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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 125

HON. ROBERT P. O'NEILL, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA, )

PLAINTIFF, )

VS. )

ALLEN DAVID JONES, )

DEFENDANT. )

NO. BA 071698

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 06 1994

EDWARD M. KRITZMAN, CLERK

*D. Dancer*  
BY D. DANCER, DEPUTY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, SEPTEMBER 30, 1994

APPEARANCES:

FOR THE PEOPLE:

GIL GARCETTI, DISTRICT ATTORNEY  
BY: ANNE INGALLS, DEPUTY  
18-000 CRIMINAL COURTS BUILDING  
210 WEST TEMPLE STREET  
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT:

LAW OFFICES OF THE  
ALTERNATE PUBLIC DEFENDER  
BY: PATRICK G. THOMASON, DEPUTY  
HALL OF RECORDS  
320 WEST TEMPLE STREET  
ROOM 35  
LOS ANGELES, CALIFORNIA 90012

**ORIGINAL**

EMANUEL J. SANZO, CSR NO. 1267  
ANTHONY M. GONZALEZ, CSR NO. 987  
OFFICIAL REPORTERS

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APPEARANCE DATE PAGE NO.

SEPTEMBER 30, 1994 1

PROCEEDINGS PAGE NO.

MOTION TO SUPPRESS STATEMENTS 1

COURT'S RULING 111

PEOPLE'S WITNESSES DIRECT CROSS REDIRECT RECROSS

MORENO, ALEXANDER 6 16

DEFENSE WITNESSES DIRECT CROSS REDIRECT RECROSS

BELIZ, EFRAIN 27 51 84

DEFENSE EXHIBITS MARKED RECEIVED

A - TAPE 140822 3 89

B-1 - TAPE 141454 24 89

B-2 - TRANSCRIPT OF B-1 25 89

C-1 - TAPE 141778 25 89

C-2 - TRANSCRIPT OF C-1 26 89

D - VIDEO TAPE 25 89

E - DR. BELIZ REPORT 30 89

F - DR. SLAUGHTER REPORT 38 89

G - DR. WEINSTEIN REPORT 38 89

H - TRANSCRIPT OF TAPE 141778 88 89

1 LOS ANGELES, CALIFORNIA

2 9:30 A.M. FRIDAY \* SEPTEMBER 30, 1994

3  
4 DEPARTMENT NO. 125

HON. ROBERT P. O'NEILL, JUDGE

5  
6 APPEARANCES:

7  
8 THE DEFENDANT WITH HIS COUNSEL  
9 PATRICK THOMASON, DEPUTY ALTERNATE  
10 PUBLIC DEFENDER OF LOS ANGELES COUNTY;  
11 ANNE INGALLS, DEPUTY DISTRICT ATTORNEY  
12 OF LOS ANGELES COUNTY, REPRESENTING  
13 THE PEOPLE OF THE STATE OF CALIFORNIA.)

14  
15 (EMANUEL J. SANZO, OFFICIAL REPORTER.)

16  
17 MOTION TO SUPPRESS %

18 STATEMENTS %

19  
20 THE COURT: ALL RIGHT.

21 THIS IS THE MATTER OF DAVID JONES, WHO IS  
22 PRESENT IN COURT WITH COUNSEL, MR. THOMASON; MISS  
23 INGALLS IS PRESENT FOR THE PEOPLE.

24 THE MATTER IS ON CALENDAR FOR A MOTION TO  
25 SUPPRESS STATEMENTS.

26  
27 I HAVE READ AND CONSIDERED THE MOTION IN  
28 SUPPORT FILED ON BEHALF OF MR. JONES.

1 I HAVE READ AND CONSIDERED THE RESPONSE TO  
2 THAT MOTION FILED BY THE PEOPLE.

3 I HAVE READ AND CONSIDERED THE POINTS AND  
4 AUTHORITIES AS SUBMITTED BY BOTH SIDES THAT ARE  
5 CONTAINED IN THEIR MOTIONS.

6 I HAVE READ AND CONSIDERED THE ADDITIONAL  
7 POINTS AND AUTHORITIES THAT WERE SUBMITTED BY THE  
8 PEOPLE.

9 I HAVE LISTENED TO THREE TAPED INTERVIEWS  
10 WITH MR. JONES.

11 I HAVE REVIEWED THE VIDEOTAPE AT A CRIME  
12 SCENE WITH MR. JONES AND SEVERAL POLICE OFFICERS. I  
13 HAVE REVIEWED THAT VIDEOTAPE SEVERAL TIMES.

14 AS I UNDERSTAND YOUR MOTION, MR. THOMASON,  
15 IT'S ON TWO BASES.

16 THE FIRST BEING THAT THE DEFENDANT INVOKED  
17 HIS RIGHT WHEN HE SPOKE FIRST WITH DETECTIVE MORENO;  
18 SECOND, THAT MR. JONES' MENTAL STATUS IS SUCH THAT HE IS  
19 INCAPABLE OF WAIVING HIS RIGHTS.E.

20 IS THAT CORRECT?

21 MR. THOMASON: ALMOST. NOT NECESSARILY THAT HE'S  
22 TOTALLY INCAPABLE, BUT IN THIS CASE AND IN THE  
23 CIRCUMSTANCES OF THESE INTERVIEWS HE DID NOT KNOWINGLY  
24 AND INTELLIGENTLY WAIVE HIS MIRANDA RIGHTS.

25 THE COURT: ALL RIGHT.

26 AS I MENTIONED, I LISTEND TO ALL THE TAPES  
27 IN THIS MATTER, AND I HAVE READ THE TRANSCRIPT OF THOSE  
28 TAPES AS I WAS LISTENING TO THEM.

1 THE TAPE THAT YOU HAVE FOCUSED ON IN YOUR  
2 MOTION IS TAPE NUMBER 140822. IS THAT CORRECT?

3 MR. THOMASON: YES.

4 THE COURT: IS THERE ANY ISSUE AS TO THE OTHER  
5 TAPE NUMBER 141454 OR 141778 FOR THE PURPOSES OF THIS  
6 MOTION?

7 MR. THOMASON: NOT FOR THE FIRST PART, BUT AS TO  
8 THE SECOND PART THERE IS, SIMPLY, AS TO HOW THE  
9 INTERVIEWS WENT AND MR. JONES' ABILITY TO RESPOND.

10 THE COURT: ALL RIGHT.

11 JUST AS AN ASIDE, AND NOT PERTAINING TO THE  
12 MOTION, I DID NOTE IN THE TRANSCRIPT WHICH I WAS READING  
13 WHILE I WAS LISTENING TO THE TAPE THAT THERE ARE A LOT  
14 OF UNTRANSLATABLES MENTIONED IN THE TRANSCRIPT THAT ARE  
15 INDEED TRANSLATABLE WHEN YOU LISTEN.

16 I CAN CLEAR THAT UP SHOULD EITHER COUNSEL  
17 WISH.

18 ALL RIGHT.

19 FIRST, DO YOU WISH MARKED TAPE 140822 AS  
20 DEFENSE A FOR THE PURPOSE OF THIS MOTION?

21 MR. THOMASON: YES, YOUR HONOR.

22 THE COURT: IT WILL BE SO MARKED.

23  
24 (MARKED FOR ID ^ DEF. A, TAPE  
25 ----- ^ 140822.)  
26

27 THE COURT: IS THERE ANY ADDITIONAL EVIDENCE YOU  
28 WISH TO PRESENT ON THAT MATTER, MR. THOMASON?

1 MR. THOMASON: IN THE FIRST ISSUE ABOUT THE --  
2 THE COURT: THE WAIVER BY DETECTIVE MORENO.  
3 MR. THOMASON: NO; I BELIEVE DETECTIVE MORENO IS  
4 HERE.  
5 MS. INGALLS: YES.  
6 MR. THOMASON: I AM WILLING TO SUBMIT IT ON THE  
7 TAPE AND ON THE POINTS AND AUTHORITIES WHICH I  
8 PRESENTED.  
9 I THINK IT'S REAL REALLY PRETTY CLEAR.  
10 UNLESS THE COURT WANTS ADDITIONAL ARGUMENT, I'M PREPARED  
11 TO SUBMIT IT.  
12 I COULD RESPOND TO THE PEOPLE'S PAPERS THAT  
13 THEY FILED.  
14 THE COURT: FIRST LET ME INQUIRE OF MISS INGALLS.  
15 DO YOU WISH TO PRESENT ANY ADDITIONAL  
16 EVIDENCE ON THAT ISSUE?  
17 MS. INGALLS: YES, YOUR HONOR.  
18 THE PEOPLE WOULD ASK TO PRESENT DETECTIVE  
19 MORENO. HE IS PRESENT.  
20 I THINK THAT THERE IS SOME UNCLARITY WITH  
21 THE TAPE. AND THERE IS SOME -- THERE WERE PARTS OF THE  
22 TAPE THAT EITHER -- A PART OF THE CONVERSATION THAT WAS  
23 NOT TAPED OR WAS NOT RECORDED OR DUPLICATED.  
24 SO I WOULD LIKE TO CALL DETECTIVE MORENO TO  
25 FILL US IN ON THE CIRCUMSTANCES SURROUNDING THAT  
26 PARTICULAR WAIVER, IF THAT'S AGREEABLE WITH THE COURT.  
27 THE COURT: SURE.  
28 MS. INGALLS: PEOPLE CALL DETECTIVE MORENO,

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THE CLERK: RAISE YOUR RIGHT HAND.

ALEXANDER MORENO +

A PEOPLE'S WITNESS, CALLED, WAS SWORN AND TESTIFIED AS  
FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE  
THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

(WITNESS COMPLIES.)

MR. THOMASON: YOUR HONOR, I NOTE FOR THE RECORD  
THAT A WITNESS I INTEND TO CALL, DR. EFRAN BELIZ, IS  
PRESENT IN THE COURT NOW.

I WOULD ASK THAT HE BE ALLOWED TO REMAIN  
HERE DURING THE TESTIMONY.

THE COURT: IS THERE ANY OBJECTION TO THAT?

MS. INGALLS: NOT AT THIS POINT.

THE COURT: THAT'S FINE.

THE CLERK: STATE YOUR NAME,, SPELLING YOUR FIRST  
AND LAST NAME FOR RECORD.

THE WITNESS: ALEXANDER MORENO.

A-L-E-X -- LET ME START OVER; I NEVER SPELL  
MY FIRST.

A-L-E-X-A-N-D-E-R; MORENO, M-O-R-E-N-O.

1 THE CLERK: THANK YOU.

2 THE COURT: JUST ONE SECOND.

3

4 (BRIEF PAUSE.)

5

6 THE COURT: MISS INGALLS.

7 MS. INGALLS: THANK YOU, YOUR HONOR.

8

9 DIRECT EXAMINATION +

10 BY MS. INGALLS:

11 Q DETECTIVE MORENO, YOU CONDUCTED AN  
12 INTERVIEW WITH MR. JONES, THE DEFENDANT IN THIS CASE?

13 A YES.

14 Q APPROXIMATELY WHAT TIME OF YEAR WAS THAT?

15 A TO BE HONEST WITH YOU I DON'T RECALL.

16 I'D HAVE TO LOOK AT MY REPORT TO TELL YOU.

17 I THINK IT WAS '92.

18 Q OKAY.

19 AND AT THAT TIME YOU WERE WORKING AT WHAT  
20 PARTICULAR DIVISION?

21 A I WAS WORKING AT SOUTHEAST DIVISION,

22 Q NOW, WHEN YOU TALKED TO MR. JONES, THE  
23 DEFENDANT IN THIS CASE, DID YOU ADVISE HIM OF HIS  
24 MIRANDA RIGHTS?

25 A YES, I DID.

26 Q AND YOU HAVE HAD AN OPPORTUNITY TO LISTEN  
27 TO THE TAPE THAT IS NUMBERED 140822; IS THAT CORRECT?

28 A THAT IS CORRECT.

1 Q WHEN WAS THE FIRST TIME THAT YOU HAVE  
2 LISTENED TO THAT PARTICULAR TAPE?

3 A THE FIRST TIME I LISTENED TO IT WAS THE DAY  
4 AFTER THE INTERVIEW, WHEN I WAS FINISHING MY REPORT ON  
5 THAT INTERVIEW AND THE CRIME.

6 AND THEN IT'S BEEN A COUPLE OF YEARS. AND  
7 I LISTENED TO IT I THINK THE DAY -- NO, LAST WEEK WAS  
8 THE FIRST TIME THAT I LISTENED TO IT SINCE THEN.

9 Q THAT WAS IN PREPARATION FOR THIS HEARING?

10 A YES.

11 Q IN LISTENING TO THE TAPE DID YOU NOTICE  
12 ANYTHING MISSING FROM THE BEGINNING OF THE TAPE?

13 A YES, I DID.

14 Q AND WHAT WAS THAT?

15 A THE FIRST TWO QUESTIONS OF THE ADMONITION  
16 WERE NOT PRESENT ON THE TAPE.

17 Q SO CAN YOU DESCRIBE TO US HOW YOUR  
18 CONVERSATION WITH THE DEFENDANT, MR. JONES, WENT IN  
19 REGARD TO THE GIVING OF MIRANDA AND TAKING THE WAIVERS?

20 A WELL, TO CLARIFY, WOULD YOU LIKE ME TO  
21 DESCRIBE MY WHOLE TECHNIQUE, OR JUST FROM THE MIRANDA?

22 Q GO INTO YOUR WHOLE TECHNIQUE, IF THAT WOULD  
23 BE HELPFUL.

24 A WELL, BASICALLY WHAT I DO, I'LL SPEAK IN  
25 GENERALS TERMS.

26 I'LL GET SPECIFIC TO MR. JONES --

27 Q CAN I INTERRUPT YOU THERE. WHEN YOU SPEAK  
28 OF IN GENERAL TERMS, ARE YOU TALKING ABOUT THE GENERAL

1 TERMS YOU ARE SPEAKING OF YOU ALSO DID WITH MR. JONES?

2 A THAT'S CORRECT.

3 Q OKAY.

4 GO AHEAD, PLEASE.

5 A BASICALLY I GO TO THE JAIL THAT'S BY OUR  
6 STATION, I BRING THEM OUT, AND BASICALLY I EXPLAIN WHAT  
7 MY PURPOSE IS AND I TELL THEM THAT I'M GOING TO  
8 MIRANDIZE THEM.

9 AND BASICALLY I TELL THEM BASICALLY THEIR  
10 RIGHTS IN PLAIN ENGLISH BECAUSE SOMETIMES MIRANDA WILL  
11 BE CONFUSING TO SOME PEOPLE.

12 AND I TELL THEM YOU DON'T HAVE TO TALK TO  
13 ME IF YOU DON'T WANT TO;

14 YOU GOT A RIGHT TO HAVE AN ATTORNEY HERE  
15 BEFORE YOU TALK TO ME.

16 AND IF YOU TELL ME SOMETHING THAT I CAN USE  
17 AGAINST YOU IN COURT I WILL.3.

18 AND THAT'S BASICALLY -- AND I SAY I CAN'T  
19 MAKE YOU TALK TO ME, I CAN'T GET TO YOU TALK TO ME. I  
20 CAN'T MAKE YOU.

21 ALL I CAN DO IS ASK YOU TO TALK TO ME. IF  
22 YOU WANT TO TALK TO ME YOU CAN.

23 Q THAT IN GENERAL TERMS, THAT'S THE TYPE OF  
24 LANGUAGE YOU GENERALLY USE?

25 A YES.

26 Q AND DID YOU USE THAT TYPE OF LANGUAGE WITH  
27 MR. JONES?

28 A YES, I DID.

1 Q AND IS THAT ON THE TAPE?

2 A NO, IT IS NOT.

3 Q AND IN YOUR CONVERSATION WITH MR. JONES DID

4 HE APPEAR TO UNDERSTAND WHAT YOU WERE SAYING?

5 A YES.

6 Q AND THEN AFTER YOU DO THAT WHAT IS YOUR

7 NEXT PROCEDURE?

8 A THEN I PLACE THEM INTO THE ROOM, AS I DID

9 WITH MR. JONES.

10 AND I SAY, OKAY, NOW I'M GOING TO READ YOU

11 YOUR MIRANDA RIGHTS.

12 AND THEN I READ THEM THE RIGHT.

13 AND THEN THEY INDICATE TO ME WHETHER THEY

14 WANT TO WAIVE THEIR RIGHTS OR NOT.

15 Q SO IN THE CASE OF MR. JONES YOU WOULD GO

16 THROUGH THESE OFFICIAL, FORMAL MIRANDA RIGHTS; IS THAT

17 CORRECT?

18 A THAT IS CORRECT.

19 Q AND DO YOU RECALL WHAT YOU WOULD SAY? DO

20 YOU READ THEM FROM A CARD, OR DO YOU DO IT FROM MEMORY?

21 A I READ FROM A 15.03.0 AN L.A.P.D. FORM.

22 Q DO YOU HAVE THAT WITH YOU?

23 A NO, I DON'T.

24 Q YOU DON'T KNOW IF I HAVE IT?

25 A YOU WOULD FIND IT ON THE ARREST FACE SHEET,

26 IF HE HAS ARREST FACE SHEET. IT'S IN THE UPPER

27 RIGHT-HAND CORNER.

28 MS. INGALLS: HERE WE GO.

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MAY I APPROACH, YOUR HONOR?

THE COURT: YES.

(APPROACHES WITNESS.)

MS. INGALLS: I'M SHOWING HIM THE ARREST REPORT.

Q BY SHOWING YOU THE ARREST REPORT, IS THAT  
WHAT YOU ARE REFERRING TO?

A YES; IT'S THE FIRST PART OF MIRANDA.

WOULD YOU LIKE ME TO READ THOSE RIGHTS?

Q PLEASE.

A OKAY.

YOU HAVE THE RIGHT TO  
REMAIN SILENT.

IF YOU GIVE THE RIGHT TO  
REMAIN SILENT ANYTHING YOU SAY CAN AND  
WILL BE USED AGAINST YOU IN A COURT OF  
LAW.

YOU HAVE THE RIGHT TO  
SPEAK WITH AN ATTORNEY AND TO HAVE THE  
ATTORNEY PRESENT DURING QUESTIONING.

IF YOU SO DESIRE AND  
CANNTO AFFORD ONE AN ATTORNEY WILL BE  
APPOINTED WITHOUT CHARGE BEFORE  
QUESTIONING.

AND THERE ARE THREE SUBSEQUENT QUESTIONS  
THAT ARE ASKED THAT ARE NOT LISTED UNDER THIS FORM RIGHT  
HERE. THAT'S 15.03.0.

1                   BASICALLY I CAN FROM MEMORY RECITE THEM.

2                   BASICALLY:

3                               DO YOU UNDERSTAND THE

4                   RIGHTS I EXPLAINED TO YOU?

5                               YOU WAIT FOR AN ANSWER.

6                               DO YOU WISH TO GIVE UP

7                   THE RIGHT TO REMAIN SILENT?

8                               YOU WAIT FOR AN ANSWER.

9                               DO YOU WISH TO GIVE UP

10                  YOUR RIGHT TO HAVE AN ATTORNEY PRESENT

11                  BEFORE QUESTIONING?

12                               AND YOU WAIT FOR AN ANSWER.

13                  Q        SO YOU BASICALLY GAVE MR. JONES THE COMMON,

14                  MORE SIMPLE WAY OF TELLING SOMEBODY HIS RIGHTS.

15                               IS THAT CORRECT?

16                  A        THAT'S CORRECT.

17                  Q        AND THEN YOU GAVE HIM THIS MORE FORMAL

18                  ADMONITION?

19                  A        THAT IS CORRECT.

20                  Q        AND THEN YOU GO THROUGH THE THREE

21                  QUESTIONS?

22                  A        THAT IS CORRECT.

23                  Q        WHEN YOU WENT THROUGH THE FORMAL ADMONITION

24                  THIS TIME, AS YOU WERE READING IT OFF THE ARREST REPORT

25                  YOU SPOKE VERY QUICKLY.

26                               IS THAT HOW YOU WOULD GIVE IT? OR HOW YOU

27                  GAVE TO IT MR. JONES?

28                  A        WELL, A LITTLE BIT SLOWER. WHEN I GET KIND

1 OF NERVOUS I TEND TO SPEAK FASTER.

2 Q WHILE YOU WERE GIVING HIM THE FORMAL  
3 ADMONITION OF RIGHTS DID YOU THINK THAT THE TAPE WAS ON?

4 A YES, I DID.

5 Q NOW, WHY WOULD YOU THINK THAT THE TAPE WAS  
6 ON?

7 A BECAUSE IN SOUTHEAST DIVISION THE TAPE ROOM  
8 IS SEPARATE FROM THE INTERVIEW ROOM.

9 THERE IS A MICROPHONE INSIDE THE INTERVIEW  
10 ROOM THAT SENDS THE TRANSMISSION BACK TO THIS ROOM.

11 AND I HAVE TO RUN TO THIS ROOM. I DON'T  
12 KNOW; IT'S ABOUT 40 OR 50 FEET AWAY, AROUND A COUPLE OF  
13 CORNERS AWAY FROM THE INTERVIEW ROOM.

14 I INSERT THE TAPE, TURN IT ON. MAKE SURE  
15 IT'S RUNNING.

16 THEN I GO BACK TO THE INTERVIEW ROOM.

17 USUALLY BY THAT TIME -- THERE IS A LEAD-IN  
18 ON THE TAPE; THAT'S ENOUGH TIME FOR THE LEAD-IN TO WIND  
19 IN. SO THAT THE RECORDING TAPE IS RECORDING BY THE TIME  
20 YOU GET BACK TO THE ROOM.

21 Q OKAY.

22 SO YOU THOUGHT THAT YOU STARTED RECORDING  
23 WHEN YOU STARTED THE FORMAL ADMONITION OR THE MORE, IN  
24 STREET TERMS, MORE SIMPLE WAY OF EXPLAINING THE RIGHTS?

25 A I STARTED RECORDING BEFORE THE FORMAL  
26 ADMONITION.

27 Q THE THREE QUESTIONS THAT YOU ASKED HIM, DID  
28 ANY OF THE THREE SHOW UP ON THE TAPE?



1 STOP THIS INTERVIEW ANY TIME YOU WANT,  
2 THERE IS NOTHING I CAN DO TO MAKE YOU  
3 TALK TO ME, NOTHING.

4 AND HE INDICATED TO ME DURING THAT TIME:

5 WELL, I WANT TO TALK TO  
6 YOU, I WANT TO GET THIS CLEARED UP.

7 I SAID WHEN HE SAID NO, AFTER HE HAD  
8 FINISHED TELLING ME BEFORE THAT HE DIDN'T WANT TO TALK  
9 TO ME, MY FIRST RESPONSE WAS:

10 WAIT A MINUTE. THIS GUY  
11 TOLD ME HE WANTED TO TALK TO ME; NOW  
12 HE'S TELLING ME HE DOESN'T WANT TO  
13 TALK TO ME.

14 SO I PUT THE QUESTION TO HIM:

15 YOU DON'T WANT TO TALK TO  
16 ME?

17 AND THEN I THINK HE SAID:

18 OH, YEAH, I WANT TO TALK  
19 TO YOU.

20 AND THEN I RECLARIFIED THE QUESTION SO HE  
21 UNDERSTOOD THE QUESTION. I PHRASED IT AGAIN. I DON'T  
22 KNOW EXACTLY WHAT I SAID. I GO:

23 SO DO YOU GIVE UP YOUR  
24 RIGHT TO AN ATTORNEY?

25 AND THEN HE SAID SOMETHING THAT WASN'T  
26 CLEAR TO ME, AND I SAID:

27 IS THAT YES OR NO?

28 AND HE SAID:

1 YES.

2 AND THEN WE CONTINUED WITH THE INTERVIEW.

3 Q SO WHEN YOU MENTIONED SOMETHING ABOUT YOU  
4 WANTED TO CLEAR THIS UP RIGHT NOW, HAD HE INDICATED  
5 WHETHER HE WAS GUILTY OR NOT GUILTY OF THE RAPE  
6 INVESTIGATION YOU WERE CONDUCTING AGAINST HIM?

7 A HE DIDN'T REALLY INDICATE -- I DIDN'T ASK  
8 HIM THAT QUESTION. I DON'T ASK THAT QUESTION BEFORE I  
9 GIVE THEM MIRANDA.

10 USUALLY WHAT I DO IS, WHOEVER I'M  
11 INVESTIGATING, I TELL THEM THE NATURE OF THE  
12 INVESTIGATION, THAT I WANT TO TALK TO THEM ABOUT IT.

13 AND I ASK THEM IF THEY WANT TO TALK TO ME  
14 ABOUT IT.

15 I DON'T ASK THEM BEFORE I TURN ON THE TAPE  
16 WHETHER THEY DID IT OR NOT.

17 Q SO WHEN YOU ASKED --

18 WHEN HE ANSWERED IN RESPONSE TO YOUR  
19 QUESTION DO YOU WISH TO GIVE UP THE RIGHT TO SPEAK TO AN  
20 ATTORNEY AND HAVE THE ATTORNEY PRESENT DURING THE  
21 QUESTIONING, AND HE SAID NO TO YOU, THAT WAS AN  
22 AMBIGUOUS OR EQUIVOCAL ANSWER IN RELATION TO THE  
23 CONTENTS OF THE CONVERSATION YOU ALREADY HAD?

24 A RIGHT.

25 IN OTHER WORDS, TOTALLY CONTRADICTORY WITH  
26 EVERYTHING WE TALKED ABOUT.

27 SO AS FAR AS HE WANTED TO TALK TO ME.  
28 THAT'S WHY I PUT THE QUESTION:



1           A       NO; I MAKE IT EXTRA SIMPLE FOR EVERYBODY SO  
2 THERE IS NO MISUNDERSTANDING.

3           Q       AND THEN DID YOU KNOW ANYTHING ABOUT MR.  
4 JONES' BACKGROUND BEFORE THIS INTERVIEW?

5           A       WHAT I KNEW ABOUT HIM I GOT FROM THE ARREST  
6 REPORT.

7                    AND IT INDICATED TO ME HE WORKED AT A TACO  
8 BELL. I KNEW HE LIVES WITH HIS MOTHER.

9                    AND THAT WAS THE EXTENT OF IT.

10                   I KNEW NOTHING PERSONAL ABOUT HIM, NO.

11           Q       YOU DIDN'T KNOW ANYTHING ABOUT HIS  
12 SCHOOLING LEVEL, DID YOU?

13           A       NO, I DID NOT.

14           Q       DID YOU KNOW ANYTHING ABOUT HIS MENTAL  
15 ABILITIES?

16           A       NO.

17           Q       YOU DIDN'T DO ANYTHING TO TAILOR YOUR  
18 MIRANDA WAIVERS OR THE INTERVIEW TO HIS PARTICULAR  
19 MENTAL LEVEL; CORRECT?

20           A       THAT IS CORRECT.

21           Q       JUST THE SAME AS YOU WOULD FOR ANYBODY  
22 ELSE.

23           A       YES.

24           Q       THERE IS A PORTION ON THE TAPE PRIOR TO THE  
25 FORMAL WAIVER WHERE YOU ARE GOING OVER IN YOUR  
26 SIMPLIFIED MANNER THE RIGHTS.

27                    CORRECT?

28           A       THAT IS CORRECT.

1 Q IT'S JUST THE WHOLE THING ISN'T ON THERE.

2 A I'M SORRY?

3 Q IT'S JUST THAT YOUR WHOLE SIMPLIFIED  
4 TECHNIQUE IS NOT ON THE TAPE; RIGHT?

5 A WELL, ACTUALLY I DON'T RECORD THAT PART.  
6 WHEN I BRING, I BRING SOMEBODY IN I HAVE TO  
7 GET THEM FROM THE JAIL GET THEM DOWN.

8 THEN I HAVE TO RUN OVER AND TURN ON THE  
9 TAPE.

10 WHILE I'M BRINGING THEM IN FROM THE JAIL  
11 AND SETTING THEM DOWN I BASICALLY TRY TO MAKE THEM FEEL  
12 AS COMFORTABLE AS POSSIBLE TO KNOW WHAT'S HAPPENING.

13 I TELL THEM WHO I AM AND MY PURPOSE. AND  
14 THEN I TELL THEM THAT, LIKE I SAID BEFORE, I TELL THEM I  
15 WANT TO TALK TO YOU BUT YOU DON'T HAVE TO TALK TO ME  
16 BECAUSE YOU HAVE THESE RIGHTS THAT ARE IN THE  
17 CONSTITUTION.

18 THEN I GO THROUGH THAT.

19 Q BUT A PORTION OF THAT IS ACTUALLY ON THE  
20 TAPE THAT YOU REVIEWED; CORRECT?

21 A THE FORMAL MIRANDA IS ON THE TAPE. OR  
22 SHOULD BE ON THE TAPE.

23 THE INFORMAL PART IS NOT ON THE TAPE OR  
24 WOULDN'T BE ON THE TAPE.

25 MR. THOMASON: I HAVE NOTHING ELSE.

26 THE COURT: ANYTHING FURTHER?

27 MS. INGALLS: NO, YOUR HONOR.

28 THE COURT: THANK YOU, DETECTIVE. YOU MAY STEP

1 DOWN, SIR.

2 THE WITNESS: THANKS.

3 MS. INGALLS: YOUR HONOR, MAY HE STAY FOR THE  
4 SECOND PART OF THE MOTION?

5 THE COURT: SURE.

6 ANY FURTHER WITNESSES ON BEHALF OF THE  
7 PEOPLE?

8 MS. INGALLS: NO, YOUR HONOR.

9 THE COURT: MR. THOMASON, DO YOU WISH TO BE  
10 HEARD?

11 MR. THOMASON: YES, YOUR HONOR.

12 I DON'T THINK THE TESTIMONY HERE TODAY  
13 CHANGES ANYTHING FROM THE OUTCOME THAT I THINK THE CASE  
14 LAW MANDATES IN THIS CASE.

15 THE DISTRICT ATTORNEY IS CORRECT IN THAT  
16 THE LAW IS THAT YOU CAN CLEAR UP AN AMBIGUOUS REQUEST TO  
17 A PERSON.

18 HOWEVER, IN THIS CASE THERE IS NOTHING  
19 AMBIGUOUS ABOUT THE WAY.

20 YOU KNOW, THERE IS A POPULAR T-SHIRT YOU  
21 CAN BUY DOWN ON VENICE BEACH RIGHT NOW. IN FACT, THE  
22 CLERKS IN THIS COURTHOUSE OFTEN HAVE IT.

23 IT HAS "WHAT PART OF NO DON'T YOU  
24 UNDERSTAND" EMBLAZONED ON THE T-SHIRT OR NEAR THE  
25 CLERK'S DESK.

26 AND I THINK THAT'S EXACTLY THE SITUATION  
27 HERE.

28 THE QUESTION WAS:

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DO YOU WISH TO GIVE UP  
YOUR RIGHT TO AN ATTORNEY?

THE ANSWER WAS:

NO.

AND THE CASE LAW WHICH I CITED TO THE COURT  
IS DIRECTLY ON POINT; THAT ANYTHING AFTERWARDS CANNOT BE  
USED TO CREATE AN AMBIGUITY OR TO PURPORT TO CLEAR UP  
ANY AMBIGUITY.

THAT IS THE CASE OF SMITH VERSUS ILLINOIS,  
WHICH I STATED, 1989, WHICH IS SIGNIFICANT SINCE IT'S  
LATER THAN MOST OF THE CASES THAT THE DISTRICT ATTORNEY  
HAS CITED.

GIVEN THAT RESPONSE, NO, IT WOULD HAVE BEEN  
INCUMBENT ON MR. JONES TO START THE CONVERSATION BACK  
UP.

IF IN FACT THE OFFICER HAD SAID, OH, AND  
GOT UP AND STARTED TO LEAVE, THEN MR. JONES COULD SAY,  
WAIT A MINUTE, I WANT TO TALK TO YOU, OR SOMETHING LIKE  
THAT. THEN IT WOULD BE LEGAL.

BUT IT'S NOT PERMISSIBLE FOR THE OFFICER TO  
SAY, OH, I THOUGHT YOU DID, OR DON'T YOU WANT TO TALK TO  
ME, EXACTLY AS THE TAPE SHOWS IN THIS PARTICULAR CASE.

THE OFFICER TESTIFIED HERE THAT MR. JONES  
CONTRADICTED WHAT HE EARLIER SAID.

THE CONTRADICTION IS NOT AN AMBIGUITY OR A  
FUZZINESS. IT IS A STRAIGHT-OUT OPPOSITE.

SO NOTHING THAT THE OFFICER SAID HERE,  
NOTHING IN THE DISTRICT ATTORNEY'S POINTS AND

1 AUTHORITIES THAT SHE CITED CHANGE WHAT I BELIEVE SHOULD  
2 BE THE OUTCOME.

3 AND THAT IS HE INVOKED HIS RIGHT; THAT CUTS  
4 IT OFF, AND IT CUTS OFF ALL FUTURE POLICE INITIATED  
5 INTERROGATION.

6 AND I ASK YOU THROW OUT EVERYTHING.

7 THE COURT: THANK YOU.

8 MISS INGALLS.

9 MS. INGALLS: YES, YOUR HONOR.

10 I THINK WHAT HAS HAPPENED HERE IS THAT  
11 COUNSEL HOOKED ONTO A MISSING PORTION IN THE TAPING OF  
12 THIS CASE.

13 AND CLEARLY THROUGH THE TESTIMONY PROVIDED  
14 THERE WAS A GREAT DEAL OF CONTEXT IN WHICH THE  
15 INVESTIGATOR WAS CLEARLY WITHIN THE LEGAL BOUND TO  
16 CLARIFY WHAT HE PERCEIVED AS AN EQUIVOCAL ANSWER BY THE  
17 DEFENDANT.

18 THIS PARTICULAR DETECTIVE WENT TO GREAT  
19 LENGTHS TO EXPLAIN THE MIRANDA RIGHTS IN VERY SIMPLE  
20 LANGUAGE.

21 AND HE DETERMINED EVEN BEFORE HE TURNED ON  
22 THE TAPE OR ATTEMPTED TO TURN ON THE TAPE IN A TIMELY  
23 FASHION WHETHER OR NOT THE DEFENDANT WISHED TO TALK TO  
24 HIM OR NOT TO TALK TO HIM.

25 AFTER MAKING THAT DETERMINATION HE WENT AND  
26 TURNED ON THE TAPE, AND THEN WENT THROUGH THE FORMAL  
27 STATEMENT OF RIGHTS, ET CETERA, KNOWING THAT THE  
28 DEFENDANT WISHED TO TALK TO HIM.

1                   NOW, WHEN HE GETS TO THE ONE QUESTION DO  
2 YOU WISH TO GIVE UP THE RIGHT TO SPEAK TO AN ATTORNEY  
3 AND HAVE THE ATTORNEY PRESENT DURING QUESTIONING THE  
4 SIMPLE ANSWER OF NO OBVIOUSLY TAKES DETECTIVE MORENO  
5 ABACK AND HE SEEMS KIND OF TO CONTRADICT WHAT HAD  
6 OCCURRED BEFORE.

7                   SO HE ONLY FOLLOWS UP VERY BRIEFLY AND  
8 WHAT'S ALLOWABLE UNDER THE CASE LAW WITH SOME CLARIFYING  
9 QUESTIONS, AND HE GOES ACTUALLY TO THE ADVANTAGE OF THE  
10 DEFENDANT IN THAT TO MAKE SURE THE DEFENDANT WANTED TO  
11 GIVE UP HIS RIGHT TO AN ATTORNEY AND SPEAK WITH HIM.

12                   THIS IS NOT THE TYPE OF CASE CITED BY  
13 COUNSEL WHERE ACTUALLY THE POLICE WENT ON AND ON, MAYBE  
14 COERCING THE DEFENDANT, KIND OF ARGUING WITH THE  
15 DEFENDANT IN ORDER TO GET HIM TO WAIVE HIS RIGHTS, OR  
16 USING SOME TIME OF SUBSEQUENT CONDUCT SUCH AS ACTUALLY  
17 ANSWERING QUESTIONS BROUGHT ON BY THE DETECTIVE TO THE  
18 DEFENDANT AND SAYING SEE, HE DID WAIVE HIS RIGHTS, THERE  
19 YOU HAVE IT.

20                   FROM THE TOTALITY OF THE CIRCUMSTANCES, THE  
21 WHOLE CONTEXT OF THE CONVERSATION, THIS IS CLEARLY AN  
22 EQUIVOCAL ANSWER, AND IT WAS INCUMBENT ON THE DETECTIVE  
23 IN THIS CASE TO CLEAR IT UP, TO SEE WHETHER OR NOT THE  
24 DEFENDANT WOULD RESPOND TO HIS QUESTIONS AND WANTED TO  
25 WAIVE HIS RIGHTS.

26                   THE COURT:   THANK YOU.

27                   FIRST OF ALL, HAVING HEARD FROM THE  
28 DETECTIVE MORENO, IT DID HIS APPEAR THAT THE RIGHT WERE

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GIVEN TO THE DEFENDANT IN FULL.

WHAT APPEARS ABSENT FROM THE TAPE WAS FILLED IN BY DETECTIVE MORENO AT TODAY'S HEARING.

SO IT APPEARS TO THE COURT ALL THE RIGHTS WERE EXPLAINED TO HIM APPROPRIATELY.

HAVING LISTENED TO THE TAPE AND LISTENED TO THE PORTION OF THE ADVISEMENT ON THE TAPE I DIDN'T DETECTS ANY COERCION BEING UTILIZED SUCH AS TRICKERY OR DECEIT HERE.

INDEED, I DIDN'T HEAR ANY INTERROGATION BEFORE OR AFTER MR. JONES' STATEMENT OF NO, AT LEAST IMMEDIATELY.

AFTER HIS STATEMENT OF NO WHAT I HEARD WAS WHAT DETECTIVE MORENO TESTIFIED HERE, CLARIFYING QUESTIONS, INDEED WHETHER OR NOT THE DEFENDANT WANTED TO TALK TO HIM.

YOU REALLY GOT TO LISTEN TO THE TAPE. IT BECOMES READILY APPARENT WHEN YOU LISTEN TO THE TAPE THAT THE DETECTIVE IS MERELY CLARIFYING THE DEFENDANT'S WISHES.

INTERESTINGLY, IN ALL THE CASES PROVIDED, IN NASH VERSUS ESTELLE, THAT'S A CASE WHEN THE DEFENDANT IS BEING ADVISED OF HIS RIGHT TO AN ATTORNEY, HE'S TOLD YOU WANT TO HAVE ONE APPOINT FOR YOU; THE DEFENDANT REPLIES YES, SIR.

THE DISTRICT ATTORNEY GOES:

OKAY. I HAD HOPED THAT WE MIGHT TALK ABOUT THIS, BUT IF YOU

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WANT A LAWYER APPOINTED, THEN WE GO  
GOING TO STOP RIGHT NOW.

AND THE DEFENDANT GOES ON TO EVENTUALLY  
STATE THAT HE WANTS A LAWYER BUT HE WANTS TO TALK ABOUT  
IT RIGHT NOW, KIND ON POINT WITH THE SITUATION BEFORE  
THE COURT.

IN WHAT I HAVE HEARD I FIND THAT THE  
OFFICER'S FURTHER QUESTIONING WAS NOT AN INTERROGATION.  
INDEED, HE WAS CLARIFYING THE RESPONSE THAT HE HAD  
RECEIVED, ESPECIALLY IN LIGHT OF WHAT DOES NOT APPEAR ON  
THE TAPE AND THE PREVIOUS COMMENTS OF MR. JONES, THE  
PREVIOUS COMMENTS OF DETECTIVE MORENO TO MR. JONES.

SO THAT PORTION OF THE MOTION WILL BE  
DENIED.

THE SECOND PORTION OF THE MOTION GOES TO  
THE PAST HISTORY CAPACITY OF MR. JONES.

AS I HAVE INDICATED, I HAVE LISTENED TO THE  
OTHER TWO TAPES.

DO YOU WISH TAPE NUMBER 141454 TO BE MARKED  
AS DEFENDANT'S B?

MR. THOMASON: YES, PLEASE.

THE COURT: SO MARKED.

(MARKED FOR ID ^ DEF. B-1  
----- ^ TAPE 141454.)

THE COURT: AND 141778 AS DEFENDANT'S C?

MR. THOMASON: YES.

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(MARKED FOR ID ^ DEF. C-1  
----- ^ TAPE 141778.)

THE COURT: DO YOU WISH THE VIDEOTAPE MARKED AS  
WELL?

MR. THOMASON: PLEASE.

THE COURT: DEFENDANT'S D

(MARKED FOR ID ^ DEF. D, VIDEO  
----- ^ TAPE.)

THE COURT: HOW ABOUT IF WE MARK THE TRANSCRIPT  
THAT I WAS PROVIDED, THE ONE FOR TAPE DEFENDANT'S B --  
I WILL HAVE THE TAPE ITSELF MARKED  
DEFENDANTS B-1, AND THE TRANSCRIPT DEFENDANT'S B-2.

(MARKED FOR ID ^ DEF. B-2, TRANSCRIPT  
----- ^ OF B-1.)

MR. THOMASON: THAT'S FINE WITH ME. IT'S JUST TO  
THE EXTENT THAT THE TRANSCRIPT AIDS THE COURT.

BUT I'M SURE EVERYBODY IS IN AGREEMENT THAT  
THE TAPE ACTUALLY CONTROLS OVER THE TRANSCRIPT.

THE COURT: YES. BUT IT'S ALL PART OF WHAT I  
LISTENED TO.

SO JUST FOR THE PURPOSE OF THIS MOTION IT  
WILL BE B-1 AND B-2 AND C-1 AND C-2.

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(MARKED FOR ID ^ DEF. C-2, TRANSCRIPT  
----- ^ OF C-1.)

THE COURT: ALL RIGHT, MR. THOMASON.

MR. THOMASON: THANK YOU, YOUR HONOR.

AT THIS TIME I WOULD CALL DR. EFRAIN BELIZ  
TO THE STAND, PLEASE.

THE CLERK: RAISE YOUR RIGHT HAND.

EFRAIN BELIZ @  
A DEFENSE WITNESS, CALLED, WAS SWORN AND TESTIFIED AS  
FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE  
THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND  
NOTHING BUT THE TRUTH, SO HELP YOU GOD?

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

(WITNESS COMPLIES.)

THE CLERK: PLEASE STATE YOUR NAME, SPELLING YOUR  
FIRST AND LAST NAME FOR THE RECORD.

THE WITNESS: EFRAIN, E-F-R-A-I-N; BELIZ,  
B-E-L-I-Z.

THE CLERK: THANK YOU.

1 DIRECT EXAMINATION @

2 BY MR. THOMASON:

3 Q DR. BELIZ, WOULD YOU TELL US YOUR  
4 OCCUPATION, PLEASE.

5 A I'M A CLINICAL PSYCHOLOGIST.

6 THE COURT: DOCTOR --

7 ONE SECOND, MR. THOMASON.

8 JUST SIT BACK, SIR. THAT MOVES. MAKE  
9 YOURSELF COMFORTABLE.

10 THE WITNESS: THANK YOU.

11 Q BY MR. THOMASON: CAN YOU TELL US WHAT YOUR  
12 TRAINING AND EXPERIENCE IS IN TERMS OF A CLINICAL  
13 PSYCHOLOGIST?

14 A I HAVE BEEN IN MENTAL HEALTH SINCE 1976  
15 WHEN I GRADUATED WITH A DEGREE IN CLINICAL SOCIAL WORK  
16 FROM USC.

17 AND HAVE BEEN PERFORMING PSYCHOLOGICAL  
18 VALUATIONS SINCE THEN.

19 IN 1977 I STARTED IN A PH.D. PROGRAM IN  
20 CLINICAL PSYCHOLOGY.

21 FROM 1979 TO 1982 I WAS A CLINICAL FELLOW  
22 IN PSYCHOLOGY IN THE DEPARTMENT OF PHSYCHIATRY AT  
23 HARVARD MEDICAL SCHOOL.

24 I THEN IN 1986 WAS LICENSED AS A CLINICAL  
25 PSYCHOLOGIST.

26 FROM 1982 UNTIL 1991 I WAS A -- I WORKED IN  
27 A COMMUNITY MENTAL HEALTH PROGRAM WHERE I WAS AT  
28 ASSISTANT CLINICAL DIRECTOR AND THE CLINICAL DIRECTOR

1 FROM APPROXIMATELY 1987 TO 1991.

2 CURRENTLY I'M ASSISTANT CLINICAL PROFESSOR  
3 IN THE DEPARTMENT OF PHSYCHIATRY AND BIOBEHAVIORAL  
4 SERVICES AT UCLA HARBOR SCHOOL OF MEDICINE.

5 I AM A QUALIFIED MEDICAL EXAMINER FOR THE  
6 STATE OF CALIFORNIA INDUSTRIAL RELATIONS BOARD.

7 I'M ALSO ON THE ALIENIST PANEL FOR THE  
8 COURT, AT ADULT CRIMINAL COURT AND JUVENILE COURT.

9 AND I'M IN PRIVATE PRACTICE.

10 I'M ALSO CURRENTLY WITH THE ARCHDIOCES OF  
11 LOS ANGELES PERFORMING PSYCHO-DIAGNOSTIC EVALUATIONS OF  
12 INDIVIDUALS WHO ARE IN THE CLERGY THAT ARE HAVING  
13 DIFFICULTIES AS WELL AS INDIVIDUALS WHO ARE APPLYING TO  
14 RELIGIOUS ORDERS.

15 FROM 1989 TO ABOUT 1991 I WAS CONSULTANT  
16 WITH THE NATIONAL INSTITUTE OF MENTAL HEALTH PROVIDING A  
17 SECOND OPINION TO THE DEPARTMENT OF JUSTICE WITH RESPECT  
18 TO CUBAN INMATES, MARIELITOS, WHO WERE IN FEDERAL  
19 PRISON.

20 CURRENTLY I'M A CONSULTANT WITH THE WEST  
21 SIDE REGIONAL CENTER FOR DEVELOPMENTAL DISABILITY AND  
22 THE NORTH LOS ANGELES COUNTY AGENCY FOR DEVELOPMENT  
23 DISABILITY.

24 AND WHAT I DO THERE PRIMARILY IS PROVIDE  
25 ASSESSMENT WITH RESPECT TO CAUSATIVE ADOPTIVE LEVELS OF  
26 FUNCTIONING.

27 Q DO YOU CURRENTLY HAVE ANY PARTICULAR  
28 SPECIALTY THAT YOU ARE INVOLVED IN AS A CLINICAL

1 PSYCHOLOGIST?

2 A MOST OF MY WORK HAS TO DO WITH  
3 PSYCHODIAGNOSTIC ASSESSEMENTS.

4 MAYBE 35 PERCENT OF MY WORK WOULD INVOLVE  
5 ASSESSMENTS OF INTELLECTUAL FUNCTIONING AND PSYCHIATRIC  
6 FUNCTIONING.

7 Q AND THE WORK WITH THE WEST SIDE REGIONAL  
8 CENTER, THAT'S IN REGARD TO DEVELOPMENTAL DISABILITIES;  
9 IS THAT RIGHT?

10 A YES.

11 Q IS MENTAL RETARDATION A PART OF THAT  
12 PARTICULAR WORK?

13 A THAT IS THE DEVELOPMENT DISABILITY.

14 Q IS THAT ALSO, MENTAL RETARDATION, BASICALLY  
15 PART OF THE PSYCHOMETRIC EVALUATION THAT YOU SPOKE OF  
16 JUST MOMENTS AGO?

17 A YES, SIR.

18 Q YOU ARE ON THE PANEL FOR THE SUPERIOR COURT  
19 PSYCHOLOGISTS?

20 A YES.

21 Q AS SUCH HAVE YOU TESTIFIED IN COURT BEFORE?

22 A YES, I HAVE.

23 Q HAVE YOU EVER BEEN CALLED BY THE  
24 PROSECUTION TO TESTIFY IN COURT. THE DISTRICT  
25 ATTORNEY'S OFFICE.

26 A YES, I HAVE.

27 Q AND YOUR TESTIMONY HERE IS PURSUANT TO AN  
28 APPOINTMENT FROM THAT PANEL; IS THAT RIGHT?

1 A YES, SIR.

2 Q DID YOU PREPARE A REPORT IN CONNECTION  
3 WITH --

4 FIRST OF ALL, DID YOU DO AN EVALUATION OF  
5 THE DEFENDANT, DAVID ALLEN JONES?

6 A YES, I DID.

7 Q DID YOU PREPARE A REPORT IN CONNECTION WITH  
8 THAT?

9 A YES, I DID.

10 MR. THOMASON: YOUR, HONOR MAY I APPROACH?

11 THE COURT: SURE.

12

13 (APPROACHES WITNESS.)

14

15 Q BY MR. THOMASON: LET ME SHOW YOU A 28 PAGE  
16 PIECE OF PAPER.

17 IF YOU CAN TAKE A LOOK AT THAT.

18 DOES THAT APPEAR TO BE A COPY OF THE REPORT  
19 THAT YOU PREPARED IN CONNECTION WITH THIS CASE?

20 A YES, IT IS.

21 MR. THOMASON: YOUR HONOR, BEING THIS BE MARKED  
22 AS DEFENDANT'S E?

23 THE COURT: E, SO MARKED.

24

25 (MARKED FOR ID ^ DEF. E, DR. BELIZ

26 ----- ^ REPORT.)

27

28 Q BY MR. THOMASON: SIR, IN CONNECTION WITH

1 YOUR REPORT AND EVALUATION OF DAVID JONES, CAN YOU  
2 BRIEFLY TELL US WHAT MATERIALS YOU REVIEWED?

3 A I REVIEWED A TRANSCRIPTION OF A TAPE  
4 INTERVIEW.

5 I NOTED TAPE NUMBER 141454. AND TAPE  
6 NUMBER 141778.

7 ALSO A VIDEO TAPE CASSETTE.

8 A PSYCHOLOGICAL EVALUATION DATED NOVEMBER  
9 13TH, 1982 BY DR. OLIVER SLAUGHTER, PH.D., AND A  
10 PSYCHOLOGICAL EVALUATION DATED DECEMBER 3RD, 1990 BY DR.  
11 CHARLES WEINSTEIN, PH.D.

12 Q WHAT ELSE DID YOU DO IN CONNECTION WITH  
13 YOUR REPORT THAT YOU ARE LOOKING AT?

14 A EXCUSE ME?

15 Q WHAT ELSE DID YOU DO IN CONNECTION WITH THE  
16 EVALUATION OF DAVID JONES?

17 A I PERFORMED AN EVALUATION THAT INCLUDED A  
18 DETAILED LIFE HISTORY, A MENTAL STATUS EXAMINATION, AND  
19 SEVERAL PSYCHOLOGICAL TESTS DESIGNED TO ASSESS TWO  
20 AREAS.

21 ONE WAS HIS INTELLECTUAL LEVEL.

22 THE OTHER WAS HIS PERSONALITY STATE.

23 AND MY, I GUESS, GOAL WAS TO DETERMINE HIS  
24 LEVEL, HIS COGNITIVE ABILITY. IN OTHER WORDS, HIS I.Q.

25 AND ALSO TO TAKE A LOOK AT WHETHER OR NOT  
26 HE WAS PSYCHOTIC, OR SUFFERING FROM SOME SIGNIFICANT  
27 MENTAL DISORDER.

28 Q HOW MANY INTERVIEWS DID YOU DO WITH MR.

1 JONES?

2 A TWO.

3 Q AND COULD YOU TELL US THE APPROXIMATE  
4 LENGTH OF TIME TOTAL YOU SPOKE WITH MR. JONES?

5 A I WOULD IMAGINE IT WAS AT LEAST SIX HOURS  
6 TO EIGHT HOURS ON EACH DAY.

7 Q THAT WOULD HAVE BEEN AT THE COUNTY JAIL; IS  
8 THAT RIGHT?

9 A YES, SIR.

10 Q AFTER PREPARING A REPORT DID YOU REVIEW ANY  
11 OTHER MATERIALS PRIOR TO YOUR TESTIMONY TODAY?

12 A I DID REVIEW LAST NIGHT A VIDEOTAPE.

13 Q IS THAT THE SAME ONE YOU LOOKED AT EARLIER?

14 A I THINK SO.

15 Q DID YOU ALSO LISTEN TO A THIRD TAPE  
16 RECORDING IN THE LAST MONTH OR SO?

17 A YES, I DID.

18 Q AND DO YOU RECALL THE NAME OF THE POLICE  
19 OFFICER ON THE TAPE GIVING THAT INTERVIEW?

20 A DETECTIVE MORENO.

21 Q THAT WAS THE OFFICER WHO TESTIFIED JUST  
22 PREVIOUS TO YOUR TESTIMONY HERE?

23 A YES.

24 Q YOU DIDN'T ACTUALLY REVIEW THAT ONE PRIOR  
25 TO MAKING YOUR REPORT, THOUGH, DID YOU?

26 A NO, I DID NOT.

27 Q IT WASN'T PROVIDED FOR YOU, WAS IT?

28 A NO.

1 Q WHOSE FAULTS WAS THAT?

2 A (NO RESPONSE.)

3 Q IN TERMS OF MR. JONES, WERE YOU ABLE TO  
4 REACH A CONCLUSION AS TO HIS OVERALL MENTAL ABILITY?

5 A YES, I WAS.

6 Q AND CAN YOU DESCRIBE BRIEFLY YOUR  
7 CONCLUSION.

8 A YES.

9 I FOUND HIM TO BE MILDLY MENTALLY RETARDED.  
10 AND IF YOU WILL BEAR WITH ME I CAN GIVE YOU  
11 AN ESTIMATE OF HIS I.Q.

12 HE HAS A VERBAL I.Q. OF 60, PERFORMANCE  
13 I.Q. SCORE OF 73, AND A FULL SCALE I.Q. SCORE OF 65.

14 I MIGHT ALSO NOTE THAT -- LET'S SEE; I  
15 PERFORMED TWO ADDITIONAL TESTS THAT ASSESS ONE'S  
16 INTELLIGENCE. AND I CAN PROVIDE THOSE I.Q. SCORES AS  
17 WELL IF YOU WISH.

18 Q YES, WHAT ARE THOSE.

19 A OKAY.

20 ON THE PEABODY PICTURE VOCABULARY TEST,  
21 WHICH IS A TEST WHICH MEASURES RECEPTIVE VOCABULARY,  
22 WHAT PEOPLE UNDERSTAND, HE OBTAINED AN I.Q. SCORE OF --  
23 THE STANDARD SCORE OF 55.

24 THAT'S NOT QUITE LIKE AN I.Q. SCORE. BUT  
25 IF YOU ASSUME THIS AN I.Q. SCORE OF 100 IS NORMAL,  
26 AVERAGE, THEN A STANDARD SCORE OF 100 IS ALSO AVERAGE.

27 SO HE WAS A STANDARD SCORE OF 55.

28 AND HE ALSO WITH A PERCENTILE OF LESS THAN

1 1, WHICH MEANS 99 PERCENT OF THE PEOPLE HIS AGE WOULD DO  
2 BETTER.

3 THAT PARTICULAR TEST YIELDS AN AGE LEVEL,  
4 SORT OF LIKE WHAT'S THE AVERAGE THIS GUY IS ABLE TO  
5 UNDERSTAND.

6 IT CAME OUT TO ABOUT TEN AND A HALF YEARS.  
7 THERE IS A PLUS OR MINUS, A RANGE THERE.

8 SO IT WOULD BE PROBABLY BE FROM ABOUT NINE  
9 AND A HALF TO ABOUT 11 OR SO.

10 SO HIS RECEPTIVE LANGUAGE CAME OUT TO ABOUT  
11 THAT OF A 10-YEAR-OLD.

12 THEN I ALSO PERFORMED A LEITER  
13 INTERNATIONAL PERFORMANCE SCALE. THAT'S ALSO FAIRLY  
14 WELL USED AND RELIABLE.

15 IT'S NOT THE BEST TEST, BUT IT'S ONE THAT  
16 YOU CAN USE.

17 IT ALSO ASSESSES ONE'S COGNITIVE ABILITY.

18 HE OBTAINED AN I.Q. IN THAT OF 63 WITH A  
19 MENTAL AGE OF 8.2 YEARS.

20 AND ESSENTIALLY THERE WERE THREE DIFFERENT  
21 TESTS. THE WECHSLER ADULT INTELLIGENCE SCALE-REVISED,  
22 WHICH IS THE STANDARD ONE THAT'S USED ANYWHERE THAT YOU  
23 GO; THE PEABODY PICTURE VOCABULARY, AND ALSO THE LEITER,  
24 ALL THREE ARE USED ROUTINELY IN MOST DEVELOPMENT CENTERS  
25 AS A WAY OF DETERMINING INTELLIGENCE FUNCTIONING.

26 I MIGHT ALSO NOTE THAT I REVIEWED MY SCORES  
27 ON THIS TESTING WITH THE REPORTS DONE PREVIOUSLY BY DRs.  
28 SLAUGHTER AND WEINSTEIN, AND THEY WERE FAIRLY SIMILAR.

1                   THERE WAS NO DOUBT THAT MY REPORT, MORE OR  
2                   LESS SUBSTANTIATED BY PRIOR FINDINGS, THAT THIS  
3                   INDIVIDUAL IS MILDLY MENTALLY RETARDED.

4                   ONE REPORT WAS DONE I THINK IN '82, AND AND  
5                   THE OTHER ONE IN 1990.

6                   USUALLY WHEN YOU TEST SOMEONE OVER TIME, IF  
7                   THEY ARE MENTALLY RETARDED THEIR SCORES GENERALLY STAY  
8                   AROUND THE SAME AREA. THEY SELDOM IN THE ABSENCE OF  
9                   ADDITIONAL TRAUMA, THEY SELDOM WILL DECREASE.

10                  THEY USUALLY WILL NOT INCREASE.

11                  Q           YOU INDICATED --

12                               WELL, WHAT I.Q. SCORES ARE GENERALLY  
13                               CONSIDERED THE BEGINNING POINT FOR RETARDATION?

14                  A           THE CUTOFF FOR RETARDATION IS USUALLY AN  
15                               I.Q. OF 70, ALTHOUGH RECENTLY EXPERTS ARE FEELING THAT  
16                               IT SHOULD ACTUALLY GO UP TO ABOUT 75.

17                               THE REASON BEING THAT THE INITIAL CUTOFF  
18                               OCCURRED AT A TIME WHEN OUR SOCIETY WAS A LITTLE LESS  
19                               COMPLICATED AND IT WAS A LITTLE EASIER TO SURVIVE.

20                               MOST PEOPLE NOW WITH BORDERLINE I.Q., THAT  
21                               IS, AN I.Q. SCORE BETWEEN 70 AND 90, QUITE FRANKLY DON'T  
22                               MAKE IT IN OUR SOCIETY.

23                               SO CONSEQUENTLY WHAT THE THINKING IS NOW OF  
24                               DAYS IS IF YOU GOT AN I.Q. SCORE OF 75, 78 ON DOWN YOU  
25                               ARE BASICALLY MILDLY RETARDED.

26                               THE ACTUAL SCORE OF 70 HAS BEEN  
27                               TRADITIONALLY THE CUTOFF SCORE. AND HIS SCORES FELL  
28                               AROUND 73, 68 OR 69, SOMETHING LIKE THAT.

1                   SO HE'S RIGHT AROUND THE RANGE OF  
2                   RETARDATION.

3                   Q       DO YOU KNOW WHETHER OR NOT MR. JONES IS  
4                   ABLE TO READ?

5                   A       WELL, I DID PERFORM OTHER TESTS.

6                               I ADMINSTERED THE WIDE RANGE ACHIEVEMENT  
7                   TEST.  AND THAT'S ANOTHER STANDARD TEST THAT'S DESIGNED  
8                   TO ASSIST AN INDIVIDUAL'S ABILITY IN THREE AREAS,  
9                   READING, WRITING AND SPELLING.

10                              HIS PERFORMANCE ON THAT TEST AGAIN WAS  
11                   CONSISTENT WITH WHAT YOU WOULD FIND WITH SOMEONE WHO IS  
12                   MILDLY RETARDED AND SOMEONE WHO HASN'T GONE TO SCHOOL A  
13                   HECK OF A LOT.

14                              ON THE SPELLING -- ON THE READING SKILLS HE  
15                   WAS OFF THE CHART IN TERMS OF INABILITY TO READ.

16                              HE WAS ABLE TO RECOGNIZE THE LETTERS OF THE  
17                   ALPHABET.  HE WAS ABLE TO READ ONE FOUR-LETTER WORD THAT  
18                   MUST HAVE BEEN SOMETHING LIKE "OPEN," I IMAGINE.

19                              HE WASN'T ABLE TO GO BEYOND THAT.

20                              HE COULDN'T READ THREE- OR FOUR-LETTER  
21                   WORDS CONSISTENTLY, WAS UNABLE TO PRONOUNCE WORDS THAT  
22                   CONTAINED SILENT LETTERS, WAS UNABLE TO READ WORDS THAT  
23                   CONTAINED MULTIPLE SYLLABLES, SPELLING SKILLS.

24                              HE YIELDED A STANDARD SCORE OF 50.  AND  
25                   AGAIN IF YOU THINK 100 IS AVERAGE, 50 IS JUST LIKE OFF  
26                   THE CHART.

27                   Q       HIS SCORE WAS WHAT?

28                   A       50, FIVE-OH.  THAT IS, WITH A PERCENTAGE OF

1 .07, WHICH MEANS 99.03 PERCENT OF PEOPLE HIS AGE COULD  
2 DO A LOT BETTER THAN HE.

3 THAT ISN'T REALLY REMARKABLE FOR SOMEONE  
4 WHO IS MILDLY RETARDED OR WHO HAS NOT GONE TO SCHOOL,  
5 BECAUSE SOME INDIVIDUALS WHO ARE MILDLY RETARDED CAN IN  
6 FACT GET TO THE POINT WHERE THEY CAN READ TWO- OR  
7 THREE-LETTER WORDS OR FOUR-LETTER WORDS.

8 Q THE TESTS YOU PERFORMED, DO THEY HAVE ANY  
9 KIND OF INTERNAL CONTROL TO TEST WHETHER THEY'RE  
10 SHIRKING OR DELIBERATELY THROWING OFF THE RESULTS OF THE  
11 TEST?

12 A NO.

13 THE FACTS OF THE MATTER IS THAT NONE THE THE  
14 TESTS THAT I ADMINISTERED CAN YOU CONTROL FOR  
15 MALINGERING.

16 HOWEVER, WHAT WAS REMARKABLE IN THE HISTORY  
17 THAT I OBTAINED IN HIS PERFORMANCE WITH ME, ON CLINICAL  
18 INTERVIEW THE RESULTS OF PRIOR TESTING WERE ALL FAIRLY  
19 CONSISTENT.

20 WHEN SOMEONE TRIES TO LIE AND CHEAT ON THIS  
21 TEST, NUMBER ONE, THEY DON'T HAVE A CLUE AS TO HOW TO  
22 BEGIN.

23 SO WHAT YOU FIND IS THERE ARE SOME REAL  
24 INCONSISTENT SCORES BECAUSE THEY NEVER REALLY KNOW AT  
25 WHAT POINT THEY HAVE BOTTOMED OUT.

26 SO THERE IS NO REAL WAY, IF YOU ADMINISTER  
27 THE TEST PROPERLY, OF -- I MEAN, YOU CAN GIVE CUES TO  
28 THE TESTEE WITH RESPECT TO WHETHER THEY ARE DOING WELL

1 OR NOT.

2 BUT IF YOU DO IT APPROPRIATELY, WHAT YOU  
3 FIND IS THE SCORES REMAIN FAIRLY CONSISTENT.

4 IN CASES WHERE PEOPLE HAVE TRIED TO --  
5 FIRST OF ALL, THERE IS PRIOR DOCUMENTATION HERE THAT  
6 THIS GUY IS RETARDED. SO I WASN'T TOO WORRIED HE WOULD  
7 TRY TO TEST IN AN ODD WAY.

8 MR. THOMASON: I NEED TO DO ONE THING.

9 I HAVE TWO REPORTS IN MY HAND, ONE FROM DR.  
10 WEINSTEIN AND ONE FROM DR. SLAUGHTER.

11 COULD THESE BE MARKED AS --

12 THE COURT: F AND G?

13 MR. THOMASON: F AND G. F FOR DR. SLAUGHTER AND  
14 G FOR DR. WEINSTEIN.

15 THE COURT: YES.

16

17 (MARKED FOR ID ^ DEF. F, DR. SLAUGHTER  
18 ----- ^ REPORT.)

19

20 (MARKED FOR ID ^ DEF. G, DR. WEINSTEIN  
21 ----- ^ REPORT.)

22

23 Q BY MR. THOMASON: DOCTOR, I'M SHOWING YOU  
24 THE TWO REPORTS MARKED.

25 DO THESE APPEAR TO BE COPIES OF THE REPORTS  
26 FROM THE PREVIOUS EVALUATIONS THAT YOU REFERRED TO?

27 A YES, THEY ARE.

28 Q AND ARE THESE --

1 DID YOU USE THESE IN CONNECTION WITH YOUR  
2 EVALUATION OF MR. JONES?

3 A YES.

4 Q THANK YOU.

5 AT ONE POINT YOU INDICATED THAT THE MENTAL  
6 AGE OR SOME SORT OF AGE WAS 8.2 YEARS FOR MR. JONES.

7 A THAT'S CORRECT.

8 Q CAN YOU ELUCIDATE A LITTLE BIT MORE ABOUT  
9 WHAT YOU MEANT BY THE AGE OF 8.2 FOR MR. JONES.

10 A CAN YOU REPEAT THE QUESTION.

11 Q WHAT DOES MR. JONES' MENTAL AGE OF 8.2  
12 MEAN?

13 A OH, TWO THINGS.

14 ONE, THE MENTAL AGE SUGGESTS THAT THAT'S  
15 THE LEVEL AT WHICH HE FUNCTIONS, DESPITE HIS  
16 CHRONOLOGICAL AGE.

17 BUT THERE IS A CAVEAT THERE, WHICH IS THAT  
18 YOU HAVE TO KEEP IN MIND ALTHOUGH HE MIGHT HAVE AN AGE  
19 LEVEL OF 8.2 ON ONE TEST AND 10 YEARS ON ANOTHER TEST,  
20 THAT YOU HAVE TO BE CAREFUL.

21 THAT ALTHOUGH HE'S FUNCTIONED AT THAT AGE  
22 LEVEL HE'S ALSO NOT A NORMAL EIGHT-YEAR-OLD OR  
23 10-YEAR-OLD. IN OTHER WORDS, HE DOES HAVE A DEFECT. HE  
24 HAS COGNITIVE LIMITATIONS.

25 MY POINT IN THAT IS THIS: WITH A NORMAL  
26 EIGHT-YEAR-OLD OR 10-YEAR-OLD YOU CAN WITH TIME,  
27 INSTRUCTION AND PROPER TECHNIQUE, YOU CAN TEACH THEM  
28 THINGS THAT ARE FAR BEYOND AN EIGHT- OR 10-YEAR-OLD

1 LEVEL.

2 SO YOU CAN GET SOMEONE TO MASTER A PIANO OR  
3 MASTER A COMPUTER OR DO ANY NUMBER OF MUCH MORE  
4 SOPHISTICATED THINGS IF THEY ARE NORMAL.

5 WITH SOMEONE WHO IS A MENTALLY DEFECTIVE,  
6 YOU KNOW, YOU CAN TRY THOSE THINGS.

7 NUMBER ONE, IT WILL TAKE YOU AN INORDINATE  
8 AMOUNT OF TIME TO GET THEM TO MASTER THE TASK; AND EVEN  
9 IF THEY DO, TOMORROW WILL BE A BRAND NEW DAY, THEY WON'T  
10 BE ABLE TO RETAIN IT, THEY WON'T BE ABLE TO USE IT.

11 SO THAT YOU HAVE TO BE CAREFUL WHEN YOU  
12 TALK ABOUT EIGHT-YEAR-OLDS AND TEN-YEAR-OLDS THAT YOU  
13 ARE NOT ASSUMING, WELL, YOU KNOW, THIS GUY CAN HANDLE IT  
14 BECAUSE EIGHT-YEAR-OLDS AND TEN YEAR-OLDS CAN.

15 WELL, OTHERS CAN BECAUSE THEY ARE NORMAL.  
16 THIS INDIVIDUAL ISN'T.

17 I ALSO BROUGHT ALONG FOR YOU A COUPLE OF  
18 PROFESSIONAL WORKS DONE ON WHAT EXACTLY AN  
19 EIGHT-YEAR-OLD CAN DO AND CAN'T DO FOR PURPOSES OF  
20 ILLUSTRATING TO THE COURT THE LIMITATIONS THAT THIS  
21 INDIVIDUAL HAS.

22 Q DO YOU HAVE THAT ARTICLE WITH YOU AT THIS  
23 POINT?

24 A ACTUALLY THERE IS AN ARTICLE IN A COUPLE OF  
25 BRIEF QUOTATIONS FROM HIS SEVERAL STANDARD BOOKS.

26 Q WELL, WHY DON'T YOU JUST TELL US WHAT IT IS  
27 AN EIGHT-YEAR-OLD GENERALLY CAN DO?

28 A OKAY.

1 I WILL ACTUALLY LET JEAN PIAGET DO IT  
2 BECAUSE HE KNOWS A LITTLE MORE THAN I. AND THIS IS A  
3 BOOK, PIAGETIAN'S THEORY OF INTELLECTUAL DEVELOPMENT.

4 AND PIAGET IS A PIONEER IN THE  
5 DEVELOPMENTAL WORKS AND BASICALLY CURRENTLY IN MOST  
6 SCHOOLS WHEN THEY DO ASSESSMENTS ABOUT INDIVIDUALS'  
7 COGNITIVE ABILITIES THEY USE PIAGETIAN. SO HIS WORK IS  
8 FAIRLY CURRENT.

9 HE DESCRIBES WHAT INDIVIDUALS DO AT  
10 DIFFERENT AGES AND AT DIFFERENTLY LEVELS. I THOUGHT IT  
11 WAS PERTINENT TO THE COURT TO TALK ABOUT WHAT SOMEONE  
12 CAN DO BETWEEN THE AGES OF 2 AND 11.

13 AS SOON AS I FIND IT HERE.

14

15 (BRIEF PAUSE.)

16

17 THIS IS REFERRING TO CHILDREN WHO ARE 7 TO  
18 11 YEARS OF AGE. PIAGET FOUND WHEN THE CHILD OF THIS  
19 AGE WAS ASKED THE SAME QUESTIONS ABOUT OBJECTS THAT WERE  
20 NOT PRESENT HE OFTEN FAILED TO GIVE CORRECT ANSWERS.  
21 APPARENTLY THE CHILD'S CLASSIFICATION IS CONCRETE. HE  
22 UNDERSTANDS THE INCONCLUSION RELATIONS OF A GROUP OF  
23 OBJECTS HE CAN SEE, BUT FAILS TO COMPREHEND THE SAME  
24 RELATIONS WHEN IMAGINARY CLASSES ARE INVOLVED.

25 AND WHAT THEY ARE TALKING ABOUT IS THAT  
26 ESSENTIALLY AT THAT AGE A CHILD -- AND THIS IS A NORMAL  
27 CHILD. I HAVE TO REMIND THE COURT THAT AT BEST THE  
28 DEFENDANT ISN'T OF NORMAL INTELLIGENCE.



1 TANTRUM. IT GETS FAIRLY COMPLICATED. IT STARTS OFF  
2 WITH VERY EASY ITEMS.

3 I WILL NOTES HE OBTAINED A STANDARD SCORE  
4 ON THAT PARTICULAR TEST OF 3, WHICH MEANS THAT HE  
5 PROBABLY GOT ABOUT SIX WORDS. HE MAY HAVE GOTTEN FOUR  
6 OR FIVE WORDS, SIX WORDS, WHILE I ADMINISTERED THAT  
7 TEST.

8 I ALSO INTERSPERSED SEVERAL WORDS THAT CAME  
9 TO ME WITH RESPECT TO WHAT THE DETECTIVE WOULD HAVE  
10 ASKED HIM.

11 AND I BASICALLY ASKED HIM FOR A DEFINITION.

12 Q CAN YOU RELATE THOSE TO US.

13 A I ASKED HIM WHAT DID "RIGHT," R-I-G-H-T  
14 MEAN?

15 AND HE RESPONDED LIKE TO WALK ON THE  
16 SIDEWALK. I HAVE THE RIGHT TO WALK ON THE SIDEWALK.

17 WHEN I ASKED HIM TO TELL ME WHAT THIS MEANT  
18 WITHOUT USING THE OTHER WORDS, HE WAS UNABLE TO DO SO.

19 I ASKED HIM -- HE WAS UNABLE TO PROVIDE A  
20 DEFINITION FOR THE WORD "REMAIN." YOU HAVE THE RIGHT TO  
21 "REMAIN."

22 HE COULD NOT PROVIDE THAT.

23 WHEN I ASKED HIM ABOUT THE WORD "SILENT"  
24 HE SAID IT MEANT YOU WERE GOING TO BE QUIET. SO HE HAD  
25 AN UNDERSTANDING OF THAT.

26 WHEN I ASKED HIM ABOUT "WAIVE" -- AND THESE  
27 I ADD, I WILL NOTE THAT I DIDN'T GIVE HIM THESE WORDS  
28 ALL AT ONE TIME; THEY WERE THROUGHOUT THE LIST OF 30

1 WORDS IN A RANDOM ORDER.

2 WHEN I ASKED HIM ABOUT "WAIVE" HE SAID LIKE  
3 A WAVE IN THE WATER OR LIKE YOUR HAIR MIGHT BE WAVY OR  
4 LIKE IF SOMEONE WAVES TO YOU ON THE STREET.

5 I AGAIN SPELLED IT FOR HIM, AND HE COULDN'T  
6 GO BEYOND THAT.

7 I ALSO ASKED HIM TO DEFINE THE WORD  
8 "AFFORD," AS IN, YOU KNOW, THE RIGHT TO AFFORD AN  
9 ATTORNEY.

10 HE LOOKED AT ME AND SAID YOU MEAN LIKE A  
11 FORD CAR?

12 SO, AGAIN, THIS SEEMED TO BE CONSISTENT  
13 WHETHER I WAS ASKING HIM THOSE WORDS OR OTHER WORDS.

14 ALSO DURING MY INTERVIEW THERE WERE  
15 TIMES -- I REMEMBER AT ONE POINT ASKING HIM HOW OFTEN DO  
16 YOU MASTURBATE WHEN WE WERE TALKING ABOUT SEXUAL  
17 HISTORY.

18 AND HE SAID SEVERAL THINGS.

19 AND THEN I ASKED HIM DO YOU KNOW WHAT  
20 MASTURBATE MEANS. HE DIDN'T KNOW WHAT IT MEANT.

21 ON SEVERAL OCCASIONS THROUGHOUT MY  
22 INTERVIEW WITH HIM WHERE IT SEEMED AS IF HE WAS  
23 PROCEEDING ALONG THE LINE OF HAVING SOME DEGREE OF  
24 COMPREHENSION I FOUND WHAT WAS MOST USEFUL WAS -- AGAIN,  
25 WHICH IS CONSISTENT WITH WHAT YOU NEED TO DO WITH  
26 SOMEONE WHO IS MILDLY RETARDED -- IS STOP MIDWAY  
27 WHATEVER I WAS ASKING AND ASK HIM WHAT DID I JUST SAY OR  
28 WHAT DO YOU THINK I JUST MEANT BY THAT.

1 Q WHAT WOULD HE RESPOND TO YOU?

2 A WELL, HE WAS OFF AND ON HALF THE TIME.

3 Q GO AHEAD. IN ADDITION TO THE VERBAL  
4 PROBLEMS YOU DESCRIBED DO RETARDED PEOPLE HAVE ANY  
5 SPECIAL RELATIONS OR PROBLEMS RELATING TO PEOPLE IN  
6 AUTHORITY?

7 A WELL, I DON'T KNOW IF IT'S SPECIAL.

8 I THINK THAT AS A RULE, YOU KNOW, YOU WOULD  
9 HAVE TO WONDER IF YOU HAVE AN EIGHT-YEAR-OLD OR  
10 NINE-YEAR-OLD WHAT KIND OF MATCH THEY ARE FOR AN ADULT  
11 IN TERMS OF ANY INTERVIEW PROCESS.

12 AND ALSO HE IS RETARDED. SO HE, YOU KNOW,  
13 SIMPLY CAN BE MANIPULATED, WORDS CAN BE PLACED IN HIS  
14 MOUTH.

15 WHAT I WAS IMPRESSED WITH FROM HIM WAS THAT  
16 HE WOULD GO ONE WAY OR THE OTHER. I MEAN, HE SORT OF  
17 TRIES TO DEVELOP A CONVERSATION TO PLEASE YOU.

18 AND THAT CERTAINLY IS CONSISTENT WITH WHAT  
19 YOU FIND WITH YOUNGER CHILDREN.

20 ALSO WHAT YOU FIND WITH MILDLY RETARDED  
21 INDIVIDUALS, THAT THEY WILL RESPECT THE PERSON IN  
22 AUTHORITY OR THEY WILL FEAR THE PERSON IN AUTHORITY,  
23 AND, YOU KNOW, WILL PRETTY MUCH GO WITH THE FLOW IF THEY  
24 THINK THAT'S WHAT YOU WANT TO HEAR.

25 SO MY FEELING WAS THAT -- WELL, A COUPLE OF  
26 POINTS.

27 ONE, EVEN BEFORE HE ANSWERED YES OR NO TO  
28 THE WAIVER OF THE RIGHTS, HE WAS COOL AS AIR. THAT'S

1 ONE POINT.

2 WITH RESPECT TO HIS DIFFICULTIES WITH  
3 ADULTS, HE'S NO MATCH WITH AN ADULT. HE'S NO MATCH FOR  
4 ANYBODY THAT DOES HAVE AN I.Q. OF 100 OR ABOVE.

5 I THINK THE INDIVIDUAL THAT I EXAMINED IS  
6 THAT WHEN YOU LOOK AT HIM HE CAN CARRY ON A CONVERSATION  
7 AND HE SEEMS TO BE SORT OF SLOW BUT YOU DON'T  
8 IMMEDIATELY GET THE IMPRESSION THAT HE'S RETARDED.

9 THAT'S CONSISTENT WITH SOMEONE WHO  
10 BASICALLY IS OUT ON THE STREET MOST OF THE TIME. THEY  
11 HAVE A LOT OF LANGUAGE, THEY HAVE A LOT OF DIALECTS,  
12 THEY ARE STREET WISE.

13 THERE ADAPTIVE SKILLS TEND TO BE A LITTLE  
14 HIGHER. BUT THEIR COGNITIVE LEVEL, WHEN YOU DO A FORMAL  
15 TESTING, THEY ARE VERY, VERY LIMITED.

16 AND THAT'S WHAT OCCURRED WITH THIS  
17 INDIVIDUAL.

18 Q DID YOU GET THAT IMPRESSION FROM YOUR  
19 INTERVIEW PLUS THE REVIEW OF THE TAPES IN THIS CASE?

20 A YES.

21 Q WAS THERE ANY PARTICULAR PART OF ANY TAPE  
22 THAT STOOD OUT IN REGARDS TO WHAT YOU WERE JUST  
23 DESCRIBING?

24 A WELL, ONE, WHEN I REVIEWED THE TAPE  
25 RECENTLY, WHICH WAS AFTER MY REPORT WAS FILED TO YOUR  
26 OFFICE, WHERE, YOU KNOW, I THINK THE DETECTIVE DID A  
27 VERY, VERY GOOD JOB OF EXPLAINING THE RIGHTS.

28 BUT WHAT HE FAILED TO DO, THOUGH, WAS HE

1 DIDN'T ASK THE DEFENDANT TO REPEAT, YOU KNOW, WHAT I'M  
2 TALKING ABOUT.

3 I ALSO THINK IT WOULD HAVE BEEN HELPFUL --  
4 I KNOW THE DETECTIVE DID NOT KNOW THAT THIS INDIVIDUAL  
5 WAS SO IMPAIRED.

6 SO WHAT SEEMED TO MAKE SENSE AND WHAT WAS  
7 PROBABLY A VERY SIMPLIFIED VERSION WAS PROBABLY NOT  
8 ADEQUATE FOR THIS INDIVIDUAL.

9 SO, YOU KNOW. BUT, ANYWAY, JUST IN  
10 LISTENING TO IT, WHEN THEY WERE TALKING ABOUT WAIVING  
11 THE RIGHT, HE DIDN'T KNOW WHAT THOSE WORDS MEANT.

12 THE OTHER PART THAT I FELT WAS PUZZLING IN  
13 THE TAPE WAS AT ONE POINTS -- AND I THINK IT WAS THE  
14 LAST TAPE I REVIEWED -- HE ASKED FOR A PSYCHOLOGIST ON  
15 TWO TIMES, CAN I TALK TO A PSYCHOLOGIST.

16 I THOUGHT THAT WAS AN ODD THING BECAUSE  
17 THAT HADN'T BEEN INTRODUCED.

18 MY THINKING WOULD BE THAT SOMETIMES HE MAY  
19 HAVE BEEN ASKED FOR HELP AT THAT POINT IN TIME. JUST  
20 NOT KNOWING WHAT THE RIGHT WORD WAS, BUT HE WANTS TO  
21 TALK TO SOMEBODY.

22 THAT WAS IN THE MIDDLE OF WHEN HE WAS  
23 PRETTY MUCH, YOU KNOW, CONFESSING ABOUT EVERYTHING, ND  
24 ANYTHING HE HAD EVER DONE.

25 Q YOU WERE PRESENT WHEN DETECTIVE MORENO  
26 TESTIFIED EARLIER THIS MORNING; CORRECT?

27 A YES.

28 Q AND YOU HEARD HIM TESTIFY ABOUT HE ASKED IF

1 MR. JONES WANTED TO GIVE UP HIS RIGHT TO AN ATTORNEY;  
2 MR. JONES SAID NO.

3 AND THEN THE DETECTIVE ASKED HIM AGAIN.  
4 DO YOU RECALL THAT IN THE TAPE?

5 A YES.

6 Q DID THAT SEQUENCE HAVE ANY PARTICULAR  
7 SIGNIFICANCE TO YOU?

8 A WELL, IT WOULD FALL UNDER THE GUISE OF --  
9 NUMBER ONE, I THINK HE WAS PROBABLY CLUELESS AS TO WHAT  
10 WAS BEING SAID TO HIM, ON THE BASIS OF HIS TEST LEVEL  
11 AND EVERYTHING ELSE.

12 THAT WHAT'S MISSING THERE. THERE WAS NO  
13 SENSE THAT HE UNDERSTOOD WHAT THAT MEANT.

14 AND UNDERSTANDING WHAT THAT MEANT WOULD  
15 HAVE BEEN SOMETHING LIKE:

16 DO YOU REALIZE IF YOU TALK TO ME YOU MAY  
17 END UP IN JAIL MORE THAN WHAT YOU ARE ALREADY? OR YOU  
18 REALIZE IF YOU TALK TO E, WITHOUT SOMEONE WITH YOU YOU  
19 MIGHT GET YOURSELF IN MORE TROUBLE?

20 I THINK WITHOUT THAT KIND OF EXPLANATION IT  
21 CAN GO EITHER WAY. HE MAY HAVE UNDERSTOOD; HE MAY NOT  
22 HAVE UNDERSTOOD.

23 Q DO YOU RECALL ON THAT TAPE WITH DETECTIVE  
24 MORENO THE DISCUSSION ABOUT DNA ALSO?

25 A YES.

26 Q DO YOU HAVE ANY THOUGHTS ABOUT THAT IN  
27 RELATION TO YOUR TESTIMONY AND YOUR TESTING OF MR.  
28 JONES?

1           A           I WOULD IMAGINE THAT IF WE ASKED MR. JONES  
2 RIGHT NOW WHAT THAT MEANT HE WOULD NOT BE ABLE TO REPEAT  
3 WHAT THE SUBSTANCE WAS OR WHAT DETECTIVE MORENO WAS  
4 TRYING TO PRESENT TO HIM.

5                       NOT BECAUSE THE DETECTIVE DIDN'T DO A GOOD  
6 JOB OF SIMPLIFYING IT, BUT BASICALLY IT WOULD BE BEYOND  
7 HIS LEVEL OF COMPREHENSION.

8           Q           YOU HEAR ON THE TAPE, OF COURSE, MR. JONES  
9 SAYING ALL THE TIME HUH-HUH, YEAH, YEAH, REMARKING AS IF  
10 HE UNDERSTOOD, GOING ALONG.

11           A           YES.  
12                       AND THAT WAS MY EXPERIENCE WITH HIM MY  
13 DURING MY INTERVIEW; THAT I ASKED HIM STUFF, AND HE'D BE  
14 GOING ALONG.

15                       AND I'D REMIND MYSELF THAT HE MAY NOT  
16 UNDERSTAND.

17                       WHEN I ASKED HIM DO YOU KNOW WHAT I JUST  
18 SAID, HE WOULD WAIVER, AND THEN WE WOULD HAVE TO GO BACK  
19 ON TRACK.

20           Q           DID YOU GIVE ANY SIGNIFICANCE TO THE FACT  
21 THAT MR. JONES MAY HAVE SIGNED ANY WRITTEN WAIVERS?

22           A           I DON'T KNOW IF I COMPLETED PROVIDING THE  
23 REPORTS OF THE WIDE RANGE ACHIEVEMENT TEST, BASICALLY HE  
24 CANNOT READ OR WRITE OTHER THAN TO SIGN HIS NAME.

25           Q           SO IF HE SIGNED SOMETHING THERE IS NO  
26 INDICATION HE KNEW WHAT EXACTLY HE'S SIGNING?

27           A           YES.

28           Q           AND THERE IS NO ADDITIONAL EVIDENCE THAT HE

1 UNDERSTOOD ANY OTHER WARNINGS THAT HE RECEIVED?

2 A I ALSO ADMINISTERED I BELIEVE A PORTION OF  
3 ANOTHER TEST THAT DEALS WITH WRITTEN COMPREHENSION, AND  
4 HE ALSO JUST DIDN'T SCORE ON THIS AT ALL.

5 SO HIS ABILITY TO DO THINGS OTHER THAN SIGN  
6 HIS NAME IS PRETTY LIMITED. AND THAT SEEMED TO BE  
7 CONSISTENT WITH THE OTHER REPORTS.

8 Q AS YOU SIT HERE AND BASED ON ALL YOU HAVE  
9 DONE IN THIS CASE DO YOU HAVE AN OPINION AS TO WHETHER  
10 OR NOT MR. JONES WAS CAPABLE OF KNOWINGLY AND  
11 INTELLIGENTLY WAIVING WHAT ARE COMMONLY KNOWN AS MIRANDA  
12 RIGHTS?

13 A I THINK THAT HE COULD HAVE BEEN ABLE TO DO  
14 THAT HAD THE INSTRUCTION BEEN PROVIDED A LITTLE MORE  
15 SIMPLER WITH RESPECT TO CONSEQUENCES.

16 BECAUSE, AS MY EARLIER COMMENTS NOTED, HE  
17 CANNOT THINK ABSTRACTLY, AND THEREFORE CANNOT IMAGINE  
18 WHAT THE CONSEQUENCES ARE UNLESS THEY ARE SPELLED OUT  
19 FOR HIM.

20 SO I THINK THAT -- AND NOT TO SAY THAT THE  
21 DETECTIVE DID NOT DO A GOOD JOB; HE DID NOT KNOW THAT  
22 THIS INDIVIDUAL WAS THAT IMPAIRED COGNITIVELY.

23 BUT I THINK HAD IT BEEN SPELLED OUT A  
24 LITTLE CLEARER, HAD THE DEFENDANT BEEN ASKED TO REPEAT  
25 WHAT WAS BEING SAID, WHAT HE WAS AGREEING TO, THAT HE  
26 COULD HAVE INTELLIGENTLY WAIVED HIS RIGHTS.

27 UNDER THE WAY IT OCCURRED I HAVE MY DOUBTS.

28 Q WHAT ABOUT THE WAIVERS INDICATED ON THE

1 OTHER TAPE? DO YOU HAVE AN OPINION AS TO THE  
2 KNOWINGNESS OR INTELLIGENCE OF THOSE WAIVERS?

3 A I THINK IT FALLS ALONG THE LINES OF HIS  
4 TRYING TO PLEASE PEOPLE, PARTICULARLY SOMEONE WITH AN  
5 AUTHORITY FIGURE, AND FEELING THAT IF HE TALKED AND SAID  
6 THE RIGHT THING HE'D SOMEHOW GET OUT OF IT.

7 BECAUSE I THINK IN ONE OF MY QUESTIONS TO  
8 HIM WAS, WELL, WHY DID YOU -- WHY DID YOU TALK TO THEM?

9 AND HE SAID, WELL, THEY TOLD ME THEY WERE  
10 GOING TO LET ME GO.

11 AND, AGAIN, THAT'S THE KIND OF CONCRETE  
12 THINKING THAT ONE HAS IF YOU ARE AT HIS LEVEL OF  
13 INTELLIGENCE.

14 IF SOMEONE SAYS I'M GOING TO HELP YOU SO  
15 TELL ME EVERYTHING, HE'LL TELL YOU EVERYTHING.

16 THEY CAN'T MAINTAIN THE ABSTRACT CONCEPT  
17 THAT SOMEWHERE ALONG THE LINE THIS MAY GET ME IN  
18 TROUBLE.

19 MR. THOMASON: THANK YOU.

20 I HAVE NOTHING FURTHER.

21 THE COURT: MISS INGALLS.

22 MS. INGALLS: YES, THANK YOU.

23

24 CROSS-EXAMINATION @

25 BY MS. INGALLS:

26 Q DR. BELIZ, YOU HAD TWO OPPORTUNITIES TO  
27 TALK WITH MR. JONES; IS THAT CORRECT?

28 A YES, I DID.

1 Q AND HOW LONG WERE THE NATURE OF THOSE  
2 VISITS WITH MR. JONES?

3 A I WOULD IMAGINE SIX TO EIGHT HOURS.

4 Q EACH OR --

5 A YES, EACH.

6 Q SO THIS WOULD BE 12 TO 16 HOURS?

7 A I WOULD RECALL ALL DAY SPENDING THERE IN  
8 JAIL BETWEEN WAITING FOR HIM TO COME, SEEING HIM,  
9 EXITING.

10 THE WHOLE THING PROBABLY WAS AN ALL DAY  
11 AFFAIR.

12 Q NOW, OF THOSE 12 TO 16 HOURS, HOW MUCH OF  
13 THAT TIME WAS SPENT TESTING HIM?

14 A I WOULD SAY ABOUT MAYBE EIGHT HOURS OR SO.

15 Q EIGHT --

16 A EIGHT OR NINE HOURS.

17 Q -- TO NINE HOURS.

18 AND OF THE REMAINING, SAY, FOUR TO EIGHT  
19 HOURS, THAT WAS SPENT GOING OVER A SOCIAL HISTORY?

20 A INTERVIEWING HIM, ASKING HIM FOR  
21 CLARIFICATION.

22 Q CLARIFICATION AS TO WHAT?

23 A INTERVIEWING HIM WAS A DIFFICULT TASK  
24 BECAUSE I WAS NOT ALWAYS CLEAR THAT HE UNDERSTOOD WHAT I  
25 WAS ASKING HIM.

26 Q SO INTERVIEWING HIM AS TO HIS BACKGROUND.

27 A YES.

28 Q DID YOU INTERVIEW HIM AS TO THE RAPE AND

1 MURDERS THAT TOOK PLACE?

2 A YES, I DID.

3 Q AND YOU TALKED TO HIM ABOUT WHAT OCCURRED  
4 OUT THERE?

5 A YES.

6 Q AND IS ANY OF THAT CONTAINED IN THIS  
7 REPORT?

8 A YES.

9 Q AND WHAT PART IS IT CONTAINED IN THE  
10 REPORT?

11 A PAGE 3, HISTORY OF EVENTS LEADING TO  
12 INCARCERATION.

13 Q SO THE PART THAT'S REFERRED TO WHEN YOU  
14 WERE TALKING ABOUT THE RAPE AND THE MURDERS IS BASICALLY  
15 HOW HE CAME ABOUT GETTING ARRESTED?

16 A YES.

17 Q OKAY.

18 DID YOU --

19 YOU DIDN'T TALK TO HIM ANY MORE ABOUT WHY  
20 HE RAPED THE WOMAN THAT SURVIVED OR WHY HE MURDERED THE  
21 OTHER WOMEN?

22 A WELL, I DIDN'T GO MUCH INTO THE OTHER WOMEN  
23 BECAUSE HE BASICALLY DENIED HE EVER DID IT.

24 SO I COULDN'T REALLY ELABORATE THAT PART  
25 BECAUSE HE WAS TELLING ME I DIDN'T DO THAT.

26 AND WITH RESPECT TO THE RAPE, YOU KNOW, I  
27 THINK -- SOME OF THIS CAME UP AT ANOTHER POINT IN MY  
28 EVALUATION BECAUSE I RECALL SEEING ABOUT THAT AT ANOTHER

1 POINT WHEN HE TALKS ABOUT HIS DRUGS AND HIS PATTERN OF  
2 DRUGS AND WOMEN, AND EVERYTHING.

3 BUT I DIDN'T GO BEYOND WHAT I ASKED HIM  
4 THERE ABOUT THE RAPE.

5 Q AND SO WHEN YOU WERE TALKING ABOUT --  
6 AS SOON AS HE DENIED DOING THE MURDERS YOU  
7 STOPPED QUESTIONING HIM ABOUT THAT?

8 A MAY I TAKE A LOOK AT THIS?

9 Q SURE.

10

11 (BRIEF PAUSE.)

12

13 A WELL, ON PAGE 4 THERE IS, YOU KNOW, HIS  
14 ELABORATION OF WHY HE WAS IN JAIL, AND HIS STORY ABOUT  
15 THE CONFESSING AND HAVING KILLED THE FOUR GIRLS.

16 BUT IT'S ALL IN THE NEGATIVE, AND BASICALLY  
17 SAYING THAT -- I CAN EITHER PARAPHRASE IT FOR YOU OR  
18 READ IT OUT OF THE REPORT, WHATEVER YOU PREFER.

19 THE COURT: THAT'S NOT NECESSARY; IT'S MARKED AS  
20 AN EXHIBIT.

21 Q BY MS. INGALLS: OKAY.

22 SO YOU DIDN'T CONFRONT HIM AT ALL WITH THE  
23 CONTENTS OF THE TAPE AS HE GAVE IT TO THE DETECTIVE IN  
24 COMPARISON TO WHAT HE WAS THEN TELLING YOU?

25 A RIGHT.

26 Q SO YOU BASICALLY TOOK HIM AT HIS WORD.

27 A RIGHT.

28 Q SO THEN WHEN WERE YOU REVIEWING THE TAPE

1 AND THE VIDEOTAPE WERE YOU LOOKING AT THEM IN TERMS OF  
2 WHETHER OR NOT THE CRIMES ACTUALLY WERE COMMITTED, OR  
3 WERE YOU JUST LOOKING AT THEM IN TERMS OF CONTENT, WHAT  
4 THE DETECTIVE ASKED HIM AND HOW THE DEFENDANT RESPONDED?

5 A I WAS REVIEWING BOTH, JUST TO SEE HOW  
6 CREDIBLE HE WAS, WHAT HE WAS TALKING ABOUT AT THE TIME,  
7 WHAT KIND -- HOW HE WAS RELATING TO THE DETECTIVE.

8 Q OKAY.

9 A I REALLY DIDN'T HAVE AN AGENDA OTHER THAN  
10 TO VIEW THE TAPE AND USE IT AS PART OF MY OVERALL  
11 ASSESSMENT OF THE INDIVIDUAL AND HIS RESPONSES.

12 Q NOW, IT WOULD SEEM IN THE TAPE IN THE  
13 CONVERSATIONS THAT HE HAD WITH THE VARIOUS DETECTIVES HE  
14 DID ATTEMPT TO PROTECT HIMSELF FROM ANY FURTHER TROUBLE  
15 WITH THE POLICE.

16 WOULD YOU AGREE WITH THAT?

17 A YES.

18 Q HE JUST DENIED INITIALLY ANYTHING  
19 HAPPENING.

20 A RIGHT.

21 Q AND THEN AFTER THEY TALKED TO HIM SOME  
22 MORE, THEN HE GAVE A LITTLE MORE INFORMATION, BUT KEPT  
23 DENYING THE MORE EGREGIOUS PART OF THE CONFRONTATION  
24 WITH THESE WOMEN.

25 WOULD YOU AGREE?

26 A YES.

27 Q SO HE DID HAVE THESE INSTANCES OF  
28 SELF-SURVIVING IN THE CRIMINAL JUSTICE SYSTEM OR TROUBLE

1 DOWN THE ROAD.

2 IS THAT CORRECT?

3 A WELL, HE WOULD TRY THAT, BUT HE WASN'T  
4 SUCCESSFUL BECAUSE HE DID THAT WITH ME AS WELL.

5 Q AND THEN THEY WOULD GET A LITTLE MORE  
6 INFORMATION OUT HIM, AND THEN -- BUT HE STILL, HE WOULD  
7 NOT ADMIT THAT HE ACTUALLY KILLED THOSE WOMEN.

8 IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q SO HE DID NOT --

11 HE WAS PROTECTING HIMSELF AS WAS AN ISSUE  
12 OF SURVIVAL IN HIS MIND TO STAY OUT OF TROUBLE IN THE  
13 CRIMINAL JUSTICE SYSTEM, SO TO SPEAK.

14 WOULD YOU AGREE?

15 A THAT'T RIGHT. HE DEFINITELY KNOWS THAT  
16 KILLING FOUR GIRLS, OR WHATEVER IT WAS, WAS BAD.

17 Q AND HE WOULD DEFINITELY KNOW THAT, TOO, IF  
18 HE GAVE INFORMATION TO THE POLICE OFFICERS, THAT WOULD  
19 PROBABLY MAKE SURE THAT HE STAYS IN JAIL?

20 A CORRECT.

21 Q HE DEFINITELY WAS IN JAIL, HE DEFINITELY  
22 WAS IN TROUBLE.

23 A CORRECT.

24 Q AND HE WAS INFORMED THAT HE WAS A SUSPECT  
25 IN THESE MURDER INVESTIGATIONS.

26 A CORRECT.

27 Q WHEN YOU WENT INTO --

28 WHEN YOU LOOKED AT THE PARTICULAR -- THE

1 PARTICULAR VIDEOTAPE AS WELL AS THE AUDIOTAPES, DIDN'T  
2 IT SEEM TO YOU THAT THE OFFICERS WERE NOT ABLE TO LEAD  
3 HIM?

4 WOULD YOU AGREE WITH THAT?

5 A THERE WERE A COUPLE OF OCCASIONS WHEN HE  
6 SEEMED TO AGREE WITH WHAT THEY SAID FOR PURPOSES OF  
7 AGREEING.

8 Q OKAY. BUT --

9 A AND THAT I FOUND TO BE CONSISTENT WITH ME.  
10 I FELT DURING MY INTERVIEW WITH HIM THAT I  
11 COULD HAVE STEERED HIM ONE WAY OR THE OTHER. THERE WERE  
12 TIMES WHEN HE WAS MORE ATTENTIVE THAN OTHERS.

13 Q DID YOU NOTICE IN ANY OF THE TAPES THAT THE  
14 DETECTIVE USED OPEN-ENDED QUESTIONS?

15 A I THINK THERE MAY HAVE BEEN.

16 I THINK IT WAS A COMBINATION OF OPEN-ENDED  
17 AND VERY DIRECT, AS I RECALL.

18 IS THIS WHERE YOU WORK? WAS THE DOOR OPEN?  
19 WAS IT CLOSED?

20 AND THERE WERE TIMES HE SAID YEAH, YEAH,  
21 WELL, YEAH; THAT KIND OF RESPONSE.

22 Q THERE WERE TIMES THEY SAID WHAT HAPPENED  
23 AND HE WENT ON AT GREAT LENGTH.

24 IS THAT CORRECT?

25 A THAT'S CORRECT.

26 Q AND ON A LOT OF THE TAPE, ACTUALLY ALL THE  
27 TAPES, WITH HIM VOLUNTEERING INFORMATION.

28 WOULD YOU AGREE?

1 A CORRECT.

2 Q AND VOLUNTEERING INFORMATION THAT PROBABLY  
3 THE DETECTIVES WOULDN'T HAVE KNOWN ABOUT BUT FOR THE  
4 ACTUAL SUSPECT TELLING THEM THAT INFORMATION.

5 A CORRECT.

6 Q SO THAT THE DETECTIVES WERE NOT PROVIDING A  
7 SCRIPT FOR HIM; INDEED MR. JONES WAS TELLING THEM WHAT  
8 HAD OCCURRED.

9 A YES.

10 Q OKAY.

11 SO HE WAS ABLE TO THINK ABOUT WHAT WAS  
12 GOING ON, HE WASN'T OVERCOME BY THE WILL OF WHAT THE  
13 POLICEMEN'S AGENDA MIGHT BE.

14 WOULD YOU AGREE WITH THAT?

15 A CORRECT.

16 Q EVEN TO THAT EXTENT, THOUGH, IN THE FINAL  
17 ANALYSIS HE WOULD NOT ADMIT THAT HE KILLED THOSE WOMEN.

18 IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q SO IN THE VERY END HE STILL HAD THE ISSUE  
21 OF SURVIVAL IN THE CRIMINAL JUSTICE SYSTEM.

22 WOULD YOU AGREE WITH THAT?

23 A CORRECT.

24 Q SO IF YOU REALLY WANT TO PLEASE THOSE  
25 POLICE OFFICERS AND MAYBE END ALL THIS INTERVIEW AND BE  
26 TAKEN OUT OF THE LOCKUP, TO BE PARADED AROUND, ET  
27 CETERA --

28 IF HE REALLY WANTED TO PLEASE THE POLICE

1 OFFICERS HE SHOULD HAVE JUST ADMITTED THAT HE KILLED  
2 THOSE PEOPLE.

3 WOULD YOU AGREE WITH THAT?

4 A WELL, THAT WOULD BE COMPLICATED FOR HIM  
5 BECAUSE ON THE ONE HAND HE --

6 ONE THING THAT HE IS ABLE TO UNDERSTAND:  
7 IF HE KILLS SOMEBODY THAT'S BAD.

8 HE ALSO I THINK DOESN'T HAVE THE CAPACITY  
9 TO CARRY THROUGH HIS OWN SUCCESSFUL DEFENSE. HE  
10 COULDN'T KEEP A STORY CONSISTENT.

11 ON SEVERAL OCCASIONS WHEN I INTERVIEWED HIM  
12 HE INITIALLY SAID NO TO ONE THING, AND AS THE STORY  
13 WOULD UNFOLD HE WOULD BASICALLY DESCRIBE THE DESCRIPTION  
14 AND CONFIRM WHAT HE HAD INITIALLY DENIED.

15 Q WELL, ISN'T THAT A TYPE OF PROBLEM WITH  
16 LYING, DOCTOR, THAT YOU MAKE UP A STORY BUT YOU CAN'T  
17 REMEMBER WHAT THE DETAILS WERE SO YOU WIND UP TELLING  
18 THE TRUTH, EVENTUALLY COMING UP WITH A CONFLICTING  
19 STORY?

20 ISN'T THAT TRUE?

21 A CORRECT.

22 Q THAT'S THE PROBLEM WITH LYING.

23 A YES.

24 Q AND THAT OCCURS WHETHER YOU ARE REAL  
25 EDUCATED OR WHETHER YOU ARE MILDLY RETARDED.

26 ISN'T THAT YOU TRUE?

27 A YES.

28 Q THAT'S REALLY ONE OF THE POINTS OF OUR

1       WHOLE SYSTEM FOR CROSS-EXAMINATION, TO TEST SOMEBODY'S  
2       STORY TO SEE IF THEY ARE REALLY TELLING THE TRUTH OR TO  
3       FLY IN THE FACE OF COMMON SENSE, ET CETERA.

4               A       CORRECT.

5               Q       SO THE FACT THAT HE COULD NOT REMEMBER THE  
6       STORY THAT HE MADE UP ACTUALLY OCCURS WITH EVERYBODY.  
7               WOULDN'T YOU AGREE WITH THAT?

8               A       CORRECT.

9               Q       SO THAT IN ITSELF IS NOT AN INDICATION OF  
10      MENTAL RETARDATION; IT'S AN INDICATION THAT HE LIED.  
11              RIGHT?

12              A       CORRECT.

13              Q       NOW, WHEN WE ARE TALKING ABOUT --  
14              DID IT STRIKE YOU IN THE INTERVIEWS OF THE  
15      DETECTIVES WITH MR. JONES HOW MUCH MR. JONES SOUGHT  
16      ISOLATION IN THESE CRIMES?

17              A       WHAT DO YOU MEAN BY THAT?

18              Q       SOUGHT A PLACE WHERE HE WOULD NOT BE  
19      DETECTED, WHERE PEOPLE WOULD NOT SEE HIM, WHERE HE WOULD  
20      NOT GET CAUGHT.

21              A       YES.

22              MAY I ELABORATE?

23              Q       SURE.

24              A       THERE IS NO QUESTION THAT HE HAD HIS  
25      ROUTINE WITH THE COCAINE AND THE GIRLS AND THE SEX. HE  
26      HAD DEVELOPED THAT, YOU KNOW.

27              AND, YOU KNOW, USED THAT COMBINATION OF  
28      COCAINE, WHAT I BELIEVE COCAINE, IN RETURN FOR SEX AND

1 MONEY, AND THAT WAS WHERE HE WOULD GET HIMSELF IN  
2 DIFFICULTIES.

3 I ALSO DON'T HAVE ANY PROBLEMS AGREEING  
4 WITH YOU THAT HE DID LIE ON SEVERAL OCCASIONS.

5 HE DID THAT WITH ME AND HE PROBABLY WAS  
6 INCONSISTENT WITH THE DETECTIVES AS WELL.

7 MY POINT, THOUGH, WAS THAT AT A CERTAIN  
8 POINT IN TIME HE DID NOT REALIZE THAT HIS COMMUNICATING  
9 IN THE ABSENCE OF AN ATTORNEY WOULD LEAD TO DIRE  
10 CONSEQUENCES, BECAUSE THAT WAS NOT SPELLED OUT FOR HIM,  
11 OR WAS NOT SPELLED OUT FOR HIM IN A WAY THAT HE CAN  
12 UNDERSTAND.

13 THE REST OF IT, SURE, HE HAD HAD PROBLEMS  
14 BEFORE WITH THE POLICE.

15 Q BUT HE WAS ABLE TO GRASP THAT HE HAD THE  
16 RIGHT TO HAVE AN ATTORNEY; RIGHT?

17 A WELL, AGAIN, HE WASN'T ABLE TO EXPLAIN TO  
18 ME WHAT "RIGHT" MEANT, TO DEFINE THAT FOR ME FREE OF  
19 THAT PARTICULAR SETTING.

20 JUST IN TERMS OF WHAT THE WORD MEANS, HE  
21 WAS UNABLE TO DO THAT.

22 THAT'S BASICALLY WHERE I AM, YOU KNOW --  
23 THAT'S THE POINT THAT I AM MAKING.

24 EVERYTHING ELSE IN TERMS OF WHAT HE SAID OR  
25 WHAT HE DIDN'T SAY -- DID HE LIE? SURE. I MEAN IT'S  
26 SORT OF APPARENT; HE GAVE CONTRADICTORY INFORMATION TO  
27 ME.

28 BUT THE QUESTION IS, DID HE KNOW WHEN HE

1       BEGAN TO TALK TO THE DETECTIVES THAT THAT WOULD LEAD --  
2       WHERE THAT WOULD LEAD HIM IS WHAT'S OPEN TO DISCUSSION  
3       RELATIVE TO HIS COGNITIVE ABILITIES.

4               Q       WELL, GETTING BACK TO WHERE IT WOULD LEAD  
5       HIM, GOING BACK TO THE FACTS OF THE CRIME ITSELF, IT DID  
6       STRIKE YOU THAT PLACES WHERE HE CHOSE TO COMMIT HIS  
7       CRIMES WERE IN FACT ISOLATED.

8               A       SURE.

9               Q       AND THAT I BELIEVE ON THE TAPE HE ADMITS  
10      THAT HE CHOSE THEM BECAUSE THEY WERE ISOLATED SO NOBODY  
11      WOULD SEE HIM, NOBODY WOULD CATCH HIM.

12              A       SURE.

13              Q       SO HE WAS AWARE OF DOWN THE ROAD THE  
14      POTENTIAL CONSEQUENCES.

15              A       OKAY.

16              Q       IS THAT CORRECT?

17              A       YES.

18              Q       SO HE WAS AWARE OF IF HE GETS CAUGHT IN  
19      SOME WAY -- WHO KNOWS HOW; IF THE VICTIM SURVIVED, I  
20      SUPPOSE WOULD BE A GOOD ONE -- BUT THAT ABSTRACTLY HE  
21      WILL BE IN TROUBLE.

22                              WOULD YOU AGREE WITH THAT?

23              A       WELL, THAT'S SORT OF -- AGAIN, THAT'S  
24      CONCRETE.

25                              IF HE GETS CAUGHT WITH SOMEONE PERFORMING  
26      ORAL SEX ON HIM OR SMOKING COCAINE, HE KNOWS THAT'S A  
27      NO-NO, AND HE'S GOING TO GET IN TROUBLE RIGHT THEN AND  
28      THERE.

1                    THAT'S A LITTLE DIFFERENT FROM, YOU KNOW,  
2 IF YOU WAIVE YOUR RIGHT -- YOU KNOW, HE'S HEARING TWO  
3 THINGS IN THE TAPE.

4                    ONE IS -- OR WHAT HE SAID TO ME HE THOUGHT  
5 THEY WERE GOING TO HELP HIM, THEY'RE GOING TO HELP HIM.

6                    AND THE OTHER IS AN ABSTRACT CONCEPT OF  
7 WAIVING YOUR RIGHT TO AN ATTORNEY, AND IF YOU CAN'T  
8 AFFORD AN ATTORNEY ONE WILL BE PROVIDED.

9                    THOSE THINGS ARE LITTLE MORE ABSTRACT FOR  
10 HIM. THAT'S NOT ALL THAT CONCRETE.

11                    Q            BUT WHEN YOU ARE TALKING ABOUT PICKING A  
12 PLACE FOR A CRIME AND CRIMINAL CONSEQUENCES, HE  
13 UNDERSTOOD THERE WOULD BE CONSEQUENCES IF HE WERE  
14 CAUGHT.

15                                       WOULD YOU AGREE WITH THAT?

16                    A            YES.

17                    Q            WHEN YOU WENT INTO YOUR INTERVIEW YOU  
18 DIDN'T TALK TO THE DETECTIVES AT ALL, DID YOU, THAT  
19 CONDUCTED THE INTERVIEWS?

20                    A            NO, I DID NOT.

21                    Q            IN ANY OF THE TAPE DID YOU -- WAS THERE ANY  
22 INDICATION THAT THE DEFENDANT USED THAT SKILL BECAUSE HE  
23 HAD GOTTEN CAUGHT THERE BACK IN 1985 AND HE DIDN'T WANT  
24 TO GET CAUGHT AGAIN?

25                    A            I DIDN'T ASK ABOUT THAT.

26                    Q            OKAY.

27                                       YOU DIDN'T ASK ABOUT HIS CRIMINAL  
28 BACKGROUND?

1 A YES, I DID.

2 Q DID YOU GO THROUGH HIS RAP SHEET WITH HIM?

3 A NO, I DID NOT.

4 Q WHEN YOU SAY YOU WENT THROUGH HIS CRIMINAL  
5 BACKGROUND, YOU JUST SAID RELATE YOUR CRIMINAL  
6 BACKGROUND?

7 A YES.

8 Q WHEN WE ARE TALKING ABOUT MIRANDA RIGHTS,  
9 DID YOU EVER ASK HIM WERE YOU EVER ADVISED OF THESE  
10 RIGHTS BEFORE?

11 A NO, I DID NOT.

12 Q SO YOU DIDN'T TAKE HIS RAP SHEET AND GO  
13 THROUGH EVERY PARTICULAR ARREST.

14 DID YOU SAY YOU GOT YOUR MIRANDA RIGHTS  
15 THEN? WERE YOU READ THESE RIGHTS THEN?

16 A NO, I DID NOT.

17 Q AND FOR EVERY TIME THAT HE WAS IN COURT OR  
18 EVERY TIME THAT HE HAD AN ATTORNEY, DID YOU ASK HIM DID  
19 YOU -- WERE YOU ADVISED OF YOUR RIGHTS THEN, DID YOU  
20 UNDERSTAND YOUR RIGHTS THEN?

21 A NO, I DID NOT.

22 Q AND HE WAS ON PROBATION FOR A WHILE; IS  
23 THAT CORRECT?

24 A YES.

25 Q AND YOU KNOW HE HAD AN ATTORNEY AT LEAST  
26 ONCE OR SEVERAL TIMES THROUGHOUT HIS LIFE.

27 A YES.

28 Q AND YOU KNOW HE HAD HAD MANY CONTACTS THE

1 POLICE.

2 A YES.

3 Q BUT YET YOU DIDN'T ASK HIM IF HE HAD BEEN  
4 ADVISED OF HIS RIGHTS BEFORE?

5 A RIGHT.

6 Q OKAY.

7 NOW, WHEN YOU COME TO THE CONCLUSION, THEN,  
8 THAT HE DIDN'T UNDERSTAND WHAT HE WAS GIVING UP YOU BASE  
9 IT ON NOT ASKING HIM MR. JONES WHAT DID YOU THINK THEY  
10 WERE SAYING; YOU BASED IT ON AN INTELLIGENCE TEST AND  
11 THE FACT THAT HE CANNOT DEFINE CERTAIN WORDS USED WITHIN  
12 THE MIRANDA WARNINGS.

13 IS THAT CORRECT?

14 A AND ALSO HIS ESTIMATED AGE LEVEL, WHICH  
15 WOULD THEN MEAN THAT -- AND THIS HAPPENS IF YOU WORK  
16 WITH MILDLY RETARDED INDIVIDUALS.

17 YOU CAN HAVE THEM MASTER A TASK, BUT IT IS  
18 NOT A CONCRETE TASK. THEY WILL NOT RETAIN IT FROM ONE  
19 EPISODE TO ANOTHER. IT'S ALMOST LIKE A BRAND NEW DAY.

20 SO THAT THE -- YOU KNOW, IT'S A GOOD  
21 ARGUMENT THAT YOU HAVE AND IT MAKES A LOT OF SENSE, BUT  
22 YOU HAVE TO KEEP IN MIND THAT WHAT'S REAL CLEAR -- AND  
23 THIS ISN'T DR. BELIZ SAYING IT -- BUT THE BASIC THEORIES  
24 ON DEVELOPMENTAL DEVELOPMENT ARE THAT AT HIS ESTIMATED  
25 AGE LEVEL HE THINKS CONCRETELY, HE IS ABLE TO MAKE  
26 RELATIONSHIPS BETWEEN THINGS, BUT IT'S FAIRLY CONCRETE.

27 Q WELL, HAVING BEEN THROUGH THE CRIMINAL  
28 JUSTICE SYSTEM NUMEROUS TIMES HE COULD GET INTO A

1 REPETOIRE THAT HE DOESN'T EVER NEED TO SPEAK TO A POLICE  
2 OFFICER, AND THAT HE CAN HAVE AN ATTORNEY.

3 THAT'S SOMETHING HE COULD PUT INTO HIS  
4 SCHEDULE OR HIS PROCEDURE JUST AS EASILY AS HE LEARNS TO  
5 LURE A PROSTITUTE INTO AN ISOLATED PLACE, TRICK HER WITH  
6 COCAINE, GET WHAT HE WANTS SEXUALLY, AND THEN KILL HER.

7 WOULD YOU AGREE WITH THAT?

8 A YES.

9 WHAT YOU DON'T KNOW, THOUGH, IS WHAT HIS  
10 EXPERIENCE AND WHAT HIS PERCEPTION WAS OF HIS PRIOR  
11 DEALINGS WITH THE POLICE.

12 Q WELL, THAT'S MY POINT EXACTLY, DOCTOR.

13 YOU DIDN'T ASK HIM THAT, DID YOU?

14 A NO, I DID NOT.

15 Q AND YOU DIDN'T ASK HIM SAY, YOU KNOW, WHEN  
16 DETECTIVE MORENO SAID THESE THINGS TO YOU WHAT DID YOU  
17 THINK HE WAS SAYING; DID YOU THINK THAT YOU HAD TO TALK  
18 TO HIM, DID YOU THINK THAT MAYBE YOU COULD HAVE AN  
19 ATTORNEY, OR YOU COULD JUST SIT THERE AND NOT SAY  
20 ANYTHING.

21 YOU DIDN'T ASK HIM THOSE QUESTIONS.

22 A NO, I DID NOT.

23 Q OKAY.

24 AND THEN WHEN -- AS TO DETECTIVE MILLER AND  
25 DETECTIVE HARPER, THEIR INTERVIEW WITH HIM, YOU DIDN'T  
26 ASK THE DEFENDANT, HEY, WHEN THEY SAID YOU WANT TO TALK  
27 TO US DID YOU THINK YOU HAD TO TALK TO THEM, OR DID YOU  
28 THINK WHEN THEY SAID YOU COULD REMAIN SILENT, DID YOU

1 THINK YOU HAD TO TALK OR DID YOU THINK YOU COULD BE  
2 QUIET?

3 A I THINK SO.

4 I JUST LEFT IT ALONE AFTER HE TOLD ME THAT  
5 THE REASON HE SPOKE TO THEM WAS THAT THEY TOLD HIM THEY  
6 WERE GOING TO HELP HIM.

7 Q REFERRING TO THE INTERVIEW WITH DETECTIVE  
8 MORENO, YOU JUST DIDN'T INQUIRE ANY FURTHER INTO WHAT HE  
9 ACTUALLY THOUGHT ABOUT HIS RIGHTS WHEN THEY WERE READ TO  
10 HIM.

11 A SURE.

12 Q AND WHEN WE ARE TALKING ABOUT BEING ABLE TO  
13 READ, IS THERE ANYTHING ABOUT THE PROCEDURES THAT THE  
14 DETECTIVE WENT THROUGH THAT REQUIRED THE DEFENDANT TO  
15 READ ANYTHING AS FAR AS HIS RIGHTS?

16 A NO. I BELIEVE AT ONE POINT THERE WAS A --  
17 I THINK ONE THE TAPES HE WAS GOING TO SIGN SOMETHING.

18 AND THEN HE SAID I CAN'T READ. AND THAT  
19 WAS --

20 Q RIGHT.

21 AS A MATTER OF FACT, DETECTIVE MORENO, WHEN  
22 HE STARTED GOING THROUGH THE INTERVIEW, THE DEFENDANT --  
23 AND THAT'S THE FIRST INTERVIEW WITH HIM -- HE SAID I  
24 CAN'T READ; AND DETECTIVE MORENO SAID OKAY, I'LL READ IT  
25 TO YOU.

26 RIGHT?

27 A CORRECT.

28 Q SO THE FACT THAT HE CAN'T READ DOESN'T MEAN

1 HE CAN'T UNDERSTAND.

2 A RIGHT.

3 Q NOW, SPELLING. HE DIDN'T HAVE TO SPELL  
4 ANYTHING BECAUSE HE DIDN'T HAVE TO WRITE ANYTHING OUT.

5 WOULD YOU AGREE THAT?

6 A YES.

7 Q SO THE FACT THAT HE CAN'T SPELL HAS NOTHING  
8 TO DO WITH WHETHER OR NOT HE COULD UNDERSTAND HIS  
9 MIRANDA RIGHTS.

10 A CORRECT.

11 IT LIMITS HIS ABILITY TO GET ADDITIONAL  
12 INFORMATION.

13 BECAUSE IT'S NOT LIKE IT'S SOMEONE THAT YOU  
14 CAN GIVE HIM A HAND-OUT AND HAVE HIM ASK QUESTIONS ABOUT  
15 IT, OR THINGS LIKE THAT.

16 BUT ESSENTIALLY IN THIS PARTICULAR  
17 PROCEEDING THERE WAS NO REQUIREMENT THAT HE READ OR  
18 SPELL.

19 Q NOW, WHEN WE ARE TALKING ABOUT NOT  
20 UNDERSTANDING -- OR NOT BEING ABLE TO DEFINE WORDS, NOT  
21 BEING ABLE TO DEFINE A WORD TO YOU, USING WORDS,  
22 ACTUALLY THAT'S A LITTLE -- TO BE ABLE TO DEFINE A WORD  
23 IS ACTUALLY A DIFFICULT SKILL.

24 WOULDNT AGREE THAT?

25 A WELL, YOU NEED THAT SKILL TO SURVIVE.

26 SO, FOR EXAMPLE, ONE OF THE THINGS THAT YOU  
27 HAVE WITH MILDLY RETARDED INDIVIDUALS THAT HANG OUT IN  
28 THE STREET, OFTENTIMES -- OR EVEN WITH LEARNING DISABLED

1 INDIVIDUALS, IS THAT THEY ARE ABLE TO SAY THINGS LIKE,  
2 YOU KNOW, INSTEAD OF MANILA ENVELOPE, A MANILA ENVELOPE.

3 OR IN THIS CASE I HAVE A RIGHT TO BE ON THE  
4 SIDEWALK. OR YOU, KNOW, MARTIN LUTHER KING WAS AN  
5 ACTIVIST.

6 AND THEY PICK UP WORDS AND COMBINATIONS OF  
7 WORDS THAT SEEM TO IMPLY THAT THEY KNOW WHAT THEY ARE  
8 TALKING ABOUT.

9 WHEN YOU ASK THEM, THOUGH, DIRECTLY THEY  
10 ARE UNABLE TO.

11 AND THAT IS VERY DIFFERENT FROM SORT OF  
12 GOING WITH THE FLOW AND SAYING ALL THE THINGS -- HE GOT  
13 THE JARGON OF THE NEIGHBORHOOD DOWN PRETTY WELL AND CAN  
14 SAY SOME THINGS PRETTY WELL.

15 CAN HE UNDERSTAND EVERYTHING? THAT WAS MY  
16 CONCERN.

17 ON SEVERAL OCCASIONS HE DIDN'T UNDERSTAND  
18 AS MUCH AS IT SEEMED THAT HE DID.

19 AND WHEN YOU FIND THAT WITH A LOTS OF  
20 PEOPLE THAT ARE UNEDUCATED, THEY HAVE PHRASES, THEY WILL  
21 USE PROVERBS, THEY WILL USE DIFFERENT THINGS.

22 WHEN YOU ASK THEM WHAT DOES THAT MEAN THEY  
23 DON'T HAVE A CLUE; THEY JUST HEARD IT.

24 Q SO, THEN, THE PROBLEM FOR YOU IS TO DECIDE  
25 WHETHER OR NOT THAT THEY CAN SIMPLY DEFINE A WORD OR CAN  
26 THEY UNDERSTAND THE CONTEXT AND THEN ACT ON IT.

27 A CORRECT.

28 Q TWO DIFFERENT SKILLS THERE. WOULD YOU

1 AGREE WITH THAT?

2 A YES.

3 Q SO TO BE ABLE TO TURN AROUND AND DEFINE A  
4 WORD WITHOUT USING THAT WORD PROBABLY REQUIRES A LITTLE  
5 MORE EDUCATION AND REQUIRES A LITTLE BIT BITTER  
6 VOCABULARY AND A BETTER ABILITY TO PUT WORDS TOGETHER.

7 BUT SOMETHING WHERE YOU UNDERSTAND THE  
8 CONTEXT THAT WORDS ARE IN AND ASK THEM TO RESPOND TO  
9 THAT IS A MUCH SIMPLER THING TO MASTER.

10 WOULD YOU AGREE WITH THAT?

11 A LET ME GIVE YOU AN EXAMPLE.

12 I ASKED HIM TO DEFINE THE WORD "RIGHT."

13 WHAT I WAS LOOKING FOR, THE ABSTRACT  
14 DEFINITION WOULD BE A PRIVILEGE, A RIGHT IS A PRIVILEGE.

15 NOW, THAT'S A VERY DIFFERENT DEFINITION  
16 THAN WHAT HE SAYS, YEAH, IT'S THE RIGHT TO WALK ON THE  
17 SIDEWALK. THAT'S A LITTLE MORE CONCRETE.

18 AND MY CONCERN, AGAIN, WAS, OKAY, WAS HE  
19 ABLE TO REALIZE THAT WHEN THE DETECTIVE SAID YOU HAVE  
20 THE RIGHT TO AN ATTORNEY, DID HE UNDERSTAND THAT HE HAD  
21 THE PRIVILEGE.

22 I DON'T THINK HE UNDERSTOOD THAT.

23 Q WELL, HE PROBABLY WOULDN'T HAVE UNDERSTOOD  
24 THE WORD PRIVILEGE EITHER, WOULD HE?

25 A THAT'S MY POINT. THAT'S THE LIMITATION YOU  
26 HAVE WITH SOMEONE LIKE THIS.

27 Q BUT YOU DIDN'T FOLLOW THROUGH AND SAY DID  
28 YOU KNOW YOU COULD HAVE AN ATTORNEY THERE.

1                   YOU DIDN'T ASK THAT FOLLOW-UP QUESTION.

2                   A       NO, I DID NOT.

3                   Q       YOU DIDN'T ASK THE QUESTION: YOU KNOW YOU  
4 DIDN'T HAVE TO SAY ANYTHING.

5                   YOU DIDN'T ASK THAT QUESTION.

6                   A       I ASKED HIM WHY HE KEPT ON SAYING THINGS.  
7                   HE SAID BECAUSE THEY SAID THEY WERE GOING  
8 TO HELP ME.

9                   Q       SO YOU DIDN'T ASK HIM --  
10                   YOU DID NOT ASK HIM WHETHER OR NOT HE KNEW  
11 THAT HE DID NOT HAVE TO SAY SOMETHING.

12                  A       RIGHT, I DID NOT.

13                  Q       NOW, WHEN WE ARE TALKING ABOUT WHETHER OR  
14 NOT HE KNOWS WHAT MASTURBATION IS, THAT'S SIGNIFICANT,  
15 TO YOU, THE FACT THAT HE DIDN'T KNOW WHAT THAT MEANT.

16                  A       IT WAS ANOTHER EXAMPLE OR ILLUSTRATION OF  
17 HIS GOING ALONG WITH THE CONVERSATION AND NOT REALLY  
18 KNOWING WHAT HE IS TALKING ABOUT OR WHAT WORDS MEANT.

19                  Q       AND WE ARE TALKING ABOUT A SEXUAL ACT  
20 THERE.

21                  A       YES.

22                  Q       AND SOMEONE, WOULD YOU AGREE, IN THE COMMON  
23 EXPERIENCE WHO WOULDN'T WANT TO ADMIT THEY KNOW WHAT A  
24 SEXUAL TERM MEANS, WOULD SAY, GEE, I DON'T KNOW WHAT  
25 THAT MEANS; THAT'S EMBARRASSING.

26                               WOULD YOU AGREE WITH THAT?

27                  A       NOT NECESSARILY.

28                  Q       WOULD YOU AGREE THAT IF YOU BRING

1 MASTURBATION DOWN TO A COMMON USAGE TERM SUCH AS  
2 WHATEVER TERM YOU WANT TO USE, BUT LIKE SPECIFICALLY IN  
3 THE INTERVIEW WITH DETECTIVE MANSKY AND DEFENDANT JONES,  
4 WHEN HE DIDN'T UNDERSTAND SOMETHING, IT WAS DEFINED FROM  
5 THERE, SEX IN THE BEACH, OR SOMETHING.

6 HE UNDERSTOOD THAT; RIGHT?

7 A YES.

8 Q SO THE FACT THAT HE DIDN'T UNDERSTAND A  
9 LONG WORD LIKE MASTURBATION TO YOU IS SIGNIFICANT,  
10 THOUGH.

11 A WELL, IT'S SIGNIFICANT IN THE SENSE HE  
12 DIDN'T SAY I DON'T UNDERSTAND WHAT THAT MEANS AND  
13 CONTINUES WITH THE CONVERSATION.

14 Q NOW, IN THE PARTICULAR REPORT THAT YOU MADE  
15 YOU DID INDICATE THAT HE WAS MANIPULATIVE?

16 A YES.

17 Q AND THAT WAS STREET SMART.

18 A YES.

19 Q AND THERE WERE ALSO TIMES THAT IT SEEMED  
20 LIKE HE ACTUALLY COULD ENGAGED IN VARIOUS EVASIVE TYPE  
21 OF CONDUCT SUCH AS THE CONDUCT OF ATTENDING THE AA  
22 MEETINGS.

23 A YES.

24 Q AND THERE WERE TIMES WHEN HE SEEMED TO HAVE  
25 SOME INSIGHT INTO HIS OWN CHARACTER.

26 WOULD YOU AGREE WITH THAT?

27 A WHAT DO YOU MEAN BY THAT?

28 Q WELL, SAY ON PAGE 8 --

1 DO YOU HAVE YOUR REPORT THERE?

2 A NO.

3 THE COURT: WE NEED TO TAKE A BREAK.

4 IT DOESN'T APPEAR THAT I AM GOING TO GET TO  
5 THE CASTRO MATTER THIS MORNING BASED ON THIS HEARING.

6 SO I WILL PUT THAT OVER TO 1:30.

7

8

(RECESS.)

9

10

11

EFRAIN BELIZ

12 RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

13

14

THE COURT: IN THE JONES MATTER, ALL PARTIES ARE  
15 AGAIN PRESENT.

16

DR. BELIZ HAS RESUMED THE STAND.

17

MISS INGALLS.

18

MS. INGALLS: THANK YOU, YOUR HONOR.

19

20

CROSS (RESUMED)

21

BY MS. INGALLS:

22

Q DOCTOR, THE DEFENDANT HAD INDICATED TO YOU

23

THAT ONE OF THE REASONS THAT HE CONFESSED WAS THAT

24

DETECTIVE MORENO I ASSUME HAD SAID THAT HE WOULD GET HIM

25

SOME HELP.

26

IS THAT CORRECT?

27

A YES.

28

Q IN LISTENING TO THE TAPE WAS THERE ANY

1 INDICATION ON THERE THAT DETECTIVE MORENO HAD OFFERED  
2 HELP TO THE DEFENDANT?

3 A I DON'T RECALL.

4 I BELIEVE AT ONE POINT THE WHOLE -- I THINK  
5 PART OF THE DNA EXPLANATION, I THINK ON ONE TAPE, THERE  
6 WAS SOME IMPLICATION THAT IF HE TALKED TO HIM THINGS  
7 WOULD BE BETTER.

8 I CAN'T REMEMBER SPECIFICALLY.

9 Q BUT AT NO POINT DID DETECTIVE MORENO SAY HE  
10 WILL GET HELP FOR HIM OR PSYCHOLOGICAL HELP; IS THAT  
11 CORRECT?

12 A I BELIEVE SO.

13 Q AS A MATTER OF FACT, IT WAS THE DEFENDANT  
14 WHO ON SEVERAL OCCASIONS SAID HE OUGHT TO SEE HIS  
15 PSYCHOLOGIST.

16 A RIGHT, HE WANTED HIS PSYCHOLOGIST.

17 Q NOW, NOW WE HAVE BEEN TALKING ABOUT --  
18 IN YOUR REPORT THERE APPEARS TO BE TIMES  
19 WHEN THE DEFENDANT SEEMS TO HAVE SOME INSIGHT AS TO HOW  
20 HE OPERATES HOW HE THINKS.

21 WOULD YOU AGREE WITH THAT?

22 A YES.

23 Q SO ON PAGE 8 WHEN HE SAID THAT -- I'M  
24 LOOKING AT THE TOP PARAGRAPH -- I'D FEEL BIG AND BAD  
25 WHEN I WAS HIGH, BUT IT HAD MADE ME START STEALING  
26 BECAUSE I WANTED MORE -- THAT SHOWS INSIGHT INTO HIS OWN  
27 MOTIVATION.

28 WOULD YOU AGREE WITH THAT?

1 A YES.

2 Q THE THIRD PARAGRAPH, THE LAST LINE, HE'S  
3 TALKING ABOUT I GET NERVOUS AROUND COPS, I'M STUPID TO  
4 SAY WHAT I DID.

5 THAT WOULD SOME KIND OF INSIGHT OR  
6 REFLECTION ON ACTIONS THAT HE HAS TAKEN.

7 WOULD YOU AGREE THAT?

8 A YES.

9 Q ON PAGE 10, REFERRING TO THE SECOND  
10 PARAGRAPH, HE REFERRED TO HIS RELATIONSHIP WITH HIS  
11 MOTHER.

12 AND HE INDICATES I STARTED ACTING STUPID  
13 WITH HER AS AN ADULT, SHE'D TELL ME SOMETHING RIGHT, I  
14 WOULD TURN MY BACK ON HER.

15 AND HE WENT ON TO TALK ABOUT SOME OF THE  
16 THINGS HE DID TO HIS MOTHER.

17 THAT SHOWED SOME KIND OF REFLECTION OR  
18 INSIGHT INTO HOW HE TREATED HIS MOTHER, A SPECIFIC  
19 RELATIONSHIP IN HIS LIFE.

20 WOULD YOU AGREE WITH THAT?

21 A YES.

22 Q IN THE FOURTH PARAGRAPH HE SHOWED SOME  
23 INSIGHT INTO THE NATURE OF HIS RELATIONSHIP WITH HIS  
24 BROTHER, BUTCH LINCOLN, TALKING ABOUT KNOCK-DOWN  
25 DRAG-OUTS, HE STILLTREATS ME LIKE A LITTLE KID, WE'D  
26 THROW A COUPLE OF PUNCHES, AND ON AND ON TO THE END OF  
27 THAT PARAGRAPH.

28 WOULD YOU AGREE THAT SHOWS SOME INSIGHT

1 IN -- AND SOME REFLECTION INTO HIS RELATIONSHIP WITH HIS  
2 BROTHER?

3 A A DESCRIPTION OF HIS BEHAVIOR WITH HIS  
4 BROTHER, YES.

5 Q ON PAGE 11 UNDER HISTORY OF TRAUMATIC  
6 EVENTS, IN THE SECOND PARAGRAPH, FOURTH LINE DOWN, I WAS  
7 TRYING TO SHOW OFF IN FRONT OF SOME GIRLS, DOES THAT  
8 SHOW SOME INSIGHT AS TO WHY HE WAS ACTING IN CERTAIN  
9 WAYS, SOME REFLECTION?

10 WOULD YOU AGREE WITH THAT?

11 A YES, COUPLED WITH THE FACT THAT HE GOT  
12 STUCK IN THE DRAIN PIPE.

13 Q RIGHT.

14 ON PAGE 12, AT THE TOP, WHERE HE SAYS, IT  
15 HURT MY PRIDE, YOU SHOULDN'T MESS WITH SOMEONE'S PRIDE,  
16 MAYBE NOT THE BEST INSIGHT, BUT IT SHOWS SOME INSIGHT AS  
17 TO WHAT OCCURRED OUT THERE AND WHY HE DID CERTAIN  
18 THINGS.

19 WOULD YOU AGREE WITH THAT?

20 A YES.

21 Q NOW, YOU WERE ABLE TO ASCERTAIN HE DID WORK  
22 MONDAY THROUGH FRIDAY FROM 7:00 TO 11:00 EARNING MONEY  
23 AND THEN HE'D GO TO GOODWILL.

24 IS THAT CORRECT?

25 A WHERE IS THAT?

26 Q I'M SORRY; ON PAGE 14, RIGHTS IN THE  
27 MIDDLE, PRIOR TO INCARCERATION.

28 A YES.

1 Q AND WERE YOU ABLE TO ASCERTAIN HE WAS ALSO  
2 ABLE TO GET AROUND THE CITY ON HIS OWN, USING THE BUS  
3 SYSTEM AND THE BLUE LINES, KNEW WHERE TO GO TO GET  
4 DRUGS, HE KNEW WHEN TO GO GET THEM, HOW TO GET THE SEX,  
5 HOW THE TO LURE THE GIRLS TO HIM, HOW TO GET SEX WHEN HE  
6 NEEDED IT.

7 HE WAS CAPABLE OF DOING THIS.

8 A YES.

9 Q ON PAGE 15 HE TOLD YOU THAT THE GOODWILL  
10 WAS A TRAINING PROGRAM TO HELP YOU GET A JOB, THEN HE  
11 GOES ON TWO PARAGRAPHS LATER BASICALLY DISTINGUISHING  
12 DIFFERENT PROGRAMS, GOODWILL VERSUS MID-CITIES, SAYING  
13 GOODWILL IS HIGH-FUNCTIONING.

14 THAT SHOWS SOMEBODY WITH INSIGHT, IF YOU  
15 WILL, I WOULD IMAGINE.

16 OR YOU IMAGINE THAT'S JUST REPEATING WHAT  
17 HE HEARS OTHER PEOPLE SAY?

18 A NO.

19 AS A MATTER OF FACT MILDLY RETARDED  
20 INDIVIDUALS CAN IN FACT DISTINGUISH THEMSELVES FROM  
21 PROFOUNDLY RETARDED JUST BY LOOKING AT THEM.

22 AGAIN, YOU WOULD NEED TO BE AT ONE OF THOSE  
23 FACILITIES TO SEE THE LEVEL OF INDIVIDUALS THAT ARE  
24 THERE AND TO SEE HOW EASY IT IS TO SEPARATE THE MILDLY  
25 RETARDED FROM THE MORE SEVERELY RETARDED INDIVIDUALS.

26 Q AND HE WAS ABLE TO --

27 A HE CONSIDERED HIMSELF HIGHER FUNCTIONING,  
28 YES.

1 Q AND TO KNOW ACTUALLY WHAT THAT TERM MEANT,  
2 THE WORTH DISTINCTION, ET CETERA.

3 A YES.

4 Q PAGE 18, YOU REFERRED TO THE PICTURE  
5 ARRANGEMENT SUBTEST, AND YOU TALK ABOUT THAT HIS ABILITY  
6 TO RECOGNIZE AND PERHAPS UNDERSTAND SOCIAL SITUATIONS IS  
7 MUCH CLOSER TO THE NORMAL THAN HIS ABILITIES IN OTHER  
8 AREAS.

9 IS THAT CORRECT?

10 A YES.

11 Q SO ONE OF HIS AREAS OF STRENGTH LIES IN HIS  
12 ABILITY TO ANTICIPATE THE CONSEQUENCES AND THE TEMPORAL  
13 SEQUENCING IN TIME CONCEPTS OF SOCIAL SITUATIONS.

14 A YES, WHICH I MENTIONED EARLIER, WHICH IS  
15 THAT HE IS STREET WISE AND HE IS ABLE TO, YOU KNOW,  
16 SURVIVE IN THE STREETS.

17 THAT WHERE HE SPENDS MOST OF HIS TIME.

18 Q OKAY.

19 AND AGAIN ON PAGE 25, THE LAST PARAGRAPH,  
20 YOU INDICATE THAT THE DEFENDANT IS SOMEWHAT STREET WISE  
21 AND HE HAS BEEN IN TROUBLE WITH THE LAW IN THE PAST.

22 A YES.

23 Q AND LATER ON YOU INDICATE THAT HE IS  
24 MANIPULATIVE AND CAN'T AVOID SERIOUS PROBLEMS WITH THE  
25 LAW, ON PAGE 26.

26 A YES.

27 Q ON PAGE 27, STARTING AT THE -- ACTUALLY  
28 PAGE 26, THE BOTTOM LINE, HE ADMITS TO FAKING HIS WAY

1 THROUGH AA AND OTHER MEETINGS, AND HE WILL FORGET OR  
2 DISTORT INFORMATION IN ORDER TO GET HIMSELF OUT OF  
3 TROUBLE.

4 THAT SHOWS SOME ABILITY TO ANTICIPATE  
5 CONSEQUENCES AND THEN TRY TO GET OUT OF THEM, PERHAPS  
6 NOT VERY SUCCESSFULLY, BUT TO TRY, AT LEAST.

7 A IT'S BOTH.

8 I MEAN, IT GOES BACK TO THE FACT THAT HE  
9 DOESN'T LEARN FROM HIS MISTAKES. HE DOESN'T REALIZE  
10 WHAT'S GOOD JUDGMENT AND WHAT ISN'T.

11 YOU KNOW, THERE ARE THINGS LIKE GOING TO AA  
12 MEETINGS THAT HE SHOULD DO, THAT SHOULD BE DONE WITH THE  
13 SITUATION, WHATEVER IT IS, AT HAND.

14 BUT HE WON'T DO IT.

15 SO --

16 Q THAT'S NOT ONLY THE MILDLY RETARDED  
17 POPULATION; WE HAVE A WHOLE POPULATION OF PEOPLE THAT  
18 DON'T DO WHAT THEY NEED TO DO, WHAT THEY SHOULD DO.

19 WOULD YOU AGREE WITH THAT?

20 A TRUE.

21 Q AND THERE ARE A LOT OF PEOPLE THAT SHOULD  
22 FINISH AA AND THEY DON'T, AND THEY ARE VERY INTELLIGENT  
23 OR VERY EDUCATED; IT DOESN'T REALLY MATTER WHERE YOU  
24 COME FROM.

25 WOULD YOU AGREE WITH THAT?

26 A TRUE.

27 Q ON PAGE 27, IN THE SECOND FULL PARAGRAPH,  
28 HIS ACCOUNTS OF HOW, WHERE AND WITH WHOM HE DRANK AND

1 DID DRUGS SUGGESTS THAT HE TOOK ADVANTAGE OF, AND MOST  
2 LIKELY WAS ALSO TAKEN ADVANTAGE OF, BY THE PEOPLE HE  
3 KNEW OR HUNG OUT WITH.

4 THAT HE WAS ABLE TO BUY ALCOHOL AND BARTER  
5 HIS GOODS FOR SEX.

6 THAT SHOWS AN ABILITY TO MANEUVER AND  
7 OPERATE, BASICALLY IN SITUATIONS THAT ARE NOT THAT EASY  
8 TO OPERATE IN LIFE, WHICH WOULD SEEM MORE COMPLICATED.

9 WOULD YOU AGREE?

10 A I DON'T UNDERSTAND THAT.

11 Q YOU HAVE INDICATED THAT LIFE WOULD BECOME  
12 MORE COMPLICATED.

13 A YES.

14 Q AND HERE HE IS ABLE TO MANEUVER, HE'S ABLE  
15 TO GET THINGS THAT SATISFY HIM, ALCOHOL, DRUGS, SEX, AND  
16 GO AROUND THE CITY AND TAKE ADVANTAGE OF PEOPLE, GET  
17 THINGS FOR FREE.

18 WOULD YOU AGREE WITH THAT?

19 A WELL, I HAVE TO QUALIFY THAT BY SAYING THAT  
20 THAT KIND OF STREET BEHAVIOR IS NOT TOO DIFFICULT FOR  
21 PEOPLE WHO HAVE BEEN INVOLVED IN IT.

22 I THINK I NOTED IN MY REPORT THAT, YOU  
23 KNOW, HE'S BASICALLY FROM SOUTH CENTRAL LOS ANGELES, A  
24 VERY POOR AREA WITH OBVIOUSLY VERY LITTLE PARENTAL  
25 GUIDANCE OR SUPPORT, INVOLVED WITH OTHER VICTIMS.

26 RIGHT?

27 NOW, I KNOW THAT I CONSULT THROUGH A CUBAN  
28 MENTAL HEALTH PROGRAM WHERE THE MARIELITOS SHOW UP AND

1 TWO DAYS IN BEING IN THE PROGRAM, IN HAVING NO MONEY  
2 WHATEVER, THEY KNOW WHERE TO GO TO GET ORAL SEX FOR  
3 \$2.50.

4 AND SO THAT'S NOT TOO SOPHISTICATED WITH  
5 THIS GUY. HE LIKES TO RECEIVE ORAL SEX, GET MONEY FROM  
6 HIS WORK, HE USES THAT TO BUY THE COCAINE.

7 THAT'S THE AVENUE TO GET THESE THINGS. I  
8 MEAN, THAT'S NOT ALL THAT SOPHISTICATED.

9 SOCIOPATHIC, YES. IT WOULD BE NICE IF HE  
10 WERE SAVING HIS MONEY FOR A CHESS SET, OR SOMETHING LIKE  
11 THAT.

12 BUT THE REALITY IS THAT THIS GUY GOES FROM  
13 ONE HIGH TO ANOTHER, FROM ONE THING TO ANOTHER. HE SORT  
14 OF HAS, YOU KNOW, GOT THAT ROUTINE DOWN PRETTY WELL.

15 BUT, YOU KNOW, THOSE ARE YOUR SURVIVAL  
16 SKILLS THAT I WAS REFERRING TO IN TERMS OF HAVING A  
17 SUCCESSFUL STREET RELATIONSHIP. THIS GUY CAN SURVIVE IN  
18 THE STREET, THAT'S ALL HE KNOWS.

19 BUT, AGAIN, IF YOU LOOK AT THE QUALITY OF  
20 HIS SURVIVAL, HE'S BEEN IN TROUBLE WITH THE POLICE ON  
21 NUMEROUS OCCASIONS.

22 IT SEEMS THAT THESE RELATIONSHIPS WITH  
23 WOMEN RESULTED IN, YOU KNOW, GETTING HIGH AND SOMEONE  
24 RIPPING SOMEBODY OFF.

25 IN THE TAPES WHAT APPEARS TO OCCUR IN EACH  
26 EVENTS IS THAT THERE IS AN ALTERCATION, YOU KNOW. SO IT  
27 WASN'T LIKE A REAL -- I DIDN'T GET THE IMPRESSION THAT  
28 HE'S RUNNING AROUND WITH GOLD CHAINS, DRIVING A MERCEDES

1 AS A RESULT OF HIS SUBSTANCE -- YOU KNOW, HIS TRADE IN  
2 NARCOTICS FOR SEX.

3 HE'S TAKING ADVANTAGE OF PEOPLE. I THINK  
4 PEOPLE ARE TAKING ADVANTAGE OF HIM.

5 AND THAT'S WHERE HIS DILEMMA OCCURRED.

6 Q ONE FURTHER THING WHEN WE ARE TALKING ABOUT  
7 THE MIRANDA RIGHTS --

8 LET ME BACK UP. DURING THE TAPE HE DOES  
9 TALK TO THE POLICE OFFICERS AND TELLS THEM ABOUT  
10 LEARNING HOW TO DO A CHOKE HOLD BY WATCHING COP SHOWS  
11 AND COPS DOING IT TO HIM.

12 DO YOU RECALL THAT?

13 A YES.

14 Q AND IN ASKING HIM I TAKE IT THEN -- IN  
15 ASKING HIM WHETHER OR NOT --

16 IN ASKING HIM WHETHER OR NOT HE UNDERSTOOD  
17 HIS MIRANDA RIGHTS OR WHAT HE UNDERSTOOD THEM TO MEAN,  
18 YOU DIDN'T INQUIRE AS TO, WELL, HE HAS SEEN THIS ON TV,  
19 HAVE YOU SEEN THE COPS READ THE RIGHTS TO THE SUSPECTS  
20 ON TV?

21 YOU DIDN'T ASK HIM ABOUT THAT.

22 A NO, I DID NOT.

23 Q IN EVERY COP SHOW THAT YOU SEE ON TV, AS  
24 SOON AS SOMEBODY IS ARRESTED THEY ARE BUSY --

25 AS SOON AS THEY ARE HOOKING THEM UP THEY  
26 READ THEM THEIR RIGHTS NO MATTER WHETHER THEY ARE GOING  
27 TO TALK TO THEM OR NOT.

28 WOULD YOU AGREE WITH THAT?

1                   A        THAT'S RIGHT.

2                   Q        ANYBODY WHO WATCHES TV THROUGHOUT THEIR  
3 LIFE IS GOING TO HEAR MIRANDA RIGHTS ON EVERY COP SHOW.  
4                                WOULDN'T YOU AGREE WITH THAT?

5                   A        YES.

6                                I COULD QUALIFY. I GUESS THE REASON I  
7 DIDN'T ASK HIM WHEN I WAS TALKING WITH HIM, AND THINKING  
8 IT THROUGH IN MY HEAD, ONE OF THE THINGS THAT CAME TO  
9 MIND IS I GOT A DAUGHTER THAT'S ABOUT EIGHT AND A HALF  
10 YEARS OLD, AND SHE ON SEVERAL OCCASIONS TRIED TO PUT ME  
11 IN A CAROTID HOLD, OR WHATEVER THAT SHE SEES ON TV.

12                               AND SHE IS ABLE TO DO THAT.

13                               BUT WITH RESPECT TO CAPTURE THE REST OF THE  
14 VERBAL STUFF ON THE SHOW, SHE HAS NOT A CLUE WHAT THOSE  
15 THINGS ARE.

16                               SO THAT WAS MY FRAME OF REFERENCE AS I WAS  
17 TALKING TO HIM.

18                               AND KEEP IN MIND THAT THIS GUY WAS --

19                   Q        YOU ASCERTAINED THAT YOUR DAUGHTER DID NOT  
20 UNDERSTAND THE GIST OF WHAT YOU SAID BECAUSE YOU ASKED  
21 HER?

22                   A        YES.

23                   Q        YOU ASKED HER?

24                   A        WE TALKED ABOUT SOME OF THE THINGS SHE SEES  
25 ON TV AND WHY DID THEY DO THAT, WHY DID SHE DO THAT.

26                   Q        YOU ASKED HER WHAT DID SHE THINK THAT  
27 MEANT?

28                   A        YES.

1 Q BUT YOU DID NOT ASK THE DEFENDANT IN THIS  
2 CASE.

3 A NO.

4 MS. INGALLS: I HAVE NO FURTHER QUESTIONS.

5 THE COURT: MR. THOMASON.

6 MR. THOMASON: JUST ONE BRIEF AREA. THANK YOU.

7

8 REDIRECT EXAMINATION @

9 BY MR. THOMASON:

10 Q DOCTOR, THE DISTRICT ATTORNEY ASKED YOU  
11 ABOUT PAGE 18 ON YOUR REPORT WHERE YOU INDICATE THAT HE  
12 HAS THE ABILITY TO RECOGNIZE AND PERHAPS UNDERSTAND  
13 SOCIAL SITUATIONS MUCH CLOSER TO NORMAL.

14 WOULD YOU CHARACTERIZE -- DO YOU EVER  
15 CHARACTERIZE INTERACTION WITH POLICE AS SOCIAL  
16 SITUATIONS WITHIN THE MEANING OF THAT SENTENCE?

17 A NOT NECESSARILY.

18 Q YOU GO ON LATER TO TALK ABOUT THAT HE IS  
19 STREETS WISE.

20 IS THAT MORE OF THE SITUATION THAT ARE YOU  
21 ARE TALKING ABOUT.

22 A YES.

23 Q SOCIAL SITUATIONS.

24 A YES.

25 MR. THOMASON: THANK YOU NOTHING FURTHER.

26 THE COURT: JUST ONE OR TWO POINTS, DOCTOR.

27 DR. WEINSTEIN INDICATED HE FELT THAT THE  
28 DEFENDANT WAS FUNCTIONING AT A LEVEL TYPICAL OF A 13- TO

1 14-YEAR-OLD, AND YET YOU FOUND HIM TO BE FUNCTIONING AT  
2 A LEVEL MUCH LESS THAN THAT.

3 IS THAT CORRECT?

4 THE WITNESS: YES.

5 THE COURT: IN YOUR REVIEW OF THE TAPES WHERE THE  
6 DEFENDANT WAS ADVISED OF HIS RIGHTS, RATHER THAN ASKING  
7 THE DEFENDANT IF HE WAIVED HIS RIGHTS, DO YOU RECALL THE  
8 DETECTIVE SAYING DO YOU GIVE UP YOUR RIGHTS?

9 AND WOULD THAT MAKE A DIFFERENCE IN HIS NOT  
10 UNDERSTANDING THE WORD "WAIVE" AS OPPOSED TO HIS  
11 UNDERSTANDING "GIVE UP"?

12 THE WITNESS: "GIVE UP" WOULD BE BETTER USED.

13 THE QUESTION WAS DID HE UNDERSTAND. I  
14 GUESS MY POSITION ON THAT WOULD BE THAT HAD THEY ASKED  
15 HIM TO REPEAT IT.

16 THE COURT: BUT MY QUESTION IS: DOES THE WORDING  
17 USED BY DETECTIVE MORENO, DO YOU WHAT TO GIVE UP YOUR  
18 RIGHTS, NOT TO YOU WAIVE YOUR RIGHTS, DOES THAT MAKE A  
19 DIFFERENCE IN THE WAY YOU ANALYZE THAT?

20 THE WITNESS: THAT WOULD BE MORE SIMPLISTIC, YES.

21 THE COURT: ALSO, WHEN HE WAS ADVISED FURTHER BY  
22 THE OTHER OFFICERS THAT INTERVIEWED HIM SUBSEQUENT TO  
23 THAT, THEY DIDN'T STATE WAIVE, BUT THEY SAID DO YOU WANT  
24 TO TALK AND COOPERATE WITH US, WOULD THAT BE MORE  
25 SIMPLISTIC AND BETTER ABLE FOR HIM TO UNDERSTAND?

26 THE WITNESS: YES.

27 THE COURT: ANYTHING FURTHER FROM THE PEOPLE?

28 MS. INGALLS: NO, YOUR HONOR.

1 THE COURT: MR. THOMASON, ANYTHING FURTHER?

2 MR. THOMASON: JUST A MOMENT, YOUR HONOR.

3

4 (BRIEF PAUSE.)

5

6 THE COURT: YOU WANT TO KNOW WHERE I WAS  
7 REFERRING TO?

8 MR. THOMASON: YES.

9 THE COURT: THAT WAS TAPE 778.

10 MS. INGALLS: PAGE 8 AT LINE 11 AND 12.

11 THE COURT: PAGE 8, YES.

12 MR. THOMASON: I HAVE NO OTHER QUESTIONS.

13 THE COURT: I'M SORRY?

14 MR. THOMASON: I DO NOT HAVE ANY OTHER QUESTIONS.

15 THE COURT: ANYTHING FURTHER FROM THE PEOPLE?

16 MS. INGALLS: NO, YOUR HONOR.

17 THE COURT: THANK YOU, DOCTOR.

18 YOU MAY STEP DOWN, SIR. YOU ARE EXCUSED.

19

20 (WITNESS EXCUSED.)

21

22 THE COURT: WE WILL TAKE THE MORNING RECESS AND  
23 RESUME AT 1:30.

24 MS. INGALLS: YOUR HONOR, UNLESS COUNSEL WANTS TO  
25 CALL ANY OF THE OFFICER, I CAN GO AHEAD AND EXCUSE THEM,  
26 IF THAT'S OKAY WITH THE COURT.

27 MR. THOMASON: I'M PREPARED TO REST.

28 THE COURT: OKAY.

1  
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MR. THOMASON: AT THIS POINT.

THE COURT: ALL RIGHT.

YOU CAN ARGUE AT 1:30.

(AT 12:05 P.M. A RECESS WAS TAKEN  
UNTIL 1:30 P.M. OF THE SAME DAY.)

1 LOS ANGELES, CALIFORNIA, FRIDAY, SEPTEMBER 30, 1994;

2 1:45 P.M.

3 DEPARTMENT NO. 125 HON. ROBERT P. O'NEILL, JUDGE

4 APPEARANCES:

5 THE DEFENDANT WITH HIS ATTORNEY,  
6 PATRICK G. THOMASON, DEPUTY ALTERNATE  
7 PUBLIC DEFENDER OF LOS ANGELES  
8 COUNTY; ANNE INGALLS, DEPUTY DISTRICT  
9 ATTORNEY OF LOS ANGELES COUNTY,  
10 REPRESENTING THE PEOPLE OF THE STATE  
11 OF CALIFORNIA.

12 (ANTHONY M. GONZALEZ, C.S.R. NO. 987,  
13 OFFICIAL REPORTER.)

14  
15 THE COURT: IN THE JONES MATTER, ALL PARTIES  
16 ARE PRESENT.

17 I UNDERSTAND THERE'S NOTHING MORE BY WAY  
18 OF TESTIMONY FROM EITHER SIDE.

19 MR. THOMASON: THERE'S ONE OTHER PIECE OF  
20 EVIDENCE, YOUR HONOR.

21 ON PAGE 5 AND 6 OF THE TRANSCRIPT OF THE  
22 INTERVIEW ON TAPE 141778, THE DETECTIVE TALKS ABOUT A  
23 FORM THAT MR. JONES SIGNED WHERE THEY REMOVED HIM FROM  
24 THE LOCATION WHERE HE MURDERED THAT WOMAN.

25 I BELIEVE THE DISTRICT ATTORNEY WILL  
26 HAVE NO OBJECTION TO THIS BEING MARKED --

27 THE COURT: H. DEFENSE H.

28 MR. THOMASON: AND RECEIVED INTO EVIDENCE TO

1 BASICALLY ILLUSTRATE THAT PARTICULAR PORTION OF THE  
2 TAPE.

3 THAT WOULD BE THE LAST OF THE EVIDENCE.  
4 I WOULD MOVE ALL MY EXHIBITS INTO EVIDENCE.

5 THE COURT: IS THERE ANY OBJECTION TO ANY OF  
6 THE EXHIBITS?

7 MS. INGALLS: NO, YOUR HONOR.

8 THE COURT: THEY WILL ALL BE RECEIVED.

9

10 (WHEREUPON, DEFENSE EXHIBITS A  
11 THROUGH H, WERE RECEIVED INTO  
12 EVIDENCE.)

13

14 THE COURT: I'VE REVIEWED DEFENSE H AND ALL  
15 THE EXHIBITS.

16 MR. THOMASON, DO YOU WISH TO BE HEARD?

17 MR. THOMASON: THANK YOU, YOUR HONOR.

18 YOUR HONOR, THIS IS MY MOTION, BUT I DO  
19 WISH TO THE COURT TO NOTE THAT THE PEOPLE HAVE THE  
20 BURDEN BY A PREPONDERANCE OF THE EVIDENCE AT THIS  
21 POINT. HOWEVER, I'M GOING FORWARD WITH MY ARGUMENT.

22 THEY HAVE THE BURDEN. THEY HAVE  
23 OBVIOUSLY CHOSEN NOT TO PRESENT THEIR OWN  
24 PSYCHOLOGICAL EVIDENCE, RELYING ONLY ON THE TAPES AND  
25 THE TESTIMONY. I DON'T BELIEVE THAT BASED ON THAT  
26 EVIDENCE ALONE THEY CAN CARRY THE BURDEN OF A KNOWING  
27 AND INTELLIGENT WAIVER.

28 THEY HAVE PRESENTED NO EVIDENCE TO

1 DISPUTE THE BASIC FACT THAT MR. JONES IS RETARDED.  
2 THE POINTS AND AUTHORITIES THAT SHE PRESENTED TO YOU  
3 ARE BASICALLY IN AGREEMENT WITH ME ON THIS POINT, AND  
4 THAT IS MENTAL RETARDATION IS ONE OF ALL OF THE  
5 FACTORS TO BE CONSIDERED, AND IT IS NOT A PER SE  
6 RULE.

7 I AM NOT ASKING THIS COURT TO CARVE A  
8 NEW PER SE EXCEPTION TO THE CONSTITUTION IN THIS TYPE  
9 CASE.

10 HOWEVER, I DO WISH THE COURT TO NOTE THE  
11 TESTIMONY THIS MORNING FROM THE DOCTOR AND THE REPORT  
12 BEFORE YOU ARE ESSENTIALLY THAT OF AN EIGHT YEAR OLD  
13 MIND, DEFECTIVE EIGHT YEAR OLD MIND.

14 THE ONE TEST THAT THE DOCTOR PERFORMED,  
15 AND CERTAINLY RETARDED UNDER ANY OTHER TEST THAT WAS  
16 PERFORMED, TAKING THAT INTO ACCOUNT, YOU SHOULD MAKE A  
17 FINDING BASED ON THE EVIDENCE AND ALL THE TAPES,  
18 ET CETERA, THAT MR. JONES IN THESE PARTICULAR  
19 INSTANCES WAS INCAPABLE OF A KNOWING AND INTELLIGENT  
20 WAIVER.

21 DETECTIVE MORENO DID TESTIFY THAT HE  
22 TOOK SPECIAL EFFORTS TO BE PARTICULARLY SIMPLE, AND  
23 PERHAPS THAT WILL INFLUENCE THE COURT'S DECISION AS TO  
24 HIS STATEMENTS RELATED TO DETECTIVE MORENO. BUT I DO  
25 WISH THE COURT TO NOTE THAT THERE IS NO SIMILAR  
26 EVIDENCE REGARDING EITHER DETECTIVE MILLER OR  
27 DETECTIVE MANSKY'S INTERVIEWS THREE WEEKS TO FOUR  
28 WEEKS LATER IN THE MONTH OF JANUARY OF 1993, WHEN

1 THESE TOOK PLACE.

2 SO, YOU CAN SEPARATE OUT THE DIFFERENT  
3 STATEMENTS, EVEN IF YOU FIND AS TO DETECTIVE MORENO  
4 THAT HE TOOK THE EXTRA CARE, GOT A KNOWING AND  
5 INTELLIGENT WAIVER, THAT DOES NOT MEAN THAT MR. JONES  
6 KNOWINGLY AND INTELLIGENTLY WAIVED DOWN THE ROAD WITH  
7 THE OTHER DETECTIVES, ESPECIALLY IN LIGHT OF  
8 DR. BELIZ'S TESTIMONY THAT EACH DAY IS A NEW DAY TO A  
9 PERSON WITH THIS MENTAL CONDITION, AND THAT THEY DON'T  
10 HOLD OVER, THEY DON'T NECESSARILY LEARN THROUGH PRIOR  
11 EXPERIENCE.

12 THE FACT THAT DETECTIVE MORENO TOOK THE  
13 TIME FOR EXTRA EXPLANATION DOES NOT MEAN IT HELD OVER  
14 THREE WEEKS LATER, ESPECIALLY AGAIN GIVEN THE INHERENT  
15 CUSTODIAL PRESSURE THAT MIRANDA ITSELF IS COGNIZANT  
16 OF.

17 IN REGARDS TO ALL THE EVENTS BEFORE YOU,  
18 I WANT TO POINT OUT A COUPLE OF THINGS THAT I THINK  
19 REALLY POINT OUT AND ILLUSTRATE THE DOCTOR'S TESTIMONY  
20 THAT MR. JONES DID NOT INTELLIGENTLY AND KNOWINGLY  
21 WAIVE HIS RIGHTS.

22 THE DNA DISCUSSION REGARDING  
23 DETECTIVE MORENO, I THINK, IS EXTREMELY ILLUSTRATIVE  
24 OF THE WAY MR. JONES OPERATES. IT'S QUITE CLEAR, I  
25 THINK, FROM WHAT YOU KNOW ABOUT MR. JONES NOW AND WHAT  
26 HAPPENED ON THE TAPE, THAT MR. JONES CAN SAY THINGS  
27 LIKE UH-HUH, YEAH, YEAH, YEAH, AND GIVE THE  
28 APPEARANCE, BASICALLY, THAT HE KNOWS WHAT HE'S TALKING

1 ABOUT, WHEN, IN FACT, THIS DOCTOR SAID HE DOESN'T HAVE  
2 A CLUE AS TO WHAT'S GOING ON, AND HAS THE ABILITY TO  
3 MIMIC KNOWLEDGE.

4 AND I THINK THAT THAT'S EXTREMELY  
5 TELLING IN THIS CASE.

6 THE FORM THAT I JUST GAVE YOU IS REALLY  
7 TELLING, TOO, AND AGAIN THE TRANSCRIPT TESTIMONY,  
8 REGARDING THAT. THAT IS THAT JONES HAS THIS READ TO  
9 HIM, WHERE THE FORM SAYS I'LL GO WITH YOU TO WHERE I  
10 MURDERED THAT WOMAN.

11 AND THE BOTTOM LINE IS REGARDLESS WHAT  
12 YOU THINK ABOUT THESE STATEMENTS, THE ADMISSIBILITY OR  
13 NOT, MR. JONES NEVER SAID ANYTHING ABOUT MURDERING  
14 ANYBODY. ACCORDING TO THE STATEMENTS HE GAVE, IT WAS,  
15 FIRST OF ALL, SELF-DEFENSE. SECOND OF ALL, THEY WERE  
16 ALL ALIVE AND DOING WELL WHEN HE LEFT THEM.

17 SO THE VERY FACT THAT HE WOULD SIGN THIS  
18 FORM, INCLUDING THE WORD "MURDER," SHOWS AN INABILITY  
19 TO UNDERSTAND BIG WORDS, AND A WILLINGNESS TO SIGN AND  
20 DO ANYTHING WHICH HE THOUGHT WOULD CURRY FAVOR WITH  
21 THE AUTHORITIES IN A VERY CHILDLIKE WAY, HIS  
22 SUBMISSION TO AUTHORITY THAT THE DOCTOR TOLD YOU  
23 ABOUT, AND WHICH I THINK IS ACTUALLY COMMON  
24 EXPERIENCE, TOO.

25 FINALLY -- WELL, THE NEXT BIG AREA THAT  
26 I JUST WANTED TO HIGHLIGHT COMES AT PAGES 38 AND 39 OF  
27 THE INTERVIEW WITH DETECTIVE MANSKY AND CANCHOLO,  
28 141454.

1 THE COURT: PAGE 38?

2 MR. THOMASON: PAGES 38 AND 39. AND IF YOU  
3 LOOK AT IT, THEY'RE TALKING ABOUT A LOCATION. AND  
4 DETECTIVE MANSKY AND CANCHOLO ARE TRYING TO TALK ABOUT  
5 AN ALLEY BEHIND IMPERIAL HIGHWAY.

6 AND ON PAGE 39 -- EXCUSE ME -- PAGE 38,  
7 MR. JONES IS KIND OF TALKING ABOUT IT, YEAH, YEAH.  
8 AND THEN YOU TURN TO PAGE 39 AND YOU SEE MR. JONES  
9 SAYS I THOUGHT WE WERE TALKING ABOUT OVER HERE ON  
10 FIGUEROA.

11 NOW, AGAIN, TO ME THAT'S JUST AN EXAMPLE  
12 OF HOW MR. JONES CAN AND WILL PROCEED ALONG IN A  
13 CONVERSATION WITHOUT HAVING ANY REAL CLUE, AGAIN, AS  
14 TO WHAT HE'S TALKING ABOUT AND SIMPLY WILL ACQUIESCE  
15 IN A CONVERSATION WITH THE AUTHORITIES WITHOUT  
16 KNOWINGLY AND INTELLIGENTLY GOING ALONG WITH IT.

17 FINALLY, YOUR HONOR, THE NUMBER ONE  
18 INTERESTING PIECE OF EVIDENCE TO DEMONSTRATE  
19 MR. JONES' INABILITY TO KNOW AND UNDERSTAND THE  
20 WAIVERS OF THE RIGHTS COMES FROM DETECTIVE MORENO.  
21 AGAIN, IT WAS THE SUBJECT OF THE FIRST PART OF THIS  
22 MOTION WHERE THE DETECTIVE ASKS HIM THE SIMPLE  
23 QUESTION:

24 "DO YOU WISH TO GIVE UP YOUR  
25 RIGHT TO HAVE AN ATTORNEY AND SPEAK  
26 WITH ME?"

27 AND MR. JONES SAYS:

28 "NO."

1                    THEN THE DETECTIVE SAYS:

2                    "WHAT? I THOUGHT YOU DID  
3                    WANT TO."

4                    MR. JONES IMMEDIATELY CHANGES HIS MIND  
5 AND SAYS:

6                    "YES."

7                    THAT INCIDENT IS TELLING. EVEN APART  
8 FROM THE LEGAL CONSEQUENCES THAT I TALKED ABOUT  
9 EARLIER THIS MORNING, IT DIRECTLY ILLUSTRATES TO THIS  
10 COURT THAT MR. JONES REALLY DOESN'T UNDERSTAND WHAT  
11 THESE QUESTIONS ARE ALL ABOUT, AND WILL SUBMIT TO AN  
12 AUTHORITY FIGURE WHEN CHALLENGED IMMEDIATELY WITH A  
13 NEGATIVE RESPONSE FROM MR. JONES.

14                    AS SOON AS THE POLICE OFFICER  
15 ESSENTIALLY CHALLENGED MR. JONES, HE CHANGED HIS  
16 ANSWER.

17                    SO I THINK THAT IN THAT INSTANCE, THIS  
18 IS A SITUATION WHERE I'VE GOT IT REALLY KIND OF COMING  
19 AND GOING. THAT IS, THE DISTRICT ATTORNEY CAN'T NOW  
20 STAND UP AND SAID OH, YEAH, HE REALLY NOW UNDERSTOOD  
21 EVERYTHING, WHEN EARLIER THIS MORNING THEY KIND OF  
22 SAID IT'S OBVIOUS HE DIDN'T UNDERSTAND THE QUESTION  
23 AND SIMPLY GAVE THE WRONG RESPONSE BECAUSE HE DIDN'T  
24 UNDERSTAND.

25                    EITHER HE UNDERSTOOD THE QUESTION AND  
26 GAVE AN UNEQUIVOCAL RESPONSE, AND I'D ASK THE COURT TO  
27 RECONSIDER YOUR RULING FROM THIS MORNING, OR WE HAVE  
28 REALLY GOOD EVIDENCE THAT HE DOESN'T TRULY UNDERSTAND

1 WHAT'S GOING ON AND JUST GIVES ANSWERS ACCORDING TO  
2 ESSENTIALLY THE TONE OF VOICE THAT THE POLICE OFFICER  
3 USES AT THE END OF THE QUESTION OF WHETHER A YES OR A  
4 NO ANSWER IS EXPECTED.

5 I'M NOT ARGUING THAT MR. JONES IS A  
6 TOTALLY UNFUNCTIONAL PERSON. AS THE DISTRICT  
7 ATTORNEY'S CROSS EXAMINATION SHOWED, HE IS ABLE TO  
8 FUNCTION TO SOME DEGREE.

9 HE HOLDS A SIMPLE JOB, RIDES A BUS,  
10 FINDS WOMEN ON THE STREETS. BUT THAT DOESN'T SAY THAT  
11 HE'S CAPABLE OF COMPLEX ABSTRACT IDEAS, WHICH YOU  
12 HEARD FROM THE DOCTOR ARE MORE INVOLVED IN MIRANDA  
13 WAIVERS.

14 I THINK THEY ALL SHOULD BE THROWN OUT,  
15 BUT CERTAINLY ALL OF THE CONVERSATIONS TAPED, AND THE  
16 ONES PRECEDING THE TAPED INTERVIEWS, REGARDING THE  
17 HOMICIDE SHOULD BE SUPPRESSED ON INVOLUNTARY GROUNDS.

18 THE COURT: THANK YOU.

19 I AGREE WITH YOU THAT THE BURDEN IS ON  
20 THE PROSECUTION. AND MY RULING HAS TO BE MADE ON THE  
21 TOTALITY OF THE CIRCUMSTANCES THAT ARE PRESENTED TO  
22 ME.

23 I HAVE READ AND CONSIDERED THE MOTIONS.  
24 I'VE NOTED THE WATSON CASE, WHERE THE INDIVIDUAL  
25 QUESTIONED WAS ON LSD AND ALCOHOL AT THE TIME OF THE  
26 INTERROGATION, HAD AN IQ OF 65, SUBNORMAL  
27 INTELLIGENCE. HE HAD CHRONIC ORGANIC BRAIN DAMAGE AND  
28 WAS SUFFERING FROM SCHIZOPHRENIA.

1 UNDER THE FACTS AND CIRCUMSTANCES OF  
2 THAT CASE, IT WAS FOUND THAT HE WAS ABLE TO COMPREHEND  
3 AND WAIVE HIS RIGHTS.

4 LARA, PEOPLE V. LARA, WAS AN 18 YEAR OLD  
5 WITH LITTLE OR NO EDUCATION, NINTH OR TENTH GRADE. HE  
6 DRANK TOO MUCH, HAD AN IQ OF 65, AND SIMILAR TO THIS  
7 CASE, WAS DIAGNOSED WITH A MILD MENTAL RETARDATION.

8 IN RE NORMAN H. WAS A 15 YEAR OLD  
9 INDIVIDUAL WITH AN IQ OF 47. HE WAS 15 YEARS OLD WITH  
10 THE LEVEL OF INTELLIGENCE OF A SEVEN OR EIGHT YEAR  
11 OLD.

12 I JUST POINT OUT THAT THOSE ARE  
13 INSTANCES WHERE INDIVIDUALS WERE FOUND TO BE ABLE TO  
14 COMPREHEND THE RIGHTS, ALTHOUGH BECAUSE OF THOSE  
15 RULINGS I DO NOT NECESSARILY FIND PRECEDENCE IN THIS  
16 CASE.

17 UNDER THE FACTS AND CIRCUMSTANCES OF  
18 EACH OF THOSE CASES, THE COURTS FOUND THAT THE  
19 INDIVIDUALS INVOLVED WERE ABLE TO UNDERSTAND AND  
20 COMPREHEND.

21 BUT WHAT'S MOST IMPORTANT, AND SO YOU  
22 KNOW HOW I WILL ULTIMATELY RULE AFTER I HEAR FROM THE  
23 PEOPLE, I'M REQUIRED OBVIOUSLY TO JUDGE THIS CASE ON  
24 THE TOTALITY OF THE CIRCUMSTANCES PRESENTED HERE, AND  
25 NOT BASED ON THOSE PREVIOUS RULINGS, BECAUSE AN  
26 INDIVIDUAL WITH AN IQ OF 65, AND THE DEFENDANT HERE  
27 HAD AN IQ OF 63 TO 65, DOESN'T MEAN THAT BECAUSE OF  
28 THAT I WOULD FIND THESE WAIVERS ARE VALID.

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MS. INGALLS?

MS. INGALLS: THANK YOU, YOUR HONOR.

I AM GOING TO TAKE A BIT OF TIME WITH THE REPORT OF DR. BELIZ, AND I ASK TO COURT TO BEAR WITH ME IF I'M TOO LENGTHY.

FIRST OF ALL, I AM NOT TRYING TO SAY THAT MR. JONES IS EXTREMELY INTELLIGENT. I DO NOT LIKE TO MAKE HIM OUT TO BE THAT WAY, AND I HATE TO TALK ABOUT HIM LIKE THIS, AS IF HE WASN'T HERE.

AS THE COURT HAS ALREADY INDICATED, THE FACT THAT HE MIGHT BE CONSIDERED BY A STATISTICS TYPE OF TESTING TO BE MILDLY MENTALLY RETARDED IS NOT AS A MATTER OF LAW SUFFICIENT TO SHOW THAT HE DOESN'T UNDERSTAND HIS MIRANDA RIGHTS.

I WILL TAKE ISSUE WITH COUNSEL CHARACTERIZING THE MIRANDA PROCESS AS COMPLEX AND ABSTRACT IDEAS. I DON'T THINK THERE'S ANYTHING VERY COMPLEX ABOUT SAYING, "YOU CAN BE QUIET, YOU DON'T HAVE TO TALK TO ME. IF YOU WANT AN ATTORNEY, WE'LL GET YOU ONE. YOU'RE IN CONTROL OF THE WHOLE SITUATION. WHAT DO YOU THINK, DO YOU WANT TO GIVE UP YOUR RIGHTS?"

THOSE ARE VERY SIMPLE IDEAS. THIS ISN'T SOMETHING THAT ALL OF THE SUDDEN SOMEBODY'S THROWN IN A SITUATION, IT'S ALL NEW TO HIM.

NOT ONLY IS MR. JONES A PERSON WHO HAS BEEN INVOLVED WITH LAW ENFORCEMENT AND OTHER ARRESTS AND THE COURT SYSTEM AND PROBATION, AND HE'S BEEN IN

1 CUSTODY, BUT EVEN THE DAILY EXPOSURE, HOW OFTEN IT IS  
2 ON COP SHOWS, THIS HAS BECOME SOMETHING THAT EVERYBODY  
3 KNOWS ABOUT, EVERYBODY HAS HEARD ABOUT IT ON TV,  
4 WATCHES IT, CAN PRACTICALLY RECITE IT THEMSELVES.

5 THE CONCLUSION OF DR. BELIZ THAT THE  
6 DEFENDANT MOST LIKELY DID NOT KNOW WHAT HE WAS  
7 AGREEING TO, OR WHAT HIS OPTIONS WERE, I AM STRUCK  
8 WITH THE LACK OF ASKING THE DEFENDANT, "DID YOU  
9 UNDERSTAND THAT?"

10 THE MOST OPPORTUNE INTERVIEW, THE MOST  
11 PERTINENT QUESTION THAT COULD HAVE BEEN ASKED, COULD  
12 HAVE BEEN ASKED BY THE DOCTOR, BUT YET HE DID NOT ASK  
13 THAT. HE DID NOT SAY, "WHAT DID YOU THINK HE MEANT?  
14 DID YOU KNOW WHAT HE MEANT?" AND REALLY GRILL HIM ON  
15 THAT SUBJECT.

16 NOT EVEN GRILL HIM, JUST ASK HIM THE  
17 QUESTION.

18 INSTEAD HE GETS TO THIS CONCLUSION BY  
19 ASKING HIM, AN UNEDUCATED INARTICULATE MAN, SOMEBODY  
20 WHO ADMITTEDLY CANNOT READ AND CANNOT SPELL, TO DEFINE  
21 WORDS WITHOUT USING THE WORD. TO ME, I THINK THAT'S A  
22 TASK FOR PEOPLE WHO ARE SOMEWHAT EDUCATED.

23 IF THE COURT HAS DEALT WITH KIDS, IF YOU  
24 TRY TO EXPLAIN TO A CHILD WHAT A WORD MEANS, IT'S HARD  
25 TO DO THAT. IT'S HARD TO DEFINE A WORD WITHOUT USING  
26 THE WORD, ITSELF.

27 NORMALLY WHAT YOU DO IS YOU GO TO USING  
28 AN EXAMPLE. WELL, YOU KNOW, TAKE IT IN THIS CONTEXT.

1 AND THEN THE PERSON UNDERSTANDS THE CONTEXT AND CAN  
2 RESPOND.

3 SO, TO ASK A PERSON WHO ADMITTEDLY HAS  
4 NOT BEEN TO SCHOOL BEYOND THE SIXTH GRADE AND  
5 OBVIOUSLY IS NOT MOTIVATED ACADEMICALLY OR VERBALLY TO  
6 DEFINE WORDS IS JUST LUDICROUS WHEN HE COULD HAVE BEEN  
7 ASKED, "WHAT DO YOU THINK THAT THEY MEANT? YOU HAD  
8 THE RIGHTS READ TO YOU BEFORE, DID YOU UNDERSTAND THEM  
9 THEN?" GO THROUGH HIS WHOLE HISTORY.

10 THE DOCTOR DID NOT DEAL WITH PRIOR  
11 INCARCERATIONS AND PRIOR CONTACTS WITH DEFENSE  
12 ATTORNEYS, OTHER TIMES HE HAS HAD HIS RIGHTS READ TO  
13 HIM ON THE STREETS. WHAT HE HAS LEARNED ON THE  
14 STREETS.

15 DID HE TALK TO OTHER PEOPLE, OTHER  
16 PEOPLE IN JAIL ABOUT HIS RIGHTS, OTHER ATTORNEYS WHEN  
17 HE'S BEEN TO COURT. WHEN THE COURT HAS ADVISED HIM OF  
18 HIS RIGHTS. NOBODY ASKED HIM, "SO WHAT DID YOU  
19 THINK? WHAT DID IT ALL MEAN?"

20 THERE'S NO DIRECT INTERROGATION OF THE  
21 DEFENDANT SUCH AS WHAT HAPPENED IN PEOPLE V. VENTURA.  
22 INSTEAD, IT'S ALMOST LIKE A GAME, LET'S TRY TO  
23 CONSTRUCT WHAT HE MAY HAVE BEEN THINKING WITH ALL  
24 THESE WORD GAMES, AND THEN COME TO A CONCLUSION.

25 THE UNDERRIDING ASSUMPTION ALSO SEEMS TO  
26 BE THAT ANYBODY WHO CONFESSES AND IS MILDLY RETARDED  
27 DID NOT KNOW WHAT HE WAS AGREEING TO. THE COURT IS  
28 WELL AWARE THAT PEOPLE CONFESS FOR ALL KINDS OF

1 REASONS.

2 INEVITABLY, ONE WONDERS WHY THEY DO  
3 CONFESS. BUT JUST BECAUSE A PERSON DOES CONFESS DOES  
4 NOT MEAN THAT THEY DID NOT KNOW THE CONSEQUENCES.  
5 AGAIN, NOBODY ASKED HIM, SO COUNSEL WANTS US TO ENGAGE  
6 IN GUESSWORK.

7 NOW, THE DOCTOR CONCLUDED ON PAGE 25  
8 THAT THE DEFENDANT IS QUITE CAPABLE OF SIGNING HIS  
9 NAME AND CONVERSING WITHOUT A CLUE AS TO WHAT HE IS  
10 SIGNING OR AGREEING TO.

11 HOWEVER, TRYING TO SAY THAT HE'S SIMPLE,  
12 THAT HE IS EASILY OVERBORNE AND TAKEN ADVANTAGE OF.  
13 BUT THROUGHOUT HIS REPORT THERE ARE STATEMENTS THAT  
14 CONTRADICT THAT.

15 HE INDICATES IN HIS REPORT AT PAGE 26  
16 THAT THE DEFENDANT HAS LEARNED QUITE WELL HOW TO  
17 MANIPULATE THE SYSTEM, TO AVOID SERIOUS PROBLEMS WITH  
18 THE LAW. AND THAT WAS THE ESSENCE OF THE DOCTOR'S  
19 SAYING THAT HE COULDN'T UNDERSTAND MIRANDA, THE FAR  
20 REACHING CONSEQUENCES.

21 BUT YET WE HAVE WITHIN THIS CRIME  
22 ITSELF, AS WELL AS WITHIN THE DOCTOR'S REPORT, THE  
23 DEFENDANT KNOWING THAT IF HE DID CERTAIN THINGS, THAT  
24 IF HE GOT CONVICTED, THAT WOULD HAVE CONSEQUENCES, HE  
25 WOULD BE BACK IN JAIL.

26 IF SOMEBODY SAW HIM DOING WHAT HE WAS  
27 DOING, HE WOULD GET CAUGHT. SO HE DOES UNDERSTAND THE  
28 CONSEQUENCES. HE MAY NOT KNOW HOW IT ALL PLAYS OUT,

1 BUT HE DOES KNOW HE WOULD BE IN SERIOUS TROUBLE. HE  
2 HAS THAT ABILITY.

3 HE ADMITS FAKING HIS WAY THROUGH AA AND  
4 OTHER MEETINGS. HE'S CAPABLE OF MANIPULATING.

5 HE WILL FORGET OR DISTORT INFORMATION TO  
6 GET HIMSELF OUT OF TROUBLE. HE KNOWS THE STREET  
7 LIGHTS. THESE ARE ALL QUOTATIONS FROM THE DOCTOR'S  
8 REPORT.

9 HE USES PUBLIC TRANSPORTATION TO GET TO  
10 AND FROM PLACES TO BUY AND USE ILLICIT DRUGS.

11 OBVIOUSLY, SOMETHING THAT AN EIGHT YEAR  
12 OLD IS NOT THAT NECESSARILY CAPABLE OF. WE'RE TALKING  
13 ABOUT SOMEBODY WHO CAN GET AROUND, DO WHAT HE WANTS TO  
14 DO, AND FOLLOW HIS OWN WILL, AND NOT BE OVERBORNE BY  
15 OTHERS.

16 HE TRAVELS IN AND OUT OF SOUTH CENTRAL  
17 L.A. AT ALL HOURS OF THE DAY OR NIGHT WITH NO  
18 SUPERVISION, MANIPULATING HIS MOTHER, IGNORING TERMS  
19 AND CONDITIONS OF HIS PROBATION.

20 FIRST HE SAID HE DOESN'T GO OUT AT  
21 NIGHT, BUT LATER HE ADMITTED THAT HE DOES TRAVEL ALL  
22 OVER WITHOUT SUPERVISION.

23 AGAIN, WE HAVE A PERSON CAPABLE OF  
24 GETTING AROUND, TAKING CARE OF HIMSELF, KNOWING THE  
25 RAMIFICATIONS.

26 PAGE 27, THE DOCTOR TALKED ABOUT THE  
27 DEFENDANT BEING ABLE TO TAKE ADVANTAGE OF THE PEOPLE  
28 HE KNEW. PEOPLE THAT HE HUNG OUT WITH. USES TERMS

1 LIKE "MOST LIKELY."

2 WHY THE GUESSWORK. CLEARLY, IF THE  
3 DEFENDANT IS ABLE TO TAKE ADVANTAGE OF OTHER PEOPLE,  
4 AS THE NATURE OF THE CRIME IS BASICALLY TAKING  
5 ADVANTAGE OF THESE PROSTITUTES, LURING THEM, KNOWING  
6 THAT THEY'RE GOING TO WANT SOME DRUGS, AND THEY'LL  
7 GIVE UP SOME SEX SO THAT HE CAN GET HIS WAY WITH THEM,  
8 ET CETERA, AND THEN KILL THEM, HE IS ABLE TO TAKE  
9 ADVANTAGE OF THESE PEOPLE.

10 AGAIN, HE IS ABLE TO FIGURE OUT  
11 CONSEQUENCES. "IF I CAN DO THIS, THIS WILL HAPPEN,  
12 AND I CAN DO THIS." SO HE CAN SEE A LITTLE BIT  
13 FARTHER AHEAD THAN THE DOCTOR IS GIVING HIM CREDIT  
14 FOR.

15 THE FACT THAT HE WORKED AND THAT HE USED  
16 MONEY AND DRUGS TO BARTER FOR SEX. HE'S NOT A  
17 COMPLICATED MAN, BUT HE'S NOT AS SIMPLE AS THE DOCTOR  
18 WOULD LIKE TO ALLOW HIM TO BE.

19 THE CRIMES, THEMSELVES, YOU HEARD ABOUT  
20 THE CRIMES. AGAIN, WE HAVE THE DEFENDANT. HE DIDN'T  
21 WANT TO PAY. ACCORDING TO ONE OF HIS STORIES, HE  
22 DIDN'T WANT TO PAY. HE DIDN'T WANT TO BE HIT. HE HAD  
23 A WILL AND HE HAD THE ABILITY TO CARRY IT OUT.

24 THE DOCTOR REACHED THE CONCLUSION ON  
25 PAGE 27 THAT THE DEFENDANT THOUGHT HE COULD MANIPULATE  
26 HIS WAY OUT OF DIFFICULT SITUATIONS. AND THEN HE  
27 CONFESSED.

28 WELL, HE THOUGHT THAT HE COULD

1 MANIPULATE HIS WAY OUT. THAT, IN ITSELF, SHOWS  
2 SOMETHING A LITTLE MORE COMPLICATED THAN SOMEBODY WHO  
3 IS MILDLY MENTALLY RETARDED AND UNABLE TO UNDERSTAND  
4 THE LANGUAGE, THE VERY SIMPLE LANGUAGE THAT  
5 DETECTIVE MORENO USED WITH MR. JONES.

6 THE DOCTOR SAID THAT HE LIED TO GET OUT  
7 OF DIFFICULT SITUATIONS. AGAIN, THAT SHOWS A BIT OF  
8 COMPLEXITY, AND ALSO SHOWS SOMEBODY WHO UNDERSTANDS,  
9 "IF I DON'T LIE, I AM GOING TO BE IN TROUBLE. I NEED  
10 TO LIE, BECAUSE I'M IN TROUBLE AND I NEED TO GET  
11 MYSELF OUT OF IT." SO HE LIES TO GET OUT OF IT.

12 SO HE'S NOT VERY GOOD AT IT, AND HE  
13 CAN'T REMEMBER WHAT HE SAID BEFORE. THAT'S TYPICAL OF  
14 LIARS, NO MATTER HOW EDUCATED THEY ARE, ARTICULATE,  
15 WHETHER THEY CAN SPELL, READ, WRITE, WHATEVER.

16 I WOULD ATTRIBUTE NO VALUE TO THE  
17 STATEMENT THAT THE DEFENDANT IS NOT SMART ENOUGH TO  
18 DEVELOP A STORY THAT HE WOULD LATER RECALL. AGAIN,  
19 THAT'S WHAT HAPPENS WHEN PEOPLE LIE.

20 THE COURT SEES THAT TIME AND TIME AGAIN  
21 IN THE COURTROOM. THAT'S THE PURPOSE OF IMPEACHMENT  
22 TESTIMONY, CROSS EXAMINATION, TO TEST SOMEBODY'S  
23 CREDIBILITY, TEST THEIR STORY.

24 THAT'S THE PROBLEM WITH LYING. IF  
25 YOU'RE NOT GOOD AT IT, IT'S WORSE WHEN YOU'RE  
26 CONFRONTED WITH EVIDENCE THAT SAYS OTHERWISE, OR  
27 SAYING SOMETHING THAT JUST DOESN'T MAKE SENSE.

28 THE DEFENDANT IS STREET-WISE, INDICATING

1 THAT HE HAD A CERTAIN AMOUNT OF SAVVINESS.

2 AGAIN, I AM NOT SAYING THAT THE MAN IS A  
3 BRAIN SURGEON, OR ANYTHING LIKE THAT, BUT HE IS NOT AS  
4 SIMPLE AS THE DOCTOR SAYS, AND HE HAS BEEN AROUND.  
5 THE DOCTOR PUT A LOT OF CREDENCE, ONCE THE OFFICER  
6 SAID THEY HAD AN EYEWITNESS, THE DEFENDANT GOT  
7 FRIGHTENED AND CONFESSED.

8 AGAIN, THAT IS A TYPICAL SCENARIO. A  
9 SUSPECT DENIES A CRIME. AND THE OFFICERS SAY, "WE  
10 HAVE AN EYEWITNESS AND HE SAYS YOU DID IT. WHAT'S  
11 YOUR SIDE OF THE STORY?"

12 AND THEN THE SUSPECT SAYS, "OH, OH, I'M  
13 IN A LITTLE BIT IN TROUBLE. HOW CAN I GET MYSELF OUT  
14 OF THIS AND MAKE MYSELF LOOK PRETTY GOOD AND MAKE A  
15 VICTIM LOOK A LITTLE BAD, WHATEVER."

16 THIS IS, IN FACT, WHAT MR. JONES DID.  
17 HE STARTS OUT DENYING THE CRIMES, REALIZING HEY, HE  
18 CAN'T ADMIT THAT HE KILLED THESE WOMEN.

19 THEN THE OFFICER SAYS, THEY CONTINUE  
20 THEIR TALKING A LITTLE BIT, AND THE DEFENDANT SAYS,  
21 "WELL, YOU KNOW, I AM IN A LITTLE BIT OF A JAM," AND  
22 HE CHANGES HIS STORY A LITTLE BIT. AND SUDDENLY HE'S  
23 JUSTIFYING MAKING THE INDIVIDUALS LOOK KIND OF SLEAZY,  
24 AND THEY'RE THE AGGRESSOR, AND HE, THE POOR GUY, IS  
25 THE VICTIM, AND HE NEEDS TO FIGHT BACK TO DEFEND  
26 HIMSELF, SO HE STILL COMES OUT LOOKING LIKE THE GOOD  
27 GUY.

28 THEN THEY COME BACK WITH A LITTLE BIT

1 MORE, AND HIS STORY CHANGES A LITTLE BIT MORE. THE  
2 USUAL PROCEDURE IN A LOT OF INTERROGATIONS, BUT AGAIN  
3 SHOWING THAT THE DEFENDANT REALIZED, "OKAY, I AM IN A  
4 LITTLE BIT OF TROUBLE NOW, I AM GOING TO HAVE TO  
5 CHANGE MY STORY AND REARRANGE THINGS," UNDERSTANDING  
6 THE CONSEQUENCES OF WHERE AND WHAT THE OFFICERS WERE  
7 SAYING.

8 THE DOCTOR SEEMED TO ATTACH A LOT OF  
9 SIGNIFICANCE TO SOMEONE RECANTING THE ADMISSIONS OR  
10 CONFESSIONS IN HIS STATEMENT TO THE DOCTOR. AGAIN, I  
11 THINK IT WOULD PROBABLY BE THE COURT'S EXPERIENCE THAT  
12 THIS IS A COMMON EXPERIENCE IN LAW ENFORCEMENT, THAT  
13 DEFENDANTS RECANT.

14 "THEY MADE ME SAY THIS, THEY PROMISED  
15 ME SOMETHING," COMING UP WITH A ZILLION REASONS. THEN  
16 THEY REALIZE, "HEY, I DIDN'T GO HOME THAT DAY, I  
17 THOUGHT I COULD GET OUT OF IT." OR, "I DON'T WANT TO  
18 STICK THAT STORY, I'LL TRY SOMETHING DIFFERENT."

19 OR THEY TALK TO SOMEBODY IN THE COUNTY  
20 JAIL AND THEY BLAME IT ON THE COP.

21 AGAIN, MR. JONES TALKING TO THE DOCTOR  
22 SAID, "THAT WAS KIND OF STUPID, I NEED TO NOW BLAME IT  
23 ON LAW ENFORCEMENT." AGAIN, SHOWING US THAT HE HAS  
24 THE ABILITY TO UNDERSTAND CONSEQUENCES, UNDERSTANDS  
25 WHAT'S GOING ON.

26 AGAIN SHOWING HIS ABILITY TO SURVIVE AND  
27 UNDERSTAND THESE TYPES OF SITUATIONS.

28 WE WENT THROUGH SOME OF THE EXAMPLES IN

1 THE DOCTOR'S REPORT SHOWING SOME INSIGHT THAT THIS  
2 SO-CALLED MILDLY RETARDED MAN HAD IN REGARDS TO HIS  
3 LIFE AND HIS ABILITY TO DEAL WITH PEOPLE IN HIS LIFE.

4 I DON'T SEE THAT THOSE ARE THE INSIGHTS  
5 OF A PERSON WHO IS MILDLY RETARDED. I THINK TO SOME  
6 EXTENT IT SHOWS THE INSIGHT OF A MAN WHO IS CAPABLE OF  
7 KNOWING THINGS THAT HE SHOULDN'T HAVE DONE AND SHOULD  
8 HAVE PURSUED INSTEAD. SOMETHING THAT PROBABLY COMES  
9 WITH A LITTLE BIT OF TREATMENT, THERAPY, ET CETERA,  
10 BUT CERTAINLY SOMEBODY WHO IS CAPABLE OF UNDERSTANDING  
11 SIMPLE RIGHTS GIVEN TO HIM BY DETECTIVE MORENO, AS  
12 WELL AS DETECTIVE MILLER.

13 SO WHAT WE HAVE LEFT HERE IS BASICALLY A  
14 DOCTOR'S REPORT THAT TRIES TO SAY THAT THE MAN COULD  
15 NOT UNDERSTAND. HE DOESN'T SAY COULD NOT. HE SAYS  
16 MAY OR MAY NOT HAVE.

17 IN ESSENCE, THERE'S MORE IN THAT REPORT  
18 THAT SAYS THAT THE DEFENDANT WAS CAPABLE OF  
19 UNDERSTANDING HIS MIRANDA RIGHTS AND THE MIRANDA  
20 WAIVERS, THE CONSEQUENCES OF THAT. IN LOOKING AT THIS  
21 WHOLE HISTORY, LOOKING AT THE DEFENDANT'S HISTORY, WE  
22 KNOW THAT HE'S BEEN TO JAIL, HAS AN EXTENSIVE RAP  
23 SHEET, HE'S BEEN READ HIS MIRANDA RIGHTS BEFORE.

24 YOU LOOK TO HIS CRIMINAL HISTORY, HE'S  
25 HAD OTHER ATTORNEYS, HE'S HAD A LOT OF CONTACT WITH  
26 LAW ENFORCEMENT, THERE'S NO REASON TO THINK THAT HE  
27 DID NOT UNDERSTAND THE SIMPLE WORDS AND THE CONTEXT,  
28 THE SIMPLE QUESTIONS OF, "DO YOU WANT TO GIVE UP THAT

1 RIGHT? DO YOU WANT TO TALK TO US? YOU CAN REMAIN  
2 SILENT. IF YOU DON'T WANT THE TALK TO US, MR. JONES,  
3 YOU DON'T HAVE TO. YOU ARE IN CONTROL OF THIS."

4 DETECTIVE MORENO WENT THROUGH GREAT  
5 EFFORTS TO EXPLAIN THIS TO THE DEFENDANT IN WORDS THAT  
6 ANYBODY COULD UNDERSTAND.

7 HE ALSO MADE A STATEMENT THAT MR. JONES  
8 DOESN'T LEARN FROM PRIOR EXPERIENCE. WE HAVE THE  
9 DOCTOR'S TESTIMONY INDICATING OTHERWISE.

10 WE KNOW FROM PRIOR EXPERIENCE THAT HE  
11 LEARNED THAT HE NEEDS TO BE A LITTLE MORE CAUTIOUS  
12 ABOUT WHERE HE PLACES HIS VICTIMS SO THAT HE DOESN'T  
13 GET DETECTED, AND HE UTILIZED, AND WE KNOW THIS FROM  
14 THE TAPES, THEMSELVES, THAT HE TOOK THE VICTIMS TO  
15 PLACES THAT WERE ISOLATED SO HE WOULD NOT GET  
16 DETECTED.

17 THE FACT THAT HE MISUNDERSTOOD ONE  
18 QUESTION THAT THE DETECTIVE ASKED IS NOT INDICATIVE OF  
19 THE MAN BEING INCAPABLE OF UNDERSTANDING. SIMPLE  
20 CLARIFICATION BY THE DETECTIVE CLEARED UP WHAT SEEMED  
21 TO BE A MISUNDERSTANDING, AND THEY WENT ON FROM THERE.

22 I THINK THE EVIDENCE IS WAY BEYOND A  
23 PREPONDERANCE OF THE EVIDENCE. THIS IS LIKE ANOTHER  
24 DAY IN THE PARK FOR MR. JONES. HE KNEW EXACTLY WHAT  
25 WAS GOING ON.

26 THE OFFICERS WENT OVER AND ABOVE WHAT  
27 WAS CALLED FOR TO MAKE IT SIMPLE AND MAKE IT EASY FOR  
28 THE DEFENDANT TO UNDERSTAND, AND I BELIEVE HE DID.

1 THE COURT: THANK YOU.

2 MR. THOMASON, I DECLINE YOUR INVITATION  
3 TO RECONSIDER THE RULING I MADE ON THE MOTION THIS  
4 MORNING, THAT PART OF THIS MOTION. MY RULING STILL  
5 REMAINS

6 IS THERE ANYTHING YOU WISH TO RESPOND  
7 TO?

8 MR. THOMASON: I WISH TO RESPOND TO ONE AREA  
9 OF THE DISTRICT ATTORNEY'S ARGUMENT. SHE FAULTS THE  
10 DOCTOR FOR NOT ASKING MR. JONES, "MR. JONES, DID YOU  
11 UNDERSTAND?"

12 ONCE AGAIN, HE SAYS, "NO."

13 THEN SHE'S GOING TO STAND UP TO SAY THE  
14 DOCTOR PUTS ALL THIS STOCK IN A SELF SERVING DENIAL,  
15 YOU CAN'T BELIEVE THAT, YOUR HONOR. THAT'S EXACTLY  
16 WHAT WOULD HAPPEN.

17 INSTEAD OF DOING THAT, THE DOCTOR USES  
18 OBJECTIVE TESTS, RECOGNIZED BY THE PROFESSION, TO TRY  
19 TO REACH A REAL OPINION, AGAIN, AS OPPOSED TO RELYING  
20 ON RESPONSES FROM THE DEFENDANT TO A DIRECT QUESTION.

21 IN FACT, LATER ON IN HER ARGUMENT SHE  
22 DID ACCUSE THE DOCTOR OF PUTTING TOO MUCH STOCK INTO  
23 MR. JONES' DENIAL.

24 SO, THE VERY FACT THAT THE DOCTOR DIDN'T  
25 SPECIFICALLY ASK MR. JONES A QUESTION, I THINK, IS NOT  
26 IN ANY WAY, SHAPE OR FORM A DEFICIENCY TO THE WAY THAT  
27 HE PERFORMED HIS EVALUATION. AND YOU SHOULD LOOK AT  
28 EXACTLY WHAT HE DID SAY AND RULE BASICALLY AS I'VE

1 REQUESTED PREVIOUSLY.

2 THE COURT: THANK YOU.

3 I'VE CONSIDERED DR. BELIZ'S TESTIMONY.  
4 HIS CONCLUSION WAS THAT THE DEFENDANT WAS MILDLY  
5 MENTALLY RETARDED. HIS OPINION CONCERNING THE MENTAL  
6 AGE OF THE DEFENDANT RANGES ANYWHERE FROM WHAT  
7 DR. BELIZ HAS MENTIONED, BETWEEN EIGHT AND A HALF AND  
8 ELEVEN. AT ONE POINT HE SAID EIGHT AND A HALF TO  
9 ELEVEN. ANOTHER POINT HE SAID NINE AND A HALF TO  
10 ELEVEN.

11 I CONSIDERED THE DEFENDANT'S AGE PER  
12 DR. BELIZ, 33 YEARS OLD, 33 YEARS AND SEVEN MONTHS, I  
13 BELIEVE, AT THE TIME OF THE REPORT.

14 DR. WEINSTEIN, WHICH IS EXHIBIT NO. G,  
15 INDICATES THAT HIS EVALUATION OF THE DEFENDANT IS HE  
16 WAS FUNCTIONING AT A LEVEL OF 13 AND 14 YEARS OLD.

17 HIS EXPERIENCE, HIS LIFE EXPERIENCES AS  
18 THEY HAVE BEEN RELATED IN THE REPORT HERE, I'VE  
19 CONSIDERED THAT. I'VE CONSIDERED THE FACT THAT THE  
20 DEFENDANT WAS COMPETENT ENOUGH TO WORK, WORK ON A  
21 DAILY BASIS, TRANSPORTATION TO AND FROM HIS WORK, TO  
22 BASICALLY BE SELF SUFFICIENT.

23 HIS WORK AS A JANITOR AT TACO BELL.

24 I'VE CONSIDERED HIS BACKGROUND AS IT'S  
25 BEEN PRESENTED IN DR. BELIZ'S REPORT.

26 I'VE CONSIDERED THE FACT HE'S HAD PRIOR  
27 CONTACTS WITH LAW ENFORCEMENT AND THE COURTS BEFORE.  
28 HE'S HAD PROBLEMS WITH THE POLICE BEFORE.

1 HE'S BEEN ON PROBATION BEFORE, HAS HAD  
2 CONTACTS WITH ATTORNEYS BEFORE.

3 I'VE CONSIDERED THE FACT OF DR. BELIZ'S  
4 EVALUATION THAT HE HAS AN IQ OF 65. I BELIEVE HE SAID  
5 IN THE PEABODY TEST, HIS ABILITY TO UNDERSTAND  
6 VOCABULARY WAS AT 55, WHERE NORMAL IS 100. I WON'T GO  
7 INTO HIS CONCLUSION THAT HE'S MILDLY RETARDED.

8 I'VE CONSIDERED THE FACT THAT HE CANNOT  
9 READ OR SPELL. I INDICATED AT THE VERY OUTSET OF ALL  
10 THIS, I'VE LISTENED TO THE TAPES OF THESE INTERVIEWS,  
11 I'VE LISTENED TO THE DEFENDANT SPEAK, I'VE LISTENED TO  
12 THE DEFENDANT RESPOND TO QUESTIONS POSED TO HIM.

13 I'VE VIEWED THE VIDEOTAPE ON TWO  
14 OCCASIONS. I DIDN'T FIND ANY COERCION OR ANY  
15 PRESSURING TACTICS ON ANY OF THE TAPES I'VE LISTENED  
16 TO, AUDIO OR VIDEO.

17 I DIDN'T FIND ANY PHYSICAL COERCION IN  
18 ANY OF WHAT I HEARD OR SAW.

19 THE QUESTION IS WAS THE DEFENDANT'S  
20 ABILITY TO REASON AND COMPREHEND SO DISABLED THAT HE  
21 WAS INCAPABLE OF FREE AND RATIONAL CHOICE.

22 I THINK HIS COMPREHENSION OF WHAT IS  
23 BEING TOLD TO HIM IS EVIDENT WHEN YOU LISTEN TO HIS  
24 RESPONSES ON THE TAPE, WHEN YOU SEE HIM INTERACT WITH  
25 THE OFFICER ON THE VIDEO TAPE.

26 HE RESPONDS TO QUESTIONS, HE PROVIDES  
27 ANSWERS TO QUESTIONS, HE INITIATES CONVERSATIONS WITH  
28 THE OFFICER ON HIS OWN. HE DISCUSSES THE ACTS THAT

1 OCCURRED AT THIS ISOLATED LOCATION. HE LEADS THE  
2 OFFICERS TO THE SPECIFIC LOCATION WHERE THEY  
3 OCCURRED. HE DISCUSSES IN SOME DETAIL WHAT OCCURRED  
4 THERE.

5 TAKING ALL OF THIS INTO CONSIDERATION, I  
6 THINK THAT BY A PREPONDERANCE OF THE EVIDENCE, IF NOT  
7 MORE, CONSIDERING ALL OF THESE CIRCUMSTANCES, THE  
8 WAIVER OF HIS RIGHTS WAS VOLUNTARILY MADE.

9 AND I DON'T FIND HIM TO BE SO DISABLED  
10 AS HAVING BEEN INCAPABLE OF RATIONAL DECISION AT THE  
11 TIME THAT THESE RIGHTS WERE GIVEN TO HIM AND HE MADE  
12 HIS RESPONSES.

13 SO THE MOTION TO SUPPRESS IS DENIED.

14 TODAY IS ZERO OF 30.

15 MR. THOMASON: I THINK THAT WE WANT TO COME  
16 BACK ONE MORE TIME AS ZERO OF 30, AND THEN BY THAT  
17 TIME OUR CALENDARS WILL LOOK BETTER AND THEN WE WILL  
18 PROCEED.

19 THE COURT: ALL RIGHT.

20 WHATEVER DATE YOU REQUEST.

21 MR. THOMASON: COULD WE HAVE OCTOBER 27TH AS  
22 ZERO OF 30?

23 THE COURT: MS. INGALLS?

24 MS. INGALLS: THAT'S FINE.

25 THE COURT: IS THAT AGREEABLE WITH YOU,  
26 MR. JONES, THE MATTER GO OVER TO THE 27TH OF OCTOBER,  
27 YOU WILL HAVE YOUR TRIAL WITHIN 30 DAYS OF THAT DATE?

28 THE DEFENDANT: YES.

1 MR. THOMASON: YOUR HONOR, WOULD THE COURT  
2 CONSIDER ORDERING A TRANSCRIPT OF DR. BELIZ'S  
3 TESTIMONY?

4 THE COURT: YES. I'VE ORDERED A TRANSCRIPT OF  
5 THIS HEARING.

6 MR. THOMASON: THANK YOU.

7  
8 (AT 2:15 P.M., AN ADJOURNMENT WAS TAKEN  
9 UNTIL THURSDAY, OCTOBER 27, 1994,  
10 AT THE HOUR OF 8:30 A.M.)

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