

11 Q. Some persons you interviewed -- did some persons
12 you interviewed tell you that those older men did provide
13 marijuana to Alan and his aged cohorts?

14 A. Yes.

15 Q. What was the effect of -- well, I don't think
16 you've said how it started. Do you have any sense of the
17 frequency with which Alan in his teen years would drink
18 alcohol or use other kinds of intoxicants, including
19 drugs?

20 A. He was drinking very, very heavily. This was
21 something that he and his friends, this group of about
22 four boys that were hanging out together, they were all
23 drinking, I don't know precise amounts, but drinking
24 every day pretty much throughout the day. I think it
25 progressed, so I don't know if he was drinking that much
26 at 15 as opposed to at 17. But over time, he and Duke
27 Maloney and Darryl Maloney and Billy Davenport, the four
28 of them were all spending their -- spending most of their
29 lives drunk.

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1 Q. Did you receive reports or do you have an
2 opinion about what the effect of being intoxicated was on
3 Alan? In other words, what happened to Alan when he
4 drank?

5 A. I think all reporters, without exception,
6 describe Alan as being very different when he was on the
7 -- he was drunk or he was experiencing the effects of
8 alcohol than he was sober. That when he was sober and
9 before he started drinking, no one describes him as being
10 at all aggressive, violent, belligerent, poorly behaved.
11 He is described as well mannered. He is -- I think Terry
12 described him as being a chicken shit, if you will.
13 Pardon my language, that was his description, not a
14 fighter, not aggressive. And when he started drinking
15 and when he would get drunk he is described by multiple
16 reporters as getting belligerent, getting into fights,
17 being aggressive, and particularly being aggressive
18 towards females. Which is something that's obviously the
19 case in the crime that we're talking about here. The
20 reason we're here. But was also reported obviously to
21 much lesser degrees by both Sherry Schroeder and Robin
22 Saucier Marroy, who both describe that when Alan was
23 drunk, he could be confrontational, belligerent, and
24 physically aggressive toward them.

25 Q. You talked about these other young men of Alan's
26 age who drank with him and with their fathers and these
27 older men. What came of this age cohort, the other four
28 people I think you named?

29 A. I think I only named three, but two Maloneys and

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1 a Davenport, I think. I know there is Jack Collins, but
2 I didn't have the sense as he was really much a part of
3 it, and I think he was younger. Alan is the only
4 surviving member of the four. And the other three all
5 died of circumstances related to their drinking. Donald
6 and Dwayne Maloney died of diseases directly, I don't
7 know if it was cirrhosis of the liver, but died of
8 diseases directly related to their drinking. Billy
9 Davenport was driving drunk, got in an accident and was
10 institutionalized from that point forward. At the time
11 of my report, he was in an institution, but I understand
12 he has since passed away.

13 MR. CRAIG: Your Honor, just for
14 housekeeping purposes, we're at something of a
15 stopping point before we have, I'm going to
16 guess, perhaps another hour of testimony.

17 THE COURT: All right. Be a good time to
18 take the lunch break.

19 MR. CRAIG: That's what I'm suggesting.

20 THE COURT: Then you have your other expert
21 following this witness after?

22 MR. DAVIS: Yes, Your Honor. And he is
23 present.

24 THE COURT: Mr. White?

25 MR. WHITE: I would ask that the witness
26 and counsel be instructed not to talk to the
27 witness during the lunch hour.

28 THE COURT: Let's take a lunch break until
29 about 1:15, come back.

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1 MR. CRAIG: That's fine. And we accept.
2 That's standard procedure.

3 THE COURT: Dr. Mendel, don't talk about
4 your testimony to anyone else. We will be in
5 recess until 1:15.

6 (Recess)

7 THE COURT: Just a little housekeeping
8 matter. The exhibits have been marked starting
9 anew for today. The last hearing they were one
10 through whatever, and this morning, it's not a
11 continuation, so be mindful of that for any
12 future reference.

13 MR. CRAIG: Thank you.

14 THE COURT: You may continue.

15 BY MR. CRAIG:

16 Q. Dr. Mendel, towards the beginning of your
17 testimony, you testified that you do have an opinion to a
18 reasonable degree of scientific or psychological
19 certainty whether traumatizing factors had an impact on
20 Alan Walker's psychological development into adulthood,
21 and in particular as of September 8th, 1990. And I want
22 to ask you now, having discussed various traumatizing
23 factors, to turn to the concept of -- turn to the subject
24 of what some of those effects are.

25 A. Okay.

26 Q. Can you tell the Court about whether there is --
27 was an impact from the traumatizing experiences and
28 factors you've testified about on the issues of power,
29 powerlessness, control, and helplessness, as it relates

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1 to Alan Walker?

2 A. Absolutely. I think these are very central
3 themes for Alan. I think that probably that begins all
4 the way back with the experiences of poverty and
5 instability and homelessness, which is likely to evoke
6 feelings of lack of safety, and a sense of danger and
7 fear. I think it's that that made that experience with
8 the woman who forcibly undressed him or made him undress
9 and led to him -- that's what made that experience be so
10 terrifying because there was an experience of ultimate
11 powerlessness where he is rendered naked and helpless and
12 terrified. And those experiences are things that then he
13 carried with him on into his adolescence and adult life.

14 Q. And could this have any particular effect on
15 Alan's interactions with females or his views of females
16 or sexuality in general?

17 A. Huge impact. These are obviously complicated
18 things where it's not some sort of one to one
19 relationship of this happened and, therefore, here is the
20 outcome. But, in Alan's circumstances, he ended up, as a
21 result of the couple of factors I just cited, but then
22 even more so on the basis of the distorted and damaging
23 sexual interactions in his life. He developed from all
24 of that, he developed an insecure sense of attachment.
25 So I think he was a very needy boy, teenager, young man,
26 wanting affection, not knowing how to get it and not
27 trusting that anybody would provide for him, would give
28 him care, love, attention, affection. And then sex comes
29 into his life at this very early time. We're not

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1 designed to be ready for sexual relationships at six, or
2 eight, or ten. He has this introduced into his life, and
3 it's confusing, it's overwhelming, and those themselves
4 were introduced in the context of this dynamic of control
5 and domination.

6 He and Mary Reyer talk about this game that they
7 had played together, and Alan described this little game
8 as involving prisoners and guards that they, I think,
9 referring to Alan and Terry, were the guards, and Mary
10 and Marie were prisoners. And they alternated those
11 roles. But there is an ultimate portrayal of power,
12 dominance, control, versus helplessness. And that's the
13 way sexual relations began for him. It was always in
14 this context or it was initially in this context of power
15 dynamics, power, lack of power, control and dominance.
16 And I don't think it's any surprise in that light that he
17 ended up with some distortions, with profound distortions
18 in his views of women and of sexual relationships in
19 which things having to do with power and powerlessness
20 played such a central role.

21 Q. You asked the question -- let me just come back,
22 ask a clarifying question about the prisoners/guards
23 game. Was that -- was your understanding whether --
24 pardon me. Was that a sexual game or was it kind of like
25 cops and robbers?

26 A. No, he talked about that being the context in
27 which sexual activity among the four of them first
28 occurred. That they would play this game in which two of
29 them would be guards, two of them would be prisoners, and

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1 then they would end up having sex.

2 Q. You said that, in your earlier testimony, that a
3 non scientific way of posing the referral question could
4 be where does Alan's anger arise from.

5 A. Correct.

6 Q. What -- do you have an opinion about that?

7 A. I do.

8 Q. What is it?

9 A. Like -- as is the case with virtually all of my
10 answers, I don't believe there is a single source, but I
11 do believe that the childhood sexual activities played a
12 huge role. I think there's several crucial pieces of
13 information, several crucial sources of data here. The
14 first of which is no one describes Alan as being
15 chronically pervasively aggressive. That there are
16 people -- I've certainly met and evaluated people who
17 have just been angry and aggressive and violent
18 throughout most of their -- or much of their lives in
19 multiple situations to multiple different people and
20 types of people. Nobody describes Alan as being that
21 way. Here is this person who was described as well
22 behaved as a child, not getting in fights. This person
23 whom his mother and his brother describe as being passive
24 and not unlike his brother Terry, not fighting. And
25 Terry, the younger brother, spoke of having to protect
26 his older brother, Alan. He is not described by anyone
27 as aggressive across the board. His aggression, his
28 violence has, my understanding, solely come out,
29 virtually solely come out toward women. This is rage and

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1 aggression directed at women.

2 We know of at least three contexts. The crime
3 for which we're all sitting here, the murder of Konya
4 Edwards, and the relationships with Robin Saucier Marroy
5 and Sherry Schroeder. And I believe that the premature
6 introduction into sexual relationships, the sense of
7 powerlessness and helplessness he experienced, plays a
8 central pivotal role in his anger and rage and in
9 understanding why it's directed solely, or virtually
10 solely at women.

11 One of the things that happens with sexual abuse
12 is that people, there is a whole range of experiences
13 people have. But we see increased aggression, increased
14 criminal behavior. We see higher likelihood of substance
15 abuse, and we also experience anger at perpetrators, but
16 also at the class of people that perpetrators represent.
17 There are certainly substance abuse -- excuse me,
18 certainly sexual abuse victims who, male or female, who
19 can't stand being around men, who hate men. Don't want
20 anything to do with men. And there are people who hate,
21 fear, and have these intense emotions toward women.
22 Toward the class of people that has perpetrated abuse
23 against them.

24 Q. How does that play out, in your opinion, in
25 terms of Alan's view of women and sexual boundaries, and
26 if you feel like you've already adequately answered that
27 in your prior testimony, feel free to say so. But if you
28 -- I want to make sure the Court gets the full --

29 A. Can you ask it again then?

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1 Q. Certainly. So you've been talking about that
2 the effect, in terms of Alan's rage of the -- and anger
3 towards females and helplessness with respect to his
4 upbringing and traumatizing events of childhood. Those
5 are behaviors. So I guess my question is, can you
6 address -- does it also impact his view of sexuality,
7 sexual boundaries, and of women in general?

8 A. Yes. Absolutely. And I think there are,
9 certainly a bunch of that that I've spoken of. But I
10 think there's at least one additional piece that I
11 haven't touched on yet that I talk about in my report,
12 that I have not talked about here. This is not only
13 about rage and anger, and that can't, like the other
14 factors, can't be understood in isolation. A big piece
15 of that is that Alan has a profoundly distorted view of
16 women and of relationships between men and women, which
17 and I'll elaborate on that. But this creates this
18 enormous internal conflict, and as they set up for
19 disappointment, frustration, rage, acting out behaviors,
20 what this core conflict is, this is not something that
21 Alan is alone in experiencing. There is a name for it in
22 the psychological literature. It's referred to, and I
23 want to be real clear about this, this is a term, the
24 term I'm about to use describes a distorted view of women
25 held by, not by Alan alone, but by a number of men and
26 women. The term is the Madonna-whore complex. What that
27 refers to is, again, a distorted view of women that
28 essentially views them in these two -- in this
29 dichotomist split that women are either Madonnas, they're

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1 either these perfect pure virginal beings, or they're
2 promiscuous, slutty, whorish women. And obviously, it's
3 a distorted view, it's also a very unhealthy and
4 destructive view.

5 It's really hard to have a healthy relationship
6 with a woman if you have this view. We know this exists
7 with Alan because of the descriptions, not only given by
8 Alan, but by Alan's mother, and by the Reyer girls, at
9 least Mary Reyer, of his first girlfriend. This is a
10 girl named Mona Bryant, and all of them, all three of the
11 people I just mentioned describe her as being this --
12 Alan's mother said she was very different than the kind
13 of people Alan usually associated with. She was a really
14 nice good girl. She went to church every week with her
15 family. She came from good parents. Mary described her
16 as this very nice good girl. Alan talking about her
17 said, of any woman that I've known, any girl that I've
18 known, there is one. Mona still carries this special
19 place in my heart. There was never any sexual
20 interaction between Alan and Mona. He said that they
21 were friends in elementary school, and in middle school
22 she attempted to kiss him. He said he was like lying on
23 a hammock swing and she tried to lean over and kiss him,
24 and he wouldn't allow it. He was worried, he said, that
25 he would destroy their friendship. And there was never
26 anything further. He said she's always held this special
27 place in my heart. I don't know if she even knows that.

28 But it was an important enough relationship that
29 Mary Reyer said the reason we were always just friends is

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1 that he had a girlfriend. That was this Mona. So here
2 is this girl, this Madonna, this perfect pure church
3 going person, again, in Alan's vision of her, and in
4 others' vision of her. That's the ideal. That's what
5 people with this complex set up as the perfect being.
6 And then we have the women and girls that Alan was
7 actually drawn to. He was drawn to women who were
8 promiscuous, who were heavy drinkers, who were kind of
9 wild and unpredictable, like Robin, like Sherry. And it
10 is a setup for enormous conflict and enormous anger and
11 enormous disappointment because he is in the relationship
12 with these people, and he is jealous, and he is worried,
13 and he is upset, and he is full of rage.

14 In his mind, there's still the image of this
15 ideal, this Mona, this image of friendships with women
16 with no sex involved. This image of bathing together
17 with washing each other, but in a totally non-sexual way.
18 All of these things fall together. This is the
19 constellation of things. His two utterly conflictual,
20 internally contradictory, and impossible to reconcile
21 desires. The perfect, the Madonna, and the women to whom
22 he is actually drawn. I know I'm saying a lot about
23 this. I do just want to make clear that in saying this
24 about the Madonna-whore complex, I am not trying to cast
25 aspersions on the women. I am not trying to say that
26 Sherry Schroeder or Robin or Konya Edwards were in any
27 way whorish. That this was about his perception, his
28 distorted dichotomized view of women.

29 MR. WHITE: Your Honor, would you ask him

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1 to speak up some. He is getting almost to a
2 mumble.

3 A. I apologize. Thank you.

4 THE COURT: Okay.

5 BY MR. CRAIG:

6 Q. We talked about or you testified some about
7 alcohol and drug abuse. And I believe you have discussed
8 its effects on Alan's rage. Is there anything additional
9 in terms of the effect of the alcohol and drug abuse on
10 Alan's psychological makeup as of September the 8th,
11 1990?

12 A. Probably the only other thing I would want to
13 add about alcohol is not unique to Alan. Alcohol is a
14 disinhibiting agent that is -- we -- for any of us
15 basically, if we drink, if we drink a large quantity of
16 alcohol, it lowers inhibitions and behavior that might
17 not otherwise have come out can be expressed. Whether
18 that's for some people getting up and singing karaoke,
19 for other people, unfortunately, expressions of rage and
20 violence.

21 Q. Did you study with respect to the circumstances
22 of Alan's life, his potential for positive relationships
23 and the possibility of controlling those behaviors over
24 time?

25 A. When you say those behaviors?

26 Q. I'm sorry. The negative effects of the
27 traumatizing events that you've described in your
28 testimony today?

29 A. Sure. First of all, in terms of positive

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1 aspects of Alan's personality, there's a number of them,
2 and I know those were spoken of here in open court,
3 certainly by Amanda, who talked about how she was looked
4 after and cared for by her older brother, Alan. I think
5 Terry spoke of that as well, perhaps Leon. So there is a
6 caretaking protective aspect of him that I think
7 particularly came out with Amanda where he physically
8 provided care for her, his much younger sister, while
9 their mother was away at work. But also looked out for
10 her in other ways, as we can see by him warning her about
11 this Merlin Castleberry person.

12 There is -- I think toward people that there is
13 not any sort of sexual aspect of a relationship,
14 generally things are pretty positive. He is described as
15 kind and thoughtful by Faye Breland, the mother's former
16 employer. Described by his father as being very well
17 behaved as a young child, at least when he came up. So
18 there's certainly a lot of those behaviors.

19 In terms of controlling the negative behaviors,
20 I think that's essentially the same answer as -- I will
21 say this better. In terms of controlling the negative
22 behaviors, the rage and anger, we just need to bear in
23 mind that they are not pervasive. They are apparently
24 solely directed at women. The fact that he's in a gender
25 segregated circumstance in prison, I think essentially
26 eliminates that -- it takes away the primary risk factor
27 for Alan.

28 Q. And just to close that thought out, what would
29 be the effect of being in an environment where alcohol

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1 and drugs are forbidden beyond Alan's behavior in light
2 of the psychological development you've testified about
3 today?

4 A. That would be another big factor. I mean,
5 alcohol played a big role in his negative spiral through
6 his adolescence and early adulthood culminating in Konya
7 Edwards' death. So being free of alcohol and other drugs
8 is enormous.

9 Q. Dr. Mendel, would it have been -- were the basic
10 principles of psychological science that you have applied
11 today, and in your report, been available to a
12 psychologist in 1990 when the offense happened, or 1991
13 when this case came to trial?

14 A. Absolutely. I don't think I'm saying anything
15 that is cutting edge or new at all.

16 Q. So would it have been possible in 1990 for a
17 psychologist two have analyzed the facts the way that you
18 have today and testified to those facts to the jury that
19 was asked to sentence Alan Walker for the capital murder
20 of Konya Edwards?

21 A. I believe so. I'm trying to do a quick scan if
22 there is anything at all based on research that came out
23 after that fact. My book came out in 1995, but was,
24 while still fairly early in the study of impact of sexual
25 abuse upon males, it was far from the first book. There
26 were numerous articles and other books really starting to
27 come out more like late '70s, early '80s. And all the
28 other areas talking about the importance of physical
29 affection, talking about the importance of role models,

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1 father figures, impact of poverty, those are far older.
2 So yes, all of the things I've said would have been
3 available to a psychologist in 1990.

4 MR. CRAIG: Your Honor, we're just about
5 done, ready to tender the witness. I wanted to
6 inquire of the Court, I can make the proffer
7 that we --

8 THE COURT: Go ahead.

9 MR. CRAIG: On the testimony. I would
10 suggest that I just make it and then we can just
11 ask Dr. Mendel if it's correct, as opposed to
12 asking him, going with the colloquy that would
13 be just as lengthy as testimony.

14 So the proffer we would make is this, if
15 allowed to testify about his discussion with
16 Terry Walker in February of 2016, after Terry
17 testified in this court, Dr. Mendel would say
18 that -- would testify that Terry advised that he
19 had never had a successful positive relationship
20 with a female, even up to this day. That he has
21 not had a girlfriend of any length of time.
22 He's never been married. And that the only
23 sexual relationships he has had have been very
24 one-night and even for-pay type situations. And
25 that he is coming to understand the effect of
26 the sexual abuse visited upon him by these --
27 the older Reyer girl in childhood as having
28 something to do with his inability to have
29 positive relationships with women.

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1 And we would have proffered that to respond
2 to something that is often asked in these kinds
3 of cases, you know, if something happened to
4 more than one person in someone's immediate
5 family, why is it one sibling seems to do fairly
6 well in the world, and the other sibling, Mr.
7 Walker, is on trial and in prison for capital
8 murder? And Dr. Mendel would testify about that
9 and say, well, Terry still had the support of
10 his father. Terry was taken out of the home
11 before the influence of these other older father
12 figures, and even still, Terry has a very
13 dysfunctional sexual effect on his sexuality
14 from that event.

15 We would proffer that, and that as being
16 the relevance for it. We respect the Court's
17 ruling, of course, but I just wanted to make
18 sure I had done my job pursuant to case law
19 about making a proffer.

20 BY MR. CRAIG:

21 Q. May I just ask, is that what you would have
22 testified to if I had asked those questions?

23 A. Yes. I may have said it even slightly -- in a
24 slightly stronger more emphatic way. Terry said he had
25 never, not even never, had a successful, never had a
26 relationship.

27 MR. WHITE: Your Honor, the proffer has
28 been made.

29 THE COURT: So you tender the witness?

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1 MR. CRAIG: I was going to offer the first
2 of his reports as Exhibit 1. We do not have any
3 testimony about the second report. But the
4 report that's been identified as Defendant's
5 Exhibit ID-2, we would offer as an exhibit to
6 Dr. Mendel's testimony, and with that we would
7 tender the witness.

8 THE COURT: Mr. White, any objection to
9 those?

10 MR. WHITE: No.

11 THE COURT: Mark Number 2 into evidence.

12 MR. CRAIG: Yes, only the 2008 report, Your
13 Honor.

14 THE COURT: And that's the one that's part
15 of the PCR record?

16 MR. CRAIG: Yes, sir.

17 THE COURT: And everything else.

18 MR. DAVIS: Yes, sir.

19 (Defense Exhibit 2 marked into evidence)

20 CROSS-EXAMINATION

21 BY MR. WHITE:

22 Q. Dr. Mendel, Marvin White. On your website you
23 hold yourself out to be a forensic psychologist; is that
24 right?

25 A. That's correct.

26 Q. Are you board certified?

27 A. No, I'm not.

28 Q. Have you had any training in forensic
29 psychology?

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1 A. Fair amount, yeah.

2 Q. What?

3 A. Through numerous -- I do pretty much all of my
4 continuing education requirements through -- in the area
5 of forensic psychology because my initial training was in
6 clinical psychology, pretty much all of my continuing
7 education is in forensic psychology.

8 THE COURT: Doctor, for me, would you keep
9 your voice up.

10 THE WITNESS: I do apologize.

11 THE COURT: It's easy to trail off. That's
12 okay. Go ahead.

13 BY MR. WHITE:

14 Q. Have you ever applied to become board certified
15 in forensic?

16 A. No, I have not.

17 Q. Why not?

18 A. A couple reasons. One is that I've never really
19 understood the point and benefit of it. I go around, I
20 do these evaluations. I write these reports. They are
21 well received by courts, DAs, defense attorneys. I've
22 never been challenged or rejected as an expert. So it
23 doesn't affect me in that way. The second reason is when
24 I went, this is probably eight years ago, roughly, I went
25 to a four-day conference on -- specifically on capital
26 murder death penalty, forensic psychology in the world of
27 death penalty. And they talked there about the board and
28 -- the board for professional psychology in forensics and
29 getting board certified. And one of the things they

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1 talked about was needing to have a minimum of two areas
2 within forensic psychology that you can demonstrate
3 expertise in. My role is pretty narrow. It's pretty
4 circumscribed. I talk about trauma, impact of trauma.
5 That's what I do. I haven't ever seen any purpose or
6 benefit simply for the purpose of getting a certificate
7 to say, okay, I'm going to master giving competency
8 evaluations, which is the one that tends to get
9 recommended. That's easy. That's really straight
10 forward. Master that, get tested on both, and you will
11 be board certified.

12 There's tons of people who do competency
13 evaluations. I would be learning it and doing it solely
14 to have a certificate, which I haven't seen a benefit of.

15 Q. Do you know what the -- are you familiar with
16 the specialty guidelines for forensic psychology?

17 A. Absolutely.

18 Q. Did you follow them in this case?

19 A. Absolutely.

20 Q. You did. How?

21 A. I have no idea what you are asking.

22 Q. Isn't your report supposed to be objective?

23 A. Absolutely.

24 Q. And you don't put any contrary evidence in here
25 that doesn't -- or you do not rely on anything that does
26 not support your theory, do you?

27 A. I think I cite things where --

28 Q. What?

29 A. I think I talk about the fact that Alan and his

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1 mother deny the presence of any sexual aspect, whereas
2 others are saying it did happen. That would be an
3 example.

4 Q. Let me, while you are on that --

5 MR. CRAIG: Please the Court, Your Honor,
6 I'm not sure if Dr. Mendel was complete with his
7 answer.

8 A. I was not.

9 THE COURT: Finish your answer.

10 A. I would think I need to look through the report,
11 but I believe there is a number of places where I will
12 say that here is what has been alleged, and I don't know
13 whether this is the case because there's inconsistent
14 reporting of it.

15 Another example might be Alan and Terry
16 reporting that the sexual activity with Mary Reyer was
17 something that occurred multiple times, and Mary saying
18 it occurred only once. I reported that. I report what I
19 hear and what I learn.

20 Q. Are you finished?

21 A. Now I am finished with my answer, yes.

22 Q. But you like to speculate, don't you?

23 A. I wouldn't say I enjoy it. I certainly prefer
24 to say things with certainty. But I am comfortable with
25 when there is uncertainty, stating here is what I
26 believe, and I do not know this thing with any certainty.
27 I think I try to make that clear.

28 Q. Are you finished?

29 A. With that, yes, I am.

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1 Q. So based on what I've heard here today and in
2 your report, you believe there was a sexual relationship
3 between Alan Dale and his mother, right?

4 A. I think I've said very clearly and repeatedly in
5 the report that I don't know if there was.

6 Q. So if you cannot verify it, how can you rely on
7 it in making your diagnosis?

8 A. I did not in any way rely upon it in making my
9 diagnosis.

10 Q. You don't go into a great deal of the sexual
11 stuff?

12 A. I go into a great deal of the sexual stuff, and
13 I say that the particular aspects, I think I can probably
14 quote this part from memory, this will be paraphrasing,
15 but I quote, I talk about all the premature sexual
16 activities that existed. I talk with regard to his
17 mother that we know about one thing and only one thing
18 with a high degree of certainty, and that's the behavior
19 of him grabbing or pinching her nipples at work, which
20 has been testified to or spoken about by Alan, by Anita,
21 and in the affidavit of Faye Breland. So I rely upon
22 that with a high degree of certainty.

23 Q. Let me ask you this, did they bother to show you
24 the testimony of Faye Breland at the first hearing?

25 A. I was actually sitting here for that.

26 Q. No, you weren't. What did she testify to?

27 A. She backtracked enormously.

28 Q. So she said she didn't even say it, didn't she?

29 A. She said sometimes she didn't see it, sometimes

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1 she couldn't quite see where his hands were, it wasn't on
2 her breast, or just in that area. So I know -- I had
3 read her affidavit before, which was very consistent with
4 what Alan had said and his mother had said.

5 Q. And do you know who wrote that affidavit?

6 A. My understanding of how affidavits typically
7 work is there is an interview between the attorney and
8 the individual, the actual writing of it is done by the
9 attorney or somebody within the attorney's firm,
10 sometimes perhaps a paralegal. And then it is reviewed
11 and signed, sometimes with initials and corrections made
12 by the individual.

13 Q. But she testified in open court, right, sitting
14 right there where you are?

15 A. Exactly.

16 Q. That she did not see it, didn't she?

17 A. I think her report or descriptions were
18 inconsistent. At some point she said she didn't see it.
19 At some point she said she saw, but she couldn't tell
20 where the hand was. That's my recollection of her
21 testimony.

22 Q. Okay. The record speaks for itself, what she
23 said?

24 A. Absolutely.

25 Q. And not your recollection?

26 A. Yes, absolutely. But actually, I wasn't
27 finished in responding to your question which was about
28 my reliance upon him being sexually abused by his mother,
29 which as I stated, as I believe a severe distortion of

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1 what I wrote in my report. It said here we know about
2 that one incident, and I cited that there were suspicions
3 or an observation by one person of this door locked
4 thing, that I said -- I don't remember the term I used, a
5 red flag or concerns about it. And I said that is
6 adamantly denied by both Alan and his mother. And we
7 simply do not know, I used that phrase, we simply do not
8 know if anything further happened with his mother. What
9 we do know is that regardless of whether anything further
10 happened, Alan was sexually abused, and I'm referring to
11 the interactions with Brenda Reyer.

12 Q. You also -- but you don't accept any other
13 explanation. Of course, you said his girlfriend came to
14 the door, knocked, and he came to the door without a
15 shirt on. I mean, there could not be any other
16 explanation other than some sort of sexual involvement?

17 A. I'm obviously not saying it clearly. I come to
18 no conclusion about whether or not there was any sexual
19 involvement between Alan and his mother Anita. I state
20 that clearly. I've said it clearly here on the stand. I
21 believe though, apparently not as clearly as I thought
22 because there is still confusion. I don't know. She
23 said she saw this and that convinced her. It doesn't
24 convince me. I am not convinced of Alan and Anita's
25 version which is that nothing ever happened. Nor am I
26 convinced that something did happen. I do not know
27 whether anything happened sexually between Alan and his
28 mother beyond the single incident of inappropriate
29 touching at work.

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1 Q. It's inappropriate touching now, not pinching or
2 twisting, right?

3 A. Pinching and squeezing I think were the terms
4 that I used.

5 Q. You used twisting, also. I mean, each time it
6 got a little more, you know, sensational. Now, as far as
7 the -- you say you don't give any credit to this, but how
8 many times do you mention that in your report?

9 A. Mention what?

10 Q. How many times do you mention and bring up the
11 idea of him having a relationship with his mother in that
12 report? You've got 12 pages, how many times did you
13 bring it up?

14 A. I don't know. Would you like me to check?

15 Q. Well, you wrote the report.

16 A. And you are suggesting that because I wrote the
17 report -- if you ask me how many times I used the word
18 "the" in here, I would say I have no idea. I do not know
19 the number, but I could pretty readily find it out.

20 Q. But it was numerous times, wasn't it? If you
21 could not verify that, other than by your suspicion or
22 speculation --

23 A. It's not my suspicion or speculation.

24 Q. Well, then why did you mention it at all?

25 A. Because it has been brought up by other
26 individuals and we know of this one thing that is an
27 inappropriate behavior, and others have said, hey, I saw
28 this thing that certainly looked like that. And I
29 presented it in that way. Here is a concern that was

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1 brought up. It's denied. I don't know whether it
2 happened or not. And that is the state -- you can ask it
3 as many times as you would like, and I will continue to
4 say that.

5 Q. Are you licensed in Mississippi?

6 A. I'm sorry?

7 Q. Are you licensed in Mississippi?

8 A. Yes, I am.

9 Q. When did you become licensed?

10 A. The way it works here is they do one-year
11 temporary licenses.

12 Q. I just asked the question of when did you become
13 licensed?

14 A. Initially, I think in 2008 or something. This
15 time, in December, end of December of last year. So I
16 have a license that expires in about four weeks.

17 Q. Did you ever receive any formal training,
18 experience in the specialty of forensic psychology during
19 your predoctoral internship, such as rotation on
20 inpatient forensic or correctional settings such as jails
21 or prisons?

22 A. No, I did not.

23 Q. Have you attended workshops sponsored by the
24 American Academy of Forensic Psychology?

25 A. Yes, I have. That was that four-day one that I
26 mentioned was from them.

27 Q. Is that the only one?

28 A. I believe I've been to two by the American
29 Academy of Forensic Psychology and several by the

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1 American College of Forensic Psychology.

2 Q. What is that?

3 A. It's just two organizations that are for the
4 purpose of training and providing --

5 Q. American College --

6 THE COURT: One at a time.

7 A. They're both organizations that are geared
8 toward educating and providing training and continuing
9 education to people in the area of forensic psychology.

10 BY MR. WHITE:

11 Q. I believe you said with Mr. Craig that you only
12 do death penalty cases for the defense?

13 A. Oh, yeah, I'm sorry, I didn't let you finish the
14 question this time. Why don't you go ahead and ask that
15 question again.

16 Q. I said you said to Mr. Craig that you don't do
17 anything -- your forensic work is all for the defense,
18 right?

19 A. That is correct.

20 Q. You've had never been requested to do
21 anything --

22 A. No, I haven't.

23 Q. -- by the state?

24 A. No, I haven't. I've actually offered.

25 Q. Have you ever presented any papers or anything
26 to the prosecutors association?

27 A. No, I have not.

28 Q. Have you ever presented papers to death penalty
29 organizations?

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1 A. Not to a death penalty organization. I've
2 presented at a couple of -- I'm sorry --

3 Q. Conferences, yeah?

4 A. I'm differentiating between, like I've presented
5 at -- the Arkansas Law Review had a special symposium on
6 the death penalty. The law review is not a death penalty
7 organization, it's a law school, law journal. They did a
8 symposium on death penalty, and I presented. But I have
9 presented -- I'm trying to think of the name of the
10 organization. It's an organization in California that I
11 presented about the impact of sexual abuse on males. And
12 that was called the -- I'm blanking on the name. That's
13 one, and then also The Center for Death Penalty
14 Litigation in North Carolina puts on an annual
15 conference, and I presented twice at that.

16 Q. Now, you said that you had worked in a hundred
17 capital cases?

18 A. Something like that. I think maybe 110 is my
19 estimate.

20 Q. How many of those did you testify in?

21 A. This is the 18th, I believe.

22 Q. The 18th?

23 A. I'm sorry. One of those -- one time that I've
24 testified was not a death penalty case. So this is the
25 18th time I've testified. Seventeen in the death penalty
26 cases.

27 Q. Where were those cases?

28 A. I believe I've testified six times in the state
29 of North Carolina. Twice in Arizona. Six times, also,

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1 in the state of Texas. Twice in the state of California.

2 Q. But you don't list those cases, do you?

3 A. I think that with the exception of the most
4 recent one in Arizona, which was just the week before
5 last, they are all, including case number, on my forensic
6 website.

7 Q. But not in your CV?

8 A. Nope. They're not on my CV.

9 Q. They're supposed to be.

10 A. Thank you.

11 Q. The -- without overlooking, did the defendant
12 get acquitted in all of those cases except one?

13 A. Did the defendant get acquitted?

14 Q. Uh-huh.

15 A. No, no. I've never counted how many were
16 acquittals. Some of them were, as in this case, a person
17 who was already on death row. So it was in an appellate
18 case. I had two of those in Texas. One he received a
19 second sentencing hearing, and was sentenced a second
20 time to death. So he returned to death row. The other
21 one did not end up going to trial and I did not end up
22 testifying in it. Rather than going back to trial, they
23 reached an agreement of life in prison without parole. I
24 believe those are the only -- I've had some other
25 appellate ones. I think the one Texas was the only
26 appellate one in which I've testified prior to this.

27 In Texas, I believe only one case in which I've
28 been involved has the defendant been acquitted. I
29 believe that in all other cases they were sentenced to

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1 death. In Arizona, one case, the only one that's
2 completed, he was acquitted, and the second one is not
3 going, I don't know the results yet. And in California,
4 I think I said six, I think it's actually seven. And I
5 want to say it's about down the middle. I think a slight
6 majority have been acquitted. I'm sorry, I'm saying
7 acquitted and that is utterly inaccurate. Nobody has
8 been acquitted. Have received a life -- a sentence of
9 life without parole as opposed to a death penalty. I
10 have never been involved in guilt phases of cases. So
11 nobody's been acquitted in cases I've been involved with.

12 Q. The reason I ask, I can only find four reported
13 cases where your name was mentioned in the Westlaw or
14 Lexis or whatever. One of those is a civil case, Cox
15 versus Cox is a custody case. One is a capital murder
16 out of California. And there is another capital case in
17 federal court that was the district court granted him
18 relief and then the 4th Circuit reversed it, and this
19 case.

20 A. Would you like the names and case numbers of the
21 other cases?

22 Q. Not this late, no.

23 A. They are available on my website. Again, with
24 the exception of the Arizona case, which is still
25 ongoing. All the others are in there.

26 Q. Now, you said that you thought your work in this
27 case comports with the forensic specialty guidelines?

28 A. That's correct.

29 Q. Would you agree that the guidelines specifically

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1 cover issues such as the importance of forensic
2 practitioners to obtain, maintain competence in the field
3 of forensic?

4 A. Yes.

5 Q. And you do that?

6 A. I maintain competence within the areas in which
7 I work, yes. It's part of why I haven't broadened my
8 area. I know more about trauma and its impact than just
9 about anyone else. There are lots of people who know
10 lots more than I do about competence and other areas like
11 that.

12 Q. Okay. There is one thing, what is the APA's
13 definition of trauma?

14 A. I'm not sure.

15 Q. You are not sure?

16 A. I'm not sure offhand.

17 Q. And you are the expert on trauma in this area
18 and you don't know what the APA's definition of trauma
19 is?

20 A. I would say so. I don't find that at all
21 contradictory.

22 Q. So what you might be classing as trauma would
23 not be considered trauma under the APA's guidelines,
24 would it?

25 A. There's going to be multiple definitions
26 depending on whether you are looking at trauma as in
27 post-traumatic stress disorder and the precursor
28 conditions for PTSD, as opposed to simply looking at life
29 events that may be traumatizing.

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1 Q. We're not talking about PTSD. You said that the
2 absence of his father was traumatic?

3 A. I believe so.

4 Q. Under the APA definition.

5 THE COURT: Keep your voice up.

6 A. I'm sorry.

7 BY MR. WHITE:

8 Q. I said under the APA definition, that is not
9 trauma.

10 A. Okay.

11 Q. So how does that trauma, if it's not in a
12 psychological -- if you are holding yourself out to be an
13 expert in psychology, how is that, if it's not under the
14 APA definition of trauma, how does that comport with your
15 finding?

16 A. Again, I don't find those contradictory. And
17 the reason for that is that I, just as I don't believe
18 that the DSM-V is a -- somehow an absolute infallible
19 source of information about mental disorders. I don't
20 believe that the APA is some sort of gospel.

21 Q. So you make up your own?

22 A. No.

23 Q. Well, you have, evidently, if your association
24 that you say you are a member of says this is the
25 definition of a trauma, and you said, oh, but I don't
26 agree with that.

27 A. Well, actually, what I said is I'm not familiar
28 with their precise definition of trauma. My definition
29 of trauma is things that are out of the -- beyond the

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1 pale. Things that are highly unusual and painful or
2 devastating or destructive on the upbringing of an
3 individual.

4 Q. The APA, if you want to know, defines it as,
5 defines traumatic event as a potentially fatal event to
6 self or others.

7 A. And I think that is within the discussion of
8 PTSD. I don't think that that's a general definition of
9 trauma. It simply wouldn't make sense as a general
10 definition of trauma. Even within the world of PTSD,
11 they've expanded that to include, for example, sexual
12 abuse, even if it's not life threatening or felt to be
13 life threatening. The people that I would consider the
14 top experts on trauma, Bessel van der Kolk in particular,
15 has a much broader more expansive view of trauma, one
16 which I share. People can be traumatized. I can be
17 traumatized, you can be traumatized by things that are in
18 no way life threatening.

19 Q. Now, of course, forensic evaluations cover
20 multiple data sources. What multiple sources -- what are
21 the multiple sources that he experienced trauma other
22 than your conclusions that it was traumatic?

23 A. What are the multiple sources from which I know
24 about the traumatic events?

25 Q. Well, multiple sources, other than your
26 classifying them as traumatic, what are they, what are
27 you relying on?

28 A. I'm not sure how to answer that question. I
29 would say I'm relying on clinical experience, forensic

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1 experience, hundreds of articles and books about trauma
2 and its impact. Particularly -- I've read everything
3 there is -- that's probably not true. But I've read
4 virtually everything there is about sexual abuse, and I
5 know what there is to be known about the impact of sexual
6 abuse. As a trauma. Sexual abuse does not have to be,
7 and generally is not experienced as life threatening, and
8 there is no doubt that it's traumatic.

9 Q. In your opinion?

10 A. Well, in the opinion of -- yes, in my opinion,
11 but also in the opinion of the NIH, the makers of the
12 National Institutes of Health, the makers of the
13 clinician administered post-traumatic scale, which is
14 considered the gold standard in diagnosing PTSD.

15 Q. I thought we weren't talking about PTSD? You
16 found he didn't have PTSD at the time of this event. In
17 your supplemental report, you say he doesn't have -- he
18 did not have PTSD at the time that he murdered Konya
19 Edwards?

20 A. That's correct.

21 Q. And you have gone into this about this
22 Madonna-whore thing that you talked about, complex. What
23 did he think about Konya Edwards?

24 A. What do I think?

25 Q. No, what did he think about that?

26 A. Oh, I'm sorry, I misheard the question.

27 Q. He didn't know her.

28 A. No, I think he had just met her that night.

29 Q. Yeah, just met her that night. Going to give

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1 her a ride home, supposedly. So where is the basis for
2 this anger that he has on somebody he doesn't even know?
3 Now, I could see it with, you know, you talking about
4 Robin and Sherry and their sexual promiscuity. He had
5 nothing to go on with this girl.

6 A. That's correct.

7 Q. Yet he takes her out and rapes and drowns her.
8 Was he trying to wash her, to fulfill his cleansing thing
9 when he drug her out in the water and drowned her, or
10 tried to drown her?

11 A. Well, if I were to say something like that you
12 would be very accurate in characterizing me as
13 speculating. I have no idea why he did that. The answer
14 about why Konya Edwards was that he was -- she was a
15 girl, a female that he picked up in a bar. And I think
16 that's the entire sum total of it. He has rage --

17 Q. Well --

18 MR. CRAIG: Your Honor, he has not finished
19 the answer.

20 THE COURT: Let the witness finish his
21 answer. If it's non-responsive, make an
22 objection.

23 MR. WHITE: I object. It's non responsive.

24 THE COURT: Overruled.

25 A. Now I've lost my place. He is full of anger and
26 rage at the class of women. I would not feel that he
27 would be safe, maybe at this point, but throughout most
28 of his life, I would not have felt that he would be safe
29 around women -- that women would not have been safe

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1 around him. That's why Konya Edwards died. And I don't
2 think there is anything inconsistent in anything I've
3 said regarding that.

4 BY MR. WHITE:

5 Q. Finished?

6 A. Yes, I am.

7 Q. He didn't pick her up in a bar, she was asking
8 for a ride home. She got left there and needed a ride
9 home.

10 A. I thought from Jason Riser's testimony that they
11 met at the Fiesta Club.

12 Q. It was a bar, yes. But I don't think the record
13 shows that they had any reaction or interaction before
14 they were leaving and she and the people she rode with
15 had left her there.

16 A. Okay.

17 Q. And she needed a ride home.

18 A. And my understanding from Jason Riser's
19 testimony was that the two of them, Jason and she, had
20 spoken and then they all left together. He didn't
21 mention, as far as I saw, about her being left and
22 needing a ride. But I don't know that that changes
23 anything.

24 Q. And so he didn't go out and kill her just
25 because she wanted a ride home, it was all because he
26 supposedly had some sexual interaction during his early
27 years?

28 A. No. As I've really tried to make clear, it's a
29 very complex constellation of events, but yes, centrally

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1 including the sexual interactions, plural, in his early
2 years.

3 Q. Okay. And you were talking about the games,
4 supposedly, that they played. Now, the girl says just
5 one time?

6 A. That's correct.

7 Q. And yet you want to talk about numerous times of
8 this game being played?

9 A. Both Alan and Terry -- well, Mary said there was
10 only one sexual interaction, both Alan and Terry said it
11 happened on numerous occasions. I think I stated it just
12 that way. That Mary said it was a one-time thing, Alan
13 and his brother both stated it was a multiple occurring
14 thing.

15 Q. And you rely on Terry?

16 A. In part, yes.

17 Q. You were here the last time we had a hearing?

18 A. Yes.

19 Q. And what did Terry testify to?

20 A. He testified to a lot of things. He spoke about
21 -- I recall him using the word "child rape" when he
22 talked about the experiences with Brenda Reyer. He
23 talked about the experiences, the sexual interactions
24 between -- you've asked me what he's testified to.

25 Q. That's not the point of my question. My point
26 is what did he say about remembering about testifying at
27 his brother's first trial?

28 A. That's Leon. Leon -- to clarify. I heard both
29 of them testify. Leon, for some reason, was utterly

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1 oblivious to the fact that he had testified in Vicksburg
2 in 1990. Terry was not contacted, I believe. But at any
3 rate, Terry had no such issues with memory. And I don't
4 believe that I relied particularly on Leon at all.

5 Q. Did -- Terry went and lived in Alaska, right?

6 A. That's correct.

7 Q. So he was not around after -- at a fairly young
8 age he left, right?

9 A. I know that you all spent a lot of time on this
10 in the first part of the hearing about the years when
11 this happened. And I'm confused about it as well. But
12 Terry went there to Alaska for a year, I believe that was
13 around about age seven. Came back for a couple of years.
14 He said second grade he was in Alaska. Came back a
15 couple of years, then spent fifth grade in Alaska. Came
16 back, and then went back a third time, I believe seventh
17 grade, and stayed from then on. I believe that's the
18 chronology, though it's certainly possible I'm off
19 somewhere by a year or so.

20 Q. And didn't Alan go up there, too?

21 A. Alan went up -- the first time I believe was
22 both of them. So if it was, in fact, second grade for
23 Terry, it would have been -- I'm not sure if he is one or
24 two grades ahead. So I'm not sure if that was third or
25 fourth grade for Alan. I believe fourth grade. I think
26 it's two grades. If, in fact, it was fifth grade for
27 Terry when he was there, that would have been seventh
28 grade for Alan. That was the time I believe that he did
29 not stay as long, that he returned sooner to Mississippi.

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1 And then he did not go back with Terry that third time.
2 Terry was in seventh grade, Alan would have been in ninth
3 grade. Alan did come down -- did go up to Alaska one
4 further occasion when he was about 17, I believe, and was
5 there for a matter of a few months. And then returned to
6 Mississippi for good. Just -- oh, no, he would have been
7 older than 17, I'm sorry, because he was returned to
8 Mississippi shortly before the murder. Within a year, I
9 think.

10 Q. Do you consider yourself an advocate for Mr. --

11 A. No.

12 Q. You don't?

13 A. No.

14 Q. What do you consider yourself?

15 A. I consider myself a forensic evaluator who
16 evaluates defendants. You know, the -- I think maybe
17 this will make it more clear. That disparity between the
18 fact that I've been in 110 or 120 criminal cases, but
19 only testified 17 times, 18 times, comes a lot from the
20 fact that I will do an evaluation and I will say to the
21 defense attorneys, I can't help you. Here is my
22 findings. Here is what I would say to you. Sure, call
23 me if you want. I will write a report if you want. But
24 this is not going to be, in my opinion, helpful to your
25 case. Or I will just tell them what my findings are, and
26 they will -- they won't use me, because I pride myself on
27 the objectivity. If there is no trauma, I'm not going to
28 say there is trauma. If the trauma has had minimal
29 impact, I'm not going to say it's had a greater impact

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1 than is, in fact, the case. So I'm not an advocate.

2 Q. With that kind of track record, 17 cases you
3 said that you've testified in?

4 A. Correct.

5 Q. And a hundred more that you have not testified
6 in?

7 A. Something like that, yes.

8 Q. And all of those were you couldn't be of help to
9 them, all the rest of those?

10 A. No, no, no. I'm sorry if I gave that
11 impression. That is one category. I want to be clear
12 that that exists because I think it argues against the
13 point that you are trying to make that I'm an advocate,
14 that I am not somehow not impartial. The biggest
15 category of all among those 110 or so criminal cases, or
16 murder cases, are ones where they will say yes, we would
17 like you to write the report. I will write the report
18 with the idea that possibly I will go and testify as I'm
19 doing now. And they get that report to the DA, to the --
20 that's what it's called in other states, to the
21 prosecutor, to the AG, to the DA. And sometimes I've
22 ended up talking, they set up the interviews with me and
23 the DA, telephone interviews, and a settlement is
24 reached. And I don't go to court for that reason. It
25 never goes to trial. That's the biggest of the
26 categories.

27 Category two are the 17 that I've testified.
28 But there is another category, and I want to say that has
29 somewhere between 15 to 20 cases, about equal to the

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1 number that I've testified in where the defense has not
2 wanted to use me because, A, I didn't find abuse. They
3 thought there may be abuse. I've looked and I've said,
4 maybe, but not that I can see. Or I've felt that there
5 is maybe something traumatic in their life, but it's not
6 had a huge impact and it's not going to be particularly
7 -- yeah, that it hasn't been hugely impactable.

8 Q. So we don't really know how many cases that you
9 have actually said, just like 15, you've said that
10 nothing could be found?

11 A. That would be an estimate.

12 Q. So most of the time you find some reason to help
13 the defendant?

14 A. Well, the cases that I'm called in on are cases
15 in which there's already a strong reason to believe that
16 there is abuse or trauma. Despite that, in 15 or so of
17 them I've said, you know, I don't see it. That's not
18 what I see. Because I go in with an open mind wanting to
19 hear what's there and get a sense of it. It's why I
20 threw out my report. There over and over again are
21 statements about who backs, or in cases where somebody
22 contradicts the defendant's version of experiences.

23 Q. Are you still a member of the Association for
24 Sentencing Advocacy and Mitigation Specialists?

25 A. No, no.

26 Q. Why is it still on your resume?

27 A. What?

28 Q. Why is it still on your resume?

29 A. You don't have the most recent copy of it, I

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1 don't think. Did you get that from my website?

2 Q. Yeah, I did.

3 A. This has been -- okay. You have what's called
4 -- this has been a recurring frustration for me. You
5 what's called a C-A-C-H-E-D, cached version of my
6 website. It's been off my website for about a year and a
7 half I want to say. I've been -- well, actually I can
8 say this more simply. I was a dues paying member of the
9 National Association of Sentencing Advocates and
10 Mitigation Specialists from approximately 2011 to 2014.
11 -- no, 2013. I was in it because of their listserve,
12 which was wonderful, and I would learn lots from it. And
13 then it just kind of disappeared and stopped having
14 almost anything on it. I thought, yeah, no reason to
15 keep paying for this. And I haven't been a member since.
16 Again, I believe it was 20 -- I'm not sure if it was 2013
17 or 2014. But I believe 2013 was my last year of
18 membership.

19 Q. Now, you talk about him being homeless?

20 A. Yes.

21 Q. How long was that?

22 A. I think that may have been just a matter of
23 weeks.

24 Q. Yes, that's what you say in your report. He was
25 homeless for a few weeks at the age of two. How does
26 that --

27 A. Two wouldn't make sense. I apologize if I say
28 that.

29 Q. Well, then your report says two?

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1 A. Okay. Then that would have to be in error
2 because it was after the dad -- because the dad spoke
3 about this being after he had gone up there.

4 THE COURT: I can't hear you.

5 A. I'm sorry. My understanding is that the time
6 when mom and -- I mean, Terry was born, and they are two
7 years apart. So he had to be at least somewhat over two.
8 And I would think now that he would have been closer to
9 three or four and Terry would have been two. So I
10 apologize.

11 Q. Well, your report reads --

12 A. I trust that you say that.

13 Q. Your report reads Terry was -- I mean, Alan was
14 two and Terry was an infant.

15 MR. CRAIG: May he read the rest of the
16 sentence?

17 A. Actually, I will correct this here. I can see
18 how you would have misread that. When he was about two
19 years of age and his brother, Terry, an infant, their
20 father left them. That's what happened when he was two,
21 about, and Terry was an infant. There was no contact
22 with their father until Alan was about seven years old.
23 Alan's mother Anita moved haphazardly with her young
24 children traveling by car, along with another couple,
25 from her family's home in Florida to Louisiana and then
26 quickly back to Mississippi. The five of them, the
27 Walker family and the other couple, lived in the other
28 couple's car for a few weeks. While homeless, Alan
29 recalls being responsible for his younger brother at this

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1 early age while their mother worked. In other words, I
2 apologize if my writing was not clear and obviously led
3 to a confusion here. What happened at two years of age,
4 approximately, or about, as I wrote it here, was the
5 parental divorce. Sometime between two and seven is when
6 the period of homelessness, and again, I've estimated
7 that it.

8 Q. Age of what now?

9 A. Well, it says there was no contact with their
10 father until Alan was about seven years old. So that's
11 the time range. I believe he was about four. That's, I
12 think, based on the mother's report and Alan's report
13 that that's how old he was during this relatively brief
14 period of homelessness. But not two, and I didn't say
15 that. And I would appreciate you, at least, representing
16 what I write accurately.

17 Q. And you not being clear.

18 A. What?

19 THE COURT: Let's stop the argument between
20 witness and counsel. Mr. White, you know better
21 than that, and Mr. -- Dr. Mendel, you just
22 answer the questions.

23 A. Okay.

24 BY MR. WHITE:

25 Q. So a few weeks of homelessness like that, living
26 in a car, caused all this trauma, as you call it, trauma,
27 that does not meet the APA's definition, that added to
28 all of this stuff about why he is sexually dysfunctional?

29 A. Well, I think I've tried to be clear about this.

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1 That no, absolutely not. Actually, I can just answer
2 that simply no. A few weeks of homelessness definitely
3 did not lead to all of this trauma and all of this sexual
4 dysfunction.

5 Q. Now, extreme poverty, you seem to associate that
6 with causing his condition?

7 A. It is one of the numerous factors that I list,
8 yes.

9 Q. So anybody in extreme poverty is subject to
10 this, right?

11 A. What do you mean by this?

12 Q. Well, what you diagnosed Alan with, supposedly?

13 A. I don't believe I made a diagnosis in this. Can
14 you reask your question? I have no idea what you are
15 asking.

16 Q. You did not make a diagnosis of Alan?

17 A. Not in the first report.

18 Q. So we don't -- so what is your conclusion about
19 Alan, if you've not made a diagnosis, then this is just
20 words on a paper?

21 A. Of course this is words on a paper. But no, I
22 don't focus on diagnosis. I focus on human beings. I
23 focus on, I think the way I say in my summation page, is
24 that the verdict in my introduction and summation, is
25 that my purpose is to be able to explain this human being
26 to help anybody involved with this case, whether it be
27 DAs, defense attorneys, judge, jury, to understand the
28 individual who committed this crime, who is convicted of
29 this crime, understand how he became the adult that he

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1 became.

2 Q. So there is --

3 A. I was not finished at that point. No diagnosis
4 can capture that as well as a psychodynamic statement, a
5 description of an individual. A diagnosis is a label.
6 If I'm asked to do a diagnosis, I can do a diagnosis. I
7 was asked to assess the presence of trauma and the impact
8 of trauma if any.

9 Q. But you don't use -- what is your definition of
10 trauma then, if you do not follow APA's definition of
11 trauma?

12 MR. CRAIG: Object to that. It's been
13 asked and answered at least twice just in the
14 cross-examination.

15 THE COURT: Sustained.

16 BY MR. WHITE:

17 Q. What kind of studies find a link between
18 childhood trauma and adult behavior?

19 A. What kind of studies?

20 Q. Yeah, do you have some?

21 A. Gosh, hundreds of them. I would say probably
22 the pinnacle of this is what's called the ACE, the -- I'm
23 blanking out what the A is. The adverse childhood
24 experiences. This is a study done jointly by the
25 National Association -- National Institutes of Health and
26 Kaiser Permanente, the very large hospital and medical
27 chain in California. As a result of which, they have, I
28 believe, over 30,000 people in this study. And what
29 they've done in this longitudinal study is every single

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1 person for the last 20, 30 years now, in California, who
2 is involved with the Kaiser Permanente system, fills out
3 questionnaires, and they're related to adverse childhood
4 experiences, which is actually fairly close to what I
5 define as trauma. And then they're followed
6 longitudinally. So that's the biggest, the biggest study
7 of this sort. But there have been, I would say a
8 conservative estimate would be a thousand articles in the
9 last 15 years about relationship between childhood trauma
10 and adult outcome. There are certainly books about it.
11 That's what my book is about.

12 Q. You also go into about him smoking marijuana,
13 but yet you don't have any concrete proof of that, do
14 you?

15 A. That's why I kept saying likely.

16 Q. Likely. So that can't form any part in your
17 opinion, right?

18 A. Well, when Alan Walker talks about smoking
19 marijuana as a child, I haven't heard anything that would
20 contradict that statement. His brothers and sisters talk
21 about believing that he was smoking marijuana. When his
22 mother talked about believing that he was smoking
23 marijuana, do I know it to a 100 percent degree of
24 certainty? Pretty close. Maybe not 100 percent. But
25 the alternative is that, for some reason, Alan, his
26 mother, and all of his siblings decided we are going to
27 concoct a story that Alan was smoking marijuana as a
28 teenager. And I think that is probably, obviously,
29 sounds rather preposterous and way less likely than the

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1 alternative, which is that he and the rest of them were
2 telling the truth in statements that he was smoking
3 marijuana.

4 Q. Now, you draw the conclusion, you said, that
5 when they are playing this game, that clearly somebody
6 had to have been abused by an adult to know what to do in
7 that situation, right?

8 A. Nothing to do with the game. When there is --
9 among children in this six to eight year old range, this
10 very young age, when there is actual full penile/vaginal
11 sexual intercourse, it is an extremely different thing
12 than touching, fondling, which can be sui generis, that
13 can come of its own. I don't believe that six to eight
14 year olds spontaneously with no previous sexual
15 experience decide I will insert my penis in your vagina,
16 or I will perform oral sex upon you, or we will have anal
17 sex, or oral sex, or whatever. That that level of
18 severity is at least an extremely strong indicator of
19 likely previous sexual abuse or, as I wrote in my report,
20 at the very least, exposure, significant exposure to
21 graphic sexual materials. It can be learned through
22 that.

23 Q. Are you finished?

24 A. Yes.

25 Q. Well, now, you talk in your report about them
26 spying on the man and the girl in the van, all four of
27 these same people. So it doesn't mean anybody was
28 abused, they just saw somebody doing this?

29 A. That's an excellent point. That would be an

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1 alternative way.

2 Q. You can go in the barnyard and see what's going
3 on, too, can't you? Can't you?

4 A. I know the research, you know. And the research
5 says that when you see sexual -- there is a man named
6 Bill Freidrick, William Freidrick who has this whole
7 research is about normative childhood sexual behavior.
8 His conclusion is basically you have a five or six year
9 old and you catch them touching each other and getting
10 naked with each other, is that an indication of sexual
11 abuse, absolutely not. Don't be concerned about it.
12 That's normal. You get those same two doing some
13 touching, still don't be concerned about it. But you get
14 actual intercourse, be very, very, very concerned.

15 Q. And you don't have that proof of actual
16 intercourse in this case, do you?

17 A. I have -- well, I don't know how one would have
18 proof. I have Alan and Terry's statements versus Mary's
19 statements that she does not recall there being actual
20 full on intercourse, but thinks it's possible. So that's
21 the --

22 Q. Six and eight year olds, right?

23 A. That's correct. I think both Alan and Mary
24 were.

25 Q. That's possible?

26 A. Is what possible?

27 Q. Full on pelvic, as you say, intercourse?

28 A. Yes. Yes. It is, actually. It's not possible
29 certainly to ejaculate until one has reached puberty.

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1 But infants obtain erections, and certainly six year olds
2 or eight year olds do. And it is possible to have sexual
3 intercourse. It is possible for a penis to be inserted
4 in an anus, or a mouth, or a vagina.

5 Q. Is there any indication of there being sodomy
6 here?

7 A. No, I'm just --

8 Q. Then why do you bring it up, to sensationalize
9 this?

10 A. Are you asking that as a genuine serious
11 question?

12 Q. Yes.

13 A. Absolutely not to sensationalize it. To attempt
14 to be able to explain to you in a way that you will
15 understand.

16 Q. But your report mentions nothing about that. So
17 why would you bring that up?

18 A. Because I'm attempting to explain things to you
19 in a way that you will comprehend.

20 Q. You also cite this about the hugging or touching
21 or him not being -- you don't talk anything about him --
22 when is the most important time for that touching and
23 hugging?

24 A. Early in life. To some degree, I would say it's
25 important throughout life. But I would say certainly
26 infancy. I would say most important time would be
27 infancy. And then it would be a progression beyond that.
28 So most important in infancy, still tremendously
29 important when one is a toddler. Still important, but

Matthew Mendel, Ph.D. - Cross-Examination

1 marginally less so at five, six, still, and then
2 progressively less important, though I believe still
3 quite important, throughout life.

4 Q. But you don't go into anything about or have no
5 questions about how he was handled as an infant or an
6 early child, do you?

7 A. No, I don't believe I do.

8 Q. So you don't know whether he was hugged or held?

9 A. I'm trying to recall if the mother said
10 anything. Obviously, Alan wouldn't have any recollection
11 of that.

12 Q. Did you put it in your report?

13 A. I'm sorry?

14 Q. Wouldn't that have been, if it had been, would
15 that have been important to put in your report?

16 A. Yeah, I would think so.

17 Q. So if it's not there?

18 A. Then probably I didn't inquire of the mother
19 about that and her treatment of him as an infant.

20 Q. And you kind of go into this monkey study,
21 Rhesus monkey study?

22 A. Yeah.

23 Q. Is it Hans or whatever it is, the Hans study, is
24 it Hans?

25 A. No, Harlow. Harry Harlow.

26 Q. Okay. Now, you cite that and you said it
27 basically is an example of Alan. But how did that study
28 operate?

29 A. He worked with these -- Harry Harlow and his

Matthew Mendel, Ph.D. - Cross-Examination

1 colleagues worked with these Rhesus monkeys for years in
2 all different studies. But the really central seminal
3 study was one in which he would separate infant Rhesus
4 monkeys from their mothers, and divide them, I think, I
5 assume randomly, I'm sure randomly, divide them into two
6 conditions, one in which they were fed milk from a bottle
7 coming from a wire mesh in the shape of a mother Rhesus
8 monkey. And the other which they were also fed from a
9 wire mesh with the bottle, but in the second condition,
10 the wire -- the second group of monkeys, the mesh was
11 covered by a soft plush furry fabric. And what he found
12 in both cases they got adequate nutrition. There was no
13 difference in the amount of milk provided or intake, but
14 the monkeys who never had soft, warm, nurturant physical
15 contact, that is the monkeys that were fed from the
16 bottle attached to the wire mesh, were profoundly
17 disturbed. They had problems mating. They had problems
18 parenting. Their peer interactions were very distorted,
19 very different than those of normal Rhesus monkeys raised
20 by their mothers, and quite different from those fed
21 through the furry soft plush attachment.

22 They were -- the monkeys fed by the wire, no
23 physical softness and contact were aggressive. So it's
24 all these differences. That's why it's viewed as such an
25 important study.

26 Q. And but that's not Allen, though, is it?

27 A. No, that was with Rhesus monkeys, that's
28 correct.

29 Q. He was not fed and nurtured by a wire frame, was

Matthew Mendel, Ph.D. - Cross-Examination

1 he?

2 A. No. No. Certainly not.

3 Q. So like the second group, which I think they
4 said that turned out fairly normal?

5 A. I don't know if I would say that he was like the
6 second group. I'm talking about a gap or relative lack
7 or absence of physical contact.

8 Q. Did that second wire monkey, even though covered
9 with the fur, did it reach out and touch it? It didn't,
10 did it?

11 A. No.

12 Q. So that kind of defeats that purpose, doesn't
13 it?

14 A. No, no, because the infants are capable, from a
15 very young age, human infants, monkey infants can control
16 movement enough that they will cuddle up against that.
17 They will run against the fur. They won't rub against a
18 wire mesh. This is something I included as an example to
19 show how fundamental the need for physical contact.
20 There are further examples that, you know, perhaps it's
21 more directly impactful, or more directly applies, the
22 orphanage studies. These are with human beings,
23 obviously, and these are human beings that were raised in
24 orphanages where until about the 1960s, or '70s even, it
25 was thought, oh, if you have a baby in an orphanage, as
26 long as you give him or her enough food and you, you
27 know, move his little arms and legs around enough that
28 they don't get bed sores and they don't atrophy, they're
29 going to be fine. And it wasn't until around then that

Matthew Mendel, Ph.D. - Cross-Examination

1 people said, this is a psychologist named Rene Spitz,
2 there were several others involved, that looked at that
3 and said, wait a minute. Let's take some of these out.
4 Give them the same amount of food, give them the same
5 amount of physical stimuli, actually moving their limbs,
6 but let's also hold them. Let's see what difference it
7 makes when we hold them. When we hold this infant, this
8 toddler in our arms. And it makes a huge difference.

9 Q. But you didn't -- did his mother hold him? Is
10 there any evidence that you can find in there that his
11 mother didn't hold him and nurture him as a child? You
12 keep going this way, you did it during your direct
13 testimony, you do it now -- holding that child?

14 A. I don't know about the earliest year of his
15 life.

16 Q. You don't know?

17 A. No, I don't. Specifically, I don't know. And I
18 do regret not just inquiring into this more carefully.
19 More fully. But I didn't ask the mother about how, to my
20 recollection, I didn't ask how she treated him in the
21 first year of his life. From shortly thereafter, at
22 least, there was not much of that. That's by her report
23 and his. I do regret, and I thank you for bringing it to
24 my attention so that in future cases I will make sure to
25 inquire about that first year.

26 Q. Now, you -- I've gotten different ages twice,
27 two times when you testified, about when this prison game
28 or guard/prisoner game was played. How old were they?

29 A. I hadn't realized I had given different ages.

Matthew Mendel, Ph.D. - Cross-Examination

1 My understanding of the sexual interactions among Mary,
2 Marie, Alan, and Terry are that Mary and Alan are
3 approximately the same age, and this was when they were
4 about eight years old. Terry is two years younger, which
5 would have made him six, and Marie is three years older,
6 which would have made her 11. I believe that's the ages
7 that each has reported that this occurred. Is it
8 possible that instead of six, eight, and 11 it's 5, 7 and
9 10? Sure. Is it possible it's instead of six, eight and
10 11, it's 7, 9 and 12? Yes, that is possible. I don't
11 think it fundamentally changes anything. I don't believe
12 I've also said any ages other than six, eight, and 11.

13 Q. Now, you went into some detail about Alan and
14 his being aggressive only when he is drinking, or I don't
15 know, you never mentioned whether he did the same thing
16 when he was smoking marijuana as you say he did. Do you
17 know if he was drinking the night he killed Konya
18 Edwards?

19 A. I believe so.

20 Q. Are you sure?

21 A. No, I'm not sure.

22 Q. Is there evidence of that?

23 A. I'm trying to recall in Jason's testimony if he
24 had said that they had been drinking either as they spent
25 the day working on the car at Alan's house or at the --
26 yes, actually, Jason talks about him drinking. He talks
27 about him drinking at -- I do have more. Jason talked
28 about himself, Jason, drinking at Fiesta. I don't recall
29 whether he speaks about Alan drinking at the Fiesta.

Matthew Mendel, Ph.D. - Cross-Examination

1 In my second interview with Alan, the one in
2 earlier this year, when I spoke with him about the crime
3 itself, he talked about being surprised that Jason would
4 say that he was unable to obtain an erection at the time.
5 And he said because I have always been able to have an
6 erection after I've been drinking, even if I've been
7 drinking heavily. And, in fact, I like it better that
8 way because I can last forever. That was his statement.
9 So that's certainly a statement from him that he was
10 drinking. We had a statement from Jason that Jason was
11 drinking. Is it possible that Jason was lying and he, in
12 fact, had not been drinking, or that Alan was lying and
13 telling me that he wasn't drinking when he had been? I
14 suppose, but I think it's really unlikely. I don't see
15 the purpose of saying we went to the Fiesta club, we
16 spent the time there, we drank, but when in fact they
17 hadn't touched alcohol, which would also sound, I think
18 you would probably agree, very consistent with Alan who
19 has been described by everybody as drinking pretty much
20 all day every day from his -- at least his late teens,
21 mid teens.

22 Q. I know you put several times in your report that
23 he was an alcoholic. Was he ever had diagnosed as an
24 alcoholic?

25 A. I don't believe so.

26 Q. But you used that term anyway?

27 A. Yeah, yeah, I did.

28 Q. Sensationalism again, right?

29 A. I don't believe that calling a group of four

Matthew Mendel, Ph.D. - Cross-Examination

1 teenagers who are drinking --

2 MR. WHITE: Your Honor --

3 THE WITNESS: He just referred to what I
4 said as sensationalizing, and I'm explaining --

5 THE COURT: One at a time.

6 MR. WHITE: Your Honor, I'm asking him
7 about Alan Walker. Not four teenagers. I'm
8 asking about Alan Walker.

9 THE COURT: You said sensationalism again,
10 right, that's your question. And you can answer
11 that question.

12 A. Okay. Great. I spoke about a group of four
13 friends, four teenage boys, all of whom from multiple
14 peoples reports were drinking throughout the day, heavy,
15 heavy amounts of alcohol. I don't think it is in any way
16 sensationalizing to refer to that as -- to refer to them
17 as being alcoholic, when we know that two of them died of
18 diseases related to alcoholism. A third was ultimately
19 killed, first incapacitated, but ultimately died of
20 injuries suffered from driving while intoxicated. And a
21 fourth has this pattern of drinking heavily to the
22 extreme detriment of his relationships and ultimately
23 contributing to criminal behavior. I don't think it's
24 sensationalizing that in any way to refer to that as
25 alcoholism.

26 Q. Now, when did these deaths occur?

27 A. Which?

28 Q. These three you just mentioned, when did they
29 occur?

Matthew Mendel, Ph.D. - Cross-Examination

1 A. Billy Davenport was alive when I did the
2 evaluation in 2008. I don't know how long before that
3 his accident was. I think he died relatively recently,
4 like in the last two or three years. Duke and Dwayne
5 Maloney, certainly well after Alan's initial trial and
6 incarceration. I don't know if it was during their late
7 20s or their 30s or even -- it couldn't have been later
8 than their 30s because they had already been deceased
9 when I interviewed Alan in 2008.

10 Q. So you don't know what they died of?

11 A. I -- the dates?

12 Q. You say alcohol related, but you don't know what
13 they died of?

14 A. I do not know the specifics.

15 Q. So how would you know that it's alcohol related?

16 A. That's a good question. Yeah. I'm not sure.

17 Q. So by just labeling it all because they drank a
18 lot that they were all alcoholics is a misnomer; is it
19 not?

20 A. I don't know. I don't know if it's a misnomer.
21 It's what I was told by a number of individuals who knew
22 them. But is it possible they told me in error? It is
23 possible, yes.

24 Q. Who are these people that told you they were
25 alcoholics?

26 A. Certainly Alan.

27 Q. He used that term?

28 A. Yes.

29 Q. Who else used that term?

Matthew Mendel, Ph.D. - Cross-Examination

1 A. I believe Anita, Alan's mother.

2 Q. Did she call Alan an alcoholic?

3 A. Yes, I believe so.

4 Q. His mother did?

5 A. I believe so. And I want to say that the Reyers
6 referred to them as alcoholics. But I actually agree
7 with your main point, I think, with this, that I made a
8 frayed statement about alcoholism and about dying of
9 alcohol related diseases. And I would agree that that
10 was actually rather careless on my part without getting
11 further medical data about the causes of their death.

12 Q. Do you know how defense counsel found you?

13 A. I do not recall. I may have been told back at
14 the beginning, but I don't recall now.

15 Q. Have you ever worked for Dr. Shaffer before?

16 A. I'm sorry?

17 Q. Have you ever worked with Dr. Shaffer before?

18 A. No, I have not. I just met him on this case.

19 Q. So a lot of what you base yours on is the
20 self-reporting of Alan, right?

21 A. That's certainly a portion of it, yes.

22 Q. How reliable is that in a forensic setting?

23 A. We both, Dr. Shaffer and I, actually did some
24 testing of his -- of the validity of his responding, and
25 he passed with flying colors. Dr. Shaffer administered
26 the test of memory malingering, I administered the SIRS,
27 the Structured Interview of Reported Symptoms, as well as
28 the detailed assessment of post-traumatic distress, which
29 has validly measures and contains statements about

Matthew Mendel, Ph.D. - Cross-Examination

1 whether the person's response profile is suggestive
2 either of exaggerating, feigning things, malingering, or
3 conversely of minimizing problems. No indications of
4 that.

5 Q. But those are for psychiatric conditions, are
6 they not?

7 A. The?

8 Q. Malingering psychiatric conditions, they're not
9 for somebody just telling you a bald-faced lie?

10 A. Well, the test of memory malingering is just
11 straight about memory and pretending that there is
12 cognitive impairment.

13 Q. But cognitive impairment is different than
14 telling you something that happened that did not happen
15 or fashioning a story for you so that you can put in your
16 report that he is, you know, whatever situation you want
17 to extrapolate from it?

18 A. Sure. And that is why I go to as great an
19 effort as I do in speaking with collateral reporters to
20 learn whether they support or corroborate what I've heard
21 from Alan, or conversely, if they tell me conflicting or
22 contradictory information. And I am careful to cite in
23 here in my reports when there is something that is
24 conflicting or contradictory. That's why I state, "Alan
25 says this happened bunch of times." I don't think I said
26 in here that Terry said this happened a bunch of times,
27 the sexual interactions with the Reyers, because I didn't
28 know that he said that yet. There is an additional piece
29 of corroborating evidence that I didn't have access to at

Matthew Mendel, Ph.D. - Cross-Examination

1 the time of my report. But I did have access to Mary
2 Reyer saying it happened once, And I reported that.

3 The other big statement that is different by
4 reporters is Alan and his mother say there was no sexual
5 interactions between them. Others believe that there
6 was, and I said each of those views. And I did not reach
7 a conclusion about it.

8 Q. Did they agree that there was or did they
9 speculate that there was?

10 A. I would say that Mary Reyer's was a suspicion,
11 speculation. Robin's was a -- was also a suspicion or
12 speculation that she felt, okay, look. Why would they be
13 in there with the door locked, this door that's never
14 locked, and she reached the conclusion that it had
15 happened. I don't reach that conclusion, and I state
16 clearly in there that we do not know what, if anything,
17 beyond the incident with the grabbing or touching of the
18 nipples, we do not know anything else.

19 Q. And that's not what the lady testified to on
20 this very stand.

21 THE COURT: Move on, we've traveled this
22 ground many times.

23 A. Thank you.

24 THE COURT: You don't need to thank me.

25 A. Sorry.

26 BY MR. WHITE:

27 Q. Do you think Mr. Walker has ever told a lie?

28 A. I would assume so.

29 Q. Do you?

Matthew Mendel, Ph.D. - Cross-Examination

1 A. I'm sorry?

2 Q. Do you?

3 A. The reason I'm pausing as long as I am, I would
4 say the most likely example, and again, I don't reach
5 this as a conclusion, if, in fact, there was a sexual
6 relationship between him and his mother, I would strongly
7 suspect that he remembers it and is aware of it, and was
8 untruthful to me in denying it. But I think it is
9 equally possible that nothing of the sort ever happened
10 and he is telling the complete truth. That's the one
11 area where I would suspect he could have been, out of
12 embarrassment, shame, protection of his mother, that he
13 may have been lying to me.

14 Q. So nothing else he would have lied to you about?

15 A. Nothing comes to my mind. He certainly could
16 have been mistaken about ages and things, but I don't
17 consider that a lie.

18 Q. But you don't know, do you?

19 A. Of course not.

20 Q. But you assume that everything that you were
21 told is the absolute truth and you put it in there?

22 A. No, I'm going to try to answer that again. I
23 don't know how to say this in a more clear way.

24 MR. CRAIG: May I object to asked and
25 answered about the sources and whether he
26 confirmed what --

27 THE COURT: Sustained.

28 MR. WHITE: One moment, please. No further
29 questions at this time, Your Honor.

Matthew Mendel, Ph.D. - Cross-Examination

1 THE COURT: Mr. Craig, how much redirect do
2 you have?

3 MR. CRAIG: None.

4 THE COURT: Let's take about a ten minute
5 recess.

6 MR. CRAIG: Is the witness excused?

7 THE COURT: Yes. Mr. Craig, Mr. White, the
8 witness has stopped me going out of the
9 courtroom, wanted to ask me a question. Out of
10 an abundance of caution, I don't know what it's
11 about, so I want to make sure it's on the
12 record.

13 MR. CRAIG: I would rather my witness not
14 ask the Court a question, if you please.

15 THE COURT: All right. Y'all talk.

16 MR. CRAIG: Don't ask a question of the
17 Judge, Dr. Mendel.

18 (Recess)

19 THE COURT: Y'all have your next witness?

20 MR. VOISIN: We call Robert Shaffer.

21 (Oath administered by the Court)

22 THE COURT: Please allow the lawyers to
23 finish their questions before you answer so only
24 one person is talking at a time and the court
25 reporter can take everything down.

26 ROBERT SHAFFER, PH.D.

27 Having been duly sworn testified as follows:

28 DIRECT EXAMINATION

29 BY MR. VOISIN:

Robert Shaffer, Ph.D. - Direct Examination

1 Q. Please identify yourself?

2 A. Robert Daniel Shaffer.

3 Q. And please describe your educational background
4 or review your educational background for us?

5 A. I have a bachelor's degree in psychology from
6 Guilford College in Greensboro, North Carolina.
7 Subsequently, I went to Georgia State University in
8 Atlanta, and obtained a psychology degree -- excuse me, a
9 master's degree in the field of psychology. And then I
10 continued through the doctoral program in clinical
11 psychology at Georgia State University.

12 Q. And when did you get your doctoral degree?

13 A. That's Georgia State University.

14 Q. When, I'm sorry?

15 A. Excuse me, 1984.

16 Q. Okay. And do you have any specialized training
17 in the field of psychology?

18 A. Yes. I learned administration of the
19 Halstead-Reitan Neuropsychological Test Battery from
20 actually the originator and author of that battery, Ralph
21 Reitan. And I had some supervised training experience
22 from the chief of neuropsychology at the Atlanta Veterans
23 Administration Hospital. And also at the -- I had
24 supervised experience in practicing at the Atlanta
25 Federal Penitentiary.

26 Q. Okay. And where are you currently employed or
27 how are you currently employed?

28 A. I have a clinical and forensic practice that is
29 based out of my office in the northern suburbs of

Robert Shaffer, Ph.D. - Direct Examination

1 Atlanta.

2 Q. Okay. And what does your clinical practice
3 entail?

4 A. I provide psychotherapy services and family
5 related services to a variety of counseling recipients,
6 and forensic services in the field of family psychology
7 advising the court as to questions of custody and
8 parental fitness. And also, a variety of valuations for
9 criminal defendants.

10 Q. Okay. And do you have a forensic consulting
11 practice as well?

12 A. Yes.

13 Q. And have you -- about how many cases have you
14 worked on in the forensic capacity?

15 A. I'm estimating between 800 and a thousand cases.
16 Beginning with my employment at the justice department.

17 Q. Okay. What did you do at justice department,
18 what was your role there?

19 A. Well, I did some work there prior to obtaining
20 my doctorate, but most of my work was as a staff
21 psychologist for the Bureau of Prisons at Atlanta Federal
22 Penitentiary.

23 Q. And what type of evaluations did you do there?

24 A. I was asked to conduct competency and criminal
25 responsibility assessments for various judicial
26 proceedings. Occasionally I testified in federal court
27 for that purpose.

28 Q. Were you working then on behalf of the
29 prosecution?

Robert Shaffer, Ph.D. - Direct Examination

1 A. At that time, I wasn't really that cognizant of
2 who was calling me in the court case. I think I
3 consulted with both prosecution and defense prior to
4 offering testimony in federal court. I also did witness
5 protection evaluations and various of those services at
6 the request of various justice department officials.

7 Q. About how long were you there or what was the
8 timeframe?

9 A. That was a six-year period.

10 Q. When did you end?

11 A. 1990.

12 Q. And in your independent consulting practice, are
13 you retained generally by the defense or prosecution?

14 A. In my independent practice I'm retained almost
15 exclusively by defense.

16 Q. And are these exclusively death penalty cases or
17 what types of cases are we talking about?

18 A. The vast majority are murder cases. And a
19 pretty high number of death penalty cases.

20 Q. And have you been accepted as an expert in
21 courts?

22 A. Yes, I have.

23 Q. And in what courts have you been accepted as an
24 expert?

25 A. That would include about 25 counties in the
26 State of Georgia, and in I think about six other states
27 or five other states.

28 Q. And have you ever been denied being accepted as
29 an expert when you tried to testify?

Robert Shaffer, Ph.D. - Direct Examination

1 A. Not to my awareness.

2 Q. And in how many cases have you actually
3 testified, ballpark?

4 A. Somewhere between 80 and 100.

5 Q. Have you ever received any honors or awards in
6 your employment, during your history of employment?

7 A. Yes, I received a Bureau of Prisons employee of
8 the year award during the year that I was actually
9 assigned to a hostage negotiation team prior to that, a
10 year or two prior to that, a three-member hostage
11 negotiation team, some of which the training I received
12 at the Federal Law Enforcement Training Academy. While
13 commissioned for that purpose, we had a hostage takeover
14 in Atlanta where over 100 staff members were taken
15 hostage for a period of about a week. Fortunately for
16 me, they had national hostage negotiation teams that came
17 in and took over the responsibilities that I had been
18 trained for. But I did participate in the initial phase
19 of that.

20 Subsequently I did counseling of staff members
21 for post-traumatic stress that they had experienced
22 during the hostage takeover. So that was the purpose of
23 getting the employee of the year award.

24 Q. And have you had additional teaching or advisory
25 board activity?

26 A. Yes. I've had a few seminars I've done here and
27 there. I don't do a lot of teaching, but I have provided
28 instruction to organizations about various aspects of
29 mental illness, schizophrenia, to law enforcement

Robert Shaffer, Ph.D. - Direct Examination

1 training, first responders. I also taught about
2 post-traumatic stress disorder to a group of military
3 related attorneys. And I'm on a board right now for the
4 local National Alliance of Mental Illness in my area.

5 Q. Dr. Shaffer, I would like to ask you to identify
6 this. Look it over and see if you can identify it.

7 A. This is a copy of my curriculum vitae, which I
8 think was refreshed as of sometime early this year.

9 Q. Okay.

10 MR. VOISIN: Your Honor, we ask that be
11 entered as an exhibit.

12 THE COURT: Any objection?

13 MR. WHITE: Not to the exhibit, other than
14 the fact it doesn't list his cases on there.

15 THE COURT: Mark it as an exhibit.

16 (Defense Exhibit 4 marked into evidence)

17 BY MR. VOISIN:

18 Q. Dr. Shaffer, you mentioned that you underwent
19 additional training in the field of neuropsychology, and
20 I would like you to define briefly or explain what
21 neuropsychology is.

22 A. Neuropsychology is a form of assessment and
23 treatment for individuals that have brain compromise. So
24 with the assessment of brain compromise, very specific
25 tests are used that have been developed for their
26 sensitivity to various types of brain injury. The tests
27 are able to reveal some information about, first of all,
28 the presence or absence of brain impairment. Secondly,
29 some reference to the level of severity about that. And

Robert Shaffer, Ph.D. - Direct Examination

1 thirdly, some inference about the location of the brain,
2 which structure of the brain might have some impairment.

3 Q. Okay. And how does that differ from clinical
4 psychology or other branches of psychology?

5 A. Well, typically, other tests for psychologists
6 include things like intelligence tests or personality
7 assessment tests. Those are separately developed and
8 have different types of standardization processes. And
9 in order to do neuropsychological tests, they do have
10 different types of validity studies and different types
11 of administration techniques.

12 Q. And you mentioned that it helps to understand
13 compromises and brain function. But how does the testing
14 you give differ from, like, CT scans or other types of
15 neuroimaging?

16 A. The tests that I administer are all conducted on
17 a table-top surface in the presence of the examinee.
18 They all involve some type of performance on the part of
19 the examinee. Whereas the types of brain scans you are
20 referring to, such as CT scans, require laboratory
21 instruments to take pictures of various layers of the
22 brain.

23 Q. Okay. You mentioned you have had forensic
24 training?

25 A. Oh, yes.

26 Q. And can you describe the training?

27 A. Well, the training essentially has been
28 participation in continuing education seminars that are
29 offered by the American Academy of Forensic

Robert Shaffer, Ph.D. - Direct Examination

1 Psychologists, the Association of Family and Conciliation
2 Courts, and other various organizations that provide this
3 type of training.

4 Q. Now, in this case, did you perform a
5 neuropsychological assessment on Alan Walker?

6 A. Yes.

7 Q. And did you administer the types of tests that
8 are generally undertaken by neuropsychologists?

9 A. Yes, all the tests that I used are well
10 researched, well validated, and commonly used in the
11 course of this type of evaluation.

12 Q. And did you consider other materials?

13 A. Yes.

14 Q. And what were they?

15 A. I also reviewed educational records, and the
16 opinion and written report of Dr. Matt Mendel.

17 Q. Were you in court when he testified today?

18 A. Yes.

19 Q. And did you review any witness statements?

20 A. No.

21 Q. Are these the types of materials that are used
22 in reaching conclusions in the field of neuropsychology?

23 A. Yes.

24 Q. And as a forensic expert, are you familiar with
25 the concept of malingering?

26 A. Yes, I am.

27 Q. And what is that?

28 A. The concept of malingering refers to the
29 falsification of symptoms, specifically in the mental

Robert Shaffer, Ph.D. - Voir Dire Examination

1 health field we are talking about symptoms of mental
2 illness that may be falsely portrayed or the exaggeration
3 of existing symptoms.

4 Q. And without going into any details about this
5 particular case just yet, did you test for malingering in
6 this case?

7 A. Yes, I tested for malingering specifically
8 related to neuropsychological tests.

9 Q. Okay.

10 MR. VOISIN: Your Honor, at this point we
11 move that Dr. Shaffer be accepted as an expert
12 in the field of neuropsychology and forensic
13 neuropsychology.

14 THE COURT: Any voir dire?

15 MR. WHITE: Yes.

VOIR DIRE EXAMINATION

16
17 BY MR. WHITE:

18 Q. Dr. Shaffer, have you ever -- are you board
19 certified in neuropsychology?

20 A. I am not.

21 Q. Are you board certified in forensic psychology?

22 A. I am not.

23 Q. Have you ever applied to be admitted or to
24 become board certified in either one of those fields?

25 A. No.

26 Q. Why not?

27 A. I didn't view it as an advantage. There are
28 plenty of avenues to obtain training and experience and
29 expertise that I've availed myself to. At the beginning,

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1 when I worked at the justice department, I was told by a
2 supervisory individual there, another psychologist over
3 me, that I could elect to be grandfathered in as a board
4 certified forensic psychologist, that was at the time
5 when they actually started the certification. But I
6 simply elected not to do it. I really saw no advantage
7 in that. There are also a number of certificates that
8 one could obtain. I know psychologists that have 30 or
9 40 of them on their walls, but none of them in particular
10 seemed that useful for me. And I haven't pursued any.

11 Q. But the two that I'm asking about, not the other
12 offered by other groups, are the ones that are by the
13 American Professional -- American Psychological
14 Association of Professional Psychology?

15 A. To my knowledge, the APA does not actually
16 endorse or they don't administer any particular
17 certifications.

18 Q. No, I'm not talking about the APA, it's the,
19 what is it, something.

20 A. The American Board of Professional
21 Psychologists.

22 Q. Yeah.

23 A. As I mentioned, I had an opportunity to opt in
24 to that in the beginning and chose not to. Not having
25 seen a need to pursue it since then, either.

26 Q. You are familiar with the specialty guidelines
27 of the -- for forensic psychologists?

28 A. Yes.

29 Q. Do you follow those?

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1 A. Yes.

2 Q. Can you tell me what they are?

3 A. No. Not familiar.

4 Q. How do you follow them?

5 A. I became familiar enough with them to understand
6 that they were highly consistent with my practice of
7 forensic psychology.

8 MR. WHITE: No further questions.

9 THE COURT: Any objection?

10 MR. WHITE: Yes, we object to him as
11 anything other than a psychologist. He is not
12 board certified in any one or the other, two
13 specialties he says that he is an expert in.

14 THE COURT: Mr. Voisin, you are offering
15 him in forensic and neurological --

16 MR. VOISIN: Neuropsychology and forensic
17 neuropsychology.

18 THE COURT: Forensic neuropsychology.

19 MR. WHITE: There is no such specialty,
20 Your Honor.

21 THE COURT: Dr. Shaffer, is there a
22 specialty known as forensic neuropsychology?

23 THE WITNESS: Not precisely, no, I've not
24 heard that term used before. I've been
25 qualified as an expert in those fields
26 independently, as a forensic psychologist and as
27 a neuropsychologist, or in the same court
28 hearing, both of those. But not under the same
29 term of forensic neuropsychology.

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1 THE COURT: That's a blended term it sounds
2 like.

3 MR. VOISIN: Right.

4 THE COURT: So I will overrule the
5 objection and allow Dr. Shaffer to give
6 testimony as an expert witness in forensic and
7 neuropsychology.

8 MR. VOISIN: Thank you.

9 DIRECT EXAMINATION

10 BY MR. VOISIN:

11 Q. Dr. Shaffer, before jumping into the specifics
12 of your evaluation of Mr. Walker, I would like to touch
13 on a few questions regarding the brain, in particular,
14 the portions of the brain that you study.

15 THE COURT: Can I call a timeout for just a
16 second on a housekeeping thing. It's 20 to 4.
17 You anticipate going -- in other words, we can
18 stay late if it accommodates travel of the
19 witnesses, in particular. Is that going to work
20 that we will have enough time to finish this
21 witness past 5:00, or is it going to be well
22 past 5:00?

23 MR. WHITE: Depending on how long they are.

24 MR. VOISIN: I think ours will take about
25 an hour.

26 THE COURT: All right. Well, let's just
27 play it by ear. Just let y'all know, I'm
28 certainly able to stay past five.

29 BY MR. VOISIN:

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1 Q. Okay. Let's talk a little bit about the brain
2 itself. The brain, as I understand, is divided into two
3 hemispheres. I was wondering if you could describe, in
4 brief terms, what each hemisphere does?

5 A. Yes. That goes back to the 1960s where a real
6 large amount of research was done with individuals that
7 had the two hemispheres of the brain surgically severed
8 for seizure or treatment. So they were able to do
9 experimental studies of how each side of the brain
10 operates, the left hemisphere and the right hemisphere.

11 So we know certainly that the left hemisphere
12 normally specializes in language functions and sequential
13 kind of tasks. Whereas the right hemisphere of the brain
14 operates more simultaneously, and it is instrumental in
15 spatial relationships, and also in the processing of
16 negative emotional states, and the expression of those
17 emotions.

18 Q. And do the two sides of the brain communicate
19 with each other?

20 A. Yes. That is through the corpus callosum, which
21 is a band of fibers that connect the two hemispheres of
22 the brain. Very essential body that is known to be used
23 in creativity, where information of two different fields
24 is synthesized in a creative product. Anytime you have a
25 sequential logical orderly type of technique along with
26 some intuitive, more global impressionistic information,
27 the corpus callosum is active to combine those two fields
28 into a product that is created. It's also very important
29 for the ability to manage and govern emotional responses,

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1 because as the right hemisphere of the brain tends to be
2 instrumental in that process, the left hemisphere
3 provides information that must coordinate with the right
4 hemisphere.

5 Q. Okay. And I understand that the brain also has
6 like a frontal lobe or --

7 A. Right. The frontal lobe is the most recent
8 evolutionarily, if you want to consider it that way, or
9 the most specialized portion of the brain in terms of
10 what makes us uniquely human. And also some of the
11 higher mammal, the primates have the corpus callosum.
12 The frontal lobes are the most highly specialized and
13 unique to man, particularly in the prefrontal cortex.
14 This body is overlaying the limbic system, which is the
15 emotional core of the brain sometimes referred to as the
16 mammalian brain because it has to do with drives for
17 hunger or sexuality, but also emotions that are important
18 in the socialization process, such as love, appreciation,
19 as well as anger and hostility.

20 And all of that sits on the brain stem, which is
21 considered to be roughly the reptilian model of
22 functioning, which has to do with hunger, and sleeping
23 and wakefulness, arousal, pain reactivity, and the basic
24 drives that you would attribute to reptiles. But not so
25 much involved with the higher functions of emotional
26 bonding or reasoning.

27 Q. If I may approach the witness. Dr. Shaffer, I
28 would like to show you this diagram. Can you tell me if
29 you recognize that?

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1 A. Yes.

2 Q. And what is it?

3 A. This is a diagram of a cross-section of brain.
4 It reveals the structures that I've been discussing. The
5 brain stem is in the lower portion in the center. The
6 limbic system is a curvature, just seated on top of that.
7 And then it's all surrounded by this convoluted set of
8 four different lobes that we call the cortex.

9 Q. And does that diagram accurately reflect the
10 brain structure, the human brain structure?

11 A. Yes.

12 MR. VOISIN: Your Honor, I would like to
13 introduce this as an exhibit, more of a
14 demonstrative exhibit to go along with Dr.
15 Shaffer's testimony.

16 THE COURT: All right.

17 (Defense Exhibit 5 marked into evidence)

18 BY MR. VOISIN:

19 Q. Dr. Shaffer, on this diagram, there is a
20 reference to the ventromedial prefrontal cortex. Can you
21 explain why that is significant?

22 A. Yes. We've observed scientifically that the
23 prefrontal cortex develops last in life. You go through
24 different stages of development through age 25 where the
25 prefrontal cortex does its final specialization, if you
26 will. This part of the brain has been shown to have
27 important features in the inhibitory role of expression
28 of emotions, the timing of that kind of communication
29 versus behavioral expression of those emotions. It's

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1 involved in the extinction of a condition to emotional
2 response, which means that if you are familiar with
3 Pavlov's dogs or various paradigms where we learn things
4 by pain and pleasure, those form very deep patterns. But
5 the prefrontal cortex can unlearn those patterns when
6 it's no longer appropriate to react automatically in
7 situations like that. So when it's appropriate not to
8 react in rage or fear automatically, but to think more
9 logically about the action that you want to take of this
10 prefrontal cortex is very much involved with that.

11 Q. And we've discussed several areas of the brain.
12 Are those the areas of the brain that neuropsychologists
13 generally focus their testing on?

14 A. Yes. Primarily, the structures of the cortex.

15 Q. Now, Dr. Shaffer, you said you've reviewed Dr.
16 Mendel's report and heard his testimony. Did you hear
17 his testimony about the various traumatic events that Mr.
18 Walker suffered in his life?

19 A. Yes, I did.

20 Q. And just as a -- from your review of the
21 research in these areas, is there a relationship between
22 childhood trauma and trauma through life and brain
23 functioning?

24 A. Yes, there is. There's been a lot of research
25 into children who have experienced various kinds of
26 deprivation and trauma, and of looking at brain
27 correlations of that, the results of that. A lot of the
28 work has been done at Harvard University by Martin
29 Teicher out of McLean Hospital in Boston where they've

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1 studied children, they've looked at patterns of abuse,
2 and electroencephalographic readings looking at both
3 sides of the hemispheres. And they've also studied
4 various structures like the cerebellum, the amygdala, the
5 hippocampus, and the corpus callosum and so forth in
6 adults that are survivors of various forms of neglect or
7 abusive traumatic types of situations in childhood. And
8 they vary in these studies, they vary the types of
9 exposure. Some have been exposed to sexual abuse. Some
10 have been exposed simply to maternal neglect. Some have
11 been exposed to psychological abuse. And then, of
12 course, physical abuse as well.

13 Q. And more specifically, what types of effects are
14 generally found with frontal lobe functioning for
15 individuals who have suffered from some traumatic events
16 in their life?

17 A. Well, not specific to the frontal lobes, but to
18 overall cortical functioning, we find that in children
19 that have received various kinds of traumas, that the
20 left hemisphere of the brain does not develop and
21 specialize at the rate that it does in normal people.

22 Q. And what kind of consequences would that have?

23 A. One of the consequences is a difficulty with
24 processing verbal information. Specifically, verbal
25 memory. That's one of the features, cortical features
26 that does get affected by this. In addition to that, the
27 hippocampus is known to be smaller among people that have
28 had childhood exposure to trauma. And the hippocampus is
29 essentially a memory structure in the brain that provides

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1 memories and hooks them up with various contexts. So we
2 know that's a problem. And then also, the corpus
3 callosum that communicates information or data from the
4 left to the right and back and forth, is smaller among
5 individuals with childhood traumas.

6 Q. And what about executive functioning?

7 A. So, this can impair executive functioning. It
8 can interfere with the appreciation of consequences after
9 a series of actions. It can interfere with a regulation
10 of emotions. We know that hostility and anger are much
11 more prevalent in these adult individuals. We know that
12 depression and anxiety are also more prevalent.

13 Q. Okay. And what about effects on the limbic
14 system, the regulation of the limbic system?

15 A. Right. The hippocampus is part of the limbic
16 system and also the amygdala. And the signals from the
17 amygdala have to be combined with information from the
18 computing center of the brain in order to make a good
19 judgment. And this seems to be disrupted in people that
20 have experienced childhood traumas.

21 Q. And we spoke about some of the traumas, but more
22 specifically, what traumas that Dr. Mendel discussed are
23 known to have these type of adverse affects on brain
24 functioning?

25 A. Well, the presence of maternal neglect in terms
26 of affection is one of the factors, one feature that I've
27 heard discussed in the testimony today. The other would
28 be psychological abuse in terms of disrespectful
29 treatment of the body, and boundaries around nakedness

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1 and so forth. And then to the extent there was sexual
2 abuse as a category, sexual abuse has been researched in
3 this regard as well.

4 Q. And what type of effects does the chronic use of
5 alcohol have on the brain?

6 A. Alcohol is known to effect various decision
7 processes and various aspects of behavioral control.

8 Q. Okay. And what about, you know, sustained
9 prolonged use of alcohol for someone who begins ingesting
10 alcohol at an early age, like in the teenage years?

11 A. One of the features is that when someone is
12 intoxicated during the developmental phase, that
13 essentially we observe developmental arrest such that
14 during that window of opportunity in development, things
15 just don't happen like they're supposed to because the
16 brain is under sedation of some kind. Development
17 happens in stages and in sequence. And successful
18 development of future stages depends on successful
19 development of the previous stage. We know, for example,
20 that between say three and ten, the left hemisphere
21 undergoes rapid specialization for various functions like
22 language and so forth. And during that time, if there's
23 experienced some trauma, then that individual is going to
24 have difficulty with those functions. But
25 interpersonally in terms of social development, your
26 question was about alcohol. We see that during the
27 middle school years, during the high school years, when
28 there's a lot of importance on relationship building, the
29 developmental challenges have to do with finding a place

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1 among people and finding a role among peers. Very often
2 we have arrested development for that type of skill if
3 somebody is drinking during that time period.

4 Q. Now, turning to Mr. Walker, when did you
5 evaluate him?

6 A. That was May the 4th of this year.

7 Q. Where did you conduct your evaluation?

8 A. This evaluation was conducted in Mississippi at
9 the correctional institution where he is housed
10 currently.

11 Q. And based on your evaluation, have you reached
12 any conclusion about Mr. Walker's neuropsychological
13 functioning to a reasonable degree of scientific
14 certainty?

15 A. Yes. It's my opinion that the
16 neuropsychological profile of Mr. Walker is consistent
17 with that of individuals that have experienced various
18 traumas during their developmental period.

19 Q. And, Dr. Shaffer, I would like to show you this
20 document and like you to review it and see if you can
21 identify it for us.

22 A. This is a copy of the report that I generated
23 after conducting my testing on that date in May.

24 MR. VOISIN: Your Honor, we would like to
25 have this marked for identification at this
26 time.

27 THE COURT: Okay.

28 (Defense Exhibit 6 marked for identification)

29 BY MR. VOISIN:

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1 Q. Dr. Shaffer, talk a little bit about your
2 evaluation. How did you begin your evaluation of Mr.
3 Walker, or if you could describe the circumstances when
4 you got there?

5 A. The day that I met with him there had been a
6 power outage at the institution. Our time was a little
7 bit shorter than originally expected. I had some
8 difficulties getting there as well. So we -- but we sat
9 down and began the process and I did a very brief
10 introduction, and then commenced with the test of
11 malingering that I typically administer to individuals to
12 assure myself that they're actually performing to the
13 best of their ability.

14 Q. And what test did you administer?

15 A. This is called the Test Of Memory Malingering,
16 T-O-M-M, and it's used routinely and has been for
17 decades, is very well researched in the field of forensic
18 psychology as a good way to determine whether someone is
19 attempting to perform at the best of their abilities or
20 if they're attempting to appear to have deficits.

21 Q. And how did Mr. Walker perform on this test?

22 A. He, on the first trial, performed with some
23 errors on the test. And on the second trial he performed
24 a perfect score. Then a third trial is administered
25 after a brief delay. And at that trial, he correctly
26 remembered all of the items, so he received a perfect
27 score on that trial.

28 Q. Did you reach any conclusions about whether he
29 was malingering?

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1 A. My conclusion was that there was no attempt to
2 appear falsely impaired, and that he was performing to
3 the best of his ability.

4 Q. Now, after you test for malingering, I'm just
5 going through your report, you mention you undertook
6 Structured Interview of Symptoms?

7 A. Yes.

8 Q. If you could describe some of those structured
9 interviews?

10 A. Okay. Yes. The symptom structured interviews
11 that I administered are based on a history of research
12 with individuals with brain impairment and have been
13 elaborated by Martin Teicher in the research that he's
14 done with adult survivors of various kinds of childhood
15 abuse and neglect. And these symptoms are a variety of
16 symptoms that we know to occur in people that have brain
17 compromise.

18 Q. And with respect to Alan Walker, what did you
19 learn about him from these structured interviews?

20 A. It was evident from those structured interviews
21 that he had difficulties in the area of speech
22 articulation, confusional spells, memory gaps, and
23 unrecalled behaviors. That each of those occurred with
24 the approximate occurrence or frequency of about once a
25 month in his experience. We also were aware of numbing
26 and tingling sensations, irregular heartbeat, flushing or
27 hot sensations, and frequent headaches. All of those
28 statistically are correlated with known cases of brain
29 impairment.

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1 Q. Okay. And you also tested, gave a series of
2 tests regarding frontal lobe executive functioning, and I
3 want to go through some of those, beginning with the
4 Wisconsin Card Sorting Test. If you could tell us what
5 that test measures and describe how it's administered.

6 A. This test is a test of frontal lobe integrity.
7 It has been validated in many research studies to show
8 that with difficulty on the test, that it's likely that
9 there's some impairment of the frontal lobes of the
10 brain. The way that the test functions is that there are
11 four different types of categories that the stimulus
12 cards match by. They differ in terms of color, the cards
13 differ in terms of the number of items on the card, and
14 they differ in terms of the shape of the card. So that's
15 actually three different types of variation.

16 So four key cards are placed on the table in
17 front of the examinee, and then he is asked to select a
18 card off the top of the deck and place it below the one
19 that it matches. And so it could go under any of the
20 four cards that's in front of him. The subject is not
21 told what a correct match will be, and they are only
22 given feedback about whether their answer is correct or
23 incorrect. If they are incorrect, they leave the card
24 where it is and pick up the next card and place it below
25 the one that it matches. So during this process, most
26 people catch on very quickly. That I say correct. Every
27 time the color is -- a color is the same as the key card.
28 So matching is the color principle. Typically it just
29 takes a handful of tries before they catch on to this.

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1 Then, after saying correct for a series of ten
2 placements in a row, without telling them, I change the
3 strategy of what is correct and what's incorrect. So
4 it's a new matching category. It's no longer color. Now
5 it's the shape of the object that has to be matching in
6 order to be correct. So this challenges the examinee to
7 recognize the color is no longer working. They have to
8 use some other strategy to get a correct answer and
9 discover their shape is now correct.

10 So the reason that this is a good frontal lobe
11 test is that the frontal lobe is very important in
12 inhibiting a pattern of behavior that's been loaded up
13 and primed and ready to deliver. So stopping an ongoing
14 course of action, and then shifting to an alternative
15 course, is the hallmark of the prefrontal cortex. So
16 this is very difficult for some people who have different
17 kinds of brain compromise. And in this case, you know,
18 normally, people make six successful runs of changing
19 categories by the time the test is about half over. That
20 was not the case with Mr. Walker.

21 Q. How far did he get in the test?

22 A. We went through all 128 cards, and he had only
23 achieved four categories by that point.

24 Q. And how does that rank him in terms of scoring?

25 A. Typically, you see that in between 11 percent
26 and 16 percent of the population. So, above that people
27 are more likely to identify more categories than four at
28 a rate of about 84 percent.

29 MR. WHITE: I'm sorry, I didn't hear. How

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1 many did he make, four?

2 THE WITNESS: Yes.

3 MR. WHITE: Out of 128?

4 THE WITNESS: Four correct sorting
5 sequences of ten cards each out of 128. That
6 means successively placed them correctly, four
7 times.

8 BY MR. VOISIN:

9 Q. So he scored in the below average range on that?

10 A. Yes. That number of sorts is considered to
11 represent a pathological indicator.

12 Q. I would like to now move on to THE -- I guess
13 you gave something called the Stroop test?

14 A. Yes. The Stroop test is another test of frontal
15 lobe functions. It assesses, again, the ability to
16 inhibit an automatic response and give a more correct
17 response. The way it works is this, there are lists of
18 words that are presented that is comprised of only four
19 words. The four words are the names of four different
20 colors, it's red, green, blue, and tan. Those are the
21 words. The words are actually printed in a competing
22 color ink. So the word red might appear in blue ink the
23 word tan would appear in green ink and so forth.

24 So for trial number one, the examinee is asked
25 to simply read through the list of all the words.
26 Something they can do quickly and spontaneously. At the
27 end of that trial, they're asked to now specify the color
28 of the ink that each word is printed in regardless of the
29 name of the word itself. And as I said, the word is

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1 always a competing color. So there a tendency to say the
2 word. We're all -- reading is so over learned and well
3 rehearsed and practiced in our experience, that we almost
4 automatically will get the name of a word when it's on
5 the page in front of us. So it requires some inhibition
6 to stop the tendency to speak the word, and instead, look
7 at the color of the ink. And that makes this really an
8 effective test of frontal lobe injury. We know that
9 people with frontal lobe impairment have a lot of
10 difficulty with the Stroop. They take a lot longer with
11 the test, and they create errors in the process.

12 Q. And how did Mr. Walker score on this one?

13 A. On the Stroop, he was below the sixth
14 percentile.

15 Q. Below the sixth?

16 A. Below the sixth, actually. Yes. So he would be
17 exceeded by 94 out of 100 people on that test.

18 Q. And I believe the category test, also assesses,
19 problems --

20 A. Let me comment, too, on that test I noticed that
21 he seemed to be perplexed when he was making mistakes.
22 He made mistakes on this test and it bothered him.
23 Incidentally, perplexity is often used as a clinical
24 indicator that somebody feels like they ought to be doing
25 better than they are. And it suggests that there is some
26 neuropsychological conflict going on. It also indicates
27 to me that he cared about how he was performing. That he
28 was frustrated when he was making mistakes.

29 Q. And now, how did he score on the category test,

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1 which is the next one you mention?

2 A. Mr. Walker committed 74 errors on the category
3 test. At the original developmental phase in the
4 category test, Halstead and Ralph Reitan, who I worked
5 with, or taught me, who taught me the test, established a
6 cutoff of 50. That more than 50 errors was indicated
7 pathological. Now, since then, we've used the test with
8 large groups of people with various ages. Knowing the
9 performance changes over age span. We also know that
10 people with different educational levels perform
11 differently on the test. So all of the scoring and
12 norming that I did was from tables of samples of people
13 with identical age range and education level with Mr.
14 Walker. So this, the category test is substantially
15 significantly below average. I think it was actually one
16 standard deviation below average.

17 Q. Okay. And again, the category test, how did
18 that assess frontal lobe function?

19 A. Because it's very sensitive to frontal lobe
20 injury. Anytime there is frontal lobe impairment or
21 compromise, individuals have a tendency to struggle with
22 this test and make a lot of errors.

23 Q. Okay. I would like you to talk a little bit
24 about his performance on the Iowa Gambling Task. First
25 maybe if you could describe what that is?

26 A. The Iowa Gambling Task was developed as a means
27 of assessing functioning of the prefrontal cortex using a
28 very specific paradigm which has to do with making
29 choices in a gambling situation, and the way it works is

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1 that four decks of cards appear, and the examinee picks
2 from any deck they want to. Every time they pick a card,
3 the computer tells them that they've won some money.
4 Also, with many of the cards, it tells them right
5 afterwards that they've lost some money. There is no
6 planning ahead of time, or information about how much
7 will be won or lost with any of the decks that are in
8 front of them. But the decks are actually structured so
9 that half of the decks, two of the specific decks, have
10 high rewards. So that when they select that deck, they
11 see that they've won a large amount of money. Larger
12 than the other two decks. The other two decks show that
13 they've won a smaller amount of money. The difference is
14 that with the decks that give a higher reward, they also
15 periodically have a catastrophic loss. They could lose
16 ten times the amount of money that they just won on those
17 two decks only.

18 On the two decks that reward with smaller
19 amounts, occasionally there will be losses, but they're
20 not catastrophic, they're more moderate losses. So it's
21 a test to see if somebody can register the threat of a
22 catastrophic loss and consider that in their selections.
23 For example -- or another analogy is sort of like the
24 tortoise and the hare. Small simple gains that are safe
25 in the long run, ends up with more money at the end.
26 Whereas going for the hot decks every time looks good in
27 the instant of the impulse, but it has catastrophic
28 consequences long term.

29 Q. And how did Mr. Walker score on that?

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1 A. Mr. Walker had a score in the impaired range on
2 the Iowa Gambling Task, which indicates that he has a
3 tendency -- he has some difficulty appreciating the
4 consequence of a sequence of actions when it might
5 involve significant losses.

6 Q. Okay. And you mention in your report that the
7 Iowa Gambling Task is associated with impairments of the
8 ventromedial prefrontal cortex?

9 A. Right.

10 Q. And I believe that was on the diagram which I
11 believe is Exhibit 5 for today?

12 A. Yes. Right. The prefrontal cortex is displayed
13 here. It also has an arrow to the ventromedial
14 prefrontal cortex. The ventromedial prefrontal cortex is
15 a fairly small body that plays an absolutely essential
16 role in socialization, civilization, the ability to
17 conduct behavior appropriately and lawfully and so forth.
18 It's been known to become activated during moral decision
19 making. It's known very specifically that there are
20 components to this body that are specialized. For
21 example, roughly you can consider it as having a dorsal
22 aspect and a ventral aspect. Dorsal is the back most.
23 Ventral is the belly most portion of that structure. The
24 dorsal back most portion is connected up or innervated
25 with the computing system of the rest of the brain.
26 There are association links, axons that go to other
27 important areas that process information, take in
28 perceptions and make predictions about what's about to
29 happen. So this computing aspect of the brain is matched

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1 up and paired up with the ventral portion. The ventral
2 portion or the stomach -- or belly most portion of this
3 structure has direct connections with the limbic system,
4 which is the emotional core of the brain that we talked
5 about as the mammalian brain where feelings like love,
6 anger, rage, dread, fear, all of that is instrumented,
7 particularly with the amygdala and the hippocampus that I
8 mentioned earlier.

9 So the amygdala has nerve fibers that go to the
10 ventral portion of this structure. And what this
11 structure does, we know from elaborate experiments, is
12 that when a decision is made, the information part is
13 connected to the emotional part, and it tones a decision.
14 It tones a person's judgment about what's going to
15 happen. How is it going to feel if I make Behavior A or
16 if I commit Behavior B.

17 Q. Okay. So maybe building on that, what's the
18 effect of impairment to that region on behavioral control
19 and moral decision making?

20 A. Well, we know from brain injury studies that
21 samples of people that have, from CT scans and MRI scans,
22 identified damage to the ventromedial prefrontal cortex,
23 that they have trouble making moral decisions. In fact,
24 this was first demonstrated in the 1800s in a railroad
25 worker named Phineas Gage. There was an explosion and a
26 tamping iron shot directly through his prefrontal cortex.
27 He was able to successfully remove it, got to a doctor
28 right away, and they were able to stop the bleeding. And
29 nowadays, they relieve pressure by drilling a hole in the

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1 cranium. He had a hole in the cranium, so somehow he
2 survived this injury, and actually, returned to work. He
3 looked like he was okay. He could talk fine. He did
4 seem to make a recovery. But what the townspeople
5 noticed was that he became notorious for bad social
6 judgments. He was considered to be a moral reprobate
7 afterwards.

8 MR. WHITE: Your Honor.

9 THE COURT: Hold on one second.

10 MR. WHITE: It's nice to hear about this
11 man. But when are we going to get to how this
12 goes to Mr. Walker?

13 THE COURT: Move along.

14 BY MR. VOISIN:

15 Q. So let's talk -- do that. What happens in the
16 processing of this decision making when someone is under
17 extreme stress or they're faced with a novel escalating
18 situation?

19 A. Well, that's when the structure is most relevant
20 because with choices that are well rehearsed and
21 practiced, the -- we don't see under brain imaging this
22 structure lighting up, firing up. But we do see this
23 structure firing up in electromagnetic resonance imaging
24 whenever there is moral or emotional conflict in a
25 decision, then this body gets activated. And if it's
26 something that hasn't been seen before and already
27 decided about. So it's a novel situation.

28 Q. Okay. And what kind of emotional triggers, like
29 from Alan Walker, would lead to this impairment thing

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1 being more evident?

2 A. You used the word "trigger." Trigger is a term
3 of art in our field that refers to when a person sees
4 something in the environment that reminds them of
5 something from the past. That is associated with a
6 negative situation. It might be associated with abuse.
7 In the case of Mr. Walker, a sexual stimulation, sexual
8 encounter or encounter with a woman could trigger an
9 experience of conflict, emotional conflict. Some of
10 which would involve feelings of rage and hostility.

11 Q. And would it impair his ability to put the
12 brakes on under the charged circumstances?

13 A. Specifically if there is impairment to the
14 ventromedial prefrontal cortex, that's where you've got
15 particular problems. We know from research with lots of
16 vets and so forth with PTSD that there are many vets that
17 don't respond negatively to the traumatic stimulus. They
18 don't have these flashbacks or they may experience them
19 internally, but not act on them. But people with
20 difficulties in the frontal lobes are much more likely to
21 act out their reactions.

22 Q. Now, even though they act out, does that mean
23 they cannot experience regret or remorse for actions?

24 A. Well, to the contrary, independent, you know,
25 there are certainly sociopaths and psychopaths that have
26 no feelings and everything is strategic. However,
27 typically, even people with injury to this part of the
28 brain, after the experience, reflecting back, have a full
29 range of emotion. Full range of regret, remorse,

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1 feelings of sorrow about what has happened. But it's
2 leading up to the incident, the ability to predict those
3 feelings is absent.

4 Q. Okay. And moving to the next set of tests you
5 discussed in your report, you had discussed some tests
6 requiring left hemispheric and temporal lobe verbal
7 functions. Did you find impairments in the left
8 hemisphere in your testing of Alan Walker?

9 A. Yes. In one test very specifically related to
10 Martin Teicher's discoveries that with people exposed to
11 childhood traumatic events, that there is a tendency for
12 difficulty with verbal memory. There's difficulty
13 because we know from looking at the size of the
14 hippocampus, the left hippocampus is actually smaller in
15 these individuals. And, therefore, there can be
16 communication between the hippocampus and the left
17 temporal lobe seems to be disturbed. So with the Rey
18 Auditory Verbal Learning Test, we're able to assess the
19 extent to which verbal memory is intact or has
20 difficulty. Impairment scores on this test is often
21 associated with left temporal lobe difficulties. And so
22 that's one of the tests. And then confrontation naming
23 tests, actually the Boston test in my case, is another
24 example of a verbal test that I used in this study.

25 Q. And what was Mr. Walker's score on the Rey
26 Auditory Verbal Learning Test?

27 A. It was at approximately the third percentile.
28 Meaning that 97 out of 100 people would score better than
29 he did, having his similar age range.

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1 Q. You mentioned in your report a particular --
2 recurring type of error that Mr. Walker made in the test.
3 I was wondering if you could discuss that?

4 A. Well, you know, on this particular test, there
5 were what we call intrusions. The test is simply that I
6 read a list of words, 15 words, one at a time. And then
7 the examinee is asked to repeat back as many of the words
8 that he can remember. Intrusions are when somebody says
9 a word during their response that was never on the list.
10 In his case, he spoke the word "family" on several trials
11 on the test. Even though every time I said the list,
12 family was not ever on the test.

13 Q. Okay. Did you find anything significant in
14 that?

15 A. Well, that's noted to be an indicator that there
16 is some reality processing and impairment of some kind.
17 There is a lack of control between some of the more
18 subjective aspects of memory, like emotional memory,
19 that's not effectively isolated from the literal memory
20 of the words that I speak.

21 Q. And you also gave tests times requiring the
22 transfer and integration of brain functioning; is that
23 correct?

24 A. Yes.

25 Q. And that has to do with the two hemispheres
26 communicating with each other?

27 A. Right. Or disparate structures of the brain
28 combining information together. Left and right is an
29 obvious way to assess that because we can identify tasks

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1 that have both a verbal component and a spatial reasoning
2 component to the task. And if it has to be executed in
3 harmony, in tandem, and it's not something they are
4 familiar with, this is a real good test of inner
5 hemispheric cooperation.

6 Q. And you gave the KAIT Fluid Intelligence
7 Subtest. I wondered if you could describe that?

8 A. Yes, there's two of those. The logical steps
9 subtest is one of them. In this task, the subject is
10 presented with a diagram of a staircase, and then
11 individuals are located on the stairs in different
12 positions with certain rules. So they're informed from
13 the beginning that, for example, Ann is always three
14 steps above Bob. That's presented as a rule that stays
15 visible to them throughout performing the task. So then
16 you place Bob on the staircase on the next frame, and ask
17 them where is Ann.

18 Well, basically it's pretty simple with just two
19 people, but then you add additional people. The verbal
20 component is a description of the rules that govern the
21 position of the people and then identification of where
22 the people are. So the person has to combine this
23 sequential information, which is verbal, so and so is
24 four steps above so and so. And they have to combine
25 that with a visual component, which is a spatial
26 component. So it's a complex task that's what we call
27 fluid intelligence. It's not something that's practiced
28 ahead of time. They have to learn it as they go.

29 Q. Could you just define what fluid intelligence

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1 is?

2 A. Fluid intelligence is contrasted to crystallized
3 intelligence. These are two actual factors of
4 intelligence that occur naturally in human functioning.
5 Crystallized are those tests -- are those skills that are
6 very well learned, they're well-rehearsed and practiced
7 and used many, many times over the course of life.
8 Vocabulary is an example of a crystallized test of
9 intelligence. Fluid tasks involved thinking on your
10 feet, responding to situations that are novel that you
11 haven't seen before, and providing information with
12 strategies that you come up on the run. So there are two
13 different types of IQs, essentially. And that's the
14 distinction.

15 Now, fluid tests, fluid functions are much more
16 susceptible to environmental disturbance. In the form of
17 toxicity, brain injury, we know that fluid subtests get
18 impaired quite readily, whereas a crystallized tests like
19 intelligence -- or excuse me, like vocabulary tend to be
20 very robust no matter what the insult of the brain might
21 be. So they stay with more intact abilities. But the
22 fluid functions are much more easily disrupted.

23 Q. How did Mr. Walker score on the KAIT Fluid
24 Intelligence Subtest?

25 A. On the two tests that I administered to him, one
26 was the Rebus task, and that was in the impaired range.
27 And the other was Logical Steps, which I described in
28 some detail. His score on that was below average.

29 Q. So based on your testing, so we can summarize

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1 this, you found impairment in frontal lobe executive
2 functionings with Mr. Walker, you found impairment in the
3 left hemisphere, and you found impairment in the transfer
4 of information between the hemispheres of his brain?

5 A. Yes, that's all accurate.

6 Q. Okay. And those results, are they consistent
7 with someone who has experienced trauma in his lifetime?

8 A. Yes.

9 Q. We were talking before about different triggers
10 causing problems with the functioning of the prefrontal
11 cortex. What effect does alcohol have on that, if you
12 throw alcohol on top of -- when someone with these types
13 of impairments ingest alcohol, how does that affect the
14 brain function?

15 A. We know that alcohol is an inhibitor, and we
16 know that it operates on the frontal lobes of the brain.
17 We also know from behavioral studies that it's -- well,
18 it's a disinhibitor, actually. Meaning that impulsive
19 behaviors are committed more readily when somebody is
20 under the influence of alcohol. We also know that over
21 time that, for example, individuals score much more
22 poorly on the Iowa Gambling Task if they have chronic
23 alcoholism. So we know that it affects the ventromedial
24 prefrontal cortex over time.

25 Q. And if someone with impaired functioning uses
26 alcohol on top of that, would there be like a multiplier
27 effect or a cumulative effect?

28 A. Yes. It's hard to quantify that, but it
29 definitely does. We have independent contributions to

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1 disinhibition.

2 Q. Now, you mentioned triggers can cause this
3 disinhibition. But if the triggers aren't present, can
4 someone like Mr. Walker function normally, for example,
5 could he hold a job?

6 A. Yes. Most of daily activities and tasks would
7 be operated within normal limits. There shouldn't be any
8 problem with conducting most of the usual routines of
9 daily living.

10 Q. So he could baby sit his younger sister, the
11 impairments wouldn't affect that, his ability to care for
12 siblings?

13 A. Well, again, it depends on what kinds of
14 circumstances come up. An individual with his profile
15 would not be a good person to trust with emergency type
16 situations or unusual circumstances, where he has to
17 think on his feet. But with the normal process of
18 knowing who to call if he has questions or if something
19 is going wrong, there shouldn't be any trouble with that.

20 Q. Okay. Would it impair his ability to adapt to
21 prison?

22 A. Only if he is subjected to a variety of novel
23 circumstances and unpredictable events. But actually,
24 people with his profile perform best in prison because
25 they are very consistent routines. No decisions have to
26 be made. And the routines are established by someone
27 else. And so it's generally a pretty congenial
28 environment.

29 Q. Is the problems Mr. Walker have, are they

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1 treatable in any way if you were not in prison, are
2 they treatable?

3 A. Typically this is treated with different kinds
4 of medications and psychotherapy that's aimed at how --
5 the management of affect, the management of different
6 kinds of emotions, particularly negative emotions like
7 hostility and anger.

8 MR. VOISIN: Beg the Court's indulgence. I
9 don't have any questions, Your Honor, but I
10 would like to have Dr. Shaffer's report entered
11 as an exhibit in the case.

12 MR. WHITE: No objection.

13 THE COURT: All right. Mark it into
14 evidence.

15 (Defense Exhibit 6 marked into evidence)

16 MR. VOISIN: That's all the questions.

17 THE COURT: Mr. White.

18 MR. WHITE: Thank you.

CROSS-EXAMINATION

19
20 BY MR. WHITE:

21 Q. Dr. Shaffer, why was neuropsychological testing
22 necessary in this case?

23 A. Excuse me?

24 Q. Well, what purpose was neuro -- you know, I
25 mean, Dr. Mendel said that there should be
26 neuropsychological testing. Why?

27 A. He may be aware of the extensive literature now
28 that indicates that adults who have experienced various
29 traumas in childhood have some characteristic deficits in

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1 neuropsychological functions. I'm not sure his exact
2 motive. The other reason is that it's generally good
3 practice to at least do a screening of brain integrity
4 with any individual that's facing a death penalty.

5 Q. Was he not qualified to give the screening test?

6 A. I don't know if he is qualified as a
7 neuropsychologist or not.

8 Q. Evidently, you don't have to be qualified to be
9 as a neuropsychologist by the board, certified to do
10 that, do you?

11 A. Yes, you have to equip yourself with the tools
12 and the training that is necessary to conduct activities
13 in that field of practice. That's specified in the
14 ethical guidelines. So I would assume that if he
15 referred to someone else for that purpose, that he might
16 not have felt that he was adequately prepared to
17 administer those tests or interpret those tests.

18 Q. You said you follow the forensic specialty
19 guidelines?

20 A. Yes.

21 Q. Then why didn't you put the performances below
22 average in his age, how far below on the Stroop test,
23 what percentile ranking, you didn't put that in your
24 report, did you?

25 A. Correct.

26 Q. Why not?

27 A. My report was intended to give global
28 information, not a specific numeric detail.

29 Q. So your report couldn't be reviewed by some

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1 other psychologist and they know what you are talking
2 about? Just by below average doesn't give us any
3 indication of how far below average or what else, so
4 don't the specialty guidelines call for precise reporting
5 of the findings?

6 A. My reports were precise. Well, they were
7 accurate. In terms of detail, that's not included in the
8 report. It's certainly available here today for
9 discussion.

10 Q. Well, it certainly would have been nice to have
11 it in the report so that our psychologist could look at
12 it and tell what you are talking about, would that not be
13 true?

14 A. Sure.

15 Q. Don't the specialty guidelines for forensic say
16 that that is exactly what you are supposed to do?

17 A. Not to my interpretation.

18 Q. Not to your interpretation?

19 A. Correct.

20 Q. But the words might say different then, that you
21 are supposed to --

22 A. According to my interpretation, I was following
23 the guidelines.

24 Q. When was the last time you looked at them?

25 A. It's been a while.

26 Q. Since the new ones have come out?

27 A. Yes, I think.

28 Q. When did the new ones come out?

29 A. I don't recall when I looked at them last.

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1 Q. When did the new guidelines come out?

2 A. I don't recall.

3 Q. So you don't know when you saw them last, you
4 could be looking at the ones from 2002, right?

5 A. I think I've looked at them within the last two
6 or three years.

7 Q. Again, category test, how low is significantly
8 low below average percentile, didn't put that in there,
9 did you?

10 A. Correct.

11 Q. Boston Naming Test. Impaired range. No
12 percentile?

13 A. Correct.

14 Q. Logical Steps subtest, how low is below average?
15 No percentiles given. Rebus Learning Subtest. How low
16 is impaired range, no percentiles, right?

17 A. That's right.

18 Q. So this is not a report that was prepared for
19 court, it was -- was it, under the forensics guidelines,
20 specialty guidelines?

21 A. In terms of court, I was anticipating that I
22 would be able to talk about all of the raw data as a part
23 of giving testimony, if it was desired.

24 Q. Did you offer the raw data to anybody?

25 A. Yes. I told the attorneys it's available.

26 Q. Nice to know now. Do you recall a case that you
27 were involved in in Mashburn versus State in Alabama?

28 A. Vaguely. The name is familiar.

29 Q. 2013?

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1 A. Yes.

2 Q. What happened in that case?

3 A. I don't recall.

4 Q. Didn't the Court find that you had -- I think
5 the Court said Dr. Shaffer based his opinion on facts
6 that Mr. Mashburn was breach birth and thus had suffered
7 anoxia during delivery and that Mr. Mashburn had gotten a
8 concussion in a past fight. Are those the facts of the
9 case?

10 A. I don't recall.

11 Q. So if the Court -- you are saying the Court is
12 wrong when it says that the medical records documenting
13 one of Mr. Mashburn's fights did not state that Mashburn
14 suffered a concussion during that, and that the medical
15 records do not show that he suffered anoxia from birth --
16 at birth?

17 A. I didn't make that statement.

18 Q. You didn't make the statement that he had
19 anoxia?

20 A. No, I didn't make the statement that you quoted
21 me as saying about what the Court said or didn't say.
22 You will have to repeat the question or have it read
23 back.

24 Q. You've never read the opinion then?

25 A. No.

26 Q. Where they said that you came to conclusions
27 without any basis in fact?

28 A. I've not read the opinion.

29 Q. Maybe -- I won't say it, never mind. So in

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1 other words, based on this, you have a history of making
2 diagnostic conclusions about violent criminals basing
3 your conclusion on forensic opinions and forensic opinion
4 on information you say is factual, but actually you never
5 bothered to confirm the validity of that information
6 before using it and forming your opinion, right?

7 A. I had that information which was provided to me
8 and I was able to describe the source. But no way of
9 proving or perfectly corroborating the accuracy of the
10 information.

11 Q. So you went with it anyway?

12 A. Yes.

13 Q. Just like in this case?

14 A. Just like in every psychological or scientific
15 evaluation. It's very often necessary, in fact, every
16 time this kind of inquiry is conducted, hypotheses are
17 presented and conclusions are reached with relative
18 degrees of certainty. But never with perfect certainty.

19 Q. So -- let's not confuse scientific and
20 psychological because there is a big difference, right?

21 A. I don't know how to answer that.

22 Q. Well, psychology there is a lot of -- it is not
23 an exact science, is it?

24 A. Within the realms of the scientific portion of
25 psychology, it's as exact and in many cases more exact
26 than some practicing fields of study. So it all depends
27 on what specific information is being analyzed and the
28 techniques that are being used to analyze that
29 information.

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1 Q. But it still comes down to your opinion, right?

2 A. An opinion based on hypothesis and support for
3 those hypotheses.

4 Q. Do you believe in the death penalty?

5 A. Yes.

6 Q. You do. How many cases have you testified for
7 the state in?

8 A. I believe the death penalty has been enacted
9 into law in most states.

10 Q. That's not what I asked. Do you believe in it
11 personally?

12 A. You will have to explain what you mean by
13 believe in it.

14 Q. Do you agree that it should be carried out in
15 certain crimes?

16 A. It's not relevant to what I do. So I don't
17 think about it.

18 THE COURT: I get to make the decision on
19 what's relevant in this courtroom. So unless
20 there is an objection, you can answer the
21 question.

22 A. The question is whether I believe in something.
23 Believing in something to me means can I attest to the
24 reality.

25 MR. WHITE: Objection, not relevant.

26 THE COURT: Rephrase the question. I know
27 what you are trying to ask and I know where his
28 answer is going.

29 BY MR. WHITE:

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1 Q. Do you believe the death penalty should be a
2 punishment for certain crimes such as the one in this
3 case?

4 A. When you say should, you are asking me if I were
5 to design the law, would I design it this way? The
6 answer to that is probably not.

7 Q. So you're dancing all around this. Can you
8 answer the question yes or no?

9 A. No.

10 Q. No. You can't answer the question yes or no?

11 A. I honestly cannot answer the question yes or no.

12 Q. So I'm going to take --

13 A. Religious faith has some guidelines in terms of
14 how to approach that. And my personal feelings have
15 something to bear with that. My respect for elected
16 officials and statutory laws is a huge factor in that.
17 But all of that is a lot of information to process and a
18 lot of feelings involved as well.

19 Q. Do you have religious objections against the
20 death penalty?

21 A. No.

22 Q. You have personal objections against the death
23 penalty?

24 A. I do not, sir.

25 Q. Then why can't you answer the question?

26 A. Because I really don't know how I would
27 decide --

28 MR. VOISIN: I would object at this point
29 to these questions. He is trying to get the

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1 witness to answer about the death penalty in
2 this case, and that's not really relevant for
3 what his testimony is. He's testified about his
4 general beliefs, but I think anything beyond
5 that has to bring in the consideration of so
6 many other factors that it's just not
7 appropriate.

8 THE COURT: You said the death penalty in
9 the State of Mississippi versus Allen Dale
10 Walker, whether the death penalty --

11 MR. VOISIN: Right. I don't think it's
12 appropriate for defense expert --

13 THE COURT: To that portion I would sustain
14 it. Mr. White, why don't you ask the question
15 that prosecutors ask as to whether or not they
16 would be qualified or disqualified.

17 BY MR. WHITE:

18 Q. Do you have conscientious scruples against the
19 imposition of the death penalty?

20 A. No, sir.

21 THE COURT: Move along.

22 BY MR. WHITE:

23 Q. Do your feelings, whatever they may be, could
24 they have any influence on the conclusions you draw in a
25 forensic case?

26 A. No, sir. I separate my -- any personal
27 emotional feelings from my clinical judgments.

28 Q. How do you do that?

29 A. Same way that any other investigator does that.

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1 I have a functioning prefrontal cortex. I implement that
2 process and try to make the best decisions I can.

3 Q. Are there any other areas of expertise that you
4 claim to have, which actually have no formal supervised
5 training?

6 A. I'm not thinking of anything at the moment.

7 Q. What's your standard hourly rate for a
8 neuropsychological evaluation and expert testimony in a
9 death penalty case?

10 A. 250 dollars an hour.

11 Q. You can remember that.

12 THE COURT: Mr. White, it's not necessary
13 that you quip and comment to the witness'
14 testimony. That's a violation of the rules.

15 MR. WHITE: I'm sorry.

16 BY MR. WHITE:

17 Q. What is the total number of hours you've worked
18 on Mr. Walker's case?

19 A. I don't know.

20 Q. You don't know?

21 A. Correct. Typically I don't tally the totals or
22 submit a bill until the conclusion of the case.

23 Q. How many hours did you spend at Parchman?

24 A. I don't recall.

25 Q. You didn't put it -- excuse me.

26 A. It was the better part of the day. I do have
27 that information someplace. I think it was four to six
28 hours, somewhere in there. With the actual face-to-face
29 evaluation time?

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1 Q. And in a forensic opinion, according to the
2 specialty guidelines for forensic psychologists, would it
3 not be proper to put that in there, in your report?

4 A. It would be useful. And I didn't put it in.

5 Q. Now, you did not list in your six-page report
6 that you had reviewed any records in this case; is that
7 true?

8 A. That's true.

9 Q. Since -- why would a clinical neuropsychologist
10 and forensic psychologist go making or conducting
11 evaluations in a capital case without reviewing a single
12 record?

13 A. I did actually review the educational records.

14 Q. Would it not have been prudent to have reviewed
15 his medical records of some 20 something years in the
16 penitentiary? They were clearly available.

17 A. Occasionally that can be useful, but not
18 necessary.

19 Q. And you met him for a period of four to six
20 hours and you gave him a few tests. And didn't look at
21 any other records other than his school records. Did you
22 even read about this case, the facts of this case?

23 A. I was informed about the facts of the case from
24 the defense attorneys, but I did not read original
25 sources of police interviews or investigations.

26 Q. Didn't go to pull up the opinion and read the
27 opinion?

28 A. That's correct.

29 Q. So all you know is what you know from six hours,

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1 being generous, and --

2 A. That's correct.

3 Q. And what you obtained from these tests?

4 A. Yes.

5 Q. Which -- now, other than your interpretations
6 about Walker's performance on the neuropsychological
7 tests that you administered him, what other information
8 did you find to corroborate his poor performance on these
9 many test items in doing your evaluation?

10 MR. VOISIN: I would object. The question
11 is vague. He is talking about these items, it's
12 not clear what he is referring to.

13 MR. WHITE: Test items, isn't that what
14 they're called?

15 MR. VOISIN: This were a number of tests
16 that were given. I think he should be more
17 specific.

18 THE COURT: Can you answer the question?

19 A. If you repeat it, I will probably be able to
20 answer it.

21 BY MR. WHITE:

22 Q. Other than your interpretation about Mr.
23 Walker's performance on the neuropsychological tests you
24 administered to him, what other information did you find
25 to corroborate his poor performance on many of those
26 tests during your evaluation?

27 A. Other information I used in assessing these
28 results included extensive data tables from the
29 standardization samples used for the tests. And also

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1 extensive background research, validation research of how
2 each test has been demonstrated to be representative of
3 certain brain activities or certain deficits of brain.
4 And all that information gets combined into making an
5 interpretation.

6 Q. But nothing so specific to Alan Dale Walker,
7 nothing beyond the tests with Alan Dale Walker, right?

8 A. Ask me that again.

9 Q. But nothing specific to Alan Dale walker,
10 nothing beyond the tests?

11 A. That's correct. I had the advantage of Dr.
12 Mendel's report and extensive history that he prepared
13 for this, as I testified to in direct. That certainly
14 was an important part of this.

15 Q. And you accepted that report without question?

16 A. Yes, I did.

17 Q. Is that common, you don't question certain
18 things if they don't seem logical?

19 A. Well, I will retract that. I actually did
20 question Dr. Mendel about a few finer points that I
21 considered to be very important in this process. And I
22 feel like I got a fairly elaborate response back. You
23 know, there are some areas, once again, many areas in a
24 scientific inquiry that you cannot be 100 percent certain
25 about. But an example of some of the converging
26 information included the extent of sexual abuse. I
27 needed to know was this documented, was it proven, what
28 were the collateral sources, what was the information,
29 and what degree of certainty then that I might personally

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1 apply to that judgment myself, not just Dr. Mendel's
2 degree of certainty, but my own.

3 Q. But you did not, yourself, talk to or interview
4 any of these witnesses yourself, did you?

5 A. No, I did not.

6 Q. So you don't know -- you didn't have the ability
7 to look them in the eye and make your own determination
8 whether or not they were being truthful to you or not?

9 A. That's correct. I was not here during the
10 initial trials, either.

11 Q. Isn't it true that even, you know, that the
12 literature in your field states that it's common anytime
13 you administer all of those tests of neuropsychological
14 tests, even normal healthy people with no brain
15 impairment whatsoever, typically obtain some scores in
16 the abnormal range?

17 A. Yes.

18 Q. Are you familiar with the literature in your
19 field addressing the reliability and validity
20 requirements for a psychological testing in forensic
21 cases?

22 A. Yes.

23 Q. Are you familiar with the recommended guidelines
24 published in Heilbrun in 1992 and the general law of
25 human behavior addressing the reliability and validity of
26 psychological testing in forensic cases?

27 A. I've not read Heilbrun's article. I've been
28 present at some of his presentations and I'm well versed
29 in the issues.

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1 Q. Okay. And in that Heilbrun's article states
2 that psychological tests that are used in forensic cases
3 should have a reliability and validity coefficient that
4 exceeds 80 percent; is that correct?

5 A. I don't know because I haven't read his work.

6 Q. You said you have been to some of his seminars,
7 did he talk about that there?

8 A. Yes, but I don't remember that detail.

9 Q. Did you administer any type of standardized
10 personality test as part of your evaluation?

11 A. No.

12 Q. In other words, you didn't give him the MMPI-2
13 or the MMPI-2-RF?

14 A. That's correct.

15 Q. And isn't it quite common under
16 neuropsychological batteries to contain a personality
17 testing?

18 A. It's done frequently. Particularly in patient
19 context in clinical offices, but not necessary.

20 Q. Not necessary?

21 A. Yes.

22 Q. But you are talking about in this case, someone
23 who you are saying has all these problems because of
24 alleged sexual abuse, and you don't give him an MMPI,
25 which is a personality development test?

26 A. Correct, I did not.

27 Q. Would that have been helpful?

28 A. I don't think so.

29 Q. Why not?

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1 A. I don't see how it would have. I was assessing
2 performance on neuropsychological tests, not
3 self-reporting personality traits.

4 Q. It would not have helped. Isn't the goal of the
5 forensic psychologist to get as much information as
6 possible before drawing conclusions?

7 A. Well, I could have spent three days doing this
8 process as well, and go on to interview the same people
9 that Matt Mendel did, but I performed what was asked of
10 me to perform with the tools that I felt was necessary to
11 do that.

12 Q. Did the attorney tell you what tests to give
13 him?

14 A. No.

15 Q. Did you discuss what tests to give him with the
16 attorneys?

17 A. No. Just generally, describing the procedures
18 that I standardly do in this situation.

19 Q. Was the battery you gave him a fixed battery or
20 flexible battery?

21 A. Flexible.

22 Q. And what does the literature say about fixed
23 batteries versus flexible batteries?

24 A. I have no idea what you are talking about.

25 Q. In 1994, a federal case -- court case of Chappel
26 versus Granger, the federal courts held that the fixed
27 battery was much more reliable than the flexible battery.

28 MR. VOISIN: I object. There is no
29 question as to -- it's Mr. White testifying.

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1 THE COURT: Sustained.

2 MR. WHITE: I'm sorry, I didn't get the
3 objection.

4 THE COURT: You just made a statement, you
5 didn't ask a question.

6 BY MR. WHITE:

7 Q. Do some respected neuropsychologists advocate
8 using only fixed batteries in the forensic setting?

9 A. I'm not aware of who you are talking about, so I
10 can't answer that.

11 Q. Do you know of anybody that does?

12 A. Not personally.

13 Q. You keep up with the literature on forensic
14 psychology?

15 A. Yes.

16 Q. Now, which of the tests you reported for Mr.
17 Walker indicated to you that he is so brain impaired that
18 he would be unable to know the difference between what is
19 legal and illegal?

20 A. That's not my opinion. Therefore, I did not
21 apply a test that would measure that.

22 Q. Okay. So you don't have any idea what -- about
23 that?

24 A. My opinion is that he does understand the
25 difference between what is legal and what is illegal.

26 Q. Now, other than the test of memory malingering,
27 the TOMM, you gave no other malingering measure, right?

28 A. Correct.

29 Q. And isn't it standard in the forensic psychology

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1 that you --a neuropsychology, that you give more than one
2 test?

3 A. I also relied on the results of the
4 administration of a Structured Interview of Reported
5 Symptoms that was conducted by Dr. Mendel.

6 Q. But that wasn't when you gave the test though,
7 right?

8 A. Correct.

9 Q. That was at a different time?

10 A. Different time.

11 Q. Some eight years earlier?

12 A. No.

13 Q. Is that correct?

14 THE COURT: Dr. Mendel -- just a second.
15 For the record, the Court observed you
16 disagreeing or shaking your head to the witness.
17 That is inappropriate.

18 MR. WHITE: Who me?

19 THE COURT: No, Dr. Mendel.

20 MR. WHITE: Okay.

21 THE COURT: Can you start that question and
22 answer again so the Court can hear it without
23 the Court being distracted.

24 BY MR. WHITE:

25 Q. What test are you relying on by Dr. Mendel?

26 A. Dr. Mendel administered the Structured Interview
27 of Reported Symptoms, I believe within the same calendar
28 year that I did.

29 Q. In other words, that was one of those that he

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1 was using to try to search for PTSD, right?

2 A. No, it's pretty much the gold standard to assess
3 whether a person is claiming to have symptoms of mental
4 illness. Self-reporting symptoms of mental illness.

5 Q. What is the name of the test?

6 A. I beg your pardon?

7 Q. What is the test?

8 A. The Structured Interview of Reported Symptoms.

9 Q. Okay.

10 A. It's in the second version, second edition, and
11 has probably the best reliability of any test of its
12 type. It's standardly used in the profession.

13 Q. You've never used the Victoria Symptom Validity
14 Test?

15 A. Not personally.

16 Q. The Green Word Memory Test?

17 A. I've read results of that word memory test.
18 Those have far lesser effectiveness and reliability than
19 the SIRS.

20 Q. Do you give it?

21 A. Sorry?

22 Q. Do you give the SIRS?

23 A. I do.

24 Q. But you didn't give it at the time --

25 A. That's correct.

26 Q. -- that you were examining him?

27 A. That's correct.

28 Q. Now, are you familiar with the term
29 "psychopathy?"

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1 A. Psychopathy, yes, sir.

2 Q. And isn't it true that the neuro managing
3 studies -- neuroimaging studies, excuse me, of
4 psychopaths, also suggest that those individuals with
5 psychopathic traits also show deficient functioning in
6 the same areas of the brain that you've pinpointed in Mr.
7 Walker's case?

8 A. I will have to say I don't know the answer to
9 that question without looking at the research directly
10 and personally.

11 Q. So you would not say that just simply, a
12 psychopath, instead of --

13 A. I do have an opinion about that, whether he is a
14 psychopath. And my opinion is based on the fact that to
15 diagnose psychopathy, it has to be evident that there was
16 a conduct disorder that began in early life, in the early
17 years. And that there was be an absence of acts of
18 caring and kindness. Both of those, there's evidence to
19 the contrary. So my opinion is that this is not a case
20 of psychopathy.

21 Q. So if there is any miniscule evidence of that,
22 you can't or won't diagnose that then?

23 A. I missed the last part of the question.

24 Q. I said so if there is any, some miniscule
25 evidence of those things that you listed, then you
26 wouldn't diagnose him that way?

27 A. No.

28 Q. What evidence do you have of those things that
29 you listed that keep you from doing that?

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1 A. As I've been informed from his history, there
2 was not substantial evidence of cruelty, aggression
3 toward children or animals. There was no evidence of --
4 there's positive evidence of care giving to a sister.
5 Those are things that mitigate against the possibility of
6 psychopathy.

7 Q. Did you not hear Dr. Mendel testify about him
8 being aggressively violent to girls?

9 A. Yes.

10 Q. So that's, you know, that doesn't matter?

11 A. But in other contexts he demonstrated caring
12 behaviors. Typically, a psychopath would not demonstrate
13 those behaviors and would not demonstrate remorse and
14 sadness and those kinds of emotions, which I believe are
15 present in the record.

16 Q. Remorse, what kind of remorse? Where do you
17 find remorse in the record?

18 A. When he talks about the -- when Dr. Matt Mendel
19 talked about him having feelings for his sister and
20 sadness about the events that had happened when they were
21 children.

22 Q. So if he was a psychopath, he wouldn't have
23 that, right?

24 A. Right.

25 Q. Just that one little thing that would keep him
26 from being a psychopath, correct? You said the most
27 significant finding on the test was the -- in the
28 gambling test, but doesn't the research show that people
29 can improve over time so you can say his functioning in

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1 this area was impaired at the time -- can you say he was
2 impaired at the time of the events?

3 A. I'm basing that on the fact that his performance
4 was impaired this year.

5 Q. This year?

6 A. It was likely that it was impaired at that time
7 as well. He is in a controlled environment. No access
8 to alcohol or drugs. Consistent routines with
9 healthcare. This should have been an optimal setting to
10 assess his functioning on the Iowa Gambling Task.

11 Q. Let me ask you this question, this is really the
12 key to the whole thing. Can you say that he had these
13 deficits you find now at the time that Mr. Walker killed
14 Konya Edwards?

15 A. That's by inference. I believe -- it's my
16 opinion by inference that that's the case. I cannot be
17 100 percent -- I can't make that statement with 100
18 percent certainty. Similar to the other statement.

19 Q. Twenty-six years later, you can say, looking
20 back to that time, that he had all these problems, even
21 though you did not, you know, do this retroactive
22 analysis of this, right?

23 A. I was not there. So all my information is going
24 to be based on 2016 evidence.

25 Q. And the testing done now?

26 A. And testing done now.

27 Q. Because you really didn't look at any other
28 evidence, did you?

29 A. I was not aware that there was any evidence from

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1 neuropsychological tests that had been done prior to
2 this. It was my understanding that none have.

3 Q. I'm not saying about that. You didn't bother to
4 read the record in the case, you didn't bother to look at
5 his medical records to see if something occurred while
6 he's been in the penitentiary that might have accorded
7 for some of these scores on the test, you are just
8 saying, oh, well, because now I think it happened -- it
9 happened 26 years ago; is that correct?

10 A. I honestly, no, I don't know that it happened 26
11 years ago. I don't know when something happened to him
12 in the past. What I've offered an opinion on is that his
13 brain functioning had specific deficits at that time that
14 are accurately reflected in the tests I've done in the
15 tests this year.

16 Q. At what time?

17 A. At the time of the crime. 1991.

18 Q. So in other words -- are you finished?

19 A. Yeah.

20 Q. So the testing you did in May gave you the
21 snapshot of what happened in May or the situation, and
22 now you are extrapolating that back to September the 9th,
23 1990?

24 A. Exactly.

25 Q. And you can do that?

26 A. Yes, sir.

27 Q. You can?

28 A. I am. As I stated before, this is an optimal
29 setting in order to assess these functions with adequate

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1 medical care, freedom from distraction, and so forth. He
2 would be giving his optimal performance at this point.

3 Q. And you can say that to a reasonable degree of
4 psychological certainty that the test you gave in May
5 reflect exactly the way he was on September the 9th,
6 1990?

7 A. I didn't say exactly. I said they reflect the
8 same profile of brain deficits, and yes, to a
9 reasonable --

10 Q. You did not examine him then --

11 A. -- to a reasonable degree of scientific
12 certainty, I can make that assertion.

13 Q. So you said that the -- you are relying heavily
14 on SIRS. Assesses validity and reliability of response
15 -- of reported psychiatric symptoms, not effort, right?

16 A. If I understand your question, I will paraphrase
17 the question and then I will answer it if this is
18 accurate. You are asking me if assessing whether he was
19 malingering or whether he was offering a valid
20 performance, whether I relied only on the SIRS test, is
21 that the question?

22 Q. The only what?

23 A. On the SIRS test?

24 Q. I'm asking you, the validity -- the SIRS only
25 assesses the validity and reliability of reported
26 psychiatric symptoms and not the effort that is put
27 forth, right?

28 A. That's correct.

29 Q. So the only test you gave to assess effort or

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1 only test given was the TOMM, correct?

2 A. Yes. That's considered to be one of the
3 flagship tests that's used in forensic evaluation
4 sessions to determine the amount of effort that's put out
5 and whether a person is malingering.

6 Q. And you were testing his brain functioning,
7 correct?

8 A. Yes.

9 Q. And which depends on effort, right?

10 A. Correct.

11 Q. So we don't have anything other than TOMM that
12 does that?

13 A. I also have my observations, which was that he
14 demonstrated perplexity when he was getting feedback that
15 he made an error and he appeared to be frustrated. And
16 at times he would say something about himself in that
17 process that indicated he was upset when he couldn't do
18 it better. So that indicates to me, by behavioral
19 observation, that he is also performing to the best of
20 his ability.

21 Q. Now, would you agree that the problem with
22 neuropsychological assessments is it requires a doctor to
23 make inferences on educated guesses about what is
24 happening in the brain and the mind?

25 A. Inferences. I don't like the word "guesses."
26 The term "hypothesis" is scientific. It's the scientific
27 word for perhaps what you are asking in the question. We
28 present hypotheses based on information which is an
29 example of what might be the situation going on in the

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1 brain. Then we conduct the tests that provide evidence
2 either to support the hypothesis or disconfirm it. So
3 that's the procedure that we follow.

4 Q. So what was your hypothesis in this case, that
5 you were going to find brain damage?

6 A. Initially I went in without a hypothesis. After
7 I had administered some of the structured interview, I
8 began to develop a hypothesis that related to the
9 possibility that he might have some impairment of some
10 brain functions.

11 Q. Did you give any screening tests at that point
12 to try to confirm your hypothesis?

13 A. Yes. The category test is a screening test.
14 And he performed a standard deviation below average on
15 the category test.

16 Q. Does the fact that somebody's been in the
17 penitentiary for 26 years have any effect on that?

18 A. As I stated before, it should actually enhance
19 or optimize his concentration ability and his ability to
20 focus on the test because he's been taken care of
21 medically, he was well fed, should have been a good
22 representative sample.

23 Q. Where did you give the test?

24 A. Sorry?

25 Q. Where did you give the test in the penitentiary?

26 A. When?

27 Q. Where?

28 A. Where. It was -- I couldn't describe -- I don't
29 know what they call the room. It was -- there was no one

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1 else in the room. There was a clear table space between
2 us. And no distractions -- well, there was a minor
3 distraction at the beginning which was the concern over
4 the power. But when the power was on, beyond that, there
5 were no distractions.

6 Q. No noise?

7 A. There was some ambient noise in the background,
8 but not enough to be significantly distracting.

9 Q. What's your basis to make this retroactive
10 analysis? What's the basis that you can make this
11 retroactive analysis 26 years ago?

12 A. There is a long history of documented results
13 from neuropsychological tests in individuals that have
14 had brain injuries and impairments that were identified
15 to have happened years prior to that. That's standard
16 practice.

17 Q. So that means that no matter who it is, you can,
18 you know, 50 years ago, if --

19 A. What that shows is that the procedure is
20 reliable to detect events that happened years ago because
21 those events are still evident in the performance that
22 the person does on the test.

23 Q. And so you just can look back and say all of
24 this was present 26 years ago, you are making that
25 opinion right now, 26 years ago, he suffered from all
26 these things you say he does now?

27 A. No.

28 Q. What are you saying?

29 A. I'm saying that at the time of this incident,

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1 that he was functioning with some deficits in
2 neuropsychological functions.

3 Q. What were those then, if you can look back in
4 the mirror and tell us, what were those functions he was
5 suffering with?

6 A. Well, some of that included deficits in his
7 executive function, his ability to anticipate the
8 consequences of a series of actions, and especially to
9 attach relevant emotional significance to the consequence
10 of his actions.

11 Q. So --

12 A. There are other issues, too, pertaining to
13 impulsivity and the regulation of emotions. The ability
14 to calm and regulate hostility and anger.

15 Q. So picking up a girl and saying you are going to
16 give her a ride home because she doesn't have a ride,
17 taking her out in the woods and raping her and drowning
18 her and brutalizing her, setting her on fire, that's all
19 justified by what you found?

20 A. No, sir.

21 Q. Well, what did you just tell me?

22 A. Your question was about justification. I made
23 no reference to justification.

24 Q. You said he had all of these things and that he,
25 you know, couldn't deal with situations and things, all
26 that. Why he did this.

27 A. You are in a realm that is not part of my
28 province which is to talk about justification. That's --

29 Q. Okay. Let's move on to your realm then. Did

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1 those -- did the deficits that you say you have found in
2 Mr. Walker, did they cause him to kill Konya Edwards in
3 the manner in which he did?

4 A. I'm unable to determine causality with that
5 degree of certainty.

6 Q. So you don't know?

7 A. I don't use the word "cause," correct.

8 Q. Well, I am. So you can't tell us whether his
9 condition as it -- as you say it exists, because I still
10 don't accept that you can do it retroactively 25 years
11 with any accuracy. You are saying that his condition did
12 not cause him, that's not a causation factor for him to
13 kill this girl?

14 A. It is a causation factor. But that's different
15 than saying that it caused it.

16 Q. What is the causation factor?

17 A. The factor is diminished capacity in the
18 functioning of his brain. That's a factor. But you
19 asked about justification and you asked about a single
20 cause, and that's beyond what I can answer. I don't
21 know.

22 Q. Causation. So he's got brain dysfunction so
23 it's all right for him to kill?

24 A. Is that a question?

25 Q. Yes. I asked you a question.

26 A. You are asking me if it's all right for him to
27 kill? Absolutely not.

28 Q. Well, what are you saying?

29 A. I'm saying that the actions that he committed on

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1 that day were influenced by a factor that involved
2 compromised brain functioning.

3 Q. But not caused?

4 A. I can't say it caused.

5 Q. Influenced by?

6 A. Correct.

7 Q. But not caused?

8 A. That's correct.

9 Q. So if there was a lightning storm, that might
10 influence which way I drive on the street?

11 A. Yes. Or if the lightning strikes the car, it
12 might influence how far you get on the road.

13 MR. WHITE: No further question, Your
14 Honor.

15 THE COURT: Redirect?

16 MR. VOISIN: Yes.

REDIRECT EXAMINATION

17 BY MR. VOISIN:

18 Q. Dr. Shaffer, you -- Mr. White asked you whether
19 you had read the opinion of the facts in this case. Does
20 the actual opinion have any bearing on the tests you
21 conducted and your interpretation of those test results?
22 conducted and your interpretation of those test results?

23 A. The opinions are formed by the results of the
24 tests, not prior to the selection of the tests.

25 Q. I was referring to like is the court opinion in
26 this case, not your personal opinion, but is the court
27 opinion, is that relevant to the way you administer and
28 interpret test results?

29 A. Now, when you say the court opinion, could you

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1 be more specific?

2 Q. The written decision of the Mississippi Supreme
3 Court discussing the facts of this case?

4 A. It's relevant in laying out the circumstances,
5 yes.

6 Q. But in terms of administering the tests?

7 A. No, no, the tests are standardized procedures
8 that are administered every time and in the same manner.
9 That's how we know that we get reliable results.

10 Q. And these tests, would you describe them as
11 objective tests?

12 A. Yes.

13 Q. And how is the scoring done, is the scoring
14 objectively done?

15 A. Yes. It looks at samples of individuals that
16 are matched by age and education. To see relatively how
17 he compares to the normal population.

18 Q. And so since you are referring to tables, your
19 personal opinion about the death penalty or anything
20 else, like that, would have no bearing on how you derived
21 your results?

22 A. That's correct.

23 Q. Mr. White asked you about your reliance on Dr.
24 Mendel's report. Is it acceptable in your field, the
25 field of neuropsychology, to rely on expert reports
26 prepared by other experts?

27 A. Yes, it is.

28 Q. And have you done that in the past?

29 A. Very commonly.

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1 Q. You refer to a malingering test that Dr. Mendel
2 gave, the SIRS it's called?

3 A. That's correct.

4 Q. And the SIRS is best used for what type of -- to
5 assess what type of malingering?

6 A. This is best for assessment of malingering where
7 someone wants to claim certain symptoms of mental
8 illness, and that is self-reported symptoms. Could be
9 mental confusion, could be depression, could be psychotic
10 symptoms. It's very effective in distinguishing somebody
11 who wants to appear out of touch with reality.

12 Q. That would be appropriate for the type of
13 evaluation Mendel was giving at the time, correct?

14 A. Very much because Dr. Mendel's assessment was
15 very heavily involved with the narrative, the description
16 of events, the self-reporting that was given by Mr.
17 Walker. My -- the core of my tests were more about
18 performance on brain related testing.

19 Q. And for that, the TOMM is a more appropriate
20 instrument?

21 A. Exactly.

22 Q. And if I may check the -- Dr. Shaffer, I'm going
23 to show you what's marked for identification as
24 defendant's Exhibit 3. It's Dr. Mendel's supplementary
25 report.

26 A. Yes.

27 Q. You were able to review that?

28 A. Yes, I did review this.

29 Q. And what's the date on that?

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1 A. This was January 27th, 2016.

2 Q. And you also evaluated Mr. Walker in 2016; is
3 that correct?

4 A. Yes.

5 Q. So on both tests of malingering given within the
6 calendar year of Mr. Walker?

7 A. They were. The SIRS was given on January 8th or
8 9th, and the TOMM was given on May the 4th. So within
9 five months.

10 Q. And is there anything else that you've reviewed
11 or that you are familiar with that would indicate Mr.
12 Walker malingered at any point?

13 A. No, I've never seen anything that might indicate
14 that. In fact, his tendencies were to be very
15 conservative in admitting to symptoms, as far as I could
16 observe.

17 Q. Now, Mr. White, when he was asking you about
18 psychopathy referred to Mr. Walker's aggression toward
19 other women he was involved with, Sherry Schroeder and
20 Robin. Were those prior to the age of 15 as best you
21 recall?

22 A. No.

23 Q. To be considered psychopath, you had mentioned
24 you need to have a presence of a conduct disorder?

25 A. That's correct.

26 Q. How is a conduct disorder -- what's the cutoff
27 point for a conduct disorder?

28 A. Below age -- younger than age 15. You know, I
29 would have to qualify that I'm referring to the

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1 diagnostic qualifications for antisocial personality
2 disorder that are presented in the DSM-V. That it does
3 very clearly specify that there must be evidence of a
4 conduct disorder prior to age 15. And that includes a
5 variety of symptoms like cruelty, as I mentioned, cruelty
6 to animals or other children, lying, stealing, cheating,
7 those kinds of behaviors.

8 Q. Okay. And Mr. White was questioning the ability
9 to do a retrospective, I guess, analysis of brain
10 dysfunction. And you testified that -- well, let me
11 start again. Is there any reason to believe that there
12 are any other factors from 1990 to the present that would
13 have had the type of impact that you saw in Mr. Walker
14 through your testing?

15 A. Not to my knowledge. And with my questioning
16 and structured interviewing, there was no indication that
17 he had head trauma, for example. Brain injuries from
18 auto accidents, that kind of thing.

19 Q. Okay.

20 MR. VOISIN: The Court's indulgence. No
21 further questions, Your Honor.

22 THE COURT: You may step down, Dr. Shaffer.
23 You are excused.

24 THE WITNESS: Thank you, Your Honor. I
25 appreciate the opportunity.

26 THE COURT: Counsel for the petitioner, do
27 you want to make an announcement in the morning
28 as to do you want to rest or --

29 MR. CRAIG: No, we don't need to do that,

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1 Your Honor. We do rest. I don't think we have
2 any other witnesses. We rest, Your Honor.

3 THE COURT: Let me go back to a note I saw
4 from my notes from February, and I had a note
5 that there was an affidavit still marked for ID
6 by Paula Shavers who is now deceased, as I
7 recall.

8 MR. CRAIG: Yes, Your Honor.

9 THE COURT: I think I took that under
10 advisement as to whether or not that would be
11 admitted into evidence and given whatever weight
12 and credibility I thought it deserved, absence
13 of her live testimony, which you could not
14 procure because she had died. You reurge that,
15 moving that into evidence at this time?

16 MR. CRAIG: Yes, Your Honor.

17 THE COURT: I will allow it to be received
18 into evidence, and the court reporter at another
19 time can go back to that exhibit from February
20 and properly mark it as an exhibit into
21 evidence.

22 MR. WHITE: We reurge our objection, too.

23 THE COURT: So noted. Mr. White, does the
24 state have an announcement?

25 MR. WHITE: We rest.

26 THE COURT: You rest. All right. Do y'all
27 want to make comments or arguments?

28 MR. CRAIG: Our preference, Your Honor,
29 would be to set a time period after the

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1 transcript is prepared for perhaps simultaneous
2 briefs on the two transcripts. I don't know how
3 fast that could be done.

4 THE COURT: And make a proposed findings
5 and conclusions?

6 MR. CRAIG: I'm not wild about proposed
7 findings and conclusions these days. I've had a
8 couple of bad experiences. But briefing that
9 applies the law to the testimony, we think that
10 would -- it would be more in that nature. And
11 there certainly could be a page limit and
12 simultaneous briefs. Whatever the Court pleases
13 in that regard.

14 THE COURT: Mr. White?

15 MR. WHITE: Fine with me.

16 THE COURT: All right. My initial, without
17 having read what you propose to brief is that
18 the first prong of Strickland, I'm not ruling
19 from the bench here, but my first inclination is
20 that that has been established by the petitioner
21 by a preponderance of the evidence.

22 The second prong, the prejudice that would
23 attend to that is where I'm looking to give
24 y'all some idea. Weighing that versus what the
25 record evidence is and aggravation, which I
26 think is the correct application of the law I
27 have to attend, correct?

28 MR. CRAIG: Whether at least one juror
29 might have been swayed by the presentation that

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1 we've made.

2 THE COURT: And that would necessarily
3 allow the Court to review the entire transcript
4 of the trial, yes?

5 MR. CRAIG: I would think so, yes, sir.

6 THE COURT: As well as all of the exhibits
7 which were received into evidence that the jury
8 saw.

9 MR. CRAIG: I suppose so.

10 THE COURT: Those are here, I presume, at
11 the clerk's office. Any photographs, any
12 diagrams, anything that could be persuasive to
13 the court as evidence of aggravation. I mean, I
14 just don't see how I can look at a cold record
15 and make a decision, but I have to weigh this
16 testimony, the mitigation testimony here, and
17 the mitigation testimony admitted at trial
18 against evidence of the case without looking at
19 all of the evidence. Mr. White, do you agree or
20 disagree?

21 MR. WHITE: I absolutely agree. You've got
22 to look at all of it.

23 MR. CRAIG: Yes, I don't know if the
24 original exhibits are here or at the Supreme
25 Court, I just don't know those kind of things.

26 THE COURT: The exhibits are here. This
27 clerk's office. The former clerk received an
28 award from the Innocence Project because of her
29 diligence in maintaining, and that's been

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1 carried on to this current clerk. So I know --

2 MR. CRAIG: Yes, sir, I was at that
3 presentation.

4 THE COURT: I know if something was
5 received into evidence 30 years ago, plus, it's
6 in this courthouse. So while y'all are briefing
7 that, after the transcript is prepared, I will,
8 in context of the transcript, look at any
9 physical evidence. There may not be any, or
10 very little. I don't know. But I want to make
11 sure the parties don't want to hold the Court to
12 just reading the opinion of the Supreme Court
13 and setting up the facts or the habeas by Judge
14 Bramlette?

15 MR. WHITE: Starrett.

16 MR. CRAIG: Starrett.

17 THE COURT: But I'm entitled to review all
18 record evidence that the jury saw.

19 MR. CRAIG: Yes, sir.

20 THE COURT: Or to consider only what the
21 jury considered.

22 MR. CRAIG: Yes, I should think so under
23 the post-conviction act. Yes, sir.

24 THE COURT: So I think the transcript could
25 be available -- do y'all have the first set?

26 MR. CRAIG: Yes, sir.

27 THE COURT: So this transcript should be
28 available by mid January, based upon the
29 workload of the court reporter. So after

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1 receipt of that transcript, y'all receive that,
2 60 days thereafter?

3 MR. CRAIG: That's acceptable to us.

4 THE COURT: Mr. Davis must be the one
5 that's writing it because he's shaking his head.
6 I will look for y'all to have that, mid March,
7 let's say. I will enter an order saying within
8 60 days of receipt of the court reporter's
9 transcript.

10 MR. CRAIG: Yes, Your Honor. From there,
11 if you could send it in Word Perfect or Word,
12 Microsoft Word.

13 MR. CRAIG: Yes, please.

14 MR. WHITE: Y'all are Word Perfect.

15 MR. DAVIS: Whatever. We can make Word
16 work.

17 THE COURT: Whatever it is, just send it
18 electronically so we can use it as we need it.
19 Anything else on the record before we recess?

20 MR. CRAIG: No, Your Honor.

21 THE COURT: Thank you, gentlemen. We will
22 be in recess.

23
24 (Whereupon the proceedings were concluded)
25
26
27
28
29

Reporter's Certificate

1 STATE OF MISSISSIPPI

2 COUNTY OF HARRISON

3
4 I, HUEY L. BANG, CSR No. 1147, Official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 211 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of my
9 stenographic notes of the Hearings had on the 1st day of
10 December, 2016 before the HONORABLE CHRISTOPHER L.
11 SCHMIDT, Circuit Court Judge of the Second Circuit Court
12 District of the State of Mississippi, being a regular day
13 in the December Term of Harrison County Circuit Court at
14 Gulfport.

15 This is to further certify that I have this date
16 filed the original and one copy of said transcript, along
17 with one CD in PDF language, for inclusion in the record
18 on appeal, with the Clerk of the Circuit Court of
19 Harrison County, Mississippi, and have notified the
20 attorneys of record and the Supreme Court of my actions
21 herein.

22 WITNESS MY SIGNATURE on this, the 29th day of
23 August, 2018.

24 
25 HUEY L. BANG, CSR #1147

26 Official Court Reporter

27
28 Court Reporter's Fee: \$508.80
29