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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.

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THE CLERK: THANK YOU.

THE COURT: JUST ONE SECOND.

(BRIEF PAUSE.)

THE COURT: MISS INGALLS.

MS. INGALLS: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION +

BY MS. INGALLS:

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

A YES.

Q APPROXIMATELY WHAT TIME OF YEAR WAS THAT?

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

I'D HAVE TO LOOK AT MY REPORT TO TELL YOU. I THINK IT WAS '92.

Q OKAY.

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

A I WAS WORKING AT SOUTHEAST DIVISION,

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

A YES, I DID.

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

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 WEIGHT 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 A YES; THE LAST ONE DID.

2 Q SO YOU ASKED HIM, THE FIRST QUESTION YOU
3 ASKED HIM, DO YOU UNDERSTAND THESE RIGHTS?

4 A THAT'S CORRECT.

5 Q AND DID MR. JONES INDICATE WHETHER OR NOT
6 HE UNDERSTOOD THOSE RIGHTS?

7 A HE INDICATED TO ME THAT HE DID.

8 Q AND THE SECOND QUESTION YOU ASKED HIM?

9 A DO YOU WISH TO GIVE UP THE RIGHT TO REMAIN
10 SILENT.

11 HE SAID YES.

12 Q AND THEN THE THIRD QUESTION YOU ASKED HIM?

13 A DO YOU WISH TO GIVE UP YOUR RIGHT TO HAVE
14 AN ATTORNEY PRESENT DURING QUESTIONING.

15 Q AND WHAT HAPPENED AT THAT POINT?

16 A I BELIEVE HE SAID NO.

17 Q OKAY.

18 AND WHAT DID YOU DO IN RESPONSE TO THAT?

19 A THEN I SAID -- I GO: SO YOU DON'T WANT TO
20 TALK TO ME?

21 Q AND WHY DID YOU DO THAT, DETECTIVE?

22 A WELL, BECAUSE WHEN I WAS TALKING TO HIM
23 BEFORE I EXPLAINED TO HIM HIS RIGHTS.

24 AND, AGAIN, AS I STATED BEFORE, I ALWAYS
25 TELL EVERYBODY I INTERVIEW IN PLAIN ENGLISH:

26 YOU DON'T HAVE TO TALK TO
27 ME IF YOU DON'T WANT TO, YOU ARE IN
28 CONTROL OF THIS INTERVIEW, YOU CAN

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

1 GIVEN TO THE DEFENDANT IN FULL.

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

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

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

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

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

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

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

26 THE DISTRICT ATTORNEY GOES:

27 OKAY. I HAD HOPED THAT
28 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.

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DIRECT EXAMINATION @

BY MR. THOMASON:

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

A I'M A CLINICAL PSYCHOLOGIST.

THE COURT: DOCTOR --

ONE SECOND, MR. THOMASON.

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

THE WITNESS: THANK YOU.

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

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

AND HAVE BEEN PERFORMING PSYCHOLOGICAL
VALUATIONS SINCE THEN.

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

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

I THEN IN 1986 WAS LICENSED AS A CLINICAL
PSYCHOLOGIST.

FROM 1982 UNTIL 1991 I WAS A -- I WORKED IN
A COMMUNITY MENTAL HEALTH PROGRAM WHERE I WAS AT
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 CONTRADICTIONARY 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 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.

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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."

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THEN THE DETECTIVE SAYS:

"WHAT? I THOUGHT YOU DID
WANT TO."

MR. JONES IMMEDIATELY CHANGES HIS MIND
AND SAYS:

"YES."

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

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

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

EITHER HE UNDERSTOOD THE QUESTION AND
GAVE AN UNEQUIVOCAL RESPONSE, AND I'D ASK THE COURT TO
RECONSIDER YOUR RULING FROM THIS MORNING, OR WE HAVE
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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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

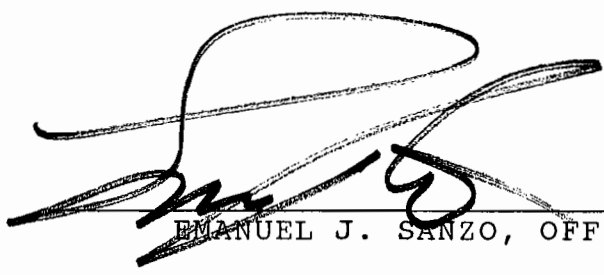
THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
) PLAINTIFF,)
)
) VS.)
)
 ALLEN DAVID JONES,)
)
) DEFENDANT.)

NO. BA071698
REPORTER'S
CERTIFICATE

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

I, EMANUEL J. SANZO, CSR #1267, OFFICIAL
REPORTER OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 87,
COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE
TESTIMONY AND PROCEEDINGS HELD IN THE MATTER OF THE
ABOVE-ENTITLED CAUSE IN DEPARTMENT 125 ON FRIDAY,
SEPTEMBER 30, 1994.

DATED THIS 5TH DAY OF SEPTEMBER, 1994.



EMANUEL J. SANZO, OFFICIAL REPORTER, CSR #1267

