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tions, Your Honor.

THE COURT: You may step down.

You may be excused, Mr. Deal.

THE WITNESS: Thank you, Your Honor.

MR. HUNT: Your Honor, again, we would renew our objections and move the Court for a mistrial, based upon the testimony that has just been given.

THE COURT: Overruled.

MR. FEAZELL: Your Honor, the State calls Dr. Clay Griffith.

THE COURT: Dr, Griffith.

MR. HUNT: Your Honor, as the witness is approaching the stand, the Defense would renew our objections, on the grounds that have been previously based. We would ask that the Court restrict his testimony and exclude him as a witness on the grounds we have already stated, which center around the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

I would ask in addition, that the Court grant me a running bill on that basis, so that I don't have to object to every question, Your Honor.

THE COURT: I overrule the objection, but I will grant you a running bill on that basis.

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MR. HUNT: Thank you, Your Honor.

THE COURT: Come right up here, Doctor.

Raise your right hand.

(Whereupon, the witness was sworn.

THE COURT: Have a seat.

DR. CLAY GRIFFITH

called as a witness on behalf of the State of Texas, and
having been first sworn, testified as follows, to-wit:

DIRECT EXAMINATION

BY MR. FEAZELL:

Q For the record, you are Dr. Clay Griffith?

A Yes.

Q And would you spell the last name for the Court Reporter,
please, sir.

A G-r-i-f-f-i-t-h.

Q Where do you reside, Dr. Griffith?

A Dallas, Texas.

Q And what is your occupation or profession?

A I am a medical doctor, specializing in psychiatry, and a
subspecialty in legal or forensic psychiatry.

Q So, then, you have a specialty in forensic or legal
psychiatry?

A Yes, sir.

Q Will you explain to the jury what forensic or legal

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psychiatry is.

A This is the application -- interpretation and application of psychiatry to the law, in very precise terms.

Q All right. And, Doctor, what -- tell the jury what some of your qualifications are that qualify you as a psychiatrist. For example, where you went to school?

A I have a Bachelor of Science and a Master of Science from Tulane University, and a Doctor of Medicine from the University of Texas Medical School in Dallas. An internship at St. Paul Hospital in Dallas, three year approved psychiatric residency at the University of Texas Medical School in Dallas. I'm on a part-time active teaching staff of the medical school and have been for 20 years. In the private practice of psychiatry in Dallas and have been for 24 years.

Q Okay. And did you say you are on a hospital staff presently?

A Yes. I'm on several hospital staffs.

Q Which ones?

A Baylor University Medical Center, Parkland Memorial Hospital -- which is the county hospital -- Doctors Hospital.

Q Do you hold any teaching positions? Or have you held any teaching positions? If so, where?

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A Yes. I teach regularly, on a part-time basis, at the medical school in Dallas, and have for several years. This is in psychiatry. Before that I taught at the medical school in Dallas in the Department of Anatomy, and I have taught at Tulane University in the Department of Anatomy.

Q Okay. What, Doctor -- if you will tell the jury -- what are some of the professional associations and organizations that you belong to?

A A member of the Dallas County Medical Society, the Texas Medical Association and the American Medical Association, the American Psychiatric Association, Academy of Science of Psychiatry and the Law, and a member of the American College of Forensic Psychiatrists. I'm on the Advisory Board of that.

Q Okay. And what did you say your professional status is, at the present? What do you do?

A Most of -- I have some private patients, but most of my work is in the field of legal psychiatry, some civil, but most of it criminal.

Q Okay. During the course of your practice, Doctor, and the course of your profession, have you had occasion to make mental examinations or evaluations of individuals?

A Yes, sir. I have.

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Q Okay, And about how many mental evaluations and examinations have you performed, just ballpark?

A Well, over all, I have examined well over 12,000 people. Now, I have examined something like 7,000 people who have been charged with felony offenses in the last 20 years.

Q Okay. Is the purpose of the mental examination to reach some kind of conclusion as to the person's mental and behavior characteristics?

A Yes, sir.

Q Okay. Let me ask you this, where you personally examined the patient -- personally examine the patient -- do you base your conclusions as to the mental and behavioral characteristics on the facts revealed about him during that mental examination?

A Well, we try to. It depends on how good a historian the person is and how well they will talk. Sometimes we have to seek information, factual information, from some other source to help complete that, because the person simply is not a good enough historian. Now, we certainly can make observations about their behavior during the period of time that we're doing the evaluation.

Q All right. Are you saying, then, that there are sometimes problems when you directly interview a person?

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A Oh, yes.

Q And if so, what kind of problems do you face?

A Well, I think the biggest problem, or potential problem, when we're examining someone charged with a crime, if we're examining them in person, is whether they're going to try to lie, fake, distort, or convince us of something about themselves that is not true, that they think might help their case. So, that, we're always on the alert as to someone doing this. Other types of problems that might arise, would be a person having some difficulty with memory, say, maybe having some kind of brain damage, these types of things, in which simply does not have enough information. If we have a language problem, we get an interpreter.

Q Where are other places that you can gain information besides talking with the individual themselves?

A Well --

Q We're talking about the history.

A Right. From the individual's attorney is where I go first. And if they have the information, they usually will share it with me. If they have names, phone numbers, whatever, of some relatives that they will let me talk to, well, I'll do this. I go to the District Attorney's Office, also, to see what information they

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might have or could get.

Q Okay. Doctor, I'm going to, if I could, point out to you, the Defendant in this case is sitting here in the grey suit between these two lawyers here, his name is David Wayne Spence.

A Yes, sir.

Q The one in the middle. And I'm going to ask you to look at him, and also look at a picture marked State's Exhibit No. 86, and that's also a picture of David Spence, as he appeared during the summer months of 1982, and ask you if you recall ever doing a personal evaluation of David Wayne Spence?

A Not to my knowledge. No, sir.

Q All right. Thank you, sir. Doctor, have you ever consulted in the diagnosis of an individual, by reviewing his case history, without personally examining the individual?

A Oh, yes. Absolutely.

Q Okay. So, then, it's not always necessary, then, that you personally examine a person, if you have enough facts from other sources or from the case history, to make an evaluation?

A Well, not at all. We're taught this in medical school, right from the first year, to utilize information that

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is given to us and come to conclusions. And this goes right on through medical school and on into postgraduate training. So, this is actually a part of the training that we have.

Q So, I take it, then, that this is something that you have done many times, not just a few times?

A Yes. I have.

Q And that this practice is a regular practice of psychiatry, for a psychiatrist, at times, reach a conclusion as to the mental and behavioral characteristics of a person, without having in fact interviewed the person themselves?

A That's correct.

Q Okay. Now, Doctor, if you're given sufficient facts about an individual's personal history and his conduct over a reasonable period of time, could you form an opinion, within reasonable psychiatric certainty, as to that person's mental and behavioral characteristics?

A Yes. If I am given enough information and facts.

Q Okay. In other words, if you're given enough information and facts, you can figure out something about that person's -- or you can diagnose something about that person's personality, about his behavior patterns?

A Yes, sir.

Q Okay. In this case, Doctor, I'm going to ask you to

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assume some things that's true. I'm going to ask you some hypothetical questions, and I want you to assume that the information that is about to follow about the Defendant, David Wayne Spence, is true, okay? And if you want to, take notes on that. First off, Doctor, I've pointed out to you the Defendant, as he appears today, and I have shown you State's Exhibit 86, showing the Defendant as he appeared in July of 1982.

A Yes, sir.

Q Also, Doctor, in July of 1982, there was a murder committed. Assume that the Defendant, David Wayne Spence, was found guilty by a jury of twelve, for the stabbing and Aggravated Kidnapping murder of a girl by the name of Jill Montgomery. And I'll show you a picture marked State's 4, and the young lady, the brunette in that picture, is Jill Montgomery.

A Yes, sir.

Q Also in the picture is a young blond lady by the name of Raylene Rice. And assume that the young blond lady was also killed, at the same time, and in a much similar manner as Jill Montgomery. Also killed at the same time, Doctor, was a young man by the name of Kenneth Franks. And here's a picture as Kenneth Franks appeared in life. So, what we have is three teenagers who were murdered.

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And the Defendant, David Wayne Spence, has been found guilty. Assume that he has been found guilty of the murder of Jill Montgomery. That the trial of Raylene Rice and Kenneth Franks has not yet come up.

A Yes, sir.

Q And assume further, Doctor, that during the summer months of 1982, when Mr. Spence appeared as he did in that photograph, that he had a history of extensive alcohol use, primarily beer. That the Defendant had a hard time keeping any kind of steady employment. Assume further that the Defendant would spend most of his time hanging around a convenience store playing video games and charging his lunch and beer and other items on the tab of his girlfriend who worked at the store. Assume further that the Defendant, David Spence, became friends with the co-owner of the store, a Jordanian national by the name of Mohammad Deeb. And assume, Doctor, that the Jordanian national approached David Spence about the possibility of killing Kenneth Franks and a young lady by the name of Gayle Kelley. Now, I have not mentioned to you that name before.

A No, sir.

Q Assume that the Jordanian national had an insurance policy in the amount of \$20,000 on Gayle Kelley. This

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2 might be a lot of notes to take down. If you want me to
3 repeat something, I will be glad to.

4 A No. I'll stop you, if need be.

5 Q And assume that, if Gayle Kelley were killed by any
6 manner other than her own hand or planning, that Muneer
7 Mohammad Deeb, the Jordanian National, would receive
8 \$20,000 insurance payment from the policy. Assume,
9 Doctor, for the purpose of this hypothetical, that Deeb
10 offered the Defendant here, David Wayne Spence, offered
11 to share part of the insurance proceeds with him, if he
12 would kill Gayle Kelley. Assume that it was well-known
13 that Gayle Kelley and the young boy, Kenneth Franks,
14 frequented a local park by the name of Koehne Park, and
15 that David Spence knew that those youngsters frequented
16 that park. Assume further, that he, accompanied by a
17 couple of friends, went out to the park one night to
18 look for Kenneth Franks and Gayle. That at the park
19 they found Kenneth Franks and Jill Montgomery and
20 Raylene Rice.

21 A Yes, sir.

22 Q Not Gayle Kelley. But that David Spence did not know
23 that it wasn't Gayle Kelley, but thought that it was.
24 And assume further, Doctor, that David Spence, accom-
25 panied by his friends, murdered the three youngsters

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there in the pictures. Now, I'm going to show you a sampling, Doctor, of the way the bodies were found, State's Exhibit 5, which shows Kenneth Franks bound and laying fully clothed, with stab wounds in his chest.

A All right.

Q And a stab wound to the throat. Jill Montgomery, bound, her nude body stabbed 14 times, nine that penetrated the heart and lungs and five that were shallow wounds.

Assume there was medical testimony that this young lady had been tortured, that the shallow wounds were torture marks, and that there were teasing wounds on the bodies, slashes. Assume further, that the girl had been bound with her own clothing, and that her throat had been cut. And also on the girl were defensive wounds, where she had initially put up some type of fight. So, it's obvious from the photographs that the young lady and the young boy were killed with some type of sharp instrument.

Another picture of Jill Montgomery laying where the body had been dumped in the grass. And assume that the nipple here of the left breast, where you can see the blood flowing down across the chest, had been bitten off by human teeth. Assume further that there were other bite marks found on the body of Jill Montgomery, and that there were also -- here is another picture of Jill

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2 Montgomery -- that there were also bite marks found on
3 the body of the young blond, Raylene Rice, and that she
4 had multiple stab wounds, and that she had been stabbed
5 in the throat. Here, Doctor, are pictures of the scene,
6 how the bodies appeared when first found, the bodies of
7 the girls. Assume further that there is medical testi-
8 mony, Doctor, that the girls' vaginal areas had been
9 extremely abused, that there was blood and bruising,
10 evidence of forced penetration. Assume further that --
11 I'll show you State's 62, that's David Wayne Spence as
12 he appeared in about May of 1983, when he was photo-
13 graphed at the time the dental impressions were taken.
14 And assumed, for the purposes of your evaluation, Doctor,
15 that the dental impressions -- that the moulds made from
16 the dental impressions of David Wayne Spence's teeth --
17 matched to a dental certainty bite marks which were left
18 on the young ladies. And, Doctor, in all, there were
19 approximately -- there are many, many bite marks -- but
20 approximately eight that could be identified and
21 numbered. Six on the body of Jill Montgomery and two
22 on the body of Raylene Rice. Remembering, too, that the
23 bite here represented by number four, the nipple, was
24 completely severed. Okay?

25 A Yes.

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Q I further ask you to assume, Doctor, that David Wayne Spence bragged repeatedly and talked repeatedly to people that he was incarcerated with concerning the murders. That he spoke about stabbing the girls, made statements such as, "I can picture the girl's face when I killed her," bragged to a couple of inmates that he had bitten the nipple off of one of the girl's breasts, and made statements such as, "She had the biggest tits I had ever seen," and "She was a fine bitch, a good fuck." Language such as that, that was used commonly and extensively. Assume further that when the Defendant was on the outside world, not in jail, that he was sitting in an apartment with some people who were sitting around talking, and the subject of girls came up, and one boy mentioned, yes, I'm engaged and I'm crazy about my girlfriend. Something to that effect, normal type talk. Whereupon, the Defendant bragged to the people in the room that, yeah, me and a friend of mine were out at the lake, and there were these two girls out there, and we started squeezing them on the tits and squeezing them on the butt and they got pissed off. And, so, I said, "I'll show you pissed off." So we tied them up and we raped them. That the people in the room became nervous, tried to change the conversation, and eventually everybody soon

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left. Assume further that the Defendant has a nickname of "Chilly" and often refers to himself almost in a third person as "Chilly" wants a beer, or "Chilly" says do this, or "Chilly" says do that. Assume, too -- and I showed you the pictures of the girls' vaginal area.

A Yes.

Q Assume, too, that the Defendant bragged to several individuals that he had taken an instrument which he referred to as a "whoopie stick" and had stuck it up the girls, stuck it up their vagina.

A What kind of stick?

Q He called it a "whoopie stick." And I wouldn't know even how to spell it. Assume that the medical evidence also was, that in addition to the bites on the girls, and in addition to the stab wounds, in addition to the penetration to the vaginal area, there was no sperm and no semen found in the girls. Also assume, for the purpose of the questions, Doctor, that the Defendant had been involved, oh, say a month, close to a month after the murders, in an extraneous rape situation, or a forcible sex, where he took a 17-year-old --

MR. HUNT: Excuse me, Mr. Feazell.

Your Honor, at this time, I renew my motion for mistrial, based on the introduction of an extraneous

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offense, and ask if that might be added to the list of things that we have in the running bill.

THE COURT: All right. Yes, sir.

I'll overrule your objection, and allow the running bill.

BY MR. FEAZELL:

Q Took a 17-year-old girl to his house, scared her real bad by talking about things like, "Be nice to 'Chilly' and 'Chilly' won't hurt you. Do what 'Chilly' wants and 'Chilly' will treat you good." That sort of thing. Produced a knife, pulled the girl's shirt up and played with her chest with the sharp point of the knife, all of the time talking weird and scaring the girl. Assume further that that girl was bitten, too, bitten on the shoulder and bitten on the nipple, and it left marks that stayed for a couple of weeks. Assume, Doctor, that that 17-year-old girl was forced to engage in oral sex with the Defendant, but that the Defendant did not ejaculate in her mouth. He slapped her around and he pulled her hair, then forced her to have sex with him, all of the time calling her things like "a bitch" and "a whore" and "a cunt" and slapping her. Assume, too, Doctor, that the Defendant did not ejaculate in this girl either, that when it came close to time for a climax, that he

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2 rolled off of the girl and masturbated, so that he
3 ejaculated on himself. Assume, Doctor, for purposes of
4 the hypothetical, that less than a month after that, that
5 he and a friend of his by the name of Gilbert Melendez --
6 Gilbert Melendez also being a man who has been implicated
7 in the murders of these three teenagers -- that he and
8 Gilbert Melendez took an 18-year-old boy into a house --

9 MR. HUNT: Excuse me, Mr. Feazell.

10 Your Honor, again, I would ask that any future
11 reference to an extraneous offense be included in my
12 running bill. And, again, I would make a motion for a
13 mistrial, on that basis.

14 THE COURT: All right.

15 I'll overrule your objection, and I'll overrule
16 your motion for a mistrial.

17 BY MR. FEAZELL:

18 Q Doctor, assume, too, that Gilbert Melendez -- and this
19 has been introduced into evidence as State's 99, that's
20 a picture of David's friend, Gilbert Melendez, as he
21 appeared in the summer of 1982 -- that the Defendant
22 and Gilbert Melendez took this 18-year-old boy into a
23 house and they beat him severely, slapped him in the head
24 and kicked him in the head, and that the Defendant
25 produced a knife and cut the boy on his arms and on his

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2 legs, about four cuts, and the boy bled a lot. They
3 knocked him up on the bed, he bled all over the bed.
4 And for the purposes of the hypothetical, assume that
5 it's true that the Defendant and Gilbert Melendez forced
6 the 18-year-old boy to take off his pants and take off
7 his underwear. And that Gilbert Melendez, the man
8 pictured in the picture there, and David's friend, pulled
9 down his pants, exposing his penis, and ordered the
10 18-year-old boy to suck him off. Whereupon, the boy
11 refused. Assume that the Defendant placed a knife on the
12 boy's throat and threatened the boy, said, "I'm going to
13 cut your Adam's Apple out and eat it" and slapped the
14 boy around and said -- placed the boy in fear of his
15 life -- he was already bleeding -- to the point to where
16 the boy did place his mouth around the genitals of
17 Gilbert Melendez. And that the 18-year-old boy was
18 forced to lay on his stomach and take his own hands and
19 spread his rear end open, so that Gilbert Melendez could
20 try to mount him, there in the presence of the Defendant.
21 And, that, then, the Defendant dragged the 18-year-old
22 boy -- who had been 18 for two days -- dragged him into
23 the bathroom and stuck his head down in the toilet in
24 the water, and then threw him on the floor and kicked him
25 around some more. And after that, the Defendant and

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2 Gilbert Melendez decided to leave, and told the boy, "If
3 you call the police, one of us will plead guilty and the
4 other one will come back to kill you." Okay. Assume
5 further, Doctor, that the Defendant was convicted --

6 MR. HUNT: Excuse me, Mr. Feazell.

7 Your Honor, again, I renew my previous
8 objections, without waiving the same, or my running bill,
9 and object to the introduction of the pen pack relative
10 to the prior conviction. And I would urge the Court for
11 a mistrial, at this time.

12 THE COURT: Overruled.

13 MR. HUNT: I would ask that that also be added
14 to the running bill.

15 THE COURT: All right, I will add it to it,
16 at this time.

17 MR. HUNT: Thank you, Your Honor.

18 BY MR. FEAZELL:

19 Q Assume, Doctor, that the Defendant also committed a
20 robbery in 1979 and was convicted in 1980 and sentenced
21 to four years in the Texas Department of Corrections.
22 That's a lot to have to remember, and I think I will
23 stop there. Assuming these facts to be true, do you
24 have an opinion, within a reasonable psychiatric certainty,
25 of what kind of personality that the Defendant has? Or

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do I need to tell you a little more? And if so, you can ask me. If I know, I will tell you, and ask you to assume that.

A No. I have an opinion.

Q What is that opinion, Doctor?

A My opinion is that, number one, there's no indication of any mental illness, no suggestion that this man has ever been treated for any mental illness. What you have described, in all of these horror episodes -- and they are horrible -- is that, we have a person who has a severe personality disorder.

Q What kind of personality disorder, if you could pinpoint it?

A Yes. There are several kinds. We can pinpoint this one. This one is an antisocial -- what we call an antisocial personality, of the most severe type.

Q What is "antisocial"? Would you explain that to the jury, or tell them whether it is known by any other name?

A Yes. Let me say that this is not something that's new. This was first described by a Dr. Lambroso in 1911. And his description of this type of person is just exactly like it is today and it hasn't changed.

Q What is that description?

A He described the person an "immoral imbecile." Now, down

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2 through the years, we've changed names of it. But the
3 characteristics of this type of problem and person have
4 remained the same. We have had psychopaths, which was
5 around for a good many years. We went to sociopaths.
6 And these are all because of, supposedly, updating our
7 terminology. And we now use "antisocial personality."

8 Q Okay. You have told the jury what a lot of the names are
9 for the person. What are some of the characteristics?

10 A Characteristics, and this severe type of person -- and it
11 is limited to a very few people, fortunately.

12 Q Fortunately?

13 A Yes, sir.

14 Q All right.

15 A Throughout the United States and, naturally, throughout
16 the world, it's the same all over the world, these are
17 people who come into constant conflict with society.
18 They act from inner urge, do not act from outside
19 stimulus, like we might act. They give no consideration
20 to property, and more particularly, to persons, as we've
21 seen here. They will do whatever they need to do to
22 obtain what they want. They are calloused. They do not
23 make friends of any lasting nature, be it as a single
24 friend or a group. They are master manipulators, they
25 are master con artists, they never learn from experience,

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and they never learn from punishment.

Q Do they show any signs of conscience, or guilt, or remorse for their wrongdoing?

A They show no signs of conscience, they show no signs of guilt or remorse. They may try to fake it. This is part of what I mentioned earlier, the kind of things that people will try to fake. You gave me nothing in here to even indicate that he tried to fake it. So, no, they have no conscience. And, again, let me say this, this is confined to a very small number of people.

Q Doctor, is a person -- in the psychiatric sense -- a person -- well, let me say, in a psychiatric legal sense, since you are a forensic psychiatrist -- is a person who has an antisocial personality mentally ill?

A Not at all. It has absolutely nothing to do with mental illness. This is a personality disorder. This is something that is with them all of their life, it does not change. We all have certain types of personality traits. We're talking about the abnormal ones now. But it has nothing to do with mental illness.

Q Okay. Even though it is not a mental illness, Dr. Griffith, is there any kind of treatment that can be given to help change a person's personality that has this kind of personality disorder?

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A Not this type of personality, not this severity. And this is as severe, in my opinion, as one can get. We've tried for years to find some way to, first of all, detect the early beginnings of this, tried to treat it. We have found nothing. There is nothing that will change this.

Q Is there any likelihood that the Defendant's personality and behavior could change for the better on its own over a period of years?

A In my opinion, none at all. I've never seen one yet that did. And nobody else has either.

Q Okay. Is there any likelihood that it might get worse?

A Well, I don't know how it could get worse. But, yeah, I guess maybe it could get worse.

Q I understand. So, in some personality disorders, they might could get worse, but in this one you don't see how it could get any worse, is that what you're saying?

A Well, no. I mean, we have the frequency, we have the horrible hideous types of killings, the sexual implications. We just, you know, we can go on and on with what this man has been involved in.

Q All right. Now, Doctor, here's what I'm getting down to. If you were given sufficient facts about an individual's personal history and conduct over a period of time,

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could you form an opinion, within reasonable psychiatric certainty, whether or not -- and I'm asking, could you form an opinion, within reasonable psychiatric certainty -- whether or not there is a probability that the person would commit criminal acts of violence in the future that would constitute a continuing threat to society? With enough information, could you form an opinion as to that question?

A Yes. I can.

Q Okay. I'm asking you to recall the facts that I've told you -- that I have asked you to assume about the Defendant.

A Yes.

Q Now, assuming these facts to be true, do you have an opinion, within reasonable psychiatric certainty, whether or not there is a probability that this Defendant will commit criminal acts of violence that would constitute a continuing threat to society? Do you have an opinion?

A I have an opinion.

Q Doctor, what is that opinion?

A Without any question, he will continue to be a very serious threat to society, be very dangerous. Behavior predicts behavior.

Q Okay. And by "society," I mean not only on the free

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world, but society within the prison walls?

A Lock him up in TDC and he will continue the same kind of behavior, given any kind of chance.

Q Okay. And that's based upon the information that I gave you and asked you to assume is true?

A That's correct.

Q Okay.

MR. FEAZELL: Pass the witness, Your Honor.

CROSS EXAMINATION

BY MR. HUNT:

Q Dr. Griffith, I have a few questions. As I understand it, we're talking about somebody who is described in a hypothetical -- or hypothet -- and that you are assuming all of those facts to be correct, is that right, sir?

A That is correct, sir.

Q Okay. If we were to take away some of those facts, would the same thing be true?

A It's quite possible that we could take away enough of them, and then it would not be true, and we would have an entirely different case. Yes, sir.

Q Certainly, as you told Mr. Feazell, you have never actually examined David Wayne Spence, is that correct?

A That is correct.

Q You have never been requested to examine David Spence by

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anybody, is that correct?

A Not to my knowledge, sir.

Q Certainly, if you had of been requested, you probably would have done the same things that you explained earlier. And that is, if somebody asks you, Dr. Griffith, we want you to do an examination, you most likely would have come to either of Mr. Spence's attorneys and said, I would like to examine your client, and I would like to talk to him to at least find out whether or not he would be truthful with me, is that a fair statement?

A That's fair.

Q So, if, then, you are to give an opinion, it's based entirely on the hypothet that was given to you by Mr. Feazell, and only the facts included in that hypothet, is that correct?

A I'm sorry. I didn't follow that.

Q Yes, sir. Your opinion is based entirely on the facts, as related to in that hypothet, is that correct?

A Yes, sir. This is the nature of the hypothetical.

Q Okay. Doctor, have there been any studies done, as far as what length of a time period you would have to have, in order to determine whether, in fact, someone is a psychopathic personality?

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A The length of time?

Q Yes, sir. Maybe I could be more clear. You described -- or the hypothet gave you some events that you were to assume happened over a relatively short period, is that correct?

A Yes. Some of them did.

Q For instance, I think that it ran -- the hypothet ran from approximately 1979 to approximately the summer of 1982, is that correct?

A Yes.

Q Okay. And you don't need any more time than that to evaluate somebody's personality, in order to determine whether or not they are a sociopathic individual?

A No, sir. Not when you have the information that we have and the facts that we have of what went on during this period of time.

Q Okay.

A All we have to have is, you know, somebody who is an adult.

Q Yes, sir. If some of the facts in that hypothet were incorrect -- for instance, if in fact, we were to take out the assumption that the Defendant was responsible for the lake murders. If, for instance, it wasn't the Defendant that committed the murders, or any part of the

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murders, would that affect your conclusion at the end of the hypothet?

A Well, what we have would be a different case.

Q Absolutely.

A I mean, we wouldn't even have this case. So, I can't answer your question, sir.

Q Okay. If I were to give you a hypothet exactly like that, except leave out the lake murders, so that there was nothing about having murdered three children, would your conclusion be the same?

A Well, yes. He had done enough to call him an adult sociopath. There's no question about that. But I can't answer your question, because that's not what the case is here.

Q Well, if I was to give you a hypothetical exactly like that, except leave out the lake murders, are you saying you couldn't answer my question?

A We would have a different case. Yes, sir.

Q Yes, sir. I acknowledge that we would have a different case. I'm saying, could you not give a conclusion?

A Well, I thought I just answered your question and said, yes, there is enough evidence of his behavior --

Q Okay.

A -- that it would not alter it. But still, in all, I

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can't answer it, because this makes a different case.

Q Okay. In a different case, would your conclusion be that the person that did that would be a sociopathic personality and society wouldn't gain anything from locking him up?

A I really don't know how else to answer you, other than what I have. I have to answer the questions that I'm given.

Q Certainly. And I'm trying to be clear. And, apparently, I'm not being clear.

A We can -- as I said, we can take any hypothetical and we can whittle it down one little bit by one little bit, and eventually we will come to some other conclusion.

Q Certainly.

A But this is not the question I was asked. And there is no way.

O Okay. No. I'm --

A I'm not going to answer it.

Q I understand that, Doctor. But what I'm asking you is a different question. I'm asking you, assume everything you did, except the lake murders. What would be your response to my hypothetical?

MR. BUTLER: Judge, he has already answered that question. He said there would still be enough there

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for him to be a sociopathic personality.

THE COURT: Is that -- as I understood, that's what you said. Is that correct?

THE WITNESS: That is correct, sir.

THE COURT: All right.

BY MR. HUNT:

Q If we were to whittle it down even further. If, for instance, we were to whittle it down and eliminate the Aggravated Sexual Abuse. Say, if I was to give the same hypothet, and say that in fact, the person in our hypothet did not force anyone to suck anybody else's genitals, but in fact said, "If you do that, I'm going to beat you up," and the boy did it anyway, and then was beaten up, would that affect? Now, again, I have taken out the lake murders, I have taken out the Aggravated Sexual Abuse. Now, would your conclusion be the same?

A Why don't -- you know -- we're going to be here taking up these people's time, that's all. Why don't we just take it all out? Because that's what you're trying to do, sir.

Q No, Doctor, I'm not.

A Well...

Q Do you think you could answer my question, then? We'll let the Court worry about these people.

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A I cannot answer your question, sir.

Q You just can't answer it?

A I cannot answer that.

Q Would you explain to me why you cannot answer a hypothet that I give you, but you can one for the District Attorney?

MR. BUTLER: Judge, he has already explained that. He said, you can take everything out, or you can take enough of it out that it is a totally different case.

THE COURT: Sustained.

BY MR. HUNT:

Q Doctor, can I give you a hypothet and you give me a response to it?

A I don't think I have any choice.

Q Well, if I was to give you a hypothet -- now, does that mean, yes, you will respond to my hypothet?

A I said, "I don't think I have a choice."

Q Is that a yes?

MR. BUTLER: Judge, if he's going to ask a question, let him ask a question.

MR. HUNT: Well, I'm trying to, Your Honor.

THE COURT: What hypo do you want to ask him?

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BY MR. HUNT:

Q I'm going to ask you -- I'm going to give you the same hypothet Mr. Feazell did, but I'm going to leave some things out. Okay, do you remember the hypothet?

A I had it written down. Yes, sir.

Q Okay. Now, rather than repeat it, every fact in the hypothet, okay, I want you to review it in your mind.

A No, sir. If you're going to give me -- excuse me -- if you're going to give me a hypothet, then you give me a hypothet.

Q Okay.

A Don't ask me to do this and that with it, please, sir.

Q Okay. Let's assume, then, in this hypothet, assume a boy about 18 years old, who hasn't been in any trouble. Okay. Assume the boy gets arrested for, say, a robbery conviction, in which no violence was --

A Wait a minute. Wait a minute. What age?

Q Eighteen years old.

A What kind of robbery?

Q A robbery with no physical danger to anybody.

A Okay. Well, what kind of robbery?

Q What do you mean, "What kind of robbery?" You need more facts?

A Yes, sir. I need more facts.

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Q Okay. Let's say a robbery of a convenience store.

A Okay. Go ahead. Day? Night? Alone? I mean, just give me the facts.

Q At night, with someone else. Okay. Assume that that person goes to prison, gets released on parole.

A I didn't understand your last sentence.

Q Get's released on parole.

A After how long? After how long?

Q After approximately two years?

A Two years?

Q Yes, sir. Assume that that person gets arrested for an aggravated sexual abuse. Assume that the facts of that aggravated sexual abuse indicate that he was with another person. That he became very angry, because the person who we are going to designate as the victim, had beaten up a very small friend of his.

A I'm a little lost.

Q Okay.

A Who became angry?

A The person who -- the defendant in our hypothet became angry, because his, approximately 14-year-old friend had been beaten up by an 18-year-old who is approximately a foot and a half taller than the 14-year-old. Assume that --

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2 MR. BUTLER: Judge, could we approach the
3 Bench?

4 THE COURT: Uh-huh.

5 (Whereupon, Counsel for the State,
6 (Counsel for the Defense, the Court
7 (and the Court Reporter went into the
8 (Court's Chambers and out of the
9 (presence and hearing of the jury the
10 (following proceedings were had,
11 (to-wit:

12 THE COURT: Go ahead.

13 MR. BUTLER: Judge, at this time, we're going
14 to request that the Court instruct him to stay in
15 hypotheticals that can be reasonably adduced from the
16 evidence before this jury. If he wants to start going
17 into these far afield things, then we're going to go
18 into devil worship, and we're going to add everything in
19 the world into it. We stayed completely within the
20 evidence before this jury. We would request the Court
21 to instruct him to do the same.

22 THE COURT: Are you talking about "a foot and
23 a half taller"?

24 MR. FEAZELL: That and beating up a little
25 friend.

MR. BUTLER: I'm talking about the things that
he is going into that are totally contrary to the
evidence before this jury.

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THE COURT: I sustain the objection to that.

MR. FEAZELL: And, also, Your Honor, the part about taking out the lake murders, since the Defendant has been found guilty by this jury of killing Jill Montgomery.

THE COURT: Well, I overrule that. But I do sustain it as far as the other two points, "a foot and a half taller." And I don't recall that there was testimony about him beating up the friend.

MR. BUTLER: Okay. We're going to ask him to take out the fact that he was trying to protect his friend.

THE COURT: Sustained as to that.

MR. BUTLER: There is no evidence to that.

We're going to ask him to take out the part, that he was doing it because the boy -- that he was angry at the boy for doing what he told him not to do, and that's why he cut him. Because the evidence is just exactly the opposite of that.

THE COURT: Well, I don't think that's in the hypothetical.

MR. BUTLER: Well, he's trying that. It was in the first one he tried to give.

MR. FEAZELL: He has said it once before.

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THE COURT: Well, I instruct you to stay within the evidence that has been offered.

(Whereupon, all parties returned to the courtroom and the trial continued in the presence and hearing of the jury as follows, to-wit:

BY MR. HUNT:

Q Okay, Doctor, I'm going to eliminate from that hypothet the "foot and a half taller." Okay, erase that from your sheet.

MR. FEAZELL: Objection, Judge. And the part about protecting a friend and beating up on a little kid. None of that in evidence.

THE COURT: All right.

I sustain the objection.

BY MR. HUNT:

Q Can you eliminate those from your hypothet, Doctor?

A Yeah. I think I can.

Q Okay. Assume, again, in our hypothet, that the defendant cuts the 18-year-old boy.

A I'm lost again.

Q Okay.

A I've got two 18-year-old boys here, I think.

Q Okay. You've got a defendant cutting an 18-year-old boy. Okay.

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A Okay. The defendant -- you've got to give me more facts.
I mean, the defendant is how old, now?

Q Okay. The defendant is approximately 23 or 24 years old.
And he cuts an 18-year-old boy.

A Okay. That's --

Q After the 18 --

A Well, wait just a minute.

Q Okay.

A Well, you can do all of this later. I'll ask you later.

Q Now, this is after the 18-year-old boy and the defend-
ant's friend, a 15-year-old boy, have fought. And this
is after --

MR. BUTLER: Your Honor, that is outside the
record. I believe the testimony is that the boy was
15 years old.

BY MR. HUNT:

Q I'm sorry, Doctor. Change it to 15.

A All right, sir.

MR. FEAZELL: Also evidence, Your Honor, that
the fight was agged on by the Defendant, and not that it
was the victim picking on any 15-year-old boy.

THE COURT: Well, I -- let him state his
hypothetical.

MR. HUNT: Okay.

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BY MR. HUNT:

Q Now, the 18-year-old boy in the hypothet, prior to being cut, kicks the 14-year-old boy in the head.

MR. BUTLER: Lost a year again.

Q Fifteen-year-old boy. Sorry.

A Which?

Q We've got the 18-year-old boy kicking the 15-year-old boy in the head. Then the cutting.

A Where is the 23-year-old boy?

Q That's the defendant. Okay. Then assume, if you would, that the defendant, the person who did the cutting, gets arrested by the police and goes to jail. Assume that while the defendant is in jail, he is accused of doing the lake murders. Again, for the purposes of our hypothet, let's assume that he did not do the lake murders.

A I thought we were leaving out the lake murders.

Q No. We're leaving out his complicity in the lake murders. We're not going to leave them out, I'm going to put them in. Assume that he gets --

A Wait a minute. Okay. You're going to have to tell me about the lake murders.

Q Okay.

A And you're going to have to go back and tell me about where the sexual offenses occurred. You're going to have

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to give me details and information.

Q Okay. If you could think back to Mr. Feazell's hypothetical, relative to --

A No. I'm not thinking back to his. We're talking about yours.

Q Okay. Let's say that there are -- that for purposes of this hypothet, the lake murders are a horrible murder of three teenage children 17 and 18 years old. By "horrible," I mean sexual abuse, biting, just an awful crime. Let's assume that that crime occurred on the 13th of July of 1982, here in Waco, Texas. Let's assume further that that crime received a tremendous amount of publicity, because it was a horrible crime.

A I agree.

Q All right. Let's assume that that crime included sexual abuse, or at least rape.

A Or what?

Q Or at least rape.

A At least rape.

Q Okay. Is that an adequate amount of information relative to the cimre, for the purposes of this hypothet?

A I don't know what you're going to ask. You've never told me that.

Q Okay. Let me go back further, then. Now, we are assuming

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that the Defendant gets arrested and placed in jail and is accused of having done the lake murders. Okay, a horrible crime.

A I agree.

Q Let's assume further that the person is interrogated while in the jail extensively.

A "The person," now, being the --

Q The defendant,

A This is the 23-year-old, now, we're back to?

Q Yes, sir. Let's assume that the Defendant is accused repeatedly of the lake murders while in custody.

A Okay,

Q Okay. Let's assume that other inmates in the jail know that the defendant has been accused of being involved in the lake murders. So, it is common knowledge in the jail,

A Okay,

Q Let's assume further that the defendant is being watched, either through closed circuit television, or through personal observation by jailers in the jail. Okay?

A Oh, yeah. I would hope so.

Q Let's assume further that everything that the defendant says to at least one inmate gets written down by that inmate, so that that inmate will have it available.

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Let's assume that the primary investigator in the case interrogates the defendant at length while the defendant is incarcerated in the jail.

A Are you repeating yourself now? Because we have been over this, that he has been interrogated and investigated.

Q Okay.

A I mean, this is still the same --

Q It's the same hypothet. Yes, sir. Let's assume further --

A The same type of thing, though, that you have already told to me two or three times.

Q Yes, sir.

A Let's assume that that investigator asked for help in solving the lake murders, and the defendant is telling him --

MR. FEAZELL: Objection, Judge. There is absolutely no evidence anywhere, as to anything like that.

MR. HUNT: Your Honor, if I recall the testimony of James Jordan, there is testimony to that effect.

THE COURT: Go ahead.

BY MR. HUNT:

Q Let's assume that the defendant is giving information to this investigator and telling him everything that he can, in effect, to help solve the lake murders.

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A Such as? I mean, when you say "everything," and so on,
just give me some examples.

Q I'm sorry, I can't do that.

A Well --

Q That's not in evidence, I can't do it. I can give you
a couple --

A Well, this is not enough information, that's what I'm
telling.

Q Okay. Let's say that he is giving information, such as,
that he was offered money to either find someone to do
the lake murders, or to do the lake murders himself.

Let's assume further that --

A Wait a minute.

Q Let's assume further that he told the investigator that
the person who offered him the money was a Jordanian
national. Let's assume further that there are a number
of inmates in the jail who are informing investigators
that they have talked to the defendant and the defendant
has admitted to them that he did the crime.

MR. FEAZELL: Now, Judge, I'm going to object
to this entire line. There's nothing in these hypo-
theticals having to do with the mental state of the
Defendant, David Wayne Spence. Mr. Hunt is asking this
doctor to do all of this same assuming that he asked this

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jury to do earlier this week during his final argument. He's just trying to argue his final argument again through asking this doctor to assume these things that have nothing to do with the mental state of the Defendant.

THE COURT: I overrule the objection. You will have him back, and you can ask him.

MR. HUNT: Thank you, Your Honor.

BY MR. HUNT:

Q Now, Doctor, do you have enough information, at that point, to draw any kind of conclusion relative to that defendant in the hypothetical?

A Yeah. I do.

Q Okay. What would your conclusion be, based on the information I just gave you?

A My conclusion is, that this man started out at age 18, as you told me, and he gradually has gotten worse. And, yes, he is an antisocial personality.

Q Based on the information that I have given you?

A Based on the information that you have given me. Yes, sir.

Q With no hope to be reclaimed, is that what you're saying?

A That's right.

Q Based on the information I have given you?

A That's right.

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MR. HUNT: I believe I'll pass the witness,
Your Honor.

THE COURT: All right.

MR. FEAZELL: We don't have any questions,
Judge.

THE COURT: All right. Doctor, you may step
down. Thank you, sir.

THE WITNESS: Thank you, Judge.

MR. HUNT: Excuse me, Doctor,

Your Honor, again, I would re-urge the objec-
tions that I have previously made, and that this Court
has given me a running bill on, and ask that the Court
would declare, at this time, there to be a mistrial,
based on the introduction of this evidence.

THE COURT: Overruled.

You may step down, Doctor.

MR. FEAZELL: May this witness be excused,
Your Honor?

THE COURT: Yes,

You're excused, Doctor.

THE WITNESS: Thank you.

MR. FEAZELL: May we approach the Bench, Your
Honor?

THE COURT: Yes, sir.

1 (Whereupon, Counsel for the State,
2 (Counsel for the Defense, the Court
3 (and the Defendant went into the
4 (Court's Chambers and returned a short
5 (time thereafter, and the trial
6 (continued in the presence of the
7 (jury as follows, to-wit:

8 THE COURT: All right, Ladies and Gentlemen
9 of the Jury, I'm going to recess you, at this time, but
10 I'm going to recess you until 9:00 o'clock in the morning.
11 The Court has to take up some matters outside the
12 presence of the jury. You're excused until 9:00 A.M.
13 in the morning.

14 I caution you and carefully again, to keep in
15 mind the instructions I have given you.

16 You're excused until 9:00 o'clock.

17 If everybody else will let the jury clear the
18 courtroom first.

19 (Whereupon, Court was recessed until
20 (July 6, 1984, at which time, out of
21 (the presence and hearing of the
22 (jury, the following proceedings were
23 (had, to-wit:

24 PROCEEDINGS HAD JULY 6, 1984 (A.M.)

25 THE COURT: Is the State ready to proceed?

MR. FEAZELL: Yes, Your Honor.

THE COURT: Is the Defense ready?

MR. HUNT: We are ready, Your Honor.

THE COURT: Now, I want the record to reflect
we're outside the presence and hearing of the jury.

1 And is there any additional evidence that the
2 State wishes to offer outside of the jury before we bring
3 the jury in?

4 MR. FEAZELL: Well, Judge, we plan to call Dr.
5 Jolliff to the stand.

6 THE COURT: All right.

7 Now, I think we heard some evidence, in refer-
8 ence to Dr. Jolliff's testimony, outside the presence of
9 the jury yesterday.

10 MR. FEAZELL: Yes, sir.

11 THE COURT: And does the State have any other
12 objections, other than the ones previously stated, to
13 Dr. Jolliff's testimony.

14 MR. FULLER: You mean the Defense?

15 MR. HUNT: Your Honor, we would again re-urge
16 all of the objections we made yesterday to the testimony
17 of Dr. Jolliff.

18 THE COURT: All right.

19 In reference to the testimony of Dr. Jolliff,
20 at this time, I overrule the objections.

21 MR. HUNT: Your Honor, if we could, before Dr.
22 Jolliff even comes on the stand, I would ask that the
23 Court take judicial notice of all of the objections that
24 we made yesterday and give us a running bill on those
25 bases, so that I don't have to object to each one of the

1 questions tendered and all of the responses made by Dr.
2 Jolliff.

3 THE COURT: All right.

4 I will do that.

5 MR. HUNT: Thank you, Your Honor.

6 THE COURT: All right.

7 If you will, bring in the jury.

8 (Whereupon, the jury was returned to
9 (the courtroom and the trial continued
10 (in the presence and hearing of the
11 (jury as follows, to-wit:

12 THE COURT: Call your next witness.

13 MR. HUNT: Your Honor, prior to the calling of
14 the next witness, I would like to make it clear to the
15 jury and to the Court, that I am again requesting that
16 the Court take judicial knowledge of all of the objec-
17 tions that we made yesterday in Chambers to the testimony
18 of Dr. Jolliff, and ask that the Court would give me a
19 running bill of exception, or a running bill on those
20 matters, so that I don't have to interrupt every question
21 and every response of this witness, in order to properly
22 object to that. I would ask the Court to do that.

23 THE COURT: All right.

24 And I grant it.

25 MR. HUNT: Thank you, Your Honor.

THE COURT: Okay.