

STATE OF OREGON  
MARION COUNTY COURT

MAR 2 1992

FILED  
#5

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

ELIZABETH DIANE DOWNS,

Petitioner,

vs.

ROBERT SCHIEDLER,  
Superintendent, Oregon  
Women's Correctional Center,

Defendant.

No. 87C-11753

FILED  
COURT OF APPEALS

DEC 28 1992

STATE COURT ADMINISTRATOR

TRANSCRIPT OF PRETRIAL PROCEEDINGS

VOLUME I

(Pages 1 - 191)

BE IT REMEMBERED That, pursuant to notice given to all parties in interest, the above-entitled matter came on regularly for hearing in the Circuit Court of the State of Oregon, for the County of Marion, on Wednesday, June 13, 1990, beginning at 9:30 a.m., the Honorable Duane R. Ertsgaard, presiding.

APPEARANCES

Steven H. Gorham, Attorney at Law,  
-- appearing in behalf of the Petitioner;

Nancy Wammack, Assistant Attorney General,  
-- appearing in behalf of the Defendant.

CASE NO. A73383

FILE NO. \_\_\_\_\_

FILED

COURT OF APPEALS

DEC 28 1992

David W. Ohmart, RPR, CSR  
Official Court Reporter  
Marion County Courthouse  
Salem, Oregon 97301

STATE COURT ADMINISTRATOR  
By TG Deputy

MAY 10 1994

CLSD.

1 discrepancies through the testimony of Mr. Pex.

2 THE COURT: So the fact that I might have  
3 been familiar with all or substantially all of this, you  
4 still had to go through it, right?

5 MS. WALSH: We thought so, Your Honor.

6 THE COURT: Thank you. You may step down,  
7 sir.

8 THE WITNESS: Thank you. May I be excused?

9 THE COURT: Yes. I think this witness can  
10 be excused now, right?

11 MR. GORHAM: As far as I'm concerned.

12 THE COURT: All right.

13 MR. GORHAM: Your Honor, I'd call Dr. Polly

14 Jamison.

15 POLLY H. JAMISON

16 Was thereupon called as a witness on behalf of the  
17 petitioner, and having been first duly sworn, was examined  
18 and testified as follows:  
19

20 THE CLERK: Please be seated. State your  
21 name and spell the last.

22 THE WITNESS: Polly H. Jamison,  
23 J-a-m-i-s-o-n.  
24

25



DIRECT EXAMINATION

1  
2 BY MR. GORHAM:

3 Q I believe before we actually started, Dr.  
4 Jamison, you wanted our assertion that Miss Downs waives  
5 any privilege she might have with you. We are doing that.  
6 I'm not sure if you need her to actually say it if --

7 A I'd appreciate that.

8 MR. GORHAM: I'd ask the Court for  
9 permission for Miss Downs to waive the privilege.

10 THE COURT: Okay. I think counsel can do  
11 it; but if the witness feels more comfortable, that's  
12 fine.

13 Miss Downs, do you understand that this  
14 witness has some concern about professional privilege of  
15 communications between you and her and she doesn't want to  
16 testify about these things until you assure her that it's  
17 all right with you by waiving that privilege. You  
18 understand that?

19 THE PETITIONER: Yes, I do.

20 THE COURT: Is that all right with you?

21 THE PETITIONER: Yes. I waive that right.

22 THE COURT: All right.

23 Q If the witness after we get started can be shown  
24 Exhibit 101? As that's being gotten -- I'm sorry.

25 THE CLERK: Is that it?

1 MR. GORHAM: That's it, I think.

2 THE CLERK: Okay.

3 MR. GORHAM: I guess I was wrong. 28?

4 THE CLERK: 28?

4 Q While that's being gotten, Dr. Jamison, could you  
5 tell us what you do?

6 A I'm a clinical psychologist.

7 Q And could you briefly tell us what your  
8 credentials are, what your background is?

9 A I received a Ph.D. in clinical psychology in 1980  
10 at the University of Oregon; finished my internship at the  
11 Veterans Administration Hospital in San Diego, California.  
12 Did my residency in clinical psychology in Eugene. And  
13 then was licensed in 1983 in Eugene. And I have been  
14 practicing in a full-time, private practice in clinical  
15 psychology since 19 -- since I was awarded the doctorate  
16 in 1980. My practice consists of therapy and also  
17 forensic evaluations.

18 Q When you say licensed, you're licensed in the  
19 State of Oregon as a clinical psychologist?

20 A That's correct. As a psychologist. The  
21 licensure is for psychologist.

22 Q Now, at some point Miss Downs was sent to you; is  
23 that correct?

24 A That's correct.  
25



1 Q And this was after the incident where her  
2 children were shot?

3 A That's correct.

4 Q Do you know approximately date wise when that  
5 was?

6 A She first contacted me August 5th, 1983.

7 Q You've gone through your file that you have on  
8 this case in relation to the preparation before today?

9 A Yes, I have.

10 Q Now, if you would look at Exhibit 28.

11 A Okay.

12 Q I believe it's an affidavit by Katherine Conrad  
13 concerning discussions she had with you; is that correct?

14 A Yes, that's correct.

15 Q Have you seen that before we came into court?  
16 Briefly today?

17 A Yes.

18 Q Do you find any inaccuracies in there?

19 A No. Part of it could take some further  
20 explanation but there's nothing inaccurate.

21 Q Do you want to explain it? You can if you want.

22 A Okay. She states that Diane Downs fell within  
23 the normal range on the MMPI, and there's a fairly lengthy  
24 explanation of that.

25 Q Okay. I think we'll probably get into that as we

1 go forward so if we don't --

2 A That's fine.

3 Q Is that the only problem you might have with that  
4 affidavit?

5 A It's accurate.

6 Q In this proceeding -- in this proceeding, you  
7 understand that we are challenging the adequacy of Mr.  
8 Jagger's representation of Miss Downs.

9 A I understand.

10 Q I think the issues that concern you are directly  
11 relating to your trial testimony or lack thereof, and are  
12 included in the claim. Are you aware of that?

13 A I'm just aware of that from conversations with  
14 Miss Conrad.

15 Q The first claim that we're interested in is that  
16 Mr. Jagger was ineffective for failing to request a  
17 mistrial after Mr. Hugi implied you had diagnosed Miss  
18 Downs as a deviant sociopath.

19 MR. LARSEN: Your Honor, I think the record  
20 speaks for itself. I don't want that characterized as an  
21 implication of the diagnosis.

22 MR. GORHAM: That's fine. I agree. I have  
23 to ask it in some way and it's just the easiest way to ask  
24 it.

25 THE COURT: Well, be careful about -- if



1 you're going to quote something, be careful you try to  
2 quote it accurately or I assume counsel will object.

3 MR. GORHAM: I think it's exactly where we  
4 are going, Your Honor.

5 THE COURT: Okay.

6 Q Do you remember at least the incident that we are  
7 talking about in relation to Mr. Hugi's questioning of  
8 Miss Downs?

9 A Yes.

10 Q Were you in the courtroom at that time?

11 A No.

12 Q How did you learn about it?

13 A I think from the newspaper.

14 MR. LARSEN: Your Honor, I do object. If  
15 she wasn't in court, what she knows about it is  
16 irrelevant. The transcript speaks for itself. I think  
17 anything she had to do, she may be able to testify  
18 regarding things to her personal knowledge, but this whole  
19 line of questioning I believe is improper.

20 MR. GORHAM: Your Honor, this is only  
21 foundational. She wasn't in the courtroom so she had to  
22 learn about it in some way. I'm not going certainly to  
23 the truth of what was said. The record will speak for  
24 itself. But she did do things that are also in the record  
25 and I want her to go forward with what she did, and I have

1 to start somewhere.

2 THE COURT: I'll overrule for now. Go  
3 ahead.

4 Q I think you were about to answer but let me ask  
5 it again. How did you learn about this incident?

6 A From the Register Guard and from people in the  
7 courtroom.

8 Q Did you respond to that in some way?

9 A Yes, I did.

10 MR. LARSEN: Your Honor, again, we're  
11 talking about -- here about Mr. Jagger's alleged  
12 ineffective assistance. What her response to something  
13 like this is has no relevance to this case.

14 MR. GORHAM: I disagree. She responded and  
15 she responded to Mr. Jagger and others. And I think it  
16 has a direct relation to the case. It's claimed in the  
17 petition.

18 THE COURT: Well, I guess I'm going to have  
19 to have some historical facts before I can determine  
20 whether any of it's going to be relevant or not so I'm  
21 going to overrule for now, at least let you present the  
22 basic posture.

23 MR. GORHAM: Thank you.

24 Q What was your response?

25 A I wrote a note to Mr. Hugi in -- handwritten note



1 dated June 13th and I left it with Mr. Hugi and with Judge  
2 Foote protesting calling for that --

3 MR. LARSEN: Your Honor --

4 A -- diagnosis.

5 MR. LARSEN: -- I object to this as  
6 irrelevant. We are talking about Mr. Jagger, not Mr. Hugi  
7 or not the Judge.

8 MR. GORHAM: That was the next question,  
9 Your Honor. Maybe if she could respond to this one, then  
10 we can go on to the next one.

11 THE COURT: All right. Go ahead. I'll  
12 overrule for now.

13 Q I guess so it's clear, if you could look at  
14 Exhibit 101 -- yes?

15 A Yes.

16 Q And it's correct that it's entitled "Deposition  
17 of Mr. Hugi"?

18 A Yes.

19 Q I think of October 24th, 1990?

20 A Yes.

21 Q Then if you can maybe look at the back of it,  
22 start backwards, I think there is an exhibit listed as  
23 Exhibit 3 -- actually, maybe Exhibit 2 first.

24 A Yes.

25 Q Okay. Exhibit 2, what is that?

1           A     That's a letter to Jim Jagger that I wrote June  
2 13th, 1984.

3           Q     And does it relate what went on in the courtroom  
4 and this incident we are talking about?

5           A     Yes, it does.

6           Q     Is that what is the subject of that letter?

7           A     Yes, it is. That's what it is about  
8 specifically.

9           Q     And Exhibit 3?

10          A     Exhibit 3 is the letter I wrote to Mr. Hugi and  
11 left with Mr. Hugi and Judge Foote.

12          Q     Did you attach a copy of that when you sent Mr.  
13 Jagger that Exhibit 2?

14          A     Yes, I did. I left him a copy of it. And this  
15 was a cover letter from my handwritten copy that I -- gave  
16 the Judge and the DA.

17          Q     Did either Mr. Hugi or Judge Foote respond?

18          A     No, sir.

19               MR. LARSEN: Your Honor, I object. I don't  
20 see the relevance of that.

21               THE COURT: I guess I don't know where we  
22 are going, Mr. Gorham. Rather than fight through this a  
23 step at a time, tell me where you're going with this.

24               You're going to ask her whether she thought  
25 they misquoted something in court? If so, why don't you



1 just ask her that, because she apparently does not have  
2 firsthand knowledge of what happened in the courtroom.  
3 She got it secondhand and she's talking about things that  
4 happened after the fact; presumably after the jury went  
5 out, right?

6 MR. GORHAM: No, no. This is during the  
7 trial, Your Honor, and that is why it's extremely  
8 relevant. It's relevant not only to -- I think to help  
9 lay a circumstantial case concerning Mr. Jagger being  
10 ineffective in not asking for a mistrial, but also in not  
11 responding to what may or may not have been a  
12 mischaracterization in court in some other way such as  
13 calling Miss Jamison as a witness which we have gone  
14 through extensive testimony by Mr. Jagger on.

15 THE COURT: Okay.

16 MR. LARSEN: Your Honor, my point is what  
17 she did, what were her communications to the Court or to  
18 Mr. Hugi, those are irrelevant.

19 THE COURT: Probably so, but he's trying to  
20 paint a picture of who did what and how this matter came  
21 about I assume to the attention of defense counsel. At  
22 least that's what he tells me. So let's hear it.

23 If he throws in some irrelevant stuff, I'll  
24 disregard it; but I would like to get the story, at least  
25 a part of it, I'm supposed to hear sometime today.

1 MR. GORHAM: I agree with that.

2 Q How did Mr. Jagger respond, if he did?

3 A I don't remember -- remember his responding to  
4 me.

5 Q It's correct that you had in fact not diagnosed  
6 Miss Downs as a deviate sociopath, isn't it?

7 A That's correct.

8 Q And you had diagnosed her as falling within the  
9 normal range? I know you want to explain that so why  
10 don't you answer and then explain it.

11 A It depends on what you mean by the normal range.  
12 I diagnosed her as having a cyclothymic disorder which is  
13 a neurotic -- a minor kind of depression -- not minor but  
14 a lesser depression, not a major depressive disorder.  
15 People with cyclothymic disorder are not within the normal  
16 range. But in terms of whether she scored on the MMPI, in  
17 the very abnormal range, visa vie these elevations on the  
18 MMPI, when it was rescored, which I'll explain, her  
19 elevations came down, down to a normal level.

20 Q Why don't you explain -- I'm sure you're aware  
21 there's some controversy, if you will, about the rescoring  
22 of the MMPI.

23 A Sure.

24 Q And, let's see -- if you could be shown Exhibit  
25 102? And -- I'm sorry, Exhibit 12?



1 THE CLERK: I think that should be in the  
2 notebook that she's got there -- no, I'm sorry. It's  
3 right here.

4 THE WITNESS: Thank you.

5 Q It may be that Exhibit 12 and 102 have at least  
6 parts of the same, as I think the first page may be the  
7 same letter; is that correct?

8 A I think they are identical.

9 Q Yeah. Okay. So why don't we work off of Exhibit  
10 12 which I think has not only the letter but has the MMPI  
11 scoring sheet.

12 A Yeah.

13 Q Now, in relation to the MMPI and the scoring, how  
14 that all happened, it's correct that she, Diane Downs,  
15 came into your office to do the MMPI?

16 A Yes.

17 Q Why don't you briefly describe how that's done  
18 and what that is.

19 A Uh, there are a number of different ways now to  
20 do the MMPI. But the way I do it is hand the person a  
21 booklet of true/false questions, 500 some true/false  
22 questions, and an answer sheet. And they mark the answer  
23 sheet true or false. Then the test is scored by templates  
24 by my secretary who then plots a graph on a standard chart  
25 which is then interpreted by the psychologist.

1 Q And this template -- this is a mechanical way of  
2 scoring something?

3 A That's correct.

4 Q So say I had the templates and you gave it to me  
5 and I was accurate, I should be able to score that the  
6 same as your secretary did?

7 A Yes. A computer can also score it.

8 Q Is that the way it's done now?

9 A Yes, typically.

10 Q It's clear that at least in your experience with  
11 Miss Downs, she only took one MMPI; is that right?

12 A She only took one from me, certainly.

13 Q Now, after that, she actually took the test, it  
14 got rescored in some way. Why don't you describe what  
15 happened.

16 A What happened was when she finished, she told  
17 me -- Diane told me that she spontaneously circled a  
18 number of items on the MMPI on the answer sheet. And she  
19 said, you know, I wasn't sure how to answer these because  
20 I would have answered them the opposite way prior to this  
21 occurrence with her children and the police and the whole  
22 incident. And I said okay, thank you for telling me that.  
23 So then, I decided to see if it was valid to rescore it  
24 with those answers shifted in the other direction. And I  
25 really had no idea if that would be a valid technique at



1 all.

2 So what I did was, I called the person who taught  
3 me the MMPI at the VA Hospital in San Diego, Lowell Storms  
4 (Phonetic), a MMPI expert who works closely with Alex  
5 Caldwell who's a nationally known MMPI expert. And I  
6 explained the situation to Lowell and asked if I should  
7 rescore it shifting these trues to falses and falses to  
8 trues, the ones Diane had circled spontaneously. He said  
9 since she circled them spontaneously, that would be valid;  
10 that would be accurate in his opinion.

11 Q When you say spontaneously, you mean while she  
12 was taking the test she circled those?

13 A Yes. And I had no idea which one was circled and  
14 which ones weren't. You can't tell looking at this what  
15 the content of any of these is. He said since she circled  
16 them spontaneously, to go ahead and shift the trues and  
17 the falses where she indicated and rescore it, and I did  
18 that. It was rescored by a colleague in Portland via  
19 computer. And we come out with a very different profile  
20 in that manner than we had originally.

21 Q Maybe if you can look at the Exhibit 12 and maybe  
22 you can tell us, I think there are circled numbers on the  
23 bottom right-hand corners -- I'm sorry, not circled but  
24 numbers on the bottom right-hand corners?

25 A Uh-hum, bottom right-hand corners 2004.

1 Q One labeled 2004 and one is 2009? At least the  
2 facing pages?

3 A Yes.

4 Q Could you tell us using the numbers which one was  
5 the first test and which was the second test? Maybe if I  
6 could help you?

7 A I wasn't aware -- yeah.

8 Q I think -- I'm sorry.

9 A He rescored both of them.

10 Q No, I don't think so. I think one is the -- one  
11 is rescored and one was the one that wasn't rescored; am I  
12 correct?

13 A Okay. I'm not certain. I haven't looked at  
14 this. This is one part I didn't study.

15 Q I'm sorry. I believe, and I want you to correct  
16 me if I'm wrong, that 2009 --

17 A Was the -- was the original.

18 Q Was the original test, and 2004 was the rescored  
19 test?

20 A I think that's accurate. Yes, that's accurate  
21 because alternate scoring is the -- the one that I had  
22 rescored and that is 2004.

23 Q Now, you provided these to someone, didn't you,  
24 the scoring sheets? And there's a cover letter I think in  
25 this exhibit; is that correct?



1           A     I provided my profile to Carl Peterson, Miss  
2 Downs' children's psychologist.

3           Q     And you made it clear to him in your cover letter  
4 that this had been rescored; is that correct?

5           A     Yes. Clear.

6           Q     You in fact refer to someone else who you had  
7 consulted; is that correct?

8           A     Right. Derrin Fenn, F-e-n-n, the person in  
9 Portland.

10          Q     He is who?

11          A     He's a psychologist in Portland. He's a  
12 colleague of mine.

13          Q     A Ph.D. in psychology.

14          A     I don't know if he's licensed yet.

15          Q     Did you at any time discard the first scoring?

16          A     No.

17          Q     Did you provide both of those scorings to Dr.  
18 Peterson?

19          A     Yes. I gave both printouts, both profiles.

20          Q     And you wrote that cover letter?

21          A     Yes, I did.

22          Q     And explained to Dr. Peterson why you rescored  
23 them?

24          A     Yes. I explained the whole thing to Dr. Peterson  
25 in this letter just as I explained it to you.

1 Q And it's clear that Miss Downs took one test?

2 A That's correct.

3 Q Did you attempt in any way to hide from the  
4 State, the prosecution, or anybody what you in fact had  
5 done?

6 A No.

7 Q Why was that? Why didn't you try and hide it?

8 A There is no reason to hide it.

9 Q Was there anything questionable in your mind in  
10 what you did?

11 A Nothing. That's why I called Dr. Storms.

12 Q Did it seem significant to you that Miss Downs  
13 was even aware that her responses would have been  
14 different before the incident?

15 A I -- it was significant in that it made me want  
16 to find out how they would have been different. People do  
17 that. People say my answer would have been different  
18 under different conditions. I think a lot of this has to  
19 do with my current stress, and so on. And people do say  
20 that.

21 Q Does that show to you some significance for your  
22 insight and self-awareness she may have had?

23 A Yes.

24 Q Is it true or not true that MMPIs can be affected  
25 by situational stress?



1 A It's true.

2 Q Could you tell us what you mean by that?

3 A People who are under significant situational  
4 stressors will often score very differently on a MMPI  
5 during the stressful time versus when the stress is over  
6 such as pain, illness, any kind of heavy duty stressor.

7 Q Is someone who is actually being followed might  
8 show a different response than if they had not been  
9 actually followed?

10 A Somebody who's actually being followed could --  
11 could score high on the paranoia subscale.

12 Q Okay. So an example might be if a person was  
13 feeling persecuted for no reason versus a person who is  
14 feeling persecuted hypothetically because they were being  
15 followed, say by the press or the police, the responses  
16 certainly could be different to that question "Do you feel  
17 you're being persecuted?"

18 A I'm sorry, would you say that again?

19 Q I'll go onto another question. Again, someone  
20 who was in fact being followed might respond differently  
21 than someone who actually wasn't being followed, correct?

22 A Could or could not.

23 Q Wouldn't you expect the person who was feeling  
24 basically unjustifiably persecuted to be questioning his  
25 responses?

1           A     It makes sense to me that Diane would question  
2 her responses and circle them given her situation.

3           Q     Does the ability to question the responses, does  
4 that show you some insight?

5           A     Yes.

6           Q     Is the MMPI geared towards uncovering healthy  
7 responses or unhealthy responses?

8           A     Unhealthy.

9           Q     I think you said in the first run-through, in the  
10 first scoring, Miss Downs scored -- scores were somewhat  
11 elevated; is that correct?

12          A     In the first run-through?

13          Q     Yes.

14          A     They were significantly elevated.

15          Q     And in what areas?

16          A     Scale 4 was significantly elevated; scale 6 --

17          Q     Why don't you when you tell us what the number of  
18 the scale is, if you could tell us what it is?

19          A     Okay. Scale 4 has a very explosive kind of name.  
20 It's called psychopathic deviant, but it stands for  
21 rebellion, acting out, that kind of thing. Scale 6 is  
22 called paranoia. These are all reasonably inflammatory  
23 names. But it's called paranoia and it stands for  
24 suspiciousness, paranoid ideation, that kind of thing.  
25 And the other one, scale 8, is a scale basically that taps



1 a sense of alienation from society and from peers.

2 Q Did these -- did the elevation on these scales --  
3 did they surprise you at the time?

4 A I wasn't doing an evaluation. I was her  
5 therapist, and so I was normally giving the MMPI to all my  
6 clients, so I didn't make too much of it, to tell you the  
7 truth, at the time since I wasn't specifically doing an  
8 evaluation.

9 Q Did you consider that these areas coincided with  
10 areas of particular stress in Miss Downs' life at that  
11 point?

12 A Yes, they do -- they did.

13 Q I think you've already said that there's no way  
14 that someone actually taking the test can tell how it's  
15 actually scored; is that correct?

16 A That's correct.

17 Q And I'm assuming that there's a reason for that;  
18 is that correct?

19 A Yes.

20 Q What is that?

21 A So that the test can't be manipulated. In fact,  
22 there are validity scales as well on the test, too, that  
23 judge the test-taking attitude of the subject.

24 Q Would it be accurate to say that you did not  
25 rescore this test in order to produce a better result for

1 Miss Downs?

2 A Absolutely not. I mean, I did not do that.

3 Q Which of the two test results in your  
4 professional opinion would be considered to be the most  
5 valid?

6 A In my professional opinion, the rescore is more  
7 valid because of the information I got from Dr. Storms,  
8 and it looks a lot more like my perception of Diane's  
9 personality.

10 Q Did you or could you diagnose Miss Downs?

11 A Could I or did I?

12 Q Yes.

13 A I did diagnosis her for insurance purposes.

14 Q Why don't you tell us what that diagnosis was.

15 A Cyclothymic disorder.

16 Q Why don't you tell us what that means.

17 A That means a neurotic depression as opposed to  
18 psychotic. In other words, a more minor depressive  
19 disorder. There are the major depressive disorders, then  
20 there are the lesser depressive disorders. This is one of  
21 the lesser depressive disorders and cyclothymic indicates  
22 that a person cycles from good moods to really sad moods,  
23 and so on. And there's some ups and Downs in the mood,  
24 which was very clearly true of Miss Downs.

25 Q In your opinion, is she a deviant sociopath?



1           A     There is no such diagnosis by the way in DSM3-R  
2     and --

3           Q     I'm sorry?

4           A     And, no.

5           Q     Briefly, just for the record, what is DSM3-R?

6           A     It's the diagnostic and statistical manual that's  
7     used by psychiatrists and psychologists to diagnose mental  
8     and emotional conditions and organic --

9           Q     Basically, the guide book?

10          A     Yes.

11          Q     To develop diagnoses from?

12          A     Yes.

13          Q     And it had a prior rendition and it would have  
14     been called DSM3?

15          A     Yes.

16          Q     And I think there may have been one before that,  
17     DSM2?

18          A     Yes.

19          Q     Were you practicing when DSM2 existed?

20          A     I can't remember.

21          Q     Okay. If you could look at the actual score, the  
22     facing sheet of the score sheets -- you might have them or  
23     they are in Exhibit -- I think we have already described  
24     it as having the numbers on the bottom.

25          A     Okay.

1 Q Okay. One has the number 2009 and one has 2004.  
2 Is that page actually called something? Maybe a profile?

3 A I don't know what it's called in this computer  
4 program.

5 Q At the bottom of each of those there's four  
6 labels; is that correct?

7 A Yes.

8 Q What do these labels signify then? Do you know?

9 A The first one is the Goldberg Hierarchical  
10 Classification, and it was designed to indicate when  
11 someone's score goes more in the direction, whether it  
12 tends toward deviant versus normal, whether it tends  
13 towards sociopathic versus -- I'm not sure what the other  
14 end of that continuum is. Normal versus deviant,  
15 psychotics versus nonpsychotic; but the different poles of  
16 the of the continuum.

17 Q What would you think of a practice of a lay  
18 person reading these terms as a diagnosis?

19 MR. LARSEN: Your Honor, I think that's not  
20 an issue here, her idea on the practice of the attorney's  
21 conduct in this case. Really, we have this here. It says  
22 deviant sociopathic. That's what Mr. Hugi read. And I  
23 think that's what we're left with.

24 THE COURT: The question is what she would  
25 think about somebody -- a lay person referring to one of



1 these labels? Is that what you're --

2 MR. GORHAM: Yeah. I think the exact  
3 question also, what would you think of a practice of a lay  
4 person reading these terms as a diagnosis.

5 MR. LARSEN: Okay. We don't have any  
6 evidence that anybody in this case ever read this as a  
7 diagnosis. And we're left in a transcript with the simple  
8 statement where you label not diagnosed. And if you look  
9 down at the bottom of this, it says, "The above  
10 labels....." This whole issue of diagnosis shouldn't even  
11 come up because that wasn't the question.

12 THE COURT: I understand that question is  
13 whether or not in a hypothetical sense this witness as an  
14 expert is entitled to give her opinion about what these  
15 terms mean and what the appropriate use of them is.

16 What it proves I'm not sure, but Mr. Gorham  
17 must have some kind of a theory he's going to argue at  
18 some point to prove something. So I'm going to overrule  
19 at this time and let him proceed, at least a little while  
20 longer.

21 Q Do you remember that question?

22 A Yes.

23 Q Could you answer it, please?

24 A I consider it -- I would consider that a very bad  
25 practice because the person would not be schooled in the

1 meanings of those terms, how they are used here, and so  
2 on. There's a great deal of training involved in  
3 understanding the MMPI and all of the hundreds of ways of  
4 scoring it and --

5 Q What would you say to someone labeling an  
6 individual as, say a deviate sociopath by using these  
7 labels?

8 A In my opinion, they shouldn't do it because it's  
9 got a high probability of being inaccurate.

10 Q Is that at least one of the reasons you were  
11 concerned by this impression you got by Mr. Hugi's  
12 statements?

13 A Yes, I was very concerned.

14 Q One of the claims is that you should have been  
15 called to testify. Did you have any problem testifying in  
16 this case?

17 A No.

18 Q You weren't called though, correct?

19 A That's right. I was subpoenaed but I was not  
20 called -- subpoenaed by Mr. Hugi.

21 Q What was the main focus of -- I guess why was  
22 Miss Downs sent to you, if you know?

23 A For therapy, counseling. She was sent to me --  
24 she came to me herself because she was extremely  
25 distraught over what was happening; the loss of her



10  
1 children, dreams she was having, suicidal feelings off and  
2 on. She was sent to me for personal therapy as anybody  
3 going through a real stressful time would likely do. She  
4 was not sent to me for any kind of forensic evaluation or  
5 for use in the trial.

6 Q So your testimony if you had been called would  
7 have been focused on that rather than some sort of  
8 forensic evaluation?

9 A Absolutely. It was not a forensic evaluation.

10 Q Are you aware that Mr. Jagger has said that you  
11 would have hurt the case against Miss Downs?

12 A I've seen that written.

13 Q Do you know of anything that you could have said  
14 that would have hurt the case?

15 A No.

16 Q At any time did you refuse to talk to Mr. Hugi?  
17 During the trial or before -- just before?

18 A I refused to talk to one of his investigators  
19 just before the trial. He wanted me to share my MMPI data  
20 and I refused because I didn't have Diane's permission.  
21 And I said if we go into court and I get her permission,  
22 I'll share anything you want with her permission, but they  
23 didn't call me in.

24 Q And at some point you must have had her  
25 permission because you sent this MMPI to Dr. Peterson.

1 A Yes. I got written permission.

2 Q And again, what's the date on that?

3 A The letter to Peterson?

4 Q Yes.

5 A October 3rd of '83.

6 Q That was before the trial?

7 A Yeah, you're right. It didn't have Diane's  
8 permission to testify.

9 Q Okay.

10 A Just like today, I asked for it again. I'm  
11 especially careful.

12 Q But when the investigator came to talk to you,  
13 Dr. Peterson already had this information?

14 A I guess that's right.

15 MR. GORHAM: Thank you. That's all the  
16 questions I have.

17

18

19

20

21

22

23

24

25



CROSS-EXAMINATION

1  
2  
3 BY MR. LARSEN:

4 Q Miss Jamison, just to clarify, you said you had  
5 been licensed since 1983?

6 A That's correct.

7 Q When was that in 1983?

8 A I don't remember. I'm sorry.

9 Q Apparently, it was before you first saw Miss  
10 Downs.

11 A When did I start seeing her?

12 Q You said early. August 5, 1983?

13 A I don't know if I was licensed or not. Prior to  
14 being licensed I was a resident under Steve Johnson.

15 Q You don't remember then? It was sometime in  
16 1983?

17 A Yes.

18 Q When did you last see Miss Downs?

19 A For therapy you mean?

20 Q Yes.

21 A Excuse me, I'm sorry. I have a list here of all  
22 the sessions. Here we go. 2-7-84.

23 Q I wanted to get just a little bit more  
24 background, if I could.

25 A Sure.

1 Q What was your primary area of therapy? Like, for  
2 example, domestic relations. Is that what you worked in  
3 primarily?

4 A I would say my practice is --

5 Q No, I want to focus back.

6 A Back then?

7 Q We're looking just at when you first saw her,  
8 August of '83, what had you been doing then?

9 A Okay. Mostly individual therapy and couples  
10 therapy.

11 Q Pardon?

12 A Mostly individual psychotherapy and couples  
13 therapy, marital therapy.

14 Q All right. So we aren't talking about any kind  
15 of criminal type of -- I think -- I don't think there's  
16 criminal therapy necessarily, but you weren't working with  
17 criminals at that time?

18 A No.

19 Q Had you ever testified in a criminal trial  
20 before?

21 A I can't remember because I did start doing  
22 forensic evaluations.

23 Q No. I mean before August of '83.

24 A I might have. I started doing forensic  
25 evaluations as a part of -- small part of my practice and



1 it's grown since then. I may have testified for -- for  
2 cases. I'd have to look it up.

3 Q It wouldn't have been very many times, though,  
4 would it?

5 A No, it wouldn't because I was new.

6 Q So when somebody was coming to you -- I just  
7 wanted to find out, you had made an opinion about Miss  
8 Downs I assume in your therapy sessions. You had an  
9 opinion about her character and her personality and that  
10 sort of thing?

11 A I had some opinions, uh-hum.

12 Q And tell me exactly how you arrived at that  
13 opinion? What was the information you relied on?

14 A 19 hours of talking to her.

15 Q Okay. This is over -- over how long?

16 A From 8-5-83 until 2-27-84. And then also MMPI  
17 data, and I read the newspapers.

18 Q So you relied on the newspapers regarding your  
19 evaluation of her?

20 A No. The only information I had about her was  
21 talking to her, her MMPI data, any articles I read in the  
22 newspaper about what people said was happening. On  
23 occasion, I spoke with Mr. Jagger about how she was doing  
24 in therapy. She wrote me some letters, so I had some  
25 information from those. I don't think I talked to other

1 people. I don't think I spoke with her parents or her  
2 siblings. I might have spoken with her brother Paul at  
3 one point.

4 Q Had you looked at any previous psychological  
5 reports on Miss Downs?

6 A No.

7 Q Had you -- well, one of the primary issues in  
8 your therapy was how she was dealing with the possible  
9 criminal matter, wasn't it?

10 A How she was dealing with it?

11 Q Yes. That's why she came to you?

12 A Mostly why she came to me was upset about not  
13 being with her children; but yes, it has to do with the  
14 criminal matter. Of course.

15 Q How many of the police reports had you read  
16 regarding that?

17 A I didn't.

18 Q Did you ever talk to any police officers?

19 A No.

20 Q So essentially, what you're saying is, your  
21 opinion regarding Miss Downs was what she told you about  
22 herself?

23 A And my own clinical skill. I mean --

24 Q Well, sure, but the raw data came from her?

25 A Her and the MMPI, uh-hum.



1 Q Which was her answers to questions?

2 A Uh-hum. It's an objective test, though.

3 Q Correct, but she's the one who answers it?

4 A That's correct.

5 Q Did you make any kind of independent survey at  
6 all of the information she gave you?

7 A No. I was not investigating the case. That  
8 wasn't my job.

9 Q Sure, I recognize that. I just want to find out  
10 what it was you had looked at. Essentially then, your --  
11 your opinion about her relied heavily on your assumption  
12 that she was telling you the truth?

13 A I never assume someone is telling me the truth.  
14 I'm constantly trying to evaluate that.

15 Q Okay. You believe she was telling you the truth,  
16 though?

17 A Yes.

18 Q In other words, you believe what she was saying  
19 she was like?

20 A I would have to go over every note to say in  
21 every case I believed exactly what she said; but in  
22 general, I found her truthful.

23 Q Now, you had had no independent information  
24 regarding her guilt or innocence, did you?

25 A No.

1           Q     So if indeed you had discovered maybe through  
2     searching or possibly reading a police report or talking  
3     to someone else that Miss Downs was in fact lying to you,  
4     that would have affected your evaluation of her, wouldn't  
5     it?

6           A     Yes.

7           Q     For example, in the MMPI, you had indicated you  
8     went ahead and changed the score because it didn't look  
9     like the person -- first score didn't look like the person  
10    you had talked to.

11          A     No, that's not why. I --

12          Q     That was one of the factors you had indicated?

13          A     That's not the reason I did it.

14          Q     Okay. But you had stated earlier that this  
15    person who had come out a deviant sociopathic, psychotic,  
16    those were the four labels on the first MMPI, weren't  
17    there?

18          A     On that particular printout.

19          Q     That was the first MMPI though, wasn't it?

20          A     There was only one MMPI. That was the first  
21    scoring.

22          Q     First printout, first scoring. And those were  
23    significantly elevated; is that what you said?

24          A     Yes.

25          Q     And your change then was based on her telling you



1 I think I would have maybe answered those differently; is  
2 that right?

3 A It was based on her telling me that these that I  
4 circled would have been the opposite a year ago or  
5 whatever before this happened. That's it was for accuracy  
6 sake that I rescored it.

7 Q You're talking about accuracy sake?

8 A It was because she told me she thought it was not  
9 a valid representation of how she is as a person prior to  
10 all this stress. That's why I called Dr. Storms and asked  
11 him if it made sense to rescore it or not.

12 Q Okay. Do you recall when you called Dr. Storms?

13 A I have a note.

14 Q That was an exhibit I believe attached thereto?

15 A January 3rd of '83.

16 Q That's when you called Dr. Storms?

17 A I think it is. That's when I wrote my note.

18 Q And you rescored it in September of '83; is that  
19 correct?

20 A Well, I don't know when I rescored it.

21 Q Well, the second one is dated September 24, 1983.  
22 Your note indicates you did call Dr. Storms on January 3,  
23 '84 -- excuse me, '83?

24 A '83.

25 Q So that was before -- it was nine months before

1 you had rescored it. Are you sure it might not have been  
2 January 3, 1984 that you called him?

3 A I'm not sure. I wrote -- it says, "Phone  
4 consultation with Lowell Storms. He feels it's  
5 appropriate to assume elevation in MMPI No. 1 are due to  
6 the incidents since she spontaneously told me it would be  
7 reversed prior to the shooting." I may have already  
8 rescored it before I called him. I'm not certain.

9 Q Okay. It is dated January 3, 1983, isn't it?

10 A Yes, it is.

11 Q And so you wouldn't have called him nine months  
12 before the test, would you?

13 A Right. So it must be --

14 Q So most likely --

15 A It must have been a mistake.

16 Q It was 1984?

17 A I'm assuming.

18 Q So in other words, you rescored it first; and  
19 then later you called somebody -- Dr. Storms to find out  
20 if that was proper?

21 A To find out if I should put any weight on it. I  
22 did it out of curiosity in the first place. And then when  
23 I got a different profile, I called him to see if it made  
24 any sense to give it any validity.

25 Q But you had indicated -- I believe you said you



1 had no idea if it was a valid technique to change --

2 A Right. I did it out of curiosity.

3 Q -- the score.

4 A Because Diane told me it would have been  
5 different, I rescored it out of my own curiosity. When I  
6 got a different profile, I thought that's interesting. I  
7 wonder if that's a valid technique. I called him up to  
8 talk to him about it to see if that made any sense. It  
9 was all very innocent. It had nothing to do with --

10 Q If it didn't make any difference, why four months  
11 later?

12 A I don't know.

13 Q Had somebody asked you to check with him?

14 A No. I called him on my own.

15 Q Just out of the blue, you decided to call him?

16 A Perhaps there was some kind of a hearing  
17 happening or something where people would be asking me to  
18 testify. I don't know the timing.

19 Q Okay. But at the time you did it, you didn't  
20 realize you could -- I mean, if it was valid?

21 A Right.

22 Q It might be equally as valid to keep the first  
23 one?

24 A That's possible. There might be a difference of  
25 opinion among experts.

1 Q And just to clarify here, both of the cover  
2 sheets, these indices that you testified about at the  
3 bottom, they are called labels, aren't they?

4 A That says labels, yes.

5 Q They are called labels?

6 A Yes.

7 Q And on the first one, the labels were deviant  
8 sociopathic; and you had put those two together, hadn't  
9 you? You called it a deviant sociopathic under the  
10 Goldberg hierarchy?

11 A I never called her that.

12 Q No, I'm not -- that's what this test said,  
13 though?

14 A The first line says deviant. The second line  
15 says --

16 MR. GORHAM: Your Honor, excuse me. The  
17 exhibit speaks for itself. It don't know why we have to  
18 go through this.

19 MR. LARSEN: Well, Your Honor, I was -- she  
20 had -- I was just trying to figure out -- she had put the  
21 two together and called it the deviant sociopathic under  
22 this one classification. I was just trying to flush  
23 out --

24 THE COURT: Well, obviously, the exhibit  
25 speaks for itself. I think you can cross-examine the



1 witness with regard to professional opinions, so I'll  
2 overrule.

3 THE WITNESS: I think I know what you mean.  
4 On the MMPI graph, Scale 4 --

5 Q Yes.

6 A -- is labeled psychopathic deviant.

7 Q Right.

8 A And that is different than what's on this  
9 printout. That's a whole different kettle of fish.

10 Q But on the first one, that was significantly  
11 elevated; is that right?

12 A Scale 4?

13 Q Scale 4.

14 A Yes.

15 Q There was -- that indicates rebellion and acting  
16 out?

17 A Yes.

18 Q On the Scale 6, the first one, there is a high  
19 elevation of paranoia?

20 A Yes.

21 Q The Scale 8 indicates a sense of alienation?

22 A Partially.

23 Q And that was high, too?

24 A Yes.

25 Q Could you tell us just briefly, what is the Scale

1 8?

2 A The name of it is schizophrenia, but it has to be  
3 understood that it doesn't -- it doesn't designate that  
4 someone is schizophrenic if they are -- score high on it.  
5 Many nonschizophrenics score high on it.

6 Q But it at least has that designation?

7 A Yes.

8 Q On the second one, even after you had rescored  
9 it -- would that be dated September 24, 1983 -- that also  
10 indicated the labeling at least on the indices was deviant  
11 sociopathic, too; is that correct?

12 A On this printout?

13 Q Yes.

14 A There are lots of different computer programs  
15 that they use for MMPIs. This isn't cast in concrete.

16 Q Okay. We are talking about Diane Downs'  
17 printouts, and they said those two words on them, didn't  
18 they?

19 A Yes. 2004?

20 Q Right. And both of them? First and the second  
21 one had those two words?

22 A Yes. Yes.

23 Q Looking at the test results just a little bit,  
24 she spontaneously answered her questions at first; and  
25 then you said she spontaneously circled things. It would



1 be just as easy to take the first answer, wouldn't it, in  
2 this test result?

3 A How do you mean just as easy?

4 Q Well, you determined that it would be better for  
5 you in your scoring to take the second.

6 A No. I was curious. I didn't determine that it  
7 was better. I wanted to see -- a client comes in. She  
8 scores this way. Hands me the thing. She says by the  
9 way -- before it's even scored, she says by the way, I  
10 don't know if this is valid or not because all of these  
11 would have been different if this hadn't happened. So all  
12 I'm trying to do is to get to know my client. I'm not  
13 trying to evaluate her. I'm just trying to get to know  
14 her. So the first printout we get. And then, I thought  
15 well, she said they would have been the opposite if this  
16 had not happened. I'm interested to know what that would  
17 have looked like so I rescored it. That's all.

18 Q Okay. But we really do have two test results  
19 then?

20 A That's correct.

21 Q The first stands and the second stands on its  
22 own?

23 A Right. It would have to be debated among MMPI  
24 experts as to which one to use.

25 Q And you had indicated that the first could be as

1 much as the second?

2 A Dr. Storms seemed to think the second would be  
3 more valid and I would trust his judgment over mine.

4 Q But you didn't know that personally?

5 A He told me over the phone that he thought that  
6 would be --

7 Q I mean, other than what Dr. Storms told you, at  
8 that time, you didn't know which way would be the best  
9 way?

10 A Prior to calling him, I did not know.

11 Q You had made some notes, didn't you, of your  
12 conversations with Miss Downs?

13 A Quite a few.

14 Q Do you remember her saying at some point she felt  
15 like lying to get her kids out of the predicament?

16 A Yes.

17 Q Do you remember her telling you that about her  
18 drinking habits?

19 A Yes.

20 Q And that she had only maybe been drinking maybe a  
21 year before the time you started seeing her?

22 A Well, can you refer me to the date?

23 Q Well, I believe it's October 31, 1988 (sic).

24 A '83?

25 Q Yes. Excuse me. '83. Just one reference here.



1 She had stopped drinking?

2 A She said she had stopped drinking as of the 31st.  
3 She had been drinking for two weeks pretty heavily to  
4 escape, she said.

5 Q And I think this was towards the first -- it  
6 would have been September 9 of '83?

7 A Yes.

8 Q She said she never drank until a year ago; drinks  
9 only when kids are with the sitter?

10 A Right. That's in these notes. Never drank until  
11 one year ago; drinks only when kids are with the sitter  
12 for purposes of acting silly.

13 Q And then down below said she smoked pot three  
14 times in her life?

15 A That's what it says, uh-hum.

16 Q She also indicated she had been quite rebellious  
17 to you at different times, didn't she?

18 A Yes.

19 Q Your entire view of the -- the criminal  
20 proceeding was through her eyes, in other words; is that  
21 right?

22 A Mostly.

23 Q What -- what might else it had been through? The  
24 newspaper?

25 A Uh-hum, yes.

1 Q Apparently you read the newspaper and that is  
2 what got you interested in what Mr. Hugi had said?

3 A Somebody came out of the courtroom, I believe,  
4 and told me what Mr. Hugi said.

5 Q Okay. You didn't know exactly what he said,  
6 though?

7 A I didn't hear him say it.

8 Q Had you ever read the transcript to see what he  
9 said?

10 A I haven't read it.

11 Q Do you have any idea how many questions he had  
12 asked about the MMPI?

13 A I have no idea. I didn't read the transcript and  
14 I wasn't there.

15 Q You said you didn't make much out of the MMPI but  
16 you did change it?

17 A I didn't change it.

18 Q Well, you rescored it?

19 A Right.

20 Q And the ultimate diagnosis you had for her was  
21 cyclothymic; is that what you said?

22 A Yes.

23 Q And it does have cyclical --

24 A Mood swings.

25 Q -- characteristics? Mood swings, right?



1 A Uh-hum.

2 Q You said it was bad practice to use these labels  
3 on the MMPI basically as anything. You said not to use  
4 them as a diagnosis?

5 A If you're not a psychologist.

6 Q If you're not a psychologist. But that's exactly  
7 what they say, isn't it?

8 A That's what the words say.

9 Q You said you didn't do a forensic evaluation of  
10 Miss Downs. Do you have any idea -- do you have any  
11 training in legal strategy for trials?

12 A Now I do.

13 Q I'm talking about back then.

14 A No.

15 Q Did you know what the legal ramifications might  
16 be if you testified?

17 A I knew that I was not allowed to testify without  
18 her permission.

19 Q You didn't know what other evidence might be able  
20 to come in if you started talking about your therapy with  
21 Miss Downs?

22 A I didn't know anything about any of that.

23 Q You never talked to Mr. Jagger about his trial  
24 strategy, did you?

25 A We had lunch one time at The Electric Station and

1 that is when Mr. Jagger told me that he was not going to  
2 call me.

3 Q But his overall trial strategy, you didn't sit  
4 down with him and go through each point?

5 A Oh, no. No. No. He asked me for my notes.

6 Q Now, you know in a criminal trial the ultimate  
7 strategy is really up to the defense counsel and the  
8 defendant?

9 A I assume you're right.

10 Q So basically, what you're saying is you would  
11 want to come in and say that based on what Diane Downs  
12 told me, which I believe was true, I think she couldn't  
13 have done some of these things?

14 A I wanted to do that?

15 Q Is that what you wanted to testify about?

16 A No.

17 Q You wanted to come in and you said you didn't  
18 have anything that would hurt her.

19 A I didn't say I wanted to come in.

20 Q Well --

21 A I said I didn't have anything against coming in.  
22 I wasn't adverse to coming in, but I certainly didn't want  
23 to come in. I don't enjoy it.

24 Q You don't enjoy it because basically, what you  
25 saw Diane for was to kind of help her through what you



1 perceived was a tough time for her?

2 MR. GORHAM: Your Honor, I'm going to  
3 object. I mean, I think I let Mr. Larsen go maybe too  
4 far. This is totally irrelevant. She's not a legal  
5 expert, she's a psychological expert. I don't see any  
6 relevance to any of these latest questions and I'm going  
7 to object.

8 THE COURT: Tell us what it is.

9 MR. LARSEN: Well, Your Honor, they are  
10 saying she should have been called because she could have  
11 helped Diane Downs. I think I can ask her why she thinks  
12 she could help her.

13 She doesn't have any idea about Mr. Jagger's  
14 trial strategy. She didn't have any idea about what was  
15 going on in the case. All she was listening to is Miss  
16 Downs. I think I can flush that out.

17 MR. GORHAM: Well, she certainly -- I think  
18 Mr. Larsen mischaracterizes the woman's testimony. She's  
19 never said that she wanted to come in and testify. That  
20 was his words, not her's. And again, I don't see any  
21 relevance to it.

22 THE COURT: Well, the characterization is  
23 that she says that she claims that she could have helped.  
24 I don't know that this witness has ever claimed that. I  
25 think petitioner and counsel claim that perhaps. And they

1 have to demonstrate it and you have to indicate or try to  
2 demonstrate otherwise, I guess. That's what lawsuits are  
3 about.

4           Until she says she wanted to come in because  
5 she thought she could help, I don't think it's appropriate  
6 to ask her how she thought she could help.

7           MR. LARSEN: Well, Your Honor, because one  
8 of the issues here is she had told Mr. Jagger -- part of  
9 the problem is she said I will come, and Mr. Jagger said I  
10 don't want to call you. I'd like to at least flush out  
11 what she knew about that.

12           THE COURT: Well, I think you can to that.  
13 The objection was to a particular question and I'm going  
14 to sustain it.

15           We have got to stick to the question and the  
16 objection rather than argue the whole case on each  
17 objection, and that is the problem as everyone gets out on  
18 the fringes. Zero in on what you want to ask this  
19 witness. And if we have an objection to a particular  
20 question, I'll rule on it.

21           Q     You don't know what Mr. Jagger's strategy was  
22 when he said he didn't want to call you to trial?

23           MR. GORHAM: Objection. That's irrelevant  
24 and calls for hearsay.

25           MR. LARSEN: She said she talked to him.



1 I'm just trying to establish she didn't have --

2 MR. GORHAM: Still calls for hearsay. She  
3 talked to him; he said something. That's hearsay.

4 THE COURT: I guess the question is what  
5 difference does it make whether she knew it or not since I  
6 don't understand that she is claiming anything other than  
7 being here and answering questions as an expert.

8 I don't know whether she claims anything.  
9 If she says she does, then you can ask her about what she  
10 claims, but I don't think she's ever said that. And that  
11 is the objection as I understand it.

12 MR. LARSEN: Well, I think the issue had  
13 come up that she had communicated to Mr. Jagger, and I was  
14 trying to find out if he responded to her in some way.

15 THE COURT: I think she testified he did  
16 not; but you never asked her why she communicated or what  
17 she tried to accomplish with that communication. Maybe it  
18 isn't what you think it was. Let's -- maybe you want to  
19 ask her. Maybe you want me to ask her. I'll ask her.

20 THE WITNESS: I think I can clear something  
21 up.

22 THE COURT: No, you better not. Wait for  
23 them to ask.

24 Q Why don't you clear it up. You didn't talk to  
25 Mr. Jagger specifically about his trial strategy?

1           A     I talked to him prior to the trial at lunch at  
2 The Electric Station at which time he said I'm not going  
3 to call you because I don't want to put you and your  
4 family through that.

5           Q     Okay.

6           A     I thought he was going -- I figured he would call  
7 me because --

8           Q     You didn't know?

9           A     I didn't know but I thought he probably would  
10 call me because he read my notes and I had positive things  
11 to say about Miss Downs.

12          Q     That was the only conversation you had with him  
13 about it?

14          A     Then -- yes, about that prior to the trial. Then  
15 when the quote was made in the courtroom and I got upset  
16 about the quote and sent the letter to Mr. Jagger -- I  
17 mean, to Mr. Hugi and Mr. -- Judge Foote, that was another  
18 communication I had with Mr. Jagger, that cover letter.

19          Q     Okay. You had testified a little earlier you  
20 didn't remember if he had gotten back to you. Do you  
21 remember now or --

22          A     I don't remember. I don't have a letter.

23          Q     You say he might have? In other words, he might  
24 have talked to you?

25          A     He might have talked to me on the phone. I don't



1 have a letter from him and I don't remember if he talked  
2 to me on the phone.

3 MR. LARSEN: That's all I have, Your Honor.

4 MR. GORHAM: I just have a couple, Your  
5 Honor.

6

7

REDIRECT EXAMINATION

8

BY MR. GORHAM:

9 Q In your experience, have you ever, say signed a  
10 check on January 4th of one year and put the previous  
11 year's date on it?

12 A Yes. I'm sure.

13 Q So the best of your recollection then this call  
14 to Dr. Storms was probably January 3rd, 1984, not 1983  
15 like the notes say?

16 A It must be a mistake. It must be a mistake, but  
17 I promise you it's an innocent mistake.

18 Q Now, what's the -- as briefly as you can, what's  
19 the difference between a psychologist and a psychiatrist?

20 A A psychologist has a PHD and a psychiatrist  
21 doesn't. Psychiatrists is an MD who does his or her  
22 residency and post-M.D. training in psychiatry, which  
23 involves the use of psychotropic medications and  
24 hospitalization, and so on. The psychologist spends the  
25 whole term of graduate school through the Ph.D. studying

1 just psychology. And then either goes into practice of a  
2 clinical kind of work or research work. There are lots of  
3 different fields of psychology, obviously, but one is an  
4 MD and one is a Ph.D. Psychologists traditionally are  
5 trained to do evaluations. In fact, they were first  
6 trained by the VA to handle evaluations. And so  
7 traditionally in hospitals, the psychiatrist is the  
8 treating physician and the psychologist handles the  
9 psychological evaluation portion.

10 Q Is -- in Oregon, is a psychiatrist qualified to  
11 give psychological testing if he is not a psychologist?

12 A I'm not -- I'm not sure what the statutes are or  
13 what the ethics state. In my opinion, if he or she is  
14 trained in psychological evaluation, then he or she  
15 probably could do it. I don't know what the rules are  
16 though. Training would be necessary because it's a pretty  
17 detailed kind of an undertaking.

18 Q In your experience, do many psychiatrists that  
19 you know actually give psychological tests such as the  
20 MMPI?

21 MR. LARSEN: Your Honor, this is irrelevant.

22 THE COURT: The purpose Mr. Gorham?

23 MR. GORHAM: Well, I guess rather than  
24 calling this witness back after Dr. Suckow testifies, I  
25 would -- I would ask to be allowed to ask this question



1 somewhat out of order.

2 It's my understanding Dr. Suckow is going to  
3 testify. He's a psychiatrist. I'd rather not have to get  
4 Miss Jamison up -- Dr. Jamison up from Eugene after he  
5 testifies tomorrow to ask more questions.

6 THE COURT: All right. For that purpose,  
7 I'll overrule. It may be relevant, at least  
8 anticipatorily.

9 MR. GORHAM: I think so, Your Honor.

10 Q In your experience, do psychiatrists that you  
11 know give psychological tests?

12 A A few.

13 Q If you can look at the deposition exhibit -- it's  
14 Exhibit 101.

15 A Yes.

16 Q Starting from the back, I think attached to that  
17 is a deposition Exhibit No. 1?

18 A Yes.

19 Q Okay. And does it look like a transcript?

20 A Yes, it does.

21 Q Okay. If you could look at Line 13?

22 A Yes.

23 Q Is that the type of question that you -- or  
24 characterization that you would feel would be an  
25 inappropriate characterization?

1 MR. LARSEN: Your Honor, I don't know what  
2 he's referring to.

3 MR. GORHAM: I'm sorry.

4 MR. LARSEN: Your Honor, we -- this is the  
5 transcript of the question and I don't think she's  
6 qualified to answer.

7 MR. GORHAM: Your Honor, Mr. Larsen  
8 strenuously cross-examined this witness concerning this.  
9 And now he's objecting to me asking the question based on  
10 the facts what was actually asked rather than his  
11 suppositions in his cross-examination.

12 This in fact is a portion of the trial  
13 transcript where that one question that is the issue that  
14 we are talking about was asked. We have heard  
15 hypotheticals and everything else from this witness  
16 concerning that. Mr. Larsen cross-examined her concerning  
17 this, but never asked her and showed her what was actually  
18 asked. Now I am because he cross-examined her on this.

19 THE COURT: Overruled. You can ask her.  
20 You know what he's referring to, first of all?

21 THE WITNESS: Yes.

22 THE COURT: You know what the question is?  
23 You're referring, as I understand, to a page and the  
24 question is --

25 MR. GORHAM: Yes.



1 THE COURT: Is that the type of question? I  
2 assume there's more than one question on that page.

3 MR. GORHAM: I apologize. Line 13 --

4 THE COURT: Okay.

5 MR. GORHAM: -- is the question.

6 Q "You were labeled a deviant sociopath by the  
7 tests she gave you?" A question by Mr. Hugi --

8 A Yes.

9 Q -- to Miss Downs.

10 A Okay.

11 Q I think you referred to similar type questions  
12 both in direct and cross. Do you think that's a valid  
13 question to be asked?

14 MR. LARSEN: Your Honor, whether a valid  
15 question to ask, that's not the issue here.

16 MS. WALSH: Your Honor, we are asking this  
17 witness to testify --

18 MR. GORHAM: I'll rephrase the question.

19 MS. WALSH: -- as a legal expertise.

20 MR. GORHAM: I'll rephrase the question.

21 THE COURT: All right.

22 Q Would you have been as upset as you were --

23 MR. LARSEN: Again, Your Honor, we don't  
24 care about her feelings, not to say that those aren't  
25 important, but that's not the issue in this case.

1 THE COURT: Why don't you relate it to her  
2 area of expertise which is why she's here as a witness,  
3 Mr. Gorham. Maybe you'll get closer.

4 MR. GORHAM: Yes.

5 Q You've already testified that you heard from  
6 someone in the courtroom as to what Mr. Hugi said,  
7 correct?

8 A Yes.

9 Q And you related what you heard and then you also  
10 related as to how you responded to that.

11 A That's correct.

12 Q Would your response been any different if you  
13 knew this was the actual question?

14 A No.

15 Q Now, I'm going to ask you at least a couple of  
16 the actual questions that were changed -- the responses  
17 were changed. And my question is, are these some of the  
18 actual questions? Do you have those?

19 A I don't know the answer to that question.

20 Q Okay.

21 A It's scored by a templet. You don't look at the  
22 actual questions. And I didn't go back and look them up.

23 Q And it's correct you did not diagnose Miss Downs  
24 as a deviant sociopath?

25 A That's correct.



1 MR. GORHAM: That's all.  
2

3 RECROSS-EXAMINATION

4 BY MR. LARSEN:

5 Q You just testified that if you knew the question  
6 was you were labeled a deviant sociopath by the test she  
7 gave you, you said your response wouldn't be any  
8 different, but don't tests have those labels? That's what  
9 this test says, isn't it?

10 A That's what it says.

11 MR. LARSEN: Okay. That's my only question.  
12

13  
14 REDIRECT EXAMINATION

15 BY MR. GORHAM:

16 Q Would you please explain your question (sic)?

17 A A psychologist has to interpret the input that's  
18 given by these computer programs. It's not -- you don't  
19 go by what the computer spits out, you go by your clinical  
20 judgment given all the data. You never -- in fact, I  
21 consider it unethical to give someone an MMPI and look at  
22 the diagnosis that's spit out by the MMPI computer without  
23 meeting the person or talking to the person and gathering  
24 other data. You don't diagnose people that way. You  
25 don't label people that way with just MMPI data. You have

1 to go through the clinicians, other sources of data, and  
2 put it altogether.

3 MR. GORHAM: Thank you, Dr. Jamison. Your  
4 Honor, may she be excused?

5 THE COURT: Are you done? I think this is a  
6 petitioner's witness so you get the last shot in the back  
7 and forth.

8 MR. LARSEN: Okay.

9  
10 RECROSS-EXAMINATION

11 BY MR. LARSEN:

12 Q Well, the answer in here was: "I don't know."

13 "You were labeled a deviant sociopath by the  
14 tests she gave you?

15 "Answer: I don't know."

16 A That's her answer, yes.

17 Q And so how -- really, how does this  
18 mischaracterize what this sheet says?

19 A I think it leaves the jury with the impression  
20 that she was characterized that way by me and she wasn't.

21 Q That's what -- it didn't say that you  
22 characterized her; it says the tests did?

23 A But you can't let the test stand alone.

24 MR. GORHAM: I object. This is argumentive.

25 THE COURT: I'll sustain the objection. I



1 think that's argumentive. I think we have probably  
2 exhausted this.

3 MR. LARSEN: That's all I have.

4 THE COURT: I have one question I'm going to  
5 ask. Did you count those answers that were circled?

6 THE WITNESS: Count them?

7 THE COURT: Yeah. How many? How many did  
8 you change?

9 THE WITNESS: I'll count them. I didn't  
10 count them. I'll count them for you.

11 THE COURT: Can you do that quickly for me?

12 THE WITNESS: Sure, uh-hum.

13 THE COURT: I guess before you do that, let  
14 me ask it this way. If you had been called as a witness  
15 in this trial and been asked that same question I just  
16 asked you, would you presumably have been prepared to  
17 count them and give that answer to that jury at that  
18 trial?

19 THE WITNESS: Would I have been prepared  
20 already, or would I have counted them?

21 THE COURT: Or do you know? You don't know  
22 what you would have brought with you to testify?

23 THE WITNESS: I would have brought my whole  
24 file.

25 THE COURT: Would have had the same thing

1 with you that you're looking at now and could have  
2 answered that question then?

3 THE WITNESS: Uh-hum.

4 THE COURT: All right. Then answer it for  
5 me, please.

6 THE WITNESS: 36 out of 566.

7 THE COURT: Thank you. You may step down.  
8 I assume this witness may be excused.

9 MR. LARSEN: Yes, Your Honor.

10 MR. GORHAM: Yes, Your Honor.

11 THE COURT: All right.

12 THE COURT: You can take yours with you but  
13 you can't take ours.

14 THE WITNESS: Yeah, I know. I'm trying to  
15 figure out which is which here.

16 THE COURT: All right. I assume it's about  
17 time for an afternoon recess. Can you kind of advise us  
18 where we are, Mr. Gorham?

19 MR. GORHAM: Yes. I think except for maybe  
20 a two-minute legal matter that I want to bring up on the  
21 record, we are done for this afternoon. If we could do  
22 that now or we can come back, whichever Your Honor  
23 prefers.

24 I only have one more witness I believe and  
25 that is Miss Downs. And I think we have agreed we can