

CAPITAL CASE

No. \_\_\_\_\_

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IN THE

**Supreme Court of the United States**

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**CURTIS WINDOM,**

*Petitioner,*

**v.**

**STATE OF FLORIDA,**

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA SUPREME COURT

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**APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI**

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**DEATH WARRANT SIGNED**

**Execution Scheduled: August 28, 2025, at 6:00 p.m.**

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/s/ Ann Marie Mirialakis  
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**APPENDIX M**

Circuit Court for the Ninth Judicial Circuit, Orange County, Florida,

Transcript of Penalty Phase Proceedings, PP-R1-113

IN THE CIRCUIT COURT, NINTH JUDICIAL  
CIRCUIT, CRIMINAL JUSTICE DIVISION  
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO. CR92-1305

vs.

CURTIS WINDOM,

Defendant.

**ORIGINAL**

PENALTY PHASE PROCEEDING

BEFORE

THE HONORABLE DOROTHY J. RUSSELL

Orange County Courthouse  
2nd Floor, Courtroom V  
Orlando, Florida  
September 23, 1992

A P P E A R A N C E S:

JEFF ASHTON, ESQUIRE  
Assistant State Attorney  
250 N. Orange Avenue  
Orlando, Florida 32801  
Representing State of Florida

ED LEINSTER, ESQUIRE  
KURT BARCH, ESQUIRE  
1302 E. Robinson Street  
Orlando, Florida 32801  
Representing the Defendant

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1 THE COURT: GOOD MORNING. THIS IS CURTIS WINDOM,  
2 CR92-1305. IS THE STATE READY TO PROCEED TO THE PENALTY  
3 PHASE?

4 MR. ASHTON: YES, YOUR HONOR.

5 THE COURT: DEFENSE?

6 MR. LEINSTER: YES AND NO, JUDGE. I WOULD LIKE  
7 TO, FOR THE RECORD, INDICATE THAT WE JUST SPOKE TO THE  
8 IMPACT WITNESS. THE STATUTE THAT THE STATE REFERS TO  
9 WENT INTO EFFECT APPARENTLY AFTER THIS CRIME WAS  
10 COMMITTED. WHICH FROM A LEGAL STANDPOINT BRINGS INTO  
11 QUESTION WHETHER OR NOT IT IS APPLICABLE AT ALL.

12 TO BE QUITE HONEST, IN TERMS OF PENALTIES,  
13 STRICTLY PENALTIES, NOT CONSIDERATIONS PRECEDING PENALTY  
14 PHASES, PENALTIES OBVIOUSLY ARE IPSO FACTO IF THEY ARE  
15 CREATED AFTER THE COMMISSION OF THE ACT. SO I'VE GOT  
16 THAT PROBLEM.

17 BUT THE OTHER PROBLEM I HAVE IS IN TALKING TO THIS  
18 INDIVIDUAL AND IN TRYING TO ORCHESTRATE WHAT SHE SAYS IN  
19 CONSONANCE WITH THE STATUTE PROVIDED, IMPACT ON THE  
20 COMMUNITY AND TRYING TO FIGURE OUT WHAT THAT MEANS.  
21 WHAT SHE IS PREPARED TO SAY IS, THAT THE CHILDREN AT THE  
22 SCHOOL IN WINTER GARDEN WERE SOMEHOW TRAUMATIZED AS A  
23 RESULT OF THIS.

24 PART OF THAT TRAUMATIZATION WAS A RESULT OF THE  
25 CHILDREN BEING BASICALLY HERDED AFTER HOURS AND TOLD

1 ABOUT ALL OF THIS. AND THE QUANTUM LEAP IS THEN MADE BY  
2 THIS PARTICULAR WITNESS, THAT ALL OF THE CHILDREN AT THE  
3 SCHOOL, I GUESS THE COMMUNITY, WERE SOMEHOW AFFECTED BY  
4 ALL OF THIS.

5 THE EFFECT OF ALL OF THIS, IT WOULD APPEAR TO ME  
6 TO BE AT LEAST, THE NET RESULT OF THOSE PEOPLE IN CHARGE  
7 AT THE TIME BRINGING ALL OF THIS TO THE CHILDREN'S  
8 ATTENTION. AND PROBABLY WITH ALL THE BEST INTENTIONS; I  
9 DON'T QUESTION THAT. BUT IN SOME WAY SUGGESTING TO THEM  
10 THE DANGERS THAT LURK IN THE STREETS OF WINTER GARDEN  
11 AND THE KINDS OF THINGS THAT RESULT FROM DRUGS AND ON  
12 AND ON.

13 THIS TO ME IS NOT WHAT THAT STATUTE WAS INTENDED  
14 TO BE. EVERY CRIME HAS AN IMPACT. I MEAN, IF YOU TOOK  
15 A WHOLE CLASSROOM OF KIDS AND YOU ADDRESS THEM AND SAID,  
16 BY THE WAY, OVER IN PALM BAY, AS YOU MAY HAVE SEEN ON  
17 THE NEWS, AN IDIOT JUST RAN AMUCK AND KILLED A BUNCH OF  
18 INNOCENT PEOPLE, YOU WOULD CERTAINLY CATCH THE ATTENTION  
19 OF THOSE CHILDREN.

20 AS A MATTER OF FACT, YOU MIGHT HAVE CAUGHT THEIR  
21 ATTENTION BY WATCHING THE TELEVISION, THE NEWSPAPER, SO  
22 FORTH. BUT YOU COULD DO THAT FOR EVERY SINGLE CRIME ON  
23 THE PLANET, I WOULD THINK. I THINK THAT STATUTE  
24 PROBABLY ADDRESSES SOMETHING A LITTLE MORE DISCRETE THAN  
25 THAT. SOMETHING THAT HITS HOME A LITTLE CLOSER THAT HAS

1 SOME SORT OF REAL PSYCHOLOGICAL IMPACT ON THE COMMUNITY,  
2 NOT AN INDIVIDUAL.

3 SO I WOULD RELY FIRST ON THE FACT THAT THE STATUTE  
4 WAS NOT IN EXISTENCE, AS I UNDERSTAND IT, AT THE TIME OF  
5 THIS CRIME. AND NUMBER TWO, IT IS NOT APPLICABLE TO  
6 THIS PROCEEDING.

7 NOW, MY OTHER OBJECTIONS ARE THAT, DESPITE WHAT  
8 MR. ASHTON HAS SAID PRIVATELY, WE HAVE DISCUSSED THIS.  
9 WE ATTEMPTED TO NARROW DOWN, FOR PURPOSES OF SENTENCING,  
10 A REASONABLE, PREDICTABLE LIST OF PEOPLE WHO COULD BE  
11 DEPOSED. AND WE WERE GIVEN FOUR DIFFERENT PEOPLE, NONE  
12 OF WHOM RESPONDED AS A RESULT OF THE SHERIFF'S POLICY,  
13 HAS NOTHING TO DO WITH LAW, OF NOT DOING ANYTHING UNLESS  
14 THEY HAVE FIVE DAYS NOTICE.

15 I DON'T KNOW WHAT YOUR ROLE WAS IN THIS, BECAUSE I  
16 GET THIS SECONDHAND FROM MY STAFF. ALL I KNEW WAS THAT  
17 WE TRIED TO WEED OUT A LOT OF DIFFERENT PROSPECTIVE  
18 WITNESSES AND GET TO THE WHEAT OF WHAT WE WERE GOING TO  
19 HAVE TO FACE AT THE TIME OF SENTENCING.

20 AND HAVING BEEN GIVEN WHAT WE THOUGHT WAS THE  
21 WHEAT, THEY DIDN'T RESPOND. AND WE HAVE BEEN GIVEN THE  
22 OPPORTUNITY TO TALK TO THEM BRIEFLY. BUT I THINK THE  
23 SENTENCING PHASE IN A CASE LIKE THIS IS SIGNIFICANT  
24 ENOUGH THAT WE OUGHT TO HAVE MORE TIME.

25 THE COURT: STATE WISH TO RESPOND?

1 MR. ASHTON: I ASSUME THAT THE LAST COMMENTS WERE  
2 INTENDED AS A MOTION TO CONTINUE THIS PENALTY PHASE, IS  
3 THAT CORRECT?

4 MR. LEINSTER: BINGO.

5 MR. ASHTON: I ASSUMED THAT, THOUGH I DIDN'T  
6 ACTUALLY HEAR MR. LEINSTER ASK FOR IT.

7 THE COURT: THAT IS WHAT HE MEANT.

8 MR. ASHTON: MR. LEINSTER IS IMPLYING, AND I WANT  
9 TO MAKE THIS CLEAR, THAT AT SOME POINT, EITHER I AGREED  
10 TO OR THE COURT ORDERED ME TO INDICATE TO MR. LEINSTER  
11 WHAT WITNESSES WILL BE CALLED TO THIS PHASE. THAT NEVER  
12 OCCURRED.

13 IN FACT, QUITE TO THE CONTRARY. MY RECOLLECTION  
14 OF THE DISCUSSION WITH MR. LEINSTER'S ASSOCIATE MR.  
15 BARCH WAS THAT HE ASKED ME TO DO THAT, AND I  
16 SPECIFICALLY DECLINED TO DO IT. SO AT NO TIME WAS I  
17 PRESENT FOR ANY DISCUSSION BETWEEN MR. LEINSTER AND THE  
18 COURT WHERE HE ASKED THAT I BE ORDERED TO LIMIT MY LIST  
19 OR GIVE HIM THE WHEAT, SO TO SPEAK. THAT NEVER  
20 HAPPENED.

21 AT NO TIME DID I REPRESENT TO MR. LEINSTER THAT  
22 THE NEW WITNESSES I PROVIDED TO HIM WERE THE ONLY  
23 WITNESSES FOR THIS PHASE. HE CHOSE IN THE PRE-TRIAL  
24 PREPARATION OF THIS CASE NOT TO DEPOSE CERTAIN  
25 WITNESSES. THAT IS HIS CHOICE. THAT IS A TACTICAL



1 DECISION ON HIS PART.

2 THE WITNESS OF WHOM HE IS COMPLAINING IS AN  
3 ORIGINALLY LISTED WITNESS AND AT DEPOSITION COULD HAVE  
4 BEEN ASKED ANY OF THE QUESTIONS HE IS ASKING TODAY. THE  
5 OTHER WITNESSES WERE WITNESSES KNOWN, I WANT TO SAY  
6 KNOWN TO HAVE BEEN WITNESSES IN THE TRAFFICKING CASE  
7 WHICH WERE MATTERS OF PUBLIC RECORD.

8 MR. REILLY MR. CRUMMETT, THOSE NAMES WERE A MATTER  
9 OF PUBLIC RECORD. THEY WERE PROVIDED AS SOON AS I KNEW  
10 OF THEIR EXISTENCE AND THEIR RELEVANCE TO THIS CASE. I  
11 WILL NOTE THAT THEIR RELEVANCE TO THIS CASE DID NOT  
12 BECOME APPARENT UNTIL I DEPOSED ONE OF THE DEFENSE  
13 WITNESSES, MARY JACKSON, WHO I WILL NOW BE CALLING AS A  
14 STATE'S WITNESS.

15 ONCE I DETERMINED FROM HER THE RELEVANT TESTIMONY,  
16 I IMMEDIATELY PROVIDED THE OTHER NAMES. I DON'T KNOW  
17 WHAT OTHER QUESTIONS MR. LEINSTER WANTS TO ASK THESE  
18 OFFICERS. THEIR TESTIMONY IS FAIRLY STRAIGHTFORWARD.  
19 AS FAR AS THE APPLICATION OF THE VICTIM IMPACT, I HAVE  
20 CASE LAW AT MY OFFICE AND HAVE RESEARCHED THE ISSUE OF  
21 THE IPSO FACTO APPLICATION AND CAN CITE CASE LAW TO THE  
22 COURT.

23 BUT SINCE MR. LEINSTER DIDN'T BRING IT UP TODAY,  
24 PERHAPS HE DIDN'T KNOW THE STATUTE EXISTED, I DON'T  
25 KNOW. BUT I CAN STATE TO THE COURT THAT THE SUPREME

1 COURT OF FLORIDA AND OF THE UNITED STATES HAS RULED THAT  
2 CHANGES IN THE DEATH PENALTY SCHEME ARE NOT A VIOLATION  
3 OF IPSO FACTO, BECAUSE THEY DO NOT CHANGE THE SENTENCE  
4 ITSELF.

5 THEY MAY CHANGE THE PROCEDURE, THEY MAY CHANGE THE  
6 RULES OF EVIDENCE. BUT THOSE ARE PROCEDURE MATTERS, NOT  
7 SUBSTANTIVE MATTERS. THEY DO NOT CHANGE THE OUTCOME OF  
8 THIS PROCEEDING. AND THERE IS A CASE, THE NAME ESCAPES  
9 ME FOR A MOMENT, WHERE THEY -- UNDER ONE OF THE CASES IN  
10 THE STATE OF FLORIDA IS JUSTICE VERSUS STATE.

11 ACTUALLY I CAN GIVE YOU A CITE ON THAT. WHERE THE  
12 COURT WAS CALLED UPON TO RULE ON THE IPSO FACTO, I DON'T  
13 HAVE IT HERE, ON THE APPLICATION OF COLD, CALCULATED AND  
14 PREMEDITATED TO WHICH WAS PASSED IN THE MID EIGHTIES,  
15 EARLY EIGHTIES TO CRIMES COMMITTED BEFORE THAT STATUTE  
16 WAS PASSED.

17 IN OTHER WORDS, THE QUESTION WAS, CAN YOU APPLY AN  
18 AGGRAVATOR TO A CASE WHEN THE AGGRAVATOR DID NOT EXIST  
19 AS A MATTER OF LAW WHEN THE MURDER WAS COMMITTED? AND  
20 IN THE CASE CALLED JUSTICE VERSUS STATE, I DON'T HAVE  
21 THE CITE FOR IT, THEY RULED THAT IT COULD. THAT IT  
22 WASN'T AN IPSO FACTO VIOLATION. AND THE UNITED STATES  
23 SUPREME COURT AFFIRMED THAT FINDING.

24 SO I DO NOT BELIEVE THERE IS ANY IPSO FACTO  
25 VIOLATION HERE. I DO NOT AGREE WITH MR. LEINSTER'S

1 CHARACTERIZATION OF WHAT INVESTIGATOR WARD IS GOING TO  
2 SAY AND WILL RELY ON HER TESTIMONY. HER TESTIMONY IS  
3 GOING TO BE NOT JUST IMPACT ON THE CHILDREN IN THE  
4 COMMUNITY IN GENERAL, BUT ALSO SPECIFICALLY THE IMPACT  
5 UPON THE VICTIM, THAT IS VALERIE DAVIS' SON, SPECIFIC  
6 IMPACT ON HIM. BUT HER TESTIMONY IS FAR BROADER THAN  
7 MR. LEINSTER EXPLAINS. I BELIEVE IT DOES COME WITHIN  
8 THE CONFINES OF THE STATUTE AND SHOULD BE ADMISSIBLE.

9 MR. BARCH: YOUR HONOR, IF I MIGHT.

10 THE COURT: MR. BARCH?

11 MR. BARCH: BEFORE YOU RULE ON THIS, IN REGARD TO  
12 THE TWO WITNESSES PAT REILLY AND BILL CRUMMETT, I JUST  
13 WANTED TO OBJECT TO THEIR BEING ALLOWED TO TESTIFY.  
14 FIRST OF ALL, THEY ARE OSTENSIBLY CALLED TO TESTIFY  
15 ABOUT MATTERS THAT ARE CURRENTLY INVOLVED IN A FEDERAL  
16 INDICTMENT. IT WAS CALLED OPERATION COOKIE MONSTER.  
17 APPARENTLY, SOME OF THE EVIDENCE RELATED TO MR. WINDOM.  
18 HOWEVER -- CURTIS WINDOM.

19 HOWEVER, MR. WINDOM WAS NEVER CHARGED WITH THOSE  
20 CRIMES. HE WAS NEVER INDICTED. IT IS THE INFORMATION  
21 CONCERNING HIM, MOST OF IT IS HEARSAY FROM MR. CRUMMETT  
22 AND ALSO MR. REILLY. CRUMMETT IS HIS NAME. AND IN  
23 REGARD TO -- I WAS ABLE TO TALK TO THEM HERE. BUT  
24 HOWEVER, A TEN OR FIFTEEN MINUTE CHAT IS CERTAINLY NOT  
25 LONG ENOUGH FOR ME TO PREPARE A FORMAL MOTION TO GET

1 CASE LAW TO SUPPLY TO YOU.

2 AGAIN, I THINK THE DEFENDANT HAS BEEN PREJUDICED  
3 AND WILL BE PREJUDICED IF THEY ARE ALLOWED TO TESTIFY.  
4 THEIR EVIDENCE DOES NOT, AS FAR AS I CAN TELL, GO TO ANY  
5 OF THE AGGRAVATING CIRCUMSTANCES. AND THEIR TESTIMONY  
6 IS GOING TO BE BASED AND BE EVIDENCE WHICH I COULD NOT  
7 EVEN GET A HOLD OF, IF I HAD KNOWN ABOUT THEM SIX WEEKS  
8 AGO -- AND I'M SURE THE FEDERAL OFFICER WILL TELL YOU  
9 THEY CERTAINLY WOULDN'T SUPPLY ME WITH EVIDENCE IN THEIR  
10 FEDERAL CASE. THE EVIDENCE THAT THEY ARE GOING TO TALK  
11 ABOUT MAY VERY WELL BE SUBJECT TO SUPPRESSION IN THAT  
12 FEDERAL CASE.

13 I HAVE NO IDEA, BUT I COULD NOT EVEN -- AND CURTIS  
14 AND I COULD NOT EVEN HAVE STANDING TO COME INTO THE  
15 FEDERAL COURT TO SUPPRESS IT. AND IT SEEMS TO ME THAT  
16 IT IS TOO SPECULATIVE, IT IS TOO AMBIGUOUS. AND THEIR  
17 TESTIMONY IS GOING TO BE CONCERNING AN INVESTIGATION  
18 INVOLVED MY CLIENT. HE WAS NEVER FORMERLY CHARGED.

19 I DO UNDERSTAND CASE LAW CONCERNING, YOU KNOW,  
20 PAST OR CRIMINAL CONDUCT, THAT IT DOESN'T NECESSARILY  
21 HAVE TO BE A CONVICTION. BUT CERTAINLY, YOUR HONOR, IT  
22 CERTAINLY SHOULD BE AT LEAST AN ARREST. IT CERTAINLY  
23 SHOULD BE AT LEAST AN INDICTMENT. THE FEDERAL GRAND  
24 JURY DID NOT INDICT HIM.

25 ALL BE IT, THE ONE WITNESS ALSO -- WELL, WE WOULD

1 HAVE, IF CURTIS HAD NOT BEEN ARRESTED FOR THESE OTHER  
2 CHARGES. THAT IS A LITTLE BIT TOO SPECULATIVE. AND IT  
3 CERTAINLY HAS NO BEARING ON ANYTHING OTHER THAN SOME  
4 NEBULOUS STATEMENT ABOUT WHY THE OFFENSE TOOK PLACE. WE  
5 ARE NOT HERE NOW TO BE CONCERNED ABOUT THAT AS MUCH AS  
6 THE AGGRAVATING AND MITIGATING CIRCUMSTANCES.

7 ALSO, MOST ALL OF THEIR EVIDENCE AND TESTIMONY IS  
8 PURELY HEARSAY. PLUS BOTH OF THEM TOLD ME, AND THE  
9 EVIDENCE, THAT THE REASON WAS JUST GIVEN THAT THEY ARE  
10 GOING TO TESTIFY CONCERNING VALERIE, ONE OF THE VICTIMS  
11 BEING A CONFIDENTIAL INFORMANT.

12 THEY BOTH TOLD ME THAT SHE WASN'T A CONFIDENTIAL  
13 INFORMANT. SO THEREFORE, YOU HAVE GOT SOMETHING  
14 CONFUSING TO THE JURY IF HE IS GOING TO BRING IN ONE  
15 WITNESS THAT SAYS THEY ARE OR SHE WAS, AND TWO WITNESSES  
16 THAT ARE GOING TO SAY, SHE WASN'T.

17 THE COURT: WELL, LET ME ASK THIS. I HAVE NEVER  
18 HEARD ABOUT THIS REILLY AND CRUMMETT, BUT ARE THEY GOING  
19 TO TESTIFY THAT VALERIE WAS A C.I.?

20 MR. ASHTON: NO, YOUR HONOR. I'LL EXPLAIN THE  
21 CONTENTS OF THE TESTIMONY. THEIR TESTIMONY IS GOING TO  
22 BE -- AND I'LL LUMP THEM IN. AGENT REILLY WAS INVOLVED  
23 IN AN INVESTIGATION OF CURTIS WINDOM FOR SALE OF DRUGS.

24 THAT HE MONITORED CONVERSATIONS IN WHICH  
25 CONFIDENTIAL INFORMANT PURCHASED COCAINE FROM MR. WINDOM

1 ON TWO OCCASIONS, ONE OF THEM BEING A TRAFFICKING AMOUNT  
2 THAT HE PARTICIPATED IN A SEARCH WARRANT IN WHICH CURTIS  
3 WINDOM AND VALERIE DAVIS WERE BOTH ARRESTED FOR  
4 TRAFFICKING IN COCAINE.

5 MR. CRUMMETT WILL TESTIFY, MR. REILLY WILL TESTIFY  
6 AS WELL THAT AT THE TIME OF THAT ARREST, BOTH MR. WINDOM  
7 AND MISS DAVIS WERE SEPARATELY INTERVIEWED BY MR.  
8 CRUMMETT ASKING THEM TO COOPERATE WITH FEDERAL  
9 AUTHORITIES IN THE INVESTIGATION OF LARGER DRUG  
10 TRAFFICKING IN WINTER GARDEN.

11 THAT WAS DONE SEPARATELY. SO IN OTHER WORDS, MR.  
12 WINDOM WAS -- DISCUSSIONS WERE HAD WITH HIM THEN MISS  
13 DAVIS WAS SUSTAINED SEPARATELY, AND A DISCUSSION WAS HAD  
14 WITH HER. MR. WINDOM DID NOT KNOW THE NATURE OF THAT  
15 DISCUSSION.

16 MR. CRUMMETT WILL TESTIFY THAT OVER THE ENSUING  
17 PERIOD OF TIME, HE CONTINUALLY CALLED VALERIE DAVIS TO  
18 TALK TO HER TO TRY TO CONVINCE HER TO GIVE INFORMATION  
19 AND TO HAVE CURTIS GIVE INFORMATION ON THESE OTHER  
20 INDIVIDUALS.

21 NONE OF THAT WAS RELEVANT UNTIL THE FOLLOWING  
22 WITNESS CAME FORWARD. MARY JACKSON WILL TESTIFY THAT  
23 APPROXIMATELY FOUR DAYS BEFORE THIS KILLING, SHE HAD A  
24 DISCUSSION WITH CURTIS WINDOM ABOUT RUMORS WHICH WERE  
25 CIRCULATING THAT VALERIE DAVIS WAS GOING TO TELL ON HIM

1 AND HIS ASSOCIATES TO THE FEDERAL AUTHORITIES.

2 NOW, WE KNEW THAT RUMOR EXISTED, BUT WE COULDN'T  
3 PROVE THAT CURTIS WINDOM KNEW IT. MARY JACKSON TELLS US  
4 THAT HE DID. MARY JACKSON TELLS US, I DISCUSSED THE  
5 RUMOR WITH HIM. HE TOLD ME YES, HE HEARD THAT. HE  
6 HEARD A LOT OF THINGS AND HE, QUOTE, DIDN'T KNOW WHAT TO  
7 THINK. THAT IS ALL EVIDENCE RELEVANT TO PROVING THE  
8 FACT THAT THE REASON FOR THIS MURDER WAS TO ELIMINATE  
9 VALERIE DAVIS AS A POSSIBLE WITNESS IN THE FEDERAL  
10 INVESTIGATION.

11 MR. LEINSTER: WHAT THE STATE IS GOING TO TRY TO  
12 DO BY MAKING THIS QUANTUM LEAP OF SPECULATION IS TO HANG  
13 MR. WINDOM ON THE AGGRAVATING FACTOR OF AVOIDING OR  
14 PREVENTING A LAWFUL ARREST OR EFFECTING AN ESCAPE FROM  
15 CUSTODY. AND WHAT THEY HAVE GOT, SUM TOTAL OF ALL THIS  
16 IS ABSOLUTE SPECULATION.

17 IT IS NOT LIKE -- IT IS NOT BAD ENOUGH ALREADY,  
18 WHICH CLEARLY IT IS. BUT NOW WHAT WE ARE GOING TO HAVE  
19 IS, WE ARE GOING TO HAVE SOMEBODY SAY THAT SHE MAY HAVE  
20 BEEN. AND WHAT THEY ARE GOING TO DO, THEY ARE GOING TO  
21 TRY TO BRING UP CURTIS WINDOM AS A DRUG DEALER. THAT IS  
22 WHAT WE ARE GOING TO BE HEARING.

23 YOU WON'T BE HEARING THAT FROM ME. BECAUSE WE  
24 HAVE DONE EVERYTHING THAT WE POSSIBLY COULD AND STILL  
25 REPRESENT MR. WINDOM EFFECTIVELY TO WEED ALL OF THAT OUT

1 OF THIS. THE FACT OF THE MATTER IS, THERE IS PROBABLY  
2 NOT MORE THAN A HANDFUL OF YOUNG MEN, BLACK MALES IN  
3 WINTER GARDEN THAT PROBABLY AREN'T IN THAT CATEGORY.

4 BUT THE FACT IS, WE ARE HERE FOR A MURDER CASE.  
5 THE DRUGS NEVER CAME UP DURING THE TRIAL, AND WE  
6 SPECIFICALLY AVOIDED THAT. I COULD HAVE PROBABLY PUT ON  
7 A DIFFERENT PRODUCTION ALL TOGETHER AT THE TIME OF THE  
8 TRIAL BY STATING THAT JOHNNY LEE WAS KNOWN TO CARRY AN  
9 UZI, THAT JOHNNY LEE WAS A DRUG DEALER, A STICK-UP MAN.

10 THE COURT: CAN I STOP YOU JUST A MINUTE? LET ME  
11 ASK A QUESTION ABOUT MARY JACKSON'S TESTIMONY. IS SHE  
12 GOING TO TESTIFY THAT HE SAID HE DIDN'T KNOW WHAT TO  
13 THINK OF IT, AND IT WAS SORT OF DROPPED? OR IS SHE  
14 GOING TO SAY THAT CURTIS SAID, WELL, I'VE GOT TO DO  
15 SOMETHING ABOUT THIS, AND --

16 MR. ASHTON: SHE IS GOING TO HAVE --

17 THE COURT: I HAVE PRETTY MUCH DECIDED I WAS GOING  
18 TO ELIMINATE WITNESSES.

19 MR. ASHTON: LET ME QUOTE HER FROM HER DEPOSITION.  
20 HAND ON, I'VE GOT IT RIGHT HERE. LET'S SEE, THIS IS AT  
21 PAGE 14, LET'S SEE -- LET ME -- OKAY, IT IS THE TOP OF  
22 PAGE 14, LINE 3. SAYS RIGHT HERE, SO, DID YOU ASK HIM  
23 ABOUT THE RUMOR ABOUT VALERIE TURNING HIM IN?

24 ANSWER, UH-HUH, MEANING YES. WHAT DID HE SAY?  
25 BASICALLY, HE WANTED -- HE WANTS TO, BASICALLY HE WANTED



1 TO BELIEVE IT, THEN HE DID NOT WANT TO BELIEVE IT. I  
2 SAID, CAN YOU LIKE QUOTE HIM? HE SAID, I DON'T KNOW  
3 WHAT TO THINK, SO MANY PEOPLE TELLING ME THINGS.

4 OKAY, WOULDN'T YOU ASSUME FROM THAT RESPONSE THAT  
5 HE DID KNOW OR HAD HEARD? I'D RATHER NOT ANSWER THAT; I  
6 DON'T KNOW. OKAY. I DON'T KNOW. BUT WHEN YOU ASKED  
7 HIM ABOUT WHETHER VALERIE HAD TURNED HIM INTO THE FEDS,  
8 HE SAID, I DON'T KNOW WHAT TO BELIEVE. I HEAR THINGS  
9 FROM A LOT OF PEOPLE. RIGHT.

10 OKAY. BUT I ALSO TOLD HIM, DON'T LISTEN TO OTHER  
11 PEOPLE; YOU CAN GET IN TROUBLE. OKAY. LET'S SEE, ABOUT  
12 JOHNNY LEE. ON ANOTHER PORTION OF THE STATEMENT, SHE  
13 INDICATED THAT DURING THAT SAME CONVERSATION, HE  
14 INDICATED THAT BASICALLY ONCE THE TRAFFICKING CASE WAS  
15 OVER, HE WAS THROUGH WITH VALERIE. THAT VALERIE -- THAT  
16 VALERIE WAS TRYING TO MAKE DEALS. HE DID NOT WANT TO  
17 MAKE DRUG DEALS HE DIDN'T WANT TO MAKE.

18 THE COURT: WHERE IS THIS?

19 MR. ASHTON: IT WILL TAKE ME A SECOND TO FIND THAT  
20 PART. LET'S SEE.

21 MR. ASHTON: OKAY, PAGE 9, LINE 15, SHE IS ASKED,  
22 OKAY, ARE YOU AWARE OF ANY OTHER DIFFICULTIES THAT HE  
23 AND VALERIE MAY HAVE HAD BEFORE THE FEDERAL  
24 INVESTIGATION? YES. TELL ME ABOUT SOME OF THOSE.  
25 WELL, ACCORDING TO HIM, HE HAD BECOME VERY AGGRESSIVE.

1 HE WANTED -- IT WAS RUMORED -- LIKE I'M SAYING, I NEVER  
2 SAW HIM OR HER SELL DRUGS. BUT IT IS RUMORED THEY WERE  
3 IN THE DRUG BUSINESS. COMMON? NOT COMMON, BUT FACTS,  
4 WHATEVER.

5 OKAY, IT GOES ON TO -- OKAY, LINE 17 ON PAGE 10.  
6 OKAY, NOW I'M CURIOUS AGAIN, WHAT IS IT EXACTLY HE SAID  
7 TO YOU ABOUT VALERIE? VALERIE WANTS WHAT NOW? SHE WAS  
8 GOING OUT MAKING HER OWN SET-UPS; I RECKON THAT IS WHAT  
9 YOU CALL IT. MAKING HER OWN DRUG DEALS? DRUG DEALS,  
10 YES, YES. AND WHAT WAS HIS REACTION TO THAT?

11 ANSWER, HE WAS BASICALLY SAYING THAT SHE IS GOING  
12 TO DO HER THING, AND HE IS BASICALLY -- HE WANTING TO  
13 GET OUT OF THAT SCENE. GET OUT OF THAT WHAT SCENE? THE  
14 DRUG SCENE, BLA, BLA, BLA. THAT QUICK SYNOPSIS OF WHAT  
15 HE SAID.

16 YOUR HONOR, THE SIGNIFICANT THING HERE IS, I  
17 ASSUME THE OBJECTION IS TO RELEVANCE. AND IF THAT IS  
18 THE OBJECTION, THIS CLEARLY TENDS TO PROVE THAT THIS WAS  
19 BECAUSE OF KILLING A WITNESS. THERE IS NO OTHER MOTIVE  
20 THAT IS SHOWN BY THIS EVIDENCE. AND IN ORDER TO BE  
21 RELEVANT, ALL IT HAS TO DO IS TEND TO PROVE THE FACTS IN  
22 ISSUE.

23 THIS TESTIMONY TENDS TO PROVE THAT THIS IS THE  
24 REASON FOR THE KILLING. THAT IS ALL THAT WE ARE -- THAT  
25 IS ALL THE RELEVANCE REQUIRES. NOW, I DO HAVE ONE OTHER

1           THING I DISAGREE WITH MR. LEINSTER ABOUT. AND I NEED TO  
2           STATE IT. I DON'T AGREE THAT ALMOST EVERY BLACK YOUNG  
3           MAN IN WINTER GARDEN IS A DRUG DEALER. I THINK THAT IS  
4           A PREPOSTEROUS STATEMENT.

5           MR. LEINSTER: OBVIOUSLY MR. ASHTON DOESN'T HAVE A  
6           CLUE ABOUT WHAT GOES ON IN WINTER GARDEN, BUT THAT IS  
7           NOT AN ISSUE ANYWAY. THAT WAS AN ASIDE.

8           THE COURT: THIS SAYS HE WAS BASICALLY SAYING THAT  
9           SHE IS GOING TO DO HER THING. AND HE IS BASICALLY -- HE  
10          WANTED TO GET OUT OF THAT SCENE, OUT OF THE DRUG SCENE.  
11          I DON'T SEE HOW THIS SAYS THAT HE IS PLANNING TO BLOW  
12          HER AWAY.

13          MR. ASHTON: JUDGE, THAT IS NOT THE PART THAT SAYS  
14          THAT.

15          THE COURT: I DON'T SEE ANY PART -- HAVE YOU READ  
16          ME ANYTHING THAT SAYS THAT AS A RESULT OF THIS  
17          CONVERSATION, SHE COULD RELY ON HE WAS GOING TO DO  
18          SOMETHING TO ANYBODY?

19          MR. ASHTON: NO, I NEVER CONTENDED THAT HE SAID  
20          I'M GOING TO KILL HER, BECAUSE SHE IS A WITNESS; KNEW  
21          THAT SHE WAS A WITNESS, KNEW OF THE RUMORS THAT SHE WAS  
22          A WITNESS TO THE FEDERAL INVESTIGATION. THAT IS  
23          RELEVANT TO PROVING THAT THAT IS WHY HE KILLED HER.

24          ALL IT HAS TO DO IS BE RELEVANT. IT DOESN'T HAVE  
25          TO ABSOLUTELY EXCLUSIVELY PROVE. I THINK IT IS TOO

1 SPECULATIVE.

2 THE COURT: I DON'T SEE IT. I'M NOT GOING TO  
3 ALLOW IT. I DON'T THINK THERE IS ANYTHING IN THIS  
4 STATEMENT THAT WOULD SAY THAT EVEN POINTS TO THE  
5 POSSIBILITY THAT HE IS GOING TO KILL SOMEBODY TO  
6 ELIMINATE THEM. I'M NOT GOING TO ALLOW THAT.

7 MR. LEINSTER: THANK YOU.

8 THE COURT: AS FAR AS THE OTHER WITNESS, WHAT IS  
9 THE WITNESS' NAME WITH THE IMPACT ON THE COMMUNITY?

10 MR. ASHTON: VICKIE WARD.

11 THE COURT: OKAY, I DO NOT HAVE A PROBLEM WITH  
12 THAT. IT DOES APPEAR TO BE PROCEDURAL. I DON'T THINK  
13 THE IPSO FACTO IS A PROBLEM IN THAT. DEPENDING ON WHAT  
14 SHE IS GOING TO SAY, NOT HAVING HEARD IT, IF SHE IS  
15 GOING TO TALK ABOUT THE IMPACT ON THE COMMUNITY, THEN I  
16 THINK IT IS IMPORTANT. AND I CAN SEE HOW IT MIGHT HAVE  
17 IMPACTED THE COMMUNITY WHEN THIS HAPPENED IN BROAD  
18 DAYLIGHT IN THE MIDDLE OF THE DAY ON THE STREET.

19 MR. LEINSTER: SO CAN I. HOWEVER, HOW DO WE  
20 DEFINE COMMUNITY? WHAT I HEARD MR. ASHTON TO SAY WAS  
21 THAT SHE IS GOING TO TESTIFY AS TO THE SPECIFICS OF ONE  
22 INDIVIDUAL WHO WAS PARTICULARLY AFFECTED BY THIS. THAT  
23 HARDLY CONSTITUTES A COMMUNITY. WHAT ARE THE  
24 DIMENSIONS?

25 THE COURT: HE SAID CHILDREN AND PARTICULARLY

1 VALERIE DAVIS' CHILD.

2 MR. LEINSTER: WELL, OKAY. WHAT DO WE DO NOW? DO  
3 WE FOCUS ON THIS INDIVIDUAL AS A REPRESENTATIVE OF THE  
4 COMMUNITY OR DO WE TALK ABOUT THE COMMUNITY? I WOULD  
5 LIKE TO HAVE SOME PARAMETERS OF WHAT IT IS THAT WE ARE  
6 SUPPOSED TO BE DOING.

7 THE COURT: WHAT IS IT?

8 MR. ASHTON: THE STATUTE SAYS THE FACT ON, QUOTE,  
9 MEMBERS OF THE COMMUNITY, THAT CAN BE INDIVIDUAL, THAT  
10 CAN BE COLLECTIVE, IT CAN BE ANYTHING. IT WAS  
11 SPECIFICALLY WRITTEN TO BE BROAD. AND WINTER GARDEN,  
12 CERTAINLY IT IS AN EASILY CLASSIFIABLE COMMUNITY.

13 THIS IS NOT SOMETHING THAT HAPPENED NINETY MILES  
14 AWAY, AND THEY HEARD ABOUT IT FROM THE TELEVISION. THIS  
15 IS SOMETHING THAT HAPPENED IN THE VERY BACK YARD OF THE  
16 CHILDREN. AND I DON'T THINK THAT IS AN UNREASONABLE  
17 READING OF THAT TERM.

18 MR. LEINSTER: HOW DO WE DEAL WITH THAT  
19 ULTIMATELY? WHAT IS THE JURY TOLD AS FAR AS THE  
20 SIGNIFICANCE OF THIS?

21 THE COURT: I DON'T HAVE AN INSTRUCTION THAT DEALS  
22 WITH THIS.

23 MR. LEINSTER: IT IS NOT AN AGGRAVATING FACTOR.

24 THE COURT: IT JUST CAME INTO LAW IN JULY.

25 MR. LEINSTER: THIS IS GRATUITOUS SLIME.

1 MR. ASHTON: NOT ACCORDING TO THE UNITED STATES  
2 SUPREME COURT, IT IS NOT GRATUITOUS SLIME.

3 THE COURT: EXACTLY WHAT IS THE RELEVANCE, AND  
4 WHAT KIND OF INSTRUCTION DO YOU HAVE THAT WOULD DEAL  
5 WITH THIS?

6 MR. ASHTON: I DON'T BELIEVE THAT WE NEED TO HAVE  
7 ANY INSTRUCTION. IF ONE DOES NEED TO BE GIVEN, PERHAPS  
8 IT SHOULD STATE THAT VICTIM IMPACT SHOULD NOT BE  
9 CONSIDERED AS AN AGGRAVATING CIRCUMSTANCE, BUT MERELY  
10 CONSIDERED BY YOU AS IN A WEIGHING PROCESS. THAT IS  
11 ESSENTIALLY WHAT PAYNE VERSUS TENNESSEE SAYS, THAT THE  
12 PURPOSE OF THIS PROCEEDING IS ABOUT HOW THE CRIME  
13 IMPACTED THE VICTIMS.

14 I'LL BE HAPPY TO, YOU KNOW, TO WORK ON AN  
15 INSTRUCTION THAT BASICALLY TELLS THEM THAT. WE ARE NOT  
16 GOING TO ARGUE TO THEM THAT THE VICTIM IMPACT IS A  
17 REASON FOR GIVING HIM THE DEATH PENALTY. THE REASONS  
18 ARE AGGRAVATING CIRCUMSTANCES.

19 WHAT WE ARE GOING TO ARGUE IS THAT WHEN YOU WEIGH  
20 THE MITIGATING CIRCUMSTANCES, THE FACT THAT HE SAVED HIS  
21 SISTER'S LIFE ONCE WHEN HE WAS A KID OR WHATEVER HE IS,  
22 WHEN YOU WEIGH THAT AGAINST THE -- AND INCLUDE IN THAT  
23 WEIGHING PROCESS THE IMPACT ON THE COMMUNITY, THEN YOU  
24 WEIGH THAT AGAINST THE AGGRAVATING CIRCUMSTANCE. YOU  
25 LOOK AT THE WHOLE PACKAGE IN DECIDING WHAT TO DO. AND I

1 THINK THAT IS THE INTENT OF THE STATUTE AS A MATTER OF  
2 FACT IN PAYNE VERSUS TENNESSEE.

3 THE COURT: I'M GOING TO ALLOW IT, BUT I NEED AN  
4 INSTRUCTION ON IT. BECAUSE I WANT THEM NOT TO BE  
5 CONFUSED TO THINK THAT THIS SHOULD BE AN AGGRAVATOR THAT  
6 THEY SHOULD CONSIDER.

7 MR. ASHTON: I WILL BE GLAD TO CONSIDER WHATEVER  
8 THE DEFENSE WANTS TO SUGGEST.

9 THE COURT: WERE THERE ANY OTHER MOTIONS?

10 MR. ASHTON: I DON'T HAVE ANYTHING ELSE.

11 THE COURT: OKAY. DID YOU GET YOUR NOTEBOOK BACK?

12 MR. ASHTON: YES, I DID; THANK YOU.

13 THE COURT: ANYTHING ELSE FROM THE DEFENSE?

14 MR. LEINSTER: NO.

15 THE COURT: ALL RIGHT. WE AT THIS POINT NEED TO  
16 BRING IN THE JURY. I'M GOING TO GO IN MY OFFICE AND GET  
17 MY INSTRUCTIONS, SO I'LL COME BACK IN AFTER THE JURY IS  
18 IN.

19 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

20 THE COURT: CLERK, PLEASE CALL THE CASE ON THE  
21 RECORD.

22 THE CLERK: CASE NUMBER CR92-1305. STATE OF  
23 FLORIDA VERSUS CURTIS WINDOM.

24 THE COURT: IS THE STATE READY TO PROCEED TO  
25 PENALTY PHASE?

1 MR. ASHTON: YES, YOUR HONOR.

2 THE COURT: DEFENSE?

3 MR. LEINSTER: YES.

4 THE COURT: OKAY. IT IS NICE TO SEE YOU AGAIN.  
5 EVERYBODY FEELING OKAY? OKAY, THIS IS THE PENALTY PHASE  
6 OF THE CURTIS WINDOM TRIAL. SO I'M GOING TO GIVE YOU A  
7 BRIEF INSTRUCTION, AND THEN I'M GOING TO ASK THE  
8 ATTORNEYS TO LIST WHAT WITNESSES THEY THINK THEY MAY  
9 CALL DURING THIS PHASE.

10 AND THEN IF THEY CHOOSE TO, THEY WILL MAKE OPENING  
11 STATEMENTS. AND THEN WE WILL CALL -- THE STATE WILL  
12 CALL ANY WITNESSES THEY WANT TO CALL. DEFENSE WILL CALL  
13 ANY WITNESSES THEY WANT TO CALL.

14 LADIES AND GENTLEMEN OF THE JURY, YOU HAVE FOUND  
15 THE DEFENDANT GUILTY OF THREE COUNTS OF MURDER IN THE  
16 FIRST DEGREE IN ADDITION TO THE ONE COUNT OF ATTEMPTED  
17 FIRST-DEGREE MURDER. THE PUNISHMENT FOR THE CRIMES OF  
18 MURDER IN THE FIRST DEGREE IS EITHER DEATH OR LIFE  
19 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR  
20 TWENTY-FIVE YEARS.

21 THE FINAL DECISION AS TO WHAT PUNISHMENT SHALL BE  
22 IMPOSED RESTS SOLELY WITH THE JUDGE OF THIS COURT.  
23 HOWEVER, THE LAW REQUIRES THAT YOU, THE JURY, RENDER TO  
24 THE COURT AN ADVISORY SENTENCE AS TO WHAT PUNISHMENT  
25 SHOULD BE IMPOSED UPON THE DEFENDANT.



1           YOUR ADVISORY SENTENCE AS TO WHAT SENTENCE SHOULD  
2 BE IMPOSED ON THIS DEFENDANT IS ENTITLED BY LAW AND WILL  
3 BE GIVEN GREAT WEIGHT BY THIS COURT IN DETERMINING WHAT  
4 SENTENCE TO IMPOSE IN THIS CASE. IT IS ONLY UNDER RARE  
5 CIRCUMSTANCES THAT THIS COURT COULD IMPOSE A SENTENCE  
6 OTHER THAN WHAT YOU RECOMMEND.

7           THE STATE AND THE DEFENDANT MAY NOW PRESENT  
8 EVIDENCE RELATIVE TO THE NATURE OF THE CRIME AND THE  
9 CHARACTER OF THE DEFENDANT. YOU ARE INSTRUCTED THAT  
10 THIS EVIDENCE WHEN CONSIDERED WITH THE EVIDENCE YOU HAVE  
11 ALREADY HEARD IS PRESENTED IN ORDER THAT YOU MIGHT  
12 DETERMINE FIRST WHETHER SUFFICIENT AGGRAVATING  
13 CIRCUMSTANCES EXIST THAT WOULD JUSTIFY THE IMPOSITION OF  
14 THE DEATH PENALTY, AND SECOND, WHETHER THERE ARE  
15 MITIGATING CIRCUMSTANCES SUFFICIENT TO OUTWEIGH THE  
16 AGGRAVATING CIRCUMSTANCES, IF ANY.

17           AT THE CONCLUSION OF THE TAKING OF THE EVIDENCE  
18 AND AFTER ARGUMENT OF COUNSEL, YOU WILL BE INSTRUCTED ON  
19 THE FACTORS IN AGGRAVATION AND MITIGATION THAT YOU MAY  
20 CONSIDER. DOES THE STATE HAVE A LIST OF WITNESSES THAT  
21 YOU MAY CALL DURING THIS PHASE?

22           MR. ASHTON: YES, YOUR HONOR; THEY WOULD INCLUDE  
23 INVESTIGATOR VICKIE WARD, PAT REILLY, BILL CRUMMETT AND  
24 MARY JACKSON.

25           THE COURT: DEFENSE, ANY NAMES YOU WOULD LIKE TO

1 ADD TO THAT?

2 MR. BARCH: YES, MA'AM. JULY HARP, MAE TATUM,  
3 ANDRE WALKER, WILLIE MAY RICH, GLORIA WINDOM, ADAM  
4 MANUEL, FRANK MASSEY, CHARLENE MOBLEY, GERALDINE WINDOM,  
5 LENA WINDOM, DAN JOHNSON. POSSIBLY I MAY CALL THE  
6 STATE'S WITNESS MARY JACKSON. LOIS JOHNSON, SHIRLEY  
7 BENNAN (PHONETIC SPELLING), AND I BELIEVE THAT IS ALL AT  
8 THIS TIME.

9 THE COURT: OKAY. ONE THING I DIDN'T DO, I DON'T  
10 KNOW THAT MR. BARCH WAS HERE. SO LET ME REINTRODUCE YOU  
11 TO THE ATTORNEYS, AND MR. WINDOM IS HERE, TOO. JEFF  
12 ASHTON AND JANNA BRENNAN FOR THE STATE AND ED LEINSTER  
13 AND KURT BARCH FOR THE DEFENSE. AND THEN YOU KNOW  
14 MR. WINDOM FROM BEFORE. IS THE STATE READY TO PROCEED  
15 WITH AN OPENING?

16 MR. ASHTON: YOUR HONOR, I HAVE DECIDED TO WAIVE  
17 OPENING.

18 THE COURT: WOULD THE DEFENSE LIKE TO MAKE AN  
19 OPENING AT THIS TIME?

20 MR. LEINSTER: SURE.

21 THE COURT: OKAY.

22 MR. BARCH: EXCUSE ME, YOUR HONOR. COULD I MAKE  
23 ONE THING CERTAIN, THAT THERE ARE NONE OF MY WITNESSES  
24 IN THE COURTROOM AT THIS TIME? AND IF THEY ARE HERE,  
25 THEN --

1 THE COURT: ANY WITNESSES EITHER FOR THE STATE OR  
2 THE DEFENSE NEED TO LEAVE THE COURTROOM AT THIS TIME.  
3 IF YOUR NAME WAS CALLED AS A POTENTIAL WITNESS, YOU NEED  
4 TO LEAVE THE COURTROOM.

5 MR. BARCH: ALSO I HAVE ONE OTHER MATTER THAT I  
6 NEED TO TAKE UP WITH YOU BEFORE THE BENCH.

7 THE COURT: ALL RIGHT, COUNSEL, APPROACH THE  
8 BENCH.

9 (BENCH CONFERENCE.)

10 MR. BARCH: SHE IS IN THE COURTROOM. IT IS A  
11 WOMAN APPARENTLY FROM THE SPOUSE ABUSE REGISTRY OR  
12 WHATEVER IT IS CALLED. AND SHE HAS A SIGN ON HER CHEST  
13 THAT SAYS, YOU DON'T BEAT WOMEN.

14 AND I WOULD LIKE TO EITHER HAVE HER REMOVED OR  
15 HAVE THE SIGN REMOVED. AND IT HAS TO BE DONE OUT OF THE  
16 HEARING OF THE JURY, SO THAT THE ATTENTION IS NOT  
17 BROUGHT TO IT. SHE IS IN THE BACK OF THE COURTROOM.

18 MR. LEINSTER: WE COULDN'T BEAT HER.

19 THE COURT: IS SHE A WITNESS?

20 MR. BRENNAN: SHE IS THE WOMAN IN THE WHITE.

21 MR. BARCH: SHE IS BEHIND THE BLACK LADY IN THE  
22 WHITE. IT IS EITHER A CALIFORNIA SUPREME COURT CASE OR  
23 A UNITED STATES SUPREME COURT CASE WHERE A PROSECUTOR  
24 HAD A FLAG ON IN HIS LAPEL. AND THE TRIAL WAS A MURDER  
25 CASE TAKING PLACE DURING THE GOLF STORM WAR. AND THE

1 SUPREME COURT RULED THAT IS A POLITICAL STATEMENT, AND  
2 IT SHOULD NOT BE ALLOWED IN THE COURTROOM. I THINK IT  
3 IS PREJUDICIAL.

4 THE COURT: OKAY, I'LL ASK HER TO LEAVE THE ROOM.  
5 AND SHE CAN COME BACK, BUT SHE HAS TO TAKE THE BUTTON  
6 OFF.

7 MR. ASHTON: THE RECORD HAS TO REFLECT THAT THIS  
8 IS A BUTTON APPROXIMATELY THREE INCHES. IT IS NOT A  
9 SIGN. IT IS A BUTTON ABOUT THREE INCHES IN DIAMETER.

10 THE COURT: IT IS SOMETHING, I DON'T SEE ANY -- I  
11 CAN'T SEE IT FROM HERE, BUT I WILL -- IF IT IS GOING TO  
12 BOTHER YOU, AND I DON'T MIND, I WILL HAVE THE COURT  
13 DEPUTY ASK HER TO DO THIS OUTSIDE.

14 MR. BARCH: IF IT WASN'T INTENDED TO BE NOTICED,  
15 SHE WOULDN'T WEAR IT.

16 THE COURT: THE LADY WORKS IN THE OFFICE NEXT  
17 DOOR. I THINK SHE IS JUST CURIOUS ABOUT A CASE OF THIS  
18 NATURE. SO I WILL ASK THAT SHE TAKE IT OFF OUTSIDE THE  
19 ROOM.

20 (IN OPEN COURT.)

21 THE COURT: ARE YOU READY TO GO FORWARD WITH YOUR  
22 OPENING, MR. LEINSTER?

23 MR. LEINSTER: YES. SINCE I'M THE SAME INDIVIDUAL  
24 THAT WAS LARGELY UNSUCCESSFUL IN CONVINCING ANYONE HERE  
25 THAT MR. WINDOM DID NOT DO EVERYTHING THE STATE SAID HE

1 DID AND IN THE DEGREE THAT THEY SAID HE DID, I HOPE THAT  
2 I CAN AT LEAST KEEP YOUR ATTENTION THROUGH THIS  
3 PARTICULAR PHASE.

4 WE HAD GOTTEN AN AGREEMENT, WE THOUGHT THAT YOU  
5 WOULD NOT WHISK FROM THE GUILTY PHASE INTO THE ELECTRIC  
6 CHAIR. NOW, SOMEWHERE AS WE SPEAK ON THIS PLANET, THERE  
7 ARE PEOPLE WHO ARE ACTUALLY HAVING FUN.

8 MR. ASHTON: YOUR HONOR, LET ME OBJECT. THIS IS  
9 NOT AN OPENING FROM THE FACTS, IT IS A SHOW.

10 MR. LEINSTER: SIT DOWN.

11 MR. ASHTON: I'M SORRY?

12 THE COURT: MR. LEINSTER, I WANT YOU TO COME HERE.  
13 (BENCH CONFERENCE OFF THE RECORD.)

14 THE COURT: OKAY, MR. LEINSTER.

15 MR. LEINSTER: ONE MORE TIME. I AM NOT ONE OF  
16 THOSE PEOPLE. THIS IS NOT FUN. NOTHING ABOUT THIS HAS  
17 BEEN FUN. TRYING A FIRST-DEGREE MURDER CASE IS ABOUT AS  
18 BRUTAL AS IT GETS. I WASN'T THERE, I DIDN'T  
19 PARTICIPATE. MY JOB IS TO TRY TO SAVE A MAN'S LIFE, END  
20 OF STORY. YOU MADE YOUR DECISION. IT WASN'T TOO TOUGH.

21 BROAD DAYLIGHT, WHAT CAN YOU SAY? I WOULD HAVE TO  
22 BE THE FIRM OF CHRIST AND HOUDINI TO HAVE MADE ANYTHING  
23 OUT OF THIS OTHER THAN WHAT IT CLEARLY WAS. SO THE  
24 QUESTION NOW FOR YOU IS, DO WE PAY ANY HOMAGE TO WHAT  
25 SEVERAL PEOPLE REFER TO AS THE SANCTITY OF HUMAN LIFE AT

1 THIS POINT? DOES HE FORFEIT HIS LIFE?

2 MR. ASHTON: OBJECTION, YOUR HONOR; THIS IS  
3 CLOSING, NOT OPENING.

4 THE COURT: OVERRULED.

5 MR. LEINSTER: YOU ARE GOING TO HEAR A FEW PEOPLE  
6 WHO ARE GOING TO TESTIFY. I'M FRANKLY NOT QUITE SURE  
7 WHAT THEY ARE GOING TO SAY AS FAR AS THE STATE'S  
8 PRESENTATION. AND THEY WILL BE PRESENTING AGGRAVATING  
9 FACTORS TO YOU. THOSE ARE BY LAW STATUTORY AGGRAVATING  
10 FACTORS THAT HAVE TO BE PROVEN BEYOND A REASONABLE  
11 DOUBT.

12 THEN WE PRESENT TESTIMONY THAT ESSENTIALLY SAYS HE  
13 IS NOT ALL BAD. THAT IS A TOUGH PITCH FOR PEOPLE WHO  
14 HAVE HEARD WHAT HE DID. AND IT IS MY JOB ONCE AGAIN TO  
15 TRY TO CONVINCE YOU. YOU MAY ALREADY BE CONVINCED. YOU  
16 MAY HAVE ALREADY MADE UP YOUR MINDS; I HOPE NOT. BUT MY  
17 JOB IS GOING TO BE AT LEAST TO TRY TO SAY THIS MAN  
18 DOESN'T NEED TO DIE.

19 THERE IS NO REASON FOR HIM TO DIE. AND I GUESS  
20 THE ULTIMATE CONCLUSION THAT WE ARE ALL GOING TO FIND  
21 OUT WHEN THIS IS ALL OVER REALLY THROUGH YOUR  
22 DETERMINATION IS REALLY WHAT WE MEAN BY THE SANCTITY OF  
23 HUMAN LIFE. BECAUSE HE IS A HUMAN,, TOO.

24 THE COURT: STATE, CALL YOUR FIRST WITNESS.

25 MR. ASHTON: VICKIE WARD.

1 THEREUPON

2 VICKIE WARD

3 WAS CALLED AS A WITNESS AND, HAVING FIRST BEEN DULY SWORN,  
4 TESTIFIED AS FOLLOWS:

5 THE COURT: YOU MAY PROCEED.

6 MR. ASHTON: THANK YOU.

7 DIRECT EXAMINATION

8 BY MR. ASHTON:

9 Q. WOULD YOU PLEASE STATE YOUR NAME?

10 A. VICTORIA WARD.

11 Q. AND HOW ARE YOU PRESENTLY EMPLOYED?

12 A. BY THE WINTER GARDEN POLICE DEPARTMENT.

13 Q. WHAT ARE YOUR DUTIES OR ASSIGNMENTS WITH THE  
14 WINTER GARDEN POLICE DEPARTMENT?

15 A. I AM ASSIGNED TO THE SCHOOL PROGRAMS. I TEACH THE  
16 DARE PROGRAM AT DILLARD STREET ELEMENTARY SCHOOL, AND I TEACH  
17 A LAW AWARENESS COURSE AT LAKEVIEW MIDDLE SCHOOL.

18 Q. NOW, WERE YOU EMPLOYED AT THE WINTER GARDEN POLICE  
19 DEPARTMENT IN FEBRUARY OF 1992 IN THE SAME CAPACITY THAT YOU  
20 ARE NOW?

21 A. NO, SIR; AT THAT TIME, I WAS ASSIGNED TO THE DARE  
22 PROGRAM AT DILLARD STREET ELEMENTARY SCHOOL, AND I WAS ALSO  
23 ASSIGNED TO THE INVESTIGATIVE BUREAU.

24 Q. NOW, WERE YOU INVOLVED IN SOME WAY IN THE  
25 INVESTIGATION OF THE MURDERS THAT OCCURRED IN WINTER GARDEN

1 ON THAT DATE?

2 A. YES.

3 Q. THESE MURDERS OCCUR ON A FRIDAY, IS THAT CORRECT?

4 A. YES.

5 Q. THE FOLLOWING MONDAY, DID YOU HAVE OCCASION TO  
6 WORK AT DILLARD STREET ELEMENTARY SCHOOL IN WINTER GARDEN?

7 A. I WAS CALLED SUNDAY NIGHT AT HOME BY THE PRINCIPAL  
8 FROM DILLARD STREET ELEMENTARY SCHOOL. AND SHE EXPLAINED TO  
9 ME THAT SHE REALIZED THAT I WAS PROBABLY GOING TO BE BUSY,  
10 BUT THE SCHOOL NEEDED FOR ME TO BE THERE MONDAY MORNING IF I  
11 COULD BE.

12 Q. CAN YOU TELL US WHAT, IF ANY, IMPACT THE MURDERS  
13 IN WINTER GARDEN HAD ON THE CHILDREN OF WINTER GARDEN THAT  
14 YOU SAW AT DILLARD STREET ELEMENTARY?

15 A. THE THINGS THAT I SAW AT WINTER GARDEN WERE AT  
16 DILLARD STREET ELEMENTARY SCHOOL. SPECIFICALLY SOME OF THE  
17 THINGS OCCURRED IN THE FIFTH GRADE CLASS WHERE TWO OF THE  
18 STUDENTS THAT I HAD IN DARE CLASS WERE RELATED TO THE  
19 VICTIMS, THE SONS.

20 Q. SO THESE WERE THE SONS OF VALERIE DAVIS?

21 A. YES.

22 Q. HOW DID -- FROM YOUR OBSERVATION, HOW DID THESE  
23 CRIMES IMPACT ON THEM?

24 A. SHAWN, ONE OF THE SONS, I DIDN'T SEE ANY MORE  
25 AFTER IT HAPPENED. HE WAS REMOVED FROM THAT SCHOOL AND



1 ENROLLED IN ANOTHER SCHOOL. BUT SHAWN WHO WAS KIND OF A  
2 MISCHIEVOUS KID --

3 Q. HOW OLD; FIFTH GRADER, YOU SAID?

4 A. YES, HE WAS A FIFTH GRADER -- PRIOR TO THAT. THE  
5 NEXT OCCASION THAT I HAD TO BE IN HIS CLASSROOM, HE WAS VERY  
6 WITHDRAWN. AS A MATTER OF FACT, HE WAS WITHDRAWN TO THE  
7 POINT WHERE HE KEPT HIS HEAD ON HIS DESK THE WHOLE TIME THAT  
8 I WAS IN THE CLASSROOM FOR ABOUT TWO OF THE CLASSES, TWO  
9 WEEKS IN SUCCESSION. AND HE SLOWLY CAME OUT OF THAT AND  
10 STARTED, YOU KNOW, REACTING TO WHAT WAS GOING ON WITH THE  
11 REST OF THE CLASS.

12 Q. DID HE WRITE AN ESSAY FOR YOU ABOUT HOW THIS CASE  
13 AFFECTED HIM?

14 A. WELL, ALL THE STUDENTS IN THE DARE CLASS ARE  
15 REQUIRED TO WRITE AN ESSAY IN ORDER TO GRADUATE FROM DARE.  
16 AND HE WROTE ONE, AND HIS WAS ABOUT WHAT HAPPENED. I ASSUME  
17 THAT THAT IS WHAT HE WAS TALKING ABOUT. I DON'T HAVE HIS  
18 ESSAY WITH ME, BUT IT WAS ONLY TWO SENTENCES. AND I HAVE IT  
19 MEMORIZED.

20 Q. WHAT DID HE SAY?

21 A. SOME TERRIBLE THINGS HAPPENED IN MY FAMILY THIS  
22 YEAR BECAUSE OF DRUGS. IF IT HADN'T BEEN FOR DARE, I WOULD  
23 HAVE KILLED MYSELF.

24 Q. WERE YOU ABLE TO OBSERVE THE EFFECT OF THIS CRIME  
25 ON OTHER CHILDREN, THE OTHER CHILDREN THERE THAT WERE NOT

1 NECESSARILY RELATED TO THE VICTIM, BUT PERHAPS LIVED IN THE  
2 COMMUNITY? OR LET ME ASK YOU, BEFORE I DO THAT, LET ME JUST  
3 ESTABLISH PEOPLE THAT LIVE IN THE AREA WHERE THE CRIME  
4 OCCURRED. DO THEY GO TO DILLARD STREET ELEMENTARY, THE  
5 CHILDREN?

6 A. YES, SOME OF THEM DO.

7 Q. DID YOU OBSERVE A BROADER EFFECT ON THE CHILDREN  
8 AT DILLARD STREET ELEMENTARY AS A RESULT OF THE CRIME?

9 A. I NOTICED A LOT OF LITTLE DIFFERENT THINGS, IF  
10 THIS HAD NOT HAPPENED, I PROBABLY WOULD NOT HAVE NOTICED  
11 BEFORE. FOR INSTANCE, THE WAY CHILDREN ARE ALWAYS PLAYING  
12 LIKE THEY ARE SHOOTING AT EACH OTHER, BANG, BANG.

13 BEFORE THAT WAS LIKE A CHILDREN'S GAME. AFTER  
14 THAT HAPPENED, IF I SAW A CHILD DO THAT, I DON'T KNOW WHETHER  
15 IT WAS BECAUSE I WAS IN THE ROOM, BUT THE REACTION OF THE  
16 CHILD BEING SHOT WAS, THAT IS NOT FUNNY. IT WASN'T A GAME TO  
17 THEM ANYMORE. IT WAS REAL.

18 Q. WERE YOU REQUESTED TO VISIT ALONG WITH COUNSELORS  
19 TO ALL OF THE CLASSES OF DILLARD STREET ELEMENTARY BECAUSE OF  
20 THAT?

21 A. YES, THERE WERE COUNSELORS THAT WENT TO ALL THE  
22 DIFFERENT CLASSROOMS ON THE MONDAY PRECEDING THE -- OR  
23 FOLLOWING THE CRIME ON FRIDAY. SOME OF THE CHILDREN WANTED  
24 TO ASK A LOT OF QUESTIONS. SOME OF THE CHILDREN DID NOT WANT  
25 TO TALK ABOUT IT AT ALL.

1           A LOT OF THE CHILDREN ACTED AFRAID. A LOT OF  
2 COMMENTS THAT I HEARD FROM THE CHILDREN WERE, I THOUGHT THAT  
3 IT WAS MY MOM. I WAS SCARED. I HEARD THAT SOMETHING BAD  
4 HAPPENED, AND I WAS AFRAID THAT IT WAS MY FAMILY THAT IT  
5 HAPPENED TO UNTIL I GOT HOME. I WAS AFRAID.

6           SOME OF THE OTHER CHILDREN WERE FANTASIZING ABOUT  
7 IT AND SAYING THINGS LIKE, I HEARD EVERYTHING THAT HAPPENED.  
8 I WAS THERE, I SAW IT, I HEARD IT. IT HAPPENED RIGHT OUTSIDE  
9 MY HOUSE. WHERE THEIR HOUSE WAS NOWHERE NEAR WHERE ANY OF IT  
10 HAPPENED AT ALL.

11           Q. DID YOU SEE THIS EFFECT EVEN IN CHILDREN THAT DID  
12 NOT LIVE IN THE NEIGHBORHOOD WHERE IT HAPPENED?

13           A. WELL, A FEW MONTHS AFTER THIS HAPPENED, I WAS  
14 VISITING A THIRD GRADE CLASS. AND BECAUSE OF WHAT HAPPENED,  
15 I CHANGED SOME OF THE THINGS THAT I WAS TEACHING. INSTEAD OF  
16 DOING PRIMARILY A DRUG ABUSE AWARENESS PROGRAM, I FELT IT WAS  
17 IMPORTANT TO DO A WEAPONS AWARENESS ALSO.

18           AND WHEN I TAUGHT A CLASS IN THE THIRD GRADE  
19 CLASSROOM, ONE OF THE STUDENTS IN THAT CLASSROOM SAID, I WANT  
20 TO SHOW YOU A BOOK THAT I WROTE. AND IT WAS ABOUT THE CURTIS  
21 WINDOM CASE. AND THAT CHILD LIVED NOWHERE NEAR WHERE THIS  
22 HAPPENED. HE WAS A WHITE CHILD THAT LIVED FAR AWAY FROM THAT  
23 NEIGHBORHOOD.

24           MR. ASHTON: NO FURTHER QUESTIONS, YOUR HONOR.

25           THE COURT: CROSS?

## CROSS-EXAMINATION

BY MR. LEINSTER:

Q. WHAT IS YOUR SPECIALTY?

A. I'M A POLICE OFFICER.

Q. YOU ARE NOT A PSYCHOLOGIST?

A. NO, SIR.

Q. DID YOU REFER ANY OF THESE CHILDREN TO  
PSYCHOLOGISTS?

A. THERE WERE PSYCHOLOGISTS THERE THAT WERE BEING  
ADVISED BY THE SCHOOL COUNSELOR WHAT SPECIFIC CHILDREN NEEDED  
SPECIAL ATTENTION.

Q. WERE THE CHILDREN KEPT AFTER CLASS?

A. YES.

Q. IN MASS, AS A GROUP?

A. YES.

Q. AND DID YOU DISCUSS WITH THEM THE FACTS OF THIS  
CASE?

A. I WASN'T THERE WHEN IT HAPPENED. I WASN'T AT  
THE --

Q. THAT WASN'T MY QUESTION. DID YOU DISCUSS THIS  
CASE WITH THE CLASSES?

A. AFTER IT HAPPENED?

Q. AFTER IT HAPPENED, RIGHT.

A. SO THEY HAD SPECIFIC --

MR. ASHTON: IF WE COULD LET THE WITNESS ANSWER

1 THE QUESTION.

2 MR. LEINSTER: I CAN'T ASK THE QUESTION, BECAUSE  
3 MR. ASHTON KEEPS INTERRUPTING. YOU INTERRUPTED THE REST  
4 OF HER ANSWER, SO LET'S LET HER FINISH THE ANSWER.

5 THE WITNESS: IF A CHILD ASKED ME A SPECIFIC  
6 QUESTION IF I FELT LIKE WASN'T TOO GRAPHIC, I WOULD  
7 ANSWER THE QUESTION.

8 BY MR. LEINSTER:

9 Q. MY QUESTION IS, DID YOU -- I DON'T NECESSARILY  
10 MEAN YOU, BUT THE SCHOOL, WERE CHILDREN KEPT AFTER CLASS TIME  
11 AS A GROUP SO THAT SOMEBODY, MAYBE YOU WOULD COME IN TO  
12 DISCUSS WHAT HAD HAPPENED OUT THERE?

13 A. NOT THAT I KNOW OF. NO, I DIDN'T DO THAT.

14 Q. DIDN'T YOU TELL ME OUTSIDE THAT THAT IS WHAT  
15 HAPPENED?

16 A. I SAID THAT THE CHILDREN WERE NOT ALLOWED TO BE  
17 DISMISSED ON FRIDAY WHEN THAT HAPPENED ON THE FRIDAY THAT  
18 THAT OCCURRED.

19 Q. ARE YOU AWARE OF WHETHER OR NOT THE CHILDREN WERE  
20 TOLD ABOUT THIS INCIDENT AS A GROUP?

21 A. I BELIEVE WHAT HAPPENED IS, MANY OF THE PARENTS  
22 CAME --

23 Q. BUT DO YOU KNOW THE ANSWER TO THAT?

24 A. I'M NOT SURE. I'M NOT SURE HOW THEY WERE -- WHAT  
25 WAS DISCUSSED WITH THEM, BECAUSE I WASN'T THERE.

1 MR. LEINSTER: THAT IS ALL I HAVE.

2 THE COURT: REDIRECT?

3 REDIRECT EXAMINATION

4 BY MR. ASHTON:

5 Q. DO YOU KNOW WHY THE CHILDREN WERE KEPT LATE ON  
6 FRIDAY THE DAY OF THE MURDERS?

7 A. BECAUSE BY THE TIME THE SCHOOL WAS DISMISSED,  
8 CURTIS WINDOM HAD NOT BEEN LOCATED YET.

9 Q. SO IT WAS FOR THEIR SAFETY?

10 A. YES.

11 MR. ASHTON: NO FURTHER QUESTIONS.

12 THE COURT: OKAY, ARE EITHER OF YOU GOING TO WANT  
13 TO CALL THIS WITNESS AGAIN?

14 MR. ASHTON: NO, YOUR HONOR.

15 THE COURT: YOU ARE RELEASED FROM THE CASE; THANK  
16 YOU. DO YOU HAVE ANY OTHER WITNESSES?

17 MR. ASHTON: NO FURTHER WITNESSES, YOUR HONOR.

18 THE COURT: NO OTHER EVIDENCE?

19 MR. ASHTON: NO, YOUR HONOR.

20 THE COURT: OKAY.

21 MR. LEINSTER: MAY WE HAVE A RECESS?

22 THE COURT: HOW LONG?

23 MR. LEINSTER: TEN MINUTES. CAN WE APPROACH THE  
24 BENCH?

25 THE COURT: YES.

1 (BENCH CONFERENCE.)

2 MR. BARCH: YOUR HONOR, I WOULD LIKE TO HAVE -- WE  
3 NEED SOME TIME TO CONFER. AND IT IS, I KNOW IT IS -- BY  
4 THE TIME WE FINISH CONFERRING, IT WILL BE NOON. COULD  
5 WE GO AHEAD AND BREAK FOR LUNCH AND COME BACK AT 12:30  
6 OR 1 O'CLOCK OR SOMETHING?

7 MR. LEINSTER: HERE IS THE DEAL, JUDGE. WE GOT A  
8 BUNCH OF PEOPLE WHO ARE THEORETICAL CASE WITNESSES.

9 THE COURT: I'M NOT TAKING A LUNCH BREAK NOW.

10 MR. LEINSTER: IF WE DIDN'T TALK TO HIM AND SAY,  
11 LOOK, THEY HAVE --

12 MR. ASHTON: I THINK THE JURY CAN HEAR YOU.

13 MR. LEINSTER: I'M SORRY. THEY HAVE TAKEN THEIR  
14 SHOT. I DON'T THINK WE CAN HELP A LOT BY PUTTING YOU UP  
15 THERE. WE AT LEAST CAN EXPLAIN THAT TO HIM, BECAUSE  
16 THEY ARE GOING TO KILL ME ANYWAY.

17 THE COURT: WELL, OKAY. WE WILL TAKE A LUNCH  
18 BREAK. HOW ABOUT ONE TO --

19 MR. BARCH: IS IT MY UNDERSTANDING THAT THE STATE  
20 HAS NOW RESTED IN THIS PORTION OF THE PHASE?

21 MR. ASHTON: THAT IS CORRECT.

22 THE COURT: OKAY.

23 (IN OPEN COURT.)

24 THE COURT: I THINK WE WILL GO AHEAD AND TAKE A  
25 LUNCH BREAK. WE WILL BEAT ALL THE CROWD. COUNSEL,

1 APPROACH THE BENCH, PLEASE.

2 (BENCH CONFERENCE OFF THE RECORD.)

3 THE COURT: SO YOU WILL BEAT THE RUSH, AND WE WILL  
4 COME BACK AT QUARTER TO ONE. SO DON'T DISCUSS THE CASE  
5 AS I'VE SAID BEFORE IN THE GUILT OR INNOCENCE PHASE OF  
6 THE TRIAL. DON'T TALK TO THE ATTORNEYS, DON'T TALK TO  
7 THE WITNESSES. AND DON'T TALK AMONG YOURSELVES ABOUT  
8 THE CASE. OTHER THAN THAT, HAVE A NICE LUNCH. WE WILL  
9 SEE YOU AT QUARTER OF ONE. THANK YOU.

10 (RECESS.)

11 THE COURT: COULD THE STATE AND DEFENSE PLEASE  
12 APPROACH THE BENCH FOR A MINUTE?

13 (BENCH CONFERENCE.)

14 THE COURT: YOU ALL ARE GOING TO HAVE TO BE A LOT  
15 MORE PUNCTUAL THAN THAT.

16 MR. BARCH: IT IS MY FAULT.

17 MR. LEINSTER: AND I'M NOT GOING TO BLAME HIM, BUT  
18 I DO APOLOGIZE. I REALLY THOUGHT IT WAS ONE FIFTEEN,  
19 AND I KNOW I'M WRONG.

20 THE COURT: YOU ARE NOT THE ONLY ONES THAT HEARD  
21 IT THAT WAY. ARE YOU READY TO PUT ON YOUR WITNESSES?

22 MR. LEINSTER: WE ARE NOT GOING TO.

23 THE COURT: YOU ARE NOT GOING TO PUT ANY WITNESSES  
24 ON?

25 MR. LEINSTER: WELL, I GUESS WE OUGHT TO MAKE IT A



1           MATTER OF RECORD.

2           THE COURT: GO AHEAD.

3           MR. LEINSTER: THE STATE HAVING CHOSEN TO PUT ON  
4           WHAT THEY PUT ON, WE COULD PUT ON A VARIETY OF  
5           INDIVIDUALS WHOSE TESTIMONY WOULD BE ESSENTIALLY THAT IN  
6           THEIR PERSONAL OBSERVATIONS OF THE DEFENDANT, THEY HAD  
7           NEVER SEEN ANYTHING QUITE LIKE THIS OR THIS KIND OF  
8           PRESENTATION. THAT HE SEEMED TO BE OUT OF HIS MIND AT  
9           THE TIME, WAS PART OF THE TRIAL TESTIMONY WHICH THE JURY  
10          CAN CONSIDER FOR PURPOSES OF THE PENALTY PHASE.

11          WHAT THAT DOES OPEN UP, HOWEVER -- AND I CAN'T  
12          CONTROL HOW THESE PEOPLE DELIVER THEIR PRESENTATION; I  
13          CAN ASK THE QUESTIONS, BUT I CAN'T CONTROL WHAT THEY SAY  
14          -- IS THE POSSIBILITY FOR THE STATE TO THEN  
15          CROSS-EXAMINE THEM ABOUT SUCH THINGS AS YOU DIDN'T SEE  
16          HIM DO THIS, SO FORTH, BUT WERE YOU AWARE OF BLA, BLA,  
17          BLA, BLA, THE FOLLOWING. AND THIS HAS BEEN FROM START  
18          TO FINISH, A COCAINE CASE WITH A MURDER OVERLAY. THE  
19          JURY HASN'T HEARD THAT.

20          THE COURT: ABOUT THE COCAINE.

21          MR. LEINSTER: ABOUT THE COCAINE. AND I HAVE HAD  
22          TO TREAD A VERY THIN LINE FROM THE BEGINNING TO END.  
23          AND I'M DOING THIS FOR THE RECORD, NOT TO AMUSE YOU OR  
24          ANYTHING.

25          THE COURT: I KNOW, AND I'M LETTING YOU NOT TO

1 AMUSE YOU.

2 MR. LEINSTER: THERE ARE WAYS OF APPROACHING THESE  
3 KINDS OF CASES. AND I WOULD PROBABLY HAVE TRIED THIS  
4 CASE IN A DIFFERENT FASHION IF IT WERE NOT A  
5 FIRST-DEGREE MURDER CASE, IF IT DIDN'T HAVE A DEATH  
6 SENTENCE ATTACHED TO IT, I MAY HAVE BEEN PERFECTLY HAPPY  
7 TO LET THE JURY HEAR THAT THERE WAS COCAINE INVOLVED.  
8 AND THE OTHER PEOPLE THAT WERE INVOLVED AND THAT THERE  
9 WERE NOTIONS OF HIS GIRLFRIEND SLEEPING WITH ANOTHER  
10 PERSON AND THAT SHE MIGHT HAVE BEEN AN INFORMANT AND ON  
11 AND ON AND ON. EXCEPT FOR THE FACT THAT, IN MY OPINION,  
12 THAT WOULD HAVE MADE AN ALREADY ALMOST INEXTRICABLE  
13 LEGAL SITUATION WORSE.

14 SO I DID THE VERY BEST I COULD WITH WHAT I HAD  
15 WHICH WAS, I DIDN'T HAVE A PAIR, YOU KNOW, THAT THE  
16 STATE HAD A STRAIGHT FLUSH, AND I DIDN'T EVEN HAVE  
17 ENOUGH TO BLUFF WITH. NOW, WHAT WE HAVE GOT NOW IS, THE  
18 STATE BECAUSE OF I THINK YOUR RULINGS HAS PUT ON ONE  
19 PERSON WHICH IS NOT AN AGGRAVATING FACTOR.

20 AND IF I PUT ON A SLEW OF POTENTIAL PEOPLE TO SAY  
21 NICE THINGS ABOUT CURTIS WINDOM, AND I'M SURE THEY WILL,  
22 THERE IS THE DISTINCT POSSIBILITY THAT THOSE FOLKS ARE  
23 GOING TO BE ASKED QUESTIONS IN CROSS-EXAMINATION THAT I  
24 MAY FIND HIGHLY OBJECTIONABLE. BUT ONCE THE QUESTION IS  
25 ASKED, IT IS ASKED. WHETHER YOU AGREE WITH ME OR NOT,

1 ULTIMATELY, THE JURY HAS HEARD IT.

2 AND IN MY OPINION, WHAT WE END UP WITH IS CURTIS  
3 WINDOM IS TRIED FOR DRUGS AND NOT FOR WHAT HAPPENED. SO  
4 I AS HIS LAWYER HAVE MADE A STRATEGIC DECISION, WISE OR  
5 UNWISE, NOT TO CALL THESE FOLKS AND TO ARGUE WHAT WE  
6 HAVE GOT HERE. AND IF I AM WRONG, OF COURSE, SOME DAY  
7 I'M GOING TO HEAR ABOUT IT.

8 THE COURT: WELL, HAVE YOU DISCUSSED THIS WITH  
9 YOUR CLIENT AND IS HE IN AGREEMENT WITH THIS?

10 MR. LEINSTER: I DISCUSSED THIS WITH MY CLIENT  
11 BEFORE LUNCH. I DON'T KNOW IF HE IS IN AGREEMENT WITH  
12 IT OR NOT. CURTIS, ARE YOU IN AGREEMENT WITH IT?

13 THE DEFENDANT: YES..

14 THE COURT: YOU ARE?

15 THE DEFENDANT: YES.

16 THE COURT: DO YOU UNDERSTAND WHY HE IS DOING IT  
17 THIS WAY?

18 THE DEFENDANT: YES.

19 THE COURT: WHY DO YOU UNDERSTAND IT TO BE?

20 THE DEFENDANT: BECAUSE HE DON'T WANT THE DRUG  
21 THING TO COME IN.

22 THE COURT: DO YOU FEEL LIKE HE HAS DONE AS GOOD A  
23 JOB AS HE CAN DO UNDER THE CIRCUMSTANCES SO FAR?

24 THE DEFENDANT: RIGHT.

25 THE COURT: OKAY.

1 MR. ASHTON: THIS I WAS INFORMED JUST A LITTLE  
2 WHILE AGO THAT THE DEFENSE WASN'T GOING TO PUT ANYTHING  
3 ON. THERE IS A CASE THAT JUST CAME OUT WITHIN THE LAST  
4 SIX MONTHS THAT SETS OUT A PROCEDURE WITH THE COURTS TO  
5 FOLLOW WHERE THE DEFENDANT HAS WAIVED MITIGATION.

6 I BELIEVE THAT PROCEDURE HAS BASICALLY BEEN  
7 COMPLIED WITH HERE. THAT IS, THAT THE DEFENSE ATTORNEY  
8 MUST ESTABLISH WHAT MITIGATING EVIDENCE MIGHT BE, AND  
9 THEN WHY IT ISN'T BEING PRESENTED AND GET THE  
10 DEFENDANT'S APPROVAL.

11 BEFORE WE GO ANY FURTHER, I WOULD LIKE TO GET THAT  
12 CASE FOR THE COURT TO MAKE SURE THAT WE ARE FOLLOWING  
13 ALL THE RULES. THERE IS ONE OTHER FACTOR I THINK I  
14 REMEMBER MR. LEINSTER MENTIONING IN AN UNRECORDED  
15 CONVERSATION WITH THE COURT AND MYSELF ABOUT SOME OTHER  
16 FACTOR, SOMETHING ABOUT THE DEFENDANT SAVING HIS  
17 SISTER'S LIFE WHEN SHE WAS A BABY.

18 NOW, THAT MAY SEEM INSIGNIFICANT, BUT I JUST -- I  
19 THINK ALL THE POSSIBLE MITIGATION HAS TO BE ANNOUNCED  
20 FOR THE RECORD AND SO THE DEFENDANT KNOWS WHAT IT IS  
21 THAT HE IS GIVING UP SPECIFICALLY. BUT PERHAPS THAT IF  
22 WE COULD TAKE A BREAK AND I'LL CALL THE LIBRARY AND GET  
23 THAT CASE.

24 BECAUSE IT DOES SET OUT A VERY SPECIFIC PROCESS TO  
25 BE FOLLOWED. I THINK WE ARE BASICALLY DOING THAT, BUT I

1 WANT TO BE SURE FOR PURPOSES OF THE RECORD. OBVIOUSLY  
2 THIS IS A SERIOUS DECISION ON MR. WINDOM'S PART.

3 THE COURT: LETS GO OVER THE THINGS THAT YOU DID  
4 DISCUSS. I THINK YOU TALKED ABOUT HE WAS A GOOD SON, HE  
5 WAS A GOOD FATHER, HE WAS AMENABLE TO REHABILITATION.  
6 HE SAVED HIS SISTER'S LIFE, AND HE WAS CHARITABLE.

7 HAVE YOU GONE OVER ALL THOSE THINGS WITH HIM AND  
8 DECIDED WHAT EACH ONE OF THOSE WOULD NOT APPLY OR AT  
9 LEAST WOULD CAUSE THE PROBLEMS IF YOU TRIED TO BRING IT  
10 OUT?

11 MR. LEINSTER: EXCUSE ME, JUDGE. I HAVE NOT GONE  
12 OVER -- MAYBE THIS WILL SAVE HIS LIFE SOME DAY IF I  
13 CAN'T NOW. I HAVE NOT GONE THROUGH ANY OF MY  
14 CEREBRATION WITH CURTIS WINDOM OTHER THAN TO TELL HIM  
15 THAT BY PUTTING PEOPLE ON THE STAND WHO MIGHT SAY KIND  
16 THINGS ABOUT HIM IN VERY SPECIFIC WAYS, THEY HAVE NEVER  
17 SEEN HIM DO THIS, THEY HAVE SEEN HIM DO THAT.

18 THAT IN MY OPINION, I RUN THE RISK THAT THE STATE  
19 CROSS-EXAMINES. AND I CAN ARGUE THE MITIGATING FACTORS  
20 AS THEY STAND STATUTORILY WITHOUT ANYBODY EVER SAYING A  
21 SINGLE THING FURTHER THAN WHAT HAS BEEN SAID IN THIS  
22 COURT. THE STATE HAS ESTABLISHED ONE AGGRAVATE -- WELL,  
23 PERHAPS TWO; COLD, CALCULATED.

24 I CAN'T IMAGINE THAT I AM GOING TO GET ANY POINTS  
25 FROM PUTTING SOMEBODY ON THE STAND TO SAY SOMETHING

1 REPETITIVE ABOUT THE FACT THAT ON THAT DAY, HE DID NOT  
2 APPEAR TO BE HIMSELF, AND THEY HAVEN'T SEEN HIM DO THAT  
3 AGAIN. THAT IS JUST NOT LIKE HIM. IF I WERE TO ASK THE  
4 QUESTION IN A FASHION, HAVE YOU HEARD, YOU KNOW, ALL  
5 RIGHT -- I COULD DO THAT, THAT IS GROUNDS FOR THREE  
6 EIGHT FIVE OH. AND MAYBE IF IT COMES BACK, WE DO IT ALL  
7 OVER AGAIN. BUT I DON'T PLAY THE GAME LIKE THAT.

8 SO I HAVE NOT SAT DOWN WITH CURTIS AND SAID,  
9 CURTIS, I'M NOT GOING TO DO THIS AND I'M NOT GOING TO DO  
10 THAT ANY MORE THAN I'VE SAT DOWN WITH CURTIS EVERY STEP  
11 OF THE WAY AND SAID, HERE IS WHAT I AM GOING TO DO,  
12 BECAUSE THEY HIRED ME TO DO A JOB.

13 AND IF I HAVE TRIPLE BYPASS SURGERY, WHICH I  
14 PROBABLY WILL, ALL THINGS BEING FAIR; I CERTAINLY  
15 DESERVE IT, I'M PROBABLY NOT GOING TO SIT DOWN AND  
16 DEMAND THEY EXPLAIN EXACTLY HOW I DO MY JOB. SO THE  
17 ANSWER, YOU REALLY WANT A SHORT ANSWER, YOU NEVER GET  
18 ONE A FROM A LAWYER.

19 THE COURT: NO.

20 MR. LEINSTER: IS NO, I HAVE NOT DISCUSSED ALL OF  
21 THIS WITH CURTIS WINDOM. I HAVE NOW BECAUSE HE HAS  
22 HEARD EVERYTHING I HAVE HAD TO SAY. I DID DISCUSS THIS  
23 WITH A PARADE OF PEOPLE THAT WE COULD HAVE CALLED AND  
24 EXPLAINED TO THEM WHY I FELT IT WAS NOT A GOOD STRATEGIC  
25 DECISION TO CALL ANYBODY TO THE STAND, BECAUSE NOBODY

1 REALLY HAS MUCH TO SAY OTHER THAN HE IS A GOOD FELLOW.  
2 PROVABLY TO THEM IN THE PAST. AND THE ACTUAL TRUTH OF  
3 THAT IS THAT THE STATE IS GOING TO CONTEND OTHERWISE.

4 THE COURT: ALL RIGHT. THEN WHY DON'T WE --

5 MR. LEINSTER: WITH THAT IN MIND, CURTIS, YOU  
6 UNDERSTAND WHAT I JUST GOT THROUGH SAYING?

7 THE DEFENDANT: YES.

8 MR. LEINSTER: NOW, DO YOU AGREE OR DISAGREE WITH  
9 WHAT I AM SAYING?

10 THE DEFENDANT: I AGREE.

11 MR. LEINSTER: YOU DO?

12 THE DEFENDANT: YES.

13 MR. LEINSTER: YOU ARE NOT GOING TO COME BACK AT  
14 SOME FUTURE DAY AND SAY THAT SOMEHOW I SCREWED YOU IN  
15 SOME WAY, ARE YOU?

16 THE DEFENDANT: NO.

17 MR. LEINSTER: AT LEAST NOT AS FAR AS THIS PART  
18 GOES?

19 THE DEFENDANT: NOT AS FAR AS THIS PART.

20 MR. LEINSTER: OKAY.

21 MR. ASHTON: COULD I ASK THE DEFENDANT A QUESTION  
22 ON THAT ISSUE?

23 THE COURT: ALL RIGHT.

24 MR. ASHTON: FOR THE RECORD, MR. WINDOM, DID YOU  
25 HEAR THE LIST OF THINGS THAT THE JUDGE INDICATED THAT

1 SHE WAS TOLD MIGHT BE OFFERED IN MITIGATION ON YOUR  
2 BEHALF?

3 THE DEFENDANT: I HEARD, YES.

4 MR. ASHTON: DO YOU AGREE WITH MR. LEINSTER'S  
5 DECISION NOT TO PRESENT ANY OF THOSE THINGS?

6 THE DEFENDANT: I AGREE WITH HIM.

7 MR. ASHTON: ALL RIGHT. I STILL WOULD LIKE TO GET  
8 THAT CASE FOR YOU TO MAKE SURE THAT WE HAVE DOTTED ALL  
9 THE I'S AND CROSSED ALL THE T'S. BUT I THINK WE HAVE.

10 THE COURT: IN THE EVENT WE HAVE, AND WE ARE GOING  
11 TO HAVE A CHARGE CONFERENCE, WE HAVE GOT A JURY THAT HAS  
12 BEEN WAITING ALREADY FORTY-FIVE MINUTES. SO WE NEED TO  
13 DECIDE WHAT AGGRAVATORS WE ARE GOING TO GIVE AND WHAT  
14 MITIGATORS, IF ANY, WE ARE GOING TO GIVE AND GET THIS  
15 INSTRUCTION READY FOR THE JURY AND THE -- WELL, THE  
16 VERDICT FORM, TOO.

17 MR. ASHTON: RIGHT. WE CAN DO ALL THAT WHILE WE  
18 ARE GETTING THAT CASE TOGETHER AND MAKE SURE WE --

19 THE COURT: THAT IS TRUE. I NEED TO FIGURE OUT  
20 HOW MUCH TIME TO TELL THE JURY THAT THEY CAN GO ABOUT  
21 THEIR BUSINESS, BECAUSE WE ARE GOING TO BE DOING  
22 SOMETHING.

23 MR. ASHTON: I WOULD SUGGEST AN HOUR. BECAUSE  
24 THAT WILL GIVE US TIME TO TALK ABOUT THE INSTRUCTIONS,  
25 GIVE MY SECRETARY THE WORD, PROCESS -- GET THE CASE, DO



1           WHATEVER WE NEED TO DO.

2           MR. LEINSTER: I'VE GOT A T-TIME IN FORTY-FIVE  
3 MINUTES.

4           THE COURT: WHAT ARE YOU CRAZY? THAT WAS A JOKE.  
5 FOR THE RECORD, THAT WAS A JOKE.

6           MR. LEINSTER: THAT WAS A JOKE.

7           MR. ASHTON: I SURE HOPE SO.

8           MR. BARCH: YOUR HONOR, COULD I JUST --

9           MR. LEINSTER: A LITTLE LEVITY, FOR CRYING OUT  
10 LOUD.

11          MR. BARCH: ONE THING THAT ASHBROOK SAID.

12          THE COURT: ASHTON.

13          MR. BARCH: ASHTON, I'M SORRY. DID I SAY  
14 ASHBROOK?

15          MR. ASHTON: I LIKE THAT NAME BETTER.

16          MR. BARCH: I LIKE BARCHEA BETTER, TOO. HE IS NOT  
17 WAIVING HIS RIGHT TO PRESENT TO YOU WHEN YOU MAKE YOUR  
18 DECISION ANY MITIGATING EVIDENCE OR CIRCUMSTANCES. MY  
19 UNDERSTANDING, HOPEFULLY WE WILL HAVE ANOTHER BRIEF  
20 HEARING OR AT LEAST HAVE A PSI OR ALLOW CURTIS THE  
21 OPPORTUNITY TO PRESENT TO YOU OTHER EVIDENCE.

22          MR. ASHTON: THE STATE'S POSITION ON THAT IS THAT  
23 THERE IS NO SUCH THING AS A -- FOR FUTURE REFERENCE,  
24 THERE IS NO SUCH THING AS TRIFURCATED SENTENCING  
25 PROCEEDING. THERE ARE TWO THINGS IN ALL THESE

1 PROCEEDINGS. ONE BEING THE DEATH PHASE, AND THIS BEING  
2 PENALTY PHASE. THERE IS NO CLEAR CASE ON THE LAW ON  
3 UNDER THE CIRCUMSTANCES ISSUE. WE ARE ARGUING THERE ARE  
4 NOT THREE BITES OF THE APPLE, ONLY TWO.

5 MR. BARCH: THERE IS A DIFFERENCE OF OPINION. I  
6 GUESS WE WILL NEED TO WORRY ABOUT THAT WHEN WE GET THE  
7 JURY'S RECOMMENDATION. BUT ONE THING I WAS GOING TO ASK  
8 YOU, IN THE EVENT THERE IS -- WELL, WE WILL WORRY ABOUT  
9 THAT WHEN IT HAPPENS.

10 THE COURT: LET'S TELL THE JURY THAT WE ARE GOING  
11 TO BE SENDING THE CASE TO THEM PRETTY SOON, AND WE ARE  
12 GETTING THE INSTRUCTIONS TOGETHER. AND WE WILL RESUME  
13 IN ONE HOUR SO THEY CAN GO WHEREVER THEY LIKE, GET A  
14 COKE, WHATEVER, BUT THAT WE WILL BE RESUMING IN ONE  
15 HOUR. THAT IS THE MOST IMPORTANT THING. WE WILL BE IN  
16 RECESS. YOU ALL ARE GOING TO DO CLOSINGS, RIGHT?

17 MR. ASHTON: YES.

18 MR. LEINSTER: WE ARE GOING TO WAIVE.

19 THE COURT: NO, YOU ARE NOT.

20 MR. LEINSTER: THAT WAS A JOKE, TOO.

21 THE COURT: WE NEED TO HAVE A CHARGE CONFERENCE.  
22 WE NEED IT ON THE RECORD, TOO, I SUPPOSE.

23 MR. ASHTON: YES, YOUR HONOR.

24 THE COURT: ARE YOU READY FOR THE CHARGE  
25 CONFERENCE?

1 MR. ASHTON: I AM.

2 THE COURT: OKAY. WHAT AGGRAVATORS ARE YOU  
3 SEEKING? OKAY, WHAT AGGRAVATORS IS THE STATE SEEKING?

4 MR. ASHTON: LET ME GET MY STATUTE HERE AND MAKE  
5 SURE I'M NOT MISSING ANYTHING. WE WILL BE REQUESTING  
6 FLORIDA STATUTE NINE TWENTY-ONE, ONE FORTY-ONE B,  
7 PREVIOUSLY CONVICTED OF ANOTHER CAPITAL FELONY OR FELONY  
8 INVOLVING USE OF VIOLENCE.

9 WE WOULD ASK FOR BOTH OF THOSE, BECAUSE WE HAVE  
10 BOTH CAPITAL FELONY AND FELONY INVOLVING VIOLENCE. WE  
11 WOULD REQUEST HEINOUS, ATROCIOUS AND CRUEL; COLD,  
12 CALCULATED, PREMEDITATED, THOSE WILL BE THE THREE.

13 THE COURT: WHAT DOES THE DEFENSE SAY ABOUT THAT?

14 MR. LEINSTER: THE CASE LAW IS, AS I UNDERSTAND  
15 IT, THAT EVEN THOUGH THESE ARE FOR OUR PURPOSES TODAY  
16 SIMULTANEOUS ACTS, THAT B IS APPROPRIATE AS AN  
17 AGGRAVATING FACTOR.

18 THE COURT: OKAY.

19 MR. LEINSTER: THE JURY HAS FOUND WITH RESPECT TO  
20 I THAT THE CAPITAL FELONY WAS A HOMICIDE. AND I'M  
21 ASSUMING THEY MUST HAVE DECIDED IT WAS COMMITTED IN A  
22 COLD, CALCULATED AND PREMEDITATED MANNER OR THEY WOULD  
23 NOT HAVE RENDERED THE VERDICT THAT THEY DID.

24 I HAVE A LITTLE PROBLEM WITH THAT FROM A LEGAL  
25 STANDPOINT. BECAUSE BY VIRTUE OF COMMITTING

1           PREMEDITATED MURDER, YOU AUTOMATICALLY HAVE AN  
2           AGGRAVATING CIRCUMSTANCE.  BECAUSE THAT IS THE VERBIAGE,  
3           PREMEDITATED MANNER.

4           AND THEN IT DOES GO ON WITHOUT ANY PRETENSE OF  
5           MORAL, LEGAL JUSTIFICATION, BUT THAT IS JUSTIFIABLE  
6           HOMICIDE.  THAT IS A DEFENSE.  SO I'M NOT ARGUING TO YOU  
7           THAT I DON'T THINK THE STATE IS OFF BASE IN ASKING FOR  
8           THAT AS AN AGGRAVATING CIRCUMSTANCE AS IT EXISTS  
9           STATUTORILY.  BUT I AM ARGUING THAT THAT PARTICULAR  
10          PROVISION WOULD APPEAR TO BE SOMEWHAT OF A REDUNDANCY.

11          YOU ARE BEING SENTENCED POSSIBLY TO THE ELECTRIC  
12          CHAIR AS A RESULT OF THE FACT THAT YOU HAVE COMMITTED A  
13          PREMEDITATED MURDER.  SO THE ACT ITSELF SENDS YOU TO THE  
14          CHAIR WHEN, IN FACT, I THINK THESE AGGRAVATING FACTORS  
15          WERE INTENDED TO LEND SOME GUIDANCE TO WHETHER YOU GET A  
16          LIFE IMPRISONMENT.  SO I WOULD OBJECT TO THAT ON THOSE  
17          GROUNDS; CONSTITUTIONAL GROUNDS, BASICALLY.

18          THE COURT:  THIS PARTICULAR INSTRUCTION GOES ON TO  
19          SAY WITHOUT ANY PRETENSE OF MORAL OR LEGAL  
20          JUSTIFICATION.  FRANKLY, I THINK IT IS APPLICABLE IN  
21          THIS CASE.  HOW DO YOU FEEL?  AND I'M GOING TO ALLOW IT  
22          AS AN AGGRAVATOR.  AND HOW DO YOU FEEL ABOUT HEINOUS,  
23          ATROCIOUS AND CRUEL?

24          MR. LEINSTER:  I HAVE A REAL PROBLEM WITH THAT  
25          ONE.  I HAVE A PROBLEM WITH THAT ONE, AND I SAID THIS

1           BEFORE.

2           MR. ASHTON: YES. THE CASES I'M CITING FOR YOU  
3 ARE, IT IS STRAIGHT, S-T-R-A-I-G-H-T, VERSUS WAINWRIGHT,  
4 FOUR TWENTY-TWO, SOUTHERN SECOND, EIGHT TWENTY-SEVEN.  
5 AND ALDRIDGE IS A-L-D-R-I-D-G-E VERSUS WAINWRIGHT, FOUR  
6 THIRTY-THREE, SOUTHERN SECOND, NINE EIGHTY-EIGHT.

7           STRAIGHT SAYS, AND I QUOTE, FOR THE JUDGE TO HAVE  
8 INSTRUCTED THE JURY IN FIRST-DEGREE MURDER PROSECUTION  
9 ONLY ON THOSE FACTORS WHICH SHE FOUND SUPPORTED BY  
10 EVIDENCE WOULD HAVE IMPROPERLY INVADED THE PROVINCE OF  
11 THE JURY. AND I BELIEVE THESE CASES STAND FOR THE  
12 PROPOSITION THAT IT IS -- THE JURY SHOULD BE READ THE  
13 LAW, AND IT IS UP TO THEM TO DETERMINE WHETHER THE  
14 AGGRAVATOR IS ESTABLISHED OR NOT. IF YOU WANT TO LOOK  
15 AT THESE.

16          THE COURT: WHAT EXACTLY WAS THE ATROCIOUS,  
17 HEINOUS AND CRUEL PART OF THIS?

18          MR. ASHTON: AS JOHNNY LEE, THE FACT THAT HE WAS  
19 SHOT TWICE IN THE BACK. AND AS HE LAID ON HIS BACK ON  
20 THE GROUND, THAT MR. WINDOM WALKED UP TO HIM AND PUT TWO  
21 MORE BULLETS INTO HIS CHEST.

22          THE COURT: BUT THE TESTIMONY OF THE MEDICAL  
23 EXAMINER WAS THAT AFTER THE FIRST TWO SHOTS, HE SHOULD  
24 HAVE BEEN UNCONSCIOUS IMMEDIATELY.

25          MR. ASHTON: MY POSITION, YOUR HONOR, IS THAT I

1 DON'T HAVE TO ARGUE THE FACT THAT THE CASES I'VE CITED  
2 SIMPLY SAY THAT --

3 THE COURT: LET ME SEE THOSE TWO CASES.

4 MR. BARCH: YOUR HONOR, I HAVE A COUPLE, TOO, THAT  
5 I WOULD LIKE TO CITE WHEN YOU ARE READY TO HEAR THEM.

6 THE COURT: BUT YOUR BURDEN IS TO PROVE IT BEYOND  
7 A REASONABLE DOUBT. I CAN'T FIND IT EVEN TO ANY EXTENT.

8 MR. ASHTON: WELL, THE CASES BASICALLY SAY THAT IS  
9 UP -- YOU KNOW, WE DON'T HAVE TO PROVE IT BEYOND A  
10 REASONABLE DOUBT IN ORDER TO GET THE INSTRUCTION, IF WE  
11 GET THE INSTRUCTION. BECAUSE IT IS PART OF THE LAW, AND  
12 IT IS UP TO THE JURY AND ULTIMATELY THE COURT TO DECIDE  
13 WHETHER THE FACTS ESTABLISH IT OR NOT.

14 THE COURT: WHAT DID YOU WANT, MR. BARCH?

15 MR. BARCH: YOUR HONOR, I WOULD CITE FOR YOU  
16 MCKINNEY V. STATE. I DON'T HAVE A COPY OF IT FOR YOU,  
17 BUT IT IS FIVE SEVENTY-NINE, SOUTHERN SECOND, EIGHTY;  
18 1991.

19 THE COURT: WHAT WAS THE CITE? I'M SORRY.

20 MR. BARCH: FIVE SEVENTY-NINE, SOUTHERN SECOND,  
21 EIGHTY. IT IS A 1991 CASE. AND ESSENTIALLY THE COURT  
22 SAYS THAT AGGRAVATED CIRCUMSTANCES IS INAPPROPRIATE  
23 WHERE EVEN THOUGH VICTIM WAS SHOT MULTIPLE TIMES,  
24 EVIDENCE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT  
25 MURDER WAS COMMITTED IN A MANNER APART FROM THE NORMAL

1 CAPITAL FELONY.

2 IN ADDITION, YOU HAVE GOT ALSO WILLIAMS V. STATE,  
3 AGGRAVATING FACTOR OF HEINOUS, ATROCIOUS OR CRUEL MAY  
4 ONLY BE FOUND IN TORTUOUS MURDERS, I.E., EXTREME AND  
5 OUTRAGEOUS DEPRAVITY AS EXEMPLIFIED BY EITHER DESIRE TO  
6 INFLICT HIGH DEGREE OF PAIN OR UTTER INDIFFERENCE OR  
7 ENJOYMENT OF THE SUFFERING OF ANOTHER.

8 AND I DON'T THINK I HAVE TO GO THROUGH THE LITANY  
9 OF CASES THAT YOU ARE I KNOW AS A LEARNED JURIST WELL  
10 AWARE OF THAT SET FORTH MURDERS THAT WHERE THIS HAS BEEN  
11 AN APPROPRIATE THING; STABBINGS, BEATINGS WHERE THE  
12 DEFENDANT HAS BEEN AWARE OR THE VICTIM HAS BEEN AWARE OF  
13 HIS IMPENDING DEATH WHERE HE HAS BEEN, SLASH, BEGGED FOR  
14 MERCY.

15 THERE IS A WHOLE LITANY OF THEM. I'M SURE YOU  
16 HAVE READ THEM. AND AS FAR AS I KNOW, THERE IS NO  
17 EVIDENCE OF ANY OF THAT IN THIS CASE. AND I BELIEVE YOU  
18 ARE CORRECT. THE MEDICAL EXAMINER SAID THAT WITHIN  
19 ALMOST INSTANTANEOUSLY UNCONSCIOUSNESS AND, IN FACT,  
20 DEATH VERY SHORTLY THEREAFTER.

21 MR. ASHTON: MR. BARCH MISSED THE POINT. THE  
22 POINT IS NOT WHETHER IT HAS BEEN ESTABLISHED. BUT THE  
23 POINT IS WHETHER THE LAW INDICATES THE INSTRUCTION  
24 SHOULD BE GIVEN. AND I'VE GIVEN YOU THE CASE LAW THAT  
25 SAYS IT SHOULD. AND I DON'T BELIEVE THERE IS ANY

1 CONTRARY CASE LAW THAT THERE WERE CITED. I DON'T  
2 BELIEVE THOSE CASES WEIGH THE PROPRIETY OF THE, I GUESS,  
3 THE INSTRUCTION. BUT WITH THE COURT FINDING IT  
4 ULTIMATELY, AND I'LL ARGUE THAT IT SHOULD BE GIVEN.

5 MR. LEINSTER: THE PROBLEM I HAVE WITH ALL OF THIS  
6 IS WHAT I BROUGHT UP EARLIER IN THE CONTEXT OF A C-4  
7 MOTION. THEY DON'T GET A SPECIAL VERDICT FORM. AND SO  
8 IF WE GIVE THEM THE ABILITY TO FIND HEINOUS AND CRUEL  
9 WHEN, IN FACT, LEGALLY THERE IS NO JUSTIFICATION FOR  
10 THAT, AND THEY WEIGH THAT IN THE BALANCING PROCESS,  
11 UNLESS WE HAVE A SPECIAL VERDICT FORM, WE DON'T KNOW HOW  
12 THEY CAME TO THAT DECISION.

13 AND SINCE IT HAS TO BE DONE BEYOND A REASONABLE  
14 DOUBT, IT SEEMS TO ME THAT THE COURT IS CALLED ON TO A  
15 CERTAIN EXTENT TO MAKE A LEGAL DETERMINATION WHETHER IT  
16 IS EVEN A PROVINCE OF THE JURY TO DO THAT. AND IF THEY  
17 ARE GOING TO BE ALLOWED TO DO THAT, THEN I WANT A  
18 SPECIAL VERDICT FORM. BECAUSE IF THEY FIND THAT AS ONE  
19 OF THEIR FACTORS THAT IT WAS PARTICULARLY HEINOUS OR  
20 CRUEL, THEN MY EDUCATED GUESS IS THIS IS GOING TO COME  
21 BACK AND HAUNT US AGAIN.

22 THE COURT: WELL, I DON'T FIND ANY BASIS TO GIVE  
23 THAT INSTRUCTION, AND I'M NOT GOING TO GIVE IT. SO WHAT  
24 ABOUT MITIGATORS?

25 MR. ASHTON: COULD I HAVE THE CASE LAW BACK? I



1 WANT TO STICK IT BACK IN MY BOOK.

2 THE COURT: YOU WANT ALL OF WHAT?

3 MR. LEINSTER: I WANT ALL OF THE MITIGATING  
4 FACTORS.

5 THE COURT: WHAT ARE THEY? NAME WHAT YOU WANT.

6 MR. LEINSTER: NINE TWENTY-ONE POINT ONE  
7 FORTY-ONE. DEFENDANT HAS NO SIGNIFICANT HISTORY OF  
8 PRIOR CRIMINAL ACTIVITY.

9 MR. ASHTON: I CAN PROBABLY MAKE THIS EASY. THE  
10 ONLY ONE I WOULD OBJECT TO IS THE FIRST ONE. BECAUSE  
11 THERE IS SPECIFIC CASE LAW THAT IS SAYING THAT THERE HAS  
12 TO BE AFFIRMATIVE TESTIMONY SHOWING NO SIGNIFICANT  
13 HISTORY. BUT ASIDE FROM THAT, HE CAN HAVE ALL THE  
14 OTHERS. I WOULD BE HAPPY TO ARGUE THAT IT DOESN'T  
15 APPLY.

16 MR. LEINSTER: FINE, DRAG OUT THE CASE LAW. AS  
17 FAR AS I'M CONCERNED, MITIGATING CIRCUMSTANCES GOES TO  
18 THE RUNNER. THERE IS NO EVIDENCE OF ANY PRIOR ACTIVITY  
19 ON HIS PART.

20 THE COURT: WELL, IS THE STATE GOING TO BE ABLE TO  
21 ARGUE THAT THERE IS NO EVIDENCE OR A LACK OF --

22 MR. LEINSTER: I'M SORRY?

23 THE COURT: IS THE STATE GOING TO BE ABLE TO ARGUE  
24 THERE IS NO EVIDENCE, THAT THERE IS A LACK OF, OR THAT  
25 THERE IS NOT A PRIOR HISTORY? THERE HAS NEVER BEEN ANY

1 TESTIMONY AT ALL ABOUT ANY PRIORS. HE HAS NEVER TAKEN  
2 THE STAND.

3 MR. LEINSTER: I HAVE NEVER BEEN IN A CRIMINAL  
4 CASE WHEN THE STATE WAS ALLOWED TO ARGUE THAT THE  
5 EVIDENCE DID NOT SHOW A LACK OF CRIMINAL ACTIVITY.

6 THE COURT: I DO WANT TO SEE THE CASE LAW ON THAT.  
7 BUT THE REST OF THEM, IF THE STATE HAS NO OBJECTION, YOU  
8 CAN HAVE THAT. I WANT TO SEE THE CASE LAW, BECAUSE I  
9 HAVE A PROBLEM WITH THAT ONE --

10 MR. ASHTON: IT IS RIGHT HERE.

11 THE COURT: -- MYSELF.

12 MR. ASHTON: LARA VERSUS STATE, FOUR SIXTY-FOUR,  
13 SOUTHERN SECOND, ELEVEN SEVENTY-THREE. SAYS MURDER, AND  
14 THIS IS -- I'M READING FROM FOOTNOTE NUMBER TEN, MURDER  
15 DEFENDANT WAS NOT ENTITLED TO JURY INSTRUCTION ON LACK  
16 OF SIGNIFICANT PRIOR CRIMINAL HISTORY. WHERE RECORD  
17 REFLECTED HE HAD A PRIOR CRIMINAL HISTORY -- I'M SORRY,  
18 WAIT A MINUTE. OKAY. LET ME GO FURTHER INTO THIS.

19 YES, THIS IS AT PAGE ELEVEN SEVENTY-NINE. IT  
20 SAYS, APPELLANT ARGUED TRIAL COURT ERRORED BY NOT  
21 INSTRUCTING THE JURY ON MITIGATING CIRCUMSTANCES OF HIS  
22 AGE AND LACK OF CRIMINAL HISTORY. APPELLANT MADE NO  
23 ATTEMPT TO PRESENT ANY EVIDENCE REGARDING HIS LACK OF  
24 PRIOR SIGNIFICANT CRIMINAL HISTORY.

25 TO ACCEPT APPELLANT'S ARGUMENT AND MANDATE THE

1 GIVING OF THIS INSTRUCTION, WOULD REQUIRE THE STATE TO  
2 PRESENT EVIDENCE TO NEGATE THIS MITIGATING CIRCUMSTANCE  
3 AND WOULD, IN EFFECT, TRANSFORM THIS FACTOR INTO AN  
4 AGGRAVATING CIRCUMSTANCE.

5 IN THIS CASE, THE DEFENDANT DID NOT OFFER ANY  
6 EVIDENCE OF THAT KNOWING FULL WELL THAT THE STATE COULD  
7 REBUT IT. SO UNDER THE LARA CASE, THAT CANNOT BE GIVEN.  
8 AND I BELIEVE --

9 THE COURT: LET ME SEE THE CASE.

10 MR. ASHTON: SURE. I BELIEVE IN DISCUSSIONS  
11 BEFORE, THE DEFENSE INDICATED THEY WERE WAIVING THAT IN  
12 ORDER TO PREVENT STATE FROM OFFERING EVIDENCE. AND IF  
13 THEY ARE NOT, THEN I WOULD LIKE TO REOPEN AND PRESENT  
14 THAT EVIDENCE. HERE IS A CASE I WAS TALKING ABOUT.

15 THE COURT: WELL, DOES THE DEFENDANT HAVE A PRIOR  
16 HISTORY?

17 MR. ASHTON: YES, YOUR HONOR. WE COULD PRESENT  
18 EVIDENCE OF AT LEAST TWO OCCASIONS; ONE INVOLVING DRUG  
19 TRAFFICKING, ONE INVOLVING THE DELIVERY OF COCAINE. WE  
20 COULD PRESENT EVIDENCE OF AN AGGRAVATED BATTERY UPON THE  
21 VICTIM IN THIS CASE, VALERIE DAVIS.

22 AND I WOULD COMMENT THAT THE WITNESSES TO PROVE  
23 THE TRAFFICKING AND DRUG CASE WERE HERE THIS MORNING.  
24 AND THE COURT, OF COURSE, MADE THAT RULING ON THAT. AND  
25 I BELIEVE THAT WAS BASED ON THE DEFENDANT'S INDICATION

1           THEY WEREN'T GOING TO OFFER THAT AGGRAVATOR.

2           MR. LEINSTER: WE NEVER WAIVED ANYTHING. WHAT WE  
3           SAID WAS THAT WE PRETENDED TO PUT MR. WINDOM OR ANY OF  
4           HIS WITNESSES ON THE STAND TO SAY THAT HE WAS A JOLLY  
5           GOOD FELLOW, THAT THE FLOOD GATES WOULD OPEN.

6           THERE IS NO QUESTION THAT LAW ENFORCEMENT RIGHTLY  
7           OR WRONGLY, AND PROBABLY RIGHTLY, THINKS THAT MR. WINDOM  
8           WAS INVOLVED IN COCAINE. NOW, STATE CAN'T BRING THAT  
9           OUT UNLESS WE OPEN THE DOOR TO THAT; PURE AND SIMPLE.

10          THE COURT: I'M NOT GOING TO LET YOU HAVE THAT  
11          INSTRUCTION ON NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL  
12          ACTIVITY.

13          MR. LEINSTER: I'M NOT ARGUING WITH YOU. I'M JUST  
14          TRYING TO GET A FEEL FOR HOW YOU ARE GOING TO DO THIS IN  
15          TERMS OF READING TO THE JURY THE AGGRAVATING AND  
16          MITIGATING CIRCUMSTANCES. ARE YOU JUST GOING TO READ  
17          THE TWO THAT THE STATE FEELS ARE -- OR AT LEAST THAT YOU  
18          HAVE ACCEPTED AS AGGRAVATING?

19          THE COURT: TWO.

20          MR. LEINSTER: RIGHT.

21          THE COURT: RIGHT.

22          MR. LEINSTER: AND THOSE THAT I HAVE REQUESTED  
23          WHICH WAS ALL OF THEM WITH THE EXCEPTION OF THE ONE YOU  
24          WILL NOT GIVE, SO YOU JUST WILL DELETE THOSE PROVISIONS  
25          FROM THE JURY, RIGHT.

1 THE COURT: I'M NOT GOING TO READ THEM IF THEY ARE  
2 NOT APPLICABLE. SO THIS MEANS THAT YOU WILL HAVE SEVEN  
3 MITIGATORS, IS THAT IT? HOW MANY MITIGATORS ARE YOU  
4 GOING TO HAVE?

5 MR. LEINSTER: WELL, ACTUALLY, MITIGATORS ARE NOT  
6 LIMITED.

7 THE COURT: WELL, I UNDERSTAND THAT, BUT WE DON'T  
8 NEED --

9 MR. LEINSTER: IN TERMS OF THE STATUTORY  
10 MITIGATORS?

11 THE COURT: YES.

12 MR. LEINSTER: YOU STRUCK ONE. FRANKLY, I WAS A  
13 LITTLE SURPRISED THAT THE STATE, PROBABLY BECAUSE IT IS  
14 INCONSEQUENTIAL, THE DEFENDANT WAS AN ACCOMPLICE IN THE  
15 CAPITAL FELONY COMMITTED BY ANOTHER PERSON. AND HIS  
16 PARTICIPATION WAS RELATIVELY MINOR.

17 THE COURT: THAT DOESN'T SEEM LIKE IT IS  
18 APPLICABLE.

19 MR. ASHTON: IF WE ARE GOING TO GO BASED ON THE  
20 FACT NONE OF THEM ARE APPLICABLE, THERE IS ABSOLUTELY NO  
21 EVIDENCE TO SUPPORT --

22 THE COURT: LET'S GO WITH THE ONES THAT MAKE ANY  
23 SENSE AT ALL, OKAY?

24 MR. ASHTON: OKAY.

25 THE COURT: NUMBER FOUR IS, THE DEFENDANT WAS AN

1 ACCOMPLICE IN AN OFFENSE FOR WHICH HE WAS TO HAVE  
2 COMMITTED, BUT THE OFFENSE WAS COMMITTED BY ANOTHER  
3 PERSON. THAT DOESN'T SEEM TO HAVE MUCH RELEVANCE HERE.

4 MR. ASHTON: I AGREE THAT IT DOESN'T.

5 THE COURT: DOES THE DEFENSE WANT THAT?

6 MR. BARCH: I THINK YOU HAD ALREADY RULED ON THIS  
7 ISSUE.

8 THE COURT: NO. OKAY, I HAVE NEVER DISCUSSED THIS  
9 ISSUE.

10 MR. BARCH: YOU SAID YOU WERE GOING TO ALLOW THEM  
11 IN, SINCE THE STATE HAD NO OBJECTION.

12 THE COURT: YOU WANT THESE INSTRUCTIONS HERE, YOU  
13 WANT THESE MITIGATORS?

14 MR. BARCH: I'LL WITHDRAW ANY OBJECTIONS THAT I  
15 RAISED; I'M SORRY.

16 MR. LEINSTER: HE IS SETTING ME UP FOR THREE EIGHT  
17 FIVE OH.

18 THE COURT: WHAT DO YOU -- JUST ONE OF YOU DECIDE  
19 WHICH ONE IS GOING TO RUN THE SHOW HERE.

20 MR. LEINSTER: JUDGE, I'M NOT GOING TO PLAY GAMES  
21 WITH YOU.

22 THE COURT: THAT IS GOOD.

23 MR. LEINSTER: I THINK THAT THE DEFENDANT WAS AN  
24 ACCOMPLICE IN A CAPITAL FELONY COMMITTED BY ANOTHER  
25 PERSON AND SO FORTH IS TOTALLY CONFUSING AND HAS

1 ABSOLUTELY NO RELEVANCE TO THIS.

2 THE COURT: DO YOU WANT THAT MITIGATOR READ OR  
3 NOT?

4 MR. LEINSTER: OF COURSE.

5 THE COURT: YOU WANT IT READ?

6 MR. LEINSTER: I'M KIDDING.

7 THE COURT: YOU DON'T WANT IT READ?

8 MR. ASHTON: I WISH WE COULD GET A SERIOUS REQUEST  
9 FROM THE DEFENSE SO I COULD FIGURE OUT WHAT IS GOING ON  
10 HERE.

11 MR. LEINSTER: WELL, IF YOU ARE AT A LOSS TO  
12 FIGURE OUT WHAT IS GOING ON, IT IS NOT MY PROBLEM.

13 THE COURT: IT IS WHEN YOU DON'T ANSWER A STRAIGHT  
14 ANSWER.

15 MR. LEINSTER: I DON'T WANT -- I DON'T WANT THAT  
16 GIVEN, BECAUSE I THINK IT IS STUPID. IT IS DUMB.

17 THE COURT: I AGREE WITH YOU.

18 MR. LEINSTER: IT DOESN'T AGREE WITH THE FACTS OF  
19 THIS CASE.

20 THE COURT: YOU ARE ABSOLUTELY RIGHT. SO WE WILL  
21 TAKE THAT OUT, BECAUSE THE DEFENSE IS NOT EVEN  
22 REQUESTING IT. ARE THERE ANY OTHERS THAT YOU ALL FEEL  
23 LIKE DO NOT APPLY TO THIS CASE THAT SHOULD BE LEFT OUT  
24 FROM THE DEFENSE'S STANDPOINT?

25 MR. LEINSTER: NO, I WANT EVERYTHING ELSE. WELL,

1 WAIT A SECOND. THE VICTIM WAS A PARTICIPANT IN THE  
2 DEFENDANT'S CONDUCT OR CONSENTED TO THE ACT.

3 THE COURT: YOU DON'T WANT --

4 MR. LEINSTER: NO, THAT DOESN'T --

5 MR. ASHTON: IF WE ARE GOING TO BE DOING IT THIS  
6 WAY, THEN I AM GOING TO STATE SOME OBJECTIONS TO THESE.  
7 I MEAN, THE DEFENSE SAID THEY WANTED EVERYTHING. I SAID  
8 FINE.

9 MR. LEINSTER: I'M SORRY, PUT IT IN. LEAVE IT IN.  
10 I'M SORRY, JEFF; PUT IT IN.

11 MR. ASHTON: COULD I FINISH?

12 THE COURT: LOOK, COULD YOU TWO PLEASE BEHAVE LIKE  
13 YOU ARE SUPPOSED TO IN A COURT OF LAW?

14 MR. ASHTON: YES, MA'AM; I'M JUST TRYING TO GET  
15 OUT A FULL SENTENCE WITHOUT INTERRUPTIONS.

16 THE COURT: FRANKLY, THIS IS WHAT I THINK. I  
17 THINK WE OUGHT TO SELECT THE ONES THAT APPLY TO THIS  
18 CASE. I THINK THE DEFENSE WAS ON THE RIGHT TRACK. WHEN  
19 YOU AGREED TO ALL OF THEM, SURE, WE CAN READ THEM ALL.  
20 BUT I BELIEVE IT IS GOING TO BE CONFUSING TO THE JURY.

21 IT CERTAINLY WILL NOT MAKE ANY SENSE TO THEM AT  
22 ALL. I DON'T WANT TO TELL THE DEFENSE HOW TO RUN THEIR  
23 CASE, AND I KNOW YOU DON'T WANT TO. SO WHY DON'T WE  
24 JUST HAVE HIM TELL US WHAT HE WANTS READ? JUST READ THE  
25 ONES THAT YOU WANT READ, MR. LEINSTER, AND WE WILL GO



1 FROM THERE.

2 MR. LEINSTER: A, I WANT READ, BUT YOU HAVE  
3 DISAGREED.

4 THE COURT: THE HISTORY?

5 MR. LEINSTER: YES. B, I WANT READ; C.

6 THE COURT: WHILE HE WAS UNDER THE INFLUENCE OF  
7 EXTREME MENTAL AND EMOTIONAL DISTURBANCE?

8 MR. LEINSTER: YES.

9 THE COURT: ALL RIGHT.

10 MR. LEINSTER: C, I DON'T WANT READ BECAUSE IT  
11 JUST DOESN'T HAVE A PLACE. IT DOESN'T MAKE ANY SENSE TO  
12 ME.

13 THE COURT: AND THAT IS THE ONE THAT SAYS THE  
14 VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S CONDUCT OR  
15 CONSENTED TO THE ACT?

16 MR. LEINSTER: RIGHT.

17 THE COURT: SO WE WON'T READ THAT, BECAUSE THE  
18 DEFENSE IS NOT REQUESTING IT.

19 MR. LEINSTER: VERY FEW PEOPLE CONSENT TO BEING  
20 SHOT TO DEATH.

21 THE COURT: WELL, THAT IS REASONABLE.

22 MR. LEINSTER: OKAY.

23 THE COURT: THE NEXT ONE, D.

24 MR. LEINSTER: THE DEFENDANT WAS AN ACCOMPLICE IN  
25 A CAPITAL FELONY, NO.

1 THE COURT: WE WILL NOT READ D, BECAUSE IT IS THE  
2 REQUEST OF THE DEFENDANT NOT TO READ IT.

3 MR. LEINSTER: RIGHT.

4 THE COURT: ALL RIGHT, THE NEXT ONE, ACTED UNDER  
5 EXTREME DURESS.

6 MR. LEINSTER: YES.

7 THE COURT: F?

8 MR. LEINSTER: YES.

9 THE COURT: CAPACITY OF THE DEFENDANT TO  
10 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM  
11 HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY  
12 IMPAIRED.

13 MR. LEINSTER: YES.

14 THE COURT: NEXT ONE, AGE OF THE DEFENDANT AT THE  
15 TIME OF THE CRIME.

16 MR. LEINSTER: YES.

17 THE COURT: ANY OTHER ASPECT OF THE DEFENDANT'S  
18 CHARACTER OR RECORD, AND ANY OTHER CIRCUMSTANCE OF THE  
19 OFFENSE?

20 MR. LEINSTER: YES.

21 THE COURT: ANYTHING ELSE?

22 MR. LEINSTER: NO.

23 MR. ASHTON: BASED UPON THAT POSITION BY THE  
24 DEFENSE, THEN MY POSITION MUST OF NECESSITY CHANGE IN  
25 THAT THE ONES CHOSEN BY THE DEFENSE, THERE HAS BEEN NO

1 EVIDENCE PRESENTED FOR ANY OF THEM.

2 THERE HAS BEEN NO EVIDENCE PRESENTED TO SUPPORT TO  
3 PROVE THE AGE OF THE DEFENDANT. NO ONE IN THIS CASE HAS  
4 EVEN MENTIONED HOW OLD, TO MY KNOWLEDGE -- YOU MAY  
5 DIFFER WITH ME ON THIS ONE -- I DON'T REMEMBER ANYBODY  
6 SAYING HOW OLD THE DEFENDANT WAS, MR. WINDOM WAS.

7 THE COURT: I DON'T KNOW IF THEY CAME OUT AND  
8 SAID, BUT HE IS SITTING RIGHT HERE. HE IS NOT AN OLD  
9 MAN, AND HE IS NOT A KID. SO I THINK IT IS AT LEAST  
10 OBVIOUS TO THE JURY THAT HE IS SOMEWHERE IN HIS  
11 TWENTIES.

12 MR. ASHTON: ALL RIGHT, THERE HAS BEEN NO  
13 TESTIMONY THAT HE ACTED UNDER DURESS OR DOMINATION OF  
14 ANOTHER PERSON. THERE IS NO SUGGESTION EVEN REMOTELY IN  
15 THIS CASE OF THE INVOLVEMENT OF ANOTHER PERSON.  
16 THEREFORE, HOW COULD THAT APPLY?

17 THE COURT: WELL, DURESS CERTAINLY MIGHT.

18 MR. ASHTON: DURESS HAS TO BE EXTERNAL. I SAW ONE  
19 TIME IN A CASE WHERE THE DEFINITION OF DURESS DEFINES IT  
20 OF AN EXTERNAL FORCE, THE FORCE OF ANOTHER PERSON. IT  
21 HAS TO BE DURESS OR DOMINATION OF ANOTHER PERSON. YOU  
22 CANNOT HAVE INTERNAL DURESS. YOU CANNOT HAVE  
23 SELF-IMPOSED DURESS.

24 MR. LEINSTER: COULD I CHANGE MY LEGAL POSITION  
25 ALL TOGETHER?

1 MR. ASHTON: SURE.

2 MR. LEINSTER: I THOUGHT THAT I WAS TRYING TO HELP  
3 CALL OUT THOSE THINGS THAT HAD VERY LITTLE MEANING. I  
4 WOULD LIKE ALL OF THEM READ. THAT WILL MAKE MR. ASHTON  
5 HAPPY. WITH THE EXCEPTION OF NUMBER ONE. AND WE WON'T  
6 HAVE TO GO THROUGH THIS.

7 MR. ASHTON: THAT IS FINE.

8 MR. LEINSTER: DOES THAT MAKE YOU HAPPY?

9 THE COURT: LET ME JUST GET IT FOR THE RECORD  
10 STRAIGHT. DOES THE DEFENSE WANT ALL OF THEM? AND I'M  
11 EXCLUDING NUMBER ONE.

12 MR. LEINSTER: ONLY, YES. I WANT THEM ALL.

13 THE COURT: ALL RIGHT, THAT IS WHAT WE WILL DO.

14 MR. LEINSTER: OKAY.

15 THE COURT: ALL BUT NUMBER ONE YOU ARE GOING TO  
16 GET.

17 MR. LEINSTER: THANK YOU.

18 THE COURT: AND YOU DON'T HAVE ANY OTHERS THAT ARE  
19 NOT STATUTORY. AM I CORRECT ON THAT?

20 MR. ASHTON: THERE WAS A STACK OF REQUESTED --

21 THE COURT: YOU HAD A STACK OF INSTRUCTIONS THAT  
22 YOU PROPOSED.

23 MR. BARCH: I BELIEVE THE ONLY ONE THAT WOULD  
24 APPLY THERE IS THAT I BELIEVE THE JURY HAS TO BE  
25 INSTRUCTED THAT THEY CAN CONSIDER NON-STATUTORY

1 MITIGATING CIRCUMSTANCES.

2 MR. ASHTON: I BELIEVE THAT IS IN THERE.

3 MR. BARCH: THAT NEEDS TO BE DONE. I DON'T THINK  
4 THAT YOU CAN EXCLUDE AND JUST CHARGE THEM ON THE  
5 STATUTORY MITIGATING. I THINK THEY HAVE TO BE TOLD THAT  
6 THEY CAN CONSIDER ANY NON-STATUTORY.

7 MR. ASHTON: I BELIEVE THE COURT INDICATED THE  
8 LAST ONE WOULD BE ANY ASPECT OF THE DEFENDANT'S  
9 BACKGROUND. CHARACTER OR CIRCUMSTANCES OF THE OFFENSE  
10 WOULD ENCOMPASS THAT, I BELIEVE.

11 THE COURT: ALL RIGHT. YOU ARE PREPARING THE  
12 INSTRUCTIONS, RIGHT?

13 MR. ASHTON: YES. AND THE STANDARD INSTRUCTION  
14 WOULD INCLUDE THAT AS THE FINAL PARAGRAPH UNDER  
15 MITIGATION.

16 THE COURT: OKAY, THAT IS RIGHT. SO TECHNICALLY,  
17 IT IS GRANTED. BUT IT IS PART OF THIS ANYWAY OF THE  
18 STANDARD INSTRUCTION.

19 MR. ASHTON: YES.

20 THE COURT: OKAY. SO YOU ARE GOING TO -- ARE WE  
21 READY TO --

22 MR. ASHTON: WELL, I HAVE TWENTY-THREE DEFENDANT'S  
23 PROPOSED PENALTY PHASE INSTRUCTIONS. I DON'T KNOW HOW  
24 MANY, IF ANY, OF THESE THE DEFENSE WANTS TO ACTUALLY  
25 INCLUDE.

1 MR. BARCH: WE HAVE GOT ONE HERE ABOUT THE  
2 MITIGATING CIRCUMSTANCE NEED NOT BE PROVED BEYOND A  
3 REASONABLE DOUBT BY THE DEFENDANT.

4 THE COURT: THAT IS TRUE. BUT IS THAT IN THE  
5 GENERAL INSTRUCTION?

6 MR. ASHTON: YES, IT IS IN THE GENERAL  
7 INSTRUCTION.

8 MR. BARCH: JUST MAKING SURE.

9 MR. ASHTON: YES, IT IS IN THERE.

10 THE COURT: ANY OTHERS THAT YOU WANT TO DISCUSS?  
11 BECAUSE I'M GOING TO GIVE THE GENERAL INSTRUCTION WHICH  
12 IS PART OF THE STATUTE. IF THERE IS ANYTHING YOU WANT  
13 ADDED TO THAT, THEN CALL THESE OUT OF THE NUMBER OF  
14 INSTRUCTIONS YOU HAVE REQUESTED.

15 MR. BARCH: JUST SO YOU HAVE THIS IN THERE, MY  
16 INSTRUCTION NUMBER TWO, IF IT IS ENCOMPASSED WITHIN WHAT  
17 YOU ARE GOING TO DO, THEN THE STATE HAS THE BURDEN TO  
18 SHOW THE AGGRAVATING CIRCUMSTANCES OUTWEIGH THE  
19 MITIGATING.

20 THE COURT: YES, THAT IS PART OF IT.

21 MR. ASHTON: YOUR HONOR, THAT IS, ONE, NOT A  
22 CORRECT STATEMENT OF THE LAW. THE MITIGATORS MUST  
23 OUTWEIGH THE AGGRAVATORS. AND THAT IS THE WAY IT IS IN  
24 THE STANDARD INSTRUCTION. AND THAT IS THE CORRECT  
25 STATEMENT OF THE LAW.

1 THE COURT: I'M GOING TO READ THE STANDARD  
2 INSTRUCTION.

3 MR. ASHTON: RIGHT, IT COVERS THAT, BUT IT IS  
4 DIFFERENT THAN REQUESTED NUMBER TWO.

5 MR. BARCH: MY NUMBER FOUR, UNLESS THAT IS PART OF  
6 YOUR STANDARD INSTRUCTION.

7 THE COURT: HAS THE STATE GOT THAT ONE?

8 MR. ASHTON: YES, I HAVE NUMBER FOUR. NUMBER FOUR  
9 IS NOT A PROPER INSTRUCTION. IT ASKS THE JURY TO -- IT  
10 ASKS THE JURY BASICALLY TO COMPARE THAT CASE TO OTHER  
11 MURDER CASES, AND THIS JURY HAS ABSOLUTELY NO IDEA OF  
12 THE FACTS OF OTHER MURDER CASES. THIS IS A STANDARD  
13 THAT THE SUPREME COURT USES.

14 IT WAS NEVER INTENDED TO BE A STANDARD FOR THE  
15 JURY TO USE. IN FACT, SETS FORTH A DIFFERENT METHOD OF  
16 DETERMINING THE DEATH PENALTY ASIDE FROM WEIGHING THE  
17 AGGRAVATORS AND MITIGATORS.

18 THE COURT: I'M GOING TO DENY THAT ONE. WHAT  
19 OTHER ONES ARE YOU REQUESTING OUT OF THIS BATCH?

20 MR. BARCH: FOUR A.

21 THE COURT: FOUR A.

22 MR. BARCH: YOU SHOULD HAVE THAT. IF YOU DON'T,  
23 I'LL GIVE IT TO YOU.

24 THE COURT: WITH REGARD TO YOUR RECOMMENDATION OF  
25 LIFE OR DEATH, THE COURT HEREBY INSTRUCTS THAT THE DEATH

1 PENALTY IS INTENDED FOR ONLY THE MOST AGGRAVATED AND  
2 UNMITIGATED OF CASES.

3 MR. ASHTON: THAT IS INCORRECT FOR THE SAME REASON  
4 THAT FOUR IS.

5 THE COURT: I THINK SO, TOO. I'M GOING TO DENY  
6 THAT ONE. WHAT OTHER ONES DO YOU WANT TO PULL OUT OF  
7 HERE?

8 MR. BARCH: IF I CAN JUST HAVE A SECOND HERE.

9 THE COURT: ALL RIGHT.

10 MR. BARCH: I THINK THERE SHOULD BE AN INSTRUCTION  
11 CONCERNING THE FACT THAT THERE IS ONLY, I THINK IT IS  
12 ELEVEN STATUTORY AGGRAVATING FACTORS. AND THERE ARE  
13 ONLY GOING TO BE, THAT IS NUMBER SIX; MAKE IT SHORT.  
14 THE LEGISLATURE HAS ESTABLISHED ELEVEN STATUTORY  
15 AGGRAVATING FACTORS, THAT YOU WILL BE INSTRUCTED TO FIND  
16 ONLY TWO IN THIS CASE.

17 THE COURT: SINCE THOSE ARE THE ONLY ONES  
18 ARGUABLY --

19 MR. ASHTON: I OBJECT TO THAT ONE. IF THE COURT  
20 WANTS TO READ ALL AGGRAVATORS, THAT IS FINE. BUT TO  
21 MAKE THIS KIND OF COMMENT, WHAT RELEVANCE DOES THIS HAVE  
22 FOR THE JURY'S DETERMINATION?

23 THE COURT: I THINK WE PULLED THEM OUT OURSELVES.  
24 THEY DON'T HAVE TO BE CONCERNED WITH HOW MANY WE HAVE A  
25 CHOICE OF. I'M GOING TO DENY THAT ONE. WHAT ELSE?



1 MR. BARCH: YOU HAVE ALREADY INDICATED YOU ARE  
2 GOING TO INSTRUCT THE JURY THAT THEY CAN CONSIDER ALL  
3 MITIGATING FACTORS, NOT JUST THE STATUTORY ONES. AT  
4 LEAST THAT IS MY UNDERSTANDING OF WHAT YOU ARE GOING TO  
5 INSTRUCT. SO NUMBER SEVEN ISN'T NEEDED. IF I AM WRONG  
6 ON MY ASSUMPTION OF WHAT YOU ARE GOING TO INSTRUCT THEM,  
7 THEN IT WOULD BE NEEDED, BUT --

8 THE COURT: I GAVE YOU ALL A COPY OF THE STANDARD  
9 INSTRUCTIONS. DID YOU LOOK OVER THAT TO MAKE SURE THAT  
10 IT SAYS ABOUT THE SAME THING?

11 MR. BARCH: WELL, I WOULD STILL REQUEST THAT  
12 NUMBER SEVEN.

13 THE COURT: WHAT IS THE STATE'S POSITION ON NUMBER  
14 SEVEN?

15 MR. ASHTON: WELL, TO THE EXTENT THAT IT IS A  
16 CORRECT STATEMENT OF LAW, IT IS ALREADY IN THERE. TO  
17 THE EXTENT THAT IT IS THE LAST SENTENCE, THE  
18 CIRCUMSTANCES LISTED IN THE STATUTE AND THESE  
19 INSTRUCTIONS MERELY INDICATE THE PRINCIPAL FACTORS IS  
20 NOT CORRECT TO GO OUTSIDE.

21 THE COURT: ALL RIGHT. THEN I'M READING WHAT IS  
22 IN THE STANDARD INSTRUCTIONS, AND THAT WILL NOT INCLUDE  
23 THE LAST SENTENCE. SO IT IS SORT OF HALFWAY GRANTED AND  
24 HALFWAY NOT GRANTED, BECAUSE IT IS ALREADY A PART OF THE  
25 INSTRUCTION.

1 MR. BARCH: AND PROBABLY NUMBER NINE IS ALSO AT  
2 LEAST PART OF IT WHERE IT ISN'T AN ACCOUNTING OR A SCORE  
3 BOARD TYPE SITUATION THAT THEY ARE TO -- YOU HAVE MY  
4 NUMBER NINE THERE?

5 THE COURT: YES, IT IS ABOUT ACCOUNTING. THAT IS  
6 NOT EXACTLY HOW IT IS SAID IN THE GENERAL INSTRUCTIONS,  
7 THE STANDARD INSTRUCTIONS. WHAT IS THE STATE'S POSITION  
8 ON THE NUMBER NINE?

9 MR. ASHTON: THE FIRST HALF OF THE PARAGRAPH IS  
10 CORRECT, BY IT NOT BEING AN ACCOUNTING PROCESS. THE  
11 SECOND HALF ABOUT REASONABLE JUDGMENT IS NOT THE PROPER  
12 PROCEDURE THE JURY USES. IT IS A WEIGHING, AND THIS, I  
13 BELIEVE MISSTATES THAT AND INVITES UNFITTED DISCRETION  
14 ON THE PART OF THE JURY IN VIOLATION OF FIRMAN (PHONETIC  
15 SPELLING) VERSUS GEORGIA.

16 THE COURT: WELL, I'M NOT GOING TO READ ANY OF IT.  
17 IT IS PART OF THE -- WHAT IS APPLICABLE IS PART OF THE  
18 GENERAL INSTRUCTION ANYWAY. AND I THINK YOUR TEN AND  
19 TEN A ARE ABOUT THE SAME THING.

20 MR. BARCH: RIGHT. AND I THINK I REQUESTED A  
21 PARTICULAR INSTRUCTION, NUMBER ELEVEN. I THINK YOU HAVE  
22 ALREADY TAKEN CARE OF THAT AND ALSO NUMBER TWELVE.  
23 BECAUSE I DON'T THINK YOU ARE GOING TO GIVE AN  
24 INSTRUCTION ON THAT, SO --

25 THE COURT: AND HEINOUS, WE DON'T NEED THAT.

1 MR. BARCH: EXACTLY.

2 THE COURT: THAT IS TWELVE?

3 MR. BARCH: EXACTLY.

4 THE COURT: AND THEN THIRTEEN IS ABOUT HEINOUS,  
5 ATROCIOUS. YOU DON'T NEED THAT, BECAUSE WE ARE NOT  
6 GOING TO TALK ABOUT IT.

7 MR. BARCH: SAME WAY WITH FOURTEEN.

8 THE COURT: FOURTEEN, TOO. SO YOU HAVE WITHDRAWN  
9 THAT?

10 MR. BARCH: YES. ALL OF THOSE DEALS WITH HEINOUS  
11 AND ATROCIOUS AND CRUEL, YES.

12 THE COURT: OKAY.

13 MR. BARCH: SIXTEEN IS THE SAME. I WOULD WITHDRAW  
14 THAT.

15 THE COURT: NOW, I DON'T EVEN UNDERSTAND YOUR  
16 NUMBER SEVENTEEN. YOU HAVE NOT YET HEARD ALL THE  
17 EVIDENCE ON THE MATTER OF PENALTY.

18 MR. BARCH: WELL, LET ME SAY --

19 THE COURT: WHAT ELSE WERE YOU PLANNING TO TELL  
20 THEM? IT IS NOW OR NEVER, MR. BARCH.

21 MR. BARCH: THERE IS PROBABLY A TYPO IN THAT ONE.  
22 THE COMPUTER MESSED UP. WE HAD THESE IN THE COMPUTER,  
23 AND IT DIDN'T SPIN OUT YET.

24 THE COURT: ARE YOU WITHDRAWING NUMBER SEVENTEEN?

25 MR. BARCH: YES, IT CAN BE WITHDRAWN.

1 THE COURT: OKAY.

2 MR. BARCH: AND EIGHTEEN AS WELL. WE HAVE COVERED  
3 IT.

4 THE COURT: SO YOU ARE WITHDRAWING THAT BECAUSE IT  
5 IS ALREADY COVERED IN THE STANDARDS?

6 MR. BARCH: YES.

7 THE COURT: OKAY.

8 MR. BARCH: NINETEEN AND TWENTY I STILL REQUEST.

9 THE COURT: WHAT DOES THE STATE SAY ABOUT NINETEEN  
10 AND TWENTY?

11 MR. ASHTON: NINETEEN, I DO NOT BELIEVE IT IS A  
12 STATEMENT OF THE LAW. WE HAVE A BURDEN TO PROVE THE  
13 AGGRAVATING CIRCUMSTANCES. ONCE THOSE ARE PROVED, THE  
14 BURDEN DOES SHIFT TO THE DEFENDANT TO ESTABLISH A  
15 MITIGATING TO OUTWEIGH THE AGGRAVATING. SO I DO NOT  
16 BELIEVE THIS IS A CORRECT STATEMENT OF THE LAW.

17 THE COURT: I'M NOT SURE THEY HAVE TO OUTWEIGH  
18 YOUR AGGRAVATORS.

19 MR. ASHTON: YES, THAT IS WHAT THE INSTRUCTION  
20 SAYS. ONCE AN AGGRAVATING CIRCUMSTANCE IS PROVEN, THEN  
21 THAT AGGRAVATING CIRCUMSTANCE IS SUFFICIENT TO JUSTIFY  
22 THE DEATH PENALTY BURDEN, OR IT THEN GOES TO THE DEFENSE  
23 TO PROVE MITIGATION WHICH OUTWEIGHS THE AGGRAVATION.

24 THE COURT: I'M NOT GOING TO READ THESE. I'M  
25 GOING TO READ THE STANDARD INSTRUCTION. SO I'M GOING TO

1 DENY THESE LAST TWO, BECAUSE I'M GOING TO READ THE  
2 STANDARD. AND MERCY IS A CONSIDERATION WHICH MAY BE  
3 CONSIDERED BY A JURY, WHAT DO YOU --

4 MR. ASHTON: YOUR HONOR, THAT INVITES THEM TO  
5 DISREGARD THE REST OF THE INSTRUCTIONS AND TO RENDER A  
6 VERDICT DESPITE THE PROPER LEGAL PROCEDURE.

7 THE COURT: I'M NOT GOING TO GIVE THAT.

8 MR. BARCH: BRIEFLY, IN REGARD TO THAT LAST ONE,  
9 IT SEEMS TO ME, YOUR HONOR, THAT THE ENTIRE SCHEME OF  
10 THE THING IS THAT EVEN IF THEY FOUND EVERY ONE OF THESE  
11 AGGRAVATING CIRCUMSTANCES AND NO MITIGATING, THEY COULD  
12 STILL RECOMMEND MERCY BASED ON NON-STATUTORY MITIGATING  
13 CIRCUMSTANCES. THEY COULD STILL DO THAT EVEN IF THEY  
14 FOUND ALL OF THE AGGRAVATORS TO BE --

15 THE COURT: YOU GOT A CASE THAT SAYS THAT?

16 MR. BARCH: NO, BUT THAT IS MY --

17 THE COURT: IS THIS THE LAW BY BARCH?

18 MR. BARCH: THAT IS MY ARGUMENT.

19 MR. LEINSTER: OR LAW BY LEINSTER.

20 THE COURT: EITHER ONE.

21 MR. BARCH: THE JURY CAN GIVE A JURY PARDON. IT  
22 HAPPENS ALL THE TIME.

23 THE COURT: I'M NOT GOING TO TELL THEM THAT. THEY  
24 MAY DO IT, AND THEY DO IT ALL THE TIME. BUT I'M NOT  
25 GOING TO TELL THEM THAT IS THEIR OPTION. OKAY, THE

1 STATE IS GOING TO PREPARE THE INSTRUCTIONS. HOW LONG  
2 ARE YOU ALL GOING TO WANT FOR CLOSINGS?

3 MR. ASHTON: FIFTEEN, TWENTY MINUTES.

4 THE COURT: HOW ABOUT THE DEFENSE?

5 MR. LEINSTER: TWO DAYS.

6 THE COURT: YOU WON'T LAST TWO DAYS. HOW LONG DO  
7 YOU WANT?

8 MR. LEINSTER: TWENTY MINUTES WILL BE FINE.

9 THE COURT: OKAY. SO GET THE INSTRUCTIONS AND  
10 VERDICT FORMS. SHOW THEM TO MR. LEINSTER BEFORE YOU  
11 GIVE THEM TO ME, AND WE WILL COME BACK.

12 MR. ASHTON: BEFORE YOU GO, LET ME MAKE SURE I'VE  
13 GOT YOUR RULINGS CORRECT SO I DON'T HAVE TO DO THIS  
14 TWICE. WE ARE GIVING STANDARD INSTRUCTION, GIVING  
15 AGGRAVATOR B, PRIOR CONVICTION, AND COLD, CALCULATED AND  
16 PREMEDITATED. UNDER MITIGATING CIRCUMSTANCES, WE GIVE  
17 EVERY PARAGRAPH EXCEPT FOR A, AND ADDING IT AT THE END  
18 OF IT, THE NON-STATUTORY MITIGATING PART.

19 THE COURT: YES.

20 MR. ASHTON: ALL RIGHT, THEN WE WILL GET THIS  
21 DONE. I'M GOING TO GO BACK TO MY OFFICE AND GET THAT  
22 DONE AND ALSO GET THAT CASE FOR YOU ON THE PROCEDURE FOR  
23 WAIVING MITIGATION.

24 THE COURT: OKAY.

25 MR. LEINSTER: WHAT TIME ARE YOU GOING TO START

1 BACK, JUDGE?

2 THE COURT: HOW LONG IS IT GOING TO TAKE YOU?

3 MR. ASHTON: I BELIEVE I CAN BE BACK IN A HALF AN  
4 HOUR. I'LL TRY TO BE BACK IN ABOUT TWENTY MINUTES.

5 THE COURT: MAYBE WE OUGHT TO WRITE THIS DOWN FOR  
6 YOU GUYS. LET'S SEE, BE BACK AT TWENTY MINUTES TO  
7 THREE.

8 MR. ASHTON: THAT WILL BE FINE.

9 THE COURT: THAT IS THIRTY MINUTES FROM NOW.  
10 TWENTY MINUTES TO THREE.

11 MR. LEINSTER: JUDGE, I ONLY GOT IN TWO HOLES THE  
12 LAST BREAK.

13 THE COURT: THAT IS PROBABLY ALL YOU COULD GET IN  
14 AN HOUR AND A HALF.

15 (RECESS.)

16 THE COURT: WE CAN BRING THE JURY BACK. AND WHEN  
17 WE DO, I THINK WE NEED IT ON THE RECORD THAT THE DEFENSE  
18 IS RESTING, IF THAT IS WHAT YOU WANT TO DO.

19 MR. ASHTON: I WANTED TO SAY THAT THE CASE I  
20 REFERRED TO BEFORE AS RELEVANT TO THE PROCEDURE FOR  
21 WAIVING MITIGATING IS KUNES (PHONETIC SPELLING) VERSUS  
22 DUGGER (PHONETIC SPELLING), WHICH IS SEVENTEEN, FLORIDA  
23 LAW WEEKLY, SUPREME COURT, THREE THIRTY-SEVEN. AND IN  
24 READING THE CASE, WE HAVE COMPLIED WITH THE REQUIREMENTS  
25 OF THAT PROCEDURE AT THIS POINT; I'M SATISFIED.

1 THE COURT: THAT IS COMFORTING. THEN LET'S BRING  
2 IN THE JURY. I'LL ASK THE DEFENSE, AND THEY WILL DO  
3 WHAT THEY ARE GOING TO DO. AND THEN WE WILL GO INTO  
4 CLOSINGS. FOR THE RECORD, HAS THE DEFENSE READ OVER THE  
5 INSTRUCTIONS PROVIDED BY THE STATE; DO YOU AGREE WITH  
6 THEM?

7 MR. LEINSTER: YES.

8 THE COURT: OKAY.

9 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

10 THE COURT: THE DEFENSE HAS RESTED FOR THE PENALTY  
11 PHASE. DEFENSE -- OR THE STATE HAS RESTED. WHAT ABOUT  
12 THE DEFENSE?

13 MR. LEINSTER: REST.

14 THE COURT: AND THE DEFENSE HAS RESTED. SO AT  
15 THIS TIME, WE ARE GOING TO GO INTO THE CLOSING  
16 ARGUMENTS. AND THE STATE WILL GO FIRST AND THEN THE  
17 DEFENSE. SO LISTEN CAREFULLY TO THESE ARGUMENTS.  
18 MR. ASHTON?

19 MR. ASHTON: THANK YOU. GOOD AFTERNOON, LADIES  
20 AND GENTLEMEN. THE STATE HAS PRESENTED ONE WITNESS  
21 TODAY, AND THE DEFENSE HAS RESTED WITHOUT PRESENTING ANY  
22 EVIDENCE. BOTH THE STATE AND THE DEFENSE ARE ALSO, OF  
23 COURSE, PERMITTED TO RELY IN THIS PHASE ON ANY EVIDENCE  
24 THAT YOU HEARD IN THE GUILT PHASE OF THIS CASE. AND IN  
25 FACT, THE AGGRAVATING CIRCUMSTANCES EXISTING IN THIS



1 CASE WERE PROVEN TO YOU DURING THE GUILT PHASE.

2 NOW, YOUR JOB IS TO GO BACK HAVING HEARD ALL THE  
3 EVIDENCE IN THIS CASE AND AFTER HEARING THE LAW AS THE  
4 JUDGE INSTRUCTS YOU, TO DECIDE WHAT PENALTY YOU SHOULD  
5 RECOMMEND BE GIVEN TO MR. WINDOM FOR EACH OF THE THREE  
6 MURDERS THAT YOU HAVE PREVIOUSLY FOUND HIM GUILTY OF.

7 NOW, REMEMBER THAT YOU MUST DETERMINE THE PENALTY  
8 FOR EACH VICTIM SEPARATELY. IN OTHER WORDS, YOU WILL BE  
9 ASKING YOURSELVES WHETHER TO RECOMMEND DEATH PENALTY FOR  
10 THE MURDER OF JOHNNY LEE, THEN YOU WILL BE ASKING  
11 YOURSELVES WHAT PENALTY TO RECOMMEND FOR VALERIE DAVIS  
12 AND THEN FOR MARY LUBIN. THE PENALTY DOESN'T  
13 NECESSARILY HAVE TO BE THE SAME FOR EVERY VICTIM.

14 THOUGH IN THIS CASE, I WOULD SUBMIT TO YOU THAT  
15 THE APPROPRIATE VERDICTS ARE THE SAME FOR ALL. BUT  
16 AGAIN, YOU MUST LOOK AT EACH ONE SEPARATELY. THE JUDGE  
17 IS GOING TO GIVE YOU ONE SET OF LEGAL INSTRUCTIONS. AND  
18 THEY APPLY TO ALL THREE OF THE COUNTS THAT YOU FOUND  
19 MR. WINDOM GUILTY OF.

20 THE JUDGE IS GOING TO BASICALLY TELL YOU THE  
21 PROCEDURE IS THIS. YOU FIRST LOOK TO DETERMINE WHETHER  
22 THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT ANY  
23 AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES. THE JUDGE IS  
24 GOING TO INSTRUCT YOU THAT IN THIS CASE, THERE ARE TWO  
25 AGGRAVATING CIRCUMSTANCES THAT APPLY.

1 THE FIRST IS THAT THE DEFENDANT HAS BEEN  
2 PREVIOUSLY CONVICTED OF ANOTHER CAPITAL OFFENSE OR OF A  
3 FELONY INVOLVING THE USE OF VIOLENCE TO SOME PERSON.  
4 NOW, BY PREVIOUS, THAT MEANS PREVIOUS TO THE DAY. SO IN  
5 THAT CASE, AS TO EACH MURDER, THE OTHER MURDERS ARE A  
6 PREVIOUS CONVICTION.

7 IN OTHER WORDS, AS TO THE MURDER OF JOHNNY LEE,  
8 THE MURDERS OF VALERIE DAVIS, MARY LUBIN AND THE  
9 ATTEMPTED MURDER OF KENNETH WILLIAMS ARE ALL PREVIOUS  
10 CONVICTIONS. SO IN ESSENCE, CLEARLY THE STATE HAS  
11 PROVEN BEYOND A REASONABLE DOUBT THAT THE DEFENDANT AS  
12 TO EACH VICTIM HAS BEEN PREVIOUSLY CONVICTED OF TWO  
13 OTHER MURDERS AND AN ATTEMPTED MURDER. YOU FOUND THAT  
14 YOURSELF IN YOUR VERDICT.

15 THE SECOND AGGRAVATING CIRCUMSTANCE IS THAT THE  
16 CRIME FOR WHICH THE DEFENDANT IS TO BE SENTENCED WAS  
17 COMMITTED IN A COLD, CALCULATED AND PREMEDITATED MANNER  
18 WITHOUT ANY PRETENSE OF MORAL OR LEGAL JUSTIFICATION.

19 NOW, YOU HAVE TO LOOK AT EACH KILLING INDIVIDUALLY  
20 TO DECIDE WHETHER THAT INDIVIDUAL KILLING WAS, IN FACT,  
21 COLD, CALCULATED AND PREMEDITATED. BUT OF COURSE, AS TO  
22 EACH KILLING, YOU CAN LOOK AT THE CIRCUMSTANCE AS A  
23 WHOLE IN DETERMINING THE DEFENDANT'S THOUGHTS. NOW,  
24 LET'S LOOK AT THEM SEPARATELY.

25 FIRST, MURDER OF JOHNNY LEE. WAS THAT MURDER

1 COLD, CALCULATED AND PREMEDITATED WITHOUT ANY PRETENSE  
2 OF LEGAL OR MORAL JUSTIFICATION? THE EVIDENCE SHOWS  
3 THAT THE DEFENDANT WENT TO WAL-MART AT 11:51 P.M. ON THE  
4 DAY OF THE MURDER, THAT HE PURCHASED A BOX OF AMMUNITION  
5 FOR HIS GUN.

6 THAT HE WENT BACK TO HIS HOME, THAT HE LOADED THE  
7 GUN WITH FIVE LIVE ROUNDS, GOT IN HIS CAR, FOUND JOHNNY  
8 LEE, PULLED UP NEXT TO HIM AND SHOT HIM TWICE IN THE  
9 BACK. THAT HE VERY CALMLY AND COOLLY WALKED OUT OF HIS  
10 CAR, WALKED AROUND LOOKING DOWN AT JOHNNY LEE LYING ON  
11 THE GROUND HAVING BEEN SHOT TWICE AND SHOT HIM TWO MORE  
12 TIMES IN THE CHEST.

13 LADIES AND GENTLEMEN, IT IS DIFFICULT FOR ME TO  
14 IMAGINE ANY INTERPRETATION OF THOSE FACTS THAT DO NOT  
15 INDICATE A COLD, CALCULATED AND PREMEDITATED MANNER.  
16 THERE IS NO EMOTION; IT IS A SIMPLE PLAN. THE MOTIVE  
17 FOR THAT IS CLEARLY STATED BY THE EVIDENCE, AND THAT IS  
18 MONEY. REMEMBER JOHNNY LEE OWED CURTIS WINDOM SOME  
19 MONEY.

20 JOHNNY LEE HAD NOT PAID HIM BACK, EVEN THOUGH  
21 JOHNNY LEE WON SOME MONEY AT THE TRACK. SO CURTIS  
22 KILLED HIM. REMEMBER THE QUOTATION, AND REMEMBER BACK  
23 TO, I BELIEVE IT WAS, I WANT MY FUCKING MONEY, NIGGER.  
24 AND THEN HE SHOT HIM. COLD, CALCULATED AND  
25 PREMEDITATED.

1                   NOW, LET'S LOOK AT THE MURDER OF VALERIE DAVIS.  
2           WHAT DID CURTIS WINDOM DO? HE RAN BACK TO HIS  
3           APARTMENT. REMEMBER HE HAD A FIVE-SHOT REVOLVER. HE  
4           USED FOUR OF THOSE ON JOHNNY LEE. WHY DIDN'T CURTIS  
5           SIMPLY EMPTY THE GUN INTO JOHNNY? WHY DID HE SAVE  
6           NUMBER FIVE?

7                   NOW REMEMBER HE HAD JUST BEEN IN THE APARTMENT.  
8           HE HAD JUST COME FROM THE APARTMENT. HE SAVED IT FOR  
9           VALERIE DAVIS. REMEMBER ON HIS WAY TO THE APARTMENT, HE  
10          RAN BY KENNY WILLIAMS. REMEMBER THE PERSON HE LATER  
11          SHOT, HE RAN RIGHT PAST KENNY WILLIAMS AND DID NOT SHOOT  
12          HIM. HE WAS SAVING THE BULLET. HE WAS SAVING THE  
13          BULLET FOR VALERIE DAVIS.

14                  HE WALKED INTO THE APARTMENT. HE LOOKED AT  
15          VALERIE DAVIS WHO WAS ON THE PHONE. WHAT DID HE SAY? I  
16          HAVE HAD ENOUGH, VAL. I'M THROUGH; I AM THROUGH. AND  
17          HE POINTED THE GUN AT HER CHEST AND SHOT HER DIRECTLY  
18          THROUGH THE HEART. THERE WAS NO ARGUMENT, THERE WAS NO  
19          FIGHT. HE WENT DIRECTLY TO THE APARTMENT AND DIRECTLY  
20          SHOT VALERIE DAVIS.

21                  WHAT DID HE DO THEN? HE WENT COLDLY AND CALMLY  
22          INTO THE BEDROOM, EMPTIED OUT THE FIVE SHELLS, AND YOU  
23          SAW THEM ON THE BED AND THE FLOOR, AND PUT FIVE MORE IN.

24                  LADIES AND GENTLEMEN, AGAIN, WHAT INTERPRETATION  
25          IS THERE TO THOSE FACTS BUT THAT HE WENT BACK TO THE

1 APARTMENT WITH ONE BULLET LEFT SPECIFICALLY FOR VALERIE  
2 DAVIS? VALERIE WASN'T THERE BY ACCIDENT.

3 HE DIDN'T GO BACK TO THE APARTMENT TO HIDE OUT.  
4 HE WENT BACK THERE TO KILL VALERIE DAVIS. A COLD,  
5 CALCULATED AND PREMEDITATED PLAN TO ELIMINATE THE PEOPLE  
6 IN HIS LIFE THAT WERE GIVING HIM TROUBLE.

7 LET'S LOOK NEXT AT MARY LUBIN. WHAT DID THE  
8 DEFENDANT DO? AGAIN, HE WENT INTO THE HOUSE, AND HE  
9 LOADED THE GUN. FIVE MORE BULLETS. NOW, HE DIDN'T KILL  
10 HIMSELF IN THE APARTMENT. HE DID NOT USE THOSE BULLETS  
11 ON HIMSELF. HE WENT TO AN AREA BEHIND BROWN'S BAR WHERE  
12 HE COULD SEE THE MAXI RECREATION CENTER, THE PLACE WHERE  
13 HE KNEW MARY LUBIN WAS, AND HE WAITED THERE.

14 YOU REMEMBER THE TESTIMONY FROM MISS LAW IS THAT  
15 PEOPLE TRIED TO TAKE THE GUN AWAY FROM HIM. HE WOULDN'T  
16 GIVE IT TO THEM. HE WOULD NOT GIVE IT TO THEM, BECAUSE  
17 THERE IS SOMETHING ELSE HE HAD TO DO BEFORE HE GAVE UP  
18 THAT GUN. AND AS SOON AS MARY LUBIN SHOWED UP, HE  
19 FINISHED THE JOB.

20 HE SHOT MARY LUBIN TWO TIMES IN HER CAR AND THEN  
21 AND ONLY THEN DID HE GIVE UP THE GUN. HE TOOK A  
22 POSITION WAITING FOR MARY LUBIN. HE WAITED UNTIL HE SAW  
23 HER. AND THEN HE WALKED OVER TO HER, SAID SOMETHING TO  
24 HER AND SHOT HER. COLD, CALCULATED AND PREMEDITATED.

25 IS THERE ANY PRETENSE OF MORAL OR LEGAL

1 JUSTIFICATION TO ANY OF THESE? HAVE YOU SEEN ANYTHING  
2 TO EVEN REMOTELY GIVE YOU A MORAL OR LEGAL JUSTIFICATION  
3 FOR THIS? NO. THERE HAS BEEN NO EVIDENCE OF ANY OF  
4 THOSE. ALL OF THESE CRIMES, ALL THREE OF THEM WERE  
5 COLD, CALCULATED AND PREMEDITATED CRIMES.

6 THE QUESTION THEN BECOMES, ONCE YOU HAVE  
7 DETERMINED WHETHER ANY AGGRAVATING CIRCUMSTANCE IS  
8 PROVEN AS TO A PARTICULAR MURDER, AND WHETHER YOU FIND  
9 ONE OR TWO, EVEN IF YOU DON'T FIND ONE, YOU THEN LOOK AT  
10 WHATEVER AGGRAVATING CIRCUMSTANCES YOU FOUND.

11 AND YOU SAY TO YOURSELVES, IS THIS AGGRAVATING  
12 CIRCUMSTANCE OR THESE CIRCUMSTANCES, WHATEVER I FOUND AS  
13 TO THIS MURDER, IS THIS ENOUGH TO JUSTIFY THE DEATH  
14 PENALTY? IS HAVING KILLED SOMEONE AND HAVING KILLED TWO  
15 OTHER PEOPLE AND ATTEMPTED TO MURDER A THIRD, ISN'T THAT  
16 ALONE ENOUGH TO JUSTIFY THE DEATH PENALTY?

17 YES, OF COURSE IT IS. WHEN YOU ADD INTO THAT THE  
18 COLD AND CALCULATED MANNER OF THE MURDERS, IT IS EVEN  
19 HEAVIER. IF YOU HAVE DETERMINED AS TO EACH MURDER THAT  
20 THERE ARE SUFFICIENT AGGRAVATING CIRCUMSTANCES TO  
21 JUSTIFY THE DEATH PENALTY, THEN YOU LOOK TO SEE WHETHER  
22 ANY MITIGATING CIRCUMSTANCES HAVE BEEN PROVEN.

23 NOW, THE STATE'S BURDEN TO PROVE AGGRAVATING  
24 CIRCUMSTANCES IS BEYOND A REASONABLE DOUBT JUST LIKE OUR  
25 BURDEN WAS IN THE GUILT PHASE. THE DEFENSE'S BURDEN IN

1 PROVING MITIGATING CIRCUMSTANCES IS TO REASONABLY  
2 CONVINCE YOU. SO IF YOU ARE REASONABLY CONVINCED OF A  
3 FACT, AND YOU THINK THE FACT IS MITIGATING, THEN YOU CAN  
4 CONSIDER IT.

5 NOW, THE JUDGE IS GOING TO GIVE YOU A LIST OF SIX  
6 SPECIFICALLY STATED STATUTORY MITIGATING CIRCUMSTANCES.  
7 AND A SEVENTH IS THE CATCH ALL THAT ALLOWS YOU TO  
8 CONSIDER A NUMBER OF OTHER THINGS. LET ME GO THROUGH  
9 THOSE QUICKLY, BECAUSE I THINK WHEN YOU HEAR THEM, YOU  
10 ARE GOING TO FIND THAT OF THE FIRST SIX, NONE OF THEM  
11 APPLY TO THIS CASE.

12 THE FIRST IS THAT THE CRIME FOR WHICH THE  
13 DEFENDANT IS TO BE SENTENCED WAS COMMITTED WHILE HE WAS  
14 UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL  
15 DISTURBANCE. THE IDEA BEING THAT IF SOMEBODY IS  
16 AFFECTED BY A MENTAL DISTURBANCE, PERHAPS NOT TO THE  
17 LEVEL OF INSANITY, BUT AFFECTED BY IT THAT THAT SHOULD  
18 BE MITIGATING.

19 YOU HAVE HEARD ABSOLUTELY NO EVIDENCE IN THIS CASE  
20 TO INDICATE THAT THE DEFENDANT WAS UNDER THE INFLUENCE  
21 OF ANY MENTAL OR EMOTIONAL DISTURBANCE AT ALL. YOU  
22 HEARD TESTIMONY FROM DR. KIRKLAND. NOW, REMEMBER WHAT  
23 HE SAID. HE SAID HE EXAMINED THE DEFENDANT, BUT YOU DID  
24 NOT HEAR ANY EVIDENCE OR ANY TESTIMONY FROM HIM AS TO  
25 HIS OPINION BASED ON THAT EXAMINATION.

1 HE SAID, I EXAMINED THE DEFENDANT. THEN THE  
2 DEFENSE WENT ON AND ASKED HIM, ISN'T IT POSSIBLE THERE  
3 IS A THING CALLED A FUGUE STATE? HOW IS IT DESCRIBED;  
4 BLA, BLA. WHEN IT CAME DOWN TO IT, WHAT DID HE SAY? HE  
5 SAID BASED ON THE FACTS THAT YOU HEARD, NO, THE  
6 DEFENDANT WAS NOT IN A FUGUE STATE, AND THERE WAS NO  
7 OTHER TESTIMONY AS TO ANY MENTAL DISTURBANCE. THERE HAS  
8 BEEN ABSOLUTELY NO TESTIMONY TO SORT THAT MITIGATING  
9 CIRCUMSTANCE.

10 THE SECOND, THAT THE VICTIM WAS A PARTICIPANT IN  
11 THE DEFENDANT'S CONDUCT OR CONSENTED TO THE ACT.  
12 CLEARLY THAT IS NOT THE CASE; SECOND. THIRD IS THAT THE  
13 DEFENDANT WAS AN ACCOMPLICE TO THE OFFENSE. WE CAN STOP  
14 RIGHT THERE. THE DEFENDANT IS NOT AN ACCOMPLICE. HE  
15 DID IT HIMSELF AND ALONE.

16 FOURTH, THE DEFENDANT ACTED UNDER EXTREME DURESS  
17 OR SUBSTANTIAL DOMINATION OF ANOTHER PERSON. AGAIN,  
18 THERE IS NO SUGGESTION OF ANYBODY ELSE'S INVOLVEMENT  
19 HERE OR THAT ANYBODY FORCED HIM TO COMMIT THESE CRIMES.  
20 FIFTH, THE DEFENDANT'S CAPACITY TO APPRECIATE THE  
21 CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO  
22 THE REQUIREMENTS OF LAW WAS IMPAIRED.

23 THERE IS, AGAIN, ABSOLUTELY NO EVIDENCE OF THAT IN  
24 THIS CASE. ONE IS THE AGE OF THE DEFENDANT AT THE TIME  
25 OF THE CRIME. RELYING ON YOUR OWN RECOLLECTIONS, I



1 DON'T REMEMBER HEARING ANYBODY TESTIFY AS TO MR.  
2 WINDOM'S AGE. BUT WHATEVER THAT AGE IS, IT CERTAINLY  
3 HAS NOTHING TO DO WITH THIS CRIME.

4 THE DEFENDANT IS NOT A YOUNG TEENAGER THAT MIGHT  
5 BE IMMATURE. HE IS NOT AN OLD PERSON WHO MIGHT BE  
6 SUFFERING FROM SENILITY. HIS AGE HAS NOTHING TO DO WITH  
7 THIS. IT IS NOT MITIGATING.

8 THE LAST WHAT WE CALL MITIGATING CIRCUMSTANCE, AND  
9 IT IS ACTUALLY A WHOLE RANGE OF CIRCUMSTANCES. THE  
10 JUDGE IS GOING TO TELL YOU THAT YOU CAN CONSIDER ANY  
11 OTHER ASPECT OF THE DEFENDANT'S CHARACTER OR RECORD OR  
12 ANY OTHER CIRCUMSTANCE OF THE OFFENSE.

13 NOW, I'LL START AT THE END OF THAT. IS THERE ANY  
14 CIRCUMSTANCE OF THE OFFENSE IN THIS CASE THAT IS  
15 MITIGATING? I SUBMIT TO YOU THAT THERE IS NOT. THERE  
16 IS NOTHING ABOUT THIS CASE THAT IS IN ANY REGARDS  
17 MITIGATING. EVERYTHING ABOUT THIS CASE IS AGGRAVATING.

18 HAVE YOU HEARD ANYTHING ABOUT THE DEFENDANT'S  
19 RECORD? NO. YOU HAVE NOT HEARD ANYTHING ABOUT THE  
20 DEFENDANT'S RECORD; NOT A WORD. SO YOU HAVE NO  
21 INFORMATION TO FIND MITIGATION THERE. WELL, LET ME  
22 ADDRESS ONE THING.

23 YOU DID HEAR FROM SOME WITNESSES IN THE GUILT  
24 PHASE, SOMETHING TO THE EFFECT THAT THEY PERSONALLY HAD  
25 NEVER SEEN CURTIS BEING VIOLENT. NOW, THEY DID NOT SAY

1 THAT HE HAD NEVER BEEN VIOLENT. THEY SIMPLY SAID WE  
2 HAVE NEVER SEEN HIM BE VIOLENT. SO OBVIOUSLY YOU CAN  
3 CONSIDER THAT, THE DEFENDANT'S CHARACTER.

4 DID YOU HEAR ANY EVIDENCE ABOUT THE DEFENDANT'S  
5 CHARACTER? NO. NO ONE TALKED ABOUT THE DEFENDANT'S  
6 CHARACTER IN THIS CASE. THERE WASN'T WORD ONE MENTIONED  
7 ABOUT THAT. SO WE HAVE COME TO THE END OF THIS.

8 YOU HAVE LOOKED AT ALL THE EVIDENCE. THE ONLY  
9 POSSIBLE MITIGATING EVIDENCE HERE THAT YOU HAVE BEEN  
10 PRESENTED IS THE FACT THAT THE DEFENDANT HAS NEVER, BUT  
11 SOME OF THE WITNESSES HAVE NEVER SEEN MR. WINDOM BE  
12 VIOLENT BEFORE. THAT IS THE ONLY MITIGATING EVIDENCE  
13 YOU HAVE BEEN OFFERED IN THIS CASE.

14 SO WHAT YOU HAVE TO DO NOW IS, YOU HAVE TO TAKE  
15 THAT MITIGATING EVIDENCE AND SAY, DOES THAT FACT AND  
16 THAT FACT ALONE OUTWEIGH THE AGGRAVATING EVIDENCE? THAT  
17 IS THE COLD, CALCULATED AND PREMEDITATED MURDER OF THREE  
18 PEOPLE AND THE ATTEMPT TO MURDER A FOURTH?

19 AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT  
20 UNDER NO POSSIBLE REASONABLE INTERPRETATION OF THE  
21 INSTRUCTIONS OR OF SIMPLE FAIRNESS COULD YOU POSSIBLY  
22 CONCLUDE THAT THAT MEAGER MITIGATION OUTWEIGHS WHAT  
23 CURTIS WINDOM HAS DONE.

24 NOW, YOU HEARD TESTIMONY TODAY FROM A WITNESS  
25 VICKIE WARD WHO TOLD YOU A LITTLE ABOUT THE IMPACT OF

1 THIS CRIME ON THE COMMUNITY. IT WAS THE CHILDREN IN THE  
2 COMMUNITY. THAT IS NOT TO BE CONSIDERED BY YOU AS AN  
3 AGGRAVATING CIRCUMSTANCE. YOU ARE NOT TO CONSIDER THAT,  
4 DETERMINE WHETHER THERE ARE AGGRAVATING CIRCUMSTANCES IN  
5 THIS CASE.

6 BUT YOU ARE ALLOWED TO CONSIDER IT IN LOOKING AT  
7 THE BIG PICTURE IN WEIGHING THE MITIGATING -- WEIGHING  
8 THE MITIGATING EVIDENCE AND DECIDING HOW MUCH WEIGHT TO  
9 GIVE THAT. YOU CAN CONSIDER THAT, BECAUSE CRIMES DON'T  
10 HAPPEN IN A VACUUM.

11 THERE WAS NOT SIMPLY THREE PEOPLE OUT THERE, SOME  
12 OF THEM ENDED UP DEAD AND SOME IN JAIL. THIS HAS AN  
13 IMPACT. IT IS LIKE WHEN YOU DROP A PEBBLE IN A POND,  
14 THERE ARE RIPPLES, AND RIPPLES AFFECT PEOPLE. AND IN  
15 THIS CASE, THE EFFECT WAS ON CHILDREN.

16 LADIES AND GENTLEMEN, PLEASE GIVE YOUR VERY  
17 CAREFUL ATTENTION TO MR. LEINSTER WHEN HE MAKES HIS  
18 ARGUMENT. GIVE YOUR CAREFUL ATTENTION TO THE JUDGE WHEN  
19 SHE READS YOU THE INSTRUCTIONS. AND ALL THAT I ASK OF  
20 YOU IS THIS. FOLLOW THE LAW IN THIS CASE AND DO WHAT  
21 YOU THINK IS RIGHT.

22 AND I BELIEVE AND SUBMIT TO YOU THAT WHEN YOU HAVE  
23 DONE BOTH OF THOSE THINGS, THAT THERE IS NO OTHER LEGAL,  
24 REASONABLE OR FAIR RECOMMENDATION IN THIS CASE OTHER  
25 THAN THE DEATH PENALTY FOR CURTIS WINDOM. THANK YOU.

1 THE COURT: THANK YOU, COUNSEL. MR. LEINSTER?

2 MR. LEINSTER: PHYSICALLY ILL TODAY. I'M NOT  
3 TRYING TO INTERRUPT MR. ASHTON WHEN I KEEP COUGHING. IT  
4 IS ONE OF THOSE THINGS. THIS IS NOT A DAILY EXPERIENCE  
5 FOR ANY OF YOU. IT IS ALSO NOT A DAILY EXPERIENCE FOR  
6 ME.

7 A CAPITAL MURDER CASE IS ACTUALLY -- I DON'T THINK  
8 I'VE BEEN INVOLVED IN ONE FOR YEARS. IT IS STAGGERING.  
9 THINKING ABOUT WHAT IT IS THAT I'M SUPPOSED TO PRESENT  
10 TO YOU, MY RESPONSIBILITIES AND SOCIETY'S  
11 RESPONSIBILITIES IN TRYING TO BALANCE THE WHOLE BLOODY  
12 PICTURE OF WHO ARE WE AND WHY ARE WE HERE AND SO FORTH.  
13 MAYBE SOME OF YOU HAVE A REAL CLEAR CUT IDEA AND THINK  
14 YOU DON'T NEED TO HEAR THIS STUFF.

15 MAYBE YOU MADE YOUR MINDS UP A LONG TIME AGO.  
16 MAYBE YOU DECIDED THAT BECAUSE YOU READ SOMETHING IN THE  
17 NEWSPAPER, YOU HEARD SOMETHING ON THE TELEVISION, THAT  
18 BY GOD, YOU BELIEVE IN THE DEATH PENALTY. THAT IS THE  
19 WAY IT IS, AND THAT IS THE WAY IT IS GOING TO BE.

20 DURING VOIR DIRE TO THE PROSPECTIVE PANEL, I ASKED  
21 A LOT OF PEOPLE ABOUT THEIR FEELINGS ABOUT THE DEATH  
22 PENALTY. AND I DON'T THINK I EVER GOT A RESPONSE THAT  
23 MADE A BIT OF SENSE. USUALLY WHAT IT IS IS, WELL, IF  
24 SOMEONE TAKES A LIFE, THEN HE FORFEITS HIS LIFE. ONCE  
25 THAT PERSON MAKES A DECISION TO KILL SOMEONE ELSE, THEN

1 HE OUGHT TO DIE.

2 AND THAT SAME NONSENSE IS UTTERED BY PEOPLE WHO IN  
3 THE SAME BREATH VOUCH FOR THE SANCTITY OF HUMAN LIFE.  
4 AND SO THE QUESTION THEN BECOMES, WELL, WHY DO YOU FEEL  
5 THAT WAY? WHY DO YOU TELL ME ON THE ONE HAND THAT YOU  
6 BELIEVE IN THE VALUE OF HUMAN LIFE, AND YET YOU TELL ME  
7 THAT IF SOMEBODY KILLS ANOTHER, THEY SHOULD FORFEIT  
8 THEIRS?

9 AND THE RESPONSE GENERALLY THEN IS, BECAUSE I  
10 THINK THAT PERSON HAS GIVEN UP HIS RIGHT TO LIVE. WE  
11 ARE BACK TO SQUARE ONE. WE HAVE NOT GOTTEN AN ANSWER.  
12 WE HAVE SIMPLY GOT A REPETITION OF THE SAME ARGUMENT WE  
13 STARTED WITH, WHICH IS AN EMOTIONAL FEELING. HAS  
14 NOTHING TO DO WITH THE INTELLECTUAL SIDE OF IT, THE  
15 LOGIC OF IT.

16 NOW, MAKE NO MISTAKE, IF SOMEONE CAME IN MY HOUSE  
17 AND THEY KILLED A MEMBER OF MY FAMILY OR THEY DID  
18 SOMETHING TO ME THAT VIOLATED ME AND IN A GRIEVOUS  
19 MANNER, I WOULD NOT BE MUCH WORRIED ABOUT THE COURT  
20 SYSTEM IF I COULD GET TO THEM FIRST. SO I DO UNDERSTAND  
21 THAT.

22 I UNDERSTAND THE NATURE OF TAKING BACK FROM  
23 SOMEBODY THAT HAS DONE SOMETHING TO YOU. AND I  
24 UNDERSTAND ANGER. I UNDERSTAND THAT REAL WELL. WE ARE  
25 IN A SOCIETY, AND WE CREATE RULES FOR THAT SOCIETY. AND

1 THOSE RULES PERMEATE THROUGH TO OUR CHILDREN AND TO OUR  
2 VERY THOUGHT PROCESSES. AND THOSE THOUGHTS ARE WHAT  
3 SUSTAIN US IN TERMS OF OUR MORAL VALUES.

4 NOW, IF YOU ARE NOT LOOKING AT ME RIGHT NOW, THAT  
5 MEANS YOU ARE NOT LISTENING TO ME. OUR MORAL VALUES  
6 HAVE A LOT TO DO WITH WHAT WE PASS ON. KILLING THIS  
7 MAN, THAT IS WHAT MR. ASHTON WANTS TO DO. THAT IS WHAT  
8 THE STATE WANTS TO DO; IT IS. DON'T DRESS IT UP, THEY  
9 WANT TO KILL HIM.

10 OKAY, HE DID EVERYTHING A HUMAN COULD PROBABLY DO  
11 TO DESERVE THAT IN THE SENSE THAT IT OUTRAGES US. IT  
12 MAKES US ANGRY. AND IF IT HAD BEEN ONE OF OURS, IF IT  
13 HAD BEEN ONE OF OUR CLOSE LOVED ONES AND HE HAD DONE IT,  
14 WE WOULDN'T HAVE BEEN WORRYING ABOUT THE POLICE. WE  
15 WOULD HAVE GONE AND KILLED HIM.

16 AND THERE WOULD NOT BE A JURY AROUND THAT WOULD  
17 HAVE CONVICTED US FOR DOING IT. WE ALL UNDERSTAND THAT.  
18 BUT THE RULES THAT WE ELECT FOR OUR SOCIETY ARE A WHOLE  
19 LOT MORE IMPORTANT THAN THAT. BECAUSE THE MESSAGES THAT  
20 WE CONVEY TRANSCEND ALL OF OUR PERSONAL BELIEFS. THAT  
21 IT INVOLVES THE WHOLE NUCLEUS, THE WHOLE SOCIETY.

22 AND WHEN WE SAY TO THOSE CHILDREN, FOR INSTANCE,  
23 THAT THE STATE SAID WERE AFFECTED BY THIS, WHEN WE TAKE  
24 THE MESSAGE BACK TO THEM THAT WE HAVE TODAY KILLED  
25 CURTIS WINDOM, WE HAVE ELECTROCUTED CURTIS WINDOM, WHAT

1 IS THAT MESSAGE? THE MESSAGE IS THAT WE CONDONE  
2 KILLING.

3 NOW, WE ARE GOING TO WRAP THAT WITH A BOW. WE ARE  
4 GOING TO TRY TO MAKE IT LOOK AND SMELL AND TASTE LIKE  
5 SOMETHING IT IS NOT. WE ARE GOING TO SAY, IT IS A  
6 DETERRENT. BECAUSE THAT MAKES US COMFORTABLE. WE CAN  
7 LIVE WITH THAT. WHY, IT WILL KEEP OTHER PEOPLE FROM  
8 COMMITTING SIMILAR ATROCIOUS ACTS. IT DOESN'T. BUT WE  
9 FEEL GOOD ABOUT THAT. BECAUSE WE CAN LIVE WITH THAT.

10 WE ARE GOOD PEOPLE, AND WE ARE NOT JUST TAKING A  
11 LIFE. WE ARE DOING IT AS A DETERRENT. PHILOSOPHICALLY,  
12 THAT SITS WITH US COMFORTABLY. THE ONLY JUSTIFICATION  
13 FOR THE DEATH PENALTY FOR ANYBODY IS REVENGE, PURE AND  
14 SIMPLE.

15 NOW, I UNDERSTAND REVENGE. I REALLY DO. I REALLY  
16 UNDERSTAND REVENGE. AND THERE IS A WHOLE BUNCH OF  
17 PEOPLE, I COULD MAKE A LIST OF THEM, BUT I WOULD LIKE TO  
18 WIND UP AND TAKE REVENGE ON. MIGHT NOT WANT TO KILL HIM  
19 NECESSARILY, BUT I DO UNDERSTAND THE CONCEPT. WHAT I  
20 DON'T BUY IS THE HYPOCRISY THAT GOES INTO ALL OF THIS.

21 THERE ARE ACTUALLY PEOPLE WHO ARE WILLING TO SAY  
22 INTELLECTUALLY, WHY SHOULD TAXPAYERS HAVE TO PAY FOR  
23 SOMEONE TO SIT IN PRISON FOR THE REST OF THEIR LIFE? AS  
24 THOUGH ECONOMICS HAS SOMETHING TO DO WITH A HUMAN LIFE.  
25 NOW, I'M NOT HERE TELLING YOU THAT THIS IS A GOOD

1 FELLOW.

2 HE IS A HUMAN BEING. HE IS NOT A GOOD FELLOW.  
3 YOU HAVE SAID THAT, OKAY. BUT NOW WHAT YOU ARE BEING  
4 ASKED TO DO IS TO KILL HIM. AND DESPITE THE FACT THAT  
5 YOUR DECISION IS NOT ABSOLUTELY BINDING, THE COURT HAS  
6 TOLD YOU, WHAT YOU DECIDE PRETTY MUCH IS THE WAY IT IS  
7 GOING TO GO.

8 SO AT SOME POINT IN TIME DOWN THE ROAD, THIS MAN  
9 WHO FOR WHATEVER REASON ON THAT PARTICULAR DAY DID WHAT  
10 HE DID, IF YOU FIND THAT HE DESERVES TO DIE, IS GOING TO  
11 BE ELECTROCUTED. AND ON THAT PARTICULAR DAY, ASSUMING  
12 THAT YOU ARE STILL AROUND AND NOT TOO MUCH WORRIED ABOUT  
13 THE TAX DOLLARS INVOLVED, THEN YOU CAN READ ABOUT THAT.

14 SOCIETY AS A WHOLE IS BRUTALIZED. IT IS DemeanED  
15 BY THE CONCEPT OF CAPITAL PUNISHMENT. IT MEANS WE  
16 ENDORSE IT. IT MEANS WE THINK IT IS OKAY. IT IS NOT AS  
17 THOUGH CAPITAL PUNISHMENT IS PART OF THE ENTIRE WORLD  
18 SYSTEM OF JUSTICE. IT IS NOT. IT IS PART OF FLORIDA  
19 LAW. IT DOESN'T MEAN THAT IT IS GOD GIVEN.

20 AND IF, IN FACT, GOD HAS ANYTHING TO DO WITH ANY  
21 OF THIS, IF, IN FACT, ANY OF US REALLY BELIEVE THAT  
22 THERE IS A DIVINE JUSTICE, THAT THERE IS A MORAL  
23 RIGHTNESS AND A MORAL WRONGNESS, A BALANCE IN THIS WORLD  
24 THAT DICTATES WHY WE DO WHAT WE DO, THEN HOW CAN YOU  
25 POSSIBLY CONDONE KILLING SOMEONE REGARDLESS OF HOW VIAL



1 THAT PERSON MAY HAVE PROVEN THEMSELVES TO BE?

2 HOW CAN YOU LOOK AT YOURSELF WITH A CLEAR  
3 CONSCIENCE AND SAY, I WANT HIM TO DIE? VENGEANCE IS  
4 MINE, SAID THE LORD. WHO KNOWS? I DON'T KNOW IF THE  
5 LORD SAID THAT. I AM NOT A PARTICULARLY RELIGIOUS  
6 PERSON IN THE SENSE THAT I DON'T SPEND A LOT OF TIME  
7 GOING TO ORGANIZED CHURCHES AND SO FORTH. BUT I DO  
8 THINK THAT THERE IS A BALANCE IN THIS UNIVERSE.

9 I THINK THERE IS A REASON FOR DOING GOOD AS  
10 OPPOSED TO BAD. I THINK THAT THERE IS HOPEFULLY A  
11 PAYOFF FOR OUR BEING DECENT PEOPLE AS OPPOSED TO  
12 INDECENT PEOPLE. AND I ALSO UNDERSTAND THAT PEOPLE MAKE  
13 MISTAKES, AND I'M NOT SO FOOLISH AS TO SUGGEST TO YOU  
14 THAT THIS WAS JUST A MISTAKE. THIS WASN'T A MISTAKE.  
15 IT WAS A HORRIBLE, BRUTAL ACT.

16 BUT WHY DID IT HAPPEN? WE DON'T KNOW. NONE OF US  
17 KNOW, AND WE WILL NEVER KNOW. EVERYDAY SOMETHING CRAZY  
18 IS GOING TO HAPPEN. EVERY SINGLE DAY SOMETHING CRAZY IS  
19 GOING TO HAPPEN. AND MAYBE ONE HUNDRED YEARS FROM NOW  
20 OR TWO HUNDRED YEARS FROM NOW OR THREE HUNDRED YEARS  
21 FROM NOW, WHEN WE HAVE FINALLY FIGURED OUT WHY IT IS  
22 THAT THE C C (PHONETIC) FLY AND MATES DURING A CERTAIN  
23 SEASON OF THE YEAR, THEN WE WILL ACTUALLY SPEND TAX  
24 DOLLARS TO FIGURE OUT WHY IT IS THAT HUMANS DO THE  
25 THINGS THAT THEY DO.

1           AND WE WILL REALIZE PERHAPS THAT THE CONFIGURATION  
2           OF THE HUMAN BRAIN PERHAPS HAS SOME INFLUENCE ON WHY  
3           ANYBODY EVER DOES ANYTHING.   AND MAYBE OUR WHOLE VIEW OF  
4           WHO WE ARE AND WHERE WE ARE WILL CHANGE A LITTLE BIT,  
5           AND MAYBE WE WILL BECOME A LITTLE BIT KINDER AS A WORLD.  
6           BECAUSE WE WILL UNDERSTAND OUR OWN FALLIBILITIES.

7           I HAVE NOT SPENT VERY MUCH TIME ARGUING TO TWELVE  
8           PEOPLE NOT TO KILL SOMEONE.   SO I AM NOT EXPERIENCED IN  
9           THIS ART.   I DIDN'T BRING IN A FUGUE STATE WITH DR.  
10          KIRKLAND TO PRETEND THAT THERE WAS AN AMNESIA QUALITY  
11          ABOUT THIS SORT OF THING.   I SIMPLY BROUGHT IT UP TO TRY  
12          TO SHOW YOU THAT WE JUST DON'T HAVE A CLUE WHY WE DO  
13          WHAT WE DO.

14          AND CURTIS WINDOM DOESN'T DESERVE PITY.   HE  
15          DOESN'T DESERVE ANYTHING FOR WHAT HE DID.   I AGREE WITH  
16          YOU, IT WAS -- I AGREE WITH JEFF, IT WAS COLD.   THE TWO  
17          AGGRAVATING FACTORS ARE THAT IT WAS PREMEDITATED.   WELL,  
18          THAT IS PART OF THE CHARGE.   ANYBODY THAT COULD COMMIT  
19          FIRST-DEGREE MURDER, IT IS PREMEDITATED.   SO THAT IS  
20          AGGRAVATED.

21          AND THE OTHER IS THAT IT WAS COLD IN THE SENSE  
22          THAT ANY KILLING IS COLD.   IT IS, BY DEFINITION.   THE  
23          MITIGATION FACTORS YOU WILL BE ASKED TO CONSIDER, SOME  
24          OF THEM DON'T MAKE ANY SENSE AT ALL.   TALKS ABOUT AN  
25          ACCOMPLICE, SO FORTH.   THAT DOESN'T MAKE ANY SENSE.   BUT

1 SOME OF THEM HAD A LOT OF BEARING.

2 SOME OF THEM TALK ABOUT WHETHER OR NOT THE  
3 INDIVIDUAL WAS UNDER EXTREME MENTAL OR EMOTIONAL  
4 DISTURBANCE AT THE TIME. I NEVER TOLD YOU HE WAS CRAZY.  
5 BUT EVEN PEOPLE TESTIFYING AGAINST HIM SAID THAT IS NOT  
6 WHO WE HAD SEEN ALL HIS LIFE. HE WAS CRAZY, NOT LEGALLY  
7 INSANE. YOU GOT TO BE FROTHING AT THE MOUTH TO BE  
8 LEGALLY INSANE. BUT HE WASN'T HIMSELF.

9 WHATEVER HAPPENED ON THAT PARTICULAR DAY IN HIS  
10 LIFE, WHATEVER BIZARRE CONFIGURATION OF RELAYS TOOK  
11 PLACE THAT DAY THAT CAUSED HIM TO DO THIS, WE WON'T EVER  
12 KNOW. BUT NOBODY SAYS TODAY, I THINK I'LL GO OUT AND  
13 SHOOT FOUR PEOPLE. SOMETHING HAPPENED, AND THAT IS ALL  
14 THEY CALLED THE DOCTOR FOR.

15 I WANTED TO TELL THE DOCTOR TO TAKE THE STAND AND  
16 SAY A TEAM OF SPECIALISTS EVALUATED A YOUNG MAN. AND  
17 AFTER MONTHS OF INTENSE THERAPY, DECIDED THAT ONE MOMENT  
18 HE WAS SANE AND THE OTHER HE WASN'T AND THE NEXT HE WAS.  
19 THANK YOU; SO MUCH FOR PSYCHIATRY. THEY DON'T HAVE A  
20 CLUE.

21 IF YOU SENTENCE HIM TO DEATH, YOU CAN GO HOME.  
22 YOU CAN SAY, WELL, HE WON'T KILL AGAIN. YOU CAN SAY,  
23 WELL, WE HAVE SENT A MESSAGE. YOU HAVE NOT SENT A  
24 MESSAGE. NOBODY IS READING IT, NOBODY IS LISTENING. IT  
25 IS GOING TO GO ON TOMORROW, AND THE NEXT DAY AND THE

1 NEXT DAY. I'M NOT ENDORSING THAT.

2 BUT IF YOU ARE GOING TO REACH A DECISION AND THAT  
3 SAYS KILL THIS MAN, I WANT YOU TO BE HONEST ABOUT IT. I  
4 WANT YOU TO BE AT LEAST A LITTLE MORE HONEST THAN THE  
5 POLITICIANS ARE WHEN THEY PITCH THIS NONSENSE ABOUT THE  
6 LIMP WRISTED CRIMINAL JUSTICE SYSTEM AND THE CRIME IN  
7 THE STREETS RUNNING RAMPANT BECAUSE YOU FOLKS AREN'T  
8 HARD ENOUGH ON CRIME; BALONEY.

9 YOU JUST ABOUT CAN'T GET ANY HARDER ON CRIME. BE  
10 HONEST, OKAY? WE ARE TALKING REVENGE. THAT IS ALL.  
11 THAT IS THE ONLY REASON WE ARE TALKING ABOUT KILLING  
12 THIS MAN IS TO SAY WE ARE MAD AT YOU, CURTIS WINDOM.  
13 YOU OUGHT TO BE. SOCIETY OUGHT TO BE MAD AT HIM.

14 THE QUESTION IS, DOES SOCIETY SAY WE HAVE VALUES  
15 THAT ARE MORE IMPORTANT AT STAKE HERE? WHAT HAVE WE  
16 PROVEN BY KILLING HIM OTHER THAN WE TEACH OUR CHILDREN  
17 THAT KILLING IS OKAY, GIVEN THE RIGHT SET OF  
18 CIRCUMSTANCES?

19 AS LONG AS IT IS GIVEN A JUDICIAL STAMP OF  
20 APPROVAL, WE CAN SEND TWENTY THOUSAND VOLTS THROUGH A  
21 MAN AND FRY HIM IN A SEAT. IT IS MURDER, PURE AND  
22 SIMPLE. YOU CAN WRAP A RIBBON AROUND IT IF YOU WANT TO.  
23 KILLING CURTIS WINDOM ISN'T GOING TO DO A SINGLE THING  
24 EXCEPT ENDORSE THAT PHILOSOPHY THAT WE ARE NEVER GOING  
25 TO GROW UP AS A SOCIETY.

1 WE ARE NEVER GOING TO BE A KINDER, GENTLER  
2 SOCIETY. WE ARE JUST GOING TO KEEP ON BEING MEAN AND  
3 SEEKING REVENGE.

4 THE COURT: THANK YOU, COUNSEL. WILL BOTH COUNSEL  
5 PLEASE APPROACH THE BENCH?

6 (BENCH CONFERENCE.)

7 THE COURT: THROUGH ALL THESE INSTRUCTIONS, I  
8 DON'T SEE ANY INSTRUCTION ABOUT THIS RIGHT HERE. IT IS  
9 NOT IN HERE.

10 MR. ASHTON: IT IS NOT IN THE STANDARDS.

11 THE COURT: I KNOW.

12 MR. ASHTON: I JUST PREPARED THE STANDARDS.

13 THE COURT: AND YOU SAID YOU WOULD AGREE THAT THAT  
14 NEEDS TO BE IN.

15 MR. ASHTON: IN THE INTRODUCTORY PART, I DIDN'T  
16 HEAR THAT AS ASKING FOR IT IN THESE INSTRUCTIONS.

17 THE COURT: DO YOU WANT THIS INSTRUCTION IN THERE?  
18 AND WHILE HE IS LOOKING AT THAT, I THOUGHT WE WOULD --

19 MR. ASHTON: I REMEMBERED THIS AS I WAS DISCUSSING  
20 IT. YOU DID SAY YOU WANTED SOMETHING. I DID NOT  
21 PREPARE ANY --

22 THE COURT: YOU SAID YOU WERE GOING TO --

23 MR. ASHTON: I THOUGHT WE WOULD GET TOGETHER, AND  
24 I FORGOT ABOUT IT.

25 THE COURT: I WANT THIS MUCH; WHY DON'T YOU --

1 WHAT ELSE DO YOU ALL WANT ABOUT THE VICTIM IMPACT? HE  
2 WAS GOING TO SAY SOMETHING ABOUT THESE INSTRUCTIONS. IS  
3 THAT ENOUGH, DO YOU WANT ANY OTHER EXPLANATION?

4 MR. LEINSTER: NO, THAT IS FINE.

5 THE COURT: SO I'M GOING TO READ -- ARE YOU  
6 REQUESTING THIS PART THAT DEALS WITH, SHALL BE IMPOSED  
7 FOR THIS DEFENDANT INTENT WILL BE GIVEN GREATER WEIGHT?  
8 DO YOU WANT THAT IN THIS INSTRUCTION?

9 MR. LEINSTER: YES.

10 THE COURT: OKAY, I'M GOING TO READ IT RIGHT HERE  
11 AT THE END OF THE FIRST PARAGRAPH, OKAY? THAT MEANS WE  
12 ARE GOING TO HAVE TO REDO THIS SOMEHOW. I MADE SOME  
13 COPIES.

14 MR. ASHTON: I CAN CALL BACK AND HAVE MY SECRETARY  
15 STICK THE THINGS IN YOU WANT AND REDO IT.

16 THE COURT: OKAY. THEN YOU APPROVE OF THE VERDICT  
17 FORM?

18 MR. LEINSTER: YES; NOT GUILTY, NOT GUILTY.

19 THE COURT: THAT IS NOT EXACTLY IT.

20 MR. LEINSTER: THAT IS FINE. JUDGE, I'M GOING TO  
21 HAVE KURT SIT IN FOR THE READING OF THE INSTRUCTIONS. I  
22 WILL BE ON TELEPHONE CALL. I'M NOT LEAVING, BUT --

23 THE COURT: OKAY. WHAT I DID WANT TO ASK YOU IS,  
24 YOU ARE ON MEDICATION. DOES THAT AFFECT YOU IN THIS  
25 CASE?

1 MR. LEINSTER: NO. AS A MATTER OF FACT, I HAVE  
2 BEEN COUGH MEDICINED TO DEATH. I'M ON BLOOD PRESSURE  
3 MEDICATION.


4 THE COURT: THAT DOESN'T AFFECT YOUR ABILITY? I  
5 WANT TO MAKE SURE.

6 (IN OPEN COURT.)

7 THE COURT: LADIES AND GENTLEMEN OF THE JURY, IT  
8 IS NOW YOUR DUTY TO ADVISE THE COURT AS TO WHAT  
9 PUNISHMENT SHOULD BE IMPOSED UPON THE DEFENDANT FOR HIS  
10 CRIMES OF MURDER IN THE FIRST DEGREE. AS YOU HAVE BEEN  
11 TOLD, THE FINAL DECISION AS TO WHAT PUNISHMENT SHALL BE  
12 IMPOSED IS THE RESPONSIBILITY OF THE JUDGE.

13 HOWEVER, IT IS YOUR DUTY TO FOLLOW THE LAW THAT  
14 WILL BE NOW GIVEN YOU BY THE COURT AND RENDER TO THE  
15 COURT AN ADVISORY SENTENCE BASED UPON YOUR DETERMINATION  
16 AS TO WHETHER SUFFICIENT AGGRAVATING CIRCUMSTANCES EXIST  
17 TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY, AND  
18 WHETHER SUFFICIENT MITIGATING CIRCUMSTANCES EXIST TO  
19 OUTWEIGH ANY AGGRAVATING CIRCUMSTANCES FOUND TO EXIST.

20 YOUR ADVISORY SENTENCE AS TO WHAT SENTENCE SHOULD  
21 BE IMPOSED ON THIS DEFENDANT IS ENTITLED BY LAW AND WILL  
22 BE GIVEN GREAT WEIGHT BY THIS COURT IN DETERMINING WHAT  
23 SENTENCE TO IMPOSE IN THIS CASE. IT IS ONLY UNDER RARE  
24 CIRCUMSTANCES THAT THIS COURT WOULD IMPOSE A SENTENCE  
25 OTHER THAN WHAT YOU RECOMMEND.



1 YOUR ADVISORY SENTENCE SHOULD BE BASED UPON THE  
2 EVIDENCE THAT YOU HAVE HEARD WHILE LISTENING WHILE --  
3 EXCUSE ME, WHILE TRYING THE GUILT OR THE INNOCENCE OF  
4 THE DEFENDANT AND EVIDENCE THAT HAS BEEN PRESENTED TO  
5 YOU IN THESE PROCEEDINGS.

6 THE AGGRAVATING CIRCUMSTANCES THAT YOU MAY  
7 CONSIDER ARE LIMITED TO ANY OF THE FOLLOWING THAT ARE  
8 ESTABLISHED BY THE EVIDENCE. ONE, THAT THE DEFENDANT  
9 HAS BEEN PREVIOUSLY CONVICTED OF ANOTHER CAPITAL OFFENSE  
10 OR OF A FELONY INVOLVING THE USE OF VIOLENCE TO SOME  
11 PERSON. A, THE CRIME OF MURDER IN THE FIRST DEGREE IS A  
12 CAPITAL FELONY. AND B, THE CRIME OF ATTEMPTED MURDER IN  
13 THE FIRST DEGREE IS A FELONY INVOLVING THE USE OF  
14 VIOLENCE TO ANOTHER PERSON.

15 TWO, THE CRIME FOR WHICH THE DEFENDANT IS TO BE  
16 SENTENCED WAS COMMITTED IN A COLD, CALCULATED AND  
17 PREMEDITATED MANNER WITHOUT ANY PRETENSE OF MORAL OR  
18 LEGAL JUSTIFICATION. THE VICTIM IMPACT EVIDENCE IS NOT  
19 AN AGGRAVATING CIRCUMSTANCE.

20 IF YOU FIND THE AGGRAVATING CIRCUMSTANCES DO NOT  
21 JUSTIFY THE DEATH PENALTY, YOUR ADVISORY SENTENCE SHOULD  
22 BE ONE OF LIFE IMPRISONMENT WITHOUT POSSIBILITY OF  
23 PAROLE FOR TWENTY-FIVE YEARS. SHOULD YOU FIND  
24 SUFFICIENT AGGRAVATING CIRCUMSTANCES DO EXIST, IT WILL  
25 THEN BE YOUR DUTY TO DETERMINE WHETHER MITIGATING



1 CIRCUMSTANCES EXIST THAT OUTWEIGH THE AGGRAVATING  
2 CIRCUMSTANCES.

3 AMONG THE MITIGATING CIRCUMSTANCES, YOU MAY  
4 CONSIDER IF ESTABLISHED BY THE EVIDENCE ARE, ONE, THAT  
5 THE CRIME FOR WHICH THE DEFENDANT IS TO BE SENTENCED WAS  
6 COMMITTED WHILE HE WAS UNDER THE INFLUENCE OF EXTREME  
7 MENTAL OR EMOTIONAL DISTURBANCE. TWO, THE VICTIM WAS A  
8 PARTICIPANT IN THE DEFENDANT'S CONDUCT OR CONSENTED TO  
9 THE ACT.

10 THREE, THAT THE DEFENDANT WAS AN ACCOMPLICE IN AN  
11 OFFENSE FOR WHICH HE IS TO BE SENTENCED, BUT THE OFFENSE  
12 WAS COMMITTED BY ANOTHER PERSON, AND THE DEFENDANT'S  
13 PARTICIPATION WAS RELATIVELY MINOR. FOUR IS, THAT THE  
14 DEFENDANT ACTED UNDER EXTREME DURESS OR UNDER THE  
15 SUBSTANTIAL DOMINATION OF ANOTHER PERSON.

16 FIVE, THAT THE CAPACITY OF THE DEFENDANT TO  
17 APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM  
18 HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS SUBSTANTIALLY  
19 IMPAIRED. SIX, THE AGE OF THE DEFENDANT AT THE TIME OF  
20 THE CRIME. AND SEVEN, ANY OTHER ASPECT OF THE  
21 DEFENDANT'S CHARACTER OR RECORD AND ANY OTHER  
22 CIRCUMSTANCES OF THE OFFENSE.

23 EACH AGGRAVATING CIRCUMSTANCE MUST BE ESTABLISHED  
24 BEYOND A REASONABLE DOUBT BEFORE YOU MAY CONSIDER --  
25 EXCUSE ME, BEFORE IT MAY BE CONSIDERED BY YOU IN

1 ARRIVING AT YOUR DECISION. IF ONE OR MORE AGGRAVATING  
2 CIRCUMSTANCES ARE ESTABLISHED, YOU SHOULD CONSIDER ALL  
3 THE EVIDENCE TENDING TO ESTABLISH ONE OR MORE MITIGATING  
4 CIRCUMSTANCES AND GIVE THAT EVIDENCE SUCH WEIGHT AS YOU  
5 FEEL IT SHOULD RECEIVE IN REACHING YOUR CONCLUSION AS TO  
6 THE SENTENCE THAT SHOULD BE IMPOSED.

7 A MITIGATING CIRCUMSTANCE NEED NOT BE PROVED  
8 BEYOND A REASONABLE DOUBT BY THE DEFENDANT. IF YOU ARE  
9 REASONABLY CONVINCED THAT A MITIGATING CIRCUMSTANCE  
10 EXISTS, YOU MAY CONSIDER IT AS ESTABLISHED.

11 THE SENTENCE THAT YOU RECOMMEND TO THE COURT MUST  
12 BE BASED UPON THE FACTS AS YOU FIND THEM FROM THE  
13 EVIDENCE AND THE LAW. YOU SHOULD WEIGH THE AGGRAVATING  
14 CIRCUMSTANCES AGAINST THE MITIGATING CIRCUMSTANCES. AND  
15 YOUR ADVISORY SENTENCE MUST BE BASED ON THESE  
16 CONSIDERATIONS.

17 IN THESE PROCEEDINGS, IT IS NOT NECESSARY THAT THE  
18 ADVISORY SENTENCE OF THE JURY BE UNANIMOUS. THE FACT  
19 THAT THE DETERMINATION OF WHETHER A MAJORITY OF YOU  
20 RECOMMEND A SENTENCE OF DEATH OR SENTENCE OF LIFE  
21 IMPRISONMENT IN THIS CASE CAN BE REACHED BY A SINGLE  
22 BALLOT WHICH -- EXCUSE ME, BALLOT SHOULD NOT INFLUENCE  
23 YOU TO ACT HASTILY OR WITHOUT DUE REGARD TO THE GRAVITY  
24 OF THESE PROCEEDINGS.

25 BEFORE YOU BALLOT, YOU SHOULD CAREFULLY WEIGH,

1 SIFT AND CONSIDER THE EVIDENCE, AND ALL OF THIS  
2 REALIZING THAT HUMAN LIFE IS AT STAKE AND BRING TO BEAR  
3 YOUR BEST JUDGMENT IN REACHING YOUR ADVISORY SENTENCE.

4 IF A MAJORITY OF THE JURY DETERMINES THAT CURTIS  
5 WINDOM SHOULD BE SENTENCED TO DEATH, YOUR ADVISORY  
6 SENTENCE WILL BE, QUOTE, A MAJORITY OF THE JURY BY A  
7 VOTE OF, AND THEN YOU PUT THE RESULTS, WHAT THE NUMBERS  
8 ARE, BLANK TO BLANK, ADVISE AND RECOMMEND TO THE COURT  
9 THAT IT IMPOSE THE DEATH PENALTY UPON CURTIS WINDOM.

10 ON THE OTHER HAND, IF BY SIX OR MORE VOTES, THE  
11 JURY DETERMINES THAT CURTIS WINDOM SHOULD NOT BE  
12 SENTENCED TO DEATH, YOUR ADVISORY SENTENCE WILL BE,  
13 QUOTE, THE JURY ADVISES AND RECOMMENDS TO THE COURT THAT  
14 IT IMPOSES SENTENCE OF LIFE IMPRISONMENT UPON CURTIS  
15 WINDOM WITHOUT POSSIBILITY OF PAROLE FOR TWENTY-FIVE  
16 YEARS.

17 THESE ARE VERDICT FORMS THAT YOU WILL BE TAKING  
18 BACK WITH YOU. AND EACH VERDICT FORM IS FOR A DIFFERENT  
19 VICTIM. THE FIRST ONE IS IN COUNT ONE DEALING WITH THE  
20 FIRST-DEGREE MURDER OF JOHNNY LEE, AND THE SECOND  
21 VERDICT FORM, COUNT TWO, DEALS WITH THE MURDER OF  
22 VALERIE DAVIS. AND THE THIRD VERDICT FORM DEALS WITH  
23 THE FIRST-DEGREE MURDER OF MARY LUBIN.

24 AND JUST AS IN THE GUILT PHASE OF THE TRIAL, THE  
25 FOREMAN WILL SELECT ONE OF THE TWO CHOICES WHICH I'VE

1 ALREADY TOLD YOU WHAT THEY SAY, AND THEN SIGN AND DATE  
2 THE VERDICT FORM WHEN ALL OF YOU HAVE AGREED ON A  
3 VERDICT. EXCUSE ME, WHEN YOU HAVE AGREED HOW YOU ARE  
4 GOING TO VOTE ON THE PENALTY.

5 YOU WILL NOW RETIRE TO CONSIDER YOUR  
6 RECOMMENDATION. WHEN YOU HAVE REACHED AN ADVISORY  
7 SENTENCE IN CONFORMITY WITH THESE INSTRUCTIONS, THAT  
8 FORM OF RECOMMENDATION SHOULD BE SIGNED BY YOUR FOREMAN  
9 AND RETURNED TO THE COURT.

10 COUNSEL, APPROACH THE BENCH, PLEASE.

11 (BENCH CONFERENCE.)

12 THE COURT: ANY OBJECTIONS TO THE INSTRUCTIONS AS  
13 READ?

14 MR. BARCH: NO.

15 THE COURT: AND THE VERDICT FORM, AND YOU HAVE  
16 READ ALL OF IT?

17 MR. BARCH: I HAVE.

18 THE COURT: AND THIS IS WHAT I ACTUALLY SAID, SO  
19 YOU MIGHT WANT TO TAKE THIS WITH YOU.

20 MR. ASHTON: WHAT I WAS GOING TO SUGGEST, IT MIGHT  
21 BE QUICKER IF I COULD SEE IF ESTA CAN TYPE THAT IN WITH  
22 THE COPY ON HERE.

23 THE COURT: AND CUT IT AND MOVE IT DOWN, BECAUSE  
24 IT WON'T FIT RIGHT IN THERE.

25 MR. ASHTON: IT MIGHT WHEN IT IS TYPED, THOUGH.

1 THE COURT: I DON'T THINK IT IS A PROBLEM IF YOU  
2 CAN GET IT DONE.

3 (IN OPEN COURT.)

4 THE COURT: WHAT I WILL BE DOING IS SENDING A COPY  
5 OF THE INSTRUCTIONS THAT I HAVE JUST READ TO YOU BACK  
6 WITH YOU AND THE VERDICT FORMS. SO WE WILL BE IN RECESS  
7 UNTIL RETURN OF THE RECOMMENDATION.

8 (THEREUPON, THE JURY LEAVES THE COURTROOM.)

9 THE COURT: JOANNA HUGHES AND LEWIS LANSING, YOU  
10 ARE OUR TWO ALTERNATES. SO WE DID NOT MEAN TO SEND YOU  
11 ALL BACK THERE. WHAT WE CAN DO IS RELEASE YOU FROM YOUR  
12 JURY DUTY AT THIS TIME. DO WE HAVE THEIR CERTIFICATES?  
13 IS THERE ANYTHING ELSE FOR THE RECORD BEFORE WE RECESS?

14 MR. ASHTON: NOTHING FOR THE STATE, YOUR HONOR.

15 MR. BARCH: NOTHING, YOUR HONOR.

16 THE COURT: OKAY. MR. WINDOM, ARE YOU SATISFIED  
17 WITH YOUR TRIAL SO FAR?

18 THE DEFENDANT: YES, MA'AM.

19 THE COURT: OKAY. WE WILL BE IN RECESS.

20 (RECESS.)

21 THE COURT: WE HAVE THE STATE, THE DEFENSE AND MR.  
22 WINDOM HERE. AND I UNDERSTAND THEY HAVE REACHED AN  
23 ADVISORY SENTENCE. IS THERE ANYTHING WE NEED TO PUT ON  
24 THE RECORD BEFORE THE JURY COMES BACK?

25 MR. ASHTON: NOT FROM THE STATE, YOUR HONOR.

1 MR. BARCH: NOTHING, YOUR HONOR.

2 THE COURT: DEFENSE? OKAY, THEN LET'S BRING IN  
3 THE JURY.

4 (THEREUPON, THE JURY ENTERS THE COURTROOM.)

5 THE COURT: I UNDERSTAND YOU HAVE A  
6 RECOMMENDATION.

7 THE FOREMAN: YES, MA'AM; WE DO.

8 THE COURT: WOULD YOU PLEASE HAND IT TO THE COURT  
9 DEPUTY, ONE OF YOU, PLEASE? MADAM CLERK, WOULD YOU  
10 PLEASE PUBLISH THESE?

11 THE CLERK: CASE NUMBER CR92-1305, INFORMATION,  
12 COUNT ONE, MURDER IN THE FIRST DEGREE. STATE OF FLORIDA  
13 VERSUS CURTIS WINDOM. VERDICT; COUNT ONE, A MAJORITY OF  
14 THE JURY BY A VOTE OF TWELVE TO ZERO ADVISE AND  
15 RECOMMEND TO THE COURT THAT IT IMPOSE THE DEATH PENALTY  
16 UPON CURTIS WINDOM FOR THE FIRST-DEGREE MURDER OF JOHNNY  
17 LEE.

18 VERDICT AS TO COUNT TWO, THE MAJORITY OF THE JURY  
19 BY A VOTE OF TWELVE TO ZERO ADVISE AND RECOMMEND TO THE  
20 COURT THAT IT IMPOSE THE DEATH PENALTY UPON CURTIS  
21 WINDOM FOR THE FIRST-DEGREE MURDER OF VALERIE DAVIS.

22 VERDICT; COUNT THREE, THE MAJORITY OF THE JURY BY  
23 A VOTE OF TWELVE TO ZERO ADVISE AND RECOMMEND TO THE  
24 COURT THAT IT IMPOSE THE DEATH PENALTY UPON CURTIS  
25 WINDOM FOR THE FIRST-DEGREE MURDER OF MARY LUBIN. SO

1 SAY WE ALL, ORLANDO, FLORIDA, DATED THIS 23RD DAY OF  
2 SEPTEMBER, 1992.

3 THE COURT: WOULD THE DEFENSE LIKE THE JURY  
4 POLLED?

5 MR. BARCH: NO, YOUR HONOR.

6 MR. ASHTON: NO, YOUR HONOR.

7 THE COURT: OKAY, AT THIS TIME, WE HAVE A JURY  
8 RECOMMENDATION, ADVISORY RECOMMENDATION, AND WE WILL SET  
9 THIS FOR SENTENCING ON OCTOBER THE 2ND AT 8:30 IN THE  
10 MORNING. AND I'LL RELEASE THE JURY FROM YOUR DUTY AT  
11 THIS TIME. WE NEED YOUR JURY BUTTONS, AND YOUR  
12 CERTIFICATES WILL BE IN THE MAIL.

13 ONE ADVANTAGE YOU HAVE, ONE PRIVILEGE YOU HAVE AS  
14 JURORS IS THAT ALTHOUGH I'VE TOLD YOU ALL ALONG YOU  
15 DON'T DISCUSS THIS CASE EVEN AMONG YOURSELVES OR WITH  
16 ANYONE ELSE, AT THIS TIME IT IS UP TO YOU WHETHER YOU  
17 CHOOSE TO TALK TO ANYONE ABOUT IT OR NOT.

18 SOMETIMES PEOPLE WILL ASK YOU ABOUT IT. NOBODY  
19 CAN FORCE YOU TO DO IT UNLESS IT IS BY COURT ORDER. BUT  
20 YOU CERTAINLY DON'T HAVE TO UNLESS YOU WANT TO. BUT YOU  
21 ARE FREE TO TALK ABOUT THE CASE WITH ANYONE YOU CHOOSE  
22 AT THIS POINT. I THANK YOU FOR YOUR TIME. YOU ARE  
23 EXCUSED FROM JURY DUTY THIS WEEK; THANK YOU.

24 (THEREUPON, THE JURY LEAVES THE COURTROOM.)

25 THE COURT: IS THERE ANYTHING ELSE FOR THE RECORD

1 BEFORE WE RECESS FOR THE EVENING?

2 MR. ASHTON: I HAVE ONE QUESTION THAT MR. BARCH  
3 INDICATED AT SOME POINT THAT HE WAS GOING TO ASK THE  
4 COURT TO PRESENT ADDITIONAL EVIDENCE JUST TO THE COURT.  
5 BASED ON PROCEDURES SET FORTH BY THE SUPREME COURT, THE  
6 COURT WOULD HAVE TO HEAR THAT AND THEN SUBSEQUENTLY  
7 PREPARE A WRITTEN ORDER AND THEN SENTENCE EITHER, I  
8 DON'T KNOW IF THE DEFENSE IS STILL REQUESTING THAT OR IF  
9 THE COURT IS GOING TO ENTERTAIN THAT.

10 IF SO, WE WILL HAVE TO HAVE ANOTHER PROCEEDING  
11 BEFORE OCTOBER 2ND AND BEFORE, OF COURSE, HAVE TIME FOR  
12 THE STATE TO RESPOND.

13 THE COURT: WHAT I DO WANT FROM THE DEFENSE IS A  
14 LIST OF ALL THE MITIGATORS ENUMERATED ONE, TWO, THREE,  
15 FOUR, FIVE, THAT WAY, OF ALL THE MITIGATORS THAT YOU  
16 FEEL ARE APPROPRIATE IN THIS CASE. I WANT THAT WITHIN  
17 FIVE DAYS. I WOULD SAY WEDNESDAY OF NEXT WEEK WOULD BE  
18 REASONABLE; WEDNESDAY MORNING.

19 MR. BARCH: WHEN DID YOU SAY, WEDNESDAY OF NEXT  
20 WEEK?

21 THE COURT: WELL, FIVE WORKING DAYS IS WEDNESDAY  
22 OF NEXT WEEK. SINCE I'VE SET SENTENCING FOR FRIDAY OF  
23 NEXT WEEK, THAT GIVES ME ONLY TWO DAYS. WELL, ONE,  
24 BECAUSE IT IS 8:30 IN THE MORNING. NOW, I'M NOT SURE  
25 WHAT ELSE YOU ARE SUGGESTING THAT WE HAVE IN THIS CASE.



1 MR. ASHTON: I AM BASICALLY NOT SUGGESTING WE DO  
2 ANYTHING. MR. BARCH INDICATED THAT HE WOULD LIKE THE  
3 OPPORTUNITY TO PRESENT ADDITIONAL ACTUAL TESTIMONY TO  
4 THE COURT THAT THEY DID NOT PRESENT TO THE JURY.

5 MY RESPONSE WAS, OF COURSE, THAT I OBJECTED TO  
6 THAT. IF THAT IS GOING TO BE DONE, IT WOULD HAVE TO BE  
7 DONE BEFORE TEN TWO. BECAUSE WHEN YOU COME INTO COURT  
8 ON TEN TWO, YOU HAVE GOT TO HAVE IT ALREADY DONE. SO IF  
9 THAT IS GOING TO HAPPEN, IT HAS GOT TO BE BEFORE THEN SO  
10 THE COURT CAN RESPOND TO THAT.

11 MR. BARCH: ACTUALLY, WHAT I WAS GOING TO REQUEST,  
12 AND I WOULD AGREE THAT THERE IS NO REQUIREMENT THAT YOU  
13 DO SO. I THINK IT IS WITHIN YOUR DISCRETION THAT YOU  
14 REQUEST A PRE-SENTENCE INVESTIGATION. AFTER ALL, WE ARE  
15 TALKING HERE ABOUT A PERSON WHO IS --

16 THE COURT: YOU ARE RIGHT. IF HE HAS NO PRIOR  
17 CONVICTIONS, SO THEN WE CAN'T DO IT BY OCTOBER 2ND, I  
18 CAN ASSURE YOU.

19 MR. BARCH: EXACTLY, AND THEN WHEN I SAID PRESENT  
20 ADDITIONAL MITIGATING EVIDENCE OR INFORMATION, I DIDN'T  
21 NECESSARILY MEAN FULL BLOWN TESTIMONY IN ANOTHER  
22 HEARING. BUT I THINK YOU ARE ALLOWED TO CONSIDER ANY  
23 EVIDENCE THAT I CAN SUBMIT TO YOU.

24 THE COURT: IF WE ARE GOING TO ORDER A PSI, WE  
25 CANNOT HAVE SENTENCING FOR SIX MORE WEEKS. IT TAKES

1 THAT LONG TO GET IT.

2 MR. BARCH: COULD I CONFER WITH CURTIS AS TO  
3 WHETHER OR NOT HE WANTS TO DO THAT AND LET YOU KNOW BY  
4 TOMORROW THEN OR --

5 THE COURT: SURE, IF YOU WANT TO LET ME KNOW  
6 TOMORROW.

7 MR. BARCH: I WOULD REQUEST THAT AND ADVISE IT. I  
8 DON'T KNOW HOW HE FEELS. HE MAY WANT TO THINK ABOUT IT.  
9 HE MAY NOT UNDERSTAND WHERE I'M COMING FROM, BUT --

10 THE COURT: ALL RIGHT, THEN WE WON'T SET THE  
11 SENTENCING YET. I HAD SAID OCTOBER 2ND. WE WILL NOT DO  
12 IT, BECAUSE A PSI WILL TAKE LONGER THAN A WEEK. IF YOU  
13 CALL MY OFFICE TOMORROW, THEN WE WILL SEND OUT NOTICE  
14 BASED ON WHAT YOU DECIDE YOU WANT TO DO. I STILL WANT  
15 THE MITIGATORS WITHIN ONE WEEK.

16 MR. BARCH: YES, MA'AM.

17 THE COURT: WE WILL BE IN RECESS.

18 (THEREUPON, THE PROCEEDINGS WERE CONCLUDED.)  
19  
20  
21  
22  
23  
24  
25

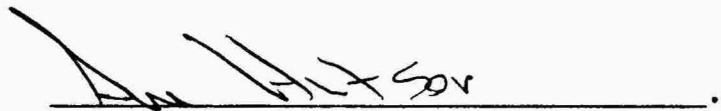
## C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF ORANGE )

I, SUE HUTSON, RPR, OFFICIAL COURT REPORTER OF THE NINTH JUDICIAL CIRCUIT OF FLORIDA, DO HEREBY CERTIFY PURSUANT TO FLORIDA STATUTE 29, THAT I WAS AUTHORIZED TO AND DID REPORT IN STENOGRAPHIC SHORTHAND THE FOREGOING PROCEEDINGS AND THAT THEREAFTER MY STENOGRAPH SHORTHAND NOTES WERE TRANSCRIBED TO TYPEWRITTEN FORM BY THE PROCESS OF COMPUTER-AIDED TRANSCRIPTION, AND THAT PAGES 3 THROUGH 112 CONTAIN A TRUE AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES TAKEN THEREIN.

WITNESS MY HAND THIS 18TH DAY OF JANUARY, A.D. 1993, IN THE CITY OF ORLANDO, COUNTY OF ORANGE, STATE OF FLORIDA.



SUE HUTSON, RPR  
REGISTERED PROFESSIONAL REPORTER

CAPITAL CASE

No. \_\_\_\_\_

---

IN THE  
**Supreme Court of the United States**

---

**CURTIS WINDOM,**  
*Petitioner,*  
  
**v.**  
  
**STATE OF FLORIDA,**  
*Respondents.*

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
FLORIDA SUPREME COURT

---

**APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI**

---

**DEATH WARRANT SIGNED**  
**Execution Scheduled: August 28, 2025, at 6:00 p.m.**

---

**APPENDIX N**

Circuit Court for the Ninth Judicial Circuit, Orange County, Florida,

Transcript of Postconviction Evidentiary Hearing –

Volume 15, PC-R492-686, PCTr.1 – 195

MAR 25 2002

IN THE CIRCUIT COURT OF THE CLERK, SUPREME COURT  
NINTH JUDICIAL CIRCUIT, IN AND BY  
FOR ORANGE COUNTY, FLORIDA

CASE NO: CR92-1305  
SUPREME COURT NO: SC01-2706

INFORMATION FOR:  
1) FIRST DEGREE MURDER  
2) FIRST DEGREE MURDER  
3) FIRST DEGREE MURDER  
4) ATTEMPTED FIRST DEGREE MURDER

STATE OF FLORIDA

PLAINTIFF,

vs.

CURTIS WINDOM

DEFENDANT,

TRANSCRIPT OF RECORD  
VOLUME 15

HONORABLE STAN STRICKLAND

492-686

1 IN THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT  
2 CRIMINAL JUSTICE DIVISION,  
3 IN AND FOR ORANGE COUNTY, FLORIDA

4 STATE OF FLORIDA,

5 PLAINTIFF,

6 VS.

CASE NO: CR92-1305\_  
VOLUME I OF V

7 CURTIS WINDOM

8 DEFENDANT./

ORIGINAL

9 MOTION FOR POSTCONVICTION RELIEF

10 BEFORE THE HONORABLE

11 STAN STRICKLAND

12 JUNE 4 - 7, 2001

13 REPORTER: SUSAN L. MCGEE, CSR, RPR, RMR  
14 ORANGE COUNTY COURTHOUSE  
ORLANDO, FLORIDA 32801

15 A P P E A R A N C E S:

16 **CHRIS LERNER, ESQUIRE**  
17 ASSISTANT STATE ATTORNEY  
18 415 NORTH ORANGE AVENUE  
ORLANDO, FLORIDA 32801  
19 APPEARING ON BEHALF OF THE PLAINTIFF

20 **BRETT STRAND, ESQUIRE**  
21 **SCOTT MARIO, ESQUIRE**  
CAPITAL COLLATERAL COUNSEL  
22 NORTHERN REGION  
P.O. DRAWER 5498  
TALLAHASSEE, FLORIDA 32314-5498  
23 APPEARING ON BEHALF OF THE DEFENDANT

24

25

LYDIA G.  
CLERK CIRCUIT  
ORANGE COUNTY

2001 NOV - 1 A P M

FILED IN OFFICE  
CRIMINAL DIVISION  
ENGSTROM

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## P R O C E E D I N G S

**THE CLERK:** CR92-1305, CURTIS WINDOM.

**THE COURT:** ALL RIGHT. THIS IS THE 3.850  
THAT WE HAVE SCHEDULED FOLLOWING A HUFF HEARING  
SOME TIME BACK. AND IF YOU'D LIKE TO MAKE AN  
OPENING STATEMENT, WE'LL DO THAT IN A MOMENT.

PRIOR TO US GOING ON THE RECORD, THE STATE  
HANDED TO ME A MOTION TO EXCLUDE EXPERT ATTORNEY  
WITNESS EVIDENCE. AND AS SOON AS YOU'VE HAD AN  
OPPORTUNITY TO LOOK THAT OVER -- ARE YOU JUST NOW  
GETTING THIS?

**MR. MARIO:** YES, YOUR HONOR.

**MR. STRAND:** YOUR HONOR, IT WAS JUST HANDED  
TO ME.

**THE COURT:** TAKE A MOMENT TO LOOK IT OVER,  
AND THEN LET'S TALK ABOUT THAT.

**MR. STRAND:** JUDGE, I, WITH THE CAVEAT I MAY  
THINK OF SOMETHING LATER, I THINK I'M PREPARED TO  
RESPOND TO MR. LERNER'S MOTION TO EXCLUDE EXPERT  
ATTORNEY EVIDENCE.

**THE COURT:** LET MR. LERNER GO AHEAD, IF  
THERE IS ANYTHING ELSE HE WANTS TO TELL ME. I  
HAVE THE MOTION, WHY DON'T WE GO AHEAD AND MARK  
THIS.

1 GO AHEAD, MR. LERNER.

2 MR. LERNER: IT'S BEEN MY EXPERIENCE IN  
3 YEARS PAST WHEN I HAD ARGUED 3.850 MOTIONS IT WAS  
4 THE CUSTOM OF THE DEFENSE COUNSEL TO CALL A  
5 PERSON WHO WAS TERMED TO BE AN EXPERT IN THE  
6 STRICKLAND STANDARD, AND, BASICALLY, SECOND --  
7 KIND OF SECOND-GUESS OR GIVE OPINION, AS WAS DONE  
8 IN THE PROVENZANO CASE, DIRECTLY SAYING THAT THE  
9 ACTS AND OMISSIONS OF THE DEFENSE ATTORNEY IN  
10 TRIAL WERE INEFFECTIVE, AND GIVE AN OPINION ON  
11 THAT. AND WHAT I'M ARGUING IS, THAT'S IMPROPER.

12 NOW, SINCE THAT TIME, I HAVE SEEN DEFENSE  
13 ATTORNEYS IN 3.850 MOTIONS CALL EXPERTS BASICALLY  
14 FOR THE PURPOSE OF STATING WHAT THE STANDARD WAS  
15 AT ANY GIVEN TIME THROUGH THEIR PERSONAL  
16 EXPERIENCE. I DON'T THINK THAT'S IMPROBABLE  
17 BECAUSE IT DOESN'T INVOLVE THE RENDITION OF ANY  
18 OPINION.

19 THE COURT: WHEN YOU SAY, THE STANDARD, WHAT  
20 ARE YOU TALKING ABOUT?

21 MR. LERNER: IN OTHER WORDS, USUALLY THESE  
22 CASES ARE BROUGHT, 3.850 HEARINGS, YEARS AND  
23 DECADES EVEN PAST THE TIME THAT THE TRIAL TOOK  
24 PLACE. AND THERE HAS ALMOST ALWAYS BEEN AN  
25 EVOLUTION AND GROWTH IN THE STRATEGY AND SKILLS

1 OF THE DEFENSE BAR IN GENERAL. AND, SO, I HAVE  
2 SEEN DEFENSE COUNSEL CALL EXPERIENCED ATTORNEYS  
3 WHO WERE PRACTICING AT THAT TIME TO SAY, WELL, IT  
4 WAS COMMON PRACTICE TO DO SUCH AND SUCH. I DON'T  
5 THINK THAT I'M NOT ASKING YOU TO EXCLUDE THAT,  
6 BECAUSE I THINK THAT'S APPROPRIATE. BUT WHAT I  
7 AM ASKING YOU TO EXCLUDE AND WHAT I DO THINK IS  
8 INAPPROPRIATE IS FOR AN ATTORNEY TO SAY I'M  
9 GIVING MY OPINION AS AN EXPERT THAT WHAT THIS  
10 ATTORNEY DID IN THIS PARTICULAR CIRCUMSTANCE WAS  
11 INEFFECTIVE ASSISTANCE OF COUNSEL.

12 THE COURT: OKAY. LET ME HEAR FROM  
13 MR. STRAND.

14 MR. STRAND: THANK YOU, YOUR HONOR. AS TO  
15 MR. LERNER'S MOTION, I THINK HIS MOTION IS  
16 WELL-TAKEN. IN FACT, AN EXPERT ON THE STRICKLAND  
17 STANDARD FOR INEFFECTIVENESS IS NOT ALLOWED TO  
18 TESTIFY TO THE ULTIMATE QUESTION, WE CAN'T HAVE A  
19 LAWYER GET UP THERE AND SAY, THIS ATTORNEY, HIS  
20 ACTIONS WERE INEFFECTIVE. BUT WHAT THAT  
21 INEFFECTIVENESS EXPERT CAN TESTIFY TO WERE THE  
22 COMMUNITY STANDARDS FOR SIXTH AMENDMENT AND  
23 EIGHTH AMENDMENT REPUTATION AT THE TIME OF THE  
24 TRIAL, AND IN MR. WINDOM'S CASE, THAT WOULD BE  
25 1992.

1           AND, ALSO, THAT EXPERT, WHAT THAT EXPERT CAN  
2           DO IS ASSIST THE COURT BY FAMILIARIZING THE COURT  
3           WITH CASE LAW AND ALSO THE STANDARDS THAT WOULD  
4           APPLY TO THE ATTORNEY'S ACTIONS, AND THEN THIS  
5           HONORABLE COURT WOULD MAKE THE DECISION WHETHER  
6           OR NOT THE ATTORNEY'S ACTIONS WERE REASONABLE  
7           UNDER THE SIXTH AND EIGHTH AMENDMENT.

8           IN THE PAST, YOUR HONOR, I FOUND THAT THIS  
9           IS A GREAT ASSISTANCE TO THE TRIAL COURT BECAUSE  
10          IT WILL GIVE YOU THE OPPORTUNITY TO LISTEN TO  
11          SOMEONE WHO'S ESTEEMED WITHIN THE LAW AND GIVE  
12          THE COURT AN OPPORTUNITY TO ASK QUESTIONS OF THE  
13          WITNESS ALSO, AND IT WILL ASSIST YOU IN  
14          EVALUATING THE FACTS OF THE CASE UNDER THE LAW.

15          NOW, WE DON'T ANTICIPATE CALLING  
16          MR. NORGARD, WHO'S A BOARD CERTIFIED CAPITAL  
17          TRIAL LAWYER TO -- WE'RE NOT GOING TO ASK HIM THE  
18          ULTIMATE QUESTION, WAS TRIAL COUNSEL IN THIS  
19          MATTER INEFFECTIVE. WE ARE GOING TO ASK HIM  
20          ABOUT THE STANDARDS IN 1992. AND WE WILL APPLY  
21          SOME HYPOTHETICAL SITUATIONS TO THE LEGAL  
22          STANDARDS THAT WERE IN PLACE IN 1992 TO GIVE  
23          EXAMPLES TO WHAT THE REASONABLE PRACTICE WOULD  
24          HAVE BEEN IN 1992. AND SO, JUDGE, I WOULD ASK  
25          THAT YOU ALLOW ROBERT NORGARD TO TESTIFY.

1           **THE COURT:**   MR. LERNER.

2           **MR. LERNER:**   WELL, AGAIN, I DON'T THINK IT'S  
3           PROPER TO ASK HIM TO WHAT A REASONABLE PRACTICE  
4           IS IN 1992.   HE CAN TESTIFY FROM FIRST-HAND  
5           RECOLLECTION WHAT WAS BEING DONE AT THAT TIME BY  
6           ATTORNEYS IN THAT AREA OF PRACTICE.

7           **THE COURT:**   ALL RIGHT.   BASICALLY THE CASE  
8           YOU'VE HANDED ME FOR THIS PROPOSITION IS  
9           PROVENZANO, AND I THINK IT STATES THE LAW  
10          CORRECTLY, AS I UNDERSTAND IT, WHICH IS AS  
11          FOLLOWS:   I'M READING FROM PAGE 4 OF THAT  
12          DECISION.   INQUIRIES INTO STRATEGIC OR TACTICAL  
13          DECISIONS CHALLENGED AS INEFFECTIVE ASSISTANCE OF  
14          COUNSEL INVOLVE BOTH A FACTUAL AND LEGAL  
15          COMPONENT.   THE QUESTION OF WHETHER AN ATTORNEY'S  
16          ACTIONS WERE ACTUALLY THE PRODUCT OF A TACTICAL  
17          OR STRATEGIC DECISION IS AN ISSUE OF FACT, AND A  
18          STATE COURT'S DECISION CONCERNING THAT ISSUE IS  
19          PRESUMPTIVELY CORRECT.   BY CONTRAST, THE QUESTION  
20          OF WHETHER THE STRATEGIC AND TACTICAL DECISION IS  
21          REASONABLE ENOUGH TO FALL WITHIN THE WIDE RANGE  
22          OF PROFESSIONAL COMPETENCE IS AN ISSUE OF LAW NOT  
23          ONE OF FACT.

24          OBVIOUSLY SOMEBODY CAN GET UP AND TESTIFY  
25          AND TELL ME ABOUT WHAT THE STANDARDS WERE, BUT TO

1 MERELY GET UP AND QUESTION MR. LEINSTER'S TACTICS  
2 AND REASONING INVOLVING A DECISION HE MADE IS NOT  
3 FAIR GAME. SO I THINK WE ALL AGREE ON THAT,  
4 RIGHT?

5 MR. STRAND: YES.

6 THE COURT: SO YOUR MOTION TO STRIKE AS AN  
7 EXPERT WITNESS NORGARD IS DENIED. HOWEVER, WE  
8 WILL LIMIT HIS TESTIMONY TO ONLY FACTUAL MATTERS  
9 AND STANDARDS AS THEY EXISTED IN 1992, ALL RIGHT?  
10 OKAY.

11 MR. STRAND: YOUR HONOR, I HAVE ONE OTHER  
12 HOUSEKEEPING MATTER. WE HAD FILED A PETITION FOR  
13 WRIT OF TESTIFICANDUM FOR ANDRE WALKER AND ALBERT  
14 WINDOM, LISTED DEFENSE WITNESSES, AND BOTH OF  
15 THOSE INDIVIDUALS ARE INCARCERATED IN DEPARTMENT  
16 OF CORRECTIONS. AS OF TODAY THEY HAVE NOT BEEN  
17 TRANSPORTED. MR. WALKER, WE FILED THAT THREE  
18 WEEKS AGO AND YOU SIGNED IT, AND I THINK ABOUT  
19 TWO WEEKS AGO WE DID MR. ALBERT WINDOM, AND  
20 THEY'RE NOT HERE AS OF LAST NIGHT. THEY WEREN'T  
21 IN THE JAIL.

22 THE COURT: OKAY. I REMEMBER SIGNING THEM.  
23 I DON'T KNOW WHY THEY'RE NOT HERE.

24 MR. LERNER: YOUR HONOR, I WAS SUSPICIOUS OF  
25 THE WAY THOSE LOOKED. I HAD MY SECRETARY CHECK,



1 I BELIEVE, LAST WEEK, AND I ALSO COMMUNICATED  
2 WITH MR. STRAND THAT I HAD DOUBTS ABOUT WHETHER  
3 OR NOT TRANSPORTATION WOULD ACT ON THOSE. SO, MY  
4 SECRETARY CALLED AND THEY SAID, NO, THEY PROBABLY  
5 WOULDN'T TRANSPORT JUST ON THOSE, AND SHE CALLED  
6 OR CONTACTED YOUR SECRETARY WHO WAS SUPPOSED TO  
7 DO UP SOME ADDITIONAL TRANSPORT ORDERS. AND I  
8 DON'T KNOW IF THOSE WERE DONE OR NOT. I HOPE SO.

9 THE COURT: I HAVE NO EARTHLY IDEA.

10 MR. LERNER: DO YOU REMEMBER SIGNING THEM  
11 LAST WEEK?

12 THE COURT: NO. NO. I REMEMBER THE ORDERS  
13 THAT MR. STRAND IS TALKING ABOUT, BUT I DON'T  
14 REMEMBER OR RECALL HAVING SEEN ANYTHING ELSE.  
15 ARE THOSE PEOPLE THAT WOULD BE TESTIFYING THIS  
16 MORNING?

17 MR. STRAND: NO, YOUR HONOR, THEY COULD VERY  
18 WELL TESTIFY TOMORROW OR ON WEDNESDAY.

19 THE COURT: DEPENDING ON WHERE THEY'RE  
20 COMING FROM, I'M NOT EVEN SURE IF IT'S GOING TO  
21 BE POSSIBLE, BUT WE'LL MAKE A PHONE CALL TO FIND  
22 OUT. LET'S ASSUME THAT WE CAN GET THEM HERE,  
23 ALTHOUGH, OBVIOUSLY, THEY'RE NOT GONNA BE HERE  
24 THIS MORNING, WHAT ELSE CAN WE GO FORWARD WITH?

25 MR. STRAND: OH, TODAY?

1 THE COURT: YEAH.

2 MR. STRAND: WELL, JUDGE, I THINK I WON'T BE  
3 MAKING A FORMAL OPENING STATEMENT, BUT KIND OF  
4 GIVE YOU A GAME PLAN.

5 THE COURT: THAT'S FINE.

6 MR. STRAND: AND WHAT WE INTEND TO DO ON  
7 BEHALF OF MR. WINDOM THIS MORNING, WE WILL BE  
8 CALLING DR. JONATHAN PINCUS. HE'S A NEUROLOGIST.  
9 THIS TESTIMONY WILL RELATE TO MR. WINDOM'S MENTAL  
10 STATE AS IT WOULD APPLY TO THE GUILT PHASE AND TO  
11 THE PENALTY PHASE ISSUES IN THIS CASE.

12 MR. MARIO WILL BE PRESENTING THAT TESTIMONY.  
13 NEXT WE'LL PRESENT DR. CRAIG BEAVER. HE'S A  
14 BOARD CERTIFIED NEUROPSYCHOLOGIST. AGAIN, TO  
15 MR. WINDOM'S MENTAL STATE AS TO GUILT PHASE AND  
16 PENALTY PHASE ISSUES.

17 AND AFTER THAT, WE WILL BE CALLING SOME LAY  
18 WITNESSES, WITNESSES THAT WILL TESTIFY ABOUT WHAT  
19 THEY OBSERVED IN MR. WINDOM'S BEHAVIOR IN THE  
20 WEEKS PRIOR TO THE INCIDENT IN QUESTION, AND ALSO  
21 THEY WILL TESTIFY TO BACKGROUND, MEDICATION, AS  
22 WHAT WOULD BE ANTICIPATED UNDER LIKE HITCHCOCK  
23 VERSUS FLORIDA OR PROFITT (PH) VERSUS FLORIDA,  
24 THE NONSTATUTORY MITIGATION ABOUT HIS CHILDHOOD  
25 AND SO FORTH. THAT'S WHERE WE INTEND TO GO

1           TODAY.

2           TOMORROW MORNING MR. LEINSTER WILL BE  
3           TESTIFYING VIA TELEPHONE PURSUANT TO YOUR ORDER,  
4           AND THEN AFTER MR. LEINSTER, WE'LL BE CALLING  
5           KURT BARCH, WHO'S AN ATTORNEY WHO ASSISTED  
6           MR. LEINSTER. EXCUSE ME, FIRST WILL BE  
7           DR. KIRKLAND, ROBERT KIRKLAND, A PSYCHIATRIST WHO  
8           DID THE PRETRIAL EVALUATION. SO IT'S KIND OF  
9           WHERE WE'RE GOING. AND WE WILL BE ADDRESSING  
10          TODAY, IN PARTICULAR, THE INEFFECTIVE ASSISTANCE  
11          OF COUNSEL ISSUES AS TO THE MENTAL STATE DURING  
12          GUILT, THE MENTAL STATE AT PENALTY. AND ALSO  
13          THERE IS A SEPARATE CLAIM, AKE VERSUS OKLAHOMA,  
14          WHICH IS THE CLAIM THAT TALKS ABOUT EIGHTH  
15          AMENDMENT CLIENT -- DEFENDANT'S RIGHT TO HAVE --  
16          HAVING A COMPETENT MENTAL HEALTH EVALUATION. SO  
17          THAT'S WHAT WE PLAN ON DOING, SIR.

18                **THE COURT:** OKAY. ANY OTHER DISCUSSION  
19          BEFORE WE GET GOING?

20                **MR. LERNER:** YOUR HONOR, THE ONLY COMMENT I  
21          WOULD HAVE, AND I THINK I WILL MAKE A VERY SHORT  
22          OPENING STATEMENT, BECAUSE THIS IS A SOMEWHAT  
23          UNUSUAL CASE. THIS PARTICULAR CASE, I BELIEVE,  
24          IS UNUSUAL BECAUSE, UNLESS YOU CLOSELY EXAMINE  
25          THE TRIAL TRANSCRIPT, THERE'S A GREAT DEAL OF

1 MATERIAL THAT MR. LEINSTER WAS ABLE TO KEEP OUT  
2 IN THE TRIAL. HE MENTIONS THAT PASSING -- IN  
3 PASSING DURING SOME OF HIS ADDRESSES, AND I'M  
4 TALKING ON THE TRIAL RECORD TO THE TRIAL COURT  
5 WHEN THE JURY'S OUT OF THE ROOM.

6 BUT BASICALLY IN THIS CASE I HOPE TO BRING  
7 OUT THE FACT THAT MR. WINDOM HAD A CONSIDERABLE  
8 BUSINESS IN SELLING DRUGS IN THE WINTER GARDEN  
9 AREA. AND IN THE TIME LEADING UP TO THIS  
10 INCIDENT, HE HAD BEEN ARRESTED A NUMBER OF TIMES,  
11 AND THAT THOSE ARRESTS INVOLVED A CONFIDENTIAL  
12 INFORMANT. THE REASON I THINK THIS IS  
13 SIGNIFICANT IS, WHEN YOU LOOK AT THE WAY IN WHICH  
14 THE MURDERS WERE COMMITTED, I BELIEVE THAT THERE  
15 IS A TIE-IN AS FAR AS MOTIVE TO THE BUSINESS THAT  
16 MR. WINDOM HAD BEEN ENGAGED IN LEADING UP TO THAT  
17 TIME. HE -- THE TIME THAT HE SHOT THE PEOPLE,  
18 THAT HE SHOT IN WINTER GARDEN, HE NOT ONLY HAD  
19 BEEN ARRESTED MULTIPLE TIMES, BUT HIS DWELLING OR  
20 AT LEAST THE DWELLING OF ONE OF THE VICTIMS WITH  
21 WHOM HE LIVED AND HAD A CHILD, VALERIE, WAS THE  
22 SUBJECT OF A SEARCH WARRANT, MONEY WAS TAKEN, AND  
23 BASICALLY HE WAS, I BELIEVE, BEING PUT IN AN  
24 INCREASING STRESSFUL SITUATION BECAUSE OF THE  
25 BUSINESS HE WAS OPERATING. AND I THINK THAT'S

1        REALLY SIGNIFICANT IN THIS PARTICULAR CASE  
2        BECAUSE, ALTHOUGH HE MAY HAVE BEEN LABORING UNDER  
3        SOME DEGREE OF BRAIN DAMAGE, I BELIEVE THAT THE  
4        EVIDENCE WILL SHOW THAT THIS PARTICULAR CRIME WAS  
5        MUCH MORE THOUGHT OUT. IT WAS NOT SOMETHING THAT  
6        WAS DONE JUST AS A MATTER OF FRENZY BECAUSE HE  
7        COULD NOT CONTROL HIMSELF. IT WAS MORE A MATTER  
8        OF BAD JUDGMENT IN EXECUTING A PLAN THAT HE  
9        CARRIED OUT OVER A PERIOD OF TIME. THAT HE  
10       MENTIONED TO OTHER PEOPLE THAT HE WAS ANGRY WITH  
11       THE FIRST VICTIM, JOHNNIE LEE, THAT HE WAS ANGRY  
12       WITH HIM OVER MONEY.

13                AGAIN, I BELIEVE THIS PROBABLY HAD A TIE-IN  
14       INTO THE DRUG SITUATION. THAT HE WENT OUT AND  
15       OBTAINED AMMUNITION, AND WENT OUT AND OBTAINED A  
16       GUN, AND ONLY THEN DID HE COME BACK AND BEGIN  
17       SHOOTING. AND THE PEOPLE HE SHOT SEEMED TO HAVE  
18       A TIE-IN, AGAIN, I WILL ARGUE TO THIS DRUG  
19       BUSINESS THAT HE WAS RUNNING, AND THE  
20       FRUSTRATIONS THAT HE WAS, AND ANGER THAT HE WAS  
21       EXPERIENCING WITH THE DRUG BUSINESS.

22                I THINK IT'S IMPORTANT TO EVALUATE ANY  
23       CLAIMS OF BRAIN DAMAGE AND WHETHER OR NOT THIS  
24       SHOULD HAVE BEEN PRESENTED STRATEGICALLY, NUMBER  
25       ONE. AND ALSO WHETHER OR NOT THE BRAIN DAMAGE

1 WAS SUFFICIENTLY MITIGATING THAT IT WOULD HAVE  
2 MADE A DIFFERENCE IN THE OUTCOME OF THE CASE.  
3 BECAUSE I WILL ARGUE THE SCENARIO LEADING UP TO  
4 THE SHOOTING ALSO APPEARS TO BE ONE THAT CREATED  
5 A STRONG MOTIVE FOR HIM TO BE ANGRY AT THE PEOPLE  
6 THAT HE SHOT, AND THAT THAT IS WHY HE SHOT THEM.

7 THE COURT: THANK YOU.

8 MR. STRAND: YOUR HONOR, I HAVE NO RESPONSE,  
9 BUT I HAVE A REQUEST OF THE COURT, IF I COULD.  
10 MR. WINDOM IS AT COUNSEL TABLE, AND I WOULD NOTE  
11 FOR THE RECORD THAT MR. WINDOM IS IN LEG SHACKLES  
12 AND HE HAS A WAIST CHAIN WHICH IS CONNECTED TO  
13 SOME HANDCUFFS. AND I WOULD ASK THE COURT IF THE  
14 COURT WOULD CONSIDER ALLOWING MR. WINDOM TO HAVE  
15 THE HANDCUFFS REMOVED FROM THE WAIST CHAIN IN  
16 ORDER FOR HIM TO BE ABLE TO WRITE NOTES TO ME AND  
17 THAT DURING THE PROCEEDING. THE WAY IT IS NOW,  
18 HIS HANDS ARE BELOW THE TABLE, HE CANNOT LIFT  
19 THEM UP.

20 THE COURT: LET ME CHECK ON HOW COURT  
21 SECURITY -- THAT'S MORE THAN A JUDICIAL SECURITY.  
22 I KNOW HE'S A MAXIMUM SECURITY PERSON. AND LET  
23 ME JUST HAVE MY DEPUTY CHECK AND SEE IF THERE  
24 IS -- OR I'LL TALK WITH HIM, SEE IF THERE IS ANY  
25 SORT OF PROCEDURE NECESSARY. MY INCLINATION IS

1           GENERALLY TO JUST GIVE YOU AN OUTRIGHT NO. BUT  
2           IF YOU FEEL LIKE IT'S IMPORTANT, I'LL CERTAINLY  
3           LOOK INTO IT, AND I'LL DO THAT RIGHT NOW.

4           LET ME HAVE, BILL, IF YOU'LL COME UP FOR A  
5           MOMENT. LET ME HAVE THE LAWYERS COME UP AS WELL.  
6           I JUST GOT A NOTE THAT I NEED TO DISCUSS WITH  
7           YOU.

8                               (WHEREUPON, THERE WAS AN  
9                               OFF-THE-RECORD BENCH CONFERENCE.)

10          **THE COURT:** OKAY. MR. STRAND, WE WILL GO  
11          AHEAD AND TRY TO ACCOMMODATE YOUR CLIENT AS BEST  
12          WE CAN. THE DEPUTIES ARE WORKING ON IT. WHY  
13          DON'T WE GO AHEAD AND GET STARTED.

14          **MR. STRAND:** THANK YOU, YOUR HONOR.

15          **THE COURT:** READY?

16          **MR. STRAND:** JUDGE, IS IT ALL RIGHT IF WE  
17          HAVE A BOTTLE OF WATER IN YOUR COURTROOM?

18          **THE COURT:** SURE IT IS.

19          **MR. STRAND:** GO AHEAD AND CALL HIM.

20          **MR. MARIO:** YOUR HONOR, AT THIS TIME, THE  
21          DEFENSE CALLS DR. JONATHAN PINCUS.

22          THEREUPON,

23                               JONATHAN PINCUS, M.D.

24          WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY  
25          SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

## DIRECT EXAMINATION

BY MR. MARIO:

Q GOOD MORNING. COULD YOU TELL US YOUR NAME,  
PLEASE, FOR THE RECORD.

A MY NAME'S JONATHAN HENRY PINCUS, P-I-N-C-U-S.

Q WHAT'S YOUR CURRENT JOB, DR. PINCUS?

A I'M THE CHIEF OF NEUROLOGY AT THE WASHINGTON  
VETERANS AFFAIRS MEDICAL CENTER, THE CHAIRMAN OF  
NEUROLOGY THERE, AND PROFESSOR AT THE GEORGETOWN  
UNIVERSITY, SCHOOL OF MEDICINE.

Q YOU'RE A NEUROLOGIST?

A I'M A NEUROLOGIST.

Q CAN YOU DEFINE FOR US WHAT THE FIELD OF  
NEUROLOGY IS AND HOW MAYBE THAT DIFFERS FROM OTHER  
DISCIPLINES THAT STUDY THE BRAIN.

A SURE. NEUROLOGY IS A STUDY OF MEDICAL ILLNESS  
THAT AFFECTS THE BRAIN. THE BRAIN IS DISTINGUISHED AS  
THE ONLY ORGAN OF THE BODY THAT HAS TWO MEDICAL  
SPECIALTIES DIVIDED TO ITS ILLNESS, NEUROLOGY AND  
PSYCHIATRY. I MEAN, THE LIVER DOESN'T HAVE TWO KINDS OF  
HEMATOLOGISTS, OR THE HEART TWO KINDS OF CARDIOLOGISTS,  
BUT THE BRAIN HAS TWO KINDS OF DOCTORS DEVOTED TO ITS  
ILLNESS.

IN GENERAL, THE ILLNESS THAT NEUROLOGISTS  
DEAL WITH CONCERNS MOTOR SENSORY AND FUNCTION, SPEECH AND



1 MEMORY. THE DISORDERS THAT PSYCHIATRISTS DEAL WITH,  
2 THOSE THAT CONCERN THINKING AND BEHAVIOR.

3 OBVIOUSLY, THAT IS AN ARBITRARY  
4 DISTINCTION. AND THERE IS NO SUCH THING AS DISEASES OF  
5 THE BRAIN THAT DOESN'T HAVE SOME EFFECT ON THINKING AND  
6 BEHAVIOR, AND NO SUCH THING AS A DISORDER OF THINKING AND  
7 BEHAVIOR THAT ISN'T OCCURRING IN THE BRAIN.

8 PSYCHIATRIC ILLNESSES ARE TREATED WITH  
9 MEDICATIONS, SAME AS NEUROLOGY, SOMETIMES WITH THE SAME  
10 MEDICATIONS. SO THE DISTINCTION BETWEEN NEUROLOGY AND  
11 PSYCHIATRY THAT MAY HAVE ONCE SEEMED SO CLEAR BETWEEN THE  
12 MIND AND BRAIN IS BECOMING BLURRED, AND BOTH ARE --  
13 MEDICAL DOCTORS ARE DEALING WITH THE SAME ORGAN.

14 HOWEVER, BECAUSE OF THE HISTORY OF  
15 MEDICINE, THERE ARE CERTAIN DISEASES WHICH ARE REFERRED  
16 TO PSYCHIATRISTS AND SPECIALTIES IN THOSE DISEASES, AND  
17 OTHERS FOR NEUROLOGISTS.

18 Q SO WOULD THIS SORT OF OVERLAP? IS IT COMMON IN  
19 YOUR PROFESSION TO ENCOUNTER PATIENTS WITH MENTAL  
20 ILLNESSES?

21 A SURELY. I MEAN, AS PART OF MY -- PART OF MY  
22 JOB AS A NEUROLOGIST IS TO DETERMINE WHETHER SOMEBODY HAS  
23 A MENTAL ILLNESS THAT WOULD BE BETTER TAKEN CARE OF BY A  
24 PSYCHIATRIST OR A NEUROLOGIST, THAT WILL BE BETTER TAKEN  
25 CARE OF BY ME. IS THE PATIENT DEPRESSED, MANIC? DOES

1 THE PATIENT HAVE FRONTAL DAMAGE? WHY IS THIS PERSON  
2 PSYCHOTIC? IS IT BECAUSE OF NEUROLOGICAL DISEASE, IS IT  
3 BECAUSE OF PSYCHIATRY DISEASE.

4 I SAW SOMEBODY JUST ACTUALLY DAY BEFORE  
5 YESTERDAY WITH THAT EXACT QUESTION AT THE VETERANS  
6 HOSPITAL ON THE PSYCHIATRIST SERVICE. SO I'M CONSULTED  
7 FREQUENTLY BY PSYCHIATRISTS AND BY INTERNISTS FOR  
8 ANSWERING JUST EXACTLY THAT KIND OF QUESTION.

9 Q I SEE. AT THIS TIME IF IT WOULD ASSIST THE  
10 COURT, I JUST PRODUCED YOUR C.V., WHICH I THINK YOU HAVE  
11 A COPY. I'M SHOWING A COPY TO OPPOSING COUNSEL.

12 MR. LERNER: NO OBJECTION, YOUR HONOR.

13 MR. MARIO: MAY THIS BE ADMITTED AS DEFENSE  
14 EXHIBIT ONE, YOUR HONOR?

15 THE COURT: SURE, I'LL MARK IT.

16 BY MR. MARIO:

17 Q CONTINUING ON, DOCTOR, DO YOU HAVE A  
18 SPECIALIZATION WITHIN THE FIELD OF NEUROLOGY?

19 A I DO. MOVEMENT DISORDERS AND BEHAVIOR  
20 DISORDERS ARE MY TWO AREAS OF SPECIAL INTEREST WITHIN  
21 NEUROLOGY, THOUGH I'M A GENERAL NEUROLOGIST.

22 Q AND A MOVEMENT DISORDER WOULD BE SOMETHING  
23 LIKE, WHAT, FOR EXAMPLE?

24 A PARKINSON'S DISEASE.

25 Q OKAY. AND BEHAVIORAL NEUROLOGY, WHAT IS THAT?

1           A     WELL, THERE'S, AS I SAID, THERE IS A LARGE  
2     OVERLAP BETWEEN PSYCHIATRIC, THE DISEASES THAT  
3     PSYCHIATRIC -- THE MENTAL ILLNESS THAT PSYCHIATRISTS CARE  
4     FOR AND ILLNESS THAT NEUROLOGISTS CARE FOR. I WROTE A  
5     TEXTBOOK WITH A PSYCHIATRIST CALLED BEHAVIOR NEUROLOGY  
6     THAT DEALS WITH THAT BORDERLINE, EPILEPSY, MANIA,  
7     DEPRESSION, SCHIZOPHRENIA. EXACTLY.

8           Q     IS THIS THAT TEXT BOOK?

9           A     THAT'S THE TEXT BOOK.

10          Q     I'M SHOWING THE --

11          A     MOVEMENT DISORDER.

12          Q     -- BEHAVIOR NEUROLOGY, THE THIRD EDITION.

13          A     CORRECT.

14          Q     IS THIS CONSIDERED PRETTY MUCH STANDARD  
15     REFERENCE WORK IN THE FIELD?

16          A     IT HAS BEEN. IT'S A LITTLE OUTDATED. WE'RE  
17     WRITING THE FOURTH EDITION AS WE SPEAK. I HOPE IT WILL  
18     BE FINISHED WITHIN TWO WEEKS AND PUBLISHED NEXT SPRING.

19                **THE COURT:** BEFORE YOU ASK YOUR NEXT  
20     QUESTION, LET'S TAKE CARE OF MR. WINDOM'S CUFFS,  
21     THEN WE WILL CONTINUE.

22                **MR. MARIO:** SURE.

23                **THE COURT:** MR. STRAND, WE WILL SEE HOW THIS  
24     WORKS THIS MORNING. WE CAN ADDRESS IT LATER,  
25     JUST DEPENDING ON WHAT HAPPENS.

1           **MR. STRAND:** I'D LIKE TO THANK COURT  
2 SECURITY FOR TAKING -2-

3           **THE COURT:** MR. MARIO, PLEASE GO AHEAD.

4           **MR. MARIO:** THANK YOU.

5           **Q**     OKAY. DR. PINCUS, I THINK WE WERE DISCUSSING  
6 THE RELATIONSHIP BETWEEN THE BRAIN AND BEHAVIOR.

7           **A**     YES.

8           **Q**     HOW WOULD YOU DESCRIBE THAT?

9           **A**     WELL, ONE OF THE ISSUES THAT COMES UP ALL THE  
10 TIME IS VOLITION, FREE WILL, ET CETERA. LET ME USE AN  
11 ANALOGY THAT SOMETIMES MEDICAL STUDENTS FIND HELPFUL. IF  
12 YOU HAD A COMPOSER WHO WANTED TO GET HIS IDEA ACROSS TO  
13 AN AUDIENCE, THE ONLY WAY WHICH HE COULD DO THAT IS  
14 THROUGH THE MEANS OF HAVING A SYMPHONY ORCHESTRA,  
15 ACTUALLY PLAY IT, OTHERWISE HIS IDEA WOULD NOT BE ABLE TO  
16 BE BROUGHT THROUGH. IF THE PERFORMANCE IS A TERRIBLE  
17 PERFORMANCE, IT COULD BE BECAUSE OF ONE OF THREE THINGS.  
18 THE COMPOSER DID A ROTTEN JOB, THE ORCHESTRA DID A ROTTEN  
19 JOB, OR BOTH.

20                   IF YOU DO AN INVESTIGATION AND FIND OUT  
21 THAT THE ORCHESTRA WAS PLAYING ON BROKEN INSTRUMENTS, I  
22 THINK YOU HAVE TO CONCLUDE THAT THAT WAS PART OF THE  
23 REASON FOR THE POOR PERFORMANCE. IN THIS SITUATION, FREE  
24 WILL WOULD BE LIKE A COMPOSER. FREE WILL CAN ONLY BE  
25 EXPRESSED THROUGH THE BRAIN. IF THE BRAIN IS

1 DISORIENTED, THE EXPRESSION OF FREE WILL IS DISTORTED  
2 AND DAMAGED, AND THE REASON FOR IT IS THE BRAIN DISEASE.

3 Q HOW LONG HAVE YOU BEEN A NEUROLOGIST?

4 A FORTY YEARS.

5 Q AND JUST BRIEFLY, BECAUSE THE COURT ALREADY HAS  
6 A COPY OF YOUR C.V., JUST A BRIEF RUNDOWN OF YOUR  
7 EDUCATION AND TRAINING.

8 A I GRADUATED COLUMBIA COLLEGE OF PHYSICIANS AND  
9 SURGEONS. DID A YEAR OF INTERN, KING'S COUNTY HOSPITAL  
10 IN BROOKLYN IN MEDICINE, GENERAL MEDICINE. AND THEN DID  
11 THREE YEARS OF NEUROLOGY RESIDENCY AT YALE. AND I JOINED  
12 THE YALE FACULTY, REMAINED ON THE YALE FACULTY FROM 1964  
13 TO 1986.

14 I WAS MADE A FULL PROFESSOR IN 1974, AND  
15 STAYED ON THERE AS FULL PROFESSOR. OFFERED THE CHAIRMAN  
16 SPOT NEUROLOGY, GEORGETOWN, THAT'S WHY I MOVED TO  
17 WASHINGTON IN 1987.

18 JANUARY '87 I WAS CHAIRMAN OF NEUROLOGY AT  
19 GEORGETOWN FOR EIGHT OR NINE YEARS. THEN I RESIGNED THE  
20 CHAIRMANSHIP, STAYED ON AS PROFESSOR OF NEUROLOGY AT  
21 GEORGETOWN. RESIGNED ABOUT A YEAR AGO, AND WAS OFFERED  
22 TO BE CHIEF AT THE VA, AND TOOK THAT POSITION.

23 SO NOW I'M A PROFESSOR OF NEUROLOGY AT  
24 GEORGETOWN, ALTHOUGH MY SALARY IS COMING FROM THE VA.  
25 AND I -- ABOUT HALF THE GEORGETOWN MEDICAL CLASS COMES

1 THROUGH THE VA HOSPITAL TO LEARN NEUROLOGY UNDER MY  
2 AEGIS. AND THERE IS ABOUT ~~7~~ THERE IS SEVEN NEUROLOGISTS  
3 IN MY DEPARTMENT UNDER ME, AS WELL AS ANOTHER LARGE  
4 NUMBER OF NURSES, SOCIAL WORKERS, DIETICIANS,  
5 PHARMACISTS, ABOUT 50 PEOPLE ALTOGETHER.

6 Q OKAY. AND WHAT DOES IT MEAN TO BE BOARD  
7 CERTIFIED?

8 A WELL, THERE IS A QUALIFYING BOARD, THE AMERICAN  
9 BOARD OF PSYCHIATRY AND NEUROLOGY, WHICH CERTIFIES PEOPLE  
10 AFTER THEIR TRAINING AS COMPETENT IN PSYCHIATRY,  
11 NEUROLOGY, AND CHILD NEUROLOGY. AND I AM BOARD CERTIFIED  
12 IN NEUROLOGY AND IN CHILD NEUROLOGY.

13 I'M -- ACTUALLY, I WAS A PART OF THE, PART  
14 OF THE BOARD. IN OTHER WORDS, I WAS MAKING UP QUESTIONS.  
15 THERE ARE TWO PARTS OF THE EXAMINATION, THE WRITTEN  
16 EXAMINATION AND ORAL EXAMINATION. AND FOR MANY YEARS I  
17 WAS ON THE COMMITTEE THAT MADE UP THE QUESTIONS FOR THE  
18 WRITTEN EXAMINATION. AND I STILL PERFORM THE ORAL  
19 EXAMINATIONS. I JUST DID IN PHILADELPHIA ABOUT LESS THAN  
20 A MONTH AGO.

21 Q IS THIS ORGANIZATION DIFFERENT FROM THE  
22 AMERICAN ACADEMY OF NEUROLOGY?

23 A YES. THE AMERICAN ACADEMY OF NEUROLOGY IS A  
24 BROAD UMBRELLA ORGANIZATION TO WHICH ALL THE NEUROLOGISTS  
25 IN THE UNITED STATES BELONG, OR PRACTICALLY ALL. YOU

1 HAVE -- ALL YOU HAVE TO DO IS BE A NEUROLOGIST, OR EVEN  
2 WANT TO BE A NEUROLOGIST, ~~AND~~ YOU CAN BE A MEMBER OF THAT  
3 ORGANIZATION. IT HAS AN ANNUAL MEETING.

4 I RECENTLY ALSO, IN PHILADELPHIA, AT A  
5 DIFFERENT TIME, I WAS ON THE SCIENTIFIC ISSUES COMMITTEE  
6 OF THAT ORGANIZATION FOR SIX YEARS, AND WE CHOSE THE  
7 ANNUAL PROGRAM FOR THE ANNUAL MEETING AMONGST THE VARIOUS  
8 PAPERS THAT WERE SUBMITTED FOR PRESENTATION AT THAT  
9 MEETING, MANY HUNDREDS OF PAPERS. AND I AM A VICE  
10 PRESIDENT OF THAT ORGANIZATION FOR TWO YEARS, TOO.

11 Q ALL RIGHT. WE'VE ALREADY TALKED ABOUT YOUR  
12 TEXTBOOK, BEHAVIORAL NEUROLOGY. ARE THERE ANY OTHER  
13 PUBLICATIONS THAT YOU HAVE OUTSTANDING?

14 A YES. THERE IS ABOUT 130 ARTICLES AND CHAPTERS  
15 THAT I HAVE WRITTEN, MOST OF THEM PUBLISHED IN PEER  
16 REVIEW JOURNALS. THERE IS ALSO A BOOK THAT WAS JUST  
17 PUBLISHED CALLED, BASE INSTINCTS, WHAT MAKES KILLERS  
18 KILL, WHICH IS ABOUT MY INTEREST IN VIOLENCE AND MY  
19 EXPERIENCE IN VIOLENCE.

20 Q IN ADDITION TO RESEARCH AND TEACHING, DO YOU  
21 ALSO HAVE PATIENTS THAT YOU SEE ON A REGULAR BASIS FOR  
22 TREATMENT?

23 A YES, I HAVE A CLINIC STILL AT GEORGETOWN HALF A  
24 DAY A WEEK, IN WHICH I SEE ABOUT ANYWHERE FROM 12 TO 15  
25 PATIENTS PER WEEK, INCLUDING THREE OR FOUR NEW ONES. AND

1 THEN I HAVE A CLINIC AT THE VA WHICH IS GROWING. I SEE  
2 PATIENTS THERE, PRIVATE PATIENTS, VETERANS, FIVE OR SIX  
3 IN THE COURSE OF AN AFTERNOON. AND THEN I ACT AS  
4 CONSULTANT FOR THE RESIDENTS IN THEIR CLINIC FOR TWO OR  
5 THREE OTHER AFTERNOONS A WEEK, SO THAT I END UP SEEING  
6 ABOUT 20, 25 PATIENTS A WEEK. WHICH THAT HAS BEEN THE  
7 PATTERN OVER THE COURSE OF MY CAREER, I'VE SEEN ABOUT  
8 THAT NUMBER OF PATIENTS.

9 Q I UNDERSTAND THAT CURRENTLY SOME PATIENTS ARE  
10 CONGRESS PEOPLE?

11 A YES.

12 Q JANET RENO AS WELL?

13 A SHE'S ONE OF MY PATIENTS.

14 Q OKAY. WELL, BESIDES SEEING PATIENTS FOR  
15 TREATMENT --

16 A FORGIVE ME, I DON'T -- I'M NOT GIVING AWAY ANY  
17 CONFIDENCE HERE. SHE ANNOUNCED THE AMERICAN ACADEMY OF  
18 NEUROLOGY AND THANKED ME AND ANOTHER NEUROLOGIST WHO HAD  
19 TAKEN CARE OF HER PUBLICLY. SO THAT'S NOT A SECRET.

20 Q OKAY. IS THE BULK OF YOUR PRACTICE DEVOTED TO  
21 TEACHING AND RESEARCH?

22 A BULK OF MY PRACTICE IS -- WELL, THERE IS NO  
23 SUCH THING AS A PATIENT WHO'S A PRIVATE PATIENT NOT A  
24 TEACHING PATIENT. IN OTHER WORDS, I HAVE MEDICAL  
25 STUDENTS AND RESIDENTS WORKING WITH ME WHENEVER I SEE



1 PATIENTS. BUT MY CAREER HAS BEEN DIVIDED INTO TEACHING,  
2 RESEARCH AND PATIENT CARE KIND OF EQUALLY.

3 Q AND BESIDES SEEING PATIENTS FOR TREATMENT  
4 PURPOSES, ARE YOU SOMETIMES ASKED TO EVALUATE PATIENTS  
5 FOR PURPOSE OF TESTIFYING IN COURT LIKE TODAY?

6 A YES.

7 Q WOULD THAT BE PRIMARILY FOR THE DEFENSE OR THE  
8 PROSECUTION?

9 A THAT'S BEEN EXCLUSIVELY FOR THE DEFENSE REALLY  
10 OVER THE COURSE OF THE LAST 20, 25 YEARS. ONE CASE I WAS  
11 ASKED TO TESTIFY FOR THE PROSECUTION MANY YEARS AGO, AND  
12 I DID, BUT I HAVEN'T BEEN ASKED SINCE THEN.

13 Q WELL, IN THE CASES IN WHICH YOU'RE RETAINED AS  
14 AN EXPERT IN NEUROLOGY, DO YOU END UP TESTIFYING IN ALL  
15 OF THOSE CASES?

16 A NO, ONLY IN ABOUT A THIRD. AND THE REASONS FOR  
17 THAT ARE VARIED. ONE OF WHICH IS MY TESTIMONY MIGHT NOT,  
18 WOULD NOT BE USEFUL FOR THE DEFENSE, IN SUCH A CASE I  
19 WOULDN'T BE ASKED TO TESTIFY.

20 GIVE AN EXAMPLE OF TED BUNDY, WHO'S A  
21 FLORIDA GUY. I EXAMINED HIM. HE HAD NO NEUROLOGY  
22 ABNORMALITY, AND I WASN'T ASKED TO TESTIFY. SO THAT WAS  
23 ONE. BUT SOMETIMES IT'S JUST THAT THERE'S A DEAL WORKED  
24 OUT BETWEEN THE PROSECUTION AND DEFENSE, OR THE LESSER  
25 SENTENCE CONSIDERED.

1 I TEND TO GET INVOLVED ALMOST EXCLUSIVELY  
2 IN DEATH PENALTY OR POTENTIAL DEATH PENALTY CASES.

3 Q HAVE YOU BEEN QUALIFIED IN COURT THEN AS AN  
4 EXPERT IN THE FIELD OF NEUROLOGY?

5 A IN MOST OF THE STATES OF THE UNITED STATES,  
6 YES.

7 Q DOES THAT INCLUDE THE STATE OF FLORIDA?

8 A YES.

9 MR. MARIO: YOUR HONOR, I WOULD MOVE  
10 DR. PINCUS BE QUALIFIED AS AN EXPERT IN NEUROLOGY  
11 WITH A SPECIALIZATION IN BEHAVIOR.

12 MR. LERNER: NO OBJECTION.

13 THE COURT: HE'S ADMITTED AS AN EXPERT.

14 BY MR. MARIO:

15 Q DOCTOR PINCUS, WHAT IS A NEUROLOGICAL  
16 EVALUATION?

17 A WELL, A NEUROLOGIC EVALUATION CONSISTS OF TWO  
18 PARTS, THE HISTORY AND PHYSICAL. AND THE HISTORY I'M  
19 LOOKING FOR FACTORS THAT MIGHT, DEPENDING WHAT THE CHIEF  
20 COMPLAINT IS, MIGHT LEAD TO BRAIN -- MIGHT HAVE CAUSED  
21 BRAIN DAMAGE. AND I WANT ALSO TO SEE WHETHER THERE ARE  
22 FEATURES THAT SUGGEST THAT THERE IS BRAIN DAMAGE, AND  
23 WHEN IT WAS SUSTAINED AND HOW SEVERE IT WAS, WHAT THE  
24 SEQUELA, THE RESULTS OF IT MIGHT BE.

25 THE PHYSICAL EXAMINATION ATTEMPTS TO MAKE

1 DIFFERENT PARTS OF THE NERVOUS SYSTEM WORK AND SEE HOW  
2 THEY'RE WORKING. THE NEUROLOGIC EXAMINATION IS VERY  
3 PHYSIOLOGICAL IN THE SENSE THAT, ASK A PERSON TO MOVE HIS  
4 EYES IN ONE DIRECTION OR ANOTHER, YOU'RE TESTING A LOT OF  
5 FUNCTION. TEST STRENGTH, I'M SEEING HOW THE BRAIN IS  
6 WORKING IN RELATION TO THAT STRENGTH TESTING. WHEN I ASK  
7 SOMEBODY TO SHOW HOW COORDINATED, I'M CHECKING OUT LARGE  
8 SECTIONS OF THE BRAIN. AND I THINK AS I'M DOING IT OF  
9 THE PART OF THE BRAIN THAT I'M TESTING. THERE'S CERTAIN  
10 PARTS OF THE BRAIN THAT ARE EASIER TO TEST THAN OTHERS.

11 GENERALLY SPEAK ABOUT THE PARTS, BRAIN  
12 PART OF THE NERVOUS SYSTEM THAT ARE -- LIE BELOW THE  
13 TEMPORAL, BELOW THE PART OF THE BRAIN THAT IS THINKING  
14 ARE EASIER TO TEST FOR.

15 THE PARTS OF THE BRAIN THAT ARE USED FOR  
16 THINKING ARE MORE DIFFICULT TO TEST FOR. AND YOU NEED TO  
17 DO A LOT OF DIFFERENT KINDS OF TESTS IN ORDER TO  
18 DETERMINE WHETHER THOSE PARTS OF THE BRAIN ARE INTACT.

19 THERE ARE, THERE ARE TESTS OF SENSATION,  
20 MOVEMENT, COORDINATION, SPEECH, BUT ALSO MEMORY, AND A  
21 VARIETY OF COMPLICATED MANEUVERS THAT YOU ASK THE PATIENT  
22 TO ENGAGE IN THAT REQUIRE ATTENTION. THOSE ARE GOOD  
23 TESTS OF FRONTAL LOBE FUNCTION.

24 Q WELL, WHAT ABOUT SOME TYPE OF BRAIN IMAGING  
25 PROCEDURE, MRI OR PET SCAN, NECESSARY TO DO SOMETHING

1     LIKE THAT IN ORDER TO DETERMINE IF SOMEONE HAS  
2     ABNORMALITY?

3           A     NO.   THE MRI SCAN IS WONDERFUL.   I MEAN, IT'S A  
4     FANTASTIC INNOVATION.   IT'S GREAT FOR STROKES, TUMORS,  
5     MULTIPLE SCLEROSIS AND SOME VASCULAR DETERMINATIONS.   IT  
6     IS USELESS IN MOST OF THE DAILY BREAD AND BUTTER ISSUES  
7     THAT NEUROLOGISTS DEAL WITH.   IT DOES NOT SHOW ANYTHING,  
8     CHARACTERISTICS IN ALZHEIMER DISEASES, IN MIGRAINES, IN  
9     EPILEPSY, IN PARKINSON'S DISEASE.   NOW -- GAIT  
10    DISTURBANCE.   YOU JUST DON'T LEARN ANYTHING FROM THE MRI  
11    SCAN.

12                   NOW, I AM -- I HATE TO SAY THAT BECAUSE  
13    IT'S SUCH A WONDERFUL TEST.   BUT THE FACT OF THE MATTER  
14    IS, IT'S NOT USEFUL IN MOST OF THE DISEASES THAT I DEAL  
15    WITH, AND ON A DAY-TO-DAY BASIS.

16                   AND OBVIOUSLY AN ABNORMALITY MEANS A LOT.  
17    A PERSON CAN HAVE A NORMAL NEUROLOGICAL EXAMINATION,  
18    NORMAL PSYCHOLOGICAL TEST AND ABNORMAL MRI SHOWING A  
19    BRAIN TUMOR.   HE'S GOT A BRAIN TUMOR, NO QUESTION ABOUT  
20    THAT.   HE CAN HAVE A TERRIBLE MOVEMENT DISORDER, NORMAL  
21    PSYCHOLOGICAL TESTS UNDER A NORMAL MRI, HE'S GOT A  
22    MOVEMENT DISORDER.   THE ABNORMAL TEST IS THE TEST THAT  
23    DETERMINES -- IS THE DETERMINANT OF THE DIAGNOSIS.   NOW,  
24    THE NORMAL -- NORMAL TESTS DON'T GIVE YOU A CERTIFICATE  
25    OF NORMALCY.   ALL THEY DO, THEY DON'T SHOW AN

1 ABNORMALITY. BUT A TEST THAT'S ABNORMAL IS CRITICAL.  
2 GENERALLY SPEAKING, IF -- LIKE IN A CASE LIKE THIS WHERE  
3 WE HAVE AN ABNORMAL NEUROLOGICAL EXAM AND ABNORMAL  
4 NEUROLOGICAL TEST, WE DON'T NEED AN MRI. I KNOW HE  
5 DOESN'T HAVE A BRAIN TUMOR. THAT'S NOT AN ISSUE, NOT A  
6 PROGRESSIVE CONDITION.

7 Q WERE YOU ASKED TO CONDUCT A NEUROLOGICAL  
8 EVALUATION IN THIS CASE, DEFENDANT IN THIS CASE, CURTIS  
9 WINDOM?

10 A I WAS.

11 Q DID YOU PREPARE A PRELIMINARY, OR REPORT RATHER  
12 THAT SUMMARIZES YOUR PRELIMINARY FINDING?

13 A YES. AND ON OCTOBER 17TH OF LAST YEAR.

14 Q OKAY. DO YOU HAVE A COPY OF THAT REPORT WITH  
15 YOU?

16 A I DO.

17 MR. MARIO: I'VE PREVIOUSLY PROVIDED  
18 OPPOSING COUNSEL WITH A COPY OF DR. PINCUS'S  
19 REPORT, YOUR HONOR. AT THIS TIME I ASK THIS BE  
20 ADMITTED AS DEFENSE EXHIBIT 2.

21 THE COURT: ANY OBJECTION?

22 MR. LERNER: NO, YOUR HONOR.

23 THE COURT: IT'S ADMITTED.

24 BY MR. MARIO:

25 Q AS PART OF YOUR EVALUATION OF MR. WINDOM, DID

1 YOU REVIEW ANY BACKGROUND MATERIALS?

2 A I DID. THERE WERE TWO OR THREE VOLUMES THAT  
3 YOU HAD SENT ME.

4 MR. MARIO: MAY I APPROACH THE WITNESS, YOUR  
5 HONOR?

6 THE COURT: YES.

7 MR. MARIO: KEEP THIS HERE FOR A SECOND.

8 Q COULD YOU JUST TELL US IN GENERAL WHAT THESE  
9 CONSISTED OF.

10 A WELL, THESE WERE BACKGROUND MATERIALS THAT  
11 WERE -- REPORT OF DR. KIRKLAND, AN EXCERPT FROM THE TRIAL  
12 TESTIMONY OF KEN WILLIAMS, OTHER PARTS OF TRIAL  
13 TESTIMONY. THIS IS SOME OF THE CLOSING ARGUMENT, THE  
14 DEFENSES'S PENALTY PHASE OPENING ARGUMENT, SENTENCING  
15 ORDER, POLICE REPORTS, TRANSCRIPTS OF WITNESSES,  
16 INTERVIEWS CONDUCTED BY THE WINTER GARDEN POLICE,  
17 AFFIDAVITS OF VARIOUS INDIVIDUALS WHO WERE ACQUAINTED  
18 WITH CURTIS WINDOM, DISCUSSED HIS DEMEANOR AT THE TIME OF  
19 THE OFFENSE, AS WELL AS HIS HISTORY OF MENTAL PROBLEMS,  
20 AND CLOSED HEAD INJURY. AND THERE WERE INVESTIGATIVE  
21 REPORTS THAT HAD BEEN PREPARED BY YOUR OFFICE.

22 Q OKAY.

23 A I'VE SEEN A NUMBER OF THINGS SUBSEQUENTLY.

24 Q RIGHT. I WANTED TO ACTUALLY ASK YOU, THESE  
25 MATERIALS THAT WE'RE DISCUSSING RIGHT NOW, THE EXCERPT

1 FROM THE TRIAL TRANSCRIPT, THE SENTENCING ORDER AND SO  
2 FORTH, WERE SOME OF THESE THINGS PROVIDED TO YOU BEFORE  
3 YOU PREPARED THAT REPORT DATED OCTOBER 17TH, 2000?

4 A YES.

5 Q AND SOME YOU'VE ALSO -- SOME MATERIALS AFTER  
6 YOU PREPARED THE REPORT?

7 A RIGHT.

8 Q SO YOUR REPORT NOT NECESSARILY REFLECTS THINGS  
9 THAT WERE IN THOSE MATERIALS?

10 A CORRECT.

11 Q IS THAT CORRECT?

12 OKAY. IN PARTICULAR, THE VOLUME THAT'S  
13 BEEN DESIGNATED THERE AS VOLUME III OF THOSE BACKGROUND  
14 MATERIALS, DID YOU RECEIVE THIS VOLUME AFTER PREPARING  
15 YOUR REPORT?

16 A I BELIEVE I DID, YES.

17 Q AND JUST BASICALLY WHAT DOES THAT CONSIST OF?

18 A THESE ARE THE AFFIDAVITS OF GLORIA WINDOM, LENA  
19 WINDOM, MAE TATUM, EDDIE LEE WINDOM, MARY JACKSON, FRANK  
20 MASSEY, WILLIE MAE RICH, JULIE HARP, ANDRE WALKER, ADAM  
21 MANUAL, ROY EDWARD LEINSTER, ROBERT KIRKLAND, AND SCHOOL  
22 RECORDS OF CURTIS WINDOM -- WINDOM, SORRY.

23 Q DR. PINCUS, ARE THESE THE SORTS OF MATERIALS  
24 THAT ARE NORMALLY RELIED ON BY EXPERTS IN YOUR FIELD?

25 A YES.

1 Q DID YOU RELY UPON THE MATERIALS?

2 A I -- I -- YES, ~~IN~~ MY COMING TO MY CONCLUSION  
3 NOW. AND OF COURSE I DIDN'T HAVE THEM WHEN I WROTE MY  
4 REPORT, BUT, YES.

5 MR. MARIO: YOUR HONOR, I'D ASK THAT THESE  
6 BE ADMITTED AS DEFENSE EXHIBIT 3.

7 THE COURT: STATE?

8 MR. LERNER: NO OBJECTION.

9 THE COURT: ALL RIGHT. THEY'RE ADMITTED.

10 MR. MARIO: I DON'T KNOW IF YOU WANT THIS AS  
11 COMPOSITE BECAUSE THERE'S THREE VOLUMES, THREE A,  
12 B, C. WOULD THAT BE ACCEPTABLE?

13 THE COURT: THAT'S FINE.

14 BY MR. MARIO:

15 Q IN ADDITION TO THESE BACKGROUND MATERIALS  
16 COMPILED BY MR. WINDOM'S COUNSEL, DID YOU ALSO REVIEW A  
17 REPORT OF NEUROPSYCHOLOGICAL EXAMINATION CONDUCTED BY  
18 DR. CRAIG BEAVER?

19 A YES, SUBSEQUENT TO MY REPORT.

20 Q DID YOU ALSO WATCH A VIDEOTAPE OF MR. WINDOM  
21 TAKEN AT THE POLICE STATION SHORTLY AFTER HIS ARREST IN  
22 1992?

23 A YES.

24 MR. MARIO: AND, FOR THE RECORD, THAT VIDEO  
25 CASSETTE WAS ADMITTED AT TRIAL AS DEFENSE EXHIBIT



1       1 ON AUGUST 27TH, 1992. I DON'T KNOW IF YOU WANT  
2       TO --

3               **MR. STRAND:** NO, JUST MARK IT FOR THIS CASE.

4               **MR. MARIO:** YOUR HONOR, IF IT WOULD BE  
5       ACCEPTABLE TO THE STATE, I WOULD MOVE THIS BE  
6       INTRODUCED AS POSTCONVICTION DEFENSE EXHIBIT  
7       FOUR, I THINK WE'RE UP TO THE VIDEO CASSETTE.

8               **MR. LERNER:** I DON'T KNOW WHERE IT CAME  
9       FROM. WHERE DID YOU OBTAIN IT?

10              **MR. MARIO:** THIS IS A COPY OF THE TAPE THAT  
11       WAS PROVIDED TO US, WINTER GARDEN POLICE  
12       DEPARTMENT FILES.

13              **THE COURT:** HAVE YOU HAD AN OPPORTUNITY TO  
14       VIEW IT?

15              **MR. LERNER:** I HAD AN OPPORTUNITY -- NO, NOT  
16       THAT ONE. I'VE HAD AN OPPORTUNITY TO REVIEW THE  
17       ONE IN EVIDENCE. I HAVE A COPY.

18              **THE COURT:** IF YOU'D LIKE, YOU CAN COMPARE  
19       THIS TO THAT AT A RECESS AND MAKE SURE THEY'RE  
20       THE SAME THING. SUBJECT TO THAT, I ASSUME YOU  
21       DON'T HAVE ANY OBJECTION?

22              **MR. LERNER:** NOT IF IT MATCHES MY  
23       RECOLLECTION.

24              **THE COURT:** IT WILL BE A COPY. ALL RIGHT.  
25       SO WE'LL GO AHEAD AND I GUESS WE CAN MARK IT FOR

1 IDENTIFICATION PURPOSES AND WE'LL ADMIT IT AFTER  
2 MR. LERNER'S HAD A CHANCE TO VIEW IT AND MAKE  
3 SURE IT SHOWS THE SAME THING AS WHAT HE HAS.

4 THE CLERK: THAT'S GOING TO BE  
5 IDENTIFICATION LETTER D. IT'S NOT ADMITTED INTO  
6 EVIDENCE.

7 THE COURT: CORRECT. SUBJECT TO FURTHER  
8 DISCUSSION.

9 MR. MARIO: I'M GIVING A COPY TO OPPOSING  
10 COUNSEL NOW.

11 THE COURT: THANK YOU. HOW MANY COPIES DO  
12 YOU HAVE?

13 MR. MARIO: QUITE A FEW.

14 Q IN TERMS OF BACKGROUND INFORMATION, IS THERE  
15 ANYTHING ELSE YOU RELIED ON EITHER BEFORE OR AFTER  
16 PREPARING YOUR REPORT?

17 A WELL, THERE WAS DR. MERIN'S DEPOSITION THAT I  
18 READ AS WELL. THERE WERE DEPARTMENT OF CORRECTIONS  
19 RECORDS. LET'S SEE.

20 Q WHAT TYPE OF RECORDS WERE THOSE?

21 A THOSE WERE RECORDS OF MEDICAL THINGS THAT  
22 HAPPENED TO MR. WINDOM IN THE COURSE OF HIS  
23 INCARCERATION.

24 Q SUBSEQUENT TO HIS ARREST IN THIS CASE?

25 A RIGHT, OVER THE LAST EIGHT YEARS.

1 Q AND DR. MERIN, IS THAT DR. SIDNEY MERIN?

2 A RIGHT.

3 Q OKAY. GETTING TO THE EXAM ITSELF, WHEN DID  
4 YOUR EXAMINATION OF MR. WINDOM TAKE PLACE?

5 A I HAD AN OPPORTUNITY TO SPEAK WITH THE FAMILY.

6 Q COULD YOU TELL US -- I'M SORRY, LET ME BACK UP  
7 THERE. YOU HAVE A CHANCE TO SPEAK WITH ANY OF  
8 MR. WINDOM'S FAMILY?

9 A YES, HIS MOTHER AND HIS, SOME OF HIS SISTERS  
10 AND BROTHER.

11 Q OKAY. AND WHEN WAS THAT?

12 A JUST TODAY.

13 Q OKAY.

14 A THIS MORNING.

15 Q TURNING TO THE EXAM THAT YOU DID IN THIS CASE,  
16 WHEN DID THAT EXAMINATION TAKE PLACE?

17 A ON JULY 9TH OF 2000.

18 Q WHERE?

19 A AT THE UNION CORRECTIONAL FACILITY, WHICH IS  
20 NEXT TO STARKE.

21 Q OKAY. AND WHAT DID YOUR EXAMINATION CONSIST  
22 OF?

23 A HISTORY AND PHYSICAL.

24 Q ALL RIGHT. NOW, TAKING -- I THINK IN A FEW  
25 MINUTES RUN DOWN, RUN DOWN SOME OF THOSE. BEFORE WE GET

1 INTO THE PARTICULARS, CAN YOU SUMMARIZE WHAT YOUR  
2 FINDINGS WERE?

3 A SURE. MR. WINDOM IS OR WAS PSYCHOTIC AT THE  
4 TIME OF HIS -- OF THE INCIDENT, IS MENTALLY ILL, AND WAS  
5 NEUROLOGICALLY IMPAIRED, ESPECIALLY THE FRONTAL LOBE AND  
6 PARTS OF THE BRAIN TO WHICH THE FRONTAL LOBE CONNECTS.

7 Q OKAY. NOW, I THINK YOU HAVE A REFERENCE BOOK  
8 WITH YOU?

9 A YES.

10 Q WOULD THAT ASSIST YOU IN EXPLAINING YOUR  
11 TESTIMONY TO THE COURT, AS FAR AS WHAT YOUR FINDINGS  
12 WERE --

13 A YES.

14 Q -- IN THIS CASE?

15 OKAY. I THINK YOU CAN REFER TO IT.

16 MR. MARIO: YOUR HONOR, WE HAVE WHAT'S  
17 CALLED THE COLOR ATLAS OF ANATOMY. IT HAS SOME  
18 ILLUSTRATIONS THAT WILL ASSIST DR. PINCUS IN  
19 TESTIFYING. AND I WOULD LIKE TO, WHEN WE GET A  
20 BREAK, MAKE SOME COLOR PHOTOCOPIES OF THIS  
21 ILLUSTRATION, HAVE THEM MARKED AS AN EXHIBIT.

22 IN THE MEANTIME, MAYBE HAVE HIM POINT OUT  
23 THE PAGES. AND THEY'RE FLAGGED. WE CAN JUST  
24 IDENTIFY THEM FOR THE RECORD LIKE THAT. THAT  
25 WILL BE EXPEDITIOUS FOR THE CLERK.

1           **THE WITNESS:** PAGE 96 AND 98 WERE THE  
2           ILLUSTRATIONS THAT I ~~WANT~~ TO SHOW.

3   **BY MR. MARIO:**

4           **Q**     OKAY. AND COULD YOU HOLD THIS UP AS YOU'RE  
5           TALKING WHENEVER IT BECOMES --

6           **A**     WHENEVER IT COMES UP, OKAY.

7           **Q**     NOW, YOU SAID THAT MR. WINDOM HAS FRONTAL LOBE  
8           BRAIN DAMAGE. IS THERE ANYTHING ELSE YOU SAID?

9           **A**     HE'S GOT MORE DAMAGE TO THE LEFT SIDE OF HIS  
10          BRAIN THAN TO THE RIGHT, BUT HE HAS IT ON BOTH SIDES OF  
11          THE BRAIN. AND HE -- AND HE'S PSYCHOTIC. OR NOT AT THE  
12          TIME THAT I SAW HIM, BUT DESCRIBED DELUSIONS,  
13          HALLUCINATIONS.

14          **Q**     ARE YOUR OPINIONS CONCERNING MR. WINDOM'S BRAIN  
15          DAMAGE AND MENTAL ILLNESS WITHIN A REASONABLE DEGREE OF  
16          MEDICAL CERTAINTY?

17          **A**     YES, I THINK SO.

18          **Q**     OKAY. LET'S TALK ABOUT THE FRONTAL LOBE DAMAGE  
19          FIRST OF ALL. MAYBE IT WOULD HELP IF YOU BEGAN BY  
20          POINTING TO THE FRONTAL LOBES FOR THE COURT.

21          **A**     THIS IS THE -- THESE ARE PICTURES OF THE BRAIN  
22          COLOR CODED. THIS IS THE BRAIN LOOKING AT THE LEFT SIDE  
23          OF THE BRAIN FROM THE SIDE.

24                 **MR. MARIO:** EXCUSE ME. CAN YOU SEE THOSE  
25          ALL RIGHT?

1           **THE COURT:** YES, I'M FINE.

2           **THE WITNESS:** THIS IS THE FRONT AND THIS IS  
3 THE BACK. AND ON THE LEFT SIDE IS THE FRONT AND  
4 RIGHT SIDE IS THE BACK. THE PART OF THE BRAIN  
5 THAT IS USED FOR THINKING IS DIVIDED UP INTO  
6 LOBES. THERE IS AN OCCIPITAL LOBE HERE IN GREEN,  
7 TEMPORAL LOBE HERE IN YELLOW, PARIETAL LOBE WHICH  
8 IS IN BLUE, AND FRONTAL LOBE WHICH IS IN RED.  
9 THE OCCIPITAL LOBE HAS A LOT TO DO WITH VISION.  
10 PARIETAL LOBE HAS TO DO WITH READING, WRITING,  
11 ARITHMETIC. THE TEMPORAL LOBE HAS, THIS PART OF  
12 THE TEMPORAL, THE BACK PART, THE PART THAT'S  
13 CLOSEST TO THE PARIETAL HAS TO DO WITH SPEECH,  
14 UNDERSTANDING THE SPEECH AND LANGUAGE. AND  
15 MEDIAL PORTION OF THE TEMPORAL, YOU CANNOT SEE IN  
16 THIS PICTURE, IT'S TAKEN FROM THE SIDE, HAS TO DO  
17 WITH MEMORY.

18           SO READING, WRITING, ARITHMETIC, MEMORY,  
19 SPEECH AND VISION ARE THIS POSTERIOR PART. THE  
20 INTERPRETATION OF SENSATION OF TOUCH AND  
21 IDENTIFICATION OF OBJECTS PLACED IN YOUR HAND IS  
22 PARIETAL LOBE.

23           THE FRONTAL LOBE, AS YOU CAN SEE, IS A VERY  
24 SUBSTANTIAL PART OF THE BRAIN. IT'S ACTUALLY  
25 ABOUT 40 PERCENT OF THE CORTEX ALTOGETHER. THE

1 MOST POSTERIOR PART OF THE FRONTAL, LITTLE STRIP  
2 CALLED THE MOTOR STRIP, THAT'S THE PART THAT'S  
3 RESPONSIBLE FOR MOVING PARTS OF YOUR BODY. AND  
4 THE OPPOSITE SIDE, THE LEFT SIDE OF THE BRAIN  
5 CONTROLS THE RIGHT SIDE OF THE BODY, AND VICE  
6 VERSA, RIGHT SIDE OF THE BRAIN CONTROLS THE LEFT  
7 SIDE OF THE BODY. SO WHEN YOU MOVE YOUR LEFT  
8 INDEX FINGER, IT'S THE RIGHT SIDE OF YOUR MOTOR  
9 STRIP THAT IS DOING THAT.

10 BUT THE PART OF THE BRAIN IN FRONT OF THAT,  
11 WHICH IS A VERY SUBSTANTIAL PART OF THE BRAIN,  
12 THE FRONTAL LOBE, IS NOT ONLY EXTREMELY  
13 IMPORTANT, BUT IT'S ALSO EXTREMELY DIFFICULT TO  
14 TEST FOR.

15 BY MR. MARIO:

16 Q WHY IS THAT?

17 A BECAUSE THAT'S THE PART OF THE BRAIN THAT'S  
18 RESPONSIBLE FOR THINGS LIKE MOTIVATION, INITIATIVE,  
19 DRIVE, JUDGMENT, THE ABILITY TO READ A SOCIAL SITUATION,  
20 TO CARE ABOUT WHAT OTHER PEOPLE ARE THINKING, AND TO  
21 CONFORM YOUR BEHAVIOR TO THE REQUIREMENTS OF SOCIETY AND  
22 LAW. JUDGMENT, AND PRIORITIZATION, AND SOCIAL PRAGMATICS  
23 ARE VERY DIFFICULT THINGS TO TEST FOR.

24 Q WHEN YOU SAY, SOCIAL PRAGMATICS, WHAT DO YOU  
25 MEAN?

1           A     I MEAN READING OTHER PEOPLE AND CARING ABOUT  
2     WHAT YOU SEE, AND UNDERSTANDING WHAT EFFECT YOU'RE HAVING  
3     ON OTHER PEOPLE, AND THEIR EFFECT ON -- ON -- IN A SOCIAL  
4     SITUATION.  GENERALLY SPEAKING, JUST GETTING ALONG.  A  
5     PERSON WHO CAN'T DO THAT MIGHT STAND A LITTLE TOO CLOSE,  
6     MIGHT TALK A LITTLE TOO LOUDLY, MIGHT SAY THINGS THAT ARE  
7     INAPPROPRIATE AND MAKE PEOPLE FEEL UNCOMFORTABLE.

8           Q     ARE THOSE THE ONLY TYPES OF THINGS THAT WOULD  
9     BE, YOU KNOW, FRONTAL LOBE BRAIN DAMAGE?

10                   WHAT DOES IT MEAN, WHAT DO YOU EXPECT TO  
11     SEE?  DO YOU HAVE ANY EXAMPLES YOU CAN SORT OF  
12     CONCEPTUALIZE?

13           A     SURE.  A PERSON CAN BE MISSING HIS FRONTAL  
14     LOBE, HAVE A NORMAL I.Q., APPARENTLY NORMAL INTELLECT.

15           Q     WHY WOULD THEY HAVE A NORMAL I.Q. IF THEY'RE  
16     MISSING PART OF THEIR BRAIN?

17           A     THE I.Q. TESTING, READING, WRITING, ARITHMETIC,  
18     MEMORY, SPEECH, THOSE FUNCTIONS, THOSE ARE IN THE  
19     POSTERIOR PART OF THE BRAIN.  THE ANTERIOR, THE FRONTAL  
20     LOBE OF THE BRAIN IS ALMOST UNTOUCHED BY I.Q.

21           Q     HAVE YOU EVER ENCOUNTERED PATIENTS IN YOUR  
22     PRACTICE THAT HAVE HAD THIS PROBLEM?

23           A     ABSOLUTELY.  ONE IN PARTICULAR WAS A MAN WHOSE  
24     FRONTAL LOBES WERE NOT WORKING AT ALL AND WHO WOULD DO  
25     ZANNY, FOOLISH THINGS AGAIN AND AGAIN.  HE WOULD GO INTO



1 A PARKING LOT, A HUGE PARKING -- HUGE SHOPPING CENTER AND  
2 LOOK FOR CARS THAT HAD KEYS IN THE IGNITION. THEN HE  
3 WOULD TAKE THOSE CARS AND MOVE THEM TO OTHER SPACES IN  
4 THE SAME PARKING LOT. KIND OF AN ANNOYING TRICK. BUT, I  
5 MEAN, WE'RE NOT TALKING ABOUT A TEENAGER, WE'RE TALKING  
6 ABOUT A MAN IN HIS 30'S.

7 Q WHAT WAS HIS I.Q.?

8 A HIS I.Q. WAS AT 115.

9 ANOTHER THING, HE WAS TO STEAL A CAR ONE  
10 DAY AND WAS DRIVING IT ALONG THE HIGHWAY AND NOTICE THERE  
11 WAS SOMETHING WRONG WITH THE CAR, SO HE TOOK IT TO A  
12 REPAIR SHOP. FACT IS, IT WAS THREE IN THE MORNING, THE  
13 REPAIR SHOP WAS LOCKED. SO HE DROVE THROUGH THE PORTAL  
14 OF THE REPAIR SHOP INTO THE GARAGE SO HE COULD REPAIR THE  
15 CAR. THERE HE CAME UP AGAINST THE FACT THAT HE DIDN'T  
16 KNOW HOW TO REPAIR THE CAR, WHAT TO DO FOR IT OR WHERE  
17 ANY OF THE TOOLS WERE.

18 WHEN THE ALARM WENT OFF, HE STAYED AND  
19 WAITED FOR THE POLICE TO COME, THINKING THEY COULD HELP  
20 HIM IN GETTING THE CAR GOING AGAIN.

21 SO THAT KIND OF INABILITY TO PREDICT WHAT  
22 THE NEXT STEP IS AND WHAT THE RESULT IS IS A MATTER OF  
23 FRONTAL LOBE DAMAGE. BUT, AS I SAID, HIS I.Q. WAS 115.

24 THERE'S ANOTHER ONE WHO'S A RADIOLOGIST, A  
25 PHYSICIAN WHO HAD A BRAIN TUMOR. IN HIS, THERE WERE MANY

1 MANIFESTATIONS OF ABNORMAL BEHAVIOR, ONE OF WHICH WAS  
2 WHEN HE WOULD DRIVE, HE HAD THE SAME ACCIDENT THREE  
3 TIMES. HE WOULD BE -- HE COULD DRIVE A CAR. NO  
4 DIFFICULTY GETTING IN THE CAR, TURN ON THE IGNITION, PUT  
5 HIS FOOT ON THE ACCELERATOR, THE BRAKE, THE STEERING  
6 WHEEL. BUT HE WAS DRIVING ALONG ON A HIGHWAY, 55,  
7 60 MILES AN HOUR, AND THE LANE IN WHICH HE WAS DRIVING  
8 WAS CLOSED OFF. AND INSTEAD OF EITHER STOPPING THE CAR  
9 AND CHANGING LANES, HE DROVE DIRECTLY IN THE BARRIER.  
10 THAT HAPPENED, AS I SAID, ON THREE OCCASIONS.

11 THAT INABILITY TO EITHER CHANGE A PLAN OR  
12 TO, TO MODULATE, TO ANTICIPATE -- TO ANTICIPATE FAVORABLE  
13 CIRCUMSTANCES OR UNFAVORABLE CIRCUMSTANCES, TO SEE THE  
14 OUTCOME OF A SERIES OF STEPS IS THE KIND OF THING THAT IS  
15 THE FRONTAL LOBE, AND KIND OF THING THAT WAS MISSING IN  
16 HIS CASE.

17 Q AND IN CASES SUCH AS THIS THEN, IT'S POSSIBLE  
18 TO, YOU KNOW, HAVE AN OUTWARDLY NORMAL EXISTENCE, BE A  
19 SUCCESSFUL PROFESSIONAL AS YOUR RADIOLOGIST, YET HAVE  
20 SEVERE BRAIN DAMAGE TO THE FRONTAL PART OF THE BRAIN, AND  
21 IT WOULD NOT NECESSARILY BE DETECTED?

22 A YES, HE WAS FUNCTIONING AS A RADIOLOGIST UNTIL  
23 VERY LATE IN THE COURSE OF HIS ILLNESS, WHICH WAS A BRAIN  
24 TUMOR. BUT THE INCIDENT I TOLD YOU OCCURRED AFTER HE WAS  
25 CURED. HE STILL HAD TWO HOLES WHERE HIS FRONTAL LOBES

1 HAD BEEN.

2 THE POINT IS THAT YOU CAN BE A SOCIAL  
3 IMBECILE ON THE BASIS OF FRONTAL LOBE DISEASE AND HAVE A  
4 NORMAL I.Q.

5 AND THAT WAS WHAT HAPPENED TO A VERY  
6 FAMOUS PERSON, PHINEAS GAGE (PH). PHINEAS GAUGE --  
7 EVERYBODY KNOWS THIS CASE THAT HAS TAKEN AN INTRODUCTORY  
8 COURSE IN PSYCHOLOGY -- VERY MORAL AND ETHICAL MAN, VERY  
9 HIGHLY RESPONSIBLE, AND WHO WAS LAYING TRACKS FOR THE  
10 RAILROAD IN MAINE 150 YEARS AGO. A PREMATURE EXPLOSION  
11 WENT OFF AND BLEW A TAPING IRON THE SIZE OF MY THUMB, THE  
12 WIDTH OF MY THUMB THROUGH ONE EYE, CAME OUT THE OTHER  
13 SIDE OF HIS HEAD, AN INJURY THAT SHOULD HAVE BEEN FATAL,  
14 BUT WASN'T. AND HE WASN'T EVEN UNCONSCIOUS. HE WAS  
15 HELPED TO A TAVERN, GIVEN A FEW DRINKS, EXPECTED TO DIE,  
16 BUT AFTER TWO OR THREE WEEKS HE GOT BETTER. IT JUST  
17 HEALED UP. AND HE COULD WALK AND TALK AND READ AND WRITE  
18 AND CALCULATE AND REMEMBER, BUT HE WAS TOTALLY CHANGED. I  
19 MEAN, HE WAS NOW UNETHICAL, IMMORAL, UNRELIABLE. HE  
20 COULDN'T HOLD A JOB. HE BECAME A DERELICT AND TRAMP AND  
21 RIOTER, LIVING RIOTOUSLY. HE DRANK AND SWORE AND  
22 COULDN'T HOLD A JOB, AND DIED A RUINED MAN.

23 AND SO INTERESTING WAS THAT CASE BECAUSE  
24 BRAIN DAMAGE HAD ROBBED HIM OF HIS SOCIAL CAPACITY,  
25 WITHOUT CHANGING HIS INTELLECTUAL CAPACITY THAT IT FOUND

1 ITS WAY, HIS SKULL ENDED UP IN A MEDICAL MUSEUM IN  
2 HARVARD. AND THAT CASE STILL REVERBERATES.

3 THERE WAS A REPORT ON -- IN THE LAST  
4 DECADE ON SOMEONE WHO TOOK THE SKULL, USED A COMPUTER TO  
5 RECONSTRUCT WHAT THE BRAIN WOULD HAVE LOOKED LIKE, TO  
6 MATCH THE MARKINGS INSIDE THE SKULL, TRACE THE TRAJECTORY  
7 OF THE INJURY WAS TO THE FRONTAL LOBE.

8 THE FRONTAL PART OF THE FRONTAL LOBE --  
9 FRONTAL LOBE'S BEEN DIVIDED INTO THREE BIG PARTS.  
10 DORSOLATERAL, WHAT YOU SEE HERE, THE PART UNDER THE  
11 TEMPORAL, WHICH UNDER MY PALM IS YOUR TEMPORAL. ANOTHER  
12 IS THE PART THAT IS CALLED THE ORBITAL CORTEX. IT'S THE  
13 PART THAT WOULD BE JUST OVER THE EYES AND JUST BEHIND THE  
14 FOREHEAD. THIS BRAIN HAS BEEN CUT DOWN THE MIDDLE.

15 Q NOW, JUST WHAT PAGE ARE YOU REFERRING?

16 A I AM ON PAGE 98 NOW. AND THIS PART IS THE  
17 ORBITAL CORTEX. AND THEN THERE'S THE CINGULATE GYRUS IN  
18 THIS ILLUSTRATION IS IN YELLOW. IT GOES IN A C SHAPE,  
19 MOST OF WHICH IS IN THE FRONTAL LOBE. FRONTAL LOBE GOES  
20 UP, GOES UP TO WHERE THE BLUE BEGINS. YOU CAN SEE THE  
21 CINGULATE GYRUS IS IN THE FRONTAL LOBE.

22 NOW, EACH OF THESE PARTS OF THE FRONTAL  
23 LOBES HAS SOMEWHAT DIFFERENT FUNCTIONS, BUT THEY'RE  
24 NOT -- THERE'S NOT SUCH A CLEAR IDENTITY OF STRUCTURE AND  
25 FUNCTION AS EXISTS IN OTHER PARTS OF THE NERVOUS SYSTEM,

1 AS THE OCCIPITAL LOBE AND VISION. IF YOU TAKE OUT THE  
2 LEFT OCCIPITAL LOBE, THE PERSON WILL NOT BE ABLE TO SEE  
3 THE RIGHT SIDE, WITH THE RIGHT, AND THE RIGHT SIDE WITH  
4 THE LEFT EYE. AND IF A PATIENT HAS A PROBLEM WHERE HE  
5 COULDN'T SEE THE RIGHT SIDE WITH A LEFT EYE AND LEFT SIDE  
6 WITH THE RIGHT, HE WOULD KNOW THERE IS A PROBLEM WITH THE  
7 LEFT OCCIPITAL LOBE WHERE THE TRACKS LEADING TO IT.

8 THAT KIND OF IDENTITY OF STRUCTURE AND  
9 FUNCTION DOESN'T EXIST IN THE FRONTAL LOBE. BUT THE  
10 ORBITAL CORTEX HAS A LOT TO DO WITH THE KIND OF  
11 PERSONALITY STRUCTURE A PERSON HAS, AND IS RELATIVELY  
12 INSENSITIVE. YOU CAN HAVE A VERY SEVERE PERSONALITY  
13 DISORDER, BUT THE NEUROLOGIC EXAMINATION, EVEN THE KIND  
14 THAT I DO, WHICH IS VERY, VERY CAREFULLY DETAILED, AND  
15 KIND OF NEUROPSYCHOLOGICAL TESTING THAT  
16 NEUROPSYCHOLOGISTS DO WILL NOT NECESSARILY SHOW AN  
17 ABNORMALITY IN THE ORBITAL CORTEX.

18 THE DORSOLATERAL -- I'M LOOKING AT PAGE  
19 96 -- THE PARTS UNDER THE TEMPORAL, THE LARGE PART IS  
20 MUCH MORE SENSITIVE TO NEUROLOGICAL APPRAISAL AND  
21 NEUROLOGICAL TESTING.

22 WELL, ANYWAY, THE KIND OF TESTS THAT I DID  
23 FOR THIS HAVE BEEN VALIDATED. IN OTHER WORDS, THIS IS  
24 NOT JUST SOMETHING I MADE UP AND I DO. THERE WAS A STUDY  
25 THAT WAS DONE AND PUBLISHED IN THE LATE 1970'S BY JENKYN,

1 J-E-N-K-Y-N, AND HIS COLLEAGUES, WHERE THEY TOOK A GROUP  
2 OF PATIENTS WHO HAD BEEN TESTED BY NEUROPSYCHOLOGISTS  
3 ALREADY AND CLASSIFIED AS EITHER NORMAL, MILDLY IMPAIRED,  
4 MODERATELY IMPAIRED OR SEVERELY IMPAIRED, AND THEY DID  
5 THESE PARTS OF THE TEST THAT HAVE BEEN USED BY  
6 NEUROLOGISTS OVER THE PRECEDING 50 YEARS. AND THEY JUST  
7 WANTED TO SEE HOW MANY OF THOSE WOULD BE IDENTIFIED BY  
8 THE NEUROLOGIC TESTS AS CORRESPONDING TO THE ABNORMALITY  
9 SEEN BY THE NEUROPSYCHOLOGIST. AND THERE WAS A VERY GOOD  
10 CORRELATION OF THE TEST THAT I AM USING. THEN THEY WENT  
11 AND THEY TOOK THOSE TESTS AND THEY WENT TO THE DUPONT  
12 CORPORATION IN DELAWARE, THE ORIGINAL STUDY HAD BEEN DONE  
13 IN NEW HAMPSHIRE, WENT DOWN THERE AND THERE THE  
14 EMPLOYEES, WHO WERE SEVERAL THOUSAND, HAD -- OR ALL  
15 EMPLOYED AND PRESUMABLY NORMAL, WERE TESTED ROUTINELY IN  
16 YEARLY EXAMINATIONS THAT WERE REQUIRED BY THE COMPANY.  
17 AND THEY TRAINED THE DOCTORS TO DO THE MOST USEFUL OF  
18 THESE TESTS, WHICH ARE THE ONES THAT I'M USING, AND THEY  
19 FOUND OUT WHAT A NORMAL POPULATION WOULD HAVE BEEN. NOW,  
20 ABNORMAL POPULATION, ABOUT 5 PERCENT WILL HAVE AN  
21 ABNORMALITY ON ONE OF THOSE TESTS. VIRTUALLY NO ONE HAS  
22 NO ABNORMALITY ON THREE. AND IF YOU HAVE FIVE OR SIX  
23 ABNORMALITIES, THEN THAT IS ALWAYS ASSOCIATED WITH  
24 DYSFUNCTION, BRAIN DYSFUNCTION. THOSE ARE REALLY GOOD  
25 TESTS OF HOW THEY, THE CORTEX OF THE BRAIN, IS WORKING

1 FROM A CORTEX, FRONTAL CORTEX IS WORKING.

2 Q AND AGAIN THESE TESTS WERE DEVELOPED BACK IN  
3 1970'S?

4 A AND VALIDATED THEN IN 1980'S.

5 Q OKAY. SO YOU'RE SAYING THIS WAS AROUND IN 1982  
6 (SIC) WHEN MR. WINDOM -- THIS WASN'T SOME NEW INNOVATION  
7 THAT JUST CAME OUT LAST YEAR?

8 A NO, THE SECOND OF THESE PUBLICATIONS BY JENKYN  
9 AND COLLEAGUES WAS IN 1984. IN 1977, 1984 WERE THE TWO A  
10 SEMINAL PUBLICATIONS. AND THEY WERE CERTAINLY AVAILABLE  
11 IN 1992, WHICH IS -- '92 WHICH IS WHEN MR. WINDOM, THE  
12 CRIME OCCURRED.

13 Q OKAY. LET'S TALK ABOUT MR. WINDOM AND YOUR  
14 TESTING OF HIM. WHAT DID YOU DO, WHAT'S THE BASIS OF  
15 YOUR -- OF YOUR OPINION THAT HE HAS FRONTAL LOBE DAMAGE?

16 A OKAY. AS DETAILED IN MY REPORT, HE HAS  
17 ABNORMAL VISUAL TRACKING. WHAT I WOULD DO, TAKE MY  
18 FINGER AND MOVE IT FROM RIGHT TO LEFT 45 DEGREES TO  
19 MIDLINE AND ANOTHER 45 DEGREES TO THE OTHER SIDE AND BACK  
20 AGAIN. HIS EYES, WHAT HIS EYES SHOULD DO NORMALLY IS TO  
21 TRACK MY FINGER JUST AS IT'S MOVING SLOWLY TAKING ABOUT  
22 THREE SECONDS TO GET FROM THE SIDE TO THE MIDLINE AND  
23 THEN TO THE OTHER SIDE. AND WHAT HIS EYES DID WAS MOVE  
24 AS THOUGH MY FINGER WERE MOVING IN SHORT, STACCATO JERKS.  
25 AND EVERY NOW AND THEN HE WOULD TAKE HIS EYE OFF MY

1 FINGER AND HIS EYE WOULD MOVE BACK AND FORTH RAPIDLY AS  
2 THOUGH MY FINGER HAD MOVED THIS WAY. THAT IS AN  
3 ABNORMALITY IN VISUAL TRACKING. AND THE VISUAL TRACKING  
4 APPARATUS IS FRONTAL LOBE, CALLED FRONTAL EYE FIELDS.

5 Q THAT'S ONE ABNORMAL?

6 A ONE ABNORMAL.

7 Q WHAT CAME NEXT?

8 A THERE WAS MOTOR IMPERSISTENCE. NOW, YOU ASK A  
9 PERSON TO DO SOMETHING SUCH AS CLOSE HIS EYES, STICK OUT  
10 HIS TONGUE, MAINTAIN FOR 30 SECONDS. HE COULD NOT  
11 MAINTAIN FOR 30 SECONDS. THAT'S THE -- THAT'S THE  
12 TEST -- AND THAT WAS THE SECOND TEST THAT WAS ABNORMAL,  
13 FRONTAL LOBE FOCUS ATTENTION. AND VIRTUALLY ALL THESE  
14 TESTS THAT I PERFORMED HAVE AS AN IMPORTANT PART OF THEIR  
15 SUCCESS WHEN A PERSON IS SUCCESSFUL, PAYING ATTENTION.

16 ANOTHER WAS THE SNOOT REFLEX AND SUCK  
17 REFLEX. THESE ARE PRIMITIVE REFLEXES THAT ARE NORMAL IN  
18 INFANTS, BUT BECOME ABNORMAL WHEN THE NERVOUS SYSTEM  
19 MATURES. TOUCH THE LIPS, THERE WAS MOVEMENT OF PURSING,  
20 OF THE CHIN, MOVEMENT OF THE CHIN. WHEN I PRESS ON THE  
21 LIP AND REMOVE THE FINGER, THE SAME THING, THERE IS A  
22 MOVEMENT OF THE LIPS IN RESPONSE TO THAT. THAT SHOULDN'T  
23 BE. THAT'S A PRIMITIVE REFLEX. THAT'S AN ABNORMAL  
24 REFLEX. IT MEANS THAT THE FRONTAL FIBERS THAT INHIBIT  
25 THAT WHEN THEY BECOME DEVELOPED ARE NOT WORKING PROPERLY.



1 Q OKAY. SO YOU SAID A FEW MOMENTS AGO, YOUR  
2 TESTIMONY, THAT IF YOU HAVE ONE ABNORMALITY, THAT IS  
3 5 PERCENT OF THE POPULATION. IF YOU HAVE TWO, IT BECOMES  
4 SIGNIFICANT. IF YOU HAVE THREE THAT THIS IS GETTING --

5 A THIS IS OUT OF RANGE.

6 Q OKAY. AND --

7 A THAT'S TWO. THAT'S THREE. THAT'S -- EXCUSE  
8 ME.

9 Q WE HAVE MOTOR IMPERSISTENCE.

10 A WE'RE UP TO FOUR.

11 Q WE'RE UP TO FOUR ABNORMALITIES NOW?

12 A RIGHT. PARATONIA OF THE LEGS, WHERE I ASK A  
13 PERSON TO DO A -- SLOUCH DOWN IN A CHAIR, EXTEND HIS  
14 KNEES AND SUPPORT HIS LEGS ON HIS HEELS, AND THEN I PUT  
15 MY HAND UNDER THE THIGH AND RAISE UP. I ASKED THE  
16 PATIENT TO RELAX, JUST RELAX. WHAT SHOULD HAPPEN IF THE  
17 PERSON IS RELAXED, THAT THE HEEL WILL RUN -- AS I PULL UP  
18 ON THE THIGH GENTLY, THE HEEL WILL RUN ALONG THE FLOOR AS  
19 THE KNEE FLEXES. AM I BEING CLEAR?

20 THE COURT: I GOT YOU.

21 A BUT WHAT THE ABNORMAL RESPONSE WOULD BE, THE  
22 PERSON TO RAISE HIS LEG IN THE AIR. AND MR. WINDOM DID  
23 THAT REPEATEDLY. AND THAT'S CALLED PARATONIA,  
24 P-A-R-A-T-O-N-I-A, AND IT IS AN ABNORMALITY HE HAD ON  
25 BOTH LEGS, AND IT'S AN ABNORMALITY OF THE FRONTAL

1 FUNCTION.

2 Q OKAY. SO YOU'RE NOW UP TO FIVE ABNORMALITIES.

3 A CORRECT. AND THEN THE NEXT IS, I CREATE A  
4 DESIRE ON HIS PART AND THEN ASK HIM TO IGNORE IT. I FACE  
5 THE PATIENT WITH MY, MY FISTS EXTENDED. I SAY, WHEN MY  
6 FINGER, WHEN I PUT A FINGER UP, I WANT YOU TO LOOK AT THE  
7 FINGER AND THEN BACK UP AT MY NOSE. I FLASH MY INDEX  
8 FINGER, THE PATIENT LOOKS AT -- BACK AT MY NOSE. I DO  
9 THAT AGAIN, TWO TIMES ON THE RIGHT SIDE, TWO TIMES ON THE  
10 LEFT SIDE, AND THEN BACK AGAIN ON THE RIGHT SIDE.

11 NOW, THE PATIENT, MR. WINDOM WANTS TO LOOK  
12 AT MY MOVING FINGER. AND I SAID HERE COMES THE HARD  
13 PART, WHAT I WANT YOU TO DO IS TO LOOK TO THE OPPOSITE  
14 SIDE, LOOK TO THE SIDE THAT DOES NOT MOVE. THAT REQUIRES  
15 A LOT OF ATTENTION AND THAT GOING LIKE THAT. RIGHT SIDE  
16 FINGER GOES UP. THE PERSON HAS TO LOOK TO THE LEFT SIDE  
17 AND LOOK AT MY NOSE. I TRIED THAT FIVE TIMES, HE FAILED  
18 TWO OF THE TIMES. ONE OF THE FIVE IS ACCEPTABLE, TWO OF  
19 THE FIVE IS ABNORMAL. SO THAT'S ALL THE ANTISACCADES  
20 TEST, A-N-T-I-S-A-C-C-A-D-E-S. THAT ONE IS ABNORMAL.

21 Q THAT'S NUMBER SIX. DO YOU DO ANY OTHER TESTS?

22 A WELL, THOSE ARE THE -- ARE AMONGST THE TESTS  
23 THAT WERE USED BY JENKYNs.

24 Q OKAY.

25 A THERE ARE OTHER TESTS THAT WERE ABNORMAL AS

1 WELL.

2 Q WHY DON'T YOU TELL US ABOUT THAT, THOSE.

3 A YES. HE HAD BILATERAL CHOREIFORM MOVEMENT.

4 WHEN I ASKED HIM TO EXTEND HIS HAND AND SPREAD HIS

5 FINGERS, HE WAS NOT ABLE TO HOLD STILL. HIS FINGERS AND

6 ARMS JERKED IN LITTLE, SHORT JERKY MOVEMENTS. THAT'S AN

7 ABNORMALITY OF THE BASAL GANGLIA OF THE PARTS OF THE

8 NERVOUS SYSTEM THAT UNDERLIE THE CORTEX DEEP WITHIN THE

9 BRAIN AND MODIFY MOVEMENT THAT COMES FROM THE MOTOR

10 STRIP.

11 Q IS THAT PART OF THE FRONTAL LOBE AS WELL?

12 A IT'S CONNECTED WITH FRONTAL LOBE, BUT IT ISN'T

13 NECESSARILY IN THE FRONTAL LOBE.

14 Q OKAY.

15 A THE -- HE WAS UNABLE -- ALTHOUGH HE WAS ABLE TO

16 WALK, PERFECTLY ABLE, HE WAS NOT ABLE TO SKIP. ANYBODY

17 OVER THE AGE OF SEVEN SHOULD BE ABLE TO SKIP. AND HE

18 COULDN'T. THAT'S A MATTER OF COORDINATION OF THE LEGS

19 AND GOES ALONG WITH THE BASAL GANGLIA PROBLEM, THAT KIND

20 OF CLUMSINESS.

21 WHEN I ASKED HIM TO MOVE HIS LEFT HAND AS

22 THOUGH OPENING A DOORKNOB, HE INVOLUNTARILY MOVED HIS

23 RIGHT HAND. THAT'S CALLED SYNKINESIS,

24 S-Y-N-K-I-N-E-S-I-S, AND IT'S ABNORMAL. DIDN'T DO IT

25 WHEN I ASKED HIM TO USE HIS RIGHT HAND, AND HE'S

1 RIGHT-HANDED.

2 BUT HE HAD ~~POOR~~ RAPID ALTERNATING  
3 MOVEMENTS ON THE RIGHT. I ASKED HIM TO TOUCH THE CREASE  
4 OF HIS INDEX -- OF HIS THUMB WITH THE TIP OF HIS INDEX  
5 FINGER AND TO DO, TO TAP AS RAPIDLY AS POSSIBLE. HE WAS  
6 INACCURATE ON THE RIGHT SIDE AND SLOWER ON THE RIGHT SIDE  
7 THAN THE LEFT, AND HE'S RIGHT-HANDED. THEN I ASKED HIM  
8 TO DO ALTERNATING SUCCESSION MOVEMENTS OF TOUCHING THE  
9 PALM AND BACK OF THE HAND WITH THE OTHER, AND, AGAIN, HE  
10 WAS CLUMSY ON THE RIGHT AS COMPARED WITH THE LEFT. THIS  
11 IS A PERSON WHO'S RIGHT-HANDED. THESE INDICATE THAT THE  
12 LEFT SIDE OF THE BRAIN IS NOT WORKING PROPERLY.

13 Q EXCUSE ME. ARE YOU SURE HE'S RIGHT-HANDED?

14 A I GUESS I DIDN'T NOTE THAT. I'M NOT SURE THAT  
15 HE'S RIGHT-HANDED.

16 Q OKAY.

17 A I THOUGHT THAT HE WAS RIGHT-HANDED. BUT,  
18 ANYWAY, THERE'S SOMETHING WRONG WITH THE LEFT SIDE IF THE  
19 RIGHT HAND IS NOT WORKING AS WELL AS THE LEFT. AND THEN  
20 HE HAD WHAT'S CALLED A WARTENBERG REFLEX, WHICH IS --  
21 CINCHES, THAT'S UNEQUIVOCAL.

22 WHAT I DO IS I ASK HIM TO -- THIS IS HIS  
23 HAND, MY RIGHT HAND IS, AND I PUT MY FINGERS HERE AND I  
24 SAY PULL AGAINST ME. AND WHAT IT DOES IS TO MAINTAIN A  
25 STEADY PRESSURE. THE WARTENBERG IS TO WATCH THE THUMB.

1 IF THE THUMB, AS IT DID ON HIS RIGHT, CROSSES THE PALM AS  
2 HE'S PULLING, THAT'S ABNORMAL. THAT'S A FRAGMENT OF A --  
3 IF THE CORTEX WERE COMPLETELY DESTROYED, A PERSON WOULD  
4 BE ELBOWS FLEXED, WRISTS FLEXED AND THUMBS, CORTICAL  
5 THUMBS, AND THIS IS A FRAGMENT OF THAT AND INDICATION  
6 THERE IS CORTICAL DAMAGE ON THE OPPOSITE HEMISPHERE, LEFT  
7 HEMISPHERE. HE DIDN'T HAVE IT ON THE LEFT, HE ONLY HAD  
8 IT ON THE RIGHT. THAT INDICATES THE LEFT HEMISPHERE IS  
9 NOT WORKING. IT GOES ALONG WITH THE IDEA HE'S POORLY  
10 COORDINATED IN THE RIGHT HAND.

11 THEN I ASKED HIM TO DO TWO TESTS THAT WERE  
12 DESCRIBED BY A GREAT NEUROPSYCHOLOGIST WHO WAS WRITING  
13 SPECIFICALLY ABOUT THE FRONTAL LOBE AND KINDS OF TESTS  
14 THAT SHOULD BE DONE OF ITS FUNCTION. HIS NAME IS LURIA,  
15 L-U-R-I-A.

16 AND THERE IS A TWO-STEP COMMAND WHERE I  
17 ASK HIM TO PAT HIS PALM AND FIST ON HIS KNEES AND THEN  
18 REVERSE THAT JUST TO MAKE SURE THAT HE CAN DO THAT. THEN  
19 I ASK HIM TO ALTERNATE OPEN PALM, AND HE WAS NOT ABLE TO  
20 DO THAT PROPERLY. HE GOT DISCOMBOBULATED. THAT'S A TEST  
21 OF FRONTAL FUNCTION. AND THERE IS A THREE-STEP LURIA AS  
22 WELL, WHERE I ASKED HIM TO TOUCH, FIRST HIS PALM, THEN  
23 THE FIST IN THIS POSITION SO THAT THE FINGERS ARE DOWN,  
24 AND THEN THE SIDE OF HIS HAND, PALM, FIST, SIDE. AND I  
25 DO IT WITH HIM -- I DID IT WITH HIM UNTIL HE MASTERED IT

1 PALM, FIST, SIDE. AND I ASKED HIM, NOW YOU DO IT. AND  
2 HE GOT THE ORDER CONFUSED, OR DID IT THE WRONG WAY.

3 THAT, AGAIN, IS ANOTHER TEST, FRONTAL  
4 FUNCTION, THAT HE FAILED.

5 AND THEN I ASSESSED HIS ABILITY TO PAY  
6 ATTENTION TO A STORY THAT I TOLD HIM. I TOLD HIM A  
7 LITTLE STORY THAT SOUNDS FAMILIAR BUT THAT HAS NO  
8 FAMILIAR ELEMENT. IT'S ONLY FOUR OR FIVE SENTENCES. HE  
9 MADE A HASH IN THE RESELLING -- IN THE RETELLING OF IT.

10 THAT LAST THING IS NOT STANDARDIZED,  
11 THAT'S NOT A STANDARDIZED TEST, BUT I FIND IT USEFUL.  
12 AND IT SHOWED HE WAS NOT PAYING ATTENTION.

13 ALSO, HIS -- HIS -- I DON'T THINK HE WAS  
14 NOT PAYING ATTENTION BECAUSE HE DIDN'T WANT TO, HE WAS  
15 BEING EXTREMELY COOPERATIVE TO THE LIMITS OF HIS  
16 CAPACITY, HE WAS TRYING TO DO WELL IN ALL THE TESTS  
17 PROVIDED.

18 AND I NOTICED THE OTHER DOCTORS WHO SEEN  
19 HIM, DR. BEAVER AND DR. MERIN, ALSO FELT HE WAS DOING HIS  
20 BEST. HE WAS NOT PREVARICATING IN THE WAY THAT -- IT WAS  
21 NOT AN ISSUE.

22 BUT HE WAS ALSO, WHEN I SAW HIM -- UNLIKE  
23 NOW -- HE WAS UNABLE TO SIT STILL. HE WAS -- HE WAS  
24 CHAINED AND HE WAS SHACKLED, BUT HE WAS MOVING CONSTANTLY  
25 AND ANIMATED IN THE WAY HE TALKED. BUT HE HAD TREMENDOUS

1 PSYCHOMOTOR STIMULATION THAT SEEMED TO ME ABNORMAL OVER  
2 THE COURSE I WAS WITH HIM, FOR TWO AND A HALF, THREE  
3 HOURS. AND IT CONTINUED FOR THE ENTIRE TIME. HE DIDN'T  
4 SLOW DOWN. AND THERE WAS A PRESSURE OF SPEECH,  
5 EMOTIONALITY THAT WAS SUCH EXCESS IT --

6 Q WHAT'S PRESSURE OF SPEECH?

7 A TALKING THE WAY I'M TALKING NOW, TALKING A  
8 LITTLE TOO FAST. A PERSON MIGHT WHEN THEY'RE VERY  
9 NERVOUS OR IF THERE WERE SOME KIND OF INTERNAL MOTOR  
10 GOING ON AND IT WAS INAPPROPRIATE. I HAD A FEELING HIS  
11 WAS ON THE BORDERLINE OF BEING INAPPROPRIATE. IN FACT,  
12 MAYBE A LITTLE OVER THE BORDERLINE BECAUSE OF THE JUMPING  
13 AROUND.

14 HE WAS NOT ABLE TO READ ABOVE A SEVENTH  
15 GRADE LEVEL. I HAVE A PARAGRAPH AT DIFFERENT LEVELS, BUT  
16 HE WAS ABLE TO READ AT A SEVENTH GRADE LEVEL WITH FULL  
17 COMPREHENSION.

18 OTHER THINGS WAS HE HAD A FEW SCARS ON HIS  
19 BACK THAT SEEMED TO HAVE BEEN THE KIND OF SCARS THAT WERE  
20 MADE FROM BEATINGS. THERE WAS A HISTORY OF BEATINGS.

21 Q OKAY. BUT LET ME -- BEFORE -- I WANT TO GET  
22 INTO THAT IN A MOMENT.

23 A OKAY.

24 Q IN TERMS OF THE TESTING THAT WAS DONE FOR BRAIN  
25 DAMAGE, IF A FINDING OF ABNORMAL ON THREE OF THOSE TESTS

1 IS SIGNIFICANT AND INDICATES SOMEONE HAS BRAIN DAMAGE,  
2 PRETTY HIGH DEGREE OF CONFIDENCE, AND HERE WE HAVE, I  
3 THINK I'VE COUNTED 13 ABNORMALITIES, IS THERE ANY  
4 QUESTION THAT MR. WINDOM SUFFERS FROM FRONTAL LOBE BRAIN  
5 DAMAGE?

6 A NO, NONE WHATSOEVER.

7 Q AND YOU'VE ALREADY TESTIFIED THAT YOU'VE  
8 REVIEWED DR. BEAVER'S REPORT OF HIS NEUROPSYCHOLOGICAL  
9 TESTING. WERE THE RESULTS YOU SAW IN DR. BEAVER'S REPORT  
10 CONSISTENT OR LESS THAN YOUR OWN FINDINGS?

11 A YES, IN THE WISCONSIN CARD SORTING TEST.  
12 THAT'S THE WORKHORSE OF NEUROPSYCHOLOGISTS FOR FRONTAL  
13 LOBE DAMAGE. THAT'S THE -- ONE OF THE STANDARD TESTS.  
14 THERE WAS AN ABNORMALITY.

15 Q WERE THERE ANY OTHER INDICATION OF SOME TYPE OF  
16 BRAIN DYSFUNCTION, JUST IN YOUR OWN OBSERVATION, OF  
17 MR. WINDOM, HIS SPEECH, FOR EXAMPLE?

18 A WELL, HE HAD A -- HE STAMMERS AND HE IS  
19 DISARTICULATE. HE DOESN'T PRONOUNCE HIS WORDS PROPERLY.  
20 THERE'S ALSO THE ISSUE OF WHETHER THAT'S JUST A RURAL,  
21 SOUTHERN ACCENT, NOT BEING FROM THE RURAL SOUTH. BUT HE  
22 STAMMERS. AND THERE WAS A PROBLEM WITH UNDERSTANDING HIM  
23 THAT WENT BACK TO HIS SCHOOL DAYS, SO THAT THE STAMMER  
24 HAD BEEN THERE RIGHT ALONG, IT WAS NOT SOMETHING THAT  
25 JUST APPEARED.



1 Q WELL, YOU REVIEWED BACKGROUND MATERIALS AND  
2 SCHOOL RECORDS AND SO FORTH?

3 A YES.

4 Q THAT INDICATE TO YOU THE SPEECH IMPEDIMENT WAS  
5 A LONG-STANDING PROBLEM?

6 A YES.

7 Q IS THAT WHAT YOU'RE TELLING US?

8 A YES.

9 Q DID YOU SEE ANY INDICATION OF LEARNING  
10 DISABILITY OR SOMETHING?

11 A YEAH, HE HAD A -- PARTICULARLY IN SCHOOL HE WAS  
12 GETTING D'S AND C'S AT SCHOOL. THERE WERE MANY, AT LEAST  
13 TWO INCIDENTS THAT WERE VERY LIKELY TO HAVE CAUSED BRAIN  
14 DAMAGE.

15 Q YEAH, IN FACT, LET'S TALK ABOUT THAT NOW, THE  
16 ETIOLOGY. WHAT DID YOU SEE FROM YOUR HISTORY OF  
17 MR. WINDOM, FROM THE BACKGROUND MATERIALS, THAT MIGHT  
18 GIVE YOU AN IDEA OF WHAT THE ETIOLOGY IS IN THIS CASE?

19 A HE TOLD ME HE WAS DROPPED ON HIS HEAD WHEN HE  
20 WAS BORN. I DIDN'T EVEN PUT THAT IN MY NOTES BECAUSE  
21 THAT -- THAT WOULD BE SOME -- SO UNCOLLATERAL. BUT HIS  
22 MOTHER SAID THAT AND HIS SISTER SAID THAT, WHO WAS THERE  
23 AT THE TIME, CONFIRMED AGAIN. I JUST SPOKE WITH THEM.  
24 AND THEY -- IT WAS IN THEIR AFFIDAVITS.

25 HE WAS BORN -- HIS MOTHER WAS IN LABOR,

1     THEY CALLED FOR THE MIDWIFE.   HIS MOTHER HAD GONE TO THE  
2     BATHROOM TO RELIEVE HERSELF, WAS ON THE WAY BACK TO THE  
3     BEDROOM, AND ALL OF A SUDDEN, BOOM, OUT CAME CURTIS HEAD  
4     FIRST ON THE GROUND, HIT THE FLOOR ON -- WITH HIS HEAD ON  
5     THE FLOOR.   FATHER PICKED HIM UP AND BROUGHT HIM, WITH  
6     THE MOTHER, TO THE BED, AND THE MIDWIFE CAME SHORTLY  
7     THEREAFTER AND COMPLETED THE BIRTH.

8                         WELL, THAT'S PRETTY DRAMATIC, A KID FALLS  
9     OUT OF HIS MOTHER'S WOMB AND HITS HIS HEAD ON THE GROUND  
10    WHILE SHE'S STANDING UP.   THAT COULD BE THE CAUSE OF  
11    DAMAGE.

12                        NOW, HE WASN'T TAKEN TO THE HOSPITAL AT  
13    THE TIME.   BUT, ON THE OTHER HAND, THESE ARE SIMPLE  
14    PEOPLE.   THIS IS A COUNTRY ENVIRONMENT, POOR, VERY POOR  
15    RURAL MEDICAL FACILITY, MIDWIFE COMING TO THE HOUSE.  
16    THERE WAS NO DOCTORS INVOLVED IN THIS.   IT'S NOT A -- IT  
17    MAY HAVE BEEN THAT HE WAS DAMAGED AT THE TIME.   IT  
18    SOUNDED HISTORICALLY SIGNIFICANT.

19                        ANOTHER ONE -- THERE WERE MANY HEAD  
20    INJURIES THAT HE SUSTAINED OVER THE COURSE OF TIME, BUT  
21    THE ONE THAT SOUNDED MOST SIGNIFICANT OF THOSE TO ME WAS  
22    ONE THAT OCCURRED WHEN HE WAS ABOUT 16.   THERE WAS A  
23    MOTOR VEHICLE WHERE THE CAR ACTUALLY TURNED OVER SEVERAL  
24    TIMES, AND HE WAS UNCONSCIOUS, RENDERED UNCONSCIOUS.   HIS  
25    SISTER CAME TO THE ACCIDENT, SAW HIM, HE WAS UNCONSCIOUS,

1 AN AMBULANCE WAS CALLED. HE REMAINED UNCONSCIOUS, NOT  
2 UNTIL THE AMBULANCE CAME, BUT AFTER HE WAS IN THE  
3 AMBULANCE. SO THERE WAS A SUBSTANTIAL PERIOD OF  
4 UNCONSCIOUSNESS AND HEAD INJURY AT THAT TIME. AND HE WAS  
5 TAKEN TO THE HOSPITAL AND KEPT FOR SEVERAL DAYS IN THE  
6 HOSPITAL.

7 I UNDERSTAND THE RECORDS OF THE  
8 HOSPITAL -- THE HOSPITAL NO LONGER EXISTS, AND THE  
9 RECORDS OF THE HOSPITAL COULDN'T BE FOUND. BUT THE  
10 FAMILY COULDN'T BE SPECIFIC ABOUT WHAT TESTS WERE DONE,  
11 OR HOW LONG HE WAS IN THE HOSPITAL, BUT THEY ALL SAID IT  
12 WAS SEVERAL DAYS.

13 Q WAS THERE ANYTHING ELSE IN THE HISTORY OR  
14 BACKGROUND MATERIALS THAT MIGHT CONTRIBUTE?

15 A WELL, THEY SAID HIS BEHAVIOR CHANGED AFTER  
16 THAT.

17 Q OKAY.

18 A THEY SAID THAT HE BECAME MUCH MORE SUSPICIOUS  
19 OF THE DESIGNS OF OTHER PEOPLE AND AFRAID OF -- FOR HIS  
20 LIFE. IN OTHER WORDS, SYMPTOMS OF PARANOIA AND EXCESSIVE  
21 SUSPICIOUSNESS. HE WAS ALWAYS AFRAID OF BEING INJURED,  
22 ALWAYS AFRAID OF BEING KILLED. HE WAS ALWAYS AFRAID THAT  
23 SOMEBODY WAS TRYING TO GET HIM.

24 AND HE, AS A RESULT OF THAT, HE DIDN'T  
25 TALK MUCH TO OTHER PEOPLE. HE DIDN'T ESTABLISH REALLY

1 CLOSE RELATIONSHIPS WITH OTHER PEOPLE. HE TENDED TO BE  
2 SOMEWHAT GUARDED AND WOULDN'T CONFIDE IN OTHERS ABOUT HIS  
3 INNERMOST FEARS, EXCEPT THOSE MEMBERS OF HIS FAMILY WHO  
4 WERE SPEAKING TO ME. BUT THEY SAID HE HAD VERY FEW  
5 FRIENDS. A LOT OF FRIENDS -- A LOT OF PEOPLE HE WAS  
6 FRIENDLY, A LOT OF PEOPLE HE DID THINGS FOR, BUT NOT  
7 PEOPLE HE CONFIDED IN, VERY FEW.

8 Q I INTERRUPTED YOU EARLIER WHEN YOU MENTIONED  
9 YOU OBSERVED SOME SCARS.

10 A YES.

11 Q WHAT DOES THAT TELL YOU?

12 A HE TOLD ME THAT HE HAD BEEN VERY, VERY BADLY  
13 BEATEN BY HIS FATHER, BEATEN BY THE BELT. AND THE OTHER  
14 MEMBERS OF THE FAMILY SAID THAT THE FATHER WAS A VERY  
15 BRUTAL MAN, ACTED IN A VERY BRUTAL WAY.

16 IN FACT, CURTIS TOLD ME, AND THE OTHER  
17 MEMBERS OF THE FAMILY CONFIRMED, THAT THE FATHER USED TO  
18 BEAT THE MOTHER MERCILESSLY, AND SPLIT HER HEAD OPEN  
19 ONCE, TOOK A KNIFE TO HER, AND SOMETIMES -- AND HAD TO BE  
20 STOPPED BY THE CHILDREN, HAD TO BE STOPPED BY CURTIS, IN  
21 FACT, TO SAVE HIS MOTHER'S LIFE.

22 BUT THE FIGHTING AND BEATINGS WERE  
23 INCESSANT. CURTIS HAD MANY OF THE HISTORICAL FEATURES  
24 YOU SEE IN ABUSED CHILDREN. ONE, HE WAS CRUEL TO  
25 ANIMALS. ONE WAS HE WET HIS BED, INTO HIS TEENS HE WOULD

1 WET HIMSELF. BECAUSE OF HIS MOTHER'S INADEQUACIES AND  
2 INCOME, LOW INCOME LEVEL AND LACK OF CLOTHING AND LACK OF  
3 CONSTANT NEED FOR LAUNDERING, HIS CLOTHES WERE -- SMELLED  
4 OF URINE A LOT. SO WHEN HE WOULD GO TO SCHOOL WITH A  
5 STAMMER AND HIS URINE SMELLING CLOTHES, DIRTY, HE WOULD  
6 MERCILESSLY BE TEASED. THAT LED TO FIGHTS, FIGHTS AT  
7 SCHOOL, FIGHTS AT HOME. AND HIS -- HE WOULD TRY NOT TO  
8 GO TO SCHOOL, AND HIS FATHER WOULD BEAT HIM FOR NOT GOING  
9 TO SCHOOL.

10 Q OKAY. THOSE BEATINGS, COULD THAT ALSO BE A  
11 SOURCE OF HEAD TRAUMA?

12 A YES.

13 Q THAT MIGHT BE A FACTOR IN THE ETIOLOGY OF  
14 HIS --

15 A YEAH, THERE IS A CUMULATIVE EFFECT THAT HEAD  
16 INJURIES HAVE. IN OTHER WORDS, THERE IS A THING CALLED  
17 THE SECOND IMPACT SYNDROME. A PERSON WHO HAS AN INJURY,  
18 HEAD INJURY, BRAIN INJURY AS A RESULT OF AN ACCIDENT IS  
19 BOTH MORE LIKELY TO HAVE ANOTHER TRAUMATIC BRAIN INJURY  
20 AND TO HAVE A NEUROLOGIC CONSEQUENCE OF THE SECOND HEAD  
21 INJURY.

22 IF YOU TAKE TWO HEAD INJURIES OF EQUAL  
23 SEVERITY, THIS ONE IN A PERSON WHO'S NEVER HAD A HEAD  
24 INJURY, THE OTHER ONE WHO HAD A MINOR HEAD INJURY FROM  
25 WHICH THEY COMPLETELY RECOVERED, THE TWO HEAD INJURIES,

1 THE ONE THAT HAD THE PREVIOUS HEAD INJURY IS MORE LIKELY  
2 TO BE NEUROLOGICALLY DAMAGED BY THE SECOND ONE. THAT'S  
3 CALLED A SECOND IMPACT SYNDROME.

4 IT'S BECOME THE BASIS FOR THE  
5 RECOMMENDATION OF THE AMERICAN ACADEMY OF NEUROLOGY THAT  
6 HIGH SCHOOL AND COLLEGE ATHLETES SHOULD NOT PARTICIPATE  
7 IN SPORTS FOR A YEAR OR SO AFTER AN INJURY, EVEN AFTER  
8 THEY COMPLETELY RECOVER BECAUSE OF THAT.

9 SO THERE IS A CUMULATIVE EFFECT THAT  
10 INJURIES HAVE. ABUSED CHILDREN WHO HAVE A HEAD INJURY  
11 ARE MUCH MORE LIKELY TO SHOW A DEFICIT, EVEN THOUGH THE  
12 HEAD INJURY ITSELF IS NOT GREATER THAN THAT OF ANOTHER  
13 CHILD THAT JUST SUSTAINED AN INJURY BY ACCIDENT. IT'S  
14 THE CUMULATIVE EFFECT. THERE IS A SHEARING EFFECT OF --  
15 ON THE NERVE FIBERS THAT YOU CAN'T PICK UP EASILY.

16 THEY HAVE DONE STUDIES OF FOOTBALL  
17 PLAYERS, AND THEY DID PSYCHOLOGICAL TESTING BEFORE THE  
18 SEASON AND AFTER THE SEASON. AND THOSE WHO HAD BEEN --  
19 SUSTAINED CONCUSSIONS, CLOSED HEAD INJURIES, NOT MUCH  
20 DAMAGE DONE, AND CONTINUED TO PLAY THE SEASON, WERE NOT  
21 OUT OF THE NORMAL RANGE, BUT RECOGNIZABLY WORSE THAN THEY  
22 HAD BEEN, THEIR PERFORMANCE HAD BEEN ON THE PRESEASON  
23 TESTING.

24 SO THERE'S NO QUESTION THAT HEAD INJURIES  
25 HAVE AN EFFECT ON THAT. THIS COULD BE CUMULATIVE OVER

1 THE COURSE OF A LIFETIME. WHAT I'M SAYING, I DON'T  
2 REALLY KNOW FOR SURE WHY HE'S NEVER...

3 Q THERE ARE DIFFERENT FACTORS THAT WOULD EXPLAIN  
4 IT?

5 A YES.

6 THE COURT: LET ME INTERRUPT AT THIS MOMENT.  
7 SOME OF MY STAFF HAS BEEN SITTING HERE FOR TWO  
8 HOURS WITHOUT A BREAK. LET'S TAKE A QUICK BREAK  
9 RIGHT NOW. EXCUSE ME FOR INTERRUPTING THE  
10 DOCTOR'S TESTIMONY. WE DO NEED A QUICK BREAK.  
11 TAKE TEN MINUTES, GO TO THE NOON HOUR, AND BREAK  
12 FOR LUNCH.

13 (THEREUPON A RECESS WAS TAKEN.)

14 THE COURT: LET'S PICK UP WHERE WE LEFT OFF.

15 BY MR. MARIO:

16 Q OKAY. BEFORE THE RECESS, DOCTOR, YOU WERE  
17 TALKING ABOUT SOME FOOTBALL PLAYERS THAT, DEPENDING ON  
18 BRAIN INJURY, MAY HAVE HAD SOME DIFFERENCE IN  
19 PSYCHOLOGICAL TESTING.

20 BUT I THINK WITH RESPECT TO THIS CASE WE  
21 ALL KNOW FOOTBALL PLAYERS DON'T ALWAYS EXHIBIT BIZARRE  
22 BEHAVIOR. SOMETIMES THEY DO, RIGHT?

23 A RIGHT.

24 Q THAT'S NOT ALL YOU FOUND ON MR. WINDOM, FRONTAL  
25 LOBE DAMAGE, IS IT?

1           A     YES.

2           Q     WHY DON'T YOU TELL US WHAT ELSE IS INVOLVED.

3           A     WE'RE DEALING HERE WITH A PSYCHOSIS THAT ALSO  
4 WAS OCCURRING IN A PERSON THAT WAS DAMAGED. IN OTHER  
5 WORDS, TWO THINGS HAPPENING AT ONCE.

6                     NOW, THE REASON I SAY PSYCHOTIC, BECAUSE  
7 HE DESCRIBED TO ME PARANOIA OF A DELUSIONAL INTENSITY AND  
8 AUDITORY HALLUCINATIONS HE HAD BEEN HAVING AT THE TIME OF  
9 THE INCIDENT. HE SAID HE HEARD A DEEP VOICE TELLING HIM  
10 THAT HE HAD TO DIE, HE, CURTIS WINDOM, HAD TO DIE.

11                    NOW, THAT'S NOT A COMMAND HALLUCINATION.  
12 COMMAND HALLUCINATIONS ARE THE KIND A PERSON HEARS THE  
13 VOICE TELLING HIM TO DO SOMETHING. BUT IT IS NOT NORMAL,  
14 HALLUCINATIONS, AUDITORY HALLUCINATIONS. AUDITORY  
15 HALLUCINATIONS, THAT'S NOT NORMAL, THAT'S VERY ABNORMAL.

16                    DEFINITION OF PSYCHOSIS IS SOMEBODY WHO'S  
17 THINKING IN THE WAY THAT IS DIVORCED FROM REALITY. AND  
18 IF HE'S HEARING A VOICE THAT NOBODY ELSE CAN HEAR, THAT'S  
19 AN HALLUCINATION, THAT'S THE VERY DEFINITION OF AN  
20 HALLUCINATION.

21                    DELUSION MEANS THAT HE THOUGHT THAT PEOPLE  
22 WERE AGAINST HIM, WERE GOING TO KILL HIM.

23                    AN INCIDENT HAD OCCURRED SEVERAL WEEKS  
24 BEFORE THE KILLING WHERE APPARENTLY SOMEBODY CAME INTO  
25 THE APARTMENT IN WHICH HE WAS LIVING WITH VAL, HIS



1 GIRLFRIEND, AND HAD TAKEN HER JEWELRY THAT HE HAD GIVEN  
2 TO HER AND PUT IT ON A SHELF IN THE TOILET. AND THAT WAS  
3 A VERY BIZARRE THING, SOMEONE COMING INTO THE HOUSE, AND  
4 IT WORRIED HIM. HE OBSESSED ABOUT IT, THINKING ABOUT IT  
5 CONSTANTLY.

6 THEN THERE WAS A TELEPHONE CALL WHERE  
7 SOMEONE SPOKE TO VAL AND INDICATED THAT, THAT CURTIS WAS  
8 GOING TO BE KILLED AT SOME POINT. THERE WAS A  
9 THREATENING CALL. AND CURTIS DIDN'T KNOW WHO IT WAS, YOU  
10 KNOW, WHO IT CAN BE. AND HE BEGAN TO THINK MORE AND MORE  
11 AND MORE ABOUT SOMEONE TRYING TO KILL HIM. THIS WAS AN  
12 INTENSIFICATION OF A TENDENCY THAT HE HAD EVEN EARLIER  
13 THAN THAT.

14 Q WHY DO YOU SAY EARLIER?

15 A BECAUSE HIS BROTHER, MOTHER AND SISTER AND  
16 BROTHER SAID THAT WAS THE KIND OF THING HE WOULD BE  
17 ALWAYS CONCERNED ABOUT, PEOPLE HAVING BAD INTENT TOWARD  
18 HIM, AND WOULD BE PROTECTIVE OF HIMSELF IN A VARIETY OF  
19 DIFFERENT WAYS. AFRAID THAT SOMEONE'S GONNA SHOOT HIM.  
20 SOMEONE ACTUALLY DID SHOOT HIM AT ONE POINT, AND HE WAS  
21 AFRAID OF HAVING --

22 Q WELL, RIGHT THERE SOME MIGHT SAY, WELL, IF HE  
23 WAS -- HAD A FIXATION SOMEONE'S GONNA SHOOT HIM, AND  
24 SOMEONE ACTUALLY DID SHOOT HIM, AND THIS HAS HAPPENED,  
25 MAYBE THIS IS WELL-FOUNDED. HOW DO YOU KNOW IT'S

1 DELUSIONAL OR PATHOLOGICAL?

2           A     I DON'T THINK IT WAS DELUSIONAL BEFORE THIS  
3 HAPPENED, BUT IT WAS SOMETHING THAT HE WAS CONCERNED  
4 ABOUT. IT WAS SOMETHING IN THE BACKGROUND. THEN IT  
5 INTENSIFIED ENORMOUSLY, AND HE COULDN'T SLEEP. AND HE  
6 WOULD GO AROUND THREE OR 4:00 IN THE MORNING IN HIS CAR.  
7 HE COULDN'T STAY IN THE HOUSE. HE COULDN'T STAY STILL.  
8 HE COULDN'T STAY IN BED OR JUST SIT IN A CHAIR. HE HAD  
9 TO ACTUALLY BE PHYSICALLY MOVING AROUND AND WORRIED.  
10 WORRIED ABOUT APPEARING IN PUBLIC WITH HIS BABY, FEAR  
11 THAT THE BABY WOULD BE KILLED WHEN HE WAS KILLED.  
12 WORRIED ABOUT BEING SEEN IN PUBLIC WITH OTHER PEOPLE OF  
13 IMPORTANCE TO HIM. FEELING THAT HE COULDN'T, MAYBE HE  
14 SHOULDN'T BE GOING TO HIS REGULAR CLUBS FOR FEAR THE  
15 PERSON WAS LOOKING FOR HIM MIGHT BE LAYING IN WAIT.  
16                     AND IT GOT TO THE POINT WHERE HE FELT HE  
17 HAD TO HAVE A GUN TO PROTECT HIMSELF. AND THE GUN WAS  
18 JOHNNIE LEE'S GUN, THE VICTIM'S GUN, HE GAVE IT TO HIM.  
19 AND CURTIS SAID HE COULDN'T -- HE DIDN'T WANT TO TAKE  
20 POSSESSION OF THAT GUN, HE DIDN'T WANT TO HAVE IT WITH  
21 HIM. HE WAS ALMOST SURE HE WOULD USE IT MISTAKENLY IF HE  
22 HAD IT WITH HIM AT ANY GIVEN TIME. SO HE GAVE -- IT WAS  
23 GIVEN TO SOMEONE ELSE. I'VE FORGOTTEN THE NAME, PETER  
24 PERHAPS, SOMETHING LIKE THAT, BUT, ANYWAY, SOMEBODY ELSE.  
25                     AND CURTIS WAS BECOMING MORE AND MORE

1 EXCITED, LESS AND LESS ABLE TO RELAX AND TO SLEEP. AND  
2 HE HAD CHANGED IN HIS BEHAVIOR AND IN HIS DEMEANOR TO  
3 OTHER PEOPLE WHO SAW HIM.

4 HIS CHARACTERISTIC APPEARANCE WAS, WAS  
5 VERY CLEAN AND NEAT. IN FACT, HE TOOK, POSSIBLY AS A  
6 REACTION TO THE HAVING URINE SMELLING CLOTHES AND BEING  
7 DISHEVELED WHEN HE WAS A LITTLE KID, HE ALWAYS HAD -- HE  
8 ALWAYS WANTED TO BE CLEAN AND NEAT AND WELL-GROOMED. AND  
9 THAT CHANGED IN THE DAYS PRIOR TO THIS. HE BECAME  
10 DISHEVELED AND NOT CLEAN AND NEAT, AND NOTICEABLY SO, AND  
11 MORE EXCITED AND LESS ABLE TO, TO RELAX AND TO THINK  
12 CLEARLY. THEN SOMEBODY SAID TO HIM, I FORGOTTEN WHO IT  
13 WAS THAT MADE THE SUGGESTION, THAT IT WAS JOHNNIE LEE WHO  
14 WAS THE PERSON WHO WAS -- WHO WAS TRYING TO KILL HIM,  
15 JOHNNIE LEE WANTED TO KILL HIM. LET'S SEE IF I CAN FIND  
16 THE NAME OF THE PERSON WHO SAID THAT. WELL, IT'S NOT  
17 WORTH SPENDING TIME ON.

18 Q WELL, I WANTED TO ALSO ASK YOU IN YOUR REPORT  
19 ON PAGES 3 AND 4, WHICH IS NOW DEFENSE EXHIBIT 2 IN  
20 EVIDENCE, YOU REFER TO INDICATIONS OF MANIA OR INCREASE  
21 IN PARANOIA. CAN YOU TALK ABOUT THAT A LITTLE BIT,  
22 WHAT -- WHAT MIGHT INDICATE TO YOU THAT MR. WINDOM WAS A  
23 MANIC.

24 A HE DID A NUMBER OF THINGS THAT PEOPLE WITH  
25 MANIA DO. HE GAMBLLED. HE WENT THROUGH MONEY. HE GAVE

1 IT AWAY. HE DIDN'T -- HE BOUGHT THINGS THAT HE DIDN'T  
2 NEED. HE HAD SUITS AND CLOTHING THAT HE HAD NEVER WORN  
3 IN HIS WARDROBE.

4 Q THESE WERE ALL BEHAVIORS THAT WERE -- THESE  
5 EXISTED --

6 A BEFORE.

7 Q -- BEFORE? OKAY.

8 A CORRECT. THERE WAS AN INTERMITTENT CHRONIC  
9 PROBLEM WITH SLEEP, GETTING TO SLEEP. THAT'S NEVER,  
10 NEVER JUST A REACTIVE THING WHEN IT GOES OVER A PERIOD OF  
11 MONTHS, IT'S ALWAYS A SIGN OF A SERIOUS PSYCHIATRIC  
12 ABNORMALITY. BUT IT WAS ALSO CLEAR THAT THERE WERE TIMES  
13 WHEN HE WAS MUCH MORE FUNCTIONAL THAN HE WAS IN THE DAYS  
14 AND WEEKS PRIOR TO THE KILLING. AND THAT COMES AND GOES  
15 LIKE THAT, MANIC DEPRESSIVE ILLNESS. SOMETIMES IT'S HARD  
16 TO TELL BETWEEN DEPRESSION AND MANIA, SOMETIMES TO BE  
17 VERY, VERY SIMILAR AND HARD TO DISTINGUISH BETWEEN,  
18 CALLED A MIXED DISORDER, WHICH MIXES BOTH TOGETHER.

19 BUT THERE WAS A HYPERSEXUALITY, TOO. I  
20 MEAN, SLEEPING WITH THREE WOMEN IN ONE DAY AT ONE TIME.  
21 THAT'S NOT TYPICAL OF DEPRESSION. THAT'S MORE -- GOES  
22 ALONG WITH MANIA, SPENDING MONEY, GAMBLING. HE WAS A  
23 GAMBLER, SOMETIMES GAMBLED ALL HIS MONEY. HE DIDN'T HOLD  
24 ON TO MONEY WELL, SPENT IT, GAMBLED IT, GAVE IT AWAY.  
25 THOSE ARE THINGS BIG, GRANDIOSE PEOPLE WITH MANIA MIGHT

1 DO.

2 Q WITH RESPECT TO THE TIME PERIOD RIGHT BEFORE  
3 THE INCIDENT, WERE YOU GIVEN ANY INFORMATION CONCERNING  
4 CURTIS WINDOM'S DRINKING?

5 A YES. ALL THE MEMBERS OF HIS FAMILY SAID THAT  
6 THEY HAD NEVER SEEN HIM DRINK, NEVER SEEN HIM DRUNK. HE  
7 SAID THAT HE WOULD DRINK ABOUT A SIX-PACK OF BEER A WEEK.  
8 WELL, THAT'S LESS THAN ONE BEER A DAY, THAT'S ACCURATE.  
9 BUT ON THE NIGHT BEFORE THE KILLINGS HE HAD CONSUMED AN  
10 ENTIRE SIX-PACK. NOW, THAT'S ENOUGH TO CREATE QUITE A  
11 BUZZ. AND THAT'S, IN MY VIEW, AN ATTEMPT TO  
12 SELF-MEDICATE; THAT HE HAD AN AWARENESS HE WAS GOING OVER  
13 THE EDGE, COULDN'T RELAX, AND WANTED TO BE ABLE TO.

14 Q I SEE. BY THE WAY, SOMEONE WITH BRAIN DAMAGE,  
15 LIKE MR. WINDOM, WOULD THE AFFECT OF ALCOHOL CONSUMPTION  
16 ON THAT PERSON DIFFER FROM SOMEBODY WITHOUT BRAIN DAMAGE?

17 A SURE.

18 Q DRINKING THAT QUANTITY OF ALCOHOL?

19 A PEOPLE WITH BRAIN DAMAGE ARE MUCH MORE  
20 SENSITIVE TO THE EFFECTS OF ALCOHOL GENERALLY. AND  
21 ALTHOUGH I THINK THAT THE TIMING WASN'T RIGHT, I'M NOT  
22 SAYING HE WAS DRUNK AT THE TIME THAT THE MURDER OCCURRED,  
23 THE FACT THAT HE WANTED TO SELF-MEDICATE BEFORE THAT  
24 REPRESENTED AN AWARENESS OF GATHERING ABNORMALITY WITHIN  
25 HIS OWN BRAIN. AND THE FACT THAT HE GAVE THE GUN AWAY TO

1     SOMEBODY ELSE TO HOLD FOR AWHILE BECAUSE HE WAS AFRAID HE  
2     WOULD USE IT INAPPROPRIATELY, INDICATES THAT HE HAD  
3     EARLY-ON AWARENESS OF THE ABNORMALITY THAT WAS GATHERING.  
4     A PERSON WITH BRAIN DAMAGE IS MUCH LESS ABLE TO RESIST  
5     THE TEMPTATIONS THAT ARE IMPOSED BY MENTAL ILLNESS.

6           Q     OKAY.  AND THAT'S EXACTLY WHERE I WANTED TO GO  
7     NEXT.  NOW, WE HAVE FRONTAL LOBE BRAIN DAMAGE AND WE HAVE  
8     SOME MENTAL ILLNESS, POSSIBLY MANIC DEPRESSIVE PSYCHOSIS.  
9     LET'S PUT IT ALL TOGETHER, AND WHAT EFFECT DOES THAT HAVE  
10    ON MR. WINDOM'S BEHAVIOR?

11          A     IT WOULD BECOME NOT MODULATED, AND MOTIVATED BY  
12    DELUSIONAL THINKING, AND WITH A MUCH DECREASED CAPACITY  
13    TO CONTROL THE BEHAVIOR.  SOME PEOPLE THAT ARE HAVING  
14    DELUSIONS CAN CONTROL THEIR BEHAVIOR IN RESPONSE.

15          Q     COULD THIS COMBINATION OF A -- OF A -- OF A  
16    MANIC DEPRESSIVE DISORDER WITH FRONTAL LOBE BRAIN DAMAGE,  
17    WOULD THAT LEAD TO EXTREME PARANOIA OR DEFENSIVENESS?

18          A     I THINK THAT'S EXACTLY WHAT HAPPENED.  I THINK  
19    THE MENTAL ILLNESS LED TO THE EXTREME PARANOIA, AND THE  
20    BRAIN DAMAGE LED TO AN INCAPACITY OF INHIBITING THE  
21    IMPULSES THAT WERE GENERATED BY THE PARANOIA, THE  
22    DELUSIONAL PARANOIA.

23          Q     DO YOU HAVE AN OPINION THEN CONCERNING WHAT  
24    EFFECT ALL THIS WOULD HAVE ON MR. WINDOM'S ABILITY TO  
25    UNDERSTAND THE NATURE AND CONSEQUENCE OF HIS ACTION?

1           A     YES.

2           Q     OR DISTINGUISH RIGHT FROM WRONG?

3           A     I THINK THAT HIS CAPACITY TO DISTINGUISH RIGHT  
4 FROM WRONG AT THE TIME OF THE KILLING WAS SERIOUSLY  
5 COMPROMISED. I THINK THAT HE WASN'T -- WAS NOT ABLE TO  
6 DO THAT. I THINK THAT HE WAS DOING THE ONLY THING THAT  
7 HE COULD DO AT THAT TIME IN HIS MIND, WHICH WAS TO STRIKE  
8 OUT AGAINST SOMEBODY WHO HE DELUSIONALLY THOUGHT WAS  
9 ABOUT TO KILL HIM.

10          Q     SO TO PUT IT IN -- IN ANOTHER WAY, IS IT YOUR  
11 OPINION MR. WINDOM WAS LEGALLY INSANE AT THE TIME OF THE  
12 KILLING?

13          A     YES.

14          Q     IS THAT WITHIN A REASONABLE DEGREE OF MEDICAL  
15 CERTAINTY?

16          A     I THINK SO.

17          Q     AND DO YOU ALSO HAVE AN OPINION CONCERNING  
18 MR. WINDOM'S ABILITY TO PLAN AND PREMEDITATE GIVEN HIS  
19 BRAIN DAMAGE AND MENTAL ILLNESS?

20          A     I THINK THAT HIS MENTAL ILLNESS AND  
21 NEUROLOGICAL ILLNESS MADE IT IMPOSSIBLE FOR HIM TO  
22 PREMEDITATE PROPERLY, TO COOLY CALCULATE WHAT HE WAS  
23 ABOUT TO DO. I DON'T THINK HE HAD -- THAT HE HAD ANY  
24 PLAN TO DO WHAT HE DID.

25          Q     IN FACT, IT SOUNDS LIKE FROM WHAT YOU'RE

1 SAYING, DR. PINCUS, MR. WINDOM'S PROBLEM WITH HIS BRAIN  
2 DAMAGE IS HIS INABILITY TO CALMLY REFLECT AND TO MODULATE  
3 HIS IMPULSE?

4 A PARTICULARLY UNDER THE STRESS OF THAT, THAT  
5 INTENSIFIED MENTAL ILLNESS. HE WAS JUST -- THINK ABOUT  
6 THE FACTS OF THE CASE. A MAN TAKES A GUN, SHOOTS HIS  
7 BEST FRIEND, AND SHOOTS AT SOMEBODY ELSE IN THE STREET  
8 THAT HE HAPPENED TO CASUALLY MEET AT THE TIME, KILLS HIS  
9 GIRLFRIEND, DOESN'T EVEN REMEMBER IT, AND THEN SHOOTS  
10 SOMEBODY ELSE LATER, A MOTHER, ALL IN THE MISTAKEN IDEA  
11 THAT THEY WERE AFTER HIM OR THERE WAS SOME KIND OF  
12 CONSPIRACY. HE WAS JUST SORT OF SHOOTING.

13 IF YOU JUST HEARD ABOUT THAT ON THE RADIO,  
14 SOME GUY RUNNING AMUCK AND SHOT AT FOUR PEOPLE, KILLED  
15 THREE OF THEM IN ONE SHORT, RELATIVELY SHORT PERIOD OF  
16 TIME, SOMEONE WHO HAD NO -- VERY LITTLE IN THE WAY OF A  
17 CRIMINAL HISTORY BEFORE THAT, IT ALMOST CRIES OUT FOR  
18 SOME SORT OF MENTAL EXPLANATION. AND HERE WE HAVE THESE  
19 SYMPTOMS, DELUSIONS, HALLUCINATIONS, NEUROLOGICAL DAMAGE.  
20 THERE'S GOT TO BE A RELATIONSHIP THING.

21 Q IN SPEAKING OF THE FACTS THEMSELVES, IS THERE  
22 ANYTHING ABOUT THE CRIME THAT INDICATES SOME SORT OF  
23 METHODOLOGY? WAS HE -- WAS HE TRYING TO ESCAPE AFTER HE  
24 SHOT THESE PEOPLE?

25 A MY UNDERSTANDING IS WHAT HE DID IS HE DROVE HIS



1 CAR, ENCOUNTERED JOHNNIE LEE WAS TALKING TO SOME PEOPLE  
2 ON THE STREET, SHOT HIM FROM THE CAR, THINKING THAT HE  
3 WAS GOING TO BE SHOT BY JOHNNIE LEE. THOUGHT JOHNNIE LEE  
4 WAS GOING FOR HIS GUN, THERE WAS NO GUN. GOT OUT OF THE  
5 CAR, LEFT THE DOORS OF THE CAR OPEN, WALKED AWAY FROM  
6 THERE AFTER SHOOTING -- SHOOTING JOHNNIE LEE AGAIN, AND  
7 WALKED TO THE APARTMENT THAT HE SHARED WITH VAL. WENT UP  
8 INTO THE APARTMENT, WAS ANOTHER WOMAN THERE AT THE TIME.  
9 THERE HAD BEEN TWO PEOPLE IN THE STREET WITH JOHNNIE LEE  
10 AT THE TIME. WENT INTO THE APARTMENT, SAID, I CAN'T TAKE  
11 IT ANYMORE, SHOT VAL, SHOT AT THE FRIEND, CLICKED, AND IT  
12 WAS EMPTY. SHE RAN AWAY.

13 HE LOADED THE GUN AGAIN, WENT OUT, AND  
14 ENCOUNTERED A GUY NAMED KENNY WILLIAMS WHO HAPPENED TO BE  
15 WALKING BY AT THE TIME WHO SAID, WHAT'S UP, OR SOMETHING  
16 ALONG THOSE LINES, AND HE SHOT HIM. THEN HE -- DIDN'T  
17 KILL HIM. AND SO THEN HE WALKED ON.

18 AND OF COURSE THERE WAS A HUBBUB IN THE  
19 NEIGHBORHOOD BECAUSE THESE SHOOTINGS WERE GOING ON. AND  
20 HE WAS ENCOUNTERED BY HIS BROTHER AND A FELLOW BY THE  
21 NAME OF ANDRE WILLIAMS WHO SAW HIM WITH A -- WITH A GUN,  
22 CURTIS SHAKING AND SWEATING AND SAYING OVER AND OVER  
23 AGAIN, I SHOT JOHNNIE LEE, I SHOT JOHNNIE LEE.  
24 APPARENTLY UNAWARE OF THE CONFUSION, HE TOOK THE GUN, PUT  
25 IT TO HIS OWN HEAD, ONLY TO BE STOPPED BY EDDIE JAMES WHO

1 PREVENTED HIM FROM SHOOTING HIMSELF BY ACTUALLY PUTTING  
2 THE FINGER INTO THE -- BEH~~IND~~ND THE TRIGGER SO HE COULDN'T  
3 PULL IT. THEN HAVING CURTIS PULL AWAY FROM HIM, POINT  
4 THE GUN AT HIM, HE THEN PULLED BACK AND THEY, THE THREE  
5 OF THEM, CURTIS AND HIS BROTHER AND THIS FELLOW WALKED  
6 OUT. AND WHO DRIVES UP BUT THE MOTHER OF VAL, WHOM THEY  
7 EXCHANGE SOME WORDS, AND THEN HE SHOT HER THINKING SHE  
8 WAS GOING FOR A GUN, TOO.

9 Q SO WHAT WE HAVE HERE IS ALMOST A SERIES OF  
10 CHANCE ENCOUNTERS?

11 A A SERIES OF CHANCE ENCOUNTERS, EXACTLY RIGHT.

12 Q WHEN YOU SAY THAT MR. WINDOM WAS SHAKING AND  
13 SWEATING, IS THERE ANY SIGNIFICANCE OF THAT?

14 A HE WAS IN A TREMENDOUS EMOTIONAL STRESS AT THAT  
15 TIME.

16 Q ARE YOU AWARE OF WHAT TIME OF YEAR THIS  
17 INCIDENT OCCURRED?

18 A IT WAS FEBRUARY, I BELIEVE, IT WAS COOL. AND  
19 DESPITE THE FACT THAT HE WAS SWEATING, HE WAS SAYING HOW  
20 COLD HE WAS. I SAW ON THE TAPE THAT WAS TAKEN AT THE  
21 POLICE STATION SHORTLY THEREAFTER HE WAS WEARING KIND OF  
22 A WINTER, HEAVY WINTER COAT AND WAS SITTING AND CRYING  
23 AND --

24 Q INDOORS?

25 A INDOORS. AND HIS MOTHER AND HE WERE

1 EXCHANGING -- OR ACTUALLY HE WAS KIND OF LISTENING TO HIS  
2 MOTHER WHO WAS TALKING ON ~~AND~~ ON. AND AT ONE POINT HIS  
3 MOTHER SAID HE HAD SHOT A POLICEMAN. AND HE SAID, DID  
4 HE. AND HE SEEMED PUZZLED BY THAT AND ASKED THAT  
5 POLICEMAN WHETHER HE HAD SHOT A POLICEMAN, AND THE  
6 POLICEMAN SAID, NO, YOU DIDN'T. BUT HE DIDN'T KNOW  
7 WHETHER HE DID, OR HE SUBSEQUENTLY DOESN'T REMEMBER  
8 HAVING SHOT VAL.

9 Q VALERIE?

10 A VALERIE, YEAH.

11 Q ARE YOU FAMILIAR WITH THE STATUTORY MITIGATION  
12 FACTORS THAT ARE PROVIDED BY FLORIDA LAW?

13 A COULD YOU REMIND ME?

14 Q YES. THE TWO THAT I WANT TO ADDRESS IN  
15 PARTICULAR PERTAIN TO THE MENTAL STATE OF THE DEFENDANT.  
16 AND FIRST WOULD BE AT THE TIME OF THE OFFENSE MR. WINDOM  
17 WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL  
18 DISTURBANCE. DO YOU HAVE AN OPINION CONCERNING WHETHER  
19 OR NOT THAT FACTOR APPLIES?

20 A I THINK THAT HE WAS UNDER THE INFLUENCE OF  
21 EXTREME MENTAL AND EMOTIONAL DISTURBANCE.

22 Q AND, SECONDLY, THE OTHER FACTOR IS AT THE TIME  
23 OF THE OFFENSE MR. WINDOM'S CAPACITY TO APPRECIATE THE  
24 CRIMINALITY OF HIS CONDUCT OR TO CONFORM THE CONDUCT WITH  
25 THE REQUIREMENT OF LAW WAS SUBSTANTIALLY IMPAIRED. DO

1 YOU HAVE AN OPINION CONCERNING THAT FACTOR?

2 A I THINK IT WAS IMPAIRED. HIS ABILITY TO  
3 UNDERSTAND THE CRIMINALITY OF WHAT HE WAS DOING WAS  
4 IMPAIRED.

5 Q WAS IT SUBSTANTIALLY IMPAIRED?

6 A SUBSTANTIALLY IMPAIRED FOR EACH OF THE  
7 SHOOTINGS, EACH OF THE FOUR SHOOTINGS.

8 Q AND YOUR OPINIONS CONCERNING BOTH THE STATUTORY  
9 MITIGATING FACTOR -- FOR THAT MATTER, EVERYTHING YOU  
10 TESTIFIED TO THUS FAR, ARE THOSE OPINIONS WITHIN A  
11 REASONABLE DEGREE OF SCIENTIFIC CERTAINTY?

12 A I THINK SO, YES.

13 MR. MARIO: JUST A MOMENT, YOUR HONOR?

14 THE COURT: YES.

15 BY MR. MARIO:

16 Q DOCTOR, YOU INDICATED EARLIER YOU HAD A CHANCE  
17 TO REVIEW DR. SIDNEY MERIN'S DEPOSITION WHICH RECOUNTS  
18 THE RESULT OF HIS EXAMINATION OF MR. WINDOM?

19 A YES.

20 Q AND IN HIS DEPOSITION, DR. MERIN AT ONE POINT  
21 REFERS TO A DIAGNOSIS OF DISSOCIATIVE DISORDER,  
22 DISSOCIATIVE AMNESIA?

23 A YES.

24 Q WHAT IS YOUR TAKE ON THAT? IS -- IS THAT  
25 SIMILAR TO WHAT YOU'RE TALKING ABOUT WHEN HE DOESN'T

1 RECALL CERTAIN ASPECTS?

2 A THAT'S EXACTLY RIGHT. VERY OFTEN PEOPLE WHO  
3 HAVE BEEN BADLY ABUSED DEVELOP THE CAPACITY TO  
4 DISASSOCIATE, THAT IS, TO PUT THEMSELVES MENTALLY IN  
5 ANOTHER PLACE FROM WHERE THEY WERE WHEN STRESS BECOMES  
6 OVERWHELMING. THIS IS POSTTRAUMATIC STRESS DISORDER IS  
7 WHAT IT'S ACTUALLY CALLED. PSYCHIATRIC COMBAT NEUROSES  
8 IS WHAT IT WAS CALLED AT ONE TIME.

9 AND THE EXPERIENCE OF HAVING BEEN ABUSED,  
10 A CHILD SHOULD BE PREDISPOSED TO IT. SO DOES BRAIN  
11 DAMAGE. SO THAT A LOT OF PEOPLE WITH POSTTRAUMATIC  
12 STRESS DISORDER HAVE BOTH A HISTORY OF ABUSE AND SOME  
13 DEGREE OF BRAIN DAMAGE. AND I THINK THAT FOR HIS  
14 INABILITY TO REMEMBER THE KILLING OF VALERIE WAS AN  
15 EXAMPLE OF THAT. I WOULD AGREE COMPLETELY WITH DR. MERIN  
16 ABOUT THAT.

17 MR. MARIO: PARDON ME A MOMENT.

18 Q OKAY. I THINK DR. MERIN INDICATES THIS A  
19 SELECTIVE TYPE -- SELECTIVE TYPE, VOLITIONAL,  
20 DISSOCIATIVE AMNESIA. YOU DON'T HAVE AN OPINION, DO  
21 YOU?

22 A I DON'T. I THINK WE ALL AGREE THAT THERE IS --  
23 HE IS NOT PREVARICATING, HE IS NOT LYING. HE IS NOT  
24 TRYING EVEN TO PROTECT HIMSELF. HE'S JUST TELLING IT AS  
25 IT IS. DR. MERIN SAYS THAT, I AGREE WITH THAT. DR.

1 BEAVER AGREES WITH THAT. WE ALL AGREE THAT THAT IS -- IN  
2 THIS CASE VERY OFTEN THAT DOES COME UP IN A MURDER CASE,  
3 SOMEONE TRYING TO PROTECT THEMSELVES AND SAY HE DOESN'T  
4 REMEMBER SOMETHING THAT YOU MIGHT REMEMBER. THIS CASE,  
5 THAT'S NOT -- THAT'S NOT AT ISSUE AT ALL. I DON'T THINK  
6 THIS IS VOLITIONAL AT ALL. I THINK THE FACT THAT HE HAD  
7 A DISSOCIATIVE FORGETTING OF HAVING DONE THAT INDICATES  
8 THE DEGREE OF EMOTIONAL STRESS HE WAS UNDER AT THAT TIME.

9 MR. MARIO: WE HAVE NO FURTHER QUESTIONS,  
10 YOUR HONOR.

11 THE COURT: ALL RIGHT. THANK YOU.

12 MR. LERNER, DO YOU WANT TO START  
13 CROSS-EXAMINATION NOW OR WOULD YOU PREFER TO GO  
14 AHEAD AND BREAK FOR LUNCH AND BEGIN AFTER LUNCH?

15 MR. LERNER: WHICHEVER YOU PREFER.

16 MR. MARIO: JUDGE, I WOULD RESPECTFULLY ASK  
17 TO PROCEED. DR. PINCUS HAS A FLIGHT TO CATCH, AS  
18 DOES DR. BEAVER. IT MIGHT COMPLICATE IN TERMS OF  
19 HAVING TO CONTINUE THIS HEARING.

20 THE COURT: WHAT TIME DOES YOUR FLIGHT  
21 LEAVE?

22 THE WITNESS: I THINK IT LEAVES AT 2:30.

23 THE COURT: THAT'S FINE. WE WILL CONTINUE  
24 TILL NOON AND TAKE A BREAK THEN.

25 CROSS-EXAMINATION

1 BY MR. LERNER:

2 Q GOOD AFTERNOON.

3 A GOOD AFTERNOON.

4 THE COURT: I WOULD ALSO NOTE WE STARTED  
5 ABOUT 30 MINUTES LATE. BUT THAT'S FINE, LET'S GO  
6 FROM THERE.

7 MR. LERNER: I WAS HERE.

8 THE COURT: YOU WERE ABSOLUTELY.

9 BY MR. LERNER:

10 Q NOW, THE REAL -- THE ONLY REALLY SOLID FACTS  
11 THAT YOU HAVE THAT ARE WITHIN YOUR OWN KNOWLEDGE ARE THE  
12 NEUROLOGICAL TESTS THAT YOU YOURSELF PERFORMED; IS THAT  
13 CORRECT?

14 A THERE WAS A VIDEOTAPE THAT I WATCHED.

15 Q OKAY, YEAH.

16 A AND THE INTERVIEWS OF THE -- WELL, YEAH. THE  
17 SOURCE OF INFORMATION OTHER THAN MY OWN OBSERVATION YOU  
18 MEAN?

19 Q RIGHT.

20 A YEAH.

21 Q SO FOR YOUR CONCLUSIONS TO BE VALID, IT'S  
22 IMPORTANT THAT THE OTHER INFORMATION ALSO BE VALID AND  
23 TRUE AND RELIABLE?

24 A SURE, I THINK THAT'S A FAIR STATEMENT.

25 Q OKAY. NOW, LET'S GO INTO WHAT YOU REVIEWED.

1 YOU ONLY REVIEWED THOSE PORTIONS OF THE TESTIMONY FROM  
2 THE TRIAL THAT WERE PROVIDED TO YOU BY YOUR ATTORNEYS?

3 A YES.

4 Q NOW, THEY DID NOT PROVIDE YOU WITH ANY OF THE  
5 ARREST AFFIDAVITS, DID THEY, OF MR. WINDOM'S ARREST,  
6 LEADING UP TO THE SHOOTING? I'M TALKING ABOUT THE ARREST  
7 FOR DRUGS.

8 A OH, YES, I DID SEE THAT WHERE HE -- A  
9 CONFIDENTIAL INFORMANT --

10 Q RIGHT.

11 A YES, I DID READ THAT.

12 Q BECAUSE I FAXED THEM TO YOU?

13 A RIGHT.

14 Q OKAY. SO INITIALLY YOU DIDN'T, AND MR. WINDOM  
15 DIDN'T TELL YOU ANYTHING ABOUT THOSE ARRESTS WHEN YOU GOT  
16 HISTORY FROM HIM, DID HE?

17 A I THINK HE DID INDICATE THAT HE HAD BEEN  
18 ARRESTED FOR -- IN OTHER WORDS, WE WENT OVER PREVIOUS  
19 CRIMINAL HISTORY, AND, YES, HE HAD BEEN -- INDICATED HE  
20 HAD BEEN ARRESTED, AND HE ALSO INDICATED THAT HE HAD  
21 FOUGHT WITH A GIRLFRIEND AND BEEN ARRESTED FOR THAT.

22 Q RIGHT. NOW, THESE ARRESTS ALSO INVOLVED THE  
23 VICTIM, VALERIE DAVIS; IS THAT CORRECT?

24 A THE DRUG ONE DID, YES.

25 Q YES. OKAY. WELL, ACTUALLY I THINK THE ONE



1 WHERE HE -- I THINK SHE USED A LAST NAME, BUT THE ONE  
2 WHERE HE WAS DOMESTIC VIOLENCE WAS ALSO VALERIE DAVIS?

3 A THAT'S RIGHT, IT WAS ONE WITH VALERIE WHERE  
4 HE -- YEAH, THAT'S RIGHT.

5 Q BUT I'M PRIMARILY REFERRING TO THESE NOW. SO  
6 STARTING FROM, LIKE, JULY, THE KILLINGS HAPPENED IN  
7 FEBRUARY OF '9 --

8 A TWO.

9 Q -- TWO. SO STARTING IN JULY OF '91, MR. WINDOM  
10 WAS REPEATEDLY ARRESTED AND CHARGED WITH --

11 MR. MARIO: EXCUSE ME, I'M GONNA OBJECT AT  
12 THIS POINT. MY UNDERSTANDING, MR. WINDOM WAS  
13 ARRESTED ONCE, AND THERE WERE TWO CHARGING  
14 AFFIDAVITS WHICH AROSE FROM THAT ARREST.

15 MR. LERNER: I DON'T BELIEVE SO, YOUR HONOR.

16 THE COURT: SOMEBODY WILL HAVE TO SUPPORT IT  
17 WITH A FACTUAL BASIS. LET'S TRY THIS AS A  
18 HYPOTHETICAL AND ASK HIM FOR PURPOSES OF YOUR  
19 QUESTION TO ASSUME THAT'S THE TRUTH. AND  
20 SOMEBODY'S GONNA HAVE TO SHOW ME SOME EVIDENCE OF  
21 THE NUMBER OF ARRESTS.

22 BY MR. LERNER:

23 Q OKAY, DOCTOR, I'M SHOWING YOU STATE'S EXHIBIT B  
24 FOR IDENTIFICATION PURPOSES. DO YOU RECOGNIZE THE FIRST  
25 FEW ENTRIES THERE TO BE --

1           **A**     THIS IS --

2                   **MR. LERNER:**   COULD I APPROACH THE WITNESS,  
3     YOUR HONOR?

4                   **THE COURT:**   YES.

5                   **MR. LERNER:**   AND USE HIS, AND THAT WAY I CAN  
6     USE MINE.

7                   **THE COURT:**   COUNSEL, IF YOU NEED TO COME UP  
8     AND SEE ANY OF THESE, YOU MAY.

9                   **MR. LERNER:**   I GAVE COUNSEL A COPY, THEY  
10    SHOULD HAVE IT.

11   **BY MR. LERNER:**

12           **Q**     LET'S GO OVER --

13           **A**     THIS IS THE SHOOTING IN FEBRUARY.

14           **Q**     OKAY.   SO WE START OUT WITH THE SHOOTING IN  
15   FEBRUARY OF '92?

16           **A**     RIGHT.

17           **Q**     AND BASICALLY I JUST INCLUDE THAT IN THERE TO  
18   GET THE DATE.

19           **A**     RIGHT.

20           **Q**     AND A FULL HISTORY --

21                   **MR. LERNER:**   AND FOR THE RECORD, YOUR HONOR,  
22   B IS WHAT I SENT TO DR. MERIN.   WHEN I FOUND OUT,  
23   AFTER TAKING THE DEPOSITION OF DR. PINCUS AND  
24   DR. BEAVER, THEY DIDN'T HAVE IT, I FAXED IT TO  
25   THEM AS WELL.   NOT THE WHOLE COLLECTION, BUT JUST

1 THE ARRESTS.

2 Q THEN STARTING IN DECEMBER 6TH OF '91 -- OR I  
3 GUESS WE'RE GOING BACKWARDS, AREN'T WE? SO GOING BACK  
4 FROM FEBRUARY, ABOUT A COUPLE MONTHS BEFORE THAT, HE WAS  
5 ARRESTED ON DECEMBER 6TH IN CASE NUMBER 91-323204, AND  
6 THAT WAS AN EXECUTION OF A SEARCH WARRANT?

7 A OKAY.

8 Q OKAY. AND DURING THAT SEARCH WARRANT, IF YOU  
9 LOOK AT THE NARRATIVE -- AND YOU DID REVIEW THESE,  
10 CORRECT?

11 A YEAH.

12 Q OKAY. THEY WENT THROUGH AND KIND OF RIFFLED  
13 VALERIE DAVIS'S HOUSE AND MR. WINDOM'S HOUSE, THEY WERE  
14 TAKEN INTO CUSTODY, AND THEY TOOK QUITE A BIT OF CASH  
15 INTO CUSTODY, DID THEY NOT, I BELIEVE AROUND \$1,000?

16 A \$1,030 I THINK.

17 Q YES. WELL, YOU REVIEWED THESE THEN, YOU  
18 REMEMBER. AND THAT DOES INDICATE THAT HE WAS ARRESTED?

19 A OF COURSE THEY HAD GIVEN HIM A THOUSAND DOLLARS  
20 EARLIER. IN OTHER WORDS, THE CONFIDENTIAL INFORMANT  
21 WENT --

22 Q IT MIGHT HAVE BEEN THE SAME THOUSAND?

23 A IT MIGHT HAVE BEEN THE SAME THOUSAND.

24 Q OKAY. THEN GOING BACK TO DECEMBER 3RD, THERE  
25 WAS AN ARREST AFFIDAVIT THAT HE WAS ARRESTED THAT SAME

1 DAY, DECEMBER 3RD, IN CASE NUMBER 91-320887?

2 A UH-HUH. YES. BUT THAT'S NOT THE SAME DATE,  
3 DECEMBER 6TH. YOU SAID DECEMBER 3RD. BUT THAT WAS --  
4 THE ARREST WAS THE RESULT. BUT DIDN'T THE CONFIDENTIAL  
5 INFORMANT GO IN A FEW DAYS EARLIER THAN THE ARREST? IN  
6 OTHER WORDS, HE WASN'T ARRESTED WHEN THE CONFIDENTIAL  
7 INFORMANT BOUGHT THE TWO CAKES OF COCAINE FOR A THOUSAND  
8 DOLLARS, HE WASN'T ARRESTED AT THAT TIME.

9 Q WELL, THE ARREST INFORMATION INDICATES 12/3 OF  
10 '91?

11 A RIGHT.

12 Q ON CASE NUMBER 91-320887?

13 A SO HE WAS ARRESTED FOR THE COCAINE DEAL ON THE  
14 THIRD, AND HE WAS ARRESTED AGAIN ON THE SIXTH?

15 Q SO IT WOULD APPEAR FROM THE REPORTS.

16 A OKAY. IS THAT A SEPARATE THING THAT HE DID?  
17 I'M NOT SURE.

18 Q (NODS HEAD.)

19 A OKAY. GO AHEAD.

20 Q THEN GOING BACK ON AUGUST 2ND OF 1991, HE HAD  
21 BEEN ARRESTED AGAIN FOR ANOTHER DRUG CHARGE IN '91. I'M  
22 GIVING THE POLICE CASE NUMBER IN THE UPPER RIGHT HAND,  
23 201880.

24 A YES.

25 MR. MARIO: EXCUSE ME.

1           **THE COURT:**   PARDON?

2   **BY MR. LERNER:**

3           **Q**     MY POINT IS, GIVEN THIS HISTORY, DOCTOR, YOU  
4   HAVE TO CONSIDER, WOULD YOU NOT, LOGICALLY WHETHER EVEN  
5   AN ORDINARY, NONBRAIN DAMAGED PERSON WOULD BEGIN TO HAVE  
6   SOME FEELINGS OF ANGER AND FRUSTRATION ABOUT THE FACT  
7   THAT SOMEBODY IN THE COMMUNITY WAS TURNING HIM IN  
8   REPEATEDLY AND HE WAS GETTING INTO INCREASINGLY GREATER  
9   DIFFICULTIES IN THE WAY HE EARNED HIS LIVING?

10          **A**     WELL, HE KNEW -- I THINK THAT THAT MIGHT HAVE  
11   BEEN SUBSUMED IN HIS PARANOIA, THE CONCERNS ABOUT  
12   SOMEBODY WAS TURNING HIM IN AND SOMEBODY WAS LOOKING FOR  
13   HIM AND TRYING TO GET HIM, BUT I DON'T THINK THAT WAS THE  
14   CAUSE OF IT.

15          **Q**     BUT SOMEBODY WAS TURNING HIM IN AND SOMEBODY  
16   WAS TRYING TO GET HIM --

17          **A**     WELL --

18          **Q**     -- REPEATEDLY; IS THAT CORRECT?

19          **A**     THERE WAS A CONFIDENTIAL INFORMANT AND IT WAS  
20   SOMEBODY HE KNEW, SO THAT WAS NOT A -- AND HIS -- THE  
21   FOCUS OF HIS DELUSION WAS NOT THAT PERSON.

22          **Q**     OKAY. NOW, IF HE FELT THAT VALERIE DAVIS, HIS  
23   PARTNER IN THE BUSINESS, WAS GOING TO INFORM ON HIM OR  
24   SOMEHOW GET HIM INTO GREATER TROUBLE SO HE GETS SENT TO  
25   PRISON POSSIBLY, THAT WOULD BE A REASON THAT EVEN A

1 NONBRAIN DAMAGED PERSON WOULD -- OR WOULD EVEN CAUSE A  
2 NONBRAIN DAMAGED PERSON TO HAVE FEELINGS OF RESENTMENT  
3 AND ANGER AT THAT PERSON, WOULDN'T IT?

4 A I THINK IF THAT WERE THE CASE, THAT WOULD,  
5 DEFINITELY SO.

6 Q AND THAT WOULD SERVE AS A MOTIVE FOR  
7 PREMEDITATED FIRST DEGREE MURDER, WOULD IT NOT?

8 A IT CERTAINLY COULD.

9 Q OKAY. NOW, LET ME SHOW YOU -- YOU DIDN'T  
10 REVIEW THE WHOLE APPELLATE RECORD, DID YOU?

11 A I DON'T THINK I DID, NO.

12 Q OKAY. LET ME CALL YOUR ATTENTION IN THE RECORD  
13 TO THE TESTIMONY.

14 MR. LERNER: COULD I APPROACH THE WITNESS,  
15 YOUR HONOR?

16 THE COURT: YES, GO AHEAD.

17 MR. LERNER: DO YOU ALL HAVE THE APPELLATE  
18 RECORD?

19 Q OKAY. I'M REFERRING TO THE PAGES LEADING UP TO  
20 505, WHICH IS THE MITIGATION HEARING THAT WAS HELD ON  
21 THIS CASE ON 11/5 OF '92. LET ME SHOW YOU.

22 MR. LERNER: AND I'M GOING GONNA REFER TO  
23 THE APPELLATE RECORD, YOUR HONOR, STARTING ON  
24 PAGE 497.

25 Q IF THERE WERE A MITIGATION HEARING, AS THERE

1 WAS IN THIS PARTICULAR CASE, WHERE WITNESSES WERE CALLED  
2 BEFORE THE COURT AFTER THE PENALTY PHASE TO TESTIFY ABOUT  
3 MITIGATION, MITIGATING CIRCUMSTANCES, AND THERE WAS A  
4 PERSON NAMED MARY JACKSON WHO TESTIFIED WHO WORKED FOR  
5 THE STATE OF FLORIDA, WAS A PROGRAM ANALYST, DEPARTMENT  
6 OF HRS, AND HAD A MASTER'S DEGREE IN CRIMINAL JUSTICE,  
7 THAT'S THE SORT OF THING YOU WOULD CONSIDER AS TO WHETHER  
8 OR NOT A WITNESS IS RELIABLE, WOULDN'T IT?

9 A EDUCATIONAL BACKGROUND?

10 Q EDUCATIONAL BACKGROUND.

11 A SURE.

12 Q OKAY. AND CALLED AS MR. WINDOM'S WITNESS.

13 NOW, IF ON THE CROSS-EXAMINATION OF THAT WITNESS  
14 MR. ASHTON SAID, WHO WAS THE PROSECUTOR, QUESTION, NOW  
15 APPROXIMATELY THE SAME TIME YOU DISCUSSED WITH CURTIS A  
16 RUMOR THAT HIS GIRLFRIEND, VALERIE, WAS GOING TO INFORM  
17 ON HIM TO THE AUTHORITIES; ISN'T THAT CORRECT. THAT I  
18 SAID THAT QUESTION -- ANSWER, THAT I SAID THAT QUESTION.  
19 AND THIS ON PAGE 505 OF THE RECORD, QUESTION, THAT YOU  
20 HAD HEARD THE RUMOR AND DISCUSSED WITH CURTIS THE FACT  
21 THAT PEOPLE WERE SAYING VALERIE WAS GOING TO INFORM ON  
22 HIM. THAT DID -- ANSWER, THAT DID COME UP. AND DID HE  
23 ACKNOWLEDGE THAT HE HAD HEARD THAT -- THAT PEOPLE WERE  
24 TELLING HIM THINGS. HE DIDN'T KNOW WHETHER TO BELIEVE  
25 THAT OR NOT, THAT HE HAD HEARD THAT. NO FURTHER

1 QUESTIONS.

2 NOW, IF THAT WERE IN -- NOW, YOU DIDN'T  
3 KNOW ABOUT THAT?

4 A NO, I DIDN'T.

5 Q ABOUT THAT FACT, DID YOU?

6 A NO.

7 Q THAT WOULD -- IF THAT WERE TRUE, THAT WOULD  
8 SERVE AS A VALID BASIS, FOR EVEN A NONBRAIN DAMAGED  
9 PERSON, AS A MOTIVE TO GET EVEN WITH, ELIMINATE, OR  
10 OTHERWISE HARM, OR HAVE AT LEAST ILL-WILL TOWARDS THE  
11 PERSON WHO'S GOING TO INFORM ON YOU IN YOUR DRUG DEALING  
12 BUSINESS?

13 A I THINK THAT -- THAT -- THAT PART OF IT MAY NOT  
14 BE TRUE. IN OTHER WORDS, IT DEPENDS ON THE LEVEL OF --  
15 OF CERTAINTY TO SOME DEGREE. JUST AS I FEEL I'M AT SOME  
16 DISADVANTAGE HAVING NOT KNOWN ABOUT THAT, SO HE DIDN'T  
17 MENTION THAT VAL WAS UNDER SUSPICION OF TURNING HIM IN,  
18 BUT HE DID THINK THAT JOHNNIE LEE WAS. BUT WHEN HE WAS  
19 TOLD THAT JOHNNIE LEE WAS GOING TO, WAS THE GUY WHO WAS  
20 GONNA KILL HIM, HE THOUGHT TO HIMSELF, THAT'S NOT  
21 REASONABLE.

22 Q NOW, WHO TOLD HIM THAT?

23 A IT WAS ANOTHER FELLOW.

24 Q JACK LUCKET?

25 A JACK LUCKET.



1 Q THAT'S WHO YOU MENTION IN YOUR REPORT?

2 A RIGHT.

3 Q IN YOUR REPORT YOU HAVE SAID --

4 A I THOUGHT HIS NAME WAS LUCKY, BUT THAT'S RIGHT.

5 MR. LERNER: IF COULD I HAVE A MOMENT, YOUR  
6 HONOR?

7 Q DO YOU HAVE A COPY OF YOUR REPORT?

8 A I DO.

9 MR. LERNER: COULD I READ OVER HIS SHOULDER,  
10 YOUR HONOR?

11 THE COURT: YES. DO I NOT HAVE THIS? THIS  
12 IS TO THE APPELLATE REPORT?

13 MR. LERNER: THIS REPORT, IT SHOULD BE IN  
14 THE RECORD.

15 MR. MARIO: DR. PINCUS'S REPORT. IT WAS  
16 INTRODUCED AS DEFENSE --

17 THE COURT: NO, I HAVE -- IS THAT WHAT  
18 YOU'RE REFERRING TO, DR. PINCUS? OH, THAT'S  
19 FINE.

20 BY MR. LERNER:

21 Q JUST READ THE LITTLE SECTION ABOUT WHAT YOUR  
22 UNDERSTANDING WAS WITH JACK LUCKET, IF YOU WILL, DOCTOR.

23 A OKAY. PRIOR TO THE INCIDENT JACK, I SAID  
24 LUCKY, THAT'S WHAT I UNDERSTOOD HIS NAME TO BE, A FRIEND  
25 TOLD CURTIS THAT JOHNNIE LEE WANTED TO KILL HIM OVER THE

1 MONEY. CURTIS WAS FEELING VERY VULNERABLE AT THE TIME,  
2 AND THAT STATEMENT, I QUOTED HIM, MADE MY HANDS SWEAT.

3 Q OKAY. SO YOU WERE ACTUALLY JUST RELYING ON  
4 WHAT MR. WINDOM TOLD YOU ABOUT --

5 A WELL, LET ME -- HE WENT A LITTLE FURTHER. HE  
6 SAID HE DID NOT THINK IT COULD BE TRUE BECAUSE THEY WERE  
7 LIKE BROTHERS, AND JOHNNIE COULD HAVE SHOT CURTIS THE  
8 OTHER NIGHT BECAUSE THEY HAD BEEN TOGETHER MOST OF THE  
9 EVENING. HE BECAME SUSPICIOUS OF JOHNNIE LEE HOWEVER  
10 INCREASINGLY SO, AND CURTIS KNEW THAT JOHNNIE LEE WAS  
11 CARRYING A GUN.

12 Q BUT THE VERACITY OR THE RELIABILITY OF THAT  
13 WOULD DEPEND, WOULD IT NOT -- HERE WE GO -- THAT WOULD  
14 DEPEND ON WHETHER OR NOT THAT WAS AN ACCURATE PICTURE OF  
15 WHAT THE FACTS WERE OF WHAT JACK LUCKET HAD SAID TO HIM?

16 A YES.

17 MR. LERNER: OKAY. NOW, IF I COULD APPROACH  
18 THE WITNESS, YOUR HONOR. AND I'M REFERRING TO  
19 VOLUME ONE OF THE DEFENSE EXHIBIT, THE TAB UNDER  
20 N.

21 Q AND, DR. PINCUS, THIS IS PART OF THE MATERIAL  
22 THAT YOU REVIEWED. THIS IS THE SUPREME COURT'S OPINION.  
23 AND THEY SAID WHAT ABOUT JACK LUCKET'S TESTIMONY?

24 THE COURT: GIVE ME A PAGE, IF YOU WOULD.

25 MR. LERNER: YOUR HONOR, IT'S UNDER TAB N.

1 I CAN'T GIVE PAGES BECAUSE THE WHOLE THING IS NOT  
2 PAGINATED. N AS IN ~~NANCY~~.

3 THE COURT: I HAVE TAB N.

4 MR. LERNER: N AS IN NANCY. SECOND PAGE.

5 I'M SORRY. IF YOU SEE THE WORD, THE INSERT IT  
6 STARTS OUT JACK LUCKET.

7 THE WITNESS: WOULD YOU LIKE ME TO READ IT.  
8 JACK LUCKET TESTIFIED THAT HE HAD TALKED WITH THE  
9 DEFENDANT THE MORNING OF THE SHOOTINGS. IN THE  
10 DISCUSSION THE DEFENDANT ASKED JACK IF JOHNNIE  
11 LEE HAD WON MONEY AT THE DOG TRACK, AND JACK SAID  
12 YES, \$114. THE DEFENDANT SAID JOHNNIE LEE OWED  
13 HIM \$2,000. WHEN THE DEFENDANT LEARNED JOHNNIE  
14 HAD WON MONEY AT THE TRACK, HE SAID TO JACK, MY  
15 NIGGER, YOU'RE GOING TO READ ABOUT ME, MY NIGGER,  
16 YOU'RE GOING TO READ ABOUT ME. HE FURTHER SAID  
17 THAT HE WAS GOING TO KILL JOHNNIE LEE. THAT SAME  
18 DAY AT 11:51 A.M. PER THE SALES SLIP AND THE  
19 SALES CLERK, THE DEFENDANT PURCHASED A .38  
20 CALIBER REVOLVER AND BOX OF 50 .38 CALIBER SHELLS  
21 FROM ABNER YONCE IN WAL-MART IN OCOEE.

22 BY MR. LERNER:

23 Q OKAY. NOW, YOU CAN STOP THERE. THANKS,  
24 DOCTOR. MY QUESTION TO YOU IS THIS, THIS DOES NOT AT ALL  
25 AGREE WITH WHAT THE DEFENDANT TOLD YOU, DOES IT?

1           A     SURE IT DOES.  HE -- WE TALKED ABOUT THE  
2     BUSINESS OF OWING MONEY, ~~AND~~ HE SAID THAT THAT WAS  
3     NOTHING.  HE WAS ACCUSTOMED OF GIVING AWAY MONEY AND  
4     LENDING MONEY TO PEOPLE.

5           Q     BUT HE TOLD YOU -- I'M SORRY?

6           A     HE DIDN'T -- HE MADE VERY LITTLE OF THE ISSUE  
7     OF OWING MONEY, THAT THAT WAS NOT A MOTIVATOR IN HIS, IN  
8     HIS PROBLEM WITH JOHNNIE LEE.

9           Q     SO WHAT WOULD YOU LOOK TO SEE IF THAT WAS A  
10    MOTIVATOR --

11          A     WELL, THIS IS --

12          Q     -- IN HIS PROBLEM WITH JOHNNIE LEE?

13          A     HE OWED \$2,000, JOHNNIE LEE OWED HIM \$2,000 AND  
14    JUST WON 114.

15          Q     UH-HUH.

16          A     HE DIDN'T KNOW.

17          Q     BUT YOU LOOK TO THE RECORD OF WHAT THE PEOPLE  
18    AROUND SAW AND HEARD AT THE TIME, WOULDN'T YOU?  WOULDN'T  
19    THAT BE THE BEST INDICATOR OF WHETHER -- WHETHER OR NOT  
20    THAT WAS A FACTOR?

21          A     WELL, OF COURSE.

22          Q     OKAY.

23          A     OF COURSE I TRY TO DO THAT.

24          Q     DID THEY SUPPLY -- THE DEFENSE ATTORNEY SUPPLY  
25    YOU WITH THE FULL TESTIMONY OF THE TRIAL?

1           A     I HAVE WHAT WAS IN THOSE VOLUMES.

2           MR. LERNER:   OKAY, IF COULD HAVE A MOMENT,  
3           YOUR HONOR.

4           Q     OKAY. LET ME SHOW YOU A PART OF THE TRANSCRIPT  
5           THAT I DON'T BELIEVE IS INCLUDED IN THE DEFENSE EXHIBIT.

6           MR. LERNER:   IF I COULD APPROACH THE  
7           WITNESS, YOUR HONOR.

8           Q     AND, DOCTOR, THIS IS THE TESTIMONY OF PAMELA  
9           FIKES, WHO I BELIEVE THE RECORD WILL SHOW WAS ONE OF THE  
10          WITNESSES THAT WAS PRESENT WITH JOHNNIE LEE AT THE TIME  
11          THAT MR. WINDOM CAME UP AND SHOT JOHNNIE LEE.

12          A     UH-HUH.

13          Q     AND ON PAGE -- HER TESTIMONY STARTS OFF ON 310,  
14          AND SHE SAYS HOW LONG SHE'S KNOWN JOHNNIE AND WHAT SHE  
15          WAS DOING STANDING BESIDE HER CAR. I'LL WAIT.

16          A     LET ME GET MY GLASSES ON.

17          Q     I'M VERY SYMPATHETIC, I JUST GOT MY FIRST PAIR  
18          OF READING GLASSES LAST WEEK.

19          THE COURT:   DID THE TAB -- THE PAGE AND  
20          NUMBER AGAIN.

21          MR. LERNER:   YES, YOUR HONOR. 312. AND  
22          THIS IS IN THE TRANSCRIPT OF THE GUILT PHASE  
23          TRIAL. AND, NO, IT'S NOT IN THERE.

24          THE COURT:   SO I DON'T HAVE WHAT YOU'RE  
25          LOOKING AT? THAT'S FINE. THAT'S FINE. I'LL

1 JUST LISTEN. NOT A PROBLEM.

2 MR. LERNER: BUT THE COURT OUGHT TO HAVE --  
3 I'LL TRY TO READ AS MUCH OF IT AS I CAN SO YOU  
4 CAN FOLLOW.

5 THE COURT: THAT'S FINE.

6 MR. LERNER: DOES DEFENSE COUNSEL HAVE THAT?

7 MR. MARIO: YEAH.

8 BY MR. LERNER:

9 Q BUT ANYWAY, TALKS ABOUT HOW LONG SHE'S KNOWN  
10 CURTIS WINDOM, AND WHICH WAY THEY WERE FACING AND SO  
11 FORTH.

12 OKAY. AND NOW WE'RE GETTING TO -- LET ME  
13 DIRECT YOUR ATTENTION TOWARD -- ON PAGE 313 OF THE TRIAL  
14 TRANSCRIPT OF THE GUILT PHASE. QUESTION, SO HE CAME  
15 BASICALLY THE WAY YOU WERE LOOKING. UH-HUH, ANSWER.  
16 QUESTION, TELL US WHAT HE DID AS HE DROVE UP, AND THIS IS  
17 REFERRING TO MR. WINDOM. ANSWER, HE CAME AND PULLED ON  
18 THE SIDE. HE SAID, QUOTE, MY MOTHER FUCKING MONEY,  
19 NIGGER, AND PUT THE GUN AND SHOT HIM TWICE, JOHNNIE LEE  
20 FELL.

21 SO THAT WOULD INDICATE THAT -- THAT THE  
22 MONEY WAS A FACTOR FOREMOST -- OR AT LEAST AN IMPORTANT  
23 ISSUE IN MR. WINDOM'S MIND AS HE DROVE UP.

24 A I DON'T THINK SO. THAT ALL DEPENDS ON HOW YOU  
25 READ THE STATEMENT AND WHAT HAPPENED AFTERWARDS. THERE

1 WAS NO ALLEGATION THAT HE WENT THROUGH JOHNNIE LEE'S  
2 POCKETS AND TRIED TO TAKE OUT ANY MONEY. THIS WAS NOT A  
3 ROBBERY. THERE'S NO ALLEGATION OF THAT.

4 HOW DID HE SAY THAT? HE DID SAY JOHNNIE  
5 LEE PUT HIS HANDS IN HIS POCKET AND AT THAT TIME -- AND  
6 HE THOUGHT THAT HE WAS GOING FOR A GUN, OR -- AND HE WAS  
7 SAYING, CRITICIZING HIM FOR DOING THAT, IF YOU PUT YOUR  
8 HANDS IN YOUR POCKET, MAYBE YOU SHOULD BE PULLING OUT A  
9 WALLET, PAY ME THE MONEY THAT YOU OWE ME. THE MEANING OF  
10 THOSE WORDS IS NOT CLEAR FROM THE -- THE TESTIMONY. IT'S  
11 EQUIVOCAL. BUT WHAT HE DID AFTERWARDS WAS NOT A ROBBERY.

12 Q WHEN PEOPLE ARE TALKING ABOUT SOMETHING, THAT  
13 IS USUALLY WHAT'S GOING THROUGH THEIR MIND AT THE TIME,  
14 ISN'T IT?

15 A SURELY. BUT THE INTERPRETATION OF WHAT THEY  
16 SAID AND WHAT THEY MEANT IS NOT ENTIRELY CLEAR IN THAT  
17 INSTANCE.

18 Q BUT YOU WEREN'T GIVEN A CHANCE TO REALLY THINK  
19 ABOUT IT BECAUSE YOU WEREN'T GIVEN THIS TESTIMONY, WERE  
20 YOU, TO CONSIDER?

21 A BUT I DO KNOW THERE ISN'T A CHARGE OF ROBBERY.  
22 THIS WAS NOT A ROBBERY, THIS WAS A KILLING.

23 Q RIGHT. BUT YOU JUST SAID YOU DIDN'T THINK THAT  
24 THE ISSUE OF THE MONEY AND ANGER OVER THE MONEY THAT WAS  
25 OWED WAS FOREMOST IN HIS MIND. BUT IF THAT'S TRUE, THE

1 RECORD THAT WE JUST WENT OVER, THAT INDICATES THAT THAT  
2 WAS SOMETHING HE WAS THINKING ABOUT RIGHT AT THE POINT  
3 THAT HE SHOT JOHNNIE LEE?

4 A WELL, DEPENDS ON WHAT JOHNNIE LEE WAS DOING.  
5 I'M NOT SURE THAT THE \$114 THAT JOHNNIE WON AT THE RACE  
6 TRACK IN FACE OF THE \$2,000 JOHNNIE LEE OWED HIM WAS A  
7 MAJOR ISSUE FOR HIM AT THE TIME. I DON'T THINK THERE IS  
8 ANYTHING IN THE HISTORY OF MR. WINDOM, IN TERMS OF HIS  
9 GIVING OUT MONEY OR WHAT HE DID AFTER THE KILLING, THAT  
10 INDICATES THAT THAT WAS THE THING THAT WAS UPPERMOST ON  
11 HIS MIND. WHAT WAS UPPERMOST ON HIS MIND I THINK IS WHAT  
12 JACK LUCKY SAID, THAT JOHNNIE LEE WAS GOING TO KILL HIM  
13 AND HAD A GUN. AND ALL THAT WAS SAID TO SOMEBODY WHO WAS  
14 AT THE TIME UNDER THE INFLUENCE OF A VERY SEVERE PARANOID  
15 DELUSION.

16 Q OKAY. NOW, IT'S SOMEWHAT ESSENTIAL TO THE  
17 THEORY OF THE CASE THAT JACK LUCKET TOLD CURTIS WINDOM  
18 THAT JOHNNIE LEE WAS GOING TO -- WAS THINKING ABOUT  
19 KILLING HIM?

20 A YES.

21 Q DID YOU TALK TO -- DID YOU TALK TO JACK LUCKET  
22 TO SEE IF THAT WAS ACTUALLY TRUE?

23 A NO.

24 Q DID YOU REVIEW THE TESTIMONY OF JACK LUCKET TO  
25 SEE IF THAT WAS ACTUALLY TRUE?



1           A     I DON'T RECALL.

2                   MR. LERNER:  OKAY, IF I COULD APPROACH THE  
3           WITNESS, YOUR HONOR.

4                   YOUR HONOR, I'M REFERRING TO THE TESTIMONY  
5           OF JACK LUCKET, AND I DON'T WANT TO READ THE  
6           WHOLE THING, BUT, OH, FROM ABOUT PAGE 322, AND  
7           THE SALIENT COMMENT THAT I WANTED TO POINT OUT IS  
8           ON 324.

9           Q     BUT, DOCTOR, SINCE YOU GOT YOUR READING GLASSES  
10          ON, YOU CAN BACK UP FROM THERE IF YOU WANT, BUT READ --  
11          READ FROM WHEREVER YOU FEEL COMFORTABLE THERE IN YOUR  
12          TESTIMONY -- AND YOU DON'T HAVE TO READ IT ALOUD, JUST  
13          READ IT TO YOURSELF -- UP TO PAGE 324, IF YOU WILL.

14          A     OKAY.

15          Q     OKAY.  NOW, ISN'T IT TRUE THAT, ACCORDING TO  
16          JACK LUCKET, THE CONVERSATION FIRST WENT ON ABOUT CURTIS  
17          LEARNING THAT MR. LEE HAD WON SOME MONEY?

18          A     YEAH, TURNS OUT TO BE \$104 RATHER THAN 114.  
19          BUT IT ALSO SAYS THAT MR. LUCKET SAID THAT MR. WINDOM  
20          SAID IT WASN'T ABOUT MONEY, IT WAS SOMETHING ELSE, THAT  
21          MEANING THE GRUDGE THAT CURTIS HAD AGAINST JOHNNIE LEE.  
22          SO IF IT WASN'T MONEY, AND HE SAID THAT TO LUCKET RIGHT  
23          HERE IN LUCKET'S TESTIMONY, THEN THAT IS AGAINST THE  
24          THEORY THAT YOU'VE PUT FORWARD.  IT WASN'T THE THING THAT  
25          WAS BOTHERING HIM EITHER ACCORDING TO WINDOM OR TO

1 LUCKET.

2 Q WELL, LET'S READ WHAT IT SAYS. IT'S A PRETTY  
3 SHORT PASSAGE, STARTING ON 323. QUESTION BY MR. ASHTON,  
4 AS LONG AS YOU'RE DOING -- ALL YOU'RE DOING IS TELLING US  
5 WHAT CURTIS TOLD YOU? ANSWER, \$2,000. DID -- DID HE  
6 TELL YOU THAT ON THAT DAY HE WAS GOING TO KILL JOHNNIE.  
7 YEAH. AND HE TOLD YOU WHAT AFTER THAT. ANSWER, HE TOLD  
8 ME, HE SAID, QUOTE, YOU'RE GOING TO READ ABOUT ME, I'M  
9 GOING TO MAKE HEADLINES.

10 NOW -- WELL, LET ME GO ON. DID YOU TRY TO  
11 TALK CURTIS OUT OF THAT TO APPEASE HIM IN ANY WAY. YES,  
12 SIR. WHAT DID YOU OFFER TO DO. BEST THING FOR YOU TO  
13 DO, DON'T SPEAK TO HIM, THAT WILL HURT MORE THAN ANYTHING  
14 YOU CAN DO. QUESTION, DID YOU OFFER TO PAY JOHNNIE --  
15 CURTIS THE MONEY. ANSWER, I SAID, GO TO THE FLORIDA  
16 MALL, FORGET ABOUT IT. QUESTION, DID HE ANSWER, HE SAID  
17 IT WASN'T ABOUT MONEY, IT WAS SOMETHING ELSE. QUESTION,  
18 DID HE TELL YOU WHAT SOMETHING ELSE WAS. ANSWER, NO,  
19 SIR.

20 SO, IF WHAT -- TWO POINTS -- IF WHAT THE  
21 TESTIMONY OF JACK LUCKET, OR WHAT HE SAID IN TRIAL WAS  
22 TRUE, HE DIDN'T TELL CURTIS WINDOM THAT JOHNNIE LEE WAS  
23 OUT TO KILL HIM, LUCKET DIDN'T?

24 A THAT'S -- THAT'S -- THAT -- THAT IS SO, BUT HE  
25 WASN'T OF COURSE ASKED THAT EITHER SPECIFICALLY.

1 Q AND ACCORDING TO LUCKET, MR. WINDOM BECAME  
2 ANGRY WHEN HE LEARNED ABOUT THE MONEY BECAUSE JOHNNIE LEE  
3 OWED HIM MONEY, HE MENTIONED THOSE THINGS?

4 A YEAH.

5 Q AND THEN HE SAID IT WAS SOMETHING ELSE?

6 A I THINK THAT WE'RE LOSING THE THING. FIRST OF  
7 ALL, THIS ISN'T PRIMARY INFORMATION. THIS IS WHAT LUCKET  
8 SAID IN HIS TESTIMONY.

9 Q UH-HUH.

10 A NO ONE ASKED HIM WHETHER HE TOLD JOHNNIE LEE --  
11 TOLD CURTIS WINDOM THAT JOHNNIE LEE HAD THREATENED, NO  
12 ONE ASKED HIM THAT QUESTION DIRECTLY. I THINK IT'S  
13 HIGHLY QUITE LIKELY THAT LUCKET, IF HE HAD SUGGESTED THAT  
14 JOHNNIE LEE -- TO CURTIS THAT JOHNNIE LEE WAS AFTER HIM,  
15 WOULDN'T HAVE VOLUNTEERED THAT DURING THE COURSE OF HIS  
16 TESTIMONY. HE WASN'T ABOUT TO. WHAT WE DO KNOW IS THAT  
17 LUCKET SAID THAT CURTIS SAID THAT THE MONEY WASN'T THE  
18 THING, AND THAT IT WAS SOMETHING ELSE. HE HAD SOMETHING  
19 ELSE AGAINST JOHNNIE LEE THAT MADE HIM WANT TO KILL  
20 JOHNNIE LEE. WHAT COULD THAT SOMETHING HAVE BEEN?

21 Q BUT THE ONLY PERSON THAT SAID THEY WANTED TO  
22 KILL SOMEBODY WAS CURTIS SAYING THAT HE WANTED TO KILL  
23 JOHNNIE LEE TO MR. LUCKET?

24 A RIGHT. RIGHT. THAT'S WHAT MR. LUCKET SAID.  
25 BUT HE WASN'T ASKED SPECIFICALLY WHETHER HE HAD SUGGESTED

1 THAT JOHNNIE LEE MIGHT WANT TO KILL HIM.

2 Q AND YOU TESTIFIED, DID YOU NOT, THAT ONE OF THE  
3 HALLMARKS OF AN OPERATING OR FUNCTIONING FRONTAL LOBE OR  
4 FRONTAL LOBE ACTIVITIES, YOU CAN SEE THE LOGICAL OUTCOME  
5 OF YOUR ACTION?

6 A RIGHT.

7 Q DIDN'T MR. WINDOM THEN TELL MR. LUCKET, YOU  
8 WILL SEE ME IN THE NEWSPAPERS?

9 A YES, HE, MR. LUCKET, CERTAINLY SAID THAT.

10 Q THAT'S A LOGICAL OUTCOME OF SHOOTING SOMEBODY  
11 IN JUST THE WAY YOU SHOT -- OR HE SHOT MR. LEE, ISN'T IT?

12 A NO. THERE ARE TWO THINGS THAT ARE -- WHERE  
13 YOU'RE COMING IMPROPER ON THAT ONE. ONE IS YOU'RE  
14 SUGGESTING A STANDARD FOR FRONTAL LOBE TESTING WHICH  
15 ISN'T THE STANDARD FOR FRONTAL LOBE TESTING, THAT IS TO  
16 SAY, WHETHER A KILLING WOULD BE IN THE NEWSPAPERS THE  
17 NEXT DAY, THE PERSON WHO KNOWS THAT DOESN'T NECESSARILY  
18 HAVE INTACT FRONTAL LOBES, THAT'S A.

19 B, THE FACT THAT -- THAT HE WAS READY TO  
20 KILL JOHNNIE LEE IN THE COURSE OF THEIR CONVERSATION  
21 COULD HAVE BEEN SUGGESTED BY LUCKET. IN OTHER WORDS,  
22 HE -- HE, LUCKET, DOESN'T KNOW ABOUT THE INCIDENT WITH  
23 VALERIE, THAT THE TELEPHONE CALL OR THE JEWELRY AND NOT  
24 SLEEPING AND MULLING AROUND IN HIS BRAIN THAT SOMEONE IS  
25 TRYING TO KILL HIM, AND STAYING OUT LATE AT NIGHT AND

1 BEING EXCITED AND WORRIED ABOUT SOMEBODY TRYING TO KILL  
2 HIM, WHO COULD IT BE, COULD IT BE SOMEONE I KNOW, COULD  
3 IT BE SOMEONE I DON'T KNOW.

4 AND SOMETHING THAT LUCKET SAID TO HIM  
5 MIGHT BE RELATIVELY INNOCUOUS, COULD BE COMPLETELY  
6 MISINTERPRETED WITH WINDOM WHO SAID, I AM GONNA GET HIM  
7 FIRST IF HE TRIES TO GET ME, AND TRIES TO SEE HIM IN THE  
8 STREETS, HE PUTS HIS HAND IN THE POCKET AND SAYS, I'M  
9 GONNA GET HIM, HE'S TRYING TO KILL ME NOW.

10 Q BUT FROM WHAT MR. LUCKET SAID, IT WAS CURTIS'S  
11 INTENTION HOURS BEFORE THE FIRST SHOT WAS FIRED AT  
12 JOHNNIE LEE FOR HIM TO KILL JOHNNIE LEE?

13 A DO YOU THINK THAT IT WAS? ARE YOU SUGGESTING  
14 IT WAS A LOGICAL UNDERSTANDING OF THE OUTCOME?

15 TO KILL HIM IN PUBLIC, WALK AWAY FROM THE  
16 CAR THE WAY HE DID WITHOUT ANY ATTEMPT -- IN FRONT OF TWO  
17 WITNESSES, COMING OUT OF HIS CAR, SHOOTING HIM, WALKING  
18 AWAY LEAVING THE CAR THERE, LEAVING THE CAR DOOR OPEN,  
19 AND THEN WALKING OFF TO ANOTHER LOCATION, THAT SOMEHOW OR  
20 ANOTHER INDICATED THAT HE WAS DOING SOMETHING THAT WAS  
21 WELL THOUGHT OUT, THAT THE CONSEQUENCES, WHICH ARE EITHER  
22 DEATH OR PERMANENT INCARCERATION, THAT HE WAS CONSIDERING  
23 THAT WHEN HE WAS TALKING TO LUCKET, I DON'T THINK THAT  
24 WAS THE CASE AT ALL.

25 Q WELL, LET'S LOOK AT WHAT HE SAID. HE SAID, DID

1 HE NOT, THAT HE WANTED TO, ACCORDING TO LUCKET, HE WANTED  
2 TO KILL JOHNNIE LEE, THAT ~~HE~~ WAS MAD ABOUT HIM FROM THE  
3 CONTEXT ABOUT THE MONEY AND ABOUT SOMETHING ELSE.

4 A YES.

5 THE COURT: LET'S TAKE A BREAK HERE. I NEED  
6 TO HAVE COUNSEL COME UP AND WE NEED TO TALK.  
7 WE'RE WELL OFF THE BEATEN TRACK FOR WHAT I HAD --  
8 WHAT I HAD IMAGINED.

9 AND, DOCTOR, YOU CAN STEP DOWN. WE'RE GONNA  
10 TAKE A LUNCH BREAK NOW. I'M GONNA TALK TO THE  
11 LAWYERS FOR A MINUTE.

12 (THEREUPON THERE WAS AN OFF-THE-RECORD BENCH CONFERENCE.)

13 (AFTERNOON RECESS.)

14 THE COURT: LET'S PICK UP WHERE WE LEFT OFF.  
15 YES, PLEASE.

16 MR. LERNER: JUDGE, IF I APPEAR TO NOT HAVE  
17 HEARD WHAT YOU SAID, I PROBABLY HAVEN'T HEARD.  
18 I'M A LITTLE BIT HARD OF HEARING IN THE RIGHT  
19 EAR, SO JUST YELL AT ME.

20 THE COURT: LET'S START NOW.

21 MR. LERNER: OKAY. THANKS, JUDGE.

22 Q DOCTOR, I WANTED TO BRING UP ONE MORE THING.  
23 THERE WAS TESTIMONY OF A WITNESS NAMED, I BELIEVE, TOMMY  
24 WATKINS. HAVE YOU HAD A CHANCE TO READ THAT?

25 A YES.

1           Q     AGAIN, THAT'S INFORMATION THAT YOU WERE NOT  
2     PROVIDED HERETOFORE; IS THAT CORRECT?

3           A     I HADN'T READ, RIGHT.

4           Q     HADN'T READ?

5           A     I WAS AWARE OF IT THOUGH.

6           Q     AND CALLING YOUR ATTENTION TO -- I HAVE IT  
7     TAGGED HERE, 340.

8                   MR. LERNER:   AND, YOUR HONOR, I WAS WRONG.

9           THIS IS IN THAT BIG -- THAT BLACK NOTEBOOK.

10          THAT'S JUST A GUILT PHASE PART, BUT IT DOES HAVE  
11          SOME OF THE TRIAL STUFF.

12          Q     CALLING YOUR ATTENTION TO 340, ISN'T IT TRUE  
13          THAT MR. WATKINS HEARD CURTIS WINDOM GIVE AN EXPLANATION  
14          AS TO WHAT WAS GOING THROUGH HIS MIND, MAKE A STATEMENT  
15          AS HE SHOT THE THIRD VICTIM?

16          A     YES.   HE SAID -- AT LEAST THE WITNESS SAID THAT  
17          HE SAID, I DON'T LIKE POLICE ASS NIGGERS.   ON THE OTHER  
18          HAND ON THE NEXT PAGE IT SAYS THAT HE -- THAT THEY ASKED  
19          HIM, COULD HE RECOGNIZE THE VOICE, AND THE FELLA SAID NOT  
20          REALLY.

21          Q     BUT IF HE SAID THAT, THAT WOULD FIT IN WITH THE  
22          SITUATION MR. WINDOM WAS IN, WOULDN'T IT?   THE FACT THAT  
23          HE HAD BEEN REPEATEDLY SUBJECTED TO BEING ARRESTED ON  
24          CONFIDENTIAL INFORMATION?

25          A     I'M -- IF HE HAD BEEN REPEATEDLY ARRESTED ON

1 THAT BASIS, I THINK THAT THERE WOULD BE -- I THINK HE WAS  
2 ARRESTED ONCE. THERE WAS ~~ONE~~ INCIDENT THAT I KNOW OF IN  
3 WHICH -- WHERE THE POLICE SENT IN A CONFIDENTIAL  
4 INFORMANT WHO BOUGHT TWO CAKES OF CRACK COCAINE FOR A  
5 THOUSAND DOLLARS AND THEN LEFT, AND THERE WAS NO ARREST  
6 THAT DAY.

7 Q UH-HUH.

8 A BUT THERE WAS A REPORT ABOUT THAT. AND THE  
9 CONFIDENTIAL INFORMANT WAS SEARCHED AND STRIP SEARCHED  
10 BEFORE AND AFTER HE DID THIS, AND THEN THERE WAS AN  
11 ARREST SEVERAL DAYS LATER. I BELIEVE THAT WAS IN  
12 DECEMBER. I DON'T THINK THAT THERE WERE MANY INCIDENTS  
13 OF A CONFIDENTIAL INFORMANT. I THINK THERE WAS ONE  
14 INCIDENT.

15 Q JUST ONE INCIDENT, OKAY. BUT THAT WOULD HAVE?

16 A BUT -- OKAY. IN THE -- UNDER THE  
17 CIRCUMSTANCES, LET'S ACCEPT THAT. LET'S ACCEPT THAT  
18 THAT'S WHAT HE SAID, I DON'T LIKE POLICE ASS NIGGERS,  
19 THEN HE SHOT KENNY WILLIAMS. THE ISSUE WAS NOT WHETHER  
20 HE SHOT HIM, WE KNOW THAT HE DID. THE QUESTION WAS WHY.  
21 WAS THIS A PREMEDITATED THING OR WAS THIS SOMETHING THAT  
22 JUST HAPPENED IN A SPUR OF A MOMENT, LIKE THAT, OR IS IT  
23 THE RESULT OF A PERVASIVE PARANOID STATE THAT WAS GOING  
24 ON FOR SEVERAL WEEKS BEFOREHAND AND REACHING AN APOGEE AT  
25 THIS POINT, WHICH IS WHAT I THINK HAS HAPPENED.



1                   IT'S TRUE THAT ANY SUSPICION THAT HE MAY  
2   HAVE HAD OF HIS GIRLFRIEND OR OF JOHNNIE LEE OR KENNY  
3   WILLIAMS, IT MAY OR MAY NOT HAVE BEEN SOME BASIS FOR IT.  
4   BUT IN HIS MIND MAYBE THERE WAS A GREATER BASIS, MUCH  
5   GREATER BASIS THAN REALLY EXISTED. BUT HAD HE NOT BEEN  
6   IN, LAY TERM, CRAZY AT THE TIME, I THINK IT WOULD HAVE --  
7   IT WOULDN'T HAVE MEANT ANYTHING. I DON'T THINK THIS WAS  
8   A CALM ASSASSINATION. I THINK THIS IS SOMETHING THAT  
9   HAPPENED ON THE SPUR OF A MOMENT.

10           Q     WELL, I'D AGREE BECAUSE HE JUST HAPPENED TO  
11   MEET THIS ONE -- THIS ONE WITNESS HE JUST HAPPENED TO  
12   MEET.

13           A     EXACTLY.

14           Q     NOW, HE CLAIMED TO YOU, DID HE NOT, THAT -- AND  
15   I'M SPEAKING OF MR. WINDOM, THAT HE HAD NO RECOLLECTION  
16   ABOUT SHOOTING VAL?

17           A     RIGHT.

18           Q     DID YOU REVIEW THE REPORT OF DR. BEAVER?

19           A     I DID.

20           Q     DID YOU REVIEW THIS PART?

21                   MR. LERNER: AND IF I COULD APPROACH THE  
22   WITNESS, YOUR HONOR.

23                   THE COURT: YES.

24   BY MR. LERNER:

25           Q     REFERRING TO DR. BEAVER'S REPORT ON PAGE EIGHT,

1 AND IT SAYS IN THE 1, 2, 3, 4, 5, SIXTH PARAGRAPH HE DOES  
2 REPORT SOME RECOLLECTION OF MARY LUBIN, VALERIE DAVIS'S  
3 MOTHER PULLING UP IN HER CAR AND BEING CONCERNED THAT  
4 MARY WOULD SHOOT HIM FOR HAVING SHOT HER DAUGHTER.

5 SO OBVIOUSLY AT THAT POINT FROM WHAT  
6 MR. WINDOM HIMSELF TOLD DR. BEAVER, HE DID RECOLLECT  
7 SHOOTING VALERIE, OR THAT STATEMENT WOULDN'T MAKE ANY  
8 SENSE.

9 A NOT WHEN I SAW HIM. BUT, REMEMBER, WE ARE  
10 NOT -- I DON'T THINK FOR A MOMENT THAT HE DOESN'T TRULY  
11 MEAN THAT MEMORY OF SHOOTING VALERIE IS NOT IN HIS MIND.  
12 THE QUESTION IS WHETHER HE CAN RECOLLECT IT AT A GIVEN  
13 TIME, THAT'S WHAT DISSOCIATION IS. IT'S THE SAME THING  
14 AS TRULY NOT REMEMBERING -- IT'S NOT BEING ABLE TO CALL  
15 FORTH THAT MEMORY.

16 WE ALL AGREE, EVERYBODY AGREES THAT HE IS  
17 NOT LYING, HE IS NOT PREVARICATING, HE IS NOT MAKING  
18 THINGS UP. THAT'S AN ISSUE IN OTHER CASES. BUT YOUR  
19 PSYCHOLOGIST FOR THE DEFENSE AND I ALL WERE IMPRESSED  
20 THAT HE WAS BEING STRAIGHTFORWARD.

21 AND SO WHEN HE SAYS HE DOESN'T REMEMBER  
22 SOMETHING LIKE THAT, THEN THAT IS THE CASE AT THE TIME  
23 THAT HE SAID THAT.

24 Q WELL, HE IS INTELLIGENT TO KNOW THE SITUATION  
25 HE'S IN NOW, RIGHT?

1           A     YES.

2           Q     HE'S NOT PSYCHOTIC NOW, AT LEAST HE WASN'T WHEN  
3     YOU SAW HIM?

4           A     CORRECT.

5           Q     AND THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN  
6     WHAT HE TOLD YOU HAPPENED AND MOTIVATIONS AND WHAT PEOPLE  
7     SAID THAN WHAT THE TRIAL, THE FACTS AT TRIAL CAME OUT  
8     FROM THE WITNESSES THAT WERE ACTUALLY THERE, ISN'T THERE?

9           A     NO, I DON'T REALLY THINK THAT THERE IS A  
10    SUBSTANTIAL DIFFERENCE.   WHAT ARE YOU REFERRING?

11          Q     WELL, FOR INSTANCE, HE DIDN'T TELL YOU ABOUT  
12    HAVING THIS CONVERSATION WITH MRS. JACKSON ABOUT THE FACT  
13    THAT VALERIE WAS GOING TO INFORM ON HIM, DID HE?

14          A     NO.

15          Q     AND THAT HE WAS UPSET WITH HER ABOUT THAT?

16          A     NO.

17          Q     HE DIDN'T TELL YOU ABOUT THE FACT THAT HE WAS  
18    UPSET WITH JOHNNIE LEE ABOUT THE MONEY, AND SOME OTHER  
19    THING?

20          A     NO.   HE TOLD ME QUITE THE OPPOSITE.   HE TOLD ME  
21    HE WAS NOT UPSET ABOUT THE MONEY, THE PEOPLE HAVE SAID HE  
22    WAS CONCERNED ABOUT THAT, BUT HE WAS NOT.

23          Q     RIGHT.

24          A     HE ALSO SAID THAT PEOPLE SAID THAT HE WAS ANGRY  
25    AT VAL, AND HE HAD BEEN ANGRY AT VAL AT DIFFERENT TIMES,

1 BUT THAT WASN'T THE MOTIVATOR FOR THIS -- FOR THIS CRIME.

2 Q WELL, WOULDN'T YOU SAY IT WOULD MAKE THE MOST  
3 SENSE TO FIND OUT WHAT THE MOTIVATOR FOR A CRIME WAS IS  
4 TO DO AN INVESTIGATION AND ACTUALLY TALK TO THE PEOPLE  
5 THAT WERE THERE SEEING HIM AT THE TIME?

6 A ABSOLUTELY. THAT -- THAT IS -- THAT IS THE  
7 BURDEN THAT IS ON THE DEFENSE AND ON THE PROSECUTION, OF  
8 COURSE.

9 Q ISN'T THAT WHY YOU WATCHED THE TAPE?

10 A YEAH.

11 Q BUT YOU DIDN'T TALK OR EVEN READ THE TESTIMONY  
12 OF MANY OF THESE PEOPLE THAT WERE THERE WHILE THE  
13 TRIAL -- WHILE THE SHOOTINGS WERE GOING ON, DID YOU?

14 A RIGHT.

15 Q NOW, I BELIEVE YOU SAID IT'S TYPICAL OF SOMEONE  
16 WHO HAS FRONTAL LOBE DAMAGE, SIGNIFICANT FRONTAL LOBE  
17 DAMAGE TO EXHIBIT SOCIALLY INAPPROPRIATE BEHAVIOR?

18 A YES.

19 Q THERE REALLY IS NOT A GREAT DEAL OF INDEPENDENT  
20 EVIDENCE OF THAT IN THIS CASE, IS THERE?

21 A THAT HE ENGAGED IN SOCIALLY INAPPROPRIATE  
22 BEHAVIOR?

23 Q CORRECT. HE WAS -- WAS HE NOT DESCRIBED BY ALL  
24 OF THE PEOPLE WHO TALKED ABOUT HIM AT THE TRIAL AS -- UP  
25 TO THE TIME OF THE SHOOTING, LEADING UP TO THE TIME OF

1 THE SHOOTING -- BEING MILD MANNERED, PLEASANT, EASY TO  
2 GET ALONG WITH, HAD FRIENDS, FIT IN WELL WITH OTHER  
3 PEOPLE?

4 A YES. THERE WERE SOME OF THE THINGS THAT HE DID  
5 THAT WERE A LITTLE UNUSUAL, LIKE THE GAMBLING, GOING  
6 THROUGH MONEY QUICKLY, GIVING AWAY MONEY, LENDING MONEY  
7 TO LOTS OF PEOPLE. THAT WAS A -- I'M NOT SURE THAT YOU  
8 OR I WOULD NOT KEEP TRACK OF OUR MONEY QUITE THE SAME  
9 LOOSE WAY. THAT SEEMS TO BE A LITTLE IRRESPONSIBLE.

10 ALSO, HE HAD A GIRLFRIEND AND ANOTHER  
11 GIRLFRIEND, AND HE HAD CHILDREN IN BOTH PLACES. NOW, I  
12 REALIZE THAT MAY NOT BE THAT UNUSUAL IN HIS, IN HIS  
13 SOCIAL MEDIA, BUT I DON'T THINK THAT COULD BE DESCRIBED  
14 AS RESPONSIBLE EITHER. HE HAD BEEN PROMISCUOUS. AND HE  
15 WAS DEALING IN DRUGS. AND HE WAS -- HE DIDN'T HAVE ANY  
16 REALLY GOOD CLOSE FRIENDS IN WHOM HE CONFIDED. ALL OF  
17 THOSE I DON'T NECESSARILY ATTRIBUTE TO FRONTAL LOBE  
18 DAMAGE, BUT I DON'T THINK WE CAN SAY HE WAS FUNCTIONING  
19 WITH A COMPLETELY FULL DECK EITHER.

20 Q WELL, IF SHIRLEY JACKSON TOLD, TESTIFIED AT THE  
21 MITIGATION PHASE -- WE WENT OVER THAT EARLIER -- THAT HE  
22 CONFIDED SEVERAL THINGS TO HER, THEN THAT WOULD BE UNLIKE  
23 SOMEONE WITH FRONTAL LOBE DAMAGE?

24 A I DON'T -- AGAIN, I THINK WHAT YOU'RE DOING IS  
25 SUGGESTING TESTS FOR FRONTAL LOBE DAMAGE WHICH AREN'T

1 TESTS. I MEAN, YOU'RE SAYING LOGICALLY IF A PERSON  
2 CROSSED THE STREET WHEN THE LIGHT TURNED GREEN, THEN HE  
3 COULDN'T HAVE FRONTAL LOBE DAMAGE. I'M MISCHARACTERIZING  
4 WHAT YOU SAID, BUT THAT'S THE KIND OF THING YOU'RE  
5 PRESENTING. THOSE ARE NOT TESTS FOR FRONTAL LOBE DAMAGE.  
6 THE FRONTAL LOBE DAMAGE TESTS ARE ONES THAT ARE DONE BY  
7 NEUROPSYCHOLOGISTS, AND THE RESULTS ARE INDISPUTABLE. I  
8 AND DR. BEAVER, YOUR PSYCHOLOGIST DR. BEAVER, BASICALLY  
9 AGREED ON THOSE, AND I ACCEPT THEM, TOO, BECAUSE IT  
10 AGREES WITH MY EXAMPLE. THERE'S OTHER TESTS OF FRONTAL  
11 LOBE FUNCTIONING, PEOPLE WITH FRONTAL LOBE DAMAGE GO TO  
12 PIECES UNDER PRESSURE, CATASTROPHIC REACTION.

13 CURT, CURT GOLDSTEIN, WORLD WAR I VETERAN  
14 WHO HAD SUSTAINED BRAIN DAMAGE AND HAD ESSENTIALLY  
15 RECOVERED BUT HADN'T COMPLETELY -- THIS IS ALL TRUE --  
16 WITH TRAUMATIC BRAIN INJURIES AND FACED WITH A PROBLEM  
17 THAT HE COULD HAVE ONCE SOLVED, NO LONGER SOLVED.

18 THEY BECOME -- THEIR PERFORMANCE  
19 DETERIORATES, BECOME EXCITED, ACTUALLY DO WORSE THAN THEY  
20 WOULD BE ABLE TO DO IF THEY WERE CALM. AND SOMETIMES  
21 SHOW TEMPER AND LOSE IT EASILY.

22 Q BUT THERE WAS NO HISTORY OF THAT, NO  
23 DEMONSTRATED RECORDED HISTORY OF THAT FOR MR. WINDOM UP  
24 TO THE DATE OF THIS SERIES OF SHOOTINGS, WERE THERE?

25 A WELL, THERE WAS AN INCIDENT WHERE HE -- THERE

1 WAS A -- I DON'T KNOW IF IT WAS VAL OR SOMEBODY ELSE WHOM  
2 HE STRUCK WITH A TELEPHONE AND SHE HAD HIT HIM WITH A  
3 KNIFE AND THERE WAS AN ARREST AT THAT TIME AND CHARGES  
4 WERE DROPPED, BUT THAT WAS -- THAT WAS DEFINITELY A FIGHT  
5 THAT HAD OCCURRED UNDER PRESSURE OF SOME CIRCUMSTANCE  
6 WHICH WENT BEYOND I THINK WHAT EITHER OF THEM PROBABLY  
7 WANTED.

8 AND THERE WAS A TIME WHEN HE WAITED FOR  
9 VAL WHILE SHE WAS PRESUMABLY BEING UNFAITHFUL WITH  
10 ANOTHER MAN AND HE SHOOK HER, SHAVED HER HEAD AND BEAT  
11 HER AT THAT TIME, TOO. THIS IS ALL WHAT HE TOLD ME.

12 I THINK HE WOULD HAVE BEEN IN MANY, MANY  
13 FIGHTS IN THE COURSE OF SCHOOL, AND OTHERS WE HAVEN'T  
14 GOTTEN INTO THAT HE WASN'T ARRESTED FOR THEM, BUT THERE  
15 WERE PLENTY OF THEM.

16 Q THE PEOPLE THAT DESCRIBED HIM AND TALKED ABOUT  
17 HIM THOUGH DID NOT DESCRIBE THAT AS THE PRIMARY COMPONENT  
18 OF HIS CHARACTER IN YOUR ESTIMATION, DID THEY?

19 A NO. HE HAS A CAPACITY TO BE VERY SWEET AND  
20 NICE AND CAN BE CARING ABOUT HIS OWN CHILDREN AND OTHERS.  
21 AND HE WOULD GIVE THINGS TO PEOPLE. HE WAS VERY GENEROUS  
22 AS WELL. THERE WAS TREMENDOUS FLUCTUATIONS THAT HAVE TO  
23 BE EXPLAINED, TOO. HE'S SORT OF A -- A BRITTLE GUY. I  
24 DON'T -- I DON'T THINK THERE IS ANYTHING IN HIS THINKING  
25 THAT IS CONSISTENT WITH THE IDEA THAT HE IS FRONTALLY

1 DAMAGED, INCLUDING ATTENTION DEFICIT DISORDER AS A CHILD.

2 Q ISN'T IT TRUE THERE IS NO RELIABLE OBJECTIVE  
3 STANDARD OR TEST FOR MEASURING JUDGMENT?

4 A CORRECT.

5 Q ALL YOU WERE DOING WAS MEASURING THE NERVOUS  
6 IMPULSES, THEY WERE REACTING IN THE SAME WAY AS THEY  
7 WOULD REACT UNDER A NORMAL PERSON. YOU CAN'T GO FROM  
8 THERE, CAN YOU, AND PREDICT EXACTLY WHAT BEHAVIOR IS  
9 GOING TO BE EXHIBITED?

10 A THAT'S TRUE. THAT'S CERTAINLY TRUE. AND THERE  
11 IS NO TEST FOR JUDGMENT DIRECTLY. WHAT NEUROLOGISTS DO  
12 IS DO A VARIETY OF MOTOR TESTS, SOME OF WHICH I  
13 DESCRIBED. BUT PSYCHOLOGISTS DO A NUMBER OF OTHER TESTS,  
14 LIKE THE WISCONSIN CARD SORTING TEST. AND WE KNOW  
15 EMPIRICALLY THAT THOSE TESTS REFLECT FRONTAL DAMAGE. IF  
16 A PERSON'S BEHAVIOR HAS BEEN ABNORMAL IN A MANNER THAT  
17 WAS CONSISTENT WITH FRONTAL DAMAGE AND THOSE TESTS ARE  
18 ABNORMAL, WE DEDUCE THAT THE THINGS ARE RELATED. THAT'S  
19 NOT A DIRECT TEST OF JUDGMENT, YOU'RE ABSOLUTELY RIGHT.

20 Q ISN'T IT TRUE THAT MOST OF THE INDIVIDUALS WHO  
21 ARE NEUROLOGICALLY DAMAGED ARE NOT TURNED INTO  
22 AUTONOMISTS?

23 A NOT TURNED INTO AUTONOMISTS, AND MOST OF THEM  
24 ARE NOT VIOLENT, THAT'S CORRECT.

25 Q AND THEY RETAIN FREE WILL OF CONSIDERABLE



1 SCOPE?

2 A YES, THAT'S TRUE.

3 Q AND TO THE EXTENT THAT THEY HAVE EXERCISED  
4 THEIR FREE WILL INAPPROPRIATELY, THEY SHOULD BE HELD  
5 RESPONSIBLE; IS THAT CORRECT?

6 A I AGREE WITH THAT.

7 Q AND PUNISHED PROPORTIONATELY?

8 A I AGREE WITH THAT.

9 Q SORRY, IF I'M READING YOUR BOOK.

10 SO, YOU JUST DON'T GO FROM A FINDING OF  
11 BRAIN DAMAGE TO A FINDING OF DIMINISHED RESPONSIBILITY  
12 AUTOMATICALLY, DO YOU?

13 A NOT AUTOMATICALLY. BUT, IN FACT, AS MOST  
14 PEOPLE WHO ARE FRONTALLY DAMAGED ARE NOT VIOLENT. BUT  
15 YOU TAKE THAT FRONTAL DAMAGE AND ADD TO IT MENTAL  
16 ILLNESS, THEN YOU HAVE TWO FACTORS THAT ARE ACTING TO  
17 CREATE A VULNERABILITY. AND THEN YOU TAKE SOMEONE WHO  
18 HAS BEEN ABUSED ALL YEARS AS A CHILD UNTIL HE LEFT THE  
19 HOME IN HIS TEENAGE YEARS, TERRIBLY ABUSIVE ENVIRONMENT,  
20 AND YOU HAVE ANOTHER VULNERABILITY TO VIOLENCE AND YOU  
21 HAVE ALL THREE TOGETHER, AND THE ISSUE BECOMES NOT SO  
22 MUCH WHETHER THERE IS A FREE WILL, NOT FREE WILL, WHAT  
23 WAS THE SCOPE OF THAT FREE WILL. AND AT CERTAIN TIMES  
24 WHEN THE MENTAL ILLNESS BECOMES VERY INTENSE, THE SCOPE  
25 OF THAT FREE WILL DIMINISHES.

1 Q BUT TO DETERMINE THAT SCOPE, YOU HAVE TO LOOK  
2 AT THE FACTS AND CIRCUMSTANCES SURROUNDING THE ACT; IS  
3 THAT NOT CORRECT?

4 A AND THAT, YEAH. I WAS SO IMPRESSED BY THE FACT  
5 THAT HE DID THE FIRST KILLING OF JOHNNIE LEE IN FULL  
6 VIEW, IT WAS HIGH NOON PRACTICALLY, PEOPLE, INCLUDING TWO  
7 WOMEN, THAT WERE SPEAKING TO JOHNNIE LEE AT THE TIME,  
8 LEFT THE CAR DOOR OPEN, DIDN'T IN ANY WAY DISTURB ANY OF  
9 JOHNNIE'S POSSESSIONS, MARCHED OFF TO THE HOUSE, VAL WAS  
10 SITTING THERE WITH ANOTHER PERSON IN THE SAME HOUSE.  
11 THIS WAS NO ASSASSINATION IN AN ORDINARY SENSE. THIS WAS  
12 A MASS MURDER THAT HE COMMITTED ON THAT ONE DAY IN A VERY  
13 BRIEF PERIOD OF TIME.

14 Q THIS WOULD BE CONSISTENT WITH SOMEONE WHO  
15 EXPRESSED TO MR. LUCKET, PLANNED TO BE IN THE NEWSPAPERS  
16 TO DO SOMETHING IN A KNOWN -- OBVIOUS WAY THAT WOULD BE  
17 KNOWN TO EVERYBODY?

18 A I DON'T THINK THAT THAT WAS THE BIG PICTURE. I  
19 THINK THE BIG PICTURE WAS THAT HE WANTED TO GET EVEN  
20 POSSIBLY WITH JOHNNIE LEE AND FIND OUT WHAT WAS GOING ON.  
21 WHEN HE SAW HIM PUT HIS HAND IN HIS POCKET, HE THOUGHT HE  
22 WAS REACHING FOR A GUN, AND RESPONDED TO THAT.

23 Q NOW, YOU CAN ONLY SAY THAT WHAT THE  
24 NEUROLOGICAL CONDITION OF MR. WINDOM WAS ON THE DATE THAT  
25 YOU ACTUALLY TESTED HIM; IS THAT CORRECT?

1           A     THAT'S -- THAT'S TRUE. BUT OF COURSE THERE'S  
2 RECORDS OF HIS SCHOOL PERFORMANCE AND OTHER THINGS, YES.

3           Q     SURE.

4           A     RIGHT.

5           Q     BUT HE --

6           A     HIS NEUROLOGIC STATUS AT THAT TIME WAS HIS  
7 NEUROLOGICAL STATUS AT THAT TIME.

8           Q     AND YOU DIDN'T HAVE THE OPPORTUNITY TO DO THAT  
9 BACK IN 1992, IN FEBRUARY OF 1992, OR EVEN IN THE SEVERAL  
10 YEARS AFTER THAT, DID YOU?

11          A     RIGHT.

12          Q     YOU REVIEWED THE PRISON RECORDS FOR MR. WINDOM;  
13 IS THAT CORRECT?

14          A     WE DID, INDEED.

15          Q     NOW, THESE ARE MY COPIES OF THE MEDICAL PRISON  
16 RECORDS, AND SHOULD CORRESPOND RELATIVELY TO YOURS. BUT  
17 IF YOU COULD JUST LOOK AT STATE'S EXHIBIT A FOR  
18 IDENTIFICATION PURPOSES.

19          A     UH-HUH.

20                **MR. LERNER:** AGAIN, YOUR HONOR, I HAVE AN  
21 EXTRA COPY IF YOU WANT.

22                **THE COURT:** THANK YOU.

23 **BY MR. LERNER:**

24          Q     ISN'T IT TRUE THAT DURING THE YEARS MR. WINDOM  
25 HAS BEEN INCARCERATED -- AND I'VE TABBED ALONG THE SIDE,

1 YOU CAN LOOK AT THE INDIVIDUAL PAGES -- HE'S BEEN  
2 INVOLVED IN SEVERAL FIGHTS?

3 A UH-HUH, YES.

4 Q IN PRISON?

5 A YES, HE HAS.

6 Q AND HE'S ALSO BEEN INVOLVED IN SEVERAL  
7 BASKETBALL ACCIDENTS SERIOUS ENOUGH THAT HE SOUGHT  
8 TREATMENT?

9 A YES.

10 Q ISN'T IT TRUE THAT ON -- I THINK THIS IS ABOUT  
11 THE THIRD TAB DOWN -- OCTOBER 11TH, 1999 HE REPORTED  
12 HITTING HIS HEAD -- I HOPE I GOT THE RIGHT DATE, YES.

13 A WHAT PAGE ARE YOU ON?

14 Q SEVENTY-TWO. YEAH, THESE ARE ALL PAGED. YEAH,  
15 I'M SORRY. I NUMBERED ALL THESE. RIGHT AT THE TOP.

16 A HIT MY HEAD WITH ANOTHER INMATE AT 3:00 P.M.  
17 TODAY. I ALREADY HAD HEADACHE AND EARACHE, THOUGH I NEED  
18 TO GET MORE DROPS FOR MY EAR. THAT WAS HIS SUBJECTIVE  
19 STATEMENT AT THE TIME. AM I READING THE RIGHT PLACE?

20 Q CORRECT.

21 A WELL, THAT DOESN'T SOUND VERY SIGNIFICANT TO  
22 ME.

23 Q BACK A COUPLE ON PAGE 68, A FEW MONTHS BEFORE  
24 THAT ON APRIL 8TH OF 2000, HIS LEFT SIDE WAS NUMB.

25 A UH-HUH. HAND GRIPS EQUAL, AMBULATORY IN CELL

1 WITHOUT DIFFICULTY, NO LEFT SIDED WEAKNESS NOTED. WELL,  
2 NUMBNESS IS NOT THE SAME AS WEAKNESS, I GRANT YOU. BUT I  
3 DON'T KNOW WHAT ORIENTED, ALERT AND ORIENTED TIMES THREE.  
4 NO SPEECH DEFICITS. HAND GRIPS EQUAL. HIS BLOOD  
5 PRESSURE AT THAT TIME WAS 132 OVER 110, WHICH IS -- 110  
6 PART IS PRETTY HIGH. BUT, I MEAN, I DON'T KNOW HOW TO  
7 INTERPRET THAT. IT DOESN'T SOUND SIGNIFICANT.

8 Q BUT THE POINT IS, ESPECIALLY IF YOU HAD SOMEONE  
9 WITH A Milder FORM OF BRAIN DAMAGE, BUT BRAIN DAMAGE --

10 A UH-HUH.

11 Q -- AND HE'S IN THE PRISON SETTING GOING ABOUT  
12 PLAYING BASKETBALL, GETTING IN FIGHTS, WHATEVER THE  
13 SETTING INVOLVES, IT WOULD TAKE A LOT LESS FOR HIM TO  
14 REINJURE THE PRE-EXISTING DAMAGE AND COME UP WITH MUCH  
15 MORE SEVERE --

16 A YES.

17 Q -- WHAT DID YOU CALL IT, SEQUELA?

18 A YES. BUT WHAT YOU NEED FOR A HEAD INJURY IS A  
19 CONCUSSION AT LEAST AND A PERIOD OF UNCONSCIOUSNESS OR A  
20 PERIOD OF LOSS OF MEMORY FOR THE EVENTS SURROUNDING THE  
21 INJURY, OR SOME FOCAL NEUROLOGIC DEFICIT. THERE'S NONE  
22 OF THAT IN HERE.

23 Q WELL, BUT ISN'T IT TRUE -- YOU MEAN YOU NEED  
24 EXACTLY THE SAME TYPE OF INJURY FOR A REINJURY? IS THAT  
25 WHAT YOU TESTIFIED?

1           A     YOU NEED TO HAVE A CONCUSSION.  USUALLY A  
2     PERSON GETS HIT IN THE HEAD AND STUNNED AND KNOCKED OUT  
3     BRIEFLY FOR, YOU KNOW, A MATTER OF A MINUTE OR TWO, IT  
4     DOESN'T HAVE ANY PROBLEM FROM THAT.  BUT IF HE HAS A  
5     SERIES OF THOSE, HE MAY DEVELOP NEUROLOGICAL DEFICITS.  
6     BUT YOU NEED TO HAVE THAT.  YOU CAN'T JUST BANG YOUR HEAD  
7     ON AN EDGE OF A DOOR OR SOMETHING LIKE THAT OR HIT  
8     SOMEBODY'S HEAD IN BASKETBALL AND NOT BE STUNNED,  
9     UNCONSCIOUS, LOSS OF MEMORY, ALL NEUROLOGICAL SYMPTOMS.

10          Q     DIDN'T YOU JUST TESTIFY THOUGH IT IS MUCH  
11     EASIER TO REINJURE YOURSELF AND SUFFER ADDITIONAL  
12     DAMAGE --

13          A     RIGHT.

14          Q     -- IF YOU HAVE THIS INITIAL --

15          A     RIGHT.

16          Q     -- BRAIN DAMAGE?

17          A     BUT YOU MUST HAVE THE REINJURY IN ORDER FOR  
18     REINJURY TO BE SIGNIFICANT.  I DON'T SEE THAT HERE.

19          Q     ISN'T IT ALSO TRUE THAT STARVATION AFFECTS THE  
20     BRAIN?

21          A     YES, IT CAN AFTER A LONG PERIOD OF TIME.

22          Q     I BELIEVE YOU TESTIFIED THAT IN A SITUATION  
23     WHERE SOMEONE DRINKS ALCOHOL, THAT'S ONE OF THE PROBLEMS,  
24     IT STARVES THE BRAIN OF NUTRIENTS THAT THEY NEED?

25          A     WELL, IF THAT'S ALL THEY INGEST, YES, IT DOES.

1 YOU GET CALORIES BUT YOU DON'T GET ANY OTHER NUTRIENTS.

2 Q I BELIEVE YOU SAID IN YOUR -- IN YOUR BOOK,  
3 BASE INSTINCTS, PERMANENT DAMAGE, REFERRING TO BRAIN  
4 DAMAGE -- AND THAT'S PAGE 112 -- RESULTS FROM BOTH  
5 NUTRITIONAL DEPRIVATION AND DIRECT EFFECT OF ALCOHOL ON  
6 THE NERVE CELLS?

7 A IN ALCOHOLICS.

8 Q NUTRITIONAL DEPRIVATION CAN CAUSE SOME DEGREE  
9 OF BRAIN DAMAGE?

10 A WE'RE TALKING ABOUT -- THAT CHAPTER WAS ABOUT A  
11 YOUNG MAN WHO WAS AN ALCOHOLIC, HAD BEEN AN ALCOHOLIC FOR  
12 SEVERAL YEARS, AND WHO WAS GETTING 1400 CALORIES A DAY  
13 FROM BEER AND WHISKEY, AND WAS ABOUT 20 OR 30 POUNDS  
14 UNDERWEIGHT. HE WAS -- I MEAN, THAT WAS REALLY SEVERE  
15 NUTRITIONAL -- HE HAD PANCREATITIS, HE HAD CIRRHOSIS OF  
16 THE LIVER. HE WAS ONLY ABOUT 18 YEARS OLD.

17 ALCOHOLISM DOES DAMAGE THE BRAIN OVER THE  
18 COURSE OF YEARS. WHEN IT DOES SO, IT DOES SO IN TWO  
19 WAYS, THE DIRECT EFFECT, THE ALCOHOL OVER A NUMBER OF  
20 YEARS, AND OTHER ONE IS A NUTRITIONAL DEPRIVATION THAT  
21 ALCOHOL HAS. THAT'S COMPLETELY IRRELEVANT TO THIS CASE.

22 Q WHAT ABOUT DEHYDRATION, CAN THAT INJURE THE  
23 BRAIN?

24 A THROUGH LOW BLOOD PRESSURE. IF A PERSON GOES  
25 INTO SHOCK, THAT CAN INJURE THE BRAIN, OTHERWISE, NO.

1 Q GOING BACK ON PAGE 120 OF THAT COLLECTION, DID  
2 YOU NOTE THAT ON APRIL 8TH --

3 A 120, JUST A SEC.

4 Q -- OF 2000, WHICH WOULD HAVE BEEN BEFORE YOU  
5 SAW HIM, MR. WINDOM WENT ON A SIX DAY --

6 A HUNGER STRIKE.

7 Q -- HUNGER STRIKE TO THE POINT WHERE HE WAS  
8 SHOWING SIGNS OF POINT OF DEHYDRATION?

9 A BUT HIS BLOOD PRESSURE WAS 142 OVER 94 SITTING,  
10 WAS 158 OVER 106, WHICH IS HYPERTENSION, NOT HYPOTENSION,  
11 NOT LOW BLOOD PRESSURE, BUT ACTUALLY HIGH BLOOD PRESSURE.  
12 AND THERE'S NO -- NO WAY THAT THAT COULD BE A SIGNIFICANT  
13 FACTOR IN ANY KIND OF BRAIN DAMAGE.

14 Q BUT SUFFICE IT TO SAY, IS IT NOT TRUE THAT  
15 MR. WINDOM COULD HAVE SUFFERED SOME SORT OF EVENT THAT  
16 DAMAGED HIS BRAIN BETWEEN THE TIME HE COMMITTED THESE  
17 MURDERS IN 1992 AND THE TIME YOU SAW HIM IN THE YEAR  
18 2000, THAT'S EIGHT YEARS; IS THAT CORRECT?

19 A THAT'S CERTAINLY POSSIBLE, BUT THERE IS NO  
20 DOCUMENTATION OF THAT. AS A MATTER OF FACT, THIS PRISON,  
21 OR WHOEVER THE NURSES ARE THAT ARE WORKING, THE  
22 PHYSICIAN, DO AN INCREDIBLE JOB OF DOCUMENTING. TAKES  
23 HIS BLOOD PRESSURE WHEN HE'S SITTING AND WHEN HE'S  
24 STANDING, AND TAKING HIS TEMPERATURE EVERY SINGLE TIME.  
25 ONE TIME HE CAME IN FEELING DIZZY, HIS TEMPERATURE WAS



1 101.8.

2 I CAME AWAY FROM READING THIS RECORD WITH  
3 AN ENORMOUS RESPECT FOR THIS PARTICULAR MEDICAL SERVICE  
4 IN THE DEPARTMENT OF CORRECTIONS. I DON'T THINK IT WOULD  
5 BE -- FOR HIM TO HAVE SUSTAINED ANY KIND OF DAMAGE TO HIS  
6 BRAIN WITHOUT THEM KNOWING ABOUT IT, HE'S NOT JUST LIVING  
7 IN A -- IN AN APARTMENT SOMEWHERE, HE'S UNDER  
8 OBSERVATION.

9 Q NOW, YOU AND I HAVE MET BEFORE; IS THAT  
10 CORRECT?

11 A WE HAVE.

12 Q IN THE SIRECI CASE. IN THIS CASE -- I ALWAYS  
13 LIKE TO TRY TO GET THINGS BACK TO THE CLERK. IN THAT  
14 CASE MR. SIRECI WAS MUCH MORE NEUROLOGICALLY DAMAGED THAN  
15 MR. WINDOM, WASN'T HE?

16 A I THINK SO. HE -- YES, FROM BIRTH HAD FORCEPS  
17 PLACED ON HIM, HE WAS BLINDED IN ONE EYE FROM BIRTH,  
18 CAUSE OF FORCEPS PLACED ON HIS HEAD, AND HE HAD BEEN IN A  
19 TERRIBLE ACCIDENT, HAD A TRACHEOTOMY SCAR.

20 YEAH, HE HAD -- AND HE WAS LIMPING. YEAH,  
21 THAT'S RIGHT.

22 Q AND THE SEQUELA, IF YOU WILL, OR THE HISTORY OF  
23 HIS BEHAVIOR WAS MUCH MORE MARKEDLY ABNORMAL THAN  
24 MR. WINDOM; IS THAT CORRECT?

25 A IN A SENSE. I MEAN, IT WAS AN ARMED ROBBERY

1 AND TWO KILLINGS, THE TWO SUBSEQUENT ARMED ROBBERIES IN  
2 WHICH HE KILLED THE PERSON HE WAS ROBBING.

3 Q STABBED THEM, OVERKILLED THEM AS YOU SAY?

4 A YES. I THINK 17 STABS IN ONE AND 40 STABS IN  
5 THE OTHER ONE.

6 Q NOW, YOU DON'T HAVE BEHAVIOR LIKE THAT,  
7 MARKEDLY ABNORMAL BEHAVIOR LIKE THAT IN THIS PARTICULAR  
8 CASE, DO YOU?

9 A WELL, SHOOTING FOUR PEOPLE IN ONE DAY IS, AS  
10 FAR AS I'M CONCERNED -- ONE HOUR OR LESS -- IS -- COULD  
11 BE CHARACTERIZED A MASS MURDER, AS FAR AS I'M CONCERNED.

12 Q BUT ISN'T IT TRUE THAT MR. WINDOM, I BELIEVE HE  
13 DID SHOOT JOHNNIE LEE A COUPLE OF TIMES, BUT THE OTHER  
14 TWO HE JUST SHOT THEM AND WENT ON AND SHOT THE OTHER ONES  
15 THAT HE WANTED TO SHOOT?

16 A YEAH.

17 Q THERE WAS NO INDICATION OF FOCUSED RAGE,  
18 WHEREAS IN THE SIRECI CASE WHERE SOMEONE WENT ON  
19 STABBING, STABBING OR GOING AHEAD WITH THE MURDER WEAPON  
20 FAR MORE THAN WAS NEEDED, THAT WASN'T PRESENT HERE, WAS  
21 IT?

22 A NO, IT WASN'T PRESENT HERE.

23 Q HE DIDN'T OVERKILL HIS VICTIMS?

24 A BUT HE KILLED A LOT OF VICTIMS.

25 Q ISN'T IT TRUE IN THIS PARTICULAR CASE THE

1 HISTORY IS MUCH MORE AMBIGUOUS AS TO WHETHER -- GIVEN  
2 WHAT THE WITNESSES SAID AND GIVEN WHAT MR. WINDOM SAID  
3 AND GIVEN WHAT WAS DONE, IS MUCH MORE AMBIGUOUS AS TO  
4 WHETHER THIS IS A SITUATION OF A PLAN, ALBEIT UNWISE PLAN  
5 CARRIED OUT, OR WHETHER IT'S A DIRECT RESULT OF BRAIN  
6 DAMAGE?

7 A I THINK WE BOTH WOULD AGREE THAT THERE WAS NO  
8 PLAN TO SHOOT KENNY WILLIAMS.

9 Q CORRECT.

10 A OKAY. I THINK WE CAN BOTH AGREE THERE WAS NO  
11 PLAN TO SHOOT VALERIE'S MOTHER EITHER. THAT HAPPENED AT  
12 THE TIME, BUT THERE WAS NO PLAN TO DO THAT. THE ONLY  
13 KILLINGS -- NOT ONLY -- BUT THE KILLINGS AT ISSUE ARE  
14 JOHNNIE LEE AND VALERIE, IN TERMS OF POSSIBILITY OF  
15 HAVING PLANNED IT BEFOREHAND, OR HAVING ANY MOTIVATION IN  
16 FACT FOR DOING IT BEFOREHAND THAT HE EXPRESSED.

17 AND MY READING OF THE STATEMENT OF THE  
18 WITNESSES AND THE PEOPLE WHO KNEW CURTIS AT THE TIME WAS  
19 THAT HE WAS DETERIORATING OVER THE TWO-WEEK PERIOD, TWO-  
20 OR THREE-WEEK PERIOD BEFORE THIS INCIDENT, AS SHOWN BY  
21 HIS NOT CARING FOR HIMSELF, THE WAY HE WAS GROOMING  
22 HIMSELF AND DRESSING HIMSELF, AND NOT BEING ABLE TO  
23 SLEEP. THERE WERE A VARIETY OF OTHER INDICIA, I DON'T  
24 WANT TO REPEAT IT ALL, BUT OF HIS MIND NOT FUNCTIONING  
25 PROPERLY IN THAT PERIOD OF TIME.

1                   AND SO I THINK THAT IT'S POSSIBLE TO THINK  
2    THAT IT'S POSSIBLE THAT HE<sup>2</sup>- HE PLANNED TO KILL JOHNNIE  
3    LEE AND VALERIE AND TO SHOOT THEM, OR IT'S POSSIBLE THAT  
4    THAT HAPPENED ON THE SPUR OF THE MOMENT.

5                   I THINK THAT IT'S MORE REASONABLE TO THINK  
6    THAT IT HAPPENED ON THE SPUR OF THE MOMENT, AND BY THAT  
7    TIME THAT HE WAS IN THE GRIPS OF AN INTENSE MENTAL  
8    ILLNESS, A PSYCHOTIC MENTAL ILLNESS, HAVING  
9    HALLUCINATIONS AND DELUSIONS AT THE TIME.

10           Q     BUT THERE IS EVIDENCE IN THIS HISTORY, WHEN YOU  
11    LOOK AT WHAT THE WITNESSES ACTUALLY SAID HAPPENED, THAT  
12    WOULD SUPPORT BOTH SCENARIOS FOR WHAT MR. WINDOM DID?

13           A     THERE IS EVIDENCE YOU'VE PRESENTED.

14           Q     AND IS YOUR RECOLLECTION, GIVEN A MUCH STRONGER  
15    SCENARIO FOR BEHAVIOR THAT WAS INFLUENCED BY BRAIN DAMAGE  
16    IN MR. SIRECI'S CASE, THAT THE JURY NEVERTHELESS CAME  
17    BACK AND RECOMMENDED DEATH?

18           MR. MARIO:   OBJECTION, IT'S IRRELEVANT.

19           THE COURT:   WHY IS THAT RELEVANT?

20           MR. LERNER:   IT'S RELEVANT UNDER THE  
21    STRICKLAND STANDARD.  ONE OF THE THINGS THAT YOU  
22    HAVE TO CONSIDER IS WHETHER THERE IS A REASONABLE  
23    PROBABILITY OF A DIFFERENT OUTCOME IN THE CASE.  
24    AND THIS IS A CASE THAT HE WAS INVOLVED IN, HE'S  
25    PUT IN HIS CURRICULUM VITAE WHERE SOMEONE HAD AN

1 EVEN MORE EXTREME CASE OF BRAIN DAMAGE WITH  
2 BEHAVIOR THAT WAS CARRIED OUT, AND YET THE JURY  
3 STILL CAME BACK AND RECOMMENDED A DEATH SENTENCE.  
4 SO I THINK THIS GOES DIRECTLY TO THE ISSUE.

5 **THE COURT:** YOUR POINT BEING THE OTHER CASE  
6 WAS A 3.850, IT WAS A PRETRIAL OPINION THAT THE  
7 DOCTOR RENDERED?

8 **MR. LERNER:** WELL, THERE HAD BEEN A 3.850.  
9 IT WAS SENT BACK. THIS WAS A RETRY OF THE  
10 PENALTY PHASE.

11 **THE COURT:** COUNSEL, GO AHEAD. DEFENSE  
12 COUNSEL.

13 **MR. MARIO:** AGAIN, THERE IS NO RELEVANCE  
14 BETWEEN MR. SIRECI, WHICH IS FACTUALLY DISTINCT  
15 FROM THIS ONE, WHAT HIS PROBLEMS WERE, IN TERMS  
16 OF BRAIN DAMAGE, MENTAL ILLNESS, WHICH ARE A  
17 QUALITATIVE DISTINCTION FROM THIS CASE.

18 HERE THERE IS NO WAY FOR THIS COURT TO KNOW  
19 WHAT DEFENSE COUNSEL'S STRATEGY WAS IN  
20 MR. SIRECI'S CASE, AND WHAT THE JURY WAS  
21 THINKING, WHY THE JURY VOTED THE WAY IT DID. I  
22 THINK THERE IS ABSOLUTELY NO RELEVANCE.

23 **THE COURT:** I'M GONNA OVERRULE THE OBJECTION  
24 BASED ON THE STRICKLAND STANDARD, WHETHER --  
25 WHETHER OR NOT A LIKELY -- OR DIFFERENT OUTCOME

1 WILL BE LIKELY. SO I WILL ALLOW THE TESTIMONY.

2 THE WITNESS: I FIND IT VERY DIFFICULT TO  
3 WEIGH THE NEUROLOGICAL FACTORS IN THE TWO CASES.  
4 I THINK THEY'RE BOTH DEMONSTRABLY DAMAGED. I  
5 THINK THEY WERE BOTH MENTALLY ILL. I THINK HIS  
6 LEVEL OF MENTAL ILLNESS IS MUCH GREATER THAN THAT  
7 WAS IN SIRECI. SIRECI WAS NOT HAVING DELUSIONS  
8 AND HALLUCINATIONS. HE WAS HAVING A DELUSION AND  
9 HALLUCINATION AT THE TIME.

10 BY MR. LERNER:

11 Q THOSE ARE DEFINING THAT HE IS -- HAVING  
12 DELUSIONS AND HALLUCINATIONS THOUGH IS DEPENDENT ON  
13 WHAT'S HE'S REPORTING TO YOU NOW?

14 A THAT'S THE ONLY WAY OF DETERMINING A DELUSION  
15 OR HALLUCINATION. IF YOU CAN OBJECTIVELY VERIFY, IT'S  
16 NOT AN HALLUCINATION OR A DELUSION.

17 Q WELL, FOR INSTANCE, NOBODY REPORTS AT THE TIME  
18 OF HEARING HIM TALK TO VOICES OR TALK TO THE AIR OR  
19 MUMBLE TO HIMSELF OR ANYTHING THAT WOULD BE CONSISTENT  
20 WITH SOMEONE WHO IS HEARING OTHER VOICES?

21 A HE HEARD -- HE TOLD ME ABOUT A DEEP VOICE THAT  
22 TOLD HIM THAT HE WAS GOING TO DIE. HE SAID THE SAME  
23 THING TO YOUR PSYCHOLOGIST, DR. MERIN. DR. MERIN,  
24 DR. BEAVER AND I ALL AGREE THAT HE IS NOT PREVARICATING.  
25 IT'S POSSIBLE TO SAY THAT MAYBE HE JUST MADE IT UP, MAYBE

1 HE MADE IT UP, MAYBE IT DIDN'T HAPPEN. BUT ALL OF US  
2 WERE IMPRESSED BY HIS VERACITY. AND IF WE'RE IMPRESSED  
3 BY HIS VERACITY, AND HE'S TELLING THE TRUTH THAT HE HEARD  
4 A VOICE TELLING HIM THAT HE WAS GOING TO DIE AT THAT  
5 TIME, NOT A COMMAND HALLUCINATION, NOT TELLING HIM TO DO  
6 THIS, THAT'S NOT WHAT HE WAS SAYING, BUT HE HEARD A VOICE  
7 SPEAKING TO HIM, A DEEP VOICE, NOW, THAT'S AN AUDITORY  
8 HALLUCINATION. IF SOMEBODY ELSE COULD HEAR IT, IT  
9 WOULDN'T HAVE BEEN. SO I FEEL QUITE CONFIDENT ABOUT THAT  
10 ONE.

11 IN TERMS OF THE PARANOIA, HE WAS INTENSELY  
12 PARANOID DELUSIONAL LEVEL. HE BELIEVED SOMEONE WAS GOING  
13 TO KILL HIM, AND HE ENDED UP KILLING THE TWO PEOPLE THAT  
14 MEANT THE MOST TO HIM, HIS GIRLFRIEND AND MOTHER OF HIS  
15 CHILD, AND BEST FRIEND.

16 Q YOU -- AGAIN, YOU DEPEND ENTIRELY ON HIM FOR  
17 THE CONCLUSION THAT HE BELIEVED SOMEONE WAS TRYING TO  
18 KILL HIM?

19 A YES.

20 Q HE DIDN'T TELL THAT TO MR. LUCKET?

21 A WELL, HE DID. MR. LUCKET SAID THERE WAS  
22 ANOTHER ISSUE, AND THAT WAS THE REAL ISSUE. SO WHAT WAS  
23 THAT REAL ISSUE? I THINK THAT THAT'S THE REAL ISSUE.  
24 NOW, MR. LUCKET MAY NOT HAVE BEEN TELLING YOU THE TRUTH,  
25 THE WHOLE TRUTH.

1 Q POSSIBLY.

2 A NO ONE ASKED HIM SPECIFICALLY ABOUT IT.

3 Q BUT HE MADE NO STATEMENTS OR TOOK NO ACTION  
4 ACCORDING TO THE WITNESSES, DID HE, THAT WERE THERE AT  
5 THE JOHNNIE LEE SHOOTING THAT WOULD BE CONSISTENT WITH  
6 SOMEONE WHO WAS AFRAID THAT THEY WERE BEING SHOT, OR  
7 WOULD BE SHOT?

8 A WELL, NO. HE ELIMINATED JOHNNIE LEE FOR WHAT  
9 HE THOUGHT WAS A THREAT TO HIM, WHICH WAS A DELUSIONAL  
10 THOUGHT, AND HE DID IT IN A -- THIS WAS NO CLEVER  
11 ASSASSINATION. HE DID IT IN FULL VIEW OF LOTS OF PEOPLE  
12 AT HIGH NOON, MIDDLE OF A STREET, LEAVING THE DOORS OF  
13 HIS CAR OPEN, AND THEN WALKING AWAY FROM HIS CAR. I  
14 DON'T EVEN KNOW IF THE MOTOR WAS STILL RUNNING, BUT IT  
15 MAY HAVE BEEN.

16 Q ISN'T IT TRUE HE DID EXACTLY WHAT HE TOLD JACK  
17 LUCKET THAT HE WOULD DO, HE KILLED JOHNNIE LEE?

18 A HE DIDN'T ACCORDING TO LUCKET'S TESTIMONY. HE  
19 IMPLIED THAT THAT WAS WHAT'S GOING TO HAPPEN, BUT HE  
20 DIDN'T ACTUALLY SAY HE WAS GOING TO SHOOT JOHNNIE LEE.  
21 HE SAID YOU'LL SEE ME IN THE NEWSPAPERS, BUT I DON'T KNOW  
22 WHETHER THAT -- YOU MAY BE RIGHT, MAYBE THAT WAS A PLAN  
23 THAT DEVELOPED AT THAT TIME. I THINK IT WASN'T.

24 Q AND ISN'T IT TRUE THAT HIS -- WHAT HE TOLD  
25 DR. BEAVER ABOUT HIS REASON FOR KILLING MARY LUBIN MAKES



1 A LOT OF SENSE, GIVEN WHAT HE JUST DONE.

2 IN BEAVER'S REPORT THAT HE WAS AFRAID THAT  
3 MARY LUBIN, WHO HE KNEW TO CARRY A GUN --

4 A SHE WAS GOING TO SHOOT HIM, TOO.

5 Q -- WOULD HAVE SHOT HER (SIC)?

6 A RIGHT. THERE WAS NO GUN FOUND, AS I'M AWARE  
7 OF.

8 Q BUT THE THING IS, THAT'S WHAT SOMEONE WOULD  
9 LOGICALLY DO, THAT WAS A LOGICAL CONCLUSION, GIVEN THE  
10 CIRCUMSTANCES IF MARY LUBIN COMMONLY CARRIED A GUN?

11 A MIGHT BE. HE WAS -- HE WAS OUT OF CONTROL AT  
12 THE TIME. I DON'T THINK THAT YOU OR I WOULDN'T HAVE BEEN  
13 IN THAT SITUATION TO BEGIN WITH, I'M SURE. BUT IT WAS  
14 A -- IT WAS AN EXCESSIVE RESPONSE, I THINK YOU'LL AGREE,  
15 TO A STIMULUS THAT WAS UNANTICIPATED.

16 Q OKAY. AND GOING BACK TO THE SIRECI CASE, IN  
17 THE SIRECI CASE THERE WAS A HISTORY, A LONG HISTORY OF  
18 VERY, VERY BIZARRE BEHAVIOR, WASN'T THERE, ON  
19 MR. SIRECI'S PART?

20 A WELL, NO. HE HAD BEEN SUBJECTED TO INCREDIBLE  
21 SEXUAL ABUSE BY HIS MOTHER, IS THAT WHAT YOU MEAN? HE  
22 HAD BEEN SEXUALLY ABUSED BY HER FOR YEARS AND YEARS AND  
23 BEATEN BY HIS STEPFATHER. HE CLIMBED A TREE TO GET AWAY  
24 FROM THE STEPFATHER, AND THE STEPFATHER CHOPPED IT DOWN  
25 WITH AN AX WHEN HE WAS YOUNGER TO GET AT HIM.

1           Q     WELL, FOR INSTANCE, I BELIEVE YOU SAID THAT IN  
2     YOUR BOOK, GOING BACK OVER, YOU RENAMED MR. SIRECI TO  
3     MR. DONOVAN AND POSSIBLY SOMEONE OF MY OWN RECOLLECTION  
4     OF THE TRIAL?

5           A     I CAN'T AGREE WITH THAT.

6           Q     DID HE NOT RUN WITH GANGS, GET IN FIGHTS WITH  
7     CHAINS, GET IN FIGHTS WITH HIS FACTORY WORKER FRIENDS?

8           A     SIRECI DID.

9           Q     AND WAS HE NOT EXTREMELY IRRITABLE AND  
10    COMBATIVE?

11          A     HE WAS VERY -- HE WAS BOTH, EXTREMELY PLACID --  
12    I'M TALKING ABOUT SIRECI NOW -- EXTREMELY EASILY UPSET,  
13    AND HE WOULD LOSE HIS TEMPER EASILY, PARTICULARLY WHEN HE  
14    WAS BELITTLED. BUT UNDER ORDINARY CIRCUMSTANCES HE WAS  
15    EXTREMELY AFFABLE, AND PEOPLE LIKED HIM VERY MUCH. HE  
16    WAS A PRODIGIOUS WORKER. HE CARRIED GIANT SHEETS OF  
17    METAL IN THE FACTORY. HE WAS QUITE THE FAVORITE OF THE  
18    FACTORY OWNER, WHO WAS SORT OF HIS SPONSOR. AND YOU  
19    COULD BORROW MONEY FROM HIM AND NOT REPAY IT. BUT YOU  
20    COULDN'T TEASE HIM. THAT WAS A THING THAT WOULD SET HIM  
21    OFF. AND REALLY THE TWO CASES ARE NOT THE SAME AT ALL.  
22    THERE ARE SIMILARITIES.

23          Q     THAT'S MY POINT, THEY AREN'T THE SAME. IN  
24    SIRECI YOU HAD A LONG HISTORY OF RECOGNIZABLY DEVIANT AND  
25    STRANGE AND ODD BEHAVIOR, DIDN'T YOU?

1           A     HE WAS IRRITABLE, BUT HE WAS VERY, VERY NICE.  
2     PEOPLE DID LIKE HIM. HE HAD NO CLOSE FRIENDS. THIS CASE  
3     HE'S GOTTEN IN -- MR. WINDOM -- PLENTY OF FIGHTS OVER THE  
4     COURSE OF HIS LIFE. HE'S EVEN BEEN -- HAD FIGHTS WITH --  
5     WITH HIS GIRLFRIENDS. AND HE'S ALSO VERY AFFABLE, GIVES  
6     AWAY MONEY AND THINGS LIKE THAT. BUT HE HAD NOT BEEN  
7     IRRITABLE THE WAY SIRECI HAD BEEN. AND IN THE SAME WAY,  
8     IN FACT, HE'S BEEN MUCH MORE PLACID.

9                     ON THE OTHER HAND, HE WAS -- MR. WINDOM  
10    WAS DELUSIONAL AND HAVING HALLUCINATIONS, THAT WAS NOT  
11    TRUE OF SIRECI WHEN HE -- THAT WAS A VERY IMPORTANT  
12    DIFFERENCE.

13          Q     OKAY. ONE LAST THING. YOU ARE NOT A  
14    PSYCHIATRIST, ARE YOU?

15          A     CORRECT, I'M A NEUROLOGIST.

16          Q     OR PSYCHOLOGIST?

17          A     THAT IS ALSO TRUE.

18          Q     YOUR AREA OF EXPERTISE, I DIDN'T JUMP UP AND  
19    OBJECT --

20          A     NEUROLOGY.

21          Q     -- PRIMARILY NEUROLOGY?

22          A     IT IS NEUROLOGY.

23          Q     DETERMINING WHETHER OR NOT BRAIN DAMAGE EXISTS  
24    OR OTHER SORTS OF NEUROLOGICAL DAMAGE EXISTS?

25          A     CORRECT.

1 Q YOU'RE NOT AN EXPERT IN THE AREA OF PSYCHOSIS  
2 OR OTHER PSYCHOLOGICAL OR PSYCHIATRIC DEFECTS, ARE YOU?

3 A I WOULDN'T SAY THAT I WASN'T AN EXPERT IN IT,  
4 BUT I'M NOT A PSYCHIATRIST FOR SURE.

5 Q AND YOU CERTAINLY ARE NOT IN ANY POSITION TO  
6 EITHER DIAGNOSE OR TREAT DISORDERS OF THAT SORT, ARE YOU?

7 A YES, I AM.

8 Q YOU ARE?

9 A I'M ASKED TO FREQUENTLY.

10 Q WELL, WOULDN'T YOU NORMALLY ASSOCIATE A --  
11 SOMEONE WHO IS A PSYCHIATRIST TO HANDLE THAT. FOR  
12 INSTANCE, HAVE YOU BEEN KNOWN TO COLLABORATE WITH DOROTHY  
13 LEWIS, WHO'S -- I BELIEVE IS SHE A PSYCHOLOGIST?

14 A SHE'S A PSYCHIATRIST. YES, I COLLABORATE WITH  
15 HER. BUT NOT FOR TREATMENT PURPOSES. I'M -- IN THE  
16 COURSE OF MY PRACTICE I'M OFTEN SENT PATIENTS BY  
17 PSYCHIATRISTS FOR HELP WITH THE TREATMENT OF THEIR  
18 PSYCHOSIS.

19 Q BECAUSE THEY FEEL THEY HAVE A NEUROLOGICAL  
20 BASIS?

21 A THEY MAY HAVE A NEUROLOGICAL COMPONENT TO IT,  
22 YES.

23 Q THAT'S WHAT YOU'RE LOOKING FOR?

24 A CORRECT.

25 MR. LERNER: I HAVE NO FURTHER QUESTIONS.

1 THE COURT: REDIRECT?

2 MR. MARIO: YES, YOUR HONOR.

3 REDIRECT EXAMINATION

4 BY MR. MARIO:

5 Q OKAY. BUT FIRSTS THING FIRST.

6 MR. MARIO: IF I MAY APPROACH THE WITNESS,

7 YOUR HONOR?

8 THE WITNESS: YES.

9 THE COURT: YES, GO AHEAD.

10 BY MR. MARIO:

11 Q I'M SHOWING YOU WHAT'S --

12 MR. MARIO: THIS HASN'T BEEN INTRODUCED, HAS

13 IT, CHRIS? THAT IS MARKED FOR ID, THIS VOLUME OF

14 BACKGROUND MATERIALS?

15 MR. LERNER: FOR THE RECORD, WE SHOULD SAY

16 WHAT IT'S MARKED.

17 MR. MARIO: IS IT A?

18 MR. LERNER: B.

19 MR. MARIO: B.

20 Q I'M SHOWING WHAT'S BEEN MARKED FOR

21 IDENTIFICATION AS STATE'S EXHIBIT A.

22 MR. LERNER: B.

23 BY MR. MARIO:

24 Q B, EXCUSE ME. AND DIRECTING YOUR ATTENTION TO

25 THE CHARGING AFFIDAVITS WHICH ARE HERE, ONE'S BEEN TABBED

1 AND DESIGNATED AS DECEMBER 3RD, 1991, DRUGS CHARGES,  
2 ANOTHER ONE AUGUST 2ND, 1991, DRUG CHARGES. IF -- WOULD  
3 YOU JUST LOOK AT THESE, AND ON THE SECTION OF EACH  
4 DOCUMENT MARKED ARREST INFORMATION, COULD YOU READ ME THE  
5 DATE. AND THIS IS ON THE ONE FOR THE DECEMBER 3RD, '91  
6 CHARGE.

7 A DATE IS 12/6/91.

8 Q AND FLIPPING NOW TO THE CHARGING AFFIDAVIT  
9 WHICH HAS BEEN DATED AUGUST 2ND '91, COULD YOU READ ME  
10 AGAIN IN THE SECTION DESIGNATED ARREST INFORMATION WHAT'S  
11 THE DATE?

12 A 12/6/91.

13 Q SAME DAY?

14 A SAME DAY.

15 Q THESE WOULD INDICATE THEN --

16 A THESE TWO ARRESTS WERE ON ONE DAY.

17 Q THAT'S ONE ARREST?

18 A ONE ARREST.

19 Q TWO CHARGING AFFIDAVITS, ONE ARREST?

20 A RIGHT.

21 Q HE WASN'T ARRESTED REPEATEDLY?

22 A NO.

23 Q MR. LERNER ASKED YOU SOME QUESTIONS ABOUT  
24 TESTIMONY FROM PRIOR WITNESSES JACK LUCKET, PAMELA FIKES  
25 AND OTHERS THAT SUGGESTED MR. WINDOM PERHAPS HAD SOME

1     LEGITIMATE REASON TO BE SUSPICIOUS OR TO FEAR FOR HIS  
2     SAFETY.  AND MY QUESTION TO YOU IS, IF THERE'S NO FACTUAL  
3     BASIS FOR THAT, IF THAT'S JUST RUMOR, OR EVEN IF THERE IS  
4     A FACTUAL BASIS, DOES IT CHANGE YOUR CONCLUSIONS WITH  
5     RESPECT TO HIS MENTAL STATE AT THE TIME OF THE SHOOTINGS?

6           A     NO.  I THINK THAT -- THAT THOSE LITTLE, IF THEY  
7     WERE SUCH SUGGESTIONS MADE BY OTHER PEOPLE, THAT THEY  
8     ASSUMED A MUCH GREATER ROLE IN DETERMINING HIS BEHAVIOR  
9     THAN THEY SHOULD HAVE, AND THEY DID SO BECAUSE HE WAS  
10    PSYCHOTIC AT THE TIME.

11          Q     WELL, IN OTHER WORDS THEN, IF YOU START OUT  
12    WITH MR. WINDOM, HE'S ALREADY IN A SORT OF PARANOID  
13    STATE, AND THEN HE HEARS FROM OTHER PEOPLE THAT, OH,  
14    YEAH, MR. LEE, JOHNNIE LEE IS ACTUALLY OUT TO KILL YOU,  
15    WOULD THAT THEN FEED INTO HIS PARANOIA, CAUSE IT TO  
16    INCREASE?

17          A     THAT'S EXACTLY THE POINT.  THAT'S EXACTLY THE  
18    POINT.

19          Q     NOW, WITH RESPECT TO JACK LUCKET, YOU HAD A  
20    CONVERSATION WITH CURTIS, YOU TOOK HIS HISTORY, RIGHT,  
21    DURING THE EXAMINATION IN JULY?

22          A     I DID.

23          Q     AND DURING THE COURSE OF YOUR CONVERSATION WITH  
24    MR. WINDOM, DID HE DISCUSS WITH YOU ANYTHING THAT JACK  
25    LUCKET HAD TOLD HIM?

1           A     YES, HE TOLD ME THAT JACK LUCKET HAD TOLD --  
2     HAD SAID THAT JOHNNIE LEE ~~WAS~~ GOING TO KILL HIM. THAT  
3     WAS WHERE THAT IDEA CAME FROM WAS FROM LUCKET, THAT'S  
4     WHAT WINDOM TOLD ME.

5           Q     OKAY. SO THIS IS NOT INFORMATION THAT WOULD  
6     APPEAR IN THE TRIAL RECORD, THIS IS SOMETHING THAT  
7     MR. WINDOM RELAYED TO YOU?

8           A     CORRECT.

9           Q     DURING YOUR EVALUATION?

10          A     THAT'S EXACTLY RIGHT.

11          Q     AND LET ME JUST --

12                **MR. MARIO:** THESE DEPARTMENT OF CORRECTIONS  
13     MEDICAL RECORDS, CHRIS, WERE THESE ALSO MARKED?

14                **MR. LERNER:** YES.

15     **BY MR. MARIO:**

16          Q     THESE ARE STATE EXHIBIT A THEN MARKED FOR  
17     IDENTIFICATION. AND YOU REVIEWED THOSE, RIGHT?

18          A     YES.

19          Q     BOTTOM LINE, IS THERE ANYTHING IN HERE THAT  
20     CHANGES YOUR OPINION THAT CURTIS WINDOM SUFFERED FROM  
21     FRONTAL LOBE DAMAGE AND MENTAL ILLNESS ON THE DATE OF THE  
22     SHOOTING IN 1992?

23          A     NO.

24          Q     IN FACT, THE LACK OF ANY DOCUMENTATION OF  
25     SERIOUS HEAD TRAUMA OR CONCUSSION ACTUALLY BOLSTERS YOUR



1 OPINION, DOES IT NOT?

2 A YES.

3 Q IS THAT THIS -- THIS CONDITION, THIS BRAIN  
4 DAMAGE EXISTED IN 1992?

5 A YES. THAT'S EXACTLY RIGHT. I'M CONVINCED THAT  
6 IT EXISTED IN 1992.

7 Q AND THERE ARE OTHER INDICIA, INFORMATION  
8 CONTAINED IN THE AFFIDAVITS, THE BACKGROUND MATERIALS  
9 THAT EXIST THAT INDICATE THIS PROBLEM WAS A LONG-STANDING  
10 CONDITION, A CHRONIC CONDITION?

11 A SCHOOL RECORDS, ET CETERA.

12 Q OKAY. AND, OH, INCIDENTALLY THERE WAS SOME  
13 TALK ON CROSS-EXAMINATION ABOUT THIS AUDITORY  
14 HALLUCINATION THAT MR. WINDOM REPORTS ABOUT A VOICE  
15 SAYING HE HAD TO DIE?

16 A RIGHT.

17 Q YOU HAD A CHANCE TO READ DR. KIRKLAND'S REPORT  
18 THAT WAS PREPARED PRETRIAL?

19 A YES.

20 Q DO YOU RECALL DR. KIRKLAND, HE ALSO MENTIONS  
21 THAT?

22 A YES. I MEAN, THERE IS ABSOLUTELY NO REASON  
23 WHATSOEVER TO DOUBT MR. WINDOM'S VERACITY IN REPORTING  
24 THAT. WE ALL AGREE THAT HE'S NOT LYING. HE'S NOT MAKING  
25 IT UP. HE HAD THAT EXPERIENCE. THE ONLY QUESTION IS WHY

1 DID HE HAVE THAT EXPERIENCE. HE WASN'T ON DRUGS AT THE  
2 TIME, THAT CAN DO IT. AND MOST LIKELY THING IS HE WAS  
3 PSYCHOTIC. THAT'S THE KIND OF THING THAT A SCHIZOPHRENIC  
4 DOES. SOMEONE IN A MANIC PHASE, SOMEONE PSYCHOTICALLY  
5 DEPRESSED, THAT'S WHAT CAUSES THAT KIND OF A SYMPTOM,  
6 AUDITORY HALLUCINATION.

7 Q AND MAYBE JUST TO CLARIFY THIS FOR THE COURT,  
8 BUT IN COMPARING THIS CASE TO MR. SIRECI'S CASE, IF WE'RE  
9 GOING TO DO THIS, CAN YOU JUST MAKE A STATEMENT THAT, YOU  
10 KNOW, SOMEONE CATEGORICALLY HAS BRAIN DAMAGE, IT'S GOING  
11 TO AFFECT DIFFERENT PEOPLE IN THE SAME WAY? I MEAN, ARE  
12 THERE OTHER FACTORS INVOLVED THAT WILL AFFECT THE  
13 BEHAVIOR?

14 A NO.

15 Q COMPARE THINGS LIKE THAT?

16 A THE ISSUE OF BRAIN DAMAGE, THAT'S ONE ISSUE.  
17 THE QUESTION IS THEN WHAT KIND OF BRAIN WAS DAMAGED.  
18 WHAT WAS IN THAT BRAIN TO BEGIN WITH. IF YOU WANT TO SEE  
19 THE KIND OF DIFFERENCES THAT TAKE -- LET'S TAKE SOMEBODY  
20 WHO HAS A BLOOD ALCOHOL LEVEL OF 0.3, WHICH EVERYBODY  
21 WOULD BE QUITE INTOXICATED. ONE PERSON WILL WALK AROUND  
22 LOOKING AS THOUGH HE'S NOT -- NOT REALLY DRUNK. ANOTHER  
23 ONE WILL BE LYING ON THE GROUND UNABLE TO MOVE, THAT  
24 WOULD BE ME. ANOTHER ONE WOULD BE TEARING THE TELEPHONE  
25 OUT OF THE WALLS AND BE ANGRY AND DIFFICULT. ANOTHER ONE

1 WOULD BE QUITE FLIRTATIOUS. AND THE BLOOD ALCOHOL LEVEL  
2 IS THE SAME ON ALL THREE OF THEM.

3 THE THING THAT'S CAUSING THE BRAIN DAMAGE  
4 IS THE SAME IN ALL OF THEM. BUT WHAT THE EFFECT OF IT ON  
5 BEHAVIOR VERY MUCH DEPENDS ON WHAT SORT OF PERSON IT WAS  
6 THAT WAS DAMAGED AT THAT TIME. WHAT WAS THEIR  
7 SOCIALIZATION LIKE? WHAT KIND OF MENTAL ILLNESSES DID  
8 THEY HAVE? IN ADDITION TO THAT, WHAT OTHER DAMAGE MIGHT  
9 THEY HAVE? WHAT WAS THEIR I.Q.? ALL OF THOSE THINGS  
10 FACTOR INTO WHAT THE BEHAVIOR IS GOING TO BE. AND THAT'S  
11 WHY IT'S SO DIFFICULT TO PREDICT THE BEHAVIOR OF SOMEBODY  
12 WHO'S FRONTALLY DAMAGED. YOU MIGHT GET A VERY SWEET  
13 PERSON, IN FACT, YOU HAVE A VERY SWEET PERSON AT TIMES.  
14 AT OTHER TIMES YOU HAVE SOMEONE WHO'S DANGEROUS.

15 MR. MARIO: CAN I HAVE JUST ONE MOMENT, YOUR  
16 HONOR?

17 THE COURT: YES.

18 MR. MARIO: WE HAVE NO FURTHER QUESTIONS,  
19 YOUR HONOR.

20 THE COURT: ANYTHING ELSE, MR. LERNER?

21 MR. LERNER: NO FURTHER QUESTIONS.

22 THE COURT: THANK YOU VERY MUCH, SIR. YOU  
23 CAN STEP DOWN.

24 READY FOR YOUR NEXT WITNESS, MR. STRAND?

25 MR. STRAND: DR. CRAIG BEAVER.

1           **THE COURT:** ANYBODY NEED A QUICK BREAK OR  
2           READY TO GO?

3           **MR. STRAND:** READY TO GO.

4           THEREUPON,

5                       CRAIG BEAVER, PH.D.

6           WAS CALLED AS A WITNESS, AND HAVING FIRST BEEN DULY  
7           SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

8                       **DIRECT EXAMINATION**

9           **BY MR. STRAND:**

10           Q       COULD YOU PLEASE STATE YOUR FULL NAME, SIR.

11           A       CRAIG W. BEAVER, B AS IN BOY, E-A-V-E-R.

12           Q       AND, DR. BEAVER, WHAT'S YOUR PROFESSION?

13           A       I'M A LICENSED PSYCHOLOGIST, I'M ALSO A  
14           DIPLOMATE STATUS IN CLINICAL NEUROPSYCHOLOGY.

15           Q       AND IN THE -- COULD YOU VERY BRIEFLY TELL US  
16           WHAT YOUR EDUCATIONAL BACKGROUND IS.

17           A       CERTAINLY. I HAVE A BACHELOR'S DEGREE IN  
18           PSYCHOLOGY FROM THE UNIVERSITY OF OREGON. I HAVE A  
19           MASTER'S AND PH.D. IN CLINICAL PSYCHOLOGY FROM MIAMI  
20           UNIVERSITY, OHIO.

21                       I ALSO COMPLETED A CLINICAL INTERNSHIP AT  
22           THE FORT MILEY V.A. MEDICAL CENTER IN COORDINATION WITH  
23           THE U.C. SAN FRANCISCO MEDICAL SCHOOL.

24                       I ALSO COMPLETED FOUR YEARS OF SUPERVISED  
25           TRAINING POSTDOCTORAL WITH DR. LLOYD CRIPE, ON THE BOARD

1 OF NEUROPSYCHOLOGISTS, WHO AT LEAST FOR PART OF THAT TIME  
2 WAS HEAD OF NEUROPSYCHOLOGICAL SERVICES FOR MADICAN ARMY  
3 HOSPITAL.

4 Q OKAY. WHERE DO YOU PRACTICE?

5 A IN BOISE, IDAHO.

6 Q AND, I'M SORRY, ARE YOU BOARD CERTIFIED IN  
7 NEUROPSYCHOLOGY?

8 A YES. I HOLD A DIPLOMATE IN CLINICAL  
9 NEUROPSYCHOLOGY FROM THE AMERICAN BOARD OF PROFESSIONAL  
10 PSYCHOLOGISTS.

11 Q ARE YOU ALSO INVOLVED IN THE REVIEW PROCESS FOR  
12 QUALIFYING APPLICANTS TO BECOME BOARD CERTIFIED?

13 A YES, I'M ONE OF THE REVIEWERS FOR APPLICANTS TO  
14 SEEK THEIR BOARD'S IN NEUROPSYCHOLOGY.

15 Q AND DO YOU HAVE AN ASSOCIATION WITH THE ADA  
16 COUNTY PROSECUTOR'S OFFICE IN BOISE?

17 A YES, I PROVIDE PSYCHOLOGICAL EVALUATIONS IN  
18 HEALTH AND WELFARE, PARENTAL TERMINATION CASES. SO I  
19 CONSULT FREQUENTLY WITH ADA COUNTY IN THE DOMESTIC LAW  
20 COURTS.

21 Q AND HAVE YOU BEEN ASSOCIATED WITH ANY CASES IN  
22 WHERE A FEDERAL, FEDERAL JUDGE HAS ASKED YOU TO ASSIST IN  
23 EVALUATING NEUROPSYCHOLOGICAL EVIDENCE?

24 A YES. I'VE HAD SEVERAL CASES WHERE I WAS  
25 APPOINTED FOR THE EXPERT FOR THE COURT WHEN EACH OF THE

1 OPPOSING COUNSEL HAD THEIR OWN EXPERTS.

2 Q WOULD THAT BE IN FEDERAL COURT OR STATE COURT?

3 A THAT WAS IN FEDERAL COURT.

4 Q HAVE YOU TESTIFIED IN CRIMINAL MATTERS BEFORE?

5 A YES.

6 Q HAVE YOU TESTIFIED FOR THE DEFENSE AND FOR THE  
7 PROSECUTION?

8 A YES.

9 Q WOULD YOU SAY THAT THE MAJORITY OF YOUR  
10 TESTIMONY HAS BEEN FOR DEFENDANTS?

11 A IN CRIMINAL CASES I WOULD SAY THE MAJORITY HAS  
12 BEEN FOR DEFENSE. ALTHOUGH, I'M CERTAINLY APPOINTED  
13 ROUTINELY BY THE COURTS TO DO PRESENTENCING EVALUATIONS.  
14 PROBABLY LESS FREQUENTLY IN CRIMINAL MATTERS I CONSULT  
15 WITH THE PROSECUTOR'S OFFICE, BUT I DO DO THAT.

16 Q HAVE YOU BEEN APPOINTED BY THE COURTS TO  
17 DETERMINE COMPETENCY AND SANITY IN PRETRIAL?

18 A MANY TIMES.

19 Q AND HAVE YOU -- ARE YOU PRESENTLY NOW, HAVE YOU  
20 BEEN RETAINED BY ANY PROSECUTING ATTORNEY'S OFFICE IN A  
21 CRIMINAL MATTER AT THIS TIME? ARE YOU WORKING ON ANY  
22 CASE FOR A PROSECUTOR?

23 A I'M INVOLVED IN A COUPLE, NUMBER OF CASES. AS  
24 FAR AS CRIMINAL IS CONCERNED, I'VE RECENTLY BEEN RETAINED  
25 AS AN EXPERT WITNESS IN A CAPITAL CASE BY THE

1 PROSECUTOR'S OFFICE, YES, IN OWYHEE COUNTY, IDAHO.

2 Q WHAT IS YOUR, BRIEFLY, WHAT'S YOUR PRACTICE  
3 LIKE, YOUR DAY-TO-DAY PRACTICE LIKE?

4 A ABOUT TWO-THIRDS OF MY PRACTICE IS INVOLVED  
5 WITH DIRECT CARE OF PATIENTS. I RUN THE BRAIN INJURY  
6 REHABILITATION AT IDAHO ELKS HOSPITAL, WHICH IS A  
7 NONPROFIT REHABILITATION FACILITY. I HELPED AND DESIGNED  
8 THAT PROGRAM WHERE WE TAKE CARE OF PATIENTS THAT HAVE  
9 HEAD INJURY, STROKES, DEMENTIA, TUMORS, SPINAL CORD  
10 INJURIES, THINGS OF THAT NATURE. AND I HELP COORDINATE  
11 THAT PROGRAM BOTH INPATIENT/OUTPATIENT BASIS.

12 I ALSO HAVE A PRIVATE PRACTICE WHERE I SEE  
13 A LOT OF PATIENTS WITH SIMILAR NEUROLOGICAL PROBLEMS AND  
14 HISTORY. I WORK QUITE CLOSELY WITH ONE OF THE  
15 NEUROSURGEONS IN IDAHO, AS WELL AS SEVERAL NEUROLOGISTS  
16 REHABILITATION MEDICAL GROUPS.

17 Q HAVE YOU BEEN -- HAVE YOU HAD ANY COMMUNITY  
18 ACTIVITIES THAT'S BEEN'S ASSOCIATED WITH THE IDAHO  
19 SUPREME COURT OR WITH THE IDAHO STATE BAR?

20 A I'VE ACTUALLY DONE A NUMBER OF THINGS FOR THE  
21 COURT, IN ADDITION TO HAVING A NUMBER OF TRAINING  
22 SESSIONS FOR COURTS ON DIFFERENT ISSUES, MEMORY AND  
23 DOMESTIC VIOLENCE. I ALSO WAS ON THE COMMITTEE AND  
24 HELPED FORM THE COMMITTEE THAT SET THE CHILD CUSTODY  
25 GUIDELINES FOR THE STATE OF IDAHO.

1 I'M ALSO ON THE IDAHO SUPREME COURT  
2 COMMITTEE THAT HAS SET THE STANDARDS FOR EVALUATION OF  
3 DOMESTIC VIOLENCE AND WHO'S QUALIFIED TO DO THOSE TYPES  
4 OF EVALUATIONS FOR THE COURT. I'VE DONE A NUMBER OF  
5 PRESENTATIONS FOR THE IDAHO BAR ASSOCIATION. AND I'M  
6 ALSO ON THE IDAHO BAR SOCIAL FITNESS AND CHARACTER  
7 COMMITTEE.

8 Q AND HAVE YOU BEEN QUALIFIED IN COURTS IN THE  
9 AREA OF CLINICAL PSYCHOLOGY?

10 A YES, MANY TIMES.

11 Q OKAY. AND HAVE YOU BEEN QUALIFIED IN COURTS IN  
12 THE AREA OF NEUROPSYCHOLOGY?

13 A YES, MANY TIMES.

14 Q AND, IN FACT, HAVE YOU BEEN QUALIFIED IN THE  
15 STATE OF FLORIDA?

16 A YES.

17 Q IN BOTH OF THOSE AREAS?

18 A YES. YES.

19 MR. STRAND: YOUR HONOR, I'D OFFER  
20 DR. BEAVER AS AN EXPERT.

21 THE COURT: ANY VOIR DIRE?

22 MR. LERNER: IN WHAT AREA?

23 MR. STRAND: IN CLINICAL PSYCHOLOGY AND  
24 CLINICAL NEUROPSYCHOLOGY.

25 THE COURT: YOU'RE TENDERING AS AN EXPERT.



1           **MR. LERNER:** NO OBJECTION.

2           **THE COURT:** ALL RIGHT. I'LL ACCEPT HIM AS  
3 AN EXPERT IN THAT FIELD.

4 **BY MR. STRAND:**

5           **Q** NOW, YOU HAD AN OPPORTUNITY TO PERFORM A  
6 NEUROPSYCHOLOGICAL ON MR. WINDOM, AND ALSO PERFORM A  
7 PSYCHOLOGICAL, A CLINICAL PSYCHOLOGICAL INTERVIEW; IS  
8 THAT CORRECT?

9           **A** YES, EVALUATED MR. WINDOM IN APRIL OF 2000.

10          **Q** OKAY. AND PRIOR TO THAT EVALUATION DID YOU  
11 HAVE AN OPPORTUNITY TO REVIEW SOME BACKGROUND MATERIALS?

12          **A** BEFORE I MET AND EVALUATED MR. WINDOM, I HAD  
13 REVIEWED A NUMBER OF DIFFERENT MATERIALS. I'VE  
14 SUMMARIZED THAT LIST. IN FACT, IN THE REPORT THAT I  
15 PREPARED, THAT LISTS THE THINGS THAT I SAW BEFORE I MET  
16 WITH MR. WINDOM. AND THEN I'VE SEEN AND DONE A NUMBER OF  
17 THINGS SINCE THAT POINT IN TIME.

18           **MR. STRAND:** JUDGE, AT THIS TIME, I'D LIKE  
19 TO OFFER DR. BEAVER'S C.V. AND ALSO A COPY OF HIS  
20 REPORT INTO EVIDENCE.

21           **MR. LERNER:** NO OBJECTION.

22           **THE COURT:** ALL RIGHT. THANK YOU. WE'LL  
23 ADMIT IT.

24           **MR. STRAND:** I THINK THAT WOULD BE DEFENSE  
25 EXHIBIT 6 AND 7.

1           **THE CLERK:**   FOUR AND FIVE.

2   **BY MR. STRAND:**

3           **Q**     NOW, THE BACKGROUND MATERIALS I'M HANDING YOU,  
4   WHAT'S BEEN MARKED AS DEFENSE EXHIBIT -- I THINK IT'S  
5   NUMBER 3A IS WHAT IT IS, DID YOU HAVE AN OPPORTUNITY TO  
6   REVIEW THAT MATERIAL?

7           **A**     YES, I BELIEVE THAT'S THE SIMILAR MATERIAL THAT  
8   WAS PROVIDED TO ME BEFORE I INITIALLY SAW MR. WINDOM.

9           **Q**     OKAY. AND ALSO 3B, IS THAT PRIOR TO YOUR  
10   EVALUATION, IF YOU RECALL?

11          **A**     YES.

12          **Q**     AND ALSO DEFENSE EXHIBIT 4 IS THE VIDEOTAPE  
13   THAT HAS BEEN MARKED FOR IDENTIFICATION PURPOSES, DID YOU  
14   HAVE AN OPPORTUNITY TO REVIEW THAT?

15               **THE CLERK:**   IT'S JUST MARKED AS ID, IT'S NOT  
16   INTO EVIDENCE.

17               **THE COURT:**   JUST MARKED FOR IDENTIFICATION  
18   PURPOSES.

19               **THE WITNESS:**   I DID REVIEW THE VIDEOTAPE OF  
20   CURTIS WINDOM AND HIS MOTHER IN THE POLICE  
21   STATION, IF THAT'S WHAT YOU'RE REFERRING TO.

22   **BY MR. STRAND:**

23          **Q**     OKAY. NOW, YOUR EVALUATION OF CURTIS WINDOM  
24   THAT OCCURRED AT UNION CORRECTIONAL INSTITUTE, COULD YOU  
25   JUST TELL US ABOUT THE NEUROPSYCHOLOGICAL TESTING, WHAT

1 TESTS YOU PERFORMED?

2 A CERTAINLY. IN ADDITION TO INTERVIEWING  
3 MR. WINDOM, HE ALSO UNDERWENT A SET OF TESTS FOR US.  
4 SOME OF THE TESTS WERE ADMINISTERED BY MYSELF AND SOME OF  
5 THAT BY MASTER CLINICIAN UNDER MY SUPERVISION, TODD HURT.

6 IN TERMS OF THE TESTING THAT WAS DONE IS  
7 ESSENTIALLY COMPLETED A FORMAL SET OF NEUROPSYCHOMETRIC  
8 TESTS. WE LOOKED -- ADMINISTERED SEVERAL TESTS THAT  
9 LOOKED AT HIS LEVEL OF MOTIVATION OR ISSUES OF  
10 MALINGERING IN THE TESTING.

11 HE WAS ADMINISTERED THE VICTORIA SYMPTOM  
12 VALIDITY AND REY 15-ITEM MEMORY TEST TO LOOK AT. HE WAS  
13 ADMINISTERED A SERIES OF DIFFERENT TESTS THAT LOOK AT  
14 THINGS SUCH AS GENERAL INTELLECTUAL FUNCTIONING,  
15 ATTENTION, CONCENTRATION, MOTOR SKILLS, LANGUAGE  
16 ABILITIES, MEMORY, PROBLEM SOLVING, EXECUTIVE  
17 FUNCTIONING. AND IN OUR EVALUATION WE LOOKED AT MEDIA,  
18 EMOTIONAL STATUS IN TERMS OF THE TESTING.

19 Q AND SO YOU DID -- YOU GAVE HIM THESE TESTS, YOU  
20 HAD THE CLINICAL INTERVIEW, YOU REVIEWED BACKGROUND  
21 MATERIALS, AND THEN AFTERWARDS YOU HAD AN OPPORTUNITY TO  
22 REVIEW WHAT'S BEEN MARKED AS DEFENSE EXHIBIT NUMBER 3,  
23 THAT WOULD BE THE AFFIDAVITS?

24 A YES, I REVIEWED THOSE AFFIDAVITS.

25 Q OKAY. AND DID YOU CONSIDER ALL OF THIS

1 MATERIAL IN RENDERING YOUR OPINIONS IN THIS CASE?

2 A YES. AS WELL AS I'VE HAD, SINCE PREPARING THE  
3 REPORT, I'VE ALSO HAD TIME TO REVIEW ADDITIONAL MATERIAL.

4 Q DID YOU HAVE, ALSO HAVE AN OPPORTUNITY TO HAVE  
5 DISCUSSIONS WITH ME ABOUT THE FACTS OF THE CASE AND THE  
6 TESTIMONY THAT WAS PRESENTED AT TRIAL?

7 A YES, I DISCUSSED THAT WITH YOU.

8 Q NOW, BRIEFLY, THE NEUROPSYCHOLOGICAL TESTING,  
9 WHAT OF ALL THE TESTS, WHAT DID YOU FIND THE MOST  
10 IMPORTANT THAT HELPED YOU RENDER AN OPINION AS TO HIS  
11 NEUROPSYCHOLOGICAL STATE?

12 A WELL, FIRST OF ALL, JUST TO GIVE A CONTEXT IS  
13 THAT -- YOU KNOW, THE TESTS ARE NOT WORTH VERY MUCH  
14 UNLESS YOU HAVE A CONTEXT IN WHICH TO PUT THEM. YOU NEED  
15 TO KNOW SOMETHING ABOUT THE HISTORY OF THE PERSON, WHAT  
16 THEIR BEHAVIOR IS LIKE, HOW THEY CONDUCT THEMSELVES, WHAT  
17 THEIR HISTORY IS ABOUT FIRST OF ALL.

18 IN TERMS OF THE TESTING ITSELF AND THE  
19 PARTS OF THE TESTING THAT I FOUND PARTICULARLY RELEVANT  
20 WAS SEVERAL THINGS.

21 FIRST OF ALL, MR. WINDOM DID APPEAR TO PUT  
22 FORTH GOOD EFFORT THROUGH THE EVALUATION PROCESS, WHICH,  
23 IN SHORT, HE PASSED THE TEST THAT WE GAVE, MALINGERING  
24 AND MOTIVATION, WHICH I THINK ARE IMPORTANT TO CONSIDER  
25 IN THESE CASES.

1                   ALSO, ALL THOUGH IT IS IN HINDSIGHT, A  
2   NUMBER OF THE TESTS THAT I CONDUCTED HE PERFORMED IN A  
3   SIMILAR LEVEL AS DR. MERIN WHO HAD ALSO JUST RECENTLY  
4   SEEN HIM.

5           Q     HAVE YOU HAD AN OPPORTUNITY TO REVIEW  
6   DR. MERIN'S DEPOSITION; IS THAT CORRECT?

7           A     YES. AND TODAY I REVIEWED SOME OF HIS RAW TEST  
8   DATA.

9           Q     BUT YOU HADN'T HAD AN OPPORTUNITY TO REVIEW A  
10   REPORT?

11          A     NO.

12          Q     WRITTEN BY DR. MERIN?

13          A     NO. IN LOOKING AT THE REST OF THE TESTING,  
14   FIRST OF ALL, CURTIS WINDOM IS SOMEBODY WHO FUNCTIONS IN  
15   ABOUT, AROUND THE -- BETWEEN THE NINTH AND 13TH  
16   PERCENTILE, IF YOU WANT TO CALL IT. HE FALLS AT THE  
17   BOTTOM OF WHAT WE WOULD CONSIDER DULL NORMAL TO  
18   BORDERLINE MENTALLY DEFICIENT. HE HAS AN I.Q. AROUND THE  
19   LOW 80'S TO 80.

20                   AND THAT IS ALSO CONSISTENT WITH WHAT WE  
21   KNOW ABOUT HIS HISTORY, AND THAT HE PERFORMED POORLY IN  
22   SCHOOL. HE REPEATED SEVERAL GRADES. AND IT'S ALSO  
23   CONSISTENT WITH THE TESTING THAT WAS DONE BY DR. MERIN.

24                   JUST IN LOOKING AT THE OUTSET, HE'S  
25   SOMEBODY THAT HAS SOME LIMITATIONS IN HIS GENERAL

1 INTELLECT SKILLS AND ABILITIES.

2 THE SECOND THING THAT I FOUND IN LOOKING  
3 AT HIM IS THAT HE HAS PARTICULAR DIFFICULTIES IN THE AREA  
4 OF LANGUAGE. THAT'S AN AREA THAT IS PARTICULARLY WEAK  
5 FOR HIM, HIS ABILITY BOTH TO UNDERSTAND LANGUAGE THAT'S  
6 SAID TO HIM IN MANY RESPECTS, AS WELL AS TO COMMUNICATE.  
7 THAT ALSO IS CONSISTENT WITH HIS HISTORY.

8 WHEN YOU INTERACT WITH MR. WINDOM HE HAS A  
9 MILD BUT OBVIOUS SPEECH IMPEDIMENT. SEVERAL YEARS OF  
10 SPEECH THERAPY WHEN HE WAS IN SCHOOL BECAUSE OF SOME OF  
11 HIS LANGUAGE PROBLEMS. AND SO WE HAVE SOME CONSISTENCY  
12 THERE.

13 WHEN YOU LOOK AT HIS OTHER COGNITIVE  
14 SKILLS AND ABILITIES, IN ADDITION TO JUST GENERALLY LOW  
15 LEVEL OF FUNCTIONS, I THINK AS DR. PINCUS HAS ALREADY  
16 TALKED ABOUT TODAY, HE DOES SHOW EVIDENCE OF WHAT WE  
17 WOULD CALL EXECUTIVE DYSFUNCTION. THAT IS, SKILLS AND  
18 ABILITIES THAT WE ASSOCIATE WITH THE FRONTAL CORTEX AND  
19 THAT KIND OF HIGHER LEVEL EXECUTIVE MANAGEMENT OF BRAIN  
20 SYSTEM. AND, YES, HE SHOWS DIFFICULTIES WITH THAT.

21 MOST OBVIOUS AREA OF DEFICIT, WHEN WE LOOK  
22 AT THE WISCONSIN CARD SORTING TEST. BUT THERE'S ELEMENTS  
23 OF IT THROUGHOUT THE PATTERN OF HIS TEST SCORES.

24 Q AND YOU TESTIFIED THAT I THINK THE SCHOOL  
25 RECORDS INDICATED THAT HE WAS IN SPEECH THERAPY DURING

1 HIS SCHOOL YEARS?

2 A YES, HE WAS IN SPEECH THERAPY DURING THE SCHOOL  
3 YEARS.

4 Q WOULD THAT -- WOULD A SPEECH IMPEDIMENT, WOULD  
5 THAT BE SOMETHING THAT COULD BE NEUROLOGICALLY BASED?

6 A WELL, YES, IT IS NEUROLOGICALLY BASED UNTIL  
7 THEY HAVE A SPECIFIC MOTOR PROBLEM. BUT, YES, IT IS  
8 OFTEN NEUROLOGICALLY BASED.

9 Q SO THAT WOULD BE AN EARLY INDICATION OF A  
10 NEUROLOGICAL PROBLEM WITH MR. WINDOM?

11 A YES, IT COULD BE, COMBINED WITH THE  
12 DIFFICULTIES THAT HE HAD IN SCHOOL, EVEN MORE SO THAN HIS  
13 OTHER BROTHERS AND SISTERS.

14 Q LET'S GO TO THE EXECUTIVE FUNCTIONING. IS  
15 THERE JUST ONE TEST THAT YOU GIVE TO A PERSON TO  
16 DETERMINE HOW THEIR EXECUTIVE FUNCTIONING IS?

17 A NO. UNFORTUNATELY EXECUTIVE FUNCTION IS  
18 SOMETHING THAT IS PROVEN TO BE VERY DIFFICULT TO  
19 EVALUATE. WE HAVE SOME TESTS THAT WE KNOW ARE MORE  
20 SENSITIVE TO THAT CONCEPT THAN OTHER TESTS, AND SO YOU  
21 REALLY HAVE TO LOOK AT A PATTERN OF THE TEST PERFORMANCE.  
22 THE WISCONSIN CARD SORTING TEST, FOR  
23 EXAMPLE, IS CONSIDERED ONE OF THE MORE SENSITIVE TASKS TO  
24 LOOK AT THOSE ISSUES.

25 Q AND DID YOU GIVE HIM THAT TEST?

1           A     YES.

2           Q     AND HOW DID HE DO?

3           A     HE PERFORMED POORLY ON THAT TEST.  HE SHOWED  
4     DIFFICULTIES WITH WHAT WE WOULD CALL MORE INDUCTIVE OR  
5     INTUITIVE KIND OF REASONING AND JUDGMENT AND QUICKLY  
6     BECAME RATHER DISORGANIZED IN THAT MORE DEMANDING  
7     ENVIRONMENT.

8           Q     AND WHEN YOU SAY, EXECUTIVE FUNCTIONING, DOES  
9     THAT HAVE TO DO WITH REASONING, BEING ABLE TO UNDERSTAND  
10    WHAT IT IS THAT HE HEARS AND THE SITUATION HE'S IN?

11          A     WELL, YES.  BUT I THINK THAT PROBABLY  
12    OVERSIMPLIFIES WHAT WE REALLY THINK IT IS.  EXECUTIVE  
13    FUNCTION WITH ADULTS, IT ISN'T SO MUCH THE DAY-TO-DAY  
14    ABILITY TO MAKE A DECISION ABOUT, YOU KNOW, DO I FIX A  
15    SANDWICH BECAUSE I'M HUNGRY, OR DO I GO TO THE STORE.  
16    ALTHOUGH, OBVIOUSLY, MORE SEVERE FRONTAL LOBE INVOLVEMENT  
17    THAT CAN BE AN ISSUE WHERE THEY AREN'T ABLE TO PLAN AND  
18    DO THAT.

19                   WE'RE REALLY TALKING ABOUT THE ABILITY TO  
20    PRIORITIZE AND ORGANIZE ONE'S LIFE WITH HIGHER DEMANDS  
21    BEING PLACED UPON IT.  IF YOU HAVE TOO MANY THINGS GOING  
22    ON, HOW DO YOU PRIORITIZE WHAT REALLY HAS TO BE TAKEN  
23    CARE OF AND WHAT DOES NOT.  IF YOU HAVE A PARTICULARLY  
24    AMBIGUOUS OR DIFFICULT SITUATION THAT YOU'RE IN  
25    PERSONALLY, ECONOMICALLY, WHATEVER, HOW DO YOU SOLVE



1 THAT, HOW DO YOU LOOK AT THE LONG TERM AND SHORT TERM OF  
2 THAT? HOW DO YOU COPE WITH MORE IMMEDIATE CRISES OR  
3 ISSUES THAT ARISE? THOSE TYPES OF THINGS IS WHAT WE  
4 ASSOCIATE WITH THAT HIGHER LEVEL EXECUTIVE FUNCTIONING.

5 Q AND WHEN YOU LOOK AT THE HIGHER LEVEL EXECUTIVE  
6 FUNCTIONING AND YOU'RE TRYING TO DETERMINE A PERSON'S  
7 MENTAL STATE AT A SPECIFIC TIME, IS IT IMPORTANT TO LOOK  
8 AT THE SITUATION THAT HE'S IN AND THE AMOUNT OF STRESS  
9 THAT HE'S HAVING TO DEAL WITH AT THAT TIME?

10 A WELL, VERY MUCH SO BECAUSE THERE'S VERY MUCH AN  
11 INTERACTION BETWEEN THOSE TWO THINGS. IF YOU HAVE, FOR  
12 EXAMPLE, A PERSON WHO HAS RELATIVELY SEVERE FRONTAL LOBE  
13 DYSFUNCTION, THEN THEY TEND TO BE PRETTY DYSFUNCTIONAL  
14 ACROSS A WHOLE RANGE OF SITUATIONS, AND SO THAT BEHAVIOR  
15 IS PRETTY APPARENT.

16 ON THE OTHER HAND, WHAT WE TYPICALLY SEE  
17 WITH MORE MODERATE BRAIN DIFFICULTIES, IF YOU WILL,  
18 MODERATE TO MILD IS THAT THE DIFFICULTIES REALLY MANIFEST  
19 THEMSELVES OR SHOW THEMSELVES UNDER PERIODS OF INCREASED  
20 DURESS OR STRESS OF SOME KIND, WHETHER THEY HAVE GOT TOO  
21 MANY THINGS TO DO OR WHETHER BECAUSE IT'S A VERY  
22 EMOTIONALLY CHARGED SITUATION, BUT THERE IS A DIRECT  
23 INTERACTION WITH THEIR EMOTIONAL STATUS AND THE SITUATION  
24 GOING ON AROUND THEM AND THEIR ABILITY TO COPE  
25 EFFECTIVELY WITH IT.

1           Q     AND IN YOUR REVIEW OF THE BACKGROUND MATERIALS  
2     IN THIS CASE, AND ALSO YOUR INTERVIEW WITH MR. WINDOM  
3     GOING BACK TO THE DAY OF THE SHOOTINGS, DID YOU FIND ANY  
4     INDICATION OF THAT, HIS STRESS LEVEL WAS -- WAS HIGH  
5     THEN?

6           A     VERY MUCH SO.

7           Q     AND -- WELL, LET'S GO BACK TO A COUPLE WEEKS  
8     PRIOR TO THE SHOOTINGS. WERE YOU ABLE TO DETERMINE  
9     ANYTHING FROM YOUR INTERVIEWS FROM FAMILY MEMBERS,  
10    WITNESSES AND REVIEW THE BACKGROUND MATERIALS ABOUT  
11    MR. WINDOM'S BEHAVIOR IN THE WEEKS PRIOR TO THE  
12    SHOOTINGS?

13          A     YES.

14          Q     COULD YOU TELL US WHAT YOU FOUND OUT.

15          A     WELL, BASICALLY THERE IS -- EVEN GOES BACK A  
16    LITTLE BIT FURTHER THAN THAT. IN THE YEAR OR SO BEFORE  
17    THE SHOOTINGS TOOK PLACE IN FEBRUARY OF '92, ACTUALLY  
18    SEVERAL THINGS HAD HAPPENED. ACTUALLY EVEN TWO YEARS  
19    BEFORE THAT CURTIS WINDOM HAD BEEN SHOT IN THE LEG ON A  
20    STREET CORNER AND THE WOMAN NEXT TO HIM BEEN KILLED. AND  
21    THAT SEEMED TO REALLY HAVE A SIGNIFICANT IMPACT ON HIM.

22                   HIS FAMILY TALKED ABOUT HIM BEING MUCH  
23    MORE NERVOUS, ANXIOUS AFTER THAT EVENT HAD HAPPENED. IT  
24    REALLY SHOOK HIM UP.

25          Q     SO IS THAT A DRIVE-BY SHOOTING?

1           A       FROM WHAT I UNDERSTAND IN REVIEWING THE POLICE  
2       REPORT AND ALSO TALKING WITH CURTIS AND HIS FAMILY,  
3       THAT'S WHAT THEY THINK IT WAS. BUT, NEVERTHELESS, I  
4       THINK IT REALLY SHOOK CURTIS UP TO HAVE SOMETHING LIKE  
5       THAT HAPPEN.

6                       SEVERAL OTHER THINGS HAPPENED. HIS HOME  
7       HAD BEEN RANSACKED AND SOME THINGS TAKEN, OR HIDDEN AT  
8       LEAST IN HIS HOME. HE GOT A THREATENING PHONE CALL. HE  
9       HAD BEEN ALSO ARRESTED BY THE POLICE.

10                    SO A NUMBER OF THINGS HAVE HAPPENED IN THE  
11       PAST YEAR ALSO WITH CURTIS THAT WERE, I THINK, QUITE  
12       STRESSFUL FOR HIM AND MADE HIM START TO WORRY AND BE  
13       CONCERNED ABOUT WHAT WAS GOING ON AROUND HIM.

14                    BUT WHAT'S PARTICULARLY INTERESTING IN  
15       TALKING A LITTLE BIT WITH CURTIS, HE DOESN'T TALK ABOUT  
16       IT IN QUITE THE SAME WAY AS HIS FAMILY. I DID HAVE THE  
17       CHANCE TO INTERVIEW SEVERAL OF THE MEMBERS OF HIS FAMILY,  
18       AS WELL AS FAMILY FRIENDS, AND THEY ALL TALKED ABOUT IN  
19       THE WEEK TO TWO WEEKS BEFORE THIS SHOOTING THEY SAW AN  
20       ABRUPT CHANGE IN CURTIS'S BEHAVIOR AND FUNCTIONING.  
21       APPARENTLY IN PART BECAUSE OF SOME OF THE DIFFICULTIES IN  
22       THEIR UPBRINGING AND JUST CURTIS, AT LEAST AS THEY TALK  
23       ABOUT, WAS RIDICULED QUITE A BIT GROWING UP BECAUSE THEY  
24       WERE PRETTY POOR, HE HAD A BLADDER INCONTINENCE PROBLEM,  
25       AND STUTTERED.

1           Q     THIS PROBLEM, BLADDER INCONTINENCE, HOW OLD WAS  
2 CURTIS WHEN IT STOPPED?

3           A     WELL, ACCORDING TO HIS FAMILY, HE WAS 18 BEFORE  
4 IT STOPPED.

5           Q     WOULD IT BE CORRECT, LIKE 11 OR 12 YEARS OLD, I  
6 THINK?

7           A     WELL, THERE IS A COUPLE PLACES IN THE RECORD  
8 THAT TALKED ABOUT THAT. WHEN I TALKED TO THEM AGAIN  
9 YESTERDAY, THEY TALKED ABOUT GOING EVEN FURTHER THAN  
10 THAT. SO I'M NOT SURE EXACTLY WHEN IT STOPPED, BUT IT  
11 WAS IN ADOLESCENCE.

12                     BUT AS CURTIS HAD MOVED INTO ADULTHOOD, HE  
13 HAD BEEN SOMEBODY THAT HAD BEEN VERY, VERY FASTIDIOUS  
14 ABOUT HIS APPEARANCE, YOU KNOW, ALWAYS VERY NEATLY  
15 GROOMED, HAIR SLICKED BACK, YOU KNOW, FRESH CLOTHES, VERY  
16 CONCERNED ABOUT THOSE KINDS OF THINGS. YOU KNOW, QUIET  
17 BUT STILL HELPFUL TO OTHER PEOPLE. VISIT, YOU KNOW,  
18 PARENTS, YOU KNOW, HIS MOTHER, YOU KNOW, OLDER FAMILY,  
19 FRIENDS, THINGS LIKE THAT.

20                     THAT WEEK TO TWO WEEKS EVERYBODY SAID HE  
21 STOPPED KEEPING HIS HAIR CLEAN. HE WAS WEARING THE SAME  
22 CLOTHES DAY AFTER DAY. LOOKED RATHER DISHEVELED.

23                     I TALKED TO SEVERAL DIFFERENT FAMILY, AS  
24 WELL AS WILLIE MAE, AN OLDER FRIEND OF THE FAMILY'S WHO  
25 TALKED TO HIM THAT WEEK, AND THEY SAID HE WAS DIFFICULT

1 TO UNDERSTAND. THAT HE WAS TALKING VERY RAPIDLY, WASN'T  
2 MAKING A LOT OF SENSE WHEN THEY TRIED TO TALK WITH HIM,  
3 WHICH WAS VERY UNCHARACTERISTIC OF WHAT CURTIS WINDOM HAD  
4 BEEN LIKE BEFORE THAT.

5 Q AND HAD ANY OF THE FAMILY MEMBERS INDICATED  
6 THAT THEY HAD SEEN CURTIS BEHAVE IN THIS WAY BEFORE THIS  
7 TWO-WEEK PERIOD?

8 A NO.

9 Q AND DO YOU FIND THIS CHANGE IN HIS BEHAVIOR, DO  
10 YOU FIND IT TO BE PSYCHOLOGICALLY SIGNIFICANT?

11 A YES.

12 Q AND, NOW, ALSO EARLIER YOU TESTIFIED ABOUT HIM  
13 BEING A VICTIM OF A DRIVE-BY SHOOTING AND BURGLARY AT HIS  
14 HOUSE, AND BEING ARRESTED BY THE POLICE. DID YOU SEE  
15 ANYTHING IN YOUR CLINICAL INTERVIEW WITH MR. WINDOM  
16 AND -- OR IN REVIEW OF THE BACKGROUND MATERIALS THAT  
17 WOULD INDICATE THAT HE HAS A HIGH LEVEL OF PARANOIA?

18 A YES.

19 Q AND COULD YOU OUTLINE SOME OF THAT FOR THE  
20 COURT.

21 A WELL, OBVIOUSLY IN TALKING ABOUT WHAT HAD  
22 HAPPENED THIS LAST YEAR, HE THOUGHT SOMEBODY WAS OUT TO  
23 GET HIM, AND TALKED ABOUT CHANGING HIS BEHAVIOR, NOT  
24 WANTING TO GO OUT IN PUBLIC AS MUCH, NOT WANTING HIS  
25 GIRLFRIEND OR CHILDREN TO BE OUT WITH HIM IN PUBLIC OR

1 AFRAID THEY WOULD SOMEHOW BE THREATENED. THE FAMILY ALSO  
2 TALKED ABOUT THAT AS WELL. SO THERE WAS THAT KIND OF  
3 OVERT BEHAVIOR THAT'S TALKED ABOUT.

4 ALSO WHAT WAS INTERESTING, TOO, OF COURSE,  
5 IN TALKING AROUND THE TIME OF THE SHOOTING. NOW, HE DOES  
6 TALK ABOUT HEARING VOICES TELLING HIM TO SHOOT HIMSELF.

7 BUT THE LAST THING I THINK IS WHEN WE  
8 TESTED MR. WINDOM, MR. WINDOM REALLY HAS VERY LIMITED  
9 READING ABILITY, SO WE DID NOT GIVE HIM MUCH IN THE WAY  
10 OF PSYCHOLOGICAL TESTS.

11 BUT APPARENTLY WHEN DR. MERIN TESTED HIM,  
12 THEY READ TO HIM THE M.M.P.I, WHICH LOOKS AT PERSONALITY  
13 STYLE AND EMOTIONAL STATUS, AND HE ALSO SHOWED CLEAR  
14 SIGNS OF PARANOIA IN PSYCHOLOGICAL TESTING. IN FACT, IT  
15 WAS RATHER MARKED.

16 Q YOU SAY MARKED. IS THERE A CERTAIN SECTION OF  
17 THE M.M.P.I. THAT TRIED TO MEASURE PARANOIA?

18 A THERE IS ONE SCALE THAT SPECIFICALLY LOOKS AT  
19 PARANOIA, PACE SCALE 6. YOU NEED TO LOOK IN THE CONTEXT  
20 OF ALL THE CLINICAL SCALES. AND MR. WINDOM, IN THE  
21 M.M.P.I. THAT WAS OBTAINED BY DR. MERIN, HAD WHAT WE CALL  
22 A SIX-EIGHT PROFILE, BOTH THE SCHIZOPHRENIA SCALE AND  
23 PARANOIA SCALE WERE THE MOST MARKEDLY ELEVATED IN  
24 PROFILE.

25 IF YOU'RE WONDERING ABOUT WHAT TO LOOK FOR

1 IN TERMS OF A PROFILE IN WHICH THE PATIENT IS PRONE TO  
2 HAVE PSYCHOTIC EPISODES EITHER BECAUSE ALSO HE'S  
3 SCHIZOPHRENIC OR BIPOLAR OR PRONE TO PSYCHOTIC  
4 DEPRESSION, THINGS OF THAT NATURE, A SIX-EIGHT PROFILE IS  
5 PROBABLY THE MOST -- ONE OF THE MOST COMMON PROFILES  
6 YOU'D FIND WITH THAT TYPE OF DISORDER.

7 Q AND YOU SAY, BIPOLAR, DOES THAT HAVE TO DO WITH  
8 BEING MANIC?

9 A YES.

10 Q AND DID YOU SEE ANYTHING IN THE BACKGROUND  
11 RECORDS OR IN WHAT PEOPLE WERE ABLE TO TELL YOU ABOUT  
12 MR. WINDOM'S BEHAVIOR THAT BEING INDICIA OF MANIA PRIOR  
13 TO THE SHOOTINGS?

14 A WELL, HE HAS SOME EVIDENCE OF THAT. YOU KNOW,  
15 FRANKLY, WHEN I TALKED WITH HIS FAMILY, I WAS HOPING TO  
16 GET MORE DETAIL ABOUT HIS BEHAVIOR, TO BE ABLE TO BE MORE  
17 CLEAR IN THE PSYCHIATRIC DIAGNOSIS ABOUT MR. WINDOM. AND  
18 THEY'RE VERY NICE PEOPLE, BUT THEY'RE NOT VERY  
19 SOPHISTICATED ABOUT A LOT OF THINGS. IT'S DIFFICULT TO  
20 GET GOOD INFORMATION FROM THEM.

21 BUT HE CERTAINLY HAD A HISTORY OF NOT  
22 SLEEPING VERY MUCH, IMPULSIVE BEHAVIOR SUCH AS GAMBLING  
23 AND SO ON, THAT TYPE OF BEHAVIOR, WHICH CAN BE INDICATIVE  
24 OF A BIPOLAR MANIC-TYPE BEHAVIOR.

25 BUT ALSO THERE'S A FAMILY HISTORY OF

1 PSYCHIATRIC ILLNESS. ALTHOUGH, AGAIN, WHILE WE KNOW  
2 THERE'S THAT HISTORY, I'M NOT SURE WHAT THE DIAGNOSIS HAS  
3 BEEN. HIS MOTHER'S BEEN HOSPITALIZED SEVERAL TIMES  
4 PSYCHIATRICALY. APPARENTLY, SEVERAL OTHER FAMILY  
5 MEMBERS, IN TERMS OF THEIR CHILDREN AND COUSINS, HAVE  
6 ALSO BEEN PSYCHIATRICALY HOSPITALIZED. NOBODY'S  
7 COMPLETELY SURE WHAT THE DIAGNOSIS OF THOSE INDIVIDUALS  
8 ARE, BUT THERE IS THAT HISTORY.

9 Q UH-HUH. NOW, I GUESS GOING BACK TO THE  
10 M.M.P.I. THAT DR. MERIN DID, IS THERE A SCALE ON THAT  
11 THAT TESTS MANIA?

12 A WELL, THERE IS A -- THERE IS AN M.A. SCALE FOR  
13 SOCIAL INTROVERSION AND EXTROVERSION. AND SOMETIMES IT  
14 CAN BE INDICATIVE OF WHETHER A PERSON HAS MANIC  
15 TENDENCIES OR NOT, BUT TENDS -- OF THE DIFFERENT SCALES  
16 THAT DO THINGS, IT IS PROBABLY NOT ONE OF THE MORE  
17 RELIABLE SCALES FOR MAKING THAT DIAGNOSIS. YOU REALLY  
18 HAVE TO LOOK MORE AT HISTORY AND BEHAVIOR THAN ANYTHING  
19 ELSE.

20 HIS M.M.P.I. PROFILE DOES CLEARLY INDICATE  
21 THAT HE IS AT HIGH RISK FOR PSYCHOTIC EPISODES, GIVEN  
22 THAT SIX-EIGHT PROFILE. AND CERTAINLY BIPOLAR MANIC WITH  
23 PSYCHOTIC SYMPTOMS WOULD BE A POSSIBILITY, CONSIDERING  
24 VARIOUS DIAGNOSTIC ALTERNATIVES.

25 Q AND A PERSON WHO -- WITH THIS PROFILE, THIS



1 SIX-EIGHT PROFILE, WHAT IF THEY HAVE FRONTAL LOBE BRAIN  
2 DAMAGE OR BRAIN DYSFUNCTION ON TOP OF THAT, IS IT AN  
3 EXPEDIENTIAL EFFECT, OR DOES IT MATTER?

4 A OH, VERY MUCH. AND IT IS VERY MUCH AN  
5 INTERACTIVE PROCESS. I GUESS THE BEST WAY TO DESCRIBE  
6 IT, AND THAT IS IF YOU HAVE A PERSON THAT HAS SOME  
7 PREDISPOSITION TOWARDS MENTAL ILLNESS, AND THEY HAVE LESS  
8 RESOURCES NEUROLOGICALLY TO COPE OR DEAL WITH THAT, THEN  
9 YOU TEND TO SEE MORE PROBLEMS AND DIFFICULTIES.

10 Q AND IT WOULD ALSO BE TRUE TO CONSIDER SOMEONE'S  
11 I.Q., THEIR LEVEL OF INTELLIGENCE?

12 A YES, THAT ALSO GOES TO THE RESOURCES THAT THEY  
13 HAVE TO COPE WITH THAT.

14 Q AND MR. WINDOM, YOU SAID HE HAD AN I.Q. OF 80?

15 A YES.

16 Q IS THAT -- WOULD THAT BE CLOSER TO THE MENTAL  
17 RETARDED RANGE THAN CLOSER -- THAN IT IS CLOSER TO THE  
18 AVERAGE RANGE?

19 A WELL, 79 IS BORDERLINE MENTAL DEFICIENT, AND 90  
20 IS THE LOW RANGE OF AVERAGE.

21 Q SO HE'S ONE -- IF HE HAS A FULL SCALE I.Q. OF  
22 80, HE -- HE'S ONE POINT FROM BEING BORDERLINE MENTAL  
23 DEFICIENT?

24 A YES.

25 Q AND WOULD IT BE A FAIR STATEMENT TO SAY THAT 69

1 AND BELOW WOULD BE MENTALLY RETARDED?

2 A WELL, THAT DEPENDS ON THE DEFINITION UNDER THE  
3 WECHSLER SYSTEM. SIXTY-NINE AND BELOW IS MILDLY MENTALLY  
4 DEFICIENT RANGE. BUT SOME OF THE NEWER STANDARDS ON  
5 MENTAL RETARDATION USE 75 PLUS FUNCTIONAL LIMITATIONS.

6 Q OKAY. I WANT TO GO BACK TO THE  
7 NEUROPSYCHOLOGICAL TESTING. YOU INDICATED ON THE  
8 WISCONSIN CARD SORTING TEST THAT HE DID VERY POORLY ON  
9 THAT TEST?

10 A YES, HE DID.

11 Q DID YOU GIVE HIM ANY OTHER TESTS THAT ARE  
12 DESIGNED TO TEST EXECUTIVE FUNCTIONING, AND, IF SO, WHAT  
13 RESULTS DID YOU GET THERE?

14 A WELL, ACTUALLY HE WAS GIVEN SEVERAL DIFFERENT  
15 SETS OF THINGS. IN TERMS OF THE OTHER PROBLEM SOLVING  
16 TASKS, HE WAS GIVEN A TEST, CATEGORIES TEST, WHICH ALSO  
17 LOOKS AT MORE LOGICAL ANALYSIS AND REASONING. AND HE WAS  
18 IN THE AVERAGE RANGE ON THAT PARTICULAR TEST. HE TOOK A  
19 LONG TIME TO COMPLETE IT, ABOUT TWICE AS LONG AS I WOULD  
20 EXPECT A PERSON TO TAKE, BUT HIS ACTUAL PERFORMANCE WAS  
21 WITHIN THE NORMAL RANGE.

22 Q OKAY.

23 A HE ALSO COMPLETED THE TRAILMAKING TEST, WHICH  
24 CAN BE SENSITIVE TO THAT ISSUE. HE DID SATISFACTORY ON  
25 THAT. HE DID HAVE SOME DIFFICULTY ON THE STROOP TEST,

1 WHICH LOOKS AT ABILITY TO SUSTAIN ATTENTION AND  
2 PERSISTENCE. HE HAD SOME PROBLEM WITH THAT. HE HAD A  
3 VERY MUCH KIND OF MIXED BAGFUL ON THOSE SETS OF TESTS.

4 Q ARE THOSE SETS WITHIN THE EXECUTIVE FUNCTIONING  
5 REALM?

6 A YES.

7 Q CAN YOU EXPLAIN IF HE WAS TO PERFORM WITHIN A  
8 NORMAL RANGE ON SOME TESTS BUT NOT ON OTHERS, WHAT DOES  
9 THAT MEAN?

10 A WELL, IT GOES TO THE KINDS OF DIFFICULTIES THAT  
11 HE HAS. YOU KNOW, THERE'S NOT A HIGH CORRELATION BETWEEN  
12 THOSE TESTS, MEANING THEY DON'T MEASURE THE SAME THING.  
13 AND SO YOU TYPICALLY WILL GET -- UNTIL A PERSON HAS A  
14 MORE SEVERE BRAIN DYSFUNCTION, EVERYTHING IS GLOBALLY  
15 LOW. YOU WILL GET SOME TASKS THAT THEY'RE ABLE TO  
16 PERFORM AND SOME THEY DO NOT. AND IT TENDS TO RELATE  
17 MORE TO THE KIND OF EXECUTIVE MANAGEMENT PROBLEMS THAT  
18 THE PERSON IS HAVING.

19 AND IN MR. WINDOM'S CASE, PARTICULARLY  
20 LOOKING AT THE WISCONSIN AND SOME OF HIS OTHER TEST  
21 PERFORMANCE, HE HAS A LOT OF DIFFICULTY WITH MORE  
22 INTUITIVE, INDUCTIVE KIND OF REASONING. IF HE HAS PLENTY  
23 OF TIME TO KIND OF MAP OUT THE STEPS A, B, AND C, HE DOES  
24 BETTER. AND THAT'S WHAT YOU SEE WITH THE CATEGORIES  
25 TEST. AND MORE INTUITIVE REASONING, WHICH WE THINK GOES

1 A LOT MORE ON SOCIAL AND EMOTIONAL FUNCTIONING, HE  
2 STRUGGLES.

3 Q LET'S SEE. YOU GAVE HIM OTHER TESTS, AND I  
4 NOTICED IN YOUR REPORT HERE ON THE MEMORY FUNCTIONING HE  
5 DIDN'T DO SO WELL. COULD YOU TELL US ABOUT THAT?

6 A AGAIN, YOU SEE THIS DIFFERENCE BETWEEN MORE  
7 STRUCTURED AND LESS STRUCTURED KINDS OF TESTING. FOR  
8 EXAMPLE, IN HIS ABILITY TO RECALL MORE NARRATIVE  
9 INFORMATION IF --

10 MR. STRAND: EXCUSE ME. I'M LOOKING AT PAGE  
11 FOUR, SIR.

12 THE COURT: THANK YOU.

13 BY MR. STRAND:

14 Q I'M SORRY.

15 A THAT'S OKAY. IF YOU LOOK AT -- IF YOU LOOK AT  
16 MEMORY, IN TERMS OF LESS STRUCTURE, YOU KNOW, NARRATIVE,  
17 YOU KNOW, YOU TELL HIM A STORY, HOW MUCH CAN THEY  
18 REMEMBER ABOUT IT, HOW MUCH CAN THEY REMEMBER LATER, THAT  
19 TYPE OF THING, OKAY, CURTIS HAS TROUBLE WITH THAT, OKAY.  
20 THAT'S LESS STRUCTURED, IT'S MORE DIFFICULT.

21 IF, ON THE OTHER HAND, YOU GIVE HIM THE  
22 OPPORTUNITY TO HAVE STRUCTURE, THAT DOESN'T REQUIRE AS  
23 MUCH FRONTAL LOBE FUNCTIONING, OKAY, WHERE HE CAN  
24 REMEMBER IT.

25 SO ONE OF THE TESTS YOU GIVE HIM, YOU GIVE

1 HIM A LIST OF WORDS THAT HE HAS TO ROTE, MEMORIZE, FOR  
2 EXAMPLE, THEN HE DOES MUCH BETTER. SO, YES, HE HAS  
3 MEMORY DIFFICULTIES, PARTICULARLY IN LESS STRUCTURED AND  
4 MORE COMPLEX MATERIAL. BUT IF YOU GIVE HIM THE STRUCTURE  
5 FOR THINGS, HE DOES MUCH BETTER.

6 Q WELL, NOW, YOU HAD AN OPPORTUNITY TO REVIEW  
7 DR. MERIN'S DEPOSITION TESTIMONY?

8 A YES.

9 Q AND I'M TRYING TO RECALL JUST OFF THE TOP OF MY  
10 HEAD, THERE'S A PICTURE COMPLETION TEST, DID HE GIVE  
11 THAT?

12 A NO.

13 Q AND DID YOU GIVE THAT?

14 A YES. THERE'S SEVERAL TESTS IN THE PERFORMANCE  
15 SECTIONS THAT DR. MERIN INDICATED IN HIS DEPOSITION HE  
16 HAD NOT HAD TIME TO GIVE TO MR. WINDOM.

17 Q AND WHEN YOU SAY, PERFORMANCE SECTION, WHAT --  
18 WHAT DOES THAT GO TO?

19 A TESTS THAT LOOK MORE AT NONLANGUAGE REASONING  
20 AND PROBLEM-SOLVING SKILLS, WHICH IS ALSO A DIFFICULT  
21 AREA FOR MR. CURTIS, OR CURTIS WINDOM.

22 Q I GUESS -- I'M LOOKING HERE AGAIN, IF WE JUST  
23 GO TO YOUR REPORT, IT MIGHT MAKE THINGS MOVE ALONG. WHEN  
24 YOU LOOK AT ALL THESE TESTS, ARE THERE SPECIFIC TESTS IN  
25 HERE THAT YOU WOULD EXPECT A PERSON TO PERFORM POORLY ON

1 THAT HAS FRONTAL LOBE BRAIN DAMAGE?

2 A YES.

3 Q AND DID MR. WINDOM PERFORM POORLY ON THOSE  
4 TESTS?

5 A YES. HE HAD A LOT OF DIFFICULTY, PARTICULARLY  
6 ON THE WISCONSIN CARD SORTING TEST.

7 Q AND IN REVIEW OF DR. MERIN'S DEPOSITION AND HIS  
8 RAW DATA, DID YOU SEE INDICIA THAT IN FACT HE PERFORMED  
9 POORLY ON TESTS THAT WOULD INDICATE PROBLEMS WITH THE  
10 FRONTAL LOBE?

11 A YES. HE CONTINUED TO HAVE DIFFICULTY WITH THAT  
12 MORE INDUCTIVE REASONING. DR. MERIN GAVE HIM THE  
13 WISCONSIN CARD SORTING TEST AS WELL, AND HE STRUGGLED  
14 WITH THAT SIMILARLY. HE DID BETTER ON CATEGORIES SIMILAR  
15 TO OUR EVALUATION, WHICH I SAW A VERY MUCH SIMILAR  
16 PATTERN IN MOST THINGS. THERE WAS A LITTLE BIT OF  
17 VARIANCE HERE AND THERE, BUT, YES, VERY SIMILAR.

18 BUT ONE THING -- COUPLE OF THINGS THAT  
19 WERE A LITTLE BIT DIFFERENT. DR. MERIN DID GIVE HIM A  
20 COUPLE MORE LANGUAGE TESTS. ONE IS A MORE, A RECEPTIVE  
21 LANGUAGE, THE PEABODY, WHICH, AGAIN, MR. WINDOM DID VERY  
22 POORLY AT THAT. HE WAS ONLY ABOUT THE FIFTH PERCENTILE  
23 COMPARED TO NORMAL ADULTS.

24 ALSO HE HAD GIVEN HIM THE BOSTON NAMING  
25 TEST, WHICH LOOKS AT MORE EXPRESSIVE LANGUAGE SKILLS.

1 AGAIN MR. WINDOM WAS TOWARDS THE VERY BOTTOM IN HIS  
2 PERFORMANCE ON THAT.

3 ON THE OTHER HAND, DR. MERIN DID NOT GIVE  
4 HIM SOME OF THE TESTS THAT DEAL WITH MORE VISUAL  
5 PERCEPTION AND VISUAL ORGANIZING. AND MR. WINDOM HAD  
6 DONE POORLY ON THOSE FASHIONS WHEN I HAD SEEN AND TESTED  
7 HIM.

8 THOSE TESTS, FOR EXAMPLE, INTERESTINGLY  
9 WOULD CORRESPOND WITH SOME OF THE CONCERNS I HAVE ABOUT  
10 HIS POOR PERFORMANCE ON THE WISCONSIN, IN THAT THOSE  
11 TESTS, WHILE THEY LOOK AT VISUAL ANALYSIS, HISTORICALLY  
12 THEY HAVE BEEN SENSITIVE TO ONE'S ABILITY TO PICK OUT  
13 NONVERBAL CUES AND SOCIAL PERCEPTION. AND I THINK  
14 MR. WINDOM HAS A LOT OF DIFFICULTY WITH THAT.

15 Q AND WHEN YOU SAY, NONVERBAL CUES AND SOCIAL  
16 PERCEPTION, COULD YOU APPLY THAT TO THE SITUATION WITH  
17 MR. WINDOM BELIEVING THAT HIS LIFE WAS IN DANGER?

18 A WELL, I THINK TO JUST APPLY THAT DIFFICULTY BY  
19 ITSELF WOULD REALLY BE OVERSIMPLIFYING THINGS. I THINK  
20 THAT CURTIS WINDOM, IN THE FIRST PLACE, HAD SOME  
21 LIMITATIONS GOING INTO ANY SITUATION. YOU KNOW, HE CAME  
22 FROM A PRETTY DISRUPTIVE, ABUSIVE BACKGROUND, STRUGGLED  
23 IN SCHOOL, DID NOT DO WELL. HE CLEARLY, FROM MY  
24 PERSPECTIVE, HAD A WELL-DOCUMENTED, SIGNIFICANT BRAIN  
25 INJURY AT 16, NOT TO MENTION THE TRAUMA AT BIRTH.

1                   AND SO HE HAS LIMITATIONS IN HIS  
2   INTELLECTUAL ABILITIES. HE HAS LIMITATIONS IN HIS OWN  
3   SOCIAL FAMILY UPBRINGING. AND RELATED TO THAT,  
4   PARTICULARLY AFTER THE ACCIDENT AT 16, I THINK HE HAS  
5   LIMITS IN HIS FRONTAL LOBE FUNCTIONING. SO YOU TAKE THAT  
6   CONTEXT AND A PRETTY HOSTILE IMPOVERISHED KIND OF  
7   ENVIRONMENT, AND HE HAS A SERIES OF THINGS HAPPEN TO HIM.

8                   HE'S GOT TWO DIFFERENT GIRLFRIENDS, IF YOU  
9   WILL, THAT HE'S DIVIDED BETWEEN. THAT WOULD BE STRESSFUL  
10  FOR MOST PEOPLE. HE HAS A SERIES OF EVENTS HAPPEN TO  
11  HIM. HE GETS SHOT UNEXPECTEDLY, THAT TENDS TO BE A  
12  PRETTY TRAUMATIC EVENT FOR ANYBODY, EVEN IF YOU LIVE IN A  
13  PRETTY ROUGH NEIGHBORHOOD. HE WORRIED HE COULD HAVE BEEN  
14  KILLED. THE LADY NEXT TO HIM WAS KILLED.

15                  IT IS THROUGH A PERIOD OF TIME WHERE A  
16  NUMBER OF OTHER THINGS START TO FALL APART AROUND HIM.  
17  HE GETS HIS HOUSE RANSACKED. HE GETS THREATENING PHONE  
18  CALLS. HE GETS ARRESTED BY THE POLICE. YOU KNOW, A  
19  SERIES OF THINGS HAPPEN.

20                  AND WHAT YOU SEE -- WHO KNOWS EXACTLY WHAT  
21  THE BREAKING POINT IS THAT CAUSED THIS -- BUT YOU SEE IN  
22  THAT WEEK TO TWO WEEKS BEFORE THIS SHOOTING OCCURRED,  
23  IN -- AT LEAST IN TALKING WITH A NUMBER OF DIFFERENT  
24  WITNESSES, THERE IS A SUDDEN CHANGE IN CURTIS'S BEHAVIOR  
25  AND DEMEANOR, WHICH WOULD SUGGEST THAT THE COMBINATION OF



1 HIS OWN LIMITATIONS BOTH NEUROLOGICALLY AND  
2 PSYCHOLOGICALLY WITH WHAT WAS GOING ON IN HIS LIFE CAME  
3 TO A HEAD AND HE LOST IT.

4 Q WELL, BUT DO YOU HAVE AN OPINION -- YOU HAVE AN  
5 OPINION AS TO HIS NEUROPSYCHOLOGICAL STATE, DOES HE HAVE  
6 BRAIN DAMAGE OR BRAIN DYSFUNCTIONING?

7 A I THINK HE HAS BOTH BRAIN -- I THINK, YES, HE  
8 DOES HAVE BRAIN DYSFUNCTION. I THINK THERE IS MULTIPLE  
9 CAUSES INVOLVED. I THINK HE HAD DIFFICULTIES FROM THE  
10 BEGINNING, WHETHER IT'S GENETIC OR METABOLIC. HE HAD  
11 TRAUMA AT BIRTH, AND THEN HE HAD A SIGNIFICANT HEAD  
12 INJURY AT 16.

13 Q IF YOU WERE TO USE A SCALE FROM, LET'S SAY,  
14 MINOR BRAIN DAMAGE DYSFUNCTION TO SEVERE, WHERE WOULD  
15 MR. WINDOM FALL IN THAT SCALE?

16 A WELL, TO GIVE IT AN EXAMPLE, IN TERMS OF  
17 PATIENTS THAT I SEE, ON THE SEVERE END, I TAKE CARE OF  
18 PERSISTENT, VEGETATIVE STATES, OR COMA. WE DO PROLONGED  
19 COMA STIMULATION CARE. ON THE OTHER HAND, I SEE PATIENTS  
20 THAT HAVE CONCUSSIONS BUT WITHIN A MATTER OF A MONTH OR  
21 TWO ARE PERFECTLY NORMAL, AS BEST AS ANYBODY CAN TELL.

22 AND GIVEN THOSE KINDS OF CONTINUUM, I  
23 WOULD CONSIDER MR. CURTIS WINDOM, IF YOU TOTAL IN -- IF  
24 YOU LOOK AT ALL THINGS, HE WOULD GO INTO THE MODERATE  
25 CATEGORY FOR SEVERITY.

1           Q     IF YOU JUST LOOKED AT THAT, YOUR NEUROLOGICAL  
2     TESTING, YOUR REVIEW OF THE BACKGROUND INFORMATION, YOUR  
3     INTERVIEW WITH THE WITNESSES, AND REVIEW OF WHAT HAPPENED  
4     AT THE TIME OF THE OFFENSE, AND DISCOUNTED EVERYTHING  
5     ELSE, WOULD YOU -- IS THIS NEUROLOGICAL DEFICIT, WOULD IT  
6     BE AN EXTREME MENTAL DISTURBANCE, IN YOUR OPINION?

7           A     IF YOU TAKE THE COMBINATION OF EVERYTHING, AND  
8     I THINK THAT'S HOW YOU HAVE TO LOOK AT IT, THE  
9     COMBINATION OF WHAT WAS GOING ON WITH HIM  
10    PSYCHIATRICALY, COMBINED WITH THE NEUROLOGICAL  
11    DIFFICULTIES THAT HE WAS HAVING, COMBINED WITH THE STRESS  
12    OF THE SITUATION THAT HE WAS IN, YES, WHEN THOSE THINGS  
13    ARE COMBINED, BASED UPON THE INFORMATION THAT I HAVE, I  
14    THINK HE WAS UNDER EXTREME EMOTIONAL DISTRESS AT THE TIME  
15    OF THE SHOOTINGS.

16          Q     SO IT WOULD BE IMPORTANT TO CONSIDER  
17    EVERYTHING, THE INFORMATION FROM THE FAMILY MEMBERS, THE  
18    INFORMATION FROM THE BACKGROUND PACKETS, AND INFORMATION  
19    FROM THE TRIAL TRANSCRIPT AND TESTIMONY, AND POLICE  
20    REPORTS IN MAKING THIS DECISION; IS THAT CORRECT?

21          A     I THINK YOU HAVE TO CONSIDER THE WHOLE CONTEXT  
22    OF THE SITUATION. YOU KNOW, ANY ONE THING BY ITSELF,  
23    THAT MAY NOT BE THE CASE. BUT IT'S THE COMBINATION OF  
24    EVERYTHING THAT WAS GOING ON WITH CURTIS THAT REALLY  
25    BRINGS ME TO THAT CONCLUSION.

1 Q NOW, I AM GOING BACK TO THE MENTAL ILLNESS.

2 YOU SAID SIX-EIGHT PROFILE?

3 A YES.

4 Q AND WHERE DOES THAT COME FROM? DOES THAT COME

5 FROM THE LITERATURE OR THE PEOPLE WHO WROTE THE TEST,

6 OR --

7 A ACTUALLY, THERE'S QUITE A BIT OF RESEARCH THAT

8 LOOKS AT CLINICAL ELEVATION FOR DIFFERENT POPULATION

9 GROUPS. AND SIX-EIGHT IS PROBABLY ONE OF THE MOST COMMON

10 PROFILES, IF YOU WILL, OF THIS PARTICULAR PSYCHIATRIC

11 GROUP THAT HAVE A HISTORY OF PSYCHOTIC EPISODES.

12 Q OKAY. AND, AGAIN, YOU WOULDN'T JUST CONSIDER A

13 M.M.P.I. IN A VACUUM IN MAKING A DETERMINATION?

14 A NO, I THINK THAT WOULD BE INAPPROPRIATE.

15 Q SO, NOW, WHEN YOU LOOK AT THE -- THE EVIDENCE

16 THAT YOU HAVE OF HIS PARANOIA FROM THE M.M.P.I., AND

17 BACKGROUND MATERIALS, AND THE REPORTING OF THE PEOPLE,

18 AND YOU APPLY THAT PARANOIA TO THE SITUATION THAT

19 HAPPENED IN FEBRUARY OF 1992 ON THAT DAY, WOULD THAT HAVE

20 AFFECTED HIS ABILITY TO THINK CLEARLY?

21 A YES.

22 Q AND HOW WOULD IT HAVE AFFECTED HIS ABILITY WHEN

23 YOU TAKE INTO ACCOUNT THAT HE SUFFERS FROM FRONTAL LOBE

24 BRAIN DAMAGE?

25 A IT WOULD HAVE IMPAIRED HIS ABILITY TO THINK AND

1 MAKE RATIONAL DECISIONS AND TO LOOK CLEARLY AT THE  
2 CONSEQUENCE OF WHAT HE WAS DOING.

3 Q SO IF MR. WINDOM WERE -- SOMEONE HAD INDICATED  
4 TO HIM THAT VALERIE WAS GOING TO COOPERATE WITH THE  
5 POLICE OR REPORT HIM, WOULD HE BE ABLE TO PERCEIVE THAT  
6 IN A NORMAL MANNER?

7 A WELL, IF YOU TAKE SOMEBODY THAT'S ALREADY QUITE  
8 UNSETTLED AND IS BECOMING INCREASINGLY PARANOID AND  
9 DISHEVELED AND DISORGANIZED IN THEIR THINKING, I IMAGINE  
10 THAT WOULD BE A PRETTY SALIENT EVENT THAT A PERSON WOULD  
11 REALLY REACT TO.

12 Q AND IF A NORMAL PERSON WHO DIDN'T HAVE BRAIN  
13 DAMAGE OR DIDN'T HAVE THIS PSYCHOTIC PROFILE, THEY HEARD  
14 A RUMOR SOMEONE WAS GOING TO REPORT THEM TO THE POLICE,  
15 WOULD YOU EXPECT THEM TO ACT IN THE WAY MR. WINDOM ACTED?

16 A NO.

17 Q NOW, LOOKING AT THE CIRCUMSTANCES OF THE DAY OF  
18 THE CRIME, ABOUT WHAT TIME OF THE DAY WAS IT? WOULD IT  
19 BE FAIR TO SAY IT WAS AROUND THE LUNCH HOUR?

20 A I KNOW IT WAS DURING THE MIDDLE OF THE DAY, BUT  
21 I'M NOT SURE EXACTLY WHAT TIME.

22 Q AND DID YOU HAVE AN OPPORTUNITY TO SEE WHERE  
23 THE SHOOTING OF JOHNNIE LEE OCCURRED?

24 A YES.

25 Q AND COULD YOU DESCRIBE IT FOR THE JUDGE.

1           A     WELL, IT'S AN OPEN AREA THAT LOOKS ALMOST KIND  
2     OF LIKE IN AN AREA THAT'S --

3     (ALL THE LIGHTS IN THE COURTROOM WENT OUT.)

4           THE COURT:   I KNEW WE WERE ABOUT TO LOSE  
5     POWER.   I AM -- I'M STILL GOING.   WE MIGHT AS  
6     WELL KEEP GOING THEN.

7           THE WITNESS:   I'M SORRY.   THAT'S --

8           THE COURT:   NO, NO, THAT'S A COURT PROBLEM.  
9     WE HAD SOME ADVANCE NOTICE.   AS LONG AS WE HAVE A  
10    COURT REPORTER, WE WILL JUST KEEP GOING.

11           CAN WE GET SOME LIGHT?

12   BY MR. STRAND:

13           Q     SO THE DESCRIPTION -- I HAD ASKED YOU ABOUT A  
14    DESCRIPTION OF THE PLACE WHERE JOHNNIE LEE WAS SHOT.  
15    COULD YOU TELL THE JUDGE ABOUT WHAT THAT PLACE LOOKED  
16    LIKE.

17           A     IT WAS A -- IT'S A PRETTY OPEN AREA.   I DROVE  
18    THROUGH IT YESTERDAY.   IT'S KIND OF A COMBINATION OF  
19    NEIGHBORHOOD AND, AND LOOKS LIKE INDUSTRIAL WAREHOUSES,  
20    WHICH I GUESS WAS -- IS HIS HOME AREA.   BUT IT'S A PRETTY  
21    OPEN GRASSY AREA WITH HOUSES AROUND IT, COUPLE WAREHOUSES  
22    AROUND IT.

23           Q     THERE IS A PARK?

24           A     BASKETBALL COURT, LITTLE PARK AREA.

25           Q     IN THE -- IS IT YOUR UNDERSTANDING THAT WHEN --

1 WHAT DO YOU UNDERSTAND HAPPENED WHEN MR. WINDOM DROVE UP  
2 IN HIS CAR? WAS JOHNNIE LEE THERE ALONE OR WERE THERE  
3 OTHER PEOPLE THERE?

4 A MY UNDERSTANDING, THERE WAS AT LEAST TWO OTHER  
5 PEOPLE THERE.

6 Q UH-HUH. AND IF I WERE TO TELL YOU THAT THE  
7 POLICE REPORTS INDICATED THAT THERE WERE NUMEROUS PEOPLE  
8 WHO WERE IN THE PARK AND IN THE AREA AND SAW THIS, WOULD  
9 THAT BE SOMETHING THAT YOU WOULD CONSIDER?

10 A CONSIDER, YES.

11 Q OKAY. AND, NOW, WE HAD TALKED EARLIER ABOUT  
12 THE TESTIMONY OF PAMELA FIKES, WHO HAD INDICATED THAT --  
13 THAT CURTIS HAD SAID SOMETHING ABOUT --

14 A YES.

15 Q -- ABOUT MONEY DURING THE SHOOTING OF JOHNNIE  
16 LEE. HAVE YOU CONSIDERED THAT IN YOUR -- IN RENDERING  
17 YOUR OPINION?

18 A YES. ACTUALLY I READ THE POLICE INVESTIGATIVE  
19 RECORDS WHERE THEY HAD INTERVIEWED SOME OF THE VARIOUS  
20 WITNESSES AND TALKED ABOUT THAT.

21 Q UH-HUH. DID YOU CONSIDER THE FACT THAT AFTER  
22 HE HAD SHOT JOHNNIE LEE THAT HE LEFT HIS CAR IN THE  
23 MIDDLE OF THE ROAD AND JUST WALKED DOWN THE STREET  
24 TOWARDS -- TOWARDS HIS APARTMENT?

25 A YES, I CONSIDERED THAT.

1 Q AND DID THAT SEEM ODD TO YOU THAT, IN ANY WAY,  
2 THAT HE WOULD JUST LEAVE HIS CAR THERE AND DO THAT?

3 A WELL, IT DIDN'T MAKE A LOT OF SENSE, NO.

4 Q WELL, JUST LOOKING AT THIS OVERALL, THE OVERALL  
5 SITUATION, THE MIDDLE OF THE DAY WITH LOTS OF WITNESSES,  
6 AND DOING THIS, AND THEN WAITING UNTIL THE POLICE COME TO  
7 ARREST HIM, DOES THAT SOUND LIKE SOMEONE WHO IS OPERATING  
8 IN A PREMEDITATED AND COLD, CALCULATED MANNER?

9 A WELL, IT DOESN'T SEEM VERY RATIONAL TO ME.

10 Q SO YOU'VE CONSIDERED THE FACT OF THE OFFENSE?

11 A YES.

12 Q NOW, WE TALKED ABOUT THE MENTAL ILLNESS. DO  
13 YOU HAVE AN OPINION AS TO A DIAGNOSES OR DIAGNOSIS THAT  
14 WOULD FIT MR. WINDOM RELATING TO HIS MENTAL ILLNESS?

15 A YES.

16 Q WHAT WOULD THOSE BE?

17 A WELL, I THINK THERE ARE SEVERAL THAT ARE  
18 APPLICABLE. IN THE FIRST PLACE, I WOULD AGREE WITH WHAT  
19 IN FACT DR. MERIN MENTIONED -- THIS ALSO IS IN HIS  
20 DEPOSITION -- THAT AT LEAST PART OF THE TIME DURING THIS  
21 SHOOTING EPISODE THAT HE DID SUFFER FROM WHAT WE CALL  
22 DISSOCIATIVE AMNESIA. WHEN SOMETHING STRESSFUL OR  
23 TRAUMATIC HAPPENS, PEOPLE PSYCHOLOGICALLY SOMETIMES BLOCK  
24 THEIR WILLINGNESS TO RECALL IT, AND WE CALL THAT  
25 DISSOCIATIVE AMNESIA. THERE'S CERTAINLY SOME EVIDENCE

1 THAT OCCURRED FOR A SECTION OF TIME WHEN THE SHOOTINGS  
2 WERE GOING ON, FIRST OF ALL.

3 Q AND COULD WE TALK A LITTLE FURTHER ABOUT THAT.  
4 DID YOU HAVE AN OPPORTUNITY TO LOOK IN THE DSM-IV FOR  
5 DISSOCIATIVE DISORDER?

6 A YES.

7 Q AND WHAT IS THE DSM-IV?

8 A IT'S THE DIAGNOSTIC MANUAL USED BY PSYCHIATRY  
9 AND PSYCHOLOGY FOR THE NAME AND CLASSIFICATION FOR  
10 PSYCHIATRIC OR PSYCHOLOGICAL ISSUES OR PROBLEMS.

11 Q IS THAT -- IS THAT ACCEPTED BY THE VAST  
12 MAJORITY OF THE PSYCHOLOGICAL COMMUNITY?

13 A YES.

14 Q WHEN YOU LOOKED AT THE DISSOCIATIVE DISORDER OF  
15 THE DSM, DID YOU FIND ANYTHING RELATING TO A DIAGNOSIS OF  
16 SELECTIVE DISSOCIATIVE DISORDER?

17 A NO, THERE ISN'T. AS FAR AS I COULD FIND ANY  
18 CLASSIFYING OR REGROUPING IN SOME WAY, YOU KNOW,  
19 DISSOCIATIVE AMNESIA IS ONE OF THE POSSIBILITIES.  
20 THERE'S FOUR OR FIVE TYPE DIAGNOSES THAT CAN BE OFFERED  
21 UNDER DISSOCIATIVE DISORDERS. MULTIPLE PERSONALITY  
22 DISORDER. A FUGUE'S STATE, FOR AN EXTENDED PERIOD OF  
23 TIME WHERE YOU KIND OF DIVORCE YOURSELF FROM THE PAST.  
24 THOSE THINGS ARE UNDER DISSOCIATIVE AMNESIA. THAT'S IT.  
25 THAT'S WHAT IT'S CALLED. THERE ISN'T VARIOUS TYPES, IF



1 YOU WILL.

2 Q WHAT OTHER DIAGNOSES DID YOU THINK FITS WITH  
3 CURTIS WINDOM?

4 A WELL, I THINK CURTIS WINDOM, WITH ALL THE  
5 INFORMATION I HAVE, WAS EXPERIENCING AN ACUTE PSYCHOTIC  
6 EPISODE AT THE TIME. AND THE QUESTION REALLY IN MY MIND  
7 IS ULTIMATELY WHAT WOULD BE THE BEST DIAGNOSIS. I CAN'T  
8 JUST LEAVE IT UNDER DSN AS ACUTE PSYCHOTIC EPISODE, WHICH  
9 REFLECTS THE FACT I DON'T THINK HE WAS IN TOUCH WITH  
10 REALITY AT THE TIME THAT HAPPENED, AND THAT IT -- IT  
11 REFLECTED AN ABRUPT CHANGE IN HIS FUNCTIONING.

12 BUT I THINK THE THREE DISTINCT  
13 POSSIBILITIES, IN TERMS OF A LONGER TERM PSYCHIATRICALY,  
14 OR DIAGNOSIS FOR HIM, IT WOULD BE BIPOLAR DISORDER IN A  
15 PSYCHOTIC MANIC PHASE, OR DEPRESSIVE DISORDER WITH MOOD  
16 CONGRUENT PSYCHOTIC FEATURE, OR, LASTLY, WHICH I THINK IS  
17 PROBABLY THE LESS LIKELY, WOULD BE SCHIZOPHRENIA PARANOID  
18 TYPE.

19 Q NOW, THESE DIAGNOSES THAT YOU HAVE MENTIONED,  
20 ARE THEY -- ARE THESE PERSONALITY DISORDERS OR ARE THEY  
21 MAJOR MENTAL ILLNESSES?

22 A THEY'RE CONSIDERED MAJOR MENTAL ILLNESSES.  
23 THEY'RE CLASSIFIED AN AXIS I, NOT THE AXIS II THAT  
24 PERSONALITY DISORDERS ARE UNDER -- ARE CLASSIFIED UNDER.

25 THE COURT: CAN I INTERRUPT FOR A SECOND.

1           YOU SAID BIPOLAR OR SCHIZOPHRENIA OR --

2           **THE WITNESS:**   BIPOLAR DISORDER, MANIC

3           PSYCHOTIC TYPE, THEN THE OTHER ONE, MAJOR

4           DEPRESSIVE DISORDER WITH MOOD CONGRUENT PSYCHOTIC

5           FEATURES, AND THIRD ONE WAS THEN THE

6           SCHIZOPHRENIA PARANOID TYPE.

7           **THE COURT:**   THANK YOU.   GO AHEAD.

8   **BY MR. STRAND:**

9           **Q**       NOW, THE DSM-IV, WHEN A MENTAL HEALTH  
10       PROFESSIONAL IS ATTEMPTING TO -- RENDERING A DIAGNOSIS,  
11       DOES IT PROVIDE YOU WITH SOME GUIDANCE WHAT YOU NEED TO  
12       LOOK FOR?

13       **A**       YES, IT DOES.

14       **Q**       AND DID YOU HAVE AN OPPORTUNITY TO REVIEW THE  
15       DSM-IV AND TRY TO MAKE A DETERMINATION TO WHAT WOULD BE  
16       THE APPROPRIATE DIAGNOSIS FOR MR. WINDOM?

17       **A**       YES.

18       **Q**       AND DID THESE SEEM TO FIT THESE DIAGNOSES?

19       **A**       IN MY MIND THERE IS A NOTE, A QUESTION ABOUT  
20       HIM HAVING AN ACUTE PSYCHOTIC EPISODE AROUND THIS PERIOD  
21       OF TIME BECAUSE OF THE CHANGES THAT EVERYONE HAS TALKED  
22       ABOUT.   AND IN WHAT I KNOW ABOUT HIS PRESENTATION,  
23       COMBINED WITH WHAT WE HAVE SEEN FROM THE EVALUATION AND  
24       ASSESSMENT, THE PROBLEM, FRANKLY, GOES TO REALLY THE FACT  
25       THAT, YOU KNOW, CURTIS WINDOM WAS NOT INVOLVED IN ANY

1 ONGOING MENTAL HEALTH CARE AT THAT TIME.

2 AND WHILE I'VE BEEN ABLE TO TALK WITH  
3 FAMILY AND SOME FRIENDS ABOUT, YOU KNOW, WHAT HIS  
4 CHARACTER AND Demeanor WAS LIKE, IT'S BEEN HARD TO GET A  
5 MORE SOPHISTICATED DESCRIPTION OF WHAT WAS GOING ON WITH  
6 CURTIS AT THAT TIME TO PROVIDE A MORE DEFINITE DIAGNOSIS.  
7 HE ALSO, I THINK LASTLY, DOES WARRANT A DIAGNOSIS OF  
8 DEMENTIA SECONDARY TO HEAD TRAUMA RELATED TO THE CAR  
9 ACCIDENT AS WELL.

10 Q YOU SAID THAT IT WAS DIFFICULT TO GET THE  
11 INFORMATION, WOULD THAT JUST BE BECAUSE OF THE RELATIVE  
12 POVERTY AND EDUCATION LEVEL OF HIS FAMILY AND NEIGHBORS?

13 A IN THEIR INABILITY TO GIVE BETTER DESCRIPTION,  
14 I THINK IT DOES GO TO THE LEVEL OF SOPHISTICATION ABOUT  
15 THINGS. YOU KNOW, CURTIS'S MOTHER HAD -- HAD TWO  
16 PSYCHIATRIC HOSPITALIZATIONS, IN WHICH THEY DESCRIBED  
17 BEHAVIOR THAT SOUNDED LIKE SHE WAS PSYCHOTIC AT THE TIME  
18 SHE WAS HOSPITALIZED. BUT NONE OF THEM, FOR EXAMPLE,  
19 COULD TALK ABOUT, YOU KNOW, WHAT SHE WAS DIAGNOSED AS OR  
20 WHAT KIND OF MEDICINES SHE WAS GIVEN, OR THINGS LIKE  
21 THAT.

22 Q NOW --

23 A THERE WAS ONE OTHER THING THAT I FORGOT ON THE  
24 DIAGNOSTIC PART, JUST BECAUSE THERE IS A NUMBER OF  
25 THINGS. OTHER THAN HIS ACUTE PSYCHIATRIC STATUS, IN

1 WHICH WE TALKED ABOUT THE POSSIBILITY THERE IS THE  
2 DEMENTIA SECONDARY TO HEAD TRAUMA RELATED TO THE ACCIDENT  
3 AT 16, AND THEN HE WOULD ALSO WARRANT A DIAGNOSIS, I  
4 BELIEVE, EVEN BEFORE THAT OF LEARNING DISORDER, OTHERWISE  
5 SPECIFIED, BECAUSE OF THE MANNER OR PROBLEMS HE HAD WITH  
6 COMMUNICATION ISSUES.

7 Q YEAH. A LEARNING DISABILITY?

8 A YES, PRIMARILY INVOLVING COMMUNICATION.

9 Q OKAY. IS THERE ANY WAY THAT WHAT CURTIS WINDOM  
10 HAS WRONG WITH HIS FRONTAL LOBES, COULD IT JUST BE A  
11 LEARNING DISABILITY?

12 A NO.

13 Q AND WHY NOT?

14 A WELL, SEVERAL THINGS. FIRST OF ALL, HIS  
15 LANGUAGE OR COMMUNICATION DEFICITS HAVE BEEN THERE SINCE  
16 THE BEGINNING OF, AT LEAST WHEN SCHOOL STARTED, AND  
17 THAT'S TALKED ABOUT BY THE FAMILY. AND IF YOU LOOK AT  
18 HIS ACADEMIC PERFORMANCE IN THE RECORD, PLUS HE -- HE  
19 REPORTEDLY HAD SPEECH SERVICES WHILE HE WAS ALSO IN  
20 SCHOOL. SO WE KNOW THAT THIS WAS A CONDITION THAT'S BEEN  
21 THERE FOR A LONG TIME.

22 SECONDLY, HE DID HAVE AN ACCIDENT AT AGE  
23 16 IN WHICH HE IS DESCRIBED AS HAVING A LOSS OF  
24 CONSCIOUSNESS FOR OVER AN HOUR, EVEN THOUGH WE DIDN'T  
25 REVIEW THE MEDICAL RECORDS. I DID TALK WITH HIS SISTER

1 WHO ARRIVED AT THE SCENE OF THE ACCIDENT AND SAID THAT HE  
2 WASN'T AWAKE UNTIL AFTER HE GOT TO THE HOSPITAL. HE WAS  
3 HOSPITALIZED FOR SEVERAL DAYS.

4 SO WHILE, UNFORTUNATELY, WE HAVE NOT BEEN  
5 ABLE TO LOCATE THOSE MEDICAL RECORDS THAT WOULD BE  
6 SUGGESTIVE OF A SIGNIFICANT, MILD, TRAUMATIC BRAIN  
7 INJURY, HIS FAMILY TALKS ABOUT HIS BEHAVIOR BEING  
8 DIFFERENT AFTER THAT EVENT.

9 WE LOOK AT THE TEST DATA. TYPICALLY A  
10 PATIENT THAT JUST HAS A LEARNING DISABILITY, PRIMARILY  
11 COMMUNICATIONS IN THIS CASE, YOU WILL SEE SKILL --  
12 DEFICITS WITH SKILLS ASSOCIATED WITH LANGUAGE BASED  
13 THINGS. AND WE DO SEE THAT WITH HIM, BUT WE SEE MORE  
14 THAN THAT ON THE TEST DATA.

15 Q OKAY. NOW, WOULD IT BE POSSIBLE TO COME UP  
16 WITH A MENTAL ILLNESS DIAGNOSIS WITHOUT HAVING HAD AN  
17 OPPORTUNITY TO REVIEW THE AFFIDAVITS IN DEFENSE EXHIBIT  
18 3C AND TALK WITH THE FAMILY MEMBERS TO DETERMINE WHAT HIS  
19 BEHAVIOR WAS LIKE IN THE COUPLE YEARS PRIOR TO THE  
20 INCIDENT, AND IN PARTICULAR, THE COUPLE WEEKS PRIOR TO  
21 THE INCIDENT? IS THAT IMPORTANT INFORMATION?

22 A I THINK THAT IS IMPORTANT INFORMATION. I THINK  
23 THAT YOU CAN CERTAINLY HYPOTHESIZE ABOUT THAT, THE  
24 POSSIBILITY OF MENTAL ILLNESS BEFORE THAT. BUT THE  
25 DESCRIPTIONS THAT THEY PROVIDED, IN TERMS OF THE RATHER

1     DISTINCT CHANGE IN HIS APPEARANCE AND DEMEANOR IN THAT  
2     WEEK OR SO BEFORE THE EVENT, I THINK ARE WHAT REALLY  
3     CINCH THAT OPINION.

4           Q     NOW, HAVING HAD AN OPPORTUNITY TO LOOK AT --  
5     LOOK AT ALL OF THIS INFORMATION, DID YOU FIND -- FIND ANY  
6     INDICATION THAT A BORDERLINE PERSONALITY DISORDER MIGHT  
7     BE APPROPRIATE, AN APPROPRIATE DIAGNOSIS IN THIS CASE?

8           A     WELL, I THINK THAT HE HAS SOME ISSUES WITH  
9     RELATIONSHIPS. AND HAVING TWO DIFFERENT GIRLFRIENDS, IF  
10    YOU WILL, THAT HE HAS CHILDREN WITH AND THAT HE VISITS  
11    BOTH OF THEM ALL THE TIME, HAS RELATIONSHIPS A BIT DOWN  
12    THAT ROAD, BUT OTHERWISE HE DOESN'T HAVE MANY OF THE  
13    OTHER ASPECTS OF WHAT YOU THINK OF WITH A BORDERLINE  
14    PERSONALITY DISORDER.

15          Q     AND ALSO IN YOUR REVIEW OF THE MATERIAL AND  
16    TESTING, SO FORTH, DID YOU FIND ANY INDICATION THAT  
17    MR. WINDOM HAS ASPECTS OF AN ANTISOCIAL PERSONALITY  
18    DISORDER, OR COULD BE DIAGNOSED AS BEING ANTISOCIAL?

19          A     DEPENDS ON WHAT DEFINITION YOU WANT TO USE.  
20    BUT CERTAINLY HE'S ENGAGING IN, IN DRUG TRAFFICKING WITH  
21    THE COCAINE, THAT'S CERTAINLY AN ANTISOCIAL BEHAVIOR ACT.  
22    BUT IN TERMS OF PERSONALITY CHARACTERISTICS, IN TERMS OF  
23    LACK OF ATTACHMENT WITH OTHERS, A LOT OF MANIPULATIVENESS  
24    WITH OTHERS, THOSE KINDS OF MORE TRADITIONAL ASPECTS OF  
25    WHAT WE THINK OF AS SOCIOPATH AND THE CORRECT VERSION OF

1 THAT DISORDER, NO, HE DOESN'T SHOW THOSE FEATURES.

2 HE ALSO DIDN'T HAVE THE EARLY AGE OF  
3 HISTORY OF CONDUCT DISORDER, AS BEST I COULD TELL, WHICH  
4 IS A REQUIREMENT OF THAT DIAGNOSIS.

5 Q NOW, WERE YOU ABLE TO DETERMINE IF HE WAS  
6 DELUSIONAL AT THE TIME OF THESE SHOOTINGS?

7 A WELL, THAT'S A MORE DIFFICULT QUESTION TO  
8 ANSWER. I THINK THAT HE WAS PSYCHOTIC, AS I'VE  
9 MENTIONED. I THINK HE WAS OUT OF TOUCH JUST BY HIS  
10 ACTION AND HIS BEHAVIOR FROM WHAT I CAN TELL. CERTAINLY  
11 THERE IS A STRONG PARANOID THEME RUNNING AS BEEN  
12 MENTIONED BY SOME OF THE FAMILY AND ALSO MY TALKING WITH  
13 CURTIS AND REVIEWING RECORDS, AND THAT I THINK BORDERED  
14 IN THAT RANGE WHERE YOU CONSIDER IT DELUSIONAL.

15 UNFORTUNATELY, AGAIN, HE DIDN'T HAVE ANY  
16 ACUTE CARE RIGHT AROUND THAT TIME. THAT WOULD HAVE BEEN  
17 GOOD TO LOOK AT THAT. THE WAY HE TALKS ABOUT HIS LEVEL  
18 OF PARANOIA, IT BORDERS IN THAT RANGE. AND HE CERTAINLY  
19 AGAIN, I THINK, WAS OUT OF TOUCH WITH REALITY.

20 Q AND THE VIDEOTAPE INTERVIEW OF HIM AND HIS  
21 MOTHER, I THINK AS DEFENSE EXHIBIT NUMBER FOUR, DID THAT  
22 GIVE YOU ANY INDICATION OF WHAT HIS STATE OF MIND WAS ON  
23 THE DATE OF THE OFFENSE?

24 A I -- THIS HELPED PROVIDE WHAT HIS STATE OF MIND  
25 WAS AT THE TIME OF THE OFFENSES.

1           Q     HAD YOU EVER HAD AN OPPORTUNITY TO SEE A  
2     VIDEOTAPE LIKE THIS WITHIN HOURS OF THE SHOOTING IN ANY  
3     CASE THAT YOU WORKED ON?

4           A     YES.

5           Q     AND -- BUT IS THIS UNUSUAL?

6           A     WELL, DEPENDS. IT'S NOT I GUESS ON THE ONE  
7     HAND. I HAVE SEEN A NUMBER OF CASES WHERE I THINK THERE  
8     WERE SIGNIFICANT PSYCHIATRIC ISSUES INVOLVED IN SHOOTINGS  
9     AND OTHER EVENTS WHERE, YES, I'VE SEEN CONFUSION AND  
10    DISORGANIZATION IN VIDEOTAPES WITH THE POLICE AND OTHERS  
11    RIGHT AFTER AN EVENT.

12          Q     NOW, IF YOU HAD BEEN RETAINED TO -- TO DO THIS  
13    EVALUATION BEFORE THE JURY TRIAL, WOULD YOU HAVE FELT  
14    COMFORTABLE TESTIFYING TO THE JURY WITHOUT HAVING HAD THE  
15    OPPORTUNITY TO REVIEW THAT TAPE?

16          A     I THINK I COULD HAVE FORMED THE SAME OPINIONS  
17    THAT I HAVE TODAY WITHOUT HAVING HAD THAT TAPE. BUT I  
18    FEEL THAT HAVING THAT TAPE WHERE I GOT A CHANCE TO SEE  
19    HIS DEMEANOR AND PRESENTATION WITHIN AN HOUR OR SO AFTER  
20    THE SHOOTING WAS HELPFUL.

21          Q     OKAY. AND WOULD YOU FEEL COMFORTABLE  
22    TESTIFYING IN FRONT OF A JURY WITHOUT HAVING THE  
23    OPPORTUNITY TO REVIEW THE BACKGROUND MATERIALS THAT YOU  
24    HAD REVIEWED IN THIS CASE, ONLY RELYING UPON THE CLINICAL  
25    INTERVIEW WITH MR. WINDOM?



1           A     I THINK I WOULD HAVE BEEN SERIOUSLY HAMPERED  
2     WITH ONLY HAVING A CLINICAL INTERVIEW OF MR. WINDOM.

3           Q     AND IF, HYPOTHETICALLY, IF YOU WERE FACED WITH  
4     THAT SITUATION, WOULD YOU FEEL LIKE YOU HAD AN OBLIGATION  
5     TO NOTIFY SOMEONE OF YOUR PROBLEM?

6           A     CERTAINLY. I MEAN, THAT'S REQUIRED.

7           Q     WHAT WOULD YOU DO, SIR?

8           A     I WOULD LET THE, WHOEVER RETAINED ME TO REVIEW  
9     AND CONDUCT THE EVALUATION KNOW THAT THERE WAS ADDITIONAL  
10    INFORMATION AND MATERIALS THAT WERE NEEDED BEFORE I COULD  
11    REACH AN OPINION, AND THERE WAS ENOUGH THERE IN THE  
12    INITIAL OR PRELIMINARY INTERVIEW THAT RAISED CONCERN.

13          Q     OKAY. NOW, HYPOTHETICALLY, IF YOU WERE GIVEN A  
14    CASE AND YOU'RE JUST ASKED TO DO A COMPETENCY REVIEW, IS  
15    HE COMPETENT TO GO TO TRIAL, AND YOU'RE GIVEN A PIECE OF  
16    BACKGROUND INFORMATION, TWO PIECES OF BACKGROUND  
17    INFORMATION, ONE OF THEM DURING THE BIRTH THE DEFENDANT  
18    WAS DROPPED ON HIS HEAD, ON HIS HEAD, AND THEN AGE 16 WAS  
19    IN A CAR ROLLOVER WITH HEAD INJURY, WOULD THAT MAKE YOU  
20    WANT TO RECOMMEND NEUROPSYCHOLOGICAL TESTING?

21          A     CERTAINLY WANT TO MAKE ME RECOMMEND  
22    NEUROPSYCHOLOGICAL TESTS OR NEUROLOGICAL FOLLOW-UP AND  
23    EVALUATION, MAYBE BE ABLE TO ANSWER A QUESTION OF  
24    COMPETENCE TO PROCEED, BUT CERTAINLY RAISE THOSE ISSUES  
25    IN TERMS OF GETTING A MORE COMPREHENSIVE ISSUE OF THE

1 PERSON AND WHAT THEIR ABILITIES WERE.

2 Q IN YOUR PERFORMING A PSYCHOLOGICAL INTERVIEW,  
3 THERE'S NO INDICATION OF HEAD TRAUMA, NEUROLOGICAL  
4 PROBLEM, WOULD IT BE POSSIBLE FOR AN EXPERT TO NOT  
5 IDENTIFY A NEUROLOGICAL DEFICIT DURING THIS CLINICAL  
6 INTERVIEW?

7 A WELL, IT'S POSSIBLE NOT TO IDENTIFY IT, YES.  
8 BUT I WOULD SAY IF YOU'VE TALKED WITH CURTIS WINDOM FOR  
9 ANY LENGTH OF TIME, YOU UNDERSTAND THAT SOMETHING IS OFF  
10 WITH HIM.

11 Q NOW, AS TO JOHNNIE LEE, IF CURTIS WINDOM  
12 BELIEVED THAT JOHNNIE LEE WAS GOING TO KILL HIM, WOULD  
13 THAT FEED INTO HIS MENTAL STATE?

14 A VERY MUCH SO.

15 Q OKAY. AND BASED ON CURTIS WINDOM'S PROFILE  
16 WITH HIS FRONTAL LOBE BRAIN DAMAGE AND HIS MENTAL  
17 ILLNESS, WOULD MR. WINDOM BE ABLE TO UNDERSTAND HIS  
18 OBLIGATIONS TO TRY TO AVOID A CONFRONTATION, IN YOUR  
19 OPINION?

20 A IN MY OPINION, I DON'T THINK AT THAT POINT IN  
21 TIME, GIVEN ALL THAT WAS GOING ON WITH CURTIS, HE WAS  
22 RATIONALLY THINKING MUCH ABOUT ANYTHING.

23 Q IN YOUR OPINION, WOULD HE HAVE BEEN ABLE TO  
24 UNDERSTAND ANY OBLIGATION TO RUN AWAY IF HE FELT THAT  
25 MR. LEE WAS GOING TO SHOOT HIM?

1           A     I THINK IF HIS LIFE WAS ON THE LINE, I'M NOT  
2     SURE THAT'S WHAT HE WOULD CONSIDER IS A REASONABLE COURSE  
3     OF ACTION. WE HAVE TALKED, FOR EXAMPLE, BOTH CURTIS AND  
4     HIS FAMILY TALKED ABOUT HOW HE STOPPED GOING OUT IN  
5     PUBLIC WITH HIS GIRLFRIENDS AND HIS KIDS, FOR EXAMPLE,  
6     BECAUSE HE THOUGHT SOMEBODY WAS GOING TO COME AND SHOOT  
7     HIM. SO, RUNNING AWAY IS NOT GOING TO SOLVE THAT PROBLEM  
8     FOR THE PEOPLE THAT HE CARED ABOUT.

9           Q     IN YOUR OPINION, WOULD CURTIS WINDOM BEEN ABLE  
10    TO CONSIDER REPORTING THIS TO THE POLICE AS AN OPTION?

11          A     I DON'T THINK IN THAT CULTURE THE REPORTING  
12    THINGS TO THE POLICE WAS DONE MUCH AT ANY TIME. THAT'S  
13    JUST MY OPINION IN TALKING WITH HIM AND HIS FAMILY.

14          Q     IS IT YOUR OPINION WHEN CURTIS WINDOM SHOT  
15    JOHNNIE LEE HE WAS IN FEAR FOR HIS LIFE?

16          A     THAT'S THE PERCEPTION THAT CURTIS WINDOM  
17    PRESENTS WITH. AND I THINK THAT'S CONSISTENT WITH WHAT  
18    WE KNOW ABOUT HIS HISTORY.

19          Q     AND WAS HIS REACTION TO THAT FEAR, WAS IT  
20    REASONABLE, THE ACTION OF A RATIONAL MAN?

21          A     CERTAINLY NOT.

22          Q     OKAY. NOW, WHEN YOU CONSIDER ALL OF THESE, THE  
23    MENTAL ILLNESS AND FRONTAL LOBE BRAIN DAMAGE, WOULD THAT  
24    IMPEDE MR. WINDOM'S ABILITY TO COOLY AND CALCULATEDLY  
25    COMMIT A MURDER?

1           A     YES.

2           Q     AND LET'S TAKE THOSE WORDS ONE AT A TIME.  IN  
3     YOUR OPINION, WHEN MR. WINDOM SHOT ALL FOUR OF THE  
4     VICTIMS, WAS HE ACTING IN A COLD, UNEMOTIONAL MANNER?

5           A     WELL, I DIDN'T SEE HIM THAT -- THE DAY IT  
6     HAPPENED, BUT IN MY INTERACTION WITH MR. WINDOM, AND  
7     TALKING WITH FAMILY MEMBERS AND FRIENDS THAT SAW HIM AT  
8     OR AROUND THE TIME OF THE SHOOTING, HE WAS ANYTHING BUT  
9     COLD.  HE WAS CONFUSED, HE WAS DAZED, AND THAT TOWARDS  
10    THE END OF IT HE WAS CRYING.  I GUESS I WOULDN'T REALLY  
11    CONSIDER THAT COLD.

12          Q     AND DID YOU ALSO CONSIDER THE TESTIMONY THAT  
13    PEOPLE THAT OBSERVED HIM THE DAY OF THE SHOOTING THAT  
14    SAID THAT HE LOOKED AS IF HE WAS CRAZY?

15          A     YES.

16          Q     NOW, GOING TO THE SECOND WORD, CALCULATED,  
17    WOULD -- WE TALKED ABOUT MR. WINDOM'S SCORES ON THE  
18    EXECUTIVE FUNCTIONING SECTION OF THE NEUROLOGICAL TEST.  
19    WOULD HIS TYPE OF BRAIN DAMAGE, WOULD IT IMPEDE HIS  
20    ABILITY TO, IN A VERY RATIONAL MANNER, CALCULATE A  
21    MURDER?

22          A     WELL, IT KIND OF DEPENDS ON HOW, I GUESS, YOU  
23    DEFINE CALCULATED.  YOU KNOW, FIRST OF ALL, CERTAINLY  
24    THERE ARE CASES THAT PEOPLE THAT HAVE SOME FRONTAL LOBE  
25    DYSFUNCTION ARE ABLE TO PLAN AND DO THINGS OKAY, THEY ARE

1 ABLE TO DO THAT. THEY'RE OFTEN ABLE TO HOLD DOWN MORE  
2 ROUTINE OR STRUCTURED OR SIMPLISTIC JOBS, FOR EXAMPLE.

3 THE KEY REALLY BECOMES WHEN YOU HAVE AN  
4 INTERSECTION OF THOSE PROBLEMS, THE FRONTAL LOBE PROBLEMS  
5 WITH OTHER THINGS LIKE EMOTIONAL STATUS, HOW HIGHLY  
6 CHARGED THE SITUATION IS. AND IT'S WHEN YOU GET THOSE  
7 COMBINATION OF THINGS THAT THE ABILITY TO MAKE GOOD  
8 CHOICES IN YOUR PLANNING AND TO CONTROL OR MODULATE YOUR  
9 ACTIVITY DON'T WORK VERY WELL.

10 AND SO I BELIEVE THAT AT THE TIME THAT  
11 THESE SHOOTINGS TOOK PLACE, FROM EVERYTHING THAT I KNOW  
12 ABOUT CURTIS WINDOM, IS THAT HE WAS HAVING A LOT OF  
13 DIFFICULTY WITH BEING ABLE TO THINK RATIONALLY AND  
14 LOGICALLY.

15 Q NOW, THERE'S SOME OTHER LANGUAGE THAT IS  
16 UTILIZED IN CONSIDERING WHAT IS THE APPROPRIATE  
17 PUNISHMENT IN THESE CASES. THEY SAY A COLD -- OFFENSE  
18 WAS COMMITTED IN A COLD AND CALCULATED MANNER WE HAVE  
19 DEALT WITH. THE SECOND PART, WITHOUT A PRETENSE OF MORAL  
20 OR LEGAL JUSTIFICATION.

21 NOW, IF YOU CONSIDER THAT DEFINITION,  
22 WOULD THAT APPLY TO MR. WINDOM'S STATE OF MIND AT THE  
23 TIME OF THESE SHOOTINGS? IN HIS MIND, DID HE HAVE A  
24 PRETENSE OF MORAL OR LEGAL JUSTIFICATION, PARTICULARLY  
25 WHEN WE'RE TALKING ABOUT JOHNNIE LEE?

1           A     WELL, AGAIN, I'M NOT ALWAYS SURE EXACTLY WHAT  
2     LEGAL TERMS ARE SUPPOSED TO MEAN. BUT CURTIS WINDOM, I  
3     THINK, WAS FEARFUL FOR HIS LIFE AND PEOPLE HE WAS CLOSE  
4     TO, AND HE REACTED TO THAT.

5           Q     AND IN HIS MIND HE FELT HE WAS JUSTIFIED?

6           A     IT WAS EITHER HIM OR JOHNNIE LEE.

7           Q     NOW, ALL OF THESE THINGS, ALL OF YOUR  
8     DIAGNOSES, THE FRONTAL LOBE DAMAGE, THE INCREASED STRESS,  
9     THE FAMILY BACKGROUND, WOULD THEY HAVE MORE LIKELY THAN  
10    NOT SUBSTANTIALLY AFFECTED HIS ABILITY TO COMPORT HIS  
11    CONDUCT TO THE LAW?

12          A     YES.

13          Q     NOW, AT THE TIME THAT HE SHOT JOHNNIE LEE, DO  
14    YOU HAVE AN OPINION AS TO WHETHER OR NOT HE RATIONALLY  
15    UNDERSTOOD RIGHT FROM WRONG?

16          A     WELL, I DON'T HAVE ANY REASON TO BELIEVE THAT  
17    CURTIS WINDOM AT THAT TIME DIDN'T REALIZE HE WAS PULLING  
18    THE TRIGGER ON THE GUN, THAT THAT COULD RESULT IN JOHNNIE  
19    LEE'S DEATH, BUT HIS REASONING FOR MAKING THAT DECISION  
20    WAS NOT RATIONAL.

21          Q     WAS NOT BASED IN REALITY?

22          A     NO. WELL, IT WAS BASED IN HIS REALITY, BUT NOT  
23    THE REALITY OF WHAT WE KNOW ABOUT THE CIRCUMSTANCE.

24          Q     AND THAT REALITY STEMS FROM HIS PSYCHOSIS?

25          A     I THINK IT STEMS FROM THE COMBINATION OF THE

1 FACTORS THAT WE'VE TALKED ABOUT TODAY. IT ISN'T JUST HIS  
2 ACUTE PSYCHOTIC STATUS AT THE TIME, IT'S HIS LEVEL OF  
3 BRAIN FUNCTION, IT'S RELATED ALSO TO THE CIRCUMSTANCE  
4 THAT HE WAS IN, AND INFORMATION HE WAS OPERATING ON, AND  
5 IT'S RELATED TO HIS ACUTE PSYCHOTIC STATUS AT THE TIME.  
6 I THINK ALL OF THOSE FACTORS PLAYED A ROLE IN WHAT  
7 HAPPENED HERE.

8 MR. STRAND: IF I COULD HAVE JUST A MOMENT,  
9 JUDGE, I THINK I'M ABOUT DONE.

10 JUST A FEW MORE QUESTIONS, JUDGE.

11 Q NOW, IN THE PAST YOU'VE BEEN ASKED TO EVALUATE  
12 CASES FOR NONSTATUTORY MITIGATION. ARE YOU FAMILIAR WITH  
13 THAT TERM?

14 A YES, I AM.

15 Q THE BACKGROUND OF THE DEFENDANT, HIS CHILDHOOD,  
16 SO FORTH?

17 A YES.

18 Q AND IN REVIEWING THE BACKGROUND MATERIALS IN  
19 THIS CASE, DID YOU FIND ANY INFORMATION THAT YOU WOULD  
20 CONSIDER WORTH TELLING A JURY ABOUT?

21 A OH, MANY THINGS.

22 Q AND LET'S TALK ABOUT HIS CHILDHOOD AND FAMILY  
23 SITUATION. COULD YOU TELL THE JUDGE ABOUT THAT AND --

24 A WELL, I THINK SOME OF IT HAS ALREADY BEEN  
25 TALKED ABOUT. IT WAS VERY IMPOVERISHED, VERY POOR, VERY

1 LIMITED RESOURCES. FATHER WHO WAS ABUSIVE AND PUNISHING.  
2 A MOTHER WHO TRIED TO KEEP IT TOGETHER BUT HAD FEW  
3 RESOURCES TO DO THAT, INCLUDING HER OWN EMOTIONAL  
4 RESOURCES. I MEAN, IT WAS A VERY TRAGIC SITUATION. AND  
5 ON TOP OF THAT, YOU HAVE A VERY DIFFICULT SITUATION TO  
6 BEGIN WITH. AND CURTIS HAD FEWER RESOURCES THAN SOME OF  
7 HIS OTHER SIBLINGS TO DEAL WITH. YOUNG KIDS ARE NOT KIND  
8 TO OTHER CHILDREN THAT HAVE SPEECH IMPEDIMENTS,  
9 IRREGARDLESS WHERE YOU COME FROM.

10 THAT WAS THE CASE WITH CURTIS, HE HAD A  
11 SPEECH PROBLEM AND HE ALSO WOULD WET HIMSELF  
12 EPISODICALLY. AND, YOU KNOW, THE FAMILY TALKED OFTEN  
13 ABOUT GOING TO SCHOOL AND HIS CLOTHES SMELLED OF URINE IN  
14 PARTICULAR, AND THEY NICKNAMED HIM AND HARASSED HIM FOR  
15 THAT. SO HE WAS DEALT A PRETTY DIFFICULT HAND IN HIS  
16 GROWING UP YEARS RELATED TO THAT. SO -- NOT TO MENTION  
17 THE THINGS WE'VE ALREADY TALKED ABOUT, IN TERMS OF HIS  
18 NEUROLOGICAL HISTORY AND FINDINGS OF DR. PINCUS, I THINK  
19 THERE IS A LOT OF ISSUES THERE.

20 Q AND YOU HAD AN OPPORTUNITY TO VISIT THE FAMILY  
21 HOME WHERE CURTIS WINDOM GREW UP AND THE NEIGHBORHOOD.  
22 WOULD YOU CHARACTERIZE THAT A MIDDLE CLASS NEIGHBORHOOD,  
23 OR LOWER, OR HIGHER?

24 A MY THOUGHT WAS A POOR NEIGHBORHOOD. AND THAT  
25 THEY LOOKED LIKE THEY WERE DOING THE BEST THEY CAN TO GET



1 BY, BUT OBVIOUSLY A PRETTY FEW RESOURCES.

2 Q AND ALSO LOOKING AT CURTIS'S SCHOOL  
3 PERFORMANCE, DID IT APPEAR THAT HE WAS ABLE TO GAIN THE  
4 FULL BENEFIT OF THE PUBLIC EDUCATION SYSTEM, OR GAIN ANY  
5 BENEFIT?

6 A WELL, I WOULDN'T SAY ANY, DIDN'T GAIN ANY  
7 BENEFIT, BUT HE OBVIOUSLY STRUGGLED A LOT IN SCHOOL. HE  
8 HAD SOME ADAPTIVE CLASS, BUT NOT AS MUCH AS YOU WOULD  
9 EXPECT GIVEN HIS LIMITATIONS, AND EVENTUALLY QUIT.

10 Q ALL RIGHT. AND WOULD THESE THINGS THAT YOU'VE  
11 JUST TALKED ABOUT, WOULD THEY CONTRIBUTE TO THE --  
12 POSSIBLY CONTRIBUTE TO THE DEVELOPMENT OF MENTAL ILLNESS  
13 IN THE LATER AGE?

14 A THEY WOULD PLACE HIM AT GREATER RISK, YES.

15 MR. STRAND: I'M FINISHED, YOUR HONOR.

16 THANK YOU.

17 THE COURT: WE NEED TO TAKE A TEN-MINUTE  
18 BREAK, HONEST TO GOODNESS. WE HAVE A LOT OF  
19 GROUND TO COVER. JUST EVERYBODY KNOWS 5:15 IS  
20 THE ABSOLUTE LATEST I CAN BE HERE. OKAY.

21 MR. STRAND: THAT'S GREAT.

22 (THEREUPON A RECESS WAS TAKEN.)

23 (END OF VOLUME I.)

24

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