

5
vs.

8 /

10 DATE: November 4, 2002

11 TIME: 1:00 p.m.

13

15

Two horizontal bar charts are displayed. The top chart shows that 75% of Democrats and 55% of Republicans believe the U.S. should take more action to address climate change. The bottom chart shows that 85% of Democrats and 45% of Republicans believe the U.S. should take more action to address climate change.



1 WITNESS INDEX

2 WITNESS EXAMINATION

3 [REDACTED]

4 By [REDACTED]

5

6 E X H I B I T S

7 NUMBER MARKED FOR ID

8

9 Defendant's Exhibit No. 1 5

10 (Deposition Notice)

11 Defendant's Exhibit No. 2 12

12 (Handwritten Notes)

13 Defendant's Exhibit No. 3 12

14 (Order Appointing Expert)

15 Defendant's Exhibit No. 4 12

16 (Evaluation)

17 Defendant's Exhibit No. 5 13

18 (CV)

19 Defendant's Exhibit No. 6 17

20 (Excerpt of [REDACTED] Testimony)

21 Defendant's Exhibit No. 7 21

22 [REDACTED] Letter)

23 Defendant's Exhibit No. 8 29

24 (Excerpt of [REDACTED])

25

1	E X H I B I T S	
2	NUMBER	MARKED FOR ID
3	Defendant's Exhibit No. 9	44
4	*[REDACTED] Exam)	
5	Defendant's Exhibit No. 10	66
6	(Article)	
7	Defendant's Exhibit No. 11	69
8	(Excerpt of Diag. Stat. Manual)	
9	Defendant's Exhibit No. 12	89
10	(Excerpt of DSM-IV)	
11	Defendant's Exhibit No. 14	107
12	*(Report of Outside Activities)	
13	Defendant's Exhibit No. 15	108
14	(Subpoena)	
15		
16	(Exhibit Nos. 9 and 14 not retained	
17	by Reporter.)	
18		
19		
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21		
22		

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24

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1 WHEREUPON:

2 [REDACTED]

3 was called as a witness and after having been duly

4 sworn was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY [REDACTED]

7 Q. Would you state your name, please.

8 A. My name is [REDACTED].

9 Q. And your occupation?

10 A. I am a medical doctor.

11 Q. [REDACTED] before we get into the

12 substance of your testimony, you received a

13 subpoena asking you to bring certain items.

14 Do you have them with you now?

15 A. No.

16 Q. Why is that?

17 A. Some items I have, some items I talked

18 to [REDACTED] and he felt I would be excused from

19 them, and some items I felt were kind of on the

20 ridiculous side, asking me to bring everything

21 that I would base my opinion on, such as all my --

22 bring over all my textbooks and all my files. So

23 no, I don't have things like that.

24 I do have my CV and items like that

25 and other documents, but I don't have things like

1 all of the cases that I have ever done or all of
2 the documents that I drew my conclusions from.

3 Q. At any time did you make an attempt to
4 tell me or call me and advise me that you weren't
5 going to comply with the subpoena?

6 A. I called [REDACTED]

7 Q. That wasn't my question, I am sorry.

8 My question was did you ever make an
9 attempt to call me?

10 A. No.

11 Q. Why not?

12 A. I called [REDACTED]

13 Q. That wasn't my question.

14 Why didn't you call me?

15 A. Because I thought it was appropriate
16 to call [REDACTED].

17 Q. Why?

18 A. Because I am [REDACTED] witness,
19 and I thought that your requests were out of the
20 ordinary.

21 [REDACTED]: All right. Let's mark as

22 Claimant's No. 1 the notice of taking the

23 deposition with attachment A.

24 (Thereupon, Defendant's Exhibit Number

25 1 was marked for Identification.)

1 BY [REDACTED]

2 Q. And let's go through it.

3 Do you have with you all of the

4 documents that you have been provided with

5 regardless of the source with reference to the

6 [REDACTED] case?

7 A. Yes.

8 Q. Do you have your handwritten notes

9 with you?

10 A. Yes.

11 Q. And as I understand it, item number 5,

12 which is the list of publications upon which you

13 relied upon to reach your conclusions, you did not

14 bring that with you; is that correct?

15 A. That's correct.

16 Q. All right. Item number 7, which for

17 the record is based on the [REDACTED] case, is asking

18 for the list of cases in which you testified for

19 the last three years. You did not provide that;

20 is that correct?

21 A. That's correct.

22 Q. And did you make any effort to

23 determine what cases in which you testified for

24 the last three years?

25 A. Considering the number of cases, no, I

1 did not.

2 Q. How are your cases calendared?

3 A. How are my cases calendared?

4 Q. Yeah.

5 A. Tell me what that means.

6 Q. Sure. If I were to schedule you to

7 perform an IME, how is that done?

8 A. You would call me and I would schedule

9 it.

10 Q. How is that scheduled? Is it on a

11 hard calendar or on a computer or how is that

12 done?

13 A. On a hard calendar.

14 Q. Where would that calendar be?

15 A. It's in my office.

16 Q. What about the calendars for 1999,

17 2000, where would those be?

18 A. In my office.

19 Q. So [REDACTED] told you that you

20 didn't need to comply with my subpoena; is that

21 correct?

22 A. He didn't feel it was reasonable

23 either. I'm paraphrasing of course.

24 [REDACTED]: I think I used stronger

25 words than that.

1 THE WITNESS: I think so.

2 BY [REDACTED]:

3 Q. Did you have any e-mail communications
4 with reference to this case?

5 A. I did not.

6 Q. Do you have e-mail?

7 A. Yes, I do.

8 Q. Do you have a website?

9 A. I do not.

10 Q. Have you ever testified as a
11 psychiatrist in your professional capacity in any
12 other cases of a civil nature?

13 A. Yes, I have.

14 Q. Have you testified in federal court?

15 A. Yes, I have.

16 Q. And in federal court have you ever
17 been requested to provide a list of cases in which
18 you testified as required by the Federal Rules of
19 Procedure?

20 A. Yes, I have.

21 Q. Why didn't you at least give us that
22 list and say it had already been created?

23 A. You didn't ask for it.

24 Q. We didn't ask for it?

25 A. I would be more than happy to provide

1 it for you.

2 Q. When was the last time you created
3 such a list?

4 A. Well, it's a list of cases that
5 involve testimony including depositions of any
6 kind. I believe we just updated it this last
7 month. It's not just for federal cases, as you
8 know.

9 Q. So you had the list already which
10 would have been required, with no additional work
11 for you to provide it to me, but you just decided
12 not to provide it?

13 A. No.

14 Q. Did you tell [REDACTED] that you
15 already had such a list?

16 A. You made a request that asked for
17 certain things. I discussed them with
18 [REDACTED] Both [REDACTED] and I felt they
19 were both far in excess of anything commonly
20 requested of a witness.

21 If you would make a request for that
22 document, I would be more than happy to provide

23 that for you.

24 Q. All right. I will rephrase the

25 question.

1 Did you at any time tell [REDACTED]
2 that you had such a list in your possession
3 already?

4 A. No.

5 Q. So when you were speaking to
6 [REDACTED] it was his understanding you would
7 have to create such a list; correct?

8 [REDACTED]: Objection. How does he
9 know what my understanding was.

10 [REDACTED]: Let's find that out.

11 BY THE WITNESS:

12 A. I think [REDACTED] knows I testified
13 in federal court because he asked me in the past
14 what courts I've testified in; knowing that I
15 testified in federal court and knowing that one
16 has a case list, he is going to be aware that I
17 have such a case list.

18 BY [REDACTED]:

19 Q. Are you aware of the Elkins case?

20 A. I'm not aware of the Elkins case.

21 Q. Can you explain to us why you think it
22 is less important to provide a list of cases in

23 which you've testified in a criminal case than it

24 would be in a federal case or more burdensome or

25 more ridiculous or however you want to phrase it?

1 A. No. One thing is done one way and one
2 thing is done another way, they are different
3 rules.

4 Q. What rule permits you to not provide
5 the list of cases in a criminal case that would
6 require you to provide it in a federal case? What
7 rule are you referring to?

8 A. I don't know what rule permits you to
9 request this. I have never had this requested in
10 my life.

11 Q. What rule permits you not to provide
12 it? Are you aware of any such rule?

13 A. I am aware that I contacted the
14 attorney that I am working with and he felt that
15 this was also above and beyond what is considered
16 reasonable.

17 Q. That wasn't my question. I understand
18 that, but I am going to have to ask you to answer
19 the question that I am asking, perhaps not the
20 question you would like me to ask.

21 The question is what rule to your
22 knowledge permits you not to provide this

23 information, if you know? If you don't know,

24 simply tell me that you don't know.

25 A. I would imagine the Florida Rules of

1 Criminal Procedure, but I don't know for sure.

2 Q. Let's take a look at your file. Can I

3 take a look at your file, please.

4 (WHEREUPON, the file was tendered to

5 Counsel.)

6 [REDACTED]: Let's mark as Claimant's

7 next numbered exhibit -- these are the notes that

8 you took regarding this case?

9 THE WITNESS: Correct.

10 [REDACTED]: Let's mark that as Number

11 2; Number 3, the order appointing expert; Number

12 4, a copy of the evaluation.

13 (Thereupon, Defendant's Exhibit Numbers

14 2, 3 & 4 were marked for Identification.)

15 BY [REDACTED]:

16 Q. It looks like you have a probable

17 cause affidavit in your file dated July 16, 1997;

18 is that correct?

19 A. I have what's there.

20 Q. I understand that, but could you

21 answer my question specifically. Is that correct,

22 is that what it is?

23 A. I can't see it from here.

24 Q. Go ahead and take a look at it.

25 A. Yes.

1 Q. It looks like you also have a
2 deposition of Geraldine Italic; is that correct?

3 A. Yes. Let me see it. Yes.

4 Q. Okay. This also came out of your
5 file. All right.

6 Doctor, do you have a copy of your CV
7 in the material?

8 A. Do I have a copy of my CV and the
9 material?

10 Q. In the material there?

11 A. Yes, I do.

12 [REDACTED]: Let's mark that as
13 Claimant's next numbered exhibit.

14 (Thereupon, Defendant's Exhibit Number
15 5 was marked for Identification.)

16 BY [REDACTED]:

17 Q. Could you take a look at that.

18 Doctor, in going through your
19 curriculum vitae, it looks like there's been no
20 publications in the last nine years. Can you tell
21 me why that is?

22 A. I have not worked primarily in an

23 academic research setting.

24 Q. For whom are you currently employed?

25 A. Myself.

1 Q. Do you have a PA, a corporation?

2 A. No, I don't.

3 Q. Do you have a private practice?

4 A. Yes, I do.

5 Q. What's the nature of your practice?

6 A. Forensic psychiatry, forensic

7 cognitive behavioral, neurology and forensic

8 neuropsychiatry.

9 Q. Do you actually treat patients?

10 A. I am involved in beginning to do some

11 child psychiatry on Mondays, and I have a few

12 patients of my own.

13 Q. But for the most part, your practice

14 is essentially limited to the forensic work; is

15 that correct, court cases?

16 A. For the most part.

17 Q. What percentage are plaintiff,

18 defense, criminal, civil?

19 A. I try to keep them about 50/50.

20 Q. How long have you tried to keep it

21 50/50?

22 A. Since I started.

23 Q. When did you start?

24 A. December of 1998.

25 [REDACTED]: Let's go off the record for

1 a minute.

2 (WHEREUPON, discussion was had

3 off the record.)

4 BY [REDACTED]:

5 Q. When you say 50/50, do you mean 50

6 percent plaintiff, 50 percent defense; 50 percent

7 prosecutor, 50 percent defense?

8 A. The only realm that wouldn't be 50/50

9 would be probate cases, otherwise, both criminal

10 and civil cases would be 50/50.

11 Q. Is approximately half your practice

12 civil and half your practice criminal?

13 [REDACTED]: Let me remind you Jimmy

14 Rice is civil.

15 THE WITNESS: I don't do as much as

16 that as I used do. Probably more civil.

17 BY [REDACTED]:

18 Q. What percent civil?

19 A. I don't know, I would just be taking a

20 guesstimate. It would be just as close to being

21 wrong as it would being right, but there's more

22 civil cases.

23 Q. Meaning do you have an approximate

24 figure?

25 A. No.

1 Q. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]?

7 A. I remember the case.

8 Q. Do you remember in the deposition
 9 giving a specific breakdown and indicating that 70
 10 percent of your practice, page 39, and I will be
 11 glad to show it to you, 70 percent is civil?

12 A. What page are we on?

13 Q. Upper right-hand corner.

14 A. Okay.

15 Q. Do you remember that?

16 A. No, I don't remember.

17 Q. Can you tell me why you would be able
 18 to testify, and we can mark this deposition as
 19 Claimant's next numbered exhibit, why you could
 20 give a percentage of civil versus criminal in
 21 January of 2002 and can't give us one now?

22 A. I have had numerous cases since then,

23 and I don't have a photographic memory.

24 Q. Did you have a photographic memory

25 then?

1 A. No, I was giving a guesstimate.

2 (Thereupon, Defendant's Exhibit Number

3 6 was marked for Identification.)

4 BY [REDACTED]:

5 Q. What is your position with the

6 [REDACTED] currently?

7 A. I am an Assistant Clinical Professor.

8 Q. What does that mean? Do you teach?

9 A. Yes.

10 Q. Do you have a class?

11 A. I teach two courses.

12 Q. For which you get paid?

13 A. No.

14 Q. Is it a courtesy appointment?

15 A. Yes.

16 Q. A courtesy appointment is different

17 than a standard appointment because for courtesy

18 appointments you don't get paid; is that correct?

19 A. I don't know all of the whys and

20 wherefores, I just know I don't get paid and I

21 have a courtesy appointment.

22 Q. Can you tell me why in your evaluation

- 23 you list yourself as Clinical Assistant Professor,
- 24 Department of Psychiatry, and you don't indicate
- 25 it's a courtesy appointment versus an appointment

1 that would be paid, a paid position?

2 A. When I got paid I was a full assistant
3 professor.

4 Q. How many years ago was that?

5 A. 1992. And when I went into private
6 practice, I became a clinical professor and I have
7 held that title since.

8 Q. You don't think it's misleading to
9 have your evaluation reflect it's a courtesy
10 appointment?

11 A. No.

12 Q. Are there any kind of rules or
13 regulations as to what you can say on your
14 letterhead or on your reports with regard to your
15 relationship with the [REDACTED]?

16 A. You are not supposed to put it on your
17 letterhead.

18 Q. This report that's Defense Exhibit
19 No. 4 is on your letterhead, isn't it?

20 A. What's on my letterhead?

21 Q. The report you generated with regard
22 to [REDACTED] is on your letterhead, isn't it?

23 A. Yes.

24 Q. And the documentation on the last page

25 makes reference to Clinical Assistant Professor,

1 Department of Psychiatry, [REDACTED]

2 College of Medicine?

3 A. That's not my letterhead.

4 Q. This is a document that has your
5 address and your name and a logo on the upper
6 right-hand corner; is that correct?

7 A. Yes.

8 Q. That's not your letterhead?

9 A. That's my letterhead. The closing of
10 a letter is not your letterhead.

11 Q. So it's your understanding you are
12 allowed to generate a report listing your
13 relationship with the [REDACTED] so
14 long as it isn't on the first page, it could be on
15 the last page?

16 A. Or on the letterhead.

17 Q. What do you mean?

18 A. It's not on my business card, it's not
19 on the letterhead.

20 Q. Are you aware of Rule 6(c)1.1.011 and
21 it's sequelae that indicates in all cases in which
22 faculty members take outside employment, it must

23 be made very clear that they are doing so not

24 affiliated with the [REDACTED]?

25 [REDACTED]: Could you put on the

1 record what rule book you are referring to?

2 [REDACTED]: [REDACTED], Rule

3 6(c)1.1.011.

4 BY THE WITNESS:

5 A. Yes.

6 BY [REDACTED]:

7 Q. And in that rule it indicates that it

8 is very important when you conduct an evaluation

9 not as an employee of the [REDACTED],

10 that when you do that evaluation, you don't make

11 reference to the relationship that you have with

12 the [REDACTED] so that it could be

13 misleading and also because there's no malpractice

14 insurance to cover an activity such as that. Is

15 that correct, is that your understanding?

16 A. That's not my understanding.

17 Q. What is your understanding?

18 A. My understanding is it is not supposed

19 to be on your letterhead as to not being

20 misleading.

21 Q. Do you recall receiving a letter from

22 Dr. [REDACTED] dated January 23rd, 2002? I

23 would like that marked as Defendant's next

24 numbered exhibit.

25

1 (Thereupon, Defendant's Exhibit Number
2 7 was marked for Identification.)

3 BY THE WITNESS:

4 A. Until I hear otherwise, it's my
5 opinion that what you have in your hand does not
6 indicate I am acting as an agent of the University
7 [REDACTED] it merely states I have an
8 appointment.

9 BY [REDACTED]:

10 Q. My question was do you recall having
11 received that letter?

12 A. Yes.

13 Q. In that letter the doctor specifically
14 advises, before you conducted the report on
15 [REDACTED] and I quote, "I wanted to also make
16 sure that you are aware that you may list your
17 courtesy clinical appointment title on your CV;
18 however, you may not use it on your letterhead or
19 in a professional capacity which implies that you
20 are acting as an agent for the University [REDACTED]
21 [REDACTED] or the Department of Psychiatry."

22 And isn't that correct, that's what

23 the letter says?

24 A. That's what the letter says.

25 Q. That letter was sent to you in

1 response to a complaint wherein you were writing
2 reports and indicating on the last page of the
3 report, below your signature, Clinical Assistant
4 Professor, Department of Psychiatry, [REDACTED] College of
5 Medicine; correct?

6 A. Incorrect.

7 Q. How is that incorrect?

8 A. Because everybody got that who was on
9 courtesy faculty, not just myself.

10 Q. It's your understanding even though
11 this letter was sent to you, you can still list
12 the [REDACTED] underneath your
13 training, which seems to indicate that there is
14 some relationship with [REDACTED] when you did this
15 report?

16 A. That's your interpretation.

17 Q. How is that incorrect?


18 A. It's your interpretation.

19 Q. If you didn't want that presumption to
20 occur, why did you put that under your name?

21 A. That's what I am.

22 Q. You are a lot of things, but they are

23 not listed under your name either, so why did you

24 pick this? And I am referencing the 

25 documentation.

1 A. Professional appointments look nice.

2 Q. In reviewing the report, I don't see
3 anywhere in the beginning, and maybe I missed it,
4 that you referenced that the State Attorney's
5 Office requested that you conduct the evaluation.
6 Can you tell me why?

7 A. Because my order was from the judge.

8 Q. You were aware, however, as you just
9 testified, that [REDACTED] was the person that
10 hired you, in fact the State Attorney's Office
11 retained you; correct?

12 [REDACTED]: Objection. I did not
13 hire him personally and the State Attorney's
14 Office did not hire him personally.

15 BY [REDACTED]:

16 Q. Who picked you in this case?

17 [REDACTED]: I selected him and asked
18 he be appointed.

19 BY [REDACTED]:

20 Q. I think we are pretty clear on this.

21 [REDACTED] selected you and [REDACTED] asked the
22 Court for an order requiring you to evaluate the

23 defendant.

24 In your report, you only say the order

25 was by the judge, you don't indicate which party

1 selected you or requested that you be the one to
 2 evaluate the defendant. My question to you is
 3 why?

4 A. Because the judge selected me.

5 Q. After the State Attorney's Office gave
 6 the judge your name and requested that you be the
 7 one that the judge ordered.

8 A. And it was made known that it was not
 9 a confidential evaluation and that a report would
 10 go to all parties and that the judge chose me.

11 Q. In your report you reference that the
 12 evaluation was conducted in accordance with, I
 13 believe you say on page 5, a standard forensic
 14 psychiatric interview; correct?

15 A. Yes.

16 Q. And a standard psychiatric forensic
 17 interview requires you to indicate which party
 18 retained or requested your services, doesn't it?

19 A. I did that.

20 Q. Where?

21 A. The judge retained my services.

22 Q. The judge ordered that you do the

23 evaluation, but he did so at the request of the
24 State Attorney's Office and you didn't put that in
25 your report.

1 A. I am not under retention from the
2 State Attorney's Office.

3 Q. That wasn't my question.

4 The State Attorney's Office was the
5 organization that requested you be the individual
6 that conduct the evaluation. That information is
7 not in your report, is it?

8 A. I am not under retention from the
9 State Attorney's Office.

10 Q. Well, if that's the case, why did you
11 call [REDACTED] in the beginning instead of
12 calling my office if you were an independent
13 evaluator and not oriented with one side or the
14 other? Why didn't you call me and say, [REDACTED] I
15 am not going to bring the documents you requested,
16 why did you call [REDACTED]?

17 A. I see I have made a good choice.

18 Q. Could you answer my question, please.

19 A. You are rather argumentative.

20 Q. I am just asking my questions.

21 A. I am answering them.

22 Q. Why did you call [REDACTED] versus me

23 if you were independent?

24 A. [REDACTED] I know requested to the

25 judge, but my appointment is signed by the judge,

1 and nowhere does it say that [REDACTED] has
2 appointed me. Though advice in this case would
3 certainly come from [REDACTED] I find it odd for
4 somebody who had been appointed by the State
5 Attorney -- not been appointed, been asked by the
6 judge to be appointed by the State Attorney, to
7 call a hostile attorney, and hostile you are.

8 Q. How did you know I would be hostile if
9 you never spoke to me?

10 A. I spoke to you before. And you have a
11 reputation.

12 Q. Not on this case. Did we speak on
13 this case?

14 A. No, ma'am.

15 Q. With regard to the original questions
16 that were asked in this deposition, do you
17 remember testifying that [REDACTED] hired you?
18 In the very beginning when I asked why you called
19 him instead of me, you said he hired me. Do you
20 remember that?

21 A. I may have said that, it's not what I
22 meant. I imagine your sophistry could get me to

23 say anything.

24 Q. I am going to object and move to

25 strike. [REDACTED] this is a deposition where I

1 am seeking to obtain information. If you want to
2 talk to me afterwards, this it not the time and
3 the place. Off the record. Can we go off the
4 record?

5 [REDACTED]: Sure.

6 (WHEREUPON, discussion was had
7 off the record.)

8 BY [REDACTED]:

9 Q. Has your testimony ever been rejected
10 by the judge or jury to your knowledge?

11 A. What does that mean, to be rejected?

12 Q. In other words, they believed the
13 other psychiatrist witness over you?

14 [REDACTED]: I object to that

15 question. How would he know? Are you talking
16 about the jury?

17 [REDACTED]: Jury or the judge.

18 [REDACTED]: Who said they rejected
19 his testimony because they found the case one way
20 or the other?

21 THE WITNESS: I don't know.

22 [REDACTED]: I think the question

23 have you ever failed to qualify as an expert is

24 appropriate.

25 [REDACTED]: That's not what I am

1 asking.

2 BY THE WITNESS:

3 A. There have been cases where juries
4 have found opposite of my testimony. And no, I
5 can't name them.

6 BY [REDACTED]:

7 Q. Okay. Doctor, do you recall
8 evaluating and testifying in the Alvin Burgess
9 case?

10 A. Rings a bell.

11 Q. Are you aware that attorney Tania
12 Alavi testified under oath that with regard to
13 your testimony, your testimony was not truthful
14 with regard to the tests that were administered,
15 the manner with which they were administered and
16 the statements that were made with regard to the
17 defendant?

18 [REDACTED]: Let me interject
19 something. I happened to be the prosecutor on
20 that case. She did not testify to the jury, she
21 testified to the judge, and the judge would not
22 allow it to go to the jury.

23 [REDACTED]: Counsel, if you want to

24 make a speaking objection. You are coaching the

25 witness.

1 [REDACTED]: I am not coaching, he's
2 not aware of that.

3 [REDACTED]: Let's let the witness
4 answer the question.

5 BY [REDACTED]:

6 Q. Doctor, were you aware she stated you
7 did not tell the truth with regard to this
8 evaluation?

9 A. No.

10 [REDACTED]: Let's mark the transcript
11 as Defendant's next numbered exhibit, pages 494
12 through 557.

13 (Thereupon, Defendant's Exhibit Number
14 8 was marked for Identification.)

15 [REDACTED]: For the record, the jury
16 apparently agreed with [REDACTED]

17 THE WITNESS: Wait a second, this is
18 really confusing because you are talking in
19 circles. What are you asking me? Boil it down to
20 the simple question because you are talking me in
21 circles. Ask me a simple question.

22 BY [REDACTED]:

23 Q. Some of the questions aren't simple,

24 Doctor. And as a forensic psychiatrist, I am sure

25 you have a number of years of experience being

1 deposed; is that correct?

2 A. Every day is a new experience as today

3 is.

4 Q. All right.

5 A. Would you ask me that question again?

6 Q. Are you aware of ever having your

7 testimony either rejected by a jury or a judge?

8 A. I am aware that Ms. Alavi had

9 contention about my testimony but had no knowledge

10 of any sort of any content. I also know it was

11 rejected.

12 Q. That's because [REDACTED] told you;

13 correct?

14 A. No, I knew it before that.

15 Q. [REDACTED] stated you didn't know

16 what happened on that; is that not correct?

17 A. I knew what happened in the case.

18 Q. Did you know what Ms. Alavi testified

19 to?

20 A. No, not per se.

21 Q. You received an order from the judge

22 at the request of the Office of the State Attorney

23 to conduct an evaluation of [REDACTED].

24 In that order can you tell me whether

25 or not the judge asked you to conduct a physical

1 examination?

2 A. Was I asked to do a psychiatric
3 evaluation? I don't have that in front of me.

4 Q. The order I have is I think on another
5 doctor, so I think we will have to go with the one
6 in your file because I think that's the most
7 accurate.

8 A. As a psychiatrist I was asked to
9 examine this patient, and considering the
10 standards of the American Psychiatric Association
11 and this man's multiple medical problems, it is
12 certainly within standard practice and might be
13 considered remiss should a physical not be done.

14 Q. My question wasn't that.
15 My question was did the judge ask you
16 in the order to conduct a physical examination?

17 A. The judge asked me as a psychiatrist
18 and a physician to conduct an evaluation, which I
19 did.

20 Q. Did the judge ask you to conduct a
21 physical examination?

22 A. The judge would not specify to the

23 cardiologist to conduct a physical examination, it

24 would be inherent that it would be done, as it

25 would be in this case.

1 Q. You just testified that the American
2 Psychiatric Association protocols would require
3 you to conduct a physical. I have the protocol
4 here, and I was wondering if you could find that
5 for me in this book because I am not aware that it
6 exists.

7 And since we are going to have to
8 probably continue this deposition, we are going to
9 be filing a motion with the Court with regard to
10 the Elkins case, which isn't a civil case, it's a
11 bias case.

12 If you don't know where that is pretty
13 quickly, we can deal with that at another time
14 because I have quite a few questions.

15 [REDACTED]: May I ask a question
16 that might clarify this?

17 [REDACTED]: I prefer that you wait.

18 BY [REDACTED]

19 Q. Doctor, what I am going to do is ask
20 you to address that question at the end.

21 A. I am not done looking.

22 Q. I understand that. I am going to move

23 on since you are not finished. I would like to

24 address some of my other questions.

25 A. It's in here, I would like to find it.

1 Q. Doctor, I am sure what you are saying
2 is correct, but I am going to move on to my next
3 set of questions and we can address that later.

4 What is your -- you do not treat
5 respiratory or cardiac conditions, do you, other
6 than in the capacity as a psychiatrist?

7 A. Correct.

8 Q. Have you ever done a cardiac cath?

9 A. I have assisted on them.

10 Q. How long ago, in residency?

11 A. No, when I was a surgical tech.

12 Q. In your practice of psychiatry,
13 however, you don't normally conduct pulmonary
14 function studies or cardiac cath; is that a fair
15 statement?

16 A. Yes.

17 Q. Have you been provided with any new
18 evidence with regard to this gentleman's current
19 pulmonary condition?

20 A. No.

21 Q. I noticed in your report you talk
22 about, when you make the diagnosis, you state on

23 page 8, you state, "As per the Diagnostic and

24 Statistical Manual criteria."

25 Why did you use the Diagnostic and

1 Statistical Manual criteria?

2 A. Because that's what one normally uses

3 when one diagnosis.

4 Q. Why is that?

5 A. Why is that?

6 Q. Yes.

7 A. That's the strangest question I have

8 ever heard anybody ask me. Because that's what

9 mental health professionals use to speak the same

10 language.

11 Q. Why didn't you conduct your evaluation

12 in the multi-axial format as to the DSM-IV then or

13 the DSM-R, which would be the more recent book?

14 A. Why didn't I? I just didn't.

15 Q. You are aware that the Diagnostic and

16 Statistical Manual specifically suggests the

17 format by which you are to conduct an evaluation

18 and you are to prepare your report; correct?

19 And I have here pages 35, 36 and 37 of

20 the DSM-TR and I would like you to identify that,

21 if you would.

22 Those are the axial and nonaxial

23 formats with which the way your reports are

24 supposed to be written in when using this book;

25 correct?

1 A. I don't know whether it states in all
2 evaluations you are required to use that format.
3 I am not aware of that, you would have to show me
4 that.

5 Q. On the pages previously referenced,
6 there are two types of evaluations that are to be
7 conducted when using the DSM-IV and DSM-TR. They
8 give two examples, one is an axial format, axials
9 1 through 5, and the second is the nonaxial.

10 Are you aware of any other format that
11 the DSM-IV suggests to be used when preparing your
12 report?

13 A. I am not aware of any definitive
14 format. And you would have to show me that before
15 I would say I was aware of it.

16 [REDACTED]: All right. Let's go off
17 the record here.

18 (WHEREUPON, discussion was had
19 off the record.)

20 BY [REDACTED]:

21 Q. Page 25 of the DSM-IV, I quote, "The
22 use of the multiaxial system facilitates

- 23 comprehensive and systematic evaluations for
- 24 patients with various mental disorders and general
- 25 medical conditions."

1 Take a look at that paragraph for me.

2 Is that correct?

3 A. Okay.

4 Q. And in fact the reason they suggest

5 the multiaxial format is if one psychiatrist or

6 psychologist reads the report of another, they

7 understand how they reached the conclusions they

8 reached; correct?

9 A. I think that's presupposing. And

10 there's actually a part of your statement which is

11 de facto wrong.

12 Q. What part would that be?

13 A. Axis three, psychologists' very nature

14 of what they do cannot diagnose and therefore

15 cannot utilize axis three.

16 Q. Is it your testimony here today that

17 no psychologist can make any kind of diagnosis or

18 use a multiaxial evaluation with reference to the

19 effect of a physical injury or physical condition

20 upon a psychiatric impairment or disease process?

21 Is that what you are saying here?

22 A. It is shared by others as well.

23 Q. So the answer to the question is yes?

24 A. Yes.

25 Q. Do you have any literature or journals

1 or articles to support that opinion?

2 A. Not off the top of my head.

3 [REDACTED]: Dr. K [REDACTED] and

4 Dr. B [REDACTED] they didn't do it in their report.

5 [REDACTED]: Counsel, if you want to

6 ask him questions on cross, that's fine.

7 [REDACTED]: I'm only doing this

8 because the doctors you're relying on --

9 [REDACTED]: He's a psychiatrist, he's

10 supposed to know better.

11 [REDACTED]: I understand.

12 BY [REDACTED]:

13 Q. Doctor, what would his GAF scale be?

14 A. I can only give you a GAF on the day

15 that I saw him.

16 Q. Which would be what?

17 A. March 5th, 2001.

18 Q. I understand when you saw him, I have

19 your report.

20 What would his global assessment

21 function be?

22 A. I can only give you the GAF on the day

23 that I saw him.

24 Q. What would the GAF be?

25 A. On the day that I saw him?

1 Q. Yes.

2 A. 55 to 60.

3 Q. And the number of 55 to 60, that
4 indicates moderate severe impairment in overall
5 functioning, doesn't it?

6 A. Let me take a look at the book.

7 It indicates a general outline and
8 gives a general outline. You are also using the
9 IV and I would like to use the TR.

10 Q. It's exactly the same, but I would be
11 glad to find that page for you.

12 In fact let me ask you about that.

13 You asked for the TR, which is the
14 more current statistical manual; correct?

15 A. Yes.

16 Q. Do you have any reason to believe that
17 the global assessment of functioning has changed
18 with regard to the older versus the newer?

19 A. I haven't compared them.

20 I said 55 to 60, that's moderate
21 symptoms.

22 Q. Could you read into the record exactly

23 what that section would read with regard to those

24 numbers?

25 A. "Each one of these descriptions are

1 not specific to any one illness or impairment,
2 they are a general overview of what may be
3 problematic in an individual."

4 You certainly wouldn't talk about --

5 Q. Doctor, could you just answer the
6 question, which was to read 55.

7 A. I am answering the question.

8 Q. I didn't ask for your opinion on it, I
9 asked you to read it directly from the book.

10 A. I am answering the question.

11 It says, "Moderate symptoms which
12 include flat affect, circumstantial speech," which
13 are from two different illnesses, "possibly
14 occasional panic attack, social occupational
15 school functioning difficulties, few friends,
16 conflicts with peers or coworkers."

17 Q. Okay.

18 A. Not an extremely sick individual.

19 Q. Actually when you said not an
20 extremely sick individual, there's nowhere that
21 that is indicated on the GAF scale that you just
22 read, is there?

23 A. I am just saying that's not an

24 extremely sick individual.

25 Q. Doctor, would you please answer the

1 question. That's your comment, that's not on this
2 document?

3 A. That's my comment.

4 Q. Okay. Actually for someone to be
5 superior functional, they would be in the 91 to
6 100 range; correct? And the range only goes from
7 1 to 100?

8 A. Actually the range of normality is
9 from 80 to 100, from 80 to 90 is absent or minimal
10 symptoms.

11 Q. My question was the range of the GAF
12 is from 1 to 100, isn't it?

13 A. What?

14 Q. Actually 0 to 100?

15 A. When did you ask me that?

16 Q. Earlier. That's the question I asked.

17 A. I am sorry, I misunderstood you.

18 Q. The range goes from 0 to 100?

19 A. Yes.

20 Q. This man is at a 55 to 60 in your
21 opinion; correct?

22 A. Yes.

23 Q. Would you agree that [REDACTED]

24 pulmonary physician, Dr. [REDACTED]g, would be in a

25 better position to diagnose and treat this

1 gentleman's pulmonary condition?

2 A. Absolutely.

3 Q. All right. Can I take a look at your

4 handwritten notes?

5 A. Are you sure you don't have them?

6 Q. I don't think so.

7 A. You're welcome.

8 Q. Thank you.

9 I see on the last pages initials MSE,

10 is that for mental status examination?

11 A. Yes.

12 Q. Is that any kind of a standardized

13 test or something you created?

14 A. Something I was taught and something I

15 taught.

16 Q. What is the name of the official test

17 then?

18 A. Mental status examination.

19 Q. Is it a recognized standardized test,

20 to the best of your knowledge?

21 A. People use variations in physical

22 exams, but the components in them are all

23 recognized and the functions that you look at are

24 all recognized as they test brain functions. We

25 don't have a stethoscope to look at the brain.

1 Q. But there's no standardized test that
2 you can tell us about today that you gave, like
3 the name of a test, that says I gave this
4 particular mental status exam in accordance with
5 these regulations or here's the name of the test
6 written by such and such, these are the questions
7 and this is how I draw my conclusions; is that
8 correct? It's not a standardized test we can get
9 anywhere that you gave?

10 A. I would like you to find a physician
11 who can sit and tell you that this is Dr. Smith's
12 physical exam and --

13 Q. So the answer to the question is it's
14 not a standardized test that you can obtain, that
15 you can show me these are the questions?

16 A. It encompasses tests from
17 psychiatrists that I worked with over a number of
18 years to test a variety of standard functions.

19 Q. The answer to the question is it is
20 not a single standardized test we can get to
21 determine if it was given correctly or scored
22 correctly; is that correct?

23 A. Portions of it are, certainly.

24 Q. What portions?

25 A. Well, orientation.

1 Q. What test did that come from? What is
2 the name of it?

3 A. The test of orientation.

4 Q. I am asking you how we would obtain a
5 copy of the test to determine if it was
6 interpreted correctly?

7 A. It's on every mental status exam
8 that's out there. One test per person per place,
9 time and situation.

10 Q. What about serial 7s, where does that
11 come from?

12 A. Folstein mental status exam.

13 Q. The Folstein mental status exam?

14 A. Yes, it does. It's inconclusive
15 though.

16 Q. You did not complete the entire
17 Folstein mental status exam, did you?

18 A. No.

19 Q. You didn't score it either, did you?

20 A. I generally don't use the Folstein.

21 Q. But generally the serial 7 comes from
22 the Folstein; correct?

23 A. Yes.

24 Q. For the purposes of this deposition, I

25 would like you to identify the Folstein mental

1 status exam.

2 Are you familiar with that? Is that
3 what that looks like to you? And that's the next
4 numbered exhibit.

5 (Thereupon, Defendant's Exhibit Number
6 9 was marked for Identification.)

7 BY THE WITNESS:

8 A. Yes, that's the Folstein.

9 BY [REDACTED]:

10 Q. So you could have given an entire test
11 that existed and had scoring, but instead you
12 chose to take pieces or questions from other
13 tests; correct?

14 A. Like doctors do, yes.

15 Q. So from the scientific standpoint,
16 let's say from the Frye standpoint, you can't
17 reproduce any of your results because you didn't
18 administer any complete standardized test when you
19 evaluated this gentleman; is that correct?

20 A. No. I think that that would withstand
21 the Frye test.

22 Q. Why?

23 A. Because everything in there is part of
24 a mental status exam and everything in there can
25 be explained and everything in there has a purpose

1 and everything in there tests a certain portion of
2 the brain.

3 Q. You administered no complete
4 recognized tests, tests that would be recognized
5 by members of your peers, did you?

6 A. Sure, I did.

7 Q. Complete reproducible tests. What are
8 the names of tests, the complete tests?

9 A. Are you asking me whether my mental
10 status exam has a name? It doesn't have a name.

11 Q. So for Frye purposes, there's no peer
12 review journals that support your ability to pick
13 and choose questions from various tests, not
14 administer them completely, not score them as
15 indicated and yet draw a conclusion from that; is
16 that a safe assumption?

17 A. That's like saying that you cannot use
18 a stethoscope and percuss a chest and tell you
19 what a chest is going to look like and what a
20 chest is going to sound like without having it as
21 part of some form of standardized test. That's
22 ridiculous.

23 Q. There are lots of tests out there you

24 could have administered there, psychological and

25 psychiatric tests?

1 A. Sure, there are.

2 Q. Yet you chose not to administer any
3 standardized recognized test in a psychiatric or
4 psychological arena; correct?

5 A. I do more than what is usually called
6 for, and I do more because of the people that I
7 have worked with and the good people that have
8 shown me ways to demonstrate how certain parts of
9 the brain work.

10 Q. You did not administer any standard
11 accepted neuropsychological battery of tests in
12 this particular case, did you?

13 A. No.

14 Q. In fact you administered no
15 standardized validity scales when you examined
16 this individual?

17 A. I am not a psychologist, and
18 psychologists administer validity.

19 Q. What would a psychiatrist say?

20 Let me give you an example,

21 Dr. [REDACTED] administered the MMPI for a
22 number of years; correct?

23 A. The administration of psychometrics by
24 psychiatrists is a contested issue. And Dr. [REDACTED]
25 administered a computerized MMPI, that's a

1 psychometric test more commonly administered by
2 psychologists. And it's a question of whether
3 psychiatry should be administering psychometric
4 tests.

5 Q. In this particular case this man had
6 an MMPI, didn't he?

7 A. I didn't administer an MMPI.

8 Q. That wasn't my question. He had one,
9 didn't he? And in fact it was valid, Dr. K[REDACTED]
10 do you remember that?

11 A. I remember it, but I would have to
12 look at it.

13 Q. If you assume in fact he did have the
14 MMPI and Dr. K[REDACTED] relied upon it because it was
15 valid, meaning he passed the F scale and wasn't
16 exaggerating, can you tell me why you wouldn't
17 have that in your report because that would go to
18 his credibility and that wouldn't have anything to
19 do with your opinion, that would be a test that
20 would be administered? Why wasn't that in your
21 report?

22 A. First of all, there's more than an F

23 scale involved in the validity; and second of all,

24 I consider people valid unless shown to be

25 otherwise. And if they are shown to be otherwise,

1 then I will put it down. Otherwise I believe
2 people.

3 Q. Do you know how to administer and
4 interpret and administer the tests administered by
5 Dr. Bo [REDACTED]

6 A. Some of them.

7 Q. But not all of them?

8 A. Of course not.

9 Q. Are you aware that there are tests to
10 determine validity, including the Rey's 15 items
11 of malingering, R-e-y?

12 A. There's the SIRS, there's the M test,
13 there's a number of tests.

14 Q. So the answer is yes, you are aware
15 those tests exist?

16 A. Sure.

17 Q. In this case with regard to your
18 report, all we have is your opinion, we don't have
19 any standardized testing with regard to this man's
20 credibility; isn't that a fair statement?

21 A. You have my opinion, that is correct.

22 Q. With regard to serial 7s, I am trying

23 to find in your notes how far back he was able to
24 subtract. And I was wondering if you could find
25 that for me.

1 A. 65.

2 Q. And how can you tell that?

3 A. Because that's my nomenclature.

4 Q. Where does that say 65?

5 A. That's my nomenclature, those are my
6 notes.

7 Q. Show me where does it say 65.

8 A. It doesn't, it says plus 7, it goes to
9 65, that's what Ken Heilman goes to, that's what I
10 go to.

11 Q. Ken Heilman, that would be the
12 coauthor of the Florida mental status exam?

13 A. Yes.

14 Q. Show me where the number is on here
15 again because I don't understand it.

16 A. Those are for me, not for you. Those
17 are my notes.

18 Q. I appreciate that. Show me on the
19 document where it references that he was --

20 A. Plus 7 is my nomenclature for me when
21 I write a report, it means he went to 65.

22 Q. How does that translate into 65?

23 A. Because I know what it means to me.

24 It's my notes, they are not your notes.

25 Q. I have the right to ask you about your

1 notes, and that's what I am doing.

2 Explain to me how plus 7 means he was
3 able to count back to 65?

4 A. That means he was able to do the task.

5 Q. How? How does that translate? Why
6 did you pick 7 to mean he could go to 65?

7 A. Because he did serial 7s back to 65.

8 Q. How do you know that he went to 65
9 though? I don't understand plus 7, what does the
10 plus mean?

11 A. It means he did it.

12 Q. Okay. And what does the 7 mean?

13 A. It means he did serial 7s.

14 Q. He did serial 7s, but you didn't
15 indicate in your handwritten notes --

16 A. This is crazy.

17 Q. Doctor, maybe you think this is funny,
18 but we have a man's life in the balance.

19 A. I don't think it's funny, but you are
20 meshugah.

21 Q. You don't indicate, Doctor, anywhere
22 on your report how far back he counted in

23 subtracting serial 7s, do you?

24 A. It is to me, yes.

25 Q. Where does it say how far back he

1 counted?

2 A. Plus 7.

3 Q. Means that he counted back to 65?

4 A. Yes, it does.

5 Q. If he were to count back to 65,

6 wouldn't that be counting back serial 7s five

7 times?

8 A. Yes.

9 Q. But the number 5 is nowhere on this

10 document? Somehow 7 is supposed to mean five or

11 65?

12 A. That's my nomenclature. I cannot give

13 you a better answer. You can ask until we are

14 blue in the face, I can't give you a better

15 answer.

16 Q. Doctor, wouldn't you agree if a

17 psychiatrist takes notes during the pendency of an

18 evaluation, those notes should in some way reflect

19 what is actually going on in the interview?

20 A. Of course.

21 Q. Okay. Your notes aren't clear, are

22 they?

23 A. They are to me.

24 Q. To someone else?

25 A. I am writing a report from my notes.

1 Q. So with someone else, your handwritten
2 notes are not clear as to what the actual results
3 of the tests are that you administered; is that
4 correct, to someone else?

5 A. No, not to someone else.

6 Q. And serial 7s is counting backward
7 from 100 by 7s; is that correct?

8 A. That's correct.

9 Q. If another psychiatrist were to take a
10 look at your handwritten notes, he wouldn't know
11 how far back [REDACTED] actually counted, would
12 he, by looking at your handwritten notes?

13 A. Any answer I give would be
14 speculative.

15 Q. With regard to the abstraction and
16 concentration testing that you gave, your
17 handwritten notes say poor effort, but you
18 administered no standardized test to determine if
19 there was any poor effort, did you? No
20 universally recognized either psychological or
21 psychiatric standardized testing to determine
22 effort or attempt; is that correct?

23 A. If somebody says, "I don't want to do
24 this shit," I don't need to have a standardized
25 test to grade poor effort. Somebody who says

1 something like that is showing me poor effort.

2 Q. I don't see anywhere in your notes

3 where he says, "I don't want to do this shit."

4 Why didn't you write it down?

5 A. I just didn't.

6 Q. So we have to take your word for it;

7 correct?

8 A. Yes, you do.

9 Q. You indicated that he could spell

10 world forward and backward, and we have here the

11 letter W with an arrow pointing in one direction.

12 Would that be your nomenclature which somehow

13 means he could spell world forward and backward?

14 A. It means he could spell it forward but

15 could not spell it backward. Yes, that is my

16 nomenclature.

17 Q. The Thurstone word fluency, tell us

18 what that is?

19 A. A test of frontal lobes.

20 Q. And he scored 5?

21 A. Yes.

22 Q. What is a normal score?

23 A. 12.

24 Q. That can actually indicate a score of

25 5, an organicity of brain injury or dementia,

1 couldn't it?

2 A. It could.

3 Q. In fact you indicated in your report
4 that you suspected he might be suffering from
5 dementia; is that correct?

6 A. I believe I mentioned that, yes.

7 Q. Okay. His blood pressure was
8 elevated, wasn't it, 146 over 75?

9 A. Is that what I took?

10 Q. That would be elevated, wouldn't it?

11 A. Yes, systolic is mildly elevated, but
12 not very.

13 Q. Now, when you evaluated him, he
14 brought oxygen with him, didn't he?

15 A. Yes, he did.

16 Q. And during the evaluation he evidenced
17 a desire to utilize the oxygen tank, didn't he?

18 A. Yes, he did.

19 Q. You wouldn't let him do it, would you?

20 A. No.

21 Q. No, that's not correct, or yes, that
22 is correct?

23 A. I didn't let him do it.

24 Q. Why is that?

25 A. I read the notes and the notes

1 indicated that whenever he started talking about
2 the offense, he would begin to talk about needing
3 more oxygen.

4 I examined him, and when he started
5 talking about his arms tingling and wanting to
6 turn the oxygen up, it was my medical opinion that
7 turning the oxygen up was contraindicated as it
8 would slow his breathing.

9 Q. Did you ever call his doctor to ask
10 his treating doctor what he thought?

11 A. No. It went away within a matter of
12 seconds.

13 Q. How many?

14 A. Less than 10.

15 Q. Approximately how many? Let's see if
16 you put it in your handwritten notes. Maybe you
17 can find it for me. Where is it documented in
18 your handwritten notes?

19 A. Probably not documented because it was
20 gone by the time I went from him to sit down at my
21 desk.

22 Q. When was this typed up, the

23 evaluation?

24 A. When was it typed?

25 Q. Yes.

1 A. I am not sure.

2 Q. I want to know when it was typed. Do
3 you know?

4 A. No.

5 Q. When was it dictated?

6 A. "Went over to him, complained of
7 burning and numbness of fingertips, wanted to
8 increase O2, fingertips fine."

9 I went in and examined him, found him
10 to be just fine, and then he went on talking about
11 that he was accused of touching a bare breast and
12 cunnilingus.

13 Q. Can you please answer the question.

14 When did you dictate this document?

15 A. I don't know the date I dictated it.

16 Q. Did you dictate it or type it
17 yourself?

18 A. I dictated it.

19 Q. Why are the initials of the individual
20 who typed it not on the report? Do you generally
21 not do that?

22 A. I don't know.

23 Q. So we don't know in your handwritten
24 notes just exactly how long he was having the
25 physiologic problems; is that a fair statement?

1 A. Seconds.

2 Q. Well, your report is a little
3 confusing too, maybe you can clear it up for me.

4 Page 7 says two to three seconds, page
5 3 says five to ten, which could be as much as five
6 times different. How do we clear this up?

7 A. You believe me.

8 Q. No other way?

9 A. I don't know no other way to clear it
10 up.

11 Q. He was short of breath when he came to
12 see you, wasn't he?

13 A. No, he wasn't.

14 Q. He was not short of breath; is that
15 correct? Take a look at page 4, middle, it says,
16 "Also as was demonstrated he appeared nervous and
17 short of breath."

18 Do you think maybe you made a mistake
19 when you testified he wasn't?

20 A. You said when he came to see me,
21 that's when he walked in the door.

22 Q. Doctor, I asked you if he was short of

23 breath.

24 A. You said when he came to see me, was

25 he short of breath. I am taking every word just

1 as you say it.

2 Q. So when he was being evaluated during
3 the evaluation, he was short of breath?

4 A. There were periods where he was short
5 of breath for a small period of time.

6 Q. You didn't document that, did you?
7 You didn't document how long those periods of time
8 were; is that a fair statement?

9 A. I didn't document where?

10 Q. Anywhere in your handwritten notes how
11 many times he was short of breath or how long each
12 episode lasted; correct?

13 A. As I said I went over and I examined
14 him, and by the time I got back to the desk, he
15 was talking about something else and was fine.

16 Q. You didn't document how many times he
17 had periods of time during the evaluation --

18 A. Twice.

19 Q. Where did you document that?

20 A. I didn't document it, that's what he
21 had, twice.

22 Q. You just remember it?

23 A. Yes.

24 Q. You remember that degree of

25 specificity on an evaluation that occurred eight

1 months ago?

2 A. Because of the context and the unusual
3 nature in which it presented and how quickly it
4 resolved, it was a rare -- it was rare and unique,
5 so yes, I remember it.

6 Q. What color were his eyes?

7 A. His eyes were not rare and unique.

8 Q. You don't know, do you?

9 A. No, I don't.

10 Q. You were looking for a man for how
11 long? How long was the evaluation? How long did
12 you spend with him?

13 A. Two hours.

14 Q. Two hours you are looking at a man and
15 you don't know his eye color, but you specifically
16 remember that twice he had shortness of breath; is
17 that a fair statement?

18 A. Yeah, that's a fair statement.

19 Q. Doctor, you indicated that, on page 4,
20 though seriously ill, that is not the case, when
21 he indicated he acted as though he was about to
22 die in the next moment. Do you remember that?

23 A. Yes.

24 Q. Let's assume for the purposes of this

25 question that this gentleman had one lung when you

1 evaluated him. You knew that to be the case;

2 correct?

3 A. Yes.

4 Q. Let's also assume that he had lung

5 cancer in that remaining lung, which you were not

6 aware of apparently because it isn't in your

7 report. Let's assume that he has a ventilatory

8 defect, being he's evaluated by Dr. G [REDACTED] with

9 restricted air, obstructive and restrictive lung

10 disease.

11 If you had known then what you know

12 now, assuming that I am correct with regard to the

13 lung cancer, number one, would you have perhaps

14 refrained from precluding him from having his

15 oxygen or at least called his doctor to find out

16 what the treating doctor thought?

17 A. Not if it resolved in three seconds,

18 no.

19 Q. Number two, would you in fact now

20 change your opinion that he thought that he was

21 going to potentially die in the next moment, if in

22 fact he's suffering from fatal lung cancer in his

23 remaining lung?

24 A. I don't doubt what you are saying,

25 obviously you wouldn't be asking me if it wasn't

1 true, so I don't doubt what you are saying at all.

2 This is a description of the bizarre
3 events in my office, where as soon as the subject
4 changed the verbal subject, not the physiologic
5 subject, but the verbal subject changed, he
6 recovered.

7 Q. Well, physiologically he was short of
8 breath as you documented in your report, so there
9 were some physiologic changes; correct?

10 A. Until the topic of the conversation
11 changed.

12 Q. Wouldn't you agree that anxiety can
13 cause an increased need for oxygen?

14 A. That's all it was.

15 Q. So the answer to the question is yes,
16 you would agree that anxiety can cause an
17 increased need for oxygen?

18 A. And that's what I found.

19 Q. So he appeared to you to be anxious,
20 didn't he?

21 A. For one reason or another, yes.

22 Q. So we have a man that appears to be

- 23 anxious, if you assume now he had lung cancer in
- 24 the remaining lung, you assume he had portable
- 25 oxygen prescribed by his physician to be used when

1 he needed it, prn, you as the nontreating doctor
2 believe that you have the right, as the
3 nontreating doctor, to preclude this man from
4 using oxygen in your office when you are there to
5 do an evaluation and not treat? Do you agree with
6 what I just said or not?

7 A. If it goes away in a matter of
8 seconds, I am not going to call his doctor. If
9 this didn't go away in a matter of seconds, I am
10 going to call 911.

11 Q. How many flights up the stairs is your
12 office?

13 A. One.

14 Q. Did the stairs turn? In other words,
15 it's not just one straight set of stairs?

16 A. Correct.

17 Q. You would agree that kind of activity
18 can also increase the need for an individual to
19 utilize oxygen?

20 A. He wasn't out of breath when he came
21 into my office.

22 Q. Where do you say that in your

23 evaluation or notes?

24 A. I don't.

25 Q. You just remember it eight months ago;

1 correct?

2 A. Yes, because I remember the bizarre
3 circumstances of two episodes of him being short
4 of breath and it being based on the content of the
5 conversation as another practitioner noted the
6 same.

7 Q. If it's so bizarre, why didn't you
8 document it? Isn't that your job as a
9 psychiatrist to document bizarre things, the two
10 times versus the one or the five or 10?

11 A. I could have documented that better.

12 Q. What percentage of the body overall --
13 let's move along.

14 Doctor, where on your report -- I will
15 strike that.

16 Did you check his O2 saturation?

17 A. I don't have a sat monitor.

18 Q. Do you have a defibrillator in your
19 office?

20 A. No.

21 Q. You knew this man had prior cardiac
22 problems, didn't you?

23 A. Yes.

24 Q. Would you agree that the brain

25 consumes 20 percent of the body's total overall

1 need for oxygen?

2 A. It may be higher.

3 Q. And in fact some of the problems he
4 was having with getting the answers correct on
5 some of the tests you administered could be in
6 fact that he did have dementia; correct?

7 A. Could have been.

8 Q. Now, somewhere in your report,
9 specifically page 9, you indicate there is no
10 reason from a medical standpoint as to why
11 Dr. [REDACTED] would prescribe Prozac, a medication
12 that affects the hepatic metabolism of almost
13 every other medication that [REDACTED] takes, yet
14 would be reluctant to prescribe a very simple and
15 rather benign medication such as Lorazepam; is
16 that correct?

17 A. For the record, I would just like to
18 have this on the record, that I met this
19 individual downstairs, and I have a room that I
20 use downstairs and asked him if he could go up the
21 stairs. And I escorted him both up the stairs and
22 down the stairs. And if he could not use the

23 stairs, I would have held the evaluation

24 downstairs as I had in the past.

25 Q. That's not in your notes though, is

1 it, Doctor?

2 A. I just wanted it on the record.

3 What was your question?

4 Q. That's not in your notes, that you

5 escorted him upstairs and downstairs?

6 A. No, it's not.

7 Q. How did you know he arrived?

8 A. I was in the kitchen.

9 Q. Was he by himself or did he have

10 someone else with him?

11 A. He was by himself to the best of my

12 recollection.

13 Q. Doctor, are you aware he actually had

14 a neighbor with him? I want you to think back

15 again.

16 A. I don't recall.

17 Q. Now, let's go back to your suggestion

18 about the Lorazepam. What's another name for

19 Lorazepam?

20 A. Ativan.

21 Q. Can you tell me whether or not Ativan

22 is a CNS depressant?

23 A. Yes, it is.

24 Q. Doctor, I have an article, Defendant's

25 next numbered exhibit.

1 (Thereupon, Defendant's Exhibit Number
2 10 was marked for Identification.)

3 BY [REDACTED]:

4 Q. This is from the Murray & Nadel:
5 Textbook of Respiratory Medicine, Third Edition,
6 copyright 2000, W. B. Saunders Company, which
7 states, "Nevertheless, there are patients in whom
8 new CNS insults or drug effects contribute to
9 respiratory failure. Even small doses of
10 sedatives or narcotics may cause respiratory
11 failure when superimposed on chronic ventilatory
12 insufficiency. A careful history is essential to
13 exclude that possibility."

14 Do you agree with that?

15 A. I agree that it should be used -- that
16 all stimulants that have the potential to be
17 respiratory depressants, of which Lorazepam is a
18 very mild respiratory depressant, should be used
19 cautiously.

20 Q. In fact in this case, even small doses
21 of sedatives or narcotics can cause respiratory
22 failure, yet in this case you are castigating or

- 23 somehow indicating that Dr. [REDACTED] is wrong for
- 24 not giving him a medication which can cause him
- 25 respiratory failure; is that correct?

1 A. I am more interested in the
2 fluoxetine.

3 Q. So the question that I asked --

4 A. The main focus had been this
5 individual's agitation and anxiety, that had been
6 the main symptom and main focus.

7 How to treat that had been the
8 prescription of fluoxetine, which is a medication
9 that has a tremendous amount of B450 liver
10 interactions, so it's a drug I would use with this
11 individual.

12 Q. Do you have any reason to believe he
13 had an elevated liver profile?

14 A. It's not a question of liver profile,
15 it's a question of it has an inhibitory and will
16 speed up the metabolism of multiple medications.
17 It reacts in multiple subsets of the B450 system.

18 Q. You never called Dr. [REDACTED] to speak
19 with him to ask him why he chose Prozac versus
20 another medication; is that correct?

21 A. That's correct.

22 Q. With regard to the diagnosis of

23 dementia, would you agree that his condition was

24 sufficiently severe such that it would cause

25 impairment in occupational or social functioning?

1 A. Could you repeat that, please.

2 Q. Would you agree that with regard to
3 the dementia, his condition, meaning
4 [REDACTED], was so severe that it would cause
5 impairment in either occupational or social
6 functioning?

7 A. It could.

8 Q. And in fact memory impairment is
9 required to make that diagnosis, isn't it, which
10 is one of the reasons you put that down as the
11 diagnosis?

12 A. It's part of it, it's just part of it.

13 Q. You would agree, wouldn't you, that
14 memory impairment can affect the ability of an
15 individual to work with his or her attorney in a
16 criminal case?

17 A. It can be relevant, and it can be
18 totally irrelevant.

19 Q. Doctor, you also gave him the
20 diagnosis of adjustment disorder. You would agree
21 adjustment disorders are associated with suicide
22 attempts, aren't they?

23 A. They are not in general what we think
24 of in terms of suicide attempts, they may have
25 some association as opposed to no mental illness,

1 but they are certainly not what we think of in
2 terms of suicide attempts.

3 Q. I would like to reference pages 679 to
4 683 of the Diagnostic and Statistical Manual as
5 the next numbered exhibit.

6 (Thereupon, Defendant's Exhibit Number
7 11 was marked for Identification.)

8 BY [REDACTED]:

9 Q. Specifically I would like you to read
10 the portion that I just underlined into the
11 record. And I ask you if you in fact disagree
12 with that?

13 A. I would just like to say this it taken
14 out of context, but it says, "Adjustment disorders
15 are associated with suicide attempts, suicide,
16 excessive substance use."

17 Q. Doctor, did you ask this man if he was
18 suicidal?

19 A. Of course.

20 Q. Where is that in your handwritten
21 notes?

22 A. It's not where it usually is.

23 Q. You didn't document whether or not he

24 was suicidal, did you?

25 A. I didn't.

1 Q. That's a pretty important question in
2 a case like this, isn't it?

3 A. Yes, it is.

4 Q. Can you tell me when this gentleman's
5 adjustment disorder started and what it started in
6 your opinion as a result of?

7 A. It started at the time of his arrest.

8 What was the second part of your
9 question?

10 Q. And what was the reason it started?

11 A. Because he was arrested for a very
12 serious felony.

13 Q. When specifically did it start? How
14 soon after the arrest?

15 A. I don't know the answer to that.

16 Q. What?

17 A. I don't know the answer to that.

18 Q. In order to make the diagnosis of
19 adjustment disorder, wouldn't you agree that the
20 symptoms must develop within three months of the
21 onset of stressors? And again, referencing the
22 DSM-IV and the areas I just underlined.

23 A. I believe there are two types, yes.

24 Q. With regard to the dementia, in order

25 to have the diagnosis of dementia, the essential

1 feature is the development of multiple cognitive
2 deficits that include memory impairment and at
3 least one of the following cognitive disturbances:
4 Aphasia, apraxia, agnosia or disturbance in
5 executive functioning; correct?

6 A. Correct.

7 Q. In fact the test results by
8 Dr. B [REDACTED] confirmed this gentleman had problems
9 with executive functioning, didn't they?

10 A. Yes.

11 Q. And problems with executive
12 functioning has to do with planning, being able to
13 take information and put it together and orient it
14 in your head and act upon it; correct?

15 A. That's part of it.

16 Q. Wouldn't you agree that executive
17 functioning is necessary for an individual in
18 order to work with their attorney with regard to
19 defending a criminal claim?

20 A. Not necessarily.

21 Q. So you don't need the ability to plan
22 for defending yourself in a criminal case?

23 A. I don't think that a test involved in
24 numbers and tasks that involves card sorting
25 translates into whether you have the ability to

1 tell your story and work with your attorney on
2 your defense.

3 The fact that those detriments are
4 there is certainly something to note clinically,
5 but it doesn't necessarily de facto make this
6 gentleman competent and make him unable to work
7 with his attorney.

8 Q. Why didn't anywhere in your report
9 you reference the results of the psychological
10 tests given by Dr. Kr [REDACTED] and Dr. B [REDACTED], the
11 specifics? Why didn't you reference that in your
12 report?

13 A. Sometimes I think that the results of
14 other people have a crucial bearing. In this case
15 I found this individual to be competent, and that
16 was the question put before me by the judge. And
17 I put down what I felt backed up my findings of
18 this individual being competent to proceed.

19 Q. You would agree that the American
20 Psychiatric Association, the AMA Guide to
21 Evaluation of Permanent Impairment and the
22 Diagnostic and Statistical Manual all suggest the

23 use of longitudinal data when reaching a

24 psychiatric conclusion, longitudinal data being

25 defined as tests including the psychological tests

1 performed in this particular case?

2 A. To a varying degree, yes.

3 Q. Yet nowhere in your report do you
4 indicate why you disagree with or do agree with
5 the psychological tests from Dr. B [REDACTED] who is
6 the individual who has had the most experience
7 with this individual over a number of years?

8 A. I am sorry, I don't understand the
9 question.

10 Q. Why do you not address anywhere in
11 your report the tests that were conducted by
12 Dr. B [REDACTED] and the results of those tests either
13 to say you agree or don't agree?

14 A. I didn't feel it was necessary for me
15 to come to the conclusions that the Court asked me
16 to come and to rule on.

17 Q. With regard to this Defendant's
18 Exhibit, the dementia portion of the Diagnostic
19 and Statistical Manual, pages 147 through 151, I
20 am reading now: "Executive functioning involves
21 the ability to think abstractly and plan,
22 initiate, sequence, monitor and stop complex

23 behavior. Impairment in abstract thinking may be
24 manifested by the individuals having difficulty
25 coping with novel tests and avoiding situations

1 that will require processing of new and complex
2 information."

3 Do you agree with that?

4 A. I was about to say if you expected me
5 to process everything that you just read at that
6 speed --

7 Q. I will show you the area that I am
8 looking at. I have marked it now as page 149.

9 Would you agree that's an accurate
10 definition of executive functioning?

11 A. What is your question again?

12 Q. Do you agree with the statement that I
13 read in the record that I just handed to you to
14 reread?

15 A. Yes.

16 Q. Don't you agree that it would be
17 important for an individual to be able to have the
18 ability to engage in that activity in order to
19 adequately serve to assist his counsel in his own
20 defense?

21 A. Again, everything is varied into a
22 varying degree. I stated in my report that it's

23 my opinion his are not severe enough to interfere

24 with his ability and capacity to work with

25 counsel.

1 Q. Are you aware Dr. [REDACTED] found
2 this patient suffered from high depression and
3 high anxiety?

4 A. High depression and high anxiety?

5 Q. Severe depression and high anxiety,
6 high on the anxiety scale and severe on the
7 depression scale?

8 A. Did you really say high anxiety?

9 Q. Yes, high level of anxiety.

10 A. High level of anxiety.

11 Which one of his reports?

12 Q. The one where he performed the
13 testing. Let's see, page 4, the defendant is
14 extremely depressed and anxious and in
15 considerable distress. Were you aware he said
16 that?

17 A. I thought you said he was in high
18 depression and high anxiety.

19 Q. Let's just say severe or extremely in
20 my opinion is pretty similar.

21 Were you aware that Dr. K [REDACTED] found
22 this man to be extremely depressed and anxious?

23 A. I am going to look at Dr. K [REDACTED]

24 report.

25 [REDACTED]: Dr. K [REDACTED] has three

1 reports.

2 [REDACTED]: November 1997, this is the
3 only report where he provided standardized
4 testing.

5 BY [REDACTED]:

6 Q. What page did you say it was on?

7 A. Page 4.

8 Q. "Although, the defendant is extremely
9 depressed and anxious and in considerable
10 distress."

11 Have you read that report before?

12 A. Yes.

13 Q. I notice in going through your file
14 you made some markings or some highlightings on
15 the reports from the physical doctors, but I
16 didn't see any markings on the reports from the
17 psychologist. Why is that?

18 A. Maybe I didn't think I would be using
19 those reports in answering your questions later on
20 down the road.

21 Q. So why did you highlight the physical
22 reports?

23 A. Because I thought they were going to
24 be important things for me to refer back to.
25 (WHEREUPON, a recess was had.)

1 BY [REDACTED]:

2 Q. Doctor, what is emotional lability?

3 A. Kind of a quick temperedness, quick to

4 cry, quick to anger, quick to change moods.

5 Somebody that expresses kind of a hyperactive

6 moody state very quickly and can change that

7 quickly.

8 Q. Wouldn't you agree that emotional

9 lability can interfere with a trial depending on

10 the level or degree?

11 A. In certain circumstances.

12 Q. Were you aware that Dr. Kr [REDACTED] found him

13 to be emotionally labile?

14 A. Labile?

15 Q. Yes.

16 A. No. I wasn't aware that he found him

17 to be emotional labile.

18 Q. Were you aware that this gentleman had

19 a significant elevation in the Beck Depression

20 Inventory and the PAI, which are both tests that

21 can measure depression?

22 A. The Beck is essentially a research

23 tool and is pretty much useless. The PAI I was

24 aware of.

25 Q. Do you have any documentation that

1 reflects that the Beck Depression Inventory is
2 useless?

3 A. My own opinion.

4 Q. Why would that be?

5 A. It's a purely subjective scale that
6 any medical student or any high school student can
7 learn to score right through, and it's not a very
8 sophisticated scale.

9 Q. There's no validity factor in there,
10 is there, just like your examination of this man?

11 A. I am giving an opinion.

12 Q. And I am asking you a question.

13 Isn't it true that the Beck Depression
14 Inventory doesn't have any validity factors in it
15 that are reproducible just exactly like your
16 examination of this man?

17 A. I guess all psychiatrists are invalid
18 unless they are using psychometrics. Is that what
19 you are saying?

20 Q. Would you please answer the question.

21 Do you need the Court Reporter to
22 repeat it for you?

23 A. Sure.

24 Q. Go ahead and read it back.

25

1 (WHEREUPON, the record was read
2 by the reporter as requested.)

3 BY THE WITNESS:

4 A. The Becks don't have any validity
5 scale.

6 BY [REDACTED]:

7 Q. So that's the answer to my question?

8 A. Yes.

9 Q. Doctor, you reference on page 7 of
10 your report minor here-and-now confusion.

11 What here-and-now confusion were you
12 talking about?

13 A. Where are you?

14 Q. Page 7, under the last few words of E,
15 some allowances for minor here-and-now confusion.
16 Give me some examples of what he was confused
17 about.

18 A. If you let me finish reading, I will
19 be happy to.

20 Q. Go ahead. Take your time.

21 A. Thank you.

22 I don't think I am saying anywhere in

23 this fellow's evaluation that he is

24 neuropsychiatrically clean. I certainly wouldn't

25 want to have his pulmonary functions, heart

1 functions or his brain. What I am saying here is
2 that he will have periods of minor confusion but
3 gets oriented very quickly.

4 Q. What do you mean when you say
5 here-and-now confusion? Tell us in laymen's
6 terms.

7 A. In the present.

8 Q. So he's confused as to what is
9 occurring even in the present; is that correct?

10 A. And then gets unconfused very quickly.

11 Q. How many times did he get here-and-now
12 confused? Did you document that?

13 A. No.

14 Q. Wouldn't you agree in order to
15 determine how often that would occur and to
16 determine whether or not it would interfere with
17 the trial, the documentation of how many times it
18 occurred and specifically how it occurred would be
19 helpful?

20 A. Obviously you think so, but I am
21 merely stating that he occasionally gets confused
22 but is easily oriented. I will certainly try to

23 find a better way to put that.

24 Q. I didn't see anywhere in your report

25 where you advised this individual that his

1 comments to you were of a nonconfidential nature.

2 Isn't that also a requirement for a
3 forensic evaluation, that that be documented?

4 A. Yes, it is.

5 Q. Doctor, when he --

6 A. Hold on. I always have somebody do a
7 consent form.

8 Q. There's no consent form in your file;
9 correct?

10 A. I can't find it.

11 Q. So there's no documentation that when
12 you in fact evaluated this gentleman, he was
13 advised by you that the evaluation was
14 nonconfidential; correct?

15 A. Not documented.

16 Q. With regard to the Diagnostic and
17 Statistical Manual, the diagnosis of adjustment
18 disorder, which you gave, one of the criteria is
19 to determine when the onset of the stressor
20 occurs, yet that was not determined by you in this
21 case; correct?

22 A. Correct.

23 Q. In order to make that diagnosis, you
24 actually would need a little more information if
25 you were to comply with the Diagnostic and

1 Statistical Manual; correct?

2 A. He began having problems after his
3 arrest.

4 Q. I understand that, but the Diagnostic
5 and Statistical Manual references a particular
6 period of time, being three months, and in order
7 to make that diagnosis, you would need to know
8 whether or not his symptoms occurred within that
9 three-month period?

10 A. I know he had problems after his
11 arrest.

12 Q. You don't know whether they were in
13 the three-month period; correct?

14 A. If his -- I don't understand what you
15 are asking me.

16 Q. His problems, his psychiatric
17 problems, according to the book you referenced
18 within your report, needed to occur within three
19 months of the onset of the stressors.

20 My question was in order to accurately
21 make the diagnosis of adjustment disorder, you
22 need to know when his actual psychiatric symptoms

23 started, and you don't know that as we sit here

24 today; is that correct?

25 A. I know they started in and around the

1 time of the arrest.

2 Q. You don't know whether it was before
3 or after three months after the arrest, do you?

4 A. Not if you put it that way, no, but
5 they were right after the arrest.

6 Q. So in order to comply with how the
7 DSM-IV says you should make a diagnosis of
8 adjustment disorder, you need more information,
9 don't you?

10 A. According to the way you are wording
11 it.

12 Q. According to the way the book is
13 written; correct, Doctor?

14 A. I am stating that he started to have
15 problems right after his arrest. You want
16 something that states he began to have problems
17 within two and a half months after his arrest, I
18 am saying right after his arrest.

19 Q. Actually, that's not what I want.

20 You reference the DSM-IV as the
21 authoritative treatise for the purpose of
22 diagnosing. That book says the symptoms have to

- 23 start within three months of the stressor, and you
- 24 can't as we sit here today tell us if that is in
- 25 fact correct, which could mean that your diagnosis

1 is mistaken; correct?

2 A. Correct.

3 Q. And in fact if this man were suicidal,
4 and assume for the purposes of this question that
5 other psychologists have found him to be suicidal
6 or thinking of taking his life, if he had a change
7 in weight of plus or minus five percent of his
8 total body weight, if he had problems with
9 concentration and anhedonia and had sleep
10 problems, that combination can in fact result in a
11 more proper diagnosis of major depression;
12 correct?

13 A. It could.

14 Q. And in order to know whether or not he
15 has a major depression, you would need to know
16 whether or not all of the factors or most of
17 factors applied, I believe five out of nine for
18 the DSM-IV; correct?

19 A. Can you ask the question again,
20 please.

21 (WHEREUPON, the record was read
22 by the reporter as requested.)

23 BY THE WITNESS:

24 A. I do a review of systems on page 3,

25 where I review symptoms of illnesses with him and

1 he essentially states that he's angry about his
2 current situation and agoraphobic.

3 BY [REDACTED]:

4 Q. Let's be specific here then.

5 Did you ask him if he has had a
6 significant weight loss or gain, i.e. change of
7 more than five percent of his body weight within a
8 month?

9 A. Where are my notes?

10 I asked him if he was depressed for
11 more than a few days and at any one time, and he
12 told me he was situationally depressed.

13 Q. Can I see your handwritten notes where
14 you are reading that?

15 Actually, there's an arrow next to
16 sleep, that means decreased sleep when worried;
17 correct?

18 A. Yes.

19 Q. Okay. Irritability; correct?

20 A. It says situationally depressed,
21 decreased sleep when worried, talking about his
22 anxiety and anger and a form letter that he got.

23 Q. Okay. Can I have that back?

24 How do you know he didn't have

25 obsessive compulsive disorder? What test did you

1 give?

2 A. I ask people whether they have
3 thoughts in their head that play over and again
4 like a broken record, whether they have habits
5 that they maintain or feel like they have to do,
6 like counting or wash their hands over and over
7 again, whether it makes them nervous not to do
8 those things.

9 Q. As I understand it, there's two types
10 of OCD, obsessive compulsive disorder and
11 obsessive compulsive personality disorder.

12 Which did you test for?

13 A. They are not even related.

14 Obsessive compulsive personality
15 disorder is something that is a personality type,
16 that you find in more attorneys than doctors, that
17 is more the perfectionist of the individual that
18 has little or no ability to tolerate faults in
19 others and has no relation to obsessive compulsive
20 disorder. And as I understand it, it will
21 probably be changed in the DSM-V.

22 Q. What is the sentence after OCD? I

23 can't read that right there.

24 A. Negative Schneiderian.

25 Q. What does that mean?

1 A. Symptoms of a thought disorder,
2 thought insertion, thought broadcasting,
3 hallucinations.

4 Q. That would be more in the realm of
5 potential schizophrenia or psychosis?

6 A. Yes.

7 Q. With regard to the document, your
8 handwritten notes, it looks like he has sleep
9 problems, he talks to you of depression, he says
10 situational, but you don't indicate how often he's
11 depressed.

12 How often does he have the situations
13 which cause him to be depressed?

14 A. I asked him if he was ever depressed
15 for greater than two weeks straight, and he said
16 no.

17 Q. Where does he say that in your
18 handwritten notes?

19 A. He said no.

20 Q. Where is that in your handwritten
21 notes?

22 A. I am saying he's situationally

23 depressed, that's how I ask it.

24 Q. That's not the same as not being

25 depressed for greater than two weeks at a time?

1 A. If I were to do an evaluation to
2 satisfy you, I would have to tape record it.

3 Now, I ask whether somebody --

4 Q. And for the purposes of the record, I
5 am going to object and move to strike. Your
6 comments are inappropriate and unprofessional. I
7 am asking you just to respond to my questions. I
8 know you don't like them, but that's why we are
9 here.

10 [REDACTED]: I will entertain that
11 objection. I thought it was a very good answer
12 and I fully understand exactly where he is coming
13 from.

14 [REDACTED]: Go ahead.

15 BY THE WITNESS:

16 A. To say one is situationally depressed
17 means that one does not have a major depression,
18 it means that when bad things happen, they feel
19 bad and then they get over it.

20 BY [REDACTED]:

21 Q. In this case with the diagnosis of
22 adjustment disorder, he felt bad for quite a

23 while, and that is one of the requirements for the
24 diagnosis of adjustment disorder, isn't it? It
25 doesn't go away right away after he experiences

1 it; correct?

2 A. It can wax and wayne.

3 Q. In fact it can last until the stressor

4 itself is gone, which could be years; correct?

5 A. It can wax and wayne as well.

6 Q. Doctor, for the purposes of the

7 DSM-IV, page 356, Defendant's next numbered

8 exhibit, in order to determine if this man had a

9 major depression, you would need to know if he had

10 recurrent thoughts of death, which is a question

11 you did not ask him; correct?

12 A. Correct.

13 (Thereupon, Defendant's Exhibit Number

14 12 was marked for Identification.)

15 BY [REDACTED]:

16 Q. You did not ask him if he was

17 anhedonic, did you?

18 A. Yes, I did. I asked him if he liked

19 to be around people and if he liked to get out of

20 the house.

21 Q. That would be the same as marked

22 diminished interest and pleasure in all or almost

23 all activities, specifically number two for

24 depression?

25 A. It would encompass major aspects of

1 that.

2 Q. He indicated he didn't like to go out,
3 didn't he?

4 A. He said that he has always been that
5 way.

6 Q. He didn't like to go out; correct?
7 Regardless of how long he had been that way, he
8 didn't like to go out and be with people?

9 A. Correct.

10 Q. Can you tell me whether or not he had
11 any psychomotor agitation or retardation during
12 the evaluation?

13 A. Could you read that back?

14 (WHEREUPON, the record was read
15 by the reporter as requested.)

16 BY THE WITNESS:

17 A. I don't use those terms, but I do
18 describe him as being easily distractible and
19 hypochondriacal in his interactions.

20 BY [REDACTED]:

21 Q. That would be more toward the
22 agitation side?

23 A. I gave a description of him, but I

24 don't use the wording that you used.

25 Q. Is that a yes then?

1 A. No. It's that I gave a description of
2 him, I just don't use the wording that you use.

3 Q. I am going with the book that you
4 cite, and the book uses the word agitation.

5 Was he or was he not psychomotor
6 agitation or slowing?

7 A. He tended to have perceptions of his
8 anxiety and was distractible and at times had
9 difficulty breathing.

10 Q. Would you agree if this gentleman was
11 on the stand and the State Attorney is questioning
12 him and he is having a problem with
13 distractibility, that can affect how well he is
14 able to handle the process of this trial?

15 A. It could.

16 [REDACTED]: Off the record.

17 (WHEREUPON, discussion was had
18 off the record.)

19 BY [REDACTED]:

20 Q. Doctor, on the last page of the
21 report, you indicate that he is competent to
22 proceed and he does not meet the State's criteria

23 for insanity.

24 Why did you discuss insanity?

25 A. If anybody has the order, please let

1 me have it.

2 Q. The one I have isn't the right one.

3 A. Because in my order it asks me to do

4 so.

5 Q. Can I see the order?

6 A. Second page.

7 Q. When looking at the order, and I

8 haven't seen it before today, it looks like you

9 were also asked to discuss a description of mental

10 and emotional condition of mental processes of the

11 defendant at the time of the alleged offense,

12 including the nature of any mental impairment and

13 its relationship to the actions and state of mind

14 of the defendant at the time of the offense.

15 And I was wondering where in your

16 report you talk about how he was at the time of

17 his offense? Maybe I missed it.

18 A. What are you asking me?

19 Q. Well, you go through items A through

20 K, and you're referencing the Rules of Criminal

21 Procedure 3.211, that's probably the competency

22 section, but I don't see where you answer the

23 question about a description of mental and

24 emotional condition and mental process of the

25 defendant at the time of the alleged offense,

1 including nature of any mental impairment and its
2 relationship to actions and state of mind of the
3 defendant at the time of the offense. I don't see
4 where that's addressed in your report.

5 A. I think I address it on page 10.

6 I am saying he has nothing to impair
7 his ability to gauge the rightfulness or
8 wrongfulness or nature and quality of the act.

9 Q. In your opinion that's the same as the
10 nature of the mental impairment and its
11 relationship to the actions and state of mind of
12 the defendant at the time of the offense?

13 A. I am saying he didn't have them.

14 Q. Didn't have what?

15 A. Any mental disease or defect.

16 Q. But your report gives him two
17 diagnoses, dementia and --

18 A. At the time of these offenses.

19 Q. All right. Let's talk about that
20 then.

21 Adjustment disorder is a psychiatric
22 condition that's secondary to a stressor; correct?

23 A. Correct.

24 Q. And in fact if this gentleman's wife

25 died prior to the arrest, he could actually have

1 had the adjustment disorder prior to the arrest,
2 in this case as a result of and due to his wife's
3 death; correct?

4 A. Not by the way he's described, I
5 wouldn't say so, but I wouldn't rule it out
6 completely.

7 Q. In fact by definition adjustment
8 disorder is the kind of diagnosis an individual
9 can have following the death of a spouse or loved
10 one; correct?

11 A. They can have complicated grief
12 reactions.

13 Q. So the answer is yes?

14 A. It's possible.

15 Q. And in fact if you were to assume this
16 gentleman had just found out a few months ago he
17 has lung cancer in the remaining lung and if you
18 assume he was under the impression it was fatal,
19 his anxiety, his depression and his hysteria could
20 all be significantly worse than when you saw him
21 earlier this year; correct?

22 A. That's making a supposition. I

23 haven't seen him since I saw him, so I wouldn't

24 comment on that.

25 Q. So you don't know whether or not

1 finding out you are going to die is a likely cause

2 to significantly increase depression or anxiety?

3 You don't know that?

4 Let's be realistic here. If someone

5 is told they are going to die, isn't the normal

6 act of death and dying to be extremely anxious and

7 depressed?

8 A. It's certainly one of the stages, yes.

9 Q. In your report you indicate that you

10 would not recommend he be incarcerated prior to

11 the trial. Why is that?

12 A. Because of his medical problems.

13 Q. Would it make a difference after the

14 trial? Wouldn't those same medical problems

15 interfere with incarceration after a trial?

16 [REDACTED]: You are assuming a

17 conviction, I guess?

18 [REDACTED]: Yes.

19 BY [REDACTED]:

20 Q. I am not assuming he's convicted, but

21 if he were to be convicted, wouldn't those same

22 problems interfere if he were to be incarcerated

23 after a conviction?

24 A. He could be taken care of at North

25 Florida Reception Center.

1 Q. What is the quality of the care at the
2 North Florida Reception Center?

3 A. Unfortunately better than what many of
4 our working Americans get.

5 Q. Do you have any reason to believe the
6 doctors at the Reception Center are better than
7 Dr. [REDACTED]

8 A. I don't know Dr. [REDACTED]

9 Q. So your answer to that question is you
10 don't know; right?

11 A. Correct.

12 Q. What are the specifics of his medical
13 condition that lead you to believe he shouldn't be
14 incarcerated until a potential conviction?

15 A. I think that it is dangerous for him
16 to have an oxygen tank in the jail and would end
17 up predisposing him to being isolated merely for
18 the fact that he is ill. And I don't consider
19 that to be something reasonable.

20 Q. You would agree his treating doctor is
21 in a better position, whether it's Dr. G [REDACTED]
22 the pulmonary specialist, or Dr. [REDACTED] to

23 determine at what point he needs oxygen; correct?

24 A. Not in the situation that I was in

25 when I examined him. They were not in a better

1 situation than I was to determine whether he
2 needed oxygen or not.

3 Q. In order to obtain a canister of
4 oxygen, a prescription is necessary; correct, from
5 the physician?

6 A. Correct.

7 Q. So your refusal to allow him to take
8 the oxygen was in fact your refusal to allow him
9 to take a prescriptive device, which is the
10 compressed oxygen in a canister, as recommended by
11 his treating doctor; correct?

12 A. I don't know that his treating doctor
13 allowed him just to turn up the oxygen which
14 depresses respiratory levels as he was doing. And
15 I did not see anything that indicated respiratory
16 distress outside of what appeared to be
17 histrionics.

18 Q. You didn't call his doctor to find
19 out?

20 A. It only lasted three seconds.

21 Q. Somewhere in your report it says 10.

22 A. It only lasted three to 10 seconds.

23 Q. Did you take his heart rate or blood
24 pressure during the shortness of breath episode to
25 determine if there was any abnormality that could

1 be documented to support he was having an anxiety
2 attack or shortness of breath?

3 A. Yes.

4 Q. Why didn't you document in the report
5 that the blood pressure was taken at the time?

6 A. I was talking with him about something
7 else and didn't want to lose my train of thought
8 with him.

9 Q. So you chose not to document when you
10 did the blood pressure?

11 A. I didn't do a blood pressure, I just
12 checked his pulse and checked his color and just
13 basically checked his respiration.

14 Q. What was his pulse during these
15 attacks?

16 A. Somewhere -- they were under 100.

17 Q. You didn't document it; right?

18 A. No.

19 Q. If you assume that in fact this
20 gentleman is short of breath due to a physiologic
21 condition such as lung cancer in the one lung he
22 has left, you would agree the treating doctor

- 23 would be in a better position to determine what
- 24 kind of oxygen he needs and at what rate and
- 25 whether or not he could self-administer currently;

1 correct?

2 A. Currently?

3 Q. Yes.

4 A. Yes.

5 Q. And your statement that [REDACTED]
6 page 7, has no more difficulty relating to his
7 attorney than anyone else, did you ask anyone else
8 if he had difficulty relating to them?

9 A. I don't understand your question.

10 Q. You state in your report he had no
11 more difficulty relating to his attorney than
12 anyone else, did you ask any third parties how
13 [REDACTED] related to them?

14 A. No. I am referring to the many people
15 that I have evaluated.

16 Q. But in this case you didn't talk to
17 [REDACTED] attorney to ask [REDACTED] how
18 [REDACTED] related to him, did you?

19 A. No.

20 Q. Okay. And wouldn't you agree that if
21 the defendant's ability to assist an attorney in
22 planning a defense would utilize executive

- 23 functioning of the brain, which in this case he
- 24 has some impairment based on your diagnosis?
- 25 A. Again, we get back to where we were

1 before, it's a matter of degrees, and in my
2 opinion the degrees were not of sufficient
3 quantity to be found incompetent to proceed.

4 Q. Would you agree that when you talk
5 about histrionics, that's a component of hysteria;
6 correct?

7 A. Yes.

8 Q. And in fact the MMPI measures that
9 level, doesn't it?

10 A. It can.

11 Q. That's one of the standard scales in
12 the MMPI?

13 A. That's one of the scales.

14 Q. Do you know what his scale level was?

15 A. No.

16 Q. And in fact hysteria can be so severe
17 that it can interfere with an individual's ability
18 to assist an attorney in planning a defense, can't
19 it?

20 A. Yes.

21 Q. And the one test that was done to
22 measure that in the MMPI, independent of anyone

23 sitting and talking, the one standardized test

24 that was given to this man to determine that, you

25 don't have the numbers for it; correct?

1 A. I did my own evaluation.

2 Q. You don't have the numbers for the
3 standard test, the MMPI, that measures that, do
4 you?

5 A. I did my own evaluation.

6 Q. Can you please answer my question.

7 A. No.

8 Q. No, you are not going answer my
9 question, or no, you don't have the standard
10 numbers?

11 A. No, I don't have the numbers. I don't
12 think they were provided.

13 Q. Did you ask for them?

14 A. No.

15 Q. If the MMPI had a valid F, L and K
16 scale, then that would indicate, would it not,
17 that [REDACTED] when he was taking the test, was
18 doing so in an open and forthright manner and was
19 answering the questions honestly and to the best
20 of his ability; correct?

21 A. Would you state that again?

22 (WHEREUPON, the record was read

23 by the reporter as requested.)

24 BY THE WITNESS:

25 A. I am a psychiatrist, I don't rule, I

1 don't decide whether an MMPI is valid or not,
2 that's something done by a psychologist or a
3 computer. I can take scales from a valid test and
4 utilize what those scales mean.

5 You bring up F and K and L scales on a
6 valid MMPI, I know what they mean, but I don't
7 decide whether an MMPI is valid or not, it's not
8 what I do.

9 BY [REDACTED]:

10 Q. I understand that, but that's a test
11 that was administered to this man. And that test
12 has built within it tests to determine if someone
13 is exaggerating. And yet the fact that he passed
14 that test and wasn't exaggerating isn't referenced
15 in your report.

16 Don't you think that's important that
17 if a standardized psychological test that's been
18 around since the '30s, if an individual answers in
19 an open and forthright manner, don't you think
20 that's important to go in your report? You said a
21 lot of bad things about him, what about some of
22 the good?

23 A. Which question do you want me to

24 answer?

25 Q. Any one you want.

1 A. First of all, I find it to be
2 unprofessional for you to say that I am saying bad
3 things about someone when I am merely giving an
4 opinion, and I'm giving an opinion that is based
5 on my medical opinion and my care for this
6 gentleman to the point where I care about his
7 liver, his lungs, his well being. So I resent
8 that.

9 Q. You really --

10 A. All you are stating is that I am
11 saying bad things about this individual, and
12 basically that's a crock.

13 Q. You care about this man; is that
14 correct? Is that what you are saying, you care
15 about [REDACTED]? You personally care about him?
16 I want to be clear.

17 A. I am stating that this individual has
18 problems because of an ejection fraction, which I
19 don't see in other reports. I am stating that
20 this individual could have cerebral profusion
21 problems. And you are stating all I am doing is
22 saying the bad.

23 I stated that this individual
24 shouldn't be in jail because it's not the right
25 place for him, but all you are doing is saying

1 that I am saying the bad.

2 Q. Let's go back to my question, Doctor.

3 You mentioned something I would like
4 to ask you about. You said you cared for this
5 man, what did you mean when you said that?

6 A. It means that I have empathy for most
7 human beings in his position.

8 Q. That doesn't mean this man in
9 particular, you are talking about the human race?

10 A. No, for most human beings. I have
11 empathy for him.

12 Q. That's what you meant when you said
13 you cared about him?

14 A. Yes.

15 Q. Go ahead and answer the remainder of
16 my question, if you would, please.

17 A. The remainder of your question is how
18 many bad things I have to say about him?

19 Q. No. Let's take a two-minute break.

20 (WHEREUPON, a recess was had.)

21 BY [REDACTED]:

22 Q. Doctor, for the record wouldn't you

23 agree that the referral patterns that you have,
24 for example if you receive significantly more work
25 from the State Attorney's Office than from the

1 defense attorneys, can be an evidence of bias?

2 A. Me personally or somebody else?

3 Q. A witness.

4 A. A witness? Certainly it can, but not

5 necessarily.

6 Q. But we don't know that until we

7 receive the list of cases in which you testified;

8 is that a fair statement?

9 A. No, that's not a fair statement.

10 Q. How am I supposed to know that then?

11 A. You can ask people that have worked

12 with me.

13 Q. So I have to ask everyone who worked

14 with you? How do I know who they are if you don't

15 give me the list?

16 A. You seem to have the ability to pull

17 up all sorts of stuff.

18 Q. Thank you.

19 Can you answer the question though.

20 How am I supposed to call people if I don't have

21 your list?

22 A. Like I said you seem to have the

23 ability to pull up all sorts of people who I have

24 worked with.

25 Q. You are assuming I don't need it

1 because you think I can get it elsewhere?

2 A. You have already shown me that you
3 can.

4 Q. How many cases have you testified in
5 in the last three years, roughly?

6 A. 120.

7 Q. How many did you testify in while you
8 were employed and paid by the [REDACTED]
9 [REDACTED]?

10 A. I don't think I have -- I have never
11 received a dime testifying for the [REDACTED]
12 [REDACTED] that I can recall.

13 Q. Did you testify in any cases when you
14 were employed with the [REDACTED] on
15 your own, as in some kind of IME or something of
16 that nature?

17 A. Not that I can recall.

18 Q. In order to have done that, would you
19 have needed permission from the University?

20 A. Last three years, of course.

21 Q. Not the last three years, during the
22 time you were employed with the University, if you

23 wanted to do outside work, you would have to have

24 permission from them before you could do it;

25 correct?

1 A. Yes, but that's something that has
2 been recently worked out. I don't know what that
3 was as far as two years ago, that's something that
4 has been worked out within the last two years. I
5 don't know what the policy was two years ago.

6 Q. Before that you mean?

7 A. Yeah. But of course you do.

8 Q. Doctor, I have a document dated
9 3/21/91 that appears to be a report of outside
10 activities that you completed, Defendant's Exhibit
11 No. 14.

12 (Thereupon, Defendant's Exhibit Number
13 14 was marked for Identification.)

14 BY [REDACTED]:

15 Q. Let me ask you to verify, that's your
16 signature; is that correct?

17 A. That's my signature.

18 Q. So as far back as 1991, you were
19 required to fill those forms out as opposed to the
20 last two years; is that correct?

21 A. Yes.

22 [REDACTED]: Off the record for just a

23 second.

24 (WHEREUPON, discussion was had

25 off the record.)

1 (Thereupon, Defendant's Exhibit Number
2 15 was marked for Identification.)

3 BY [REDACTED]:

4 Q. In addition, Defendant's next numbered
5 exhibit, the subpoena duces tecum, which is dated
6 August 12th, 2002, which has the attachment A that
7 was referenced earlier, this subpoena states, "You
8 are commanded to appear before the deposition and
9 subpoenaed to bring the following attorney the
10 information requested. You shall respond to this
11 subpoena as directed. Any questions should be
12 directed to this attorney at the address listed
13 below." And my address and phone number are
14 listed below.

15 Do you remember receiving that
16 subpoena?

17 A. Yes.

18 Q. And would you agree you did not comply
19 with this subpoena?

20 A. I would agree that the subpoena does
21 not say that I cannot call [REDACTED] It says
22 that I shall call you, but it doesn't say that I

23 can't call [REDACTED].

24 Q. You did not comply with the subpoena,

25 did you?

1 A. Let me look at that again.

2 Q. Doctor, while you are looking at it,
3 can you confirm that it also says unless excused
4 by me or the court?

5 A. That's what it says.

6 Q. Doctor, I just want to clarify
7 something. You saw this gentleman March of this
8 year. If you assume that he's been advised that
9 he has lung cancer in the remaining lung, you
10 would agree that in light of that new very
11 catastrophic information, his psychiatric
12 condition may have deteriorated significantly;
13 correct?

14 A. Sure.

15 Q. Who is the individual that typed the
16 report that you prepared on [REDACTED]?

17 A. I don't even know their names. It's a
18 typing service out of Tallahassee.

19 Q. What's the name of the service?

20 A. I don't even know that. I have a
21 contract in my office.

22 Q. How do they get the data?

23 A. Over the phone.

24 Q. You call in and they have a machine at

25 the other end that at that point records what you

1 are saying and they type it up for you?

2 A. Yes.

3 Q. And how is that forwarded to you? Is

4 that mailed to you or typed into your computer

5 through a modem?

6 A. It's typed and mailed to me.

7 Q. When did you dictate the report on

8 this case, if you remember?

9 A. I don't remember. You asked me that

10 already.

11 Q. Do you have any employees?

12 A. No.

13 Q. Did you have any employees in March of

14 this year?

15 A. I have a person that comes in who

16 freelances and helps with my computer, he's not an

17 employee.

18 Q. When you say helps with your computer,

19 do you mean entering data or fixing it?

20 A. Entering data, but he's not an

21 employee.

22 Q. When this document is given to you, do

23 you send your letterhead to this business and they

24 type it on your letterhead? Is that how it works?

25 A. The only person that sees it is them

1 and me.

2 Q. I understand that, but how do they --
3 you said they mail you your mail to sign; is that
4 correct? Where do they create this document?

5 A. In Tallahassee.

6 Q. When this document, right now I am
7 referring to the evaluation, when this document is
8 created, what happens to it next? Is it mailed to
9 you?

10 A. Yes.

11 Q. Through the U.S. Postal Service?

12 A. No, by e-mail.

13 Q. At that point do you then cut and
14 paste?

15 A. Yes.

16 Q. What is the turnaround time?

17 A. It varies from what I am doing and
18 case to case.

19 Q. Typically?

20 A. There is no typical case.

21 Q. What's the shortest and what's the
22 quickest?

23 A. Tomorrow, next month.

24 Q. So it could go as long as 30 days

25 before you see the document that you have

1 dictated?

2 A. Not on a case like this.

3 Q. How do you know?

4 A. Because these types of cases are

5 quick.

6 Q. What do you mean when you say these

7 types?

8 A. Competency and sanity cases are fairly

9 quick.

10 Q. Why?

11 A. Because on personal injury cases, you

12 have seen the boxes that go with personal injury

13 cases, usually you don't have those in these

14 cases.

15 Q. In going through your handwritten

16 notes, I didn't see where you marked or wrote

17 anything down. I understand we talked about your

18 report, but even your handwritten notes don't make

19 any references to any of the multiple

20 psychological tests that were administered on this

21 man. Why not?

22 A. I do my own evaluation my own way.

- 23 Q. You don't document at all the multiple
24 psychological evaluations conducted on this man?
25 A. I may in certain circumstances.

1 Q. Not in this case?

2 A. I didn't in this case.

3 Q. Why?

4 A. I didn't feel it was necessary.

5 Q. Why not?

6 A. I didn't feel it was necessary.

7 Q. Why didn't you feel it was necessary?

8 A. I don't have a reason to give you.

9 Because I felt that I had enough information to
10 answer the question that the judge asked of me.

11 Q. Doctor, in order to determine whether
12 or not this man should have been given his oxygen,
13 don't you think it would have been important to
14 know what his pulmonary function studies were?

15 [REDACTED]: Asked and answered a
16 long time ago.

17 BY THE WITNESS:

18 A. I went over and examined him the
19 moment he was having difficulties. I did what a
20 physician does. I did more than look at a piece
21 of paper, I went over and laid hands on him.

22 BY [REDACTED]:

23 Q. Doctor, what is a pulmonary function

24 study?

25 A. It's a study of the amount of oxygen

1 and the amount of air that can flow into the lungs
2 and the amount of the capacity of air that the
3 lungs can hold and the amount of dead space that's
4 in the lungs.

5 Q. That's not a test that you administer
6 and those aren't results that you had when you
7 made your recommendations about the breathing; is
8 that correct?

9 A. No.

10 Q. Yes, that's correct?

11 A. Yes, that's correct.

12 Q. Would you agree that single breath
13 diffusing capacity for carbon monoxide is severely
14 reduced? Let me ask you this: What does that
15 mean to you?

16 A. What?

17 Q. The statement single breath diffusing
18 capacity for carbon monoxide is severely reduced.

19 A. For carbon monoxide?

20 Q. Yes. Single breath diffusing
21 capacity, do you know what that means?

22 A. Carbon monoxide has a higher infinity

23 to hemoglobin than oxygen, it would be the

24 decrease in the ability of oxygen to kick carbon

25 monoxide from hemoglobin.

1 Q. That can actually affect

2 concentration, can't it?

3 A. Concentration of what?

4 Q. Concentration and memory of being able

5 to think clearly, if you have a problem with that.

6 A. If it's a persistent problem.

7 Q. What about metabolic alkalosis?

8 A. What does that mean?

9 Q. What does that mean?

10 A. I didn't prepare for an internal

11 medicine exam.

12 Q. What does that mean? If you don't

13 know, you can tell me.

14 A. Metabolic alkalosis is that the body's

15 fluids are of an alkaline state outside of the

16 normal range.

17 Q. And what are the causes for that?

18 A. Most notably decrease in carbon

19 monoxide.

20 Q. That also could be an indicia if an

21 individual has that that perhaps they might have

22 some cognitive disorder secondary to that

23 abnormality or constellation of abnormalities;

24 correct?

25 A. Would you please ask me that again?

1 [REDACTED]: Can you read that back?

2 (WHEREUPON, the record was read

3 by the reporter as requested.)

4 BY THE WITNESS:

5 A. Again, this doctor has pointed out in

6 his report the possibility of that, and it

7 certainly can if it's persistent.

8 BY [REDACTED]:

9 Q. What kinds of examples did you use for

10 the Thurstone word fluency?

11 A. What do you mean what kind of

12 examples?

13 Q. What did you ask him?

14 A. I used the letter S.

15 Q. How many was he able to think of? And

16 for the purposes of this deposition, the Thurstone

17 word fluency is if you give someone a letter and

18 then you count how many words they can think of

19 that begin with that letter?

20 A. You can't use names and you can't use

21 proper names and you can't use names of places.

22 He gave five, but he really was not interested in

23 doing it. He was kind of onerous.

24 Q. You don't know in fact whether or not

25 he didn't want to or couldn't do it, do you?

1 A. I am telling you my opinion.

2 Q. I am asking you the question.

3 You don't know, do you, this gentleman
4 with reduced lung capacity, with prior cardiac
5 history, with organicity documented by a
6 neuropsychologist, you don't know when he got a
7 five instead of a 12 on the Thurstone word
8 fluency, whether or not it was because he didn't
9 want to or because he couldn't because there's no
10 validity test in the Thurstone word fluency, is
11 there?

12 A. It's my opinion he didn't want to.

13 Q. You don't know, do you?

14 A. It's my opinion he didn't want to.

15 Q. Let me be specific. There's no
16 independent validity test in the Thurstone word
17 fluency to tell us whether or not this man is
18 telling the truth?

19 A. That's correct.

20 Q. And what was --

21 [REDACTED]: You're done, it's 4:00.

22 [REDACTED]: Well, for the record I am

23 not finished. You are under subpoena, but for the

24 record, I am not finished.

25 (WHEREUPON, a recess was had.)

1 BY [REDACTED]:

2 Q. Did you have a discussion with the
3 defendant with regard to the specifics of the
4 alleged crime?

5 A. What are we doing here?

6 Q. I am asking you a question. We are
7 going to reserve the right to recess in light of
8 what the Court Reporter is saying, but I have a
9 couple of more questions until we recess.

10 So did you discuss with the defendant
11 the specifics surrounding the alleged events?

12 A. Yes, he denied it all.

13 Q. Did you ask him about the specifics?

14 A. Yes.

15 Q. Can you tell me where in the order it
16 reflects that you are to discuss the specifics of
17 the event itself?

18 And if you would, please, discuss how
19 that plays into the right against
20 self-incrimination.

21 A. You cannot do a mental state at the
22 time of the offense without discussing the

23 offense, nor can you gauge whether somebody has

24 the capacity to work with their attorney without

25 finding out whether they can discuss the

1 allegations. They are not under any obligations
2 to answer your questions.

3 Q. Did you tell him he was under no
4 obligation to answer your questions?

5 A. I don't recall.

6 Q. Did you tell him the judge told you to
7 ask him those questions?

8 A. Yes. I told him that the judge had
9 appointed me.

10 Q. You told him that the judge asked you
11 to ask him questions about the specifics of the
12 alleged crime?

13 A. I told him that the judge had
14 appointed me, and I told him that it was my job to
15 find out what happened in order to determine what
16 his mental state was at the time of the offense.

17 Q. What his mental state was at the time
18 of the offense can be gleaned by asking him
19 questions surrounding what his mentation was at
20 the time without going into the specifics of the
21 crime; isn't that correct?

22 A. You have been harping on this thing

23 since we started. Now, if I didn't do it

24 properly, you would pull out the ample version of

25 it and start harping on it.

1 Q. Would you please answer my questions
2 instead of attacking me.

3 A. I did it the way it is properly done,
4 and that's to find out what somebody has done
5 according to their own perceptions.

6 Q. That has to do with potential guilt or
7 innocence, that does not have to do with
8 competency or insanity, Doctor.

9 A. Yes, it does.

10 Q. Are you aware that Tanya Alavi
11 testified she believed you were funneling
12 information to the State Attorney's Office as to
13 the guilt or innocence, you were using the
14 psychiatric evaluation for that purpose?

15 [REDACTED]: Objection. She never
16 testified to any such thing, not in my presence.

17 BY THE WITNESS:

18 A. I am not aware of such.

19 BY [REDACTED]:

20 Q. This appears to be a way for the State
21 Attorney's Office to backhandedly obtain
22 information with regard to guilt or innocence of a

23 crime without the individual's attorney being

24 present.

25 Can you explain to me how that's not

1 the case?

2 A. What?

3 Q. If this man is not required to testify

4 against himself and if his attorney is not present

5 and you don't recall whether or not you told him

6 he didn't have to answer the questions and you

7 tell him that you are there because the judge

8 wants you to ask questions and you don't tell him

9 and you haven't said thus far that the State

10 Attorney that's prosecuting has requested you to

11 do this evaluation, can you tell me how that in

12 fact respects his right to avoid

13 self-incrimination?

14 A. I have never turned down any

15 attorney's request to be present in any evaluation

16 ever.

17 Q. He didn't have his attorney present,

18 did he?

19 [REDACTED]: The answer to that is

20 comments in the psychiatric evaluation are not

21 admissable unless --

22 [REDACTED]: Counsel, if you want to

23 make an objection, you can give the specifics, but

24 you are telling him the answer.

25 [REDACTED]: You are telling him

1 something that is a legal question and making it
2 appear I've done something wrong, that I send
3 [REDACTED] over there to be my agent and to find
4 out what this guy is going to say, and the truth
5 is unless the defendant presents an insanity
6 defense at the time of trial, it will never come
7 out in trial, unless the defendant specifically
8 denies that he said something.

9 [REDACTED]: It is still a way for
10 information that can be used to get secondary
11 information.

12 BY [REDACTED]:

13 Q. Can you answer my question, please.

14 A. Would you state it again.

15 [REDACTED]: Please read the question
16 again.

17 (WHEREUPON, the record was read
18 by the reporter as requested.)

19 BY [REDACTED]:

20 Q. And the answer to the question is no;
21 correct?

22 A. Correct.

23 Q. You would agree that nowhere in the
24 report or in the order appointing you, the expert,
25 does the judge ever instruct you to go over the

1 specifics of any alleged acts that the State
2 claims this individual engaged in for which he was
3 subsequently charged?

4 A. One cannot do a mental state at the
5 time of the offense without going over an alleged
6 act.

7 Q. The question isn't whether or not he's
8 guilty or innocent, the question is what was his
9 emotional state at the time; correct?

10 A. One cannot go over his emotional state
11 without going over an alleged act.

12 Q. Would you please answer my question?
13 Isn't the question not whether he's guilty or
14 innocent but what his mental status was at the
15 time, and you can make that opinion regardless of
16 whether he was guilty or innocent, can't you?

17 A. No.

18 Q. So you have to know whether he was
19 guilty or innocent; correct?

20 A. I have to know his perceptions of the
21 facts. I have to know what his perceptions were.

22 Q. So you don't know as we sit here today

23 if he was guilty or innocent, do you?

24 A. Of course not.

25 Q. You have no opinion on that, do you?

1 A. Of course not.

2 Q. Now, in order to know whether or not
3 he was guilty or innocent, you have to figure out
4 what his perceptions are at the event, but those
5 weren't independently verified with anybody, were
6 they? In other words, how do you know what he
7 told you was correct or not?

8 A. Because it's his mental state at the
9 time of the offense, it's not a question of -- you
10 just talked backwards. It's not whether it
11 happened or not, again, it's his perception.

12 Q. If he perceives something happened and
13 it did not, that could be evidence of psychosis,
14 couldn't it?

15 A. Of course.

16 Q. You don't know whether or not his
17 perceptions are correct or not unless they are
18 independently verified; correct?

19 A. I have ways of verifying it, such as
20 police reports, depositions, other reports.

21 Q. The material that you got was from the
22 Office of the State Attorney, the affidavit of

23 probable cause, the material upon which you relied

24 you got from the State Attorney's Office; correct?

25 A. I believe so.

1 Q. And you are in fact presuming when you
2 conduct this examination and render your opinion
3 that this man is guilty, aren't you?

4 A. Of course not.

5 Q. Why did you put in the report comments
6 made about what he did or didn't do if the
7 individual in question -- and also say towards the
8 end of the report that he is acutely aware that
9 sexual conduct with an underage female is both
10 morally and legally wrong and then elsewhere
11 reference what he allegedly told you with regard
12 to that conduct?

13 A. Because it's the trier of facts' job
14 to decide whether he did or not. It's my job to
15 decide or to give an opinion of whether he knew it
16 was wrong or not or whether he knew what it was.
17 This is the trier of facts' job to decide.

18 Q. You state that his interaction
19 convinces me, I quote, "[REDACTED] understood the
20 nature and quality of his acts," therefore,
21 indicating he in fact engaged in such acts, page
22 10, first paragraph; correct?

23 A. It should have been worded accused

24 acts.

25 Q. That's a big difference, isn't it?

1 A. It's a difference.

2 Q. In fact this report should have
3 reflected whether or not he was suicidal, should
4 have reflected that he was told it was not
5 confidential, should have reflected that in fact
6 the judge on his own didn't pick you, the judge
7 picked you because the State Attorney's Office
8 picked you and instructed the judge to enter an
9 order as such?

10 [REDACTED]: I didn't instruct the
11 judge to do anything, I requested [REDACTED] be
12 appointed, and the judge was gracious enough to
13 say yes, he would do that.

14 BY [REDACTED]:

15 Q. Wouldn't that have in fact been a
16 better and more complete evaluation?

17 A. I agree some things were left out as
18 you mentioned.

19 Q. You wrote in your report he has an
20 ejection fraction of 20 to 30 percent. What is
21 normal?

22 A. Depends on who you talk to. About 35.

23 Normal is in the 60s, you can get along okay in

24 the low 30s.

25 Q. An ejection fraction of 20 to 30

1 percent reflects significant cardiac restriction;

2 correct?

3 A. And I put that down, didn't I?

4 Q. So the answer to the question is yes?

5 A. And I put that down, that's right.

6 Q. And in fact significant cardiac

7 restriction can put him at risk for a heart attack

8 in the event of, let's say, unusual or significant

9 stress, elevated blood pressure, et cetera;

10 correct?

11 A. I examined the man twice. Twice there

12 was nothing wrong with him. I am a physician, I

13 could tell if something was wrong with somebody.

14 Q. Couldn't tell that he had cancer,

15 could you?

16 A. I could tell he was not in any

17 respiratory distress.

18 Q. When you said there was nothing wrong

19 with him, that's not true and that's not what you

20 mean, was it?

21 A. I could tell he was not in any

22 respiratory stress that required any kind of

23 pulmonary intervention.

24 Q. You didn't document his heart rate or

25 blood pressure, did you?

1 A. No.

2 Q. Or his O2 sat?

3 A. I don't have a sat monitor.

4 Q. Doctor, with regard to the ejection

5 fraction, you would agree that in fact significant

6 cardiac malfunction, we can call it, can in fact

7 interfere with his ability to concentrate and can

8 in fact put him at a greater risk for heart attack

9 if exposed to certain types of stress; correct?

10 A. I am not going to answer that because

11 I don't know the answer. It's too broad of a

12 question.

13 Q. With this gentleman's ejection

14 fraction, he's at risk for heart attack, isn't he?

15 Considering also, let's make it easier, that he

16 has had heart attacks in the past, considering his

17 numbers, he's at risk for heart attack, isn't he?

18 A. Yes.

19 Q. You would agree anxiety can increase

20 blood pressure?

21 A. It can.

22 Q. And it can change and elevate your

23 heart rate; correct?

24 A. It can.

25 Q. You would agree that elevated blood

1 pressure and elevated heart rate can increase the
2 likelihood of a heart attack; correct?

3 A. One more time.

4 Q. Elevated blood pressure has been tied
5 to heart attacks; correct? If you have elevated
6 blood pressure, it can increase --

7 A. So can low blood pressure.

8 Q. Is the answer to my question yes?

9 A. Yes.

10 Q. You would agree that going through a
11 trial with a jury of your peers sitting there,
12 with a gentleman who had already expressed
13 significant anxiety about discussing those types
14 of topics, that can in fact increase his potential
15 for a heart attack, can't it?

16 A. It was my opinion that what I saw was
17 histrionic and not physiologic.

18 Q. Would you answer the question.

19 The question is the stress of a trial,
20 considering his elevated blood pressure,
21 considering his ejection fraction, considering the
22 fact he has one lung, considering the fact he has

23 a history of heart attacks and considering his

24 age, that can increase the likelihood this man can

25 have a heart attack by going through this trial?

1 A. And the cancer?

2 Q. Sure.

3 A. And the cancer. Good.

4 Q. Yeah.

5 A. Good, you haven't told me that.

6 Q. We did discuss the cancer, but I will
7 be glad to ask that question and let you answer
8 it.

9 A. Yes.

10 [REDACTED]: Adjourned.

11 THE WITNESS: Read.

12 (WHEREUPON, at 4:21 p.m., the
13 deposition was adjourned.)

14 FURTHER DEPONENT SAITH NOT.

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25

1 E R R A T A S H E E T

2 This is to certify that I, [REDACTED]

3 [REDACTED] have read the foregoing

4 transcription of my testimony in re: [REDACTED]

[REDACTED]

[REDACTED] given on November 4, 2002,

7 and find the same to be a true and correct

8 transcription of said testimony with the following

9 changes (if any):

10

11 PAGE LINE SHOULD READ:

12

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1 CERTIFICATE OF OATH

2

3 STATE OF FLORIDA:

4 COUNTY OF ALACHUA:

5

6 I, the undersigned authority, certify

7 that [REDACTED] personally appeared before

8 me and was duly sworn.

9

10 WITNESS my hand and official seal this

11 12th day of November, 2002.

12

13

14 [REDACTED]

15

16

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1 REPORTER'S DEPOSITION CERTIFICATE

2

3 STATE OF FLORIDA:

4 COUNTY OF ALACHUA:

5

6 I, [REDACTED] Court

7 Reporter, certify that I was authorized to and did

8 stenographically report the deposition of [REDACTED]

9 [REDACTED] that a review of the transcript was

10 requested; and that the transcript is a true and

11 complete record of my stenographic notes.

12

13 I further certify that I am not a

14 relative, employee, attorney, or counsel of any of

15 the parties, nor am I a relative or employee of

16 any of the parties' attorney or counsel connected

17 with the action, nor am I financially interested

18 in the action.

19

20 DATED this 12th day of November, 2002.

21

22

23

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25

