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2 contested at the suppression hearing. But the  
3 testimony that would be offered here as I read  
4 both these reports, I would also note in my view,  
5 the timeliness of both of these requests are very  
6 much in question.

7 Mr. Burns to this moment has not filed a  
8 request. He has submitted a report. He has  
9 indicated verbally what he is going to do. There  
10 is no written request by you to submit this type  
11 of testimony. And the testimony, as I read it,  
12 based on the redacted McCray report and the one  
13 page missing in Salaam report, does not relate to  
14 any mental disease, defect or condition which  
15 renders the defendant incapable of understanding  
16 or waiving his constitutional rights or incapable  
17 of making a voluntary confession. Rather, in the  
18 McCray case, the psychologist would testify that  
19 the defendant, quote, "experiencing situational  
20 distress clearly related to the impending trial,  
21 but who is also, by nature, a rather socially  
22 anxious introverted person who relies heavily on  
23 the approval of others (particularly his parents  
24 and other adults) to bolster his self-esteem."

25 The Whaley report for Salaam, starts off by

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2 saying that, "He lives at home with his mother and  
3 sister and younger brother. And he appears much  
4 older than his stated age. Throughout the testing  
5 situation, Yusef made a sincere effort to  
6 concentrate when working with test items. He was  
7 careful throughout the testing situation, and at  
8 times he appeared a little apprehensive when  
9 giving responses. Yusef was pleasant, cooperative  
10 and very shy, for the most part, but it appeared  
11 that he wanted to do well."

12 The report in McCray's case in my view is  
13 further flawed by it's equivocal speculative  
14 conclusion, which reads in part, the last page,  
15 pages numbered 9.

16 "As such, it is conceivable, if not likely,  
17 that the interaction between Antron's personal  
18 vulnerabilities, that his cognitive and emotional  
19 and the novel, anxiety providing situation that  
20 existed at the police station during his two days  
21 or so of questioning, would have produced a  
22 requisite condition for Antron's making inaccurate  
23 or markedly distorted statements about his  
24 involvement with in the Central Park incident.  
25 And, besides the inaccuracy of the time, I think

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2 the nature of the conclusion doesn't lend itself  
3 to Court testimony as an expert.

4 Finally, as far as the Whaley report, the  
5 final paragraph reads as follows: "Yusef's  
6 psychological problems - diagnosed as identity  
7 disorder - could probably affect his ability to  
8 make a voluntary statement."

9 In my view, the guiding principle for all  
10 expert opinion is proper when it would help to  
11 clarify an issue calling for professional or  
12 technical knowledge possessed by the person and  
13 beyond the kin of the particular juror that has  
14 always been the test. I would quote from People  
15 against Derrick Miller, 116 A D 2nd 598, quote:

16 It is well settled that expert opinions which  
17 are contingent speculative or initially possible,  
18 lack probative force and, are therefore,  
19 inadmissible, citing a number of cases.

20 I, therefore, will foreclose the defendants  
21 from offering this testimony.

22 MR. JOSEPH: Judge, just, if I may, on two  
23 points. Number one, I want the Court to be clear.  
24 I think the court is clear, but I want the record  
25 to be clear that I'm not offering this. I was not