

1 DISTRICT COURT, LARIMER COUNTY, COLORADO

2 Case No. 98-CR-1149, Courtroom 2

3

4 REPORTER'S TRANSCRIPT

VOLUME V

5

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 vs.

9 TIMOTHY LEE MASTERS,

10 Defendant.

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13 The jury trial in this matter commenced on
14 Wednesday, March 24, 1999, at 8:25 a.m., before the
15 HONORABLE WILLIAM F. DRESSEL, Judge of the District
16 Court, and a Jury of twelve and one alternate.

17

A P P E A R A N C E S

18

FOR THE PEOPLE:

MR. TERENCE A. GILMORE
Reg. No. 1306

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MS. JOLENE C. BLAIR
Reg. No. 15934

20

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FOR THE DEFENDANT:

MR. NATHAN D. CHAMBERS
Reg. No. 14576

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MR. ERIK G. FISCHER
Reg. No. 16856

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Reported by Gina B. Zeigler, CSR, RPR

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THE COURT: People ready to proceed?

MR. GILMORE: Yes, your Honor.

THE COURT: Defense ready?

MR. CHAMBERS: Yes, sir.

THE COURT: Okay. Please return the jury.

(The jury entered the courtroom.)

THE COURT: Okay. Please be seated. The witness may be seated.

You may continue.

MR. GILMORE: Thank you, your Honor.

JOHN REID MELOY,

called as a witness on behalf of the People, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. GILMORE:

Q Dr. Meloy, I'd like to begin now with your involvement in this case.

When were you originally contacted by the Fort Collins Police Department?

A I was contacted in mid-November of 1997, approximately 15 months ago.

Q By whom were you contacted?

A I was called by Lieutenant Jim Broderick.

Q And what were you asked to do by Lieutenant

1 Broderick at that time?

2 A Lieutenant Broderick told me that there was
3 this case that the Fort Collins Police Department was
4 working on here in Fort Collins. He told me the date
5 of the case, that this was a 1987 homicide, and he
6 wanted me to look at the data on the case, all the
7 evidence on the case, and then look at data on a
8 particular individual that was a suspect in the case
9 to understand both sets of data and, in my mind, to
10 see if I could formulate any opinions as to whether
11 or not there was a relationship between the suspect
12 and the particular homicide that had occurred.

13 Q Did you agree to work with the Fort Collins
14 Police Department?

15 A Yes, I did.

16 Q And as has been testified, did you specify
17 to Lieutenant Broderick your fees in the work in this
18 type of matter?

19 A Yes, I did.

20 Q What was the hourly fee that you advised
21 Lieutenant Broderick of?

22 A \$300 per hour.

23 Q And that's for work done on the case?

24 A Correct.

25 Q It's your understanding you're being

1 retained at this time also?

2 A Correct.

3 Q Do you recall when you first began to
4 receive materials and background information on this
5 case?

6 A I think within probably seven to ten days
7 after I had been retained by the Fort Collins Police
8 Department, I began to receive information on the
9 case.

10 Q And, generally, would you describe the
11 nature of the materials that you received?

12 A Yes. Initially on the case I began to
13 receive data on the maps of Fort Collins and also
14 reviews of the crime-scene videos. They were actual
15 copies of the videos that were sent to me. I also
16 received case synopses of the Peggy Hettrick
17 homicide.

18 I began to receive background data on
19 Timothy Masters. I also received copies of the
20 warrant for arrest; the FBI profile that had been
21 done and -- subsequent to the homicide; a photo log;
22 autopsy report data on the time of the crime; a
23 personal statement of Timothy Masters on
24 February 11th; additional field incident reports from
25 the Fort Collins Police Department; and then further

1 background data on Timothy Masters, including data
2 from the Youth Service Bureau school records, fifth
3 grade special ed services addendum, student welfare
4 committee action sheet in 1987, additional
5 handwritten material from Mr. Masters, additional
6 incident reports, and then also interviews of Tim
7 Masters from 1987 and also 1992.

8 Q When you indicated that you received written
9 materials for Mr. Masters, are you talking about what
10 have been referred to as the productions of
11 Mr. Masters?

12 A I had received a sampling of some of the
13 productions at that time, but had not had all the
14 productions provided to me during the first six weeks
15 of my retention on the case, which would bring us up
16 to the beginning of 1998.

17 Q Did you eventually receive all of the
18 production -- or copies of all of the productions
19 that have been testified to in court?

20 A Yes. Following along with the methodology
21 that I suggested and had directed Lieutenant
22 Broderick that I would like to have done, I
23 received -- excuse me, nine volumes. They were
24 three-ring binders, loose-leaf binders. Nine volumes
25 of narratives and drawings and -- approximately 2,200

1 pages of narratives and drawings.

2 Q Did you develop the methodology in which to
3 review this material?

4 A Yes, I did.

5 Q Would you briefly relate to the jury what
6 that methodology was.

7 A Yes. I had visited the Fort Collins Police
8 Department in Fort Collins for the first time
9 December 29th, 1997, and at that time did two things:
10 One is I visited the crime scene; and then secondly,
11 I also met with Lieutenant Broderick and other
12 members of his staff that afternoon.

13 And during that time, I talked extensively
14 with them about my preliminary opinions concerning
15 this case, one of them being that this was a sexual
16 homicide; and two, talking with them in depth about
17 offense characteristics in a sexual homicide, and
18 also motivational aspects of a sexual homicide; in
19 other words, why people do these kinds of acts.

20 MR. CHAMBERS: Your Honor, excuse me, may we
21 approach the bench?

22 THE COURT: You may.

23 (The following proceedings were had at the
24 bench out of the hearing of the jury:)

25 MR. CHAMBERS: We have not even really

1 gotten started into substance and there have already
2 been two missteps.

3 THE COURT: There have been two missteps?

4 MR. GILMORE: I agree. I've told him a
5 hundred times he cannot say an opinion like that.

6 THE COURT: If he says one thing more, I
7 will declare a mistrial and assess the costs against
8 him directly. You may tell him that.

9 MR. GILMORE: Can we take a brief recess and
10 let me talk to him some more?

11 THE COURT: I will assess the costs against
12 him of this proceeding.

13 MR. GILMORE: I understand.

14 THE COURT: All right.

15 (The proceedings continued in the hearing of
16 the jury as follows:)

17 THE COURT: Okay. Ladies and gentlemen,
18 we're going to take a short recess, if you please
19 return to the jury room. Please rise as the jury
20 leaves.

21 (The jury left the courtroom.)

22 THE COURT: We'll take a brief recess.

23 (A recess was taken from 8:34 a.m. until
24 8:40 a.m.)

25 THE COURT: People ready to proceed now?

1 MR. GILMORE: Yes, sir.

2 MR. CHAMBERS: Yes, sir.

3 THE COURT: Okay. Please return the jury.

4 (The jury entered the courtroom.)

5 THE COURT: Okay. Please be seated. You
6 may continue.

7 Q (By Mr. Gilmore) I believe, Dr. Meloy, we
8 were talking about the methodology that you proposed
9 to Lieutenant Broderick and the Fort Collins Police
10 Department as to how to organize or categorize the
11 productions that you spoke of; is that correct?

12 A Yes. Yes.

13 Q And how did you direct them to do that?

14 A After preliminary review of the data, I
15 suggested a number of categories that I felt the
16 drawings and narratives clustered in, and directed
17 them to categorize the material according to those
18 categories that I suggested.

19 Over time, I had also several conversations
20 with Lieutenant Broderick, where he suggested to me
21 additional categories that he thought were present in
22 the narratives and in the drawings. And I either
23 supported that or said to him that I felt that that
24 was not important to -- or useful to categorize
25 according to that particular label, and the end

1 result of that was 33 different categories.

2 Q I'd like to ask you about some of those
3 categories then and identify the predominant
4 categories that appeared.

5 A Yes.

6 Q And based on the work that both the Fort
7 Collins Police Department and you yourself did, did
8 you come up with certain numbers as to the number of
9 times these categories were referenced in the various
10 productions?

11 A Yes, I did.

12 Q Did you have one category that you labeled
13 as a preoccupation with death?

14 A Yes, I did.

15 Q And what were the total number of times that
16 preoccupation with death, as a category, was
17 referenced in the materials?

18 A There were 291 items.

19 Q Did you have a category of knives?

20 A Yes, I did.

21 Q And what was the total number of times that
22 category was referenced in the materials?

23 A 186 items.

24 Q And dismemberment?

25 A Yes. There was a category that I labeled

1 maiming, dismemberment.

2 Q And how many times did that appear?

3 A 145 times.

4 Q Did you have a category that you labeled
5 self as aggressor?

6 A Correct.

7 Q And how many times did that appear?

8 A 133 times.

9 Q Did you have a category of blitz attack?

10 A Yes, I did.

11 Q And how many times did that appear?

12 A That appears 126 times.

13 Q Did you have a category that you labeled the
14 color red?

15 A Yes, I did.

16 Q And how frequently did that appear?

17 A 269 times.

18 Q Did you also have a category that you
19 labeled as female domination?

20 A Yes, I did.

21 Q And how many times did that appear?

22 A There were 92 items.

23 Q You mentioned a few moments ago that in
24 performing this type of categorization, categories
25 developed that you didn't originally anticipate?

1 A Correct.

2 Q As an example, did you determine there would
3 be a category concerning the number 10?

4 A Yes.

5 Q And how many times did the number 10 appear
6 in the productions?

7 A Let's see, I'm trying to find that
8 particular item. That appeared 56 times.

9 Q Thank you.

10 As a result of the work that you completed
11 in this case, did you initially prepare a report to
12 the Fort Collins Police Department?

13 A Yes, I did.

14 Q In 1998?

15 A Correct.

16 Q When was that report prepared?

17 A That report was prepared and sent on
18 June 22nd, 1998.

19 Q And did you also prepare a second report
20 after the seizure of certain items in Ridgecrest and
21 Loma that have been testified to?

22 A Yes, I did.

23 Q And when was that report prepared?

24 A That report was prepared and sent
25 December 5th, 1998.

1 Q I'd now like to ask you to review the
2 development of the concept of sexual homicide. And
3 by that, I'm talking about if you could briefly
4 review the history, the research that's been done
5 into the field of sexual homicide, and bring us up to
6 the present in terms of the state of that
7 development.

8 A Yes. The research on sexual homicide
9 actually began in the medical, psychiatric, and
10 psychological arena approximately 100 years ago in
11 Germany by a doctor named Kraft Ebbing, and he wrote
12 a book that was called Psychopathia Sexualis.

13 And what was important about that textbook
14 is that, for the first time a scientist had actually
15 studied carefully a number of sexual homicides and
16 had written them up as cases in this particular book.
17 That book was first published in 1886, and it was
18 widely used in Europe and also made its way to the
19 United States once it was translated into English and
20 actually had gone through a number of editions around
21 to 1910, 1911.

22 This was the first period of sexual homicide
23 research, and this unfolded over the course of the
24 next, actually, 40 or 50 years with a number of other
25 textbooks being published by psychiatrists and

1 psychologists.

2 Some of the names that we know in this area
3 are people like Karpman, and Guttmacher, Henderson,
4 DeRiver. And what they did was, essentially,
5 something similar to what this German psychiatrist
6 had done, and that is they published in their books
7 case studies of small clusters or groups of
8 individuals that had committed sexual homicide.

9 So the science began to get a feel for what
10 this particular kind of criminal act was about and,
11 secondly, the individuals that would commit these
12 kinds of acts, and also information on what occurred
13 in these acts and, actually, some of the variations
14 across different sexual homicide cases. That work
15 actually received a strong impetus.

16 As we got into the 1950s and '60s, we had a
17 number of people come onto the scene again,
18 psychiatrists and psychologists. One of the
19 important people during that time was a person named
20 Eugene Revitch, who is now retired.

21 And he wrote a number of papers in the '50s
22 and '60s and actually into the '70s. One of them was
23 called Unprovoked Attacks on Women. Another one
24 referred specifically to sexual killing, and in these
25 cases he also continued the tradition of talking

1 about individual acts of sexual homicides and the
2 individuals that did them.

3 Again, we have the small clusters of groups
4 of people; again, very small sample sizes, anywhere
5 from, you know, 6 to 12 different individuals. So
6 from a scientific perspective, we still didn't learn
7 enough about this case to be able to generalize to
8 other individuals who might do this.

9 As we moved into the 1970s, a very important
10 paper was published in 1970 by, again, a British
11 psychologist named Robert Brittain. And this paper
12 was called The Sadistic Murderer.

13 And Dr. Brittain actually talked at length
14 about his personal experience in working a number of
15 these cases throughout his career and, for the first
16 time, talked in detail about the nature of these
17 cases and the nature of the individuals that he had
18 studied who had committed sexual homicide.

19 What Dr. Brittain didn't do, which would
20 have been good, is he didn't talk about the numbers
21 of cases that he had studied, nor did he give any
22 specific demographic information on these particular
23 individuals.

24 As we then moved into the 1980s, we began to
25 see the beginning of a rapid development of research

1 in this particular field. The next, I think, very
2 important paper was published by a fellow named
3 Robert MacCulloch. And Dr. MacCulloch, actually, and
4 his team looked at a group of 16 individuals in a
5 British forensic hospital that had committed sexual
6 homicide or extreme sexual aggression.

7 And for the first time that it had been
8 organized in a specific way, Dr. MacCulloch talked
9 about fantasy and the role of fantasy in sexual
10 homicide cases. This paper was called Sadistic
11 Fantasy, Sadistic Behavior and Offending.

12 What Dr. MacCulloch and his group did was
13 very important because they established that in the
14 small sample of individuals, there was an important
15 relationship between the preoffense fantasies in
16 these individuals' minds and their acts.

17 In other words, they would fantasize certain
18 things that would then eventually be carried out in
19 the sexual homicide itself. And they were able to
20 carefully correlate the nature of the fantasies and
21 various aspects of the fantasies with the actual
22 individual sexual homicide acts themselves, and show
23 how particular points of the behavioral fantasies --
24 I'm sorry -- particular points of the fantasy would
25 be tried out -- "Behavioral tryouts" was the term

1 they used -- would be tried out in the environment,
2 and that, in many cases, this would culminate in a
3 sexual homicide. That began a lot of work focusing
4 specifically on the relationship between fantasy and
5 sexual homicide.

6 It then brought us to the late 1980s, 1988,
7 when a number of things happened in this particular
8 field. One of the very important studies that's been
9 done was completed and published by the FBI in 1988,
10 and this was a study that was turned into a book and
11 it was called Sexual Homicide Patterns and Motives.

12 This was an FBI study led by Robert Ressler.
13 And Robert and his staff looked at 36 sexual
14 murderers that were incarcerated in different parts
15 of the country.

16 Now, what was important about this
17 particular study, in a sense of a watershed, so to
18 speak, is that they actually went and traveled around
19 the country and interviewed in depth all these
20 individuals to focus on a number of things: What
21 were their background characteristics? What were
22 their preoffense behaviors; in other words, in the
23 hours or days prior to the sexual homicide, what did
24 they actually do? During the sexual homicide, why
25 did they do those things? And then what were their

1 postoffense behaviors? What would they do after the
2 offense occurred?

3 This book, which has been, in a sense, a
4 classic in this particular specialty area, is widely
5 available to professionals and has become, in a
6 sense, a blueprint for understanding sexual
7 homicides.

8 Also, at this same time, I had my first book
9 published which was called The Psychopathic Mind, and
10 I devoted -- approximately 25 to 30 percent of the
11 book focuses on various aspects of homicide and
12 sexual homicide, with a particular look at the
13 internal characteristics of an individual that would
14 commit a sexual homicide.

15 Also at this time there was an important
16 Canadian study, and that study that was done by a
17 fellow named Ron Langevin did something that the FBI
18 hadn't done, that I didn't do in my book; and that
19 is, they, for the first time, compared a small sample
20 of sexual murderers with two other groups.

21 One of the groups was individuals who
22 committed a homicide where there was no sexual
23 activities whatsoever, and the third group were
24 individuals that had neither committed a sexual
25 homicide nor a homicide, but had a criminal history,

1 a criminal background. And they were able to do a
2 comparative study.

3 Now, this is important in science when we
4 move to the level of comparison of groups of
5 individuals, one group to another group, because then
6 we get to the question of, is there anything specific
7 to the individuals that do this particular act that
8 make them different from people that don't do this
9 act, or do something else that might be somewhat
10 similar to the act?

11 And this gets us to the question of, how
12 specific are science findings? And that study became
13 important because it was one of the first comparative
14 studies. That, again, was published in 1988.

15 And then since -- between 1988 and now,
16 1999, there have been, I would estimate, about eight
17 to ten studies that have also been comparative
18 studies that have looked at groups of individuals
19 that have committed sexual homicide, and then
20 compared them to other groups of individuals that
21 have not committed a sexual homicide, to see if
22 science can zero in on the offender characteristics
23 specific to sexual homicide, and also to see if
24 science can understand more specifically why
25 individuals do these acts and what motivates them to

1 commit a sexual homicide. This work continues at
2 present.

3 An example of this would be the -- a study
4 that we've done that we continue to do that we have
5 one paper that's published and another paper that's
6 in press, where we've compared a group of sexual
7 homicide perpetrators to a group of nonsexually
8 offending psychopathic individuals.

9 And then our newest study, we've looked at a
10 group of sexual homicide perpetrators and compared
11 them to a group of nonsexually offending psychopaths
12 and also a group of pedophiles. Those are
13 individuals that commit sexual acts toward children.
14 And, again, this is a way that we get to sensitivity
15 and also specificity of who these individuals are and
16 why they do what they do.

17 Q Thank you.

18 In conducting the research that you just
19 mentioned, is there a methodology or a method of
20 studying these type of individuals primarily based on
21 interviewing these individuals?

22 A Well, generally, the data on these cases is
23 based on three different sources of information: One
24 is interview of the individuals; two is looking at
25 their histories, and within their histories it's also

1 looking at anything that they may have produced
2 related to the sexual homicide. The productions
3 could be audiotapes, videotapes, drawings, writings,
4 diaries, any kind of creations that would give us a
5 road into understanding their fantasy life.

6 And then the third place where data is
7 gathered, the third way in which data is gathered is
8 through various kinds of psychological and
9 psychiatric testing. And that has ranged in studies
10 from psychological tests, like the Rorschach, up to
11 and including some neuroimaging studies that have
12 been done; in one study, comparing sexual sadists
13 with a group of nonsadistic individuals.

14 Q Can you explain to the jury the problems
15 that are inherent with what I think is called
16 self-reporting, or where you interview an individual
17 after he's been identified as a perpetrator of a
18 sexual homicide?

19 A Yeah. The difficulty is that self-reporting
20 can always be distorted. It could either be
21 exaggerated or it can be diminished. You never can
22 be quite sure if the self-report is accurate, because
23 sometimes individuals will embellish or say things
24 that aren't true to, perhaps, make them larger than
25 life or somehow elaborate on a particular aspect on

1 themselves that isn't true.

2 But people will also tend, at times, to
3 minimize their own disturbance or feelings that are
4 bothering them or characteristics that they've
5 engaged in or behaviors they've engaged in. They
6 attempt to come up with reasons that aren't true to
7 that particular behavior. So distortion is always
8 inherent in any kind of self-report, particularly in
9 this area of sexual homicide research.

10 Q In the other categories that you mention,
11 specifically if there exists a prior history or some
12 type of a production, do you have an opinion as to
13 whether or not that lends greater credence than the
14 area of just self-reporting? Does that make sense?

15 A Yes. Because it's preoffense data. And
16 we're always very interested in what has been
17 produced that is -- that has existed prior to the
18 offense being committed, rather than what the person
19 tells us after the offense has been committed,
20 because then there may be lots of agendas, desire to
21 perhaps diminish responsibility for the crime or to
22 present one's self as having a mental disorder,
23 something to that effect.

24 But typically a preoffense data, which could
25 be productions or it could be behavior or it could be

1 the observations of other people, tend to be much
2 more credible and, from a scientific perspective,
3 much more valid than information that is given
4 postoffense through self-report.

5 Q Dr. Meloy, within the forensics
6 psychological community, is there an accepted
7 definition of sexual homicide?

8 A Yes, there is.

9 Q And what is that definition?

10 A Sexual homicide is the intentional killing
11 of another human being during which there is sexual
12 activity or evidence of sexual activity by the
13 perpetrator.

14 Q In connection with this definition of sexual
15 homicide, are you familiar with the concept of
16 sex-violence pairing?

17 A Yes, I am.

18 Q Can you just briefly relate how that relates
19 to the concept of sexual homicide?

20 A Yes.

21 MR. CHAMBERS: I'm going to object to the
22 form of the question. I believe it's calling for an
23 opinion; and he's obviously entitled to express
24 opinions, but it's clear that the question has to be
25 framed that way: Do you have an opinion about the

1 sex-violence pairing?

2 MR. GILMORE: That's fine, your Honor, I can
3 ask if he has an opinion.

4 Q (By Mr. Gilmore) Do you have an opinion as
5 to how the term sex-violence pairing relates to the
6 term sexual homicide?

7 A Yes, I do.

8 Q Okay. What would that opinion be?

9 A When we think about sexual homicide, on the
10 face of it, it's an anomaly. It just doesn't fit
11 together, because typically when we think about
12 sexuality, we think about pleasure, not homicide, the
13 intentional killing.

14 So one has to then ask the question, How do
15 these get paired off, linked together in a sexual
16 homicide case where there is an intentional killing
17 and also evidence of sexual arousal? How do those
18 two get linked together?

19 And my opinion on this is that the best way
20 to understand this is through understanding what's
21 referred to as classical conditioning. This is a
22 component of behavioral psychology, and it goes back
23 to the notion of experiments that were done by a
24 Russian named Ivan Pavlov and his dog.

25 And Dr. Pavlov found that if he presented

1 food and rang a bell at the same time, that the dog
2 would salivate and would then eat the food. The food
3 would be considered an unconditioned stimulus,
4 because we salivate typically, mammals do, when food
5 is presented to us when we're hungry; but the bell
6 would not necessarily be related at all to
7 salivation, just the hearing of the ringing of the
8 bell.

9 But what Pavlov found is that once the food
10 was removed and then the bell was rung, the dog would
11 salivate; in other words, the bell became a
12 conditioned stimulus.

13 Now, if you take this model of classical
14 conditioning or pairing of these two stimuli together
15 and apply it to sexual homicide, what has been found
16 and theorized about in papers is that the person that
17 commits a sexual homicide for some reason has been
18 conditioned to feel sexually aroused to violence; in
19 other words, when the sexual homicide perpetrator is
20 committing the sexual homicide, there is an arousal
21 to the violence, because in his past there has been a
22 conditioning to that violence; in other words, a
23 sexual conditioning to that violence.

24 Now, typically this occurs -- the research
25 suggests that this occurs in periods following the

1 development of puberty in the male; in other words,
2 it's likely that this early sexual conditioning
3 occurs around age 11, 12, 13, once the male has
4 reached and passed puberty, and that it could come in
5 a variety of ways.

6 The research indicates, for instance, that
7 in some individuals, in their homes as children they
8 had witnessed adult sex or there had been a link
9 established in the home between sex and violence,
10 perhaps in the parents, where the child observed or
11 witnessed the parents being fighting and very
12 aggressive to each other and then also being very
13 sexual with each other in close proximity to the
14 fighting.

15 There also is some suggestive data that
16 violent pornography will contribute to this, because
17 in violent pornography typically there is violence
18 associated with sexual pleasure, and that if a young
19 boy -- 12, 13 -- is exposed to this kind of material
20 repeatedly, either through videotapes, rented videos,
21 or through magazines or material like that, a
22 conditioning may occur.

23 And that typically, I think, is the best
24 theory for understanding how sex and violence is
25 linked in these cases.

1 Q Also based on your experience and research
2 in literature in the field, are there general
3 characteristics of a sexual homicide?

4 A Yes, there are.

5 Q And can you generally describe a number of
6 those characteristics?

7 A When a sexual homicide is identified,
8 typically there are characteristics that generalize
9 to most sexual homicides. Usually, the victim in a
10 sexual homicide is a female, and usually there is
11 evidence upon observation that various sexual parts
12 of her body have been exposed. Typically this would
13 be her breasts and/or her genitals.

14 And in some cases there's also evidence
15 there has been sexual acts performed on the body.
16 Typically the woman will be sexually penetrated, and
17 generally it's either an anal penetration, an oral
18 penetration, or a vaginal penetration. In sexual
19 homicides, this could occur before, during, or after
20 death.

21 The evidence for that obviously would be
22 evidence of the individual having deposited semen
23 into an orifice of the woman. If there is not
24 evidence of sexual penetration by the individual,
25 another indication that it is a sexual homicide is

1 there would be evidence, typically, of mutilation of
2 the genitals or the breasts or both, including the
3 exposure of the genitals and breasts or both through
4 the removal of clothing from the individual.

5 Q In connection with the characteristics, are
6 you familiar with the terms "posing" and
7 "positioning"?

8 A Yes.

9 Q Do those terms have any relationship, or are
10 they included within certain characteristics of
11 sexual homicide?

12 A Yes. In certain sexual homicides -- not
13 all -- there are two behaviors that can occur. One
14 is called displaying of the body. And this is where
15 the body is not hidden from view, but is openly or
16 purposefully displayed, and there's no attempt on the
17 part of the perpetrator to hide the body. And the
18 displaying of the body can suggest certain
19 characteristics concerning the individual that's
20 committed this crime.

21 There's also another term here that's
22 important to distinguish from displaying, and that is
23 posing of the body. Posing of the body is where the
24 body has been positioned in a certain way to
25 typically devalue or degrade the woman, or to somehow

1 devalue or diminish her value as a human being or as
2 a sexual human being.

3 And so two of the characteristics that we
4 would look at in crime-scene photographs would be the
5 degree to which the body was openly displayed; and,
6 secondly, would there be any indication that she was
7 posed; in other words, her body was positioned in
8 such a way to degrade or devalue her as a sexual
9 human being.

10 Q If you would turn your attention to your
11 right. Do you recognize this photograph?

12 A Yes, I do.

13 Q This has previously been testified to as how
14 the position of Peggy Hettrick was on the morning she
15 was discovered February 11th, 1987. Relating to the
16 characteristics that you just mentioned, do you find
17 any suggestions within the manner in which she is
18 lying there that would fit within the characteristics
19 of a sexual homicide?

20 A Yes. One is the exposure of the genitals
21 and also the exposure of both her breasts through the
22 pushing up of clothing: The bra here, the blouse
23 here, and the jacket here, and then the pulling down
24 of her pants, her underwear, as well as her jeans to
25 just below the top of her kneecap. And then,

1 secondly, would be the mutilation or removal of her
2 left nipple.

3 Q Dr. Meloy, within the literature, are you
4 aware of the categorization of different types of
5 sexual homicides?

6 A Yes, I am.

7 Q And, generally, what are the two categories
8 that sexual homicide has been divided into?

9 A The FBI categorization, which I'm assuming
10 is what you're referring to, has divided sexual
11 homicide into organized and disorganized.

12 Q Again, I direct your attention to your
13 right, slide that's been presented. Would you take a
14 moment just to review that, please?

15 A (The witness complied.)

16 Q Are you familiar with these different
17 categorizations of sexual homicides?

18 A Yes, I am.

19 Q And within each category of organized and
20 disorganized, there are a number of descriptors, if
21 that's a proper word, to distinguish between the two
22 types of sexual homicides. Are you familiar with
23 these?

24 A Correct.

25 Q Okay. If you would, please, I'd like to

1 begin with the second line, victim a targeted
2 stranger or victim or location known.

3 Generally, what is being discussed here and
4 how is the distinction being made based on the type
5 of victim?

6 A What the research has indicated is that in
7 organized sexual homicides, typically the victim does
8 not have a relationship, a personal relationship,
9 with the perpetrator. And that's the word stranger.

10 The targeted is that oftentimes the victim
11 has been targeted by the perpetrator, and typically
12 that's done through the perpetrator identifying this
13 individual as a potential victim and then also
14 surveilling them or watching them from a distance; in
15 other words, gathering information on them, but not
16 necessarily knowing them in any personal way.

17 Q Continuing with the next one, the difference
18 between personalizing the victim and depersonalizing
19 the victim?

20 A Yes. This refers to the degree to which the
21 perpetrator wants personal information on the victim
22 and will attempt to engage the individual in a
23 conversation at the point, or just prior to the
24 sexual attack on the individual.

25 And this can meet a variety of psychological

1 needs for the person, but the point of personalizing
2 is to gather information and to establish some kind
3 of conversation with the victim. This is usually
4 done in the service of a ruse or a con in order to
5 get the victim into a particular situation where she
6 will be vulnerable to the sexual assault and the
7 murder.

8 The other side across from it, is just the
9 opposite, where there is no evidence of any attempt
10 to talk to or relate to or gather personal
11 information through conversation from the victim.

12 Q I take it the next category relates to that
13 next category of either having conversation or lack
14 of conversation?

15 A Correct. The personalizing of the victim in
16 the organized sexual homicide, we see a lot of
17 controlled conversation, where there is conversing
18 with the victim. Typically, however, it is the
19 perpetrator who is directing and asking many of the
20 questions.

21 One of the ways that's been identified in
22 the research is where there has been an unsuccessful
23 sexual homicide; in other words, the perpetrator
24 perhaps had prior victims and escapes and isn't
25 killed, and she in subsequent interviews talks about

1 the nature of the conversation that she had with the
2 perpetrator.

3 On the other side of it, the disorganized,
4 we have minimal conversation, where there's typically
5 minimal or no attempt, no interest in having any kind
6 of conversation with the victim because there's no
7 desire to personalize this individual.

8 Q Continuing with the different types of
9 control or crime-scene analysis as to the nature of
10 the crime?

11 A Yes. When the crime scene reflects control,
12 it refers to the fact that the perpetrator has not
13 let anything get out of control and that has been
14 pretty meticulous about the crime scene itself,
15 exactly where the sexual assault has occurred and
16 also what was done during the sexual assault and
17 where the body is left or if the body is moved to
18 another place; in other words, the crime scene
19 reflects, oftentimes, a desire to be very
20 compulsively clean and meticulous about the crime
21 scene itself.

22 In the disorganized case, typically the
23 crime scene is -- there's a randomness and a
24 sloppiness to it that suggests that the perpetrator
25 was not in control of the crime scene, that the act

1 was very spontaneous, and that there was -- that it
2 was impulsive and there was no sense of being able to
3 control or monitor the behavior of the victim or
4 determination of where the victim's body should go.

5 Q Continuing with the next category, demands
6 submissive victim?

7 A In the submission, demands submissive
8 victim, in contrast to the sudden violence to the
9 victim. What the FBI research found was that in
10 organized sexual homicide, typically the perpetrator
11 will demand that the victim submit to him and engage
12 in submissive behaviors prior to her death.

13 This could be wanting her to act in certain
14 ways, to express certain feelings or emotions to him
15 before or during the sexual assault. It may be
16 particular behaviors he wants her to engage in prior
17 to being sexually assaulted and killed, or doing the
18 sexual assault and killing.

19 In the disorganized cases, typically the
20 violence is very sudden. The FBI has used the term
21 "a blitz attack" in describing this kind of violence
22 toward the victim. It is sudden, unexpected.
23 There's no chance for the victim to react to it. And
24 therefore, typically the desire on the part of the
25 perpetrator is to dominate and completely take over

1 control of the victim and render her helpless or, in
2 many cases, dead as quickly as possible, and there's
3 not a desire to have her behaviorally submit to him
4 over time.

5 Q The next category involving the use of
6 restraints?

7 A Yes. In organized sexual homicides,
8 typically this is where individuals who have the
9 diagnosis of sexual sadism will typically find
10 themselves if they commit a sexual homicide. And
11 sexual sadists typically will use restraints or
12 bindings on the victim to control her and to get her
13 to submit to him, and also the restraints may be used
14 for torture of the victim.

15 And that is common in sexual sadism; that is
16 a desire to torture the victim, because the sexual
17 sadists derive sexual pleasure through the suffering
18 of the victim and the domination of the victim over
19 time. So there's actual sexual arousal to her
20 suffering.

21 Sometimes that can be inflicted most readily
22 through the use of restraints. On the other side,
23 there's typically no evidence of any kind of
24 restraints in disorganized sexual homicide.

25 Q The next category of, acts either before or

1 after death?

2 A Yes. Typically in an organized sexual
3 homicide, the kind of aggressive acts and sexually
4 aggressive acts will occur before death. Sometimes
5 that's in the service of torture or inflicting
6 suffering on the victim so the perpetrator can enjoy
7 the suffering, and that could also include various
8 kinds of cuttings or mutilation of the body while the
9 woman is still alive.

10 On the other side of this, in disorganized
11 sexual homicide, typically any kind of sexual acts or
12 cutting or mutilation are committed after the person
13 is dead.

14 Q Discuss the next category of where the body
15 is left.

16 A Yes. In organized sexual homicide, in the
17 majority of cases the body is hidden from view. In
18 disorganized sexual homicide cases, the body is left
19 in view. What I mean by that, it's left in view to
20 be discovered rather easily by somebody, by a
21 passerby, an onlooker who just happened by accident
22 to come upon the crime scene.

23 Q Next category regarding whether or not the
24 weapon is present?

25 A In organized sexual homicide, typically

1 there has been the cleanliness and the obsessiveness
2 I talked about in terms of making sure that a weapon
3 is not left at the scene, and oftentimes there's also
4 attempts to remove or disguise any evidence that may
5 lead to apprehension of the perpetrator.

6 In disorganized sexual homicide, typically
7 the weapon and the evidence are often both left at
8 the crime scene, and oftentimes that is because the
9 weapon has been a weapon that was just available at
10 the point where the sexual homicide occurred and was
11 not brought to the crime from some other place.

12 Q In that regard then, in returning to the
13 first category of whether the event was planned or a
14 spontaneous offense, would that be the type of
15 evidence you would examine in determining whether the
16 offense was planned or not?

17 A Correct. Yes. One of the important
18 determinants there is to what degree have weapons or
19 a weapon been brought to the crime or was the weapon
20 available at the point of the sexual assault and
21 murder.

22 Q Okay. And the last category of what's done
23 with the body?

24 A Yes. In organized sexual homicide, because
25 there is typically an attempt to hide the body, there

1 are typically three different sites: There is the
2 abduction or initial assault site where the person is
3 taken control of; there is then also the site where
4 the person was sexually assaulted and killed; and
5 then a third site, which the FBI refers to as a dump
6 site, for their disposal site for the body. There
7 are typically three sites. So the body, by
8 necessity, is transported from the point at which she
9 was sexually assaulted and killed to another site for
10 being hidden.

11 In disorganized sexual homicide, typically
12 the body is left at the point where she was killed
13 and sexually assaulted; and it's usually in that
14 order: That she is first killed and then she is
15 sexually assaulted.

16 Q In determining whether or not a sexual
17 homicide fits within each of these categories, are
18 these categories mutually exclusive, or is there a
19 blending of the categories?

20 A Since this was first introduced in 1988,
21 there has been discussion about that and work in that
22 area. And the position that I've taken in writing,
23 which I think has also been taken by some other
24 people, is that oftentimes these are not mutually
25 exclusive categories, and sometimes it's important to

1 think about them as being on a continuum.

2 What I find in the sexual homicide cases I
3 have done, and other people have also, is oftentimes
4 you get a mixture of organized features and
5 disorganized features; but, typically, there will be
6 a predominance of one or the other. I found it
7 useful to think of these -- each of these criteria as
8 being on a continuum rather than mutually exclusive.

9 Q Dr. Meloy, in reviewing all the materials
10 that you received in this case concerning the crime
11 scene, did you form an opinion as to whether or not
12 this fell within the category of organized or
13 disorganized?

14 A It's my opinion in this particular case this
15 was a dis -- predominantly a disorganized sexual
16 homicide, disorganized pattern of behavior with some
17 organized characteristics.

18 Q Which disorganized features do you feel were
19 present?

20 MR. CHAMBERS: Is he asking for an opinion?

21 MR. GILMORE: In his opinion.

22 A In this particular case, in terms of the
23 disorganized features, it was my opinion that there
24 was no attempt to -- there didn't seem to be any
25 evidence that the victim was personalized or there

1 attempted to be conversation engaged in; therefore,
2 it would fall on the side of the depersonalization of
3 the victim. There was no evidence that there was any
4 conversation, which would fall into the minimal
5 conversation.

6 In terms of the crime scene reflecting
7 control or the crime scene being random and sloppy,
8 it appeared to me that the initial assault on the
9 victim at the curb, where there was an outpouring of
10 blood and a pooling of blood, that there was some
11 initial discontrol at the point of the homicidal
12 assault; but then the perpetrator took control of the
13 victim and moved her into the field, approximately, I
14 think it was 105 yards into the field.

15 And then so we would see that being actually
16 a combination of initially there being some
17 sloppiness to it, in terms of the initial assault,
18 but then a control being taken; that there was sudden
19 violence to the victim; that there was an approach
20 from behind in what I would refer to as a blitz
21 attack.

22 There was no evidence of use of restraints
23 in this case. It appears, from the pathologist's
24 report, that the sexual acts -- in other words, the
25 mutilation of the genitals and the left breast --

1 were committed after the death of Miss Hettrick; that
2 the body was left in view.

3 This category right here we see, again, a
4 mixture. There was no evidence that a weapon was
5 left right at the crime scene, but there was other
6 evidence that was at the crime scene, so we would see
7 a combination of the disorganized and organized here.

8 And then, lastly, the body was left at the
9 death scene, and the body was not transported by the
10 perpetrator.

11 So we have a majority of characteristics
12 being disorganized with some organized features.

13 Q (By Mr. Gilmore) Are you familiar with the
14 terms "modus operandi" and "signature" as they apply
15 to the concept of sexual homicide?

16 A Yes, I am.

17 Q Would you explain what is meant by the term
18 "modus operandi" and "signature" as they relate to
19 sexual homicide?

20 A Yes. These are terms that actually have now
21 been around for approximately 20 years and were first
22 specified in a paper by John Douglas and Munn back in
23 the early 1980s from the FBI, and they were able to
24 identify and distinguish between two components
25 within, specifically, a sexual homicide.

1 The first has a term that's been around in
2 law enforcement work for many years, and that is
3 modus operandi, which actually means, in English
4 translation, a method of operating.

5 This is typically the necessary acts that
6 need to be carried out to complete the killing in a
7 sexual homicide, so it's the practical means by which
8 the perpetrator completes the killing of the
9 individual.

10 And this obviously could be applied to other
11 criminal activity, like the method by which a bank
12 robber is going to enter the bank and rob the bank.
13 That would be an MO.

14 And then the last component of this that I
15 wanted to put on this particular slide is that the
16 modus operandi can be changed and altered consciously
17 by the perpetrator. In sexual homicide cases, you do
18 see that, where there is a variable pattern of MO
19 that is intentionally changed for the sexual homicide
20 perpetrator to improve the efficiency of his
21 apprehension and abduction or killing of the victim.

22 In one case back in New York, the
23 perpetrator had originally thought that he would use
24 a knife in his sexual homicide cases, and then found
25 that that was not efficient and effective for him,

1 even though it was prominent in his fantasy
2 constructions before the crime, so he switched to
3 using a gun in his sexual homicides.

4 So you can see change of weapons, change of
5 location, change of approach to the person, but it's
6 all practically necessary to complete the killing of
7 the individual.

8 The signature is very different. The
9 signature, first of all, is distinguished from the MO
10 by the fact that it's not necessary to complete the
11 killing of the person.

12 Secondly, signatures are there to gratify
13 abnormal psychosexual desire; in other words,
14 typically the signature in sexual homicide is
15 directed toward the genitalia of the woman, or it's
16 an assault on an orifice of the woman. And typically
17 the nature of the assault tells us something about
18 the psychosexual desire of the person.

19 And what psychosexual means is the degree to
20 which his thinking and his emotions are tied in to
21 his sexual arousal patterns. We all have
22 psychosexual desire; but in signature cases, we know
23 that that psychosexual desire is abnormal given the
24 acts that are inflicted on the victim.

25 The third component of signature is that it

1 is typically a product of fantasy; and, oftentimes,
2 in the preoffense productions of the perpetrator, you
3 will find indications of the signature, or at least
4 suggestions of the signature.

5 And then typically the signature, because it
6 may not be completely conscious for the individual,
7 is a constant theme, but there may be some evolution
8 over time; in other words, there may be some change
9 over time, but typically the signature is constant.

10 Signature has been used to link together
11 different sexual homicides. There's a well-known
12 case in Washington -- the state of Washington --
13 where the specific signature was able to link
14 together three different sexual homicides, which on
15 the surface because their MOs were very different,
16 looked like they were committed by different
17 perpetrators; but because the signature matched on
18 all three, the linkage was able to be established.

19 Q Do you have an opinion, based on your
20 experience in your research, as to why sexual
21 homicide perpetrators mutilate a body?

22 A Yes. Typically there are -- there can be a
23 variety of motivations for mutilation of the body.
24 The most prominent and constant one appears to be
25 anger and hostility toward the woman, and

1 specifically the sexuality of the woman.

2 It also can be involved in -- the reason for
3 it can be that the person feels threatened by the
4 sexuality or the eroticism of the woman; and by
5 mutilating or damaging her genitals, he removes that
6 erotic threat from him.

7 A third reason is a desire to dominate fully
8 the woman and to degrade her sexually. Typically
9 there's also hostility in that. And then a fourth
10 reason is curiosity about the female genitalia. And
11 a fifth reason would be discussed concerning the
12 female's genitals; again, this is a way to remove and
13 distance from the female through domination and
14 degradation of her sexuality.

15 Q Have -- strike that.

16 Are you familiar with the different
17 categorizations, then, of mutilation?

18 A Yes, I am.

19 Q Again, the slide that's been placed to your
20 right lists three types of mutilation: Defensive,
21 aggressive, and offensive.

22 Are you familiar with those three
23 categories?

24 A Yes. These are three major categories of
25 criminal mutilation of the human body that is

1 involved in forensic cases that is seen.

2 The first one, defensive mutilation, is
3 typically the mutilation of the body to dispose of
4 the body and to impede identification of the victim.
5 So, for instance, it may be a case where the body
6 after death has been dismembered.

7 There was a case in Missouri where the body
8 was cut up into parts and then put into huge garbage
9 bags and wrapped in newspaper and then put out for
10 the trash pickup every Monday morning, and this was
11 the way for the perpetrator to impede identification
12 of the victims and also just to dispose of the body.
13 And that's been referred to as defensive mutilation.

14 The second category is called aggressive
15 mutilation. This is apparent in cases where there is
16 evidence of overkill. And overkill means that there
17 have been -- there's been more violence towards the
18 body than was necessary to cause the death of the
19 person. That's what overkill refers to.

20 And typically overkill suggests that there
21 has been a personal relationship between the victim
22 and the perpetrator, sometimes a very personal
23 relationship, intimate relationship; and secondly, it
24 suggests rage, very intense rage or fury towards the
25 victim.

1 Overkill was suggested in the Nicole Brown
2 Simpson killing, given the fact that she was stabbed
3 repeatedly in the chest which would cause her death,
4 but then also was almost decapitated by the
5 perpetrator. And, typically, oftentimes in
6 aggressive mutilation, the overkill is directed
7 toward the face or the upper portion of the body of
8 the individual.

9 The third form of mutilation is offensive
10 mutilation. This is typically mutilation that either
11 suggests a necrophiliac urge -- a necrophiliac means,
12 the philiac means love of or desire for, necro means
13 dead. So this is typically an urge that comes over
14 the person after the victim is dead, or it's an
15 offensive mutilation that is to satisfy a sexually
16 sadistic desire.

17 That would be in a case where there has been
18 torture prior to the death of the victim and the
19 wounds have been identified as being premortem or
20 before death of the person. And then an offensive
21 mutilation typically, the victim is either a stranger
22 or a casual acquaintance.

23 One of the important differences between
24 these two is that in this case the -- typically the
25 mutilation is very carefully done and done in a very

1 controlled way, and there's no extra expenditure of
2 effort to do so.

3 Q Based on your experience and your expertise,
4 do you have an opinion as to the classification of
5 the mutilation of the body of Peggy Hettrick?

6 A Yes. In my opinion this was an offensive
7 mutilation.

8 Q I'd like to direct your attention back, now,
9 to the categories that we talked about with organized
10 and disorganized. And I think the first category
11 related to the idea of the offense being planned.

12 Do you recall that discussion we had?

13 A Yes.

14 Q In connection with the concept that a sexual
15 homicide is planned, are you familiar with the
16 research into the concept of fantasy and rehearsal
17 fantasy as it relates to planning an offense?

18 A Correct.

19 Q Would you explain that to the jury, please.

20 A There has been, now, a number of studies
21 that have looked at the relationship between fantasy,
22 specifically sexual fantasy, in relationship to the
23 commission of certain kinds of sexual homicides; and
24 in the area of fantasy it's the opinion of a number
25 of people, based upon the research, that in

1 indications of sexual homicide perpetration there is
2 typically and often evidence of fantasy, fantasy that
3 is both sexualized as well as violent where we have
4 the pairing, and fantasy that may be very specific to
5 the behavior that occurred in the sexual homicide.

6 Secondly, there is evidence that this
7 fantasy material -- and let me define for you, when I
8 say the term "fantasy," I'm talking about a conscious
9 thought that is based and rooted in emotion, in this
10 case conscious thought that is separated or divorced
11 from reality that is a creation of the individual in
12 his mind, rooted in emotion, and typically that
13 emotion or those feelings are sexualized.

14 For instance, there might be anger
15 surrounding the fantasy material; and anger, however,
16 also causes sexual arousal in the individual.

17 Now, the study of fantasy has moved to the
18 term "rehearsal fantasy"; and what I mean by that is
19 fantasy which, in a sense, provides a rehearsal for
20 the crime itself.

21 I had mentioned earlier the work of
22 Dr. MacCulloch and Brittain, where they were able to
23 initially show that there were certain components of
24 the fantasy that were actually behaviorally done in
25 the sexual homicide to establish a close link before

1 the two, and this fantasy existed prior to the sexual
2 homicide itself.

3 Fantasy provides a number of gratifications
4 for the individual. An important motivational
5 component of rehearsal fantasy is that the individual
6 may have in his mind these fantasies repetitively,
7 and typically they will occur over extended periods
8 of time, and he may masturbate to those fantasies.

9 But one of the things we know about sexual
10 arousal and fantasy is that over time, you habituate
11 or you become used to the sexual fantasy, and it's
12 not as stimulating as it was.

13 And those of us that do research and work in
14 this area think that as the fantasy becomes less
15 stimulating, there's more of a tendency for the
16 person to then go and actually act out the fantasy in
17 the environment to increase his stimulation and to
18 behaviorally try out the fantasy in the real world.

19 Q Do you have an opinion as to what purpose
20 fantasy serves in an individual?

21 A I think the primary purpose of rehearsal
22 fantasy in sexual homicide cases --

23 MR. CHAMBERS: Just so it's clear, is this
24 an opinion?

25 MR. GILMORE: That's what I'm asking.

1 A Yes. It's my opinion that the primary
2 purpose of sexual fantasy as rehearsed fantasy in
3 sexual homicides prior to the event is to express
4 deeply felt hostility to women in a very private way.

5 Q (By Mr. Gilmore) Can fantasy also serve as
6 a compensation for other emotions?

7 A Yes. I had mentioned earlier in my
8 definition of fantasy that sometimes it's divorced
9 from reality. This is where we talk about fantasy
10 with another 50-cent word as a compensating mechanism
11 or a compensatory fantasy. Let me see if I can
12 describe it in simple terms.

13 If a person in their real life has a number
14 of very painful feelings -- those could be anger,
15 depression, sadness, loneliness, grief, alienation
16 from other people -- then in their mind, if the world
17 in its real way is that painful in their mind, they
18 may retreat into fantasy. And in their fantasies, in
19 a sense, they experience much more pleasure than they
20 do in the real world. So in a sense the fantasy
21 compensates or takes the place of real activity with
22 other people that are pleasurable.

23 So in this sense fantasy becomes divorced
24 from reality, but may be very pleasurable; and
25 oftentimes in that fantasy, the pleasure may focus on

1 certain activities or certain objects that the person
2 thinks about a lot.

3 Q Would you discuss for a moment the
4 importance, if there is one, in your opinion, as to
5 the frequency and duration of fantasy thought?

6 A Yes. The research, in terms of both sexual
7 homicide -- this also bridges over into some of the
8 research on rapists and raping -- is that often
9 sometimes this material originates in the
10 postpubescent period, typically 12, 13 years of age,
11 and will have a period of what's been referred to as
12 incubation; in other words, the person won't act out
13 this material, but will think about it and be
14 preoccupied with it for months or perhaps years
15 before there's actually an act that's done on another
16 person.

17 So this is not rehearsal fantasy, is not
18 something that one comes up with one day and then
19 commits an act of extreme sexual aggression the next
20 day. Usually there's an extensive period of
21 incubation that goes on for months or, perhaps,
22 several years.

23 Q In reviewing the materials, specifically the
24 productions of Mr. Masters that you were provided,
25 did you find, or do you have an opinion as to whether

1 or not the fantasies extended over a period of time?

2 A It's my understanding from the material that
3 I reviewed that the productions extended back at
4 least several years.

5 Q And did they continue to extend into the
6 future?

7 A Correct.

8 Q In discussing the frequency of either
9 productions of fantasy or fantasy itself, can there
10 occur a blurring between reality and fantasy?

11 A In my opinion, yes.

12 Q What do you base your opinion on?

13 A That's a particular area that we focused on
14 in our research where we've been very interested in
15 what's referred to as reality testing in sexual
16 homicide perpetrators.

17 Reality testing is the ability to
18 distinguish clearly between what is inside from what
19 is outside the self; in other words, being able to
20 separate one's wishful fantasy from what's actually
21 happening in the environment.

22 What we found in our research, and we have a
23 sample size now of 38 individuals that have all
24 committed at least one, if not more sexual homicides,
25 that these individuals have what we refer to as

1 borderline reality testing.

2 What that means is that they have a strong
3 propensity to confuse internal wishful fantasy with
4 the external environment, what actually is going on
5 outside themselves. And we've specifically measured
6 that with Rorschach data in the sample of
7 individuals.

8 A specific example of that in a sexual
9 homicide perpetration case, would be an individual
10 was consumed with strong hostility or anger toward
11 women and believed in his mind, in his fantasy mind,
12 in his fantasy, that women were sexually taunting him
13 and trying to seduce him and use their sexuality to
14 make him angry.

15 And then he, perhaps, would be walking down
16 the street and would see a woman who he found
17 sexually attractive; but because of his anger and
18 hostility toward the woman, in his mind he would
19 believe that because of the way she's walking and the
20 way she's dressed, she's deliberately taunting him
21 and flaunting her sexuality, and that might then
22 stoke his anger toward her.

23 That's where his belief and his fantasies
24 about who women are and what they do to men would, in
25 a sense, override her actual behavior and her

1 motivation for walking down the street and looking --
2 and presenting herself the way that she presents.

3 Q You indicated that you do conduct some type
4 of testing in this regard?

5 A Yes.

6 Q And how can this be tested?

7 A Well, in our Rorschach data, we used the
8 measure -- it's a technical term called X minus
9 percent. This is where the individual is tested
10 using this particular technique, and we found that
11 typically they will produce what they refer to as F
12 minus responses in the Rorschach data. This is where
13 their internal images tend to override the crux of
14 the stimuli that they're looking at during the
15 testing.

16 Q Let me go on to another term, ask if you're
17 familiar with the term "trigger mechanisms"?

18 A Yes.

19 Q And would you explain, first of all, what
20 that term means as it relates to sexual homicide?

21 A Yes. Actually, there are several terms here
22 basically meaning the same thing: One is "trigger
23 mechanism," another one would be a "precipitating
24 event."

25 What the sexual homicide research has found

1 is that individuals that will have these rehearsal
2 fantasies over the course of time, there still needs
3 to be an event or a trigger mechanism or some
4 particular point in time that compels the person to
5 go from behavior which is thought about to behavior
6 which is acted out in the environment.

7 And research in this area has pointed to a
8 number of things that could be trigger mechanisms or
9 precipitating events, such as a conflict with
10 one's -- one's spouse or one's girlfriend.

11 Interestingly, virtually all sexual
12 homicides are committed against a stranger or a
13 casual acquaintance, and rarely are they committed
14 toward an intimate partner. So even if a sexual
15 homicide perpetrator is married, his spouse will not
16 be the victim if he commits a sexual homicide.

17 Another event might be an extreme stressor
18 around a job or termination from a position or
19 conflict with parents or conflict in some kind of
20 school setting or employment setting. It could also
21 have to do with a grief reaction, an emotional upset
22 concerning the death or the loss of somebody. And
23 that has been specifically talked about as one of the
24 number of precipitating events or triggers in cases
25 of sexual homicide.

1 Q When you speak of the grief surrounding the
2 loss of a family member, is it only referring to just
3 the loss at the immediate time or possible later
4 times?

5 A In my opinion, it also is referring to loss
6 at later times, specifically could be what's referred
7 to in the literature as an anniversary reaction.

8 Q Are you familiar with a breakdown in the
9 classification of fantasy thought?

10 A Yes, I am, in terms of the structure of the
11 rehearsal fantasy, yes.

12 Q Again, I've placed a slide to your right.
13 And in discussing your first rehearsal fantasy, are
14 there generally accepted five components or
15 structural elements of rehearsal fantasy?

16 A Yes. This was -- these elements or
17 components of rehearsal fantasy were written about
18 and published for the first time in the early 1990s
19 by Roy Hazelwood. And Roy Hazelwood was with the
20 behavioral sciences unit at the FBI and did a lot of
21 work in terms of extreme sexual offending, and he
22 developed these five components to understand the
23 structure of rehearsal fantasy.

24 Q Would you please start with the top one,
25 situational, and describe to the jury what the term

1 means and how it relates to rehearsal fantasy.

2 A Yes. Situational refers to the actual
3 situation in which the object will be contacted by
4 the perpetrator, or the victim will be first engaged
5 by the perpetrator.

6 And it relates to the rehearsal fantasy
7 because it has the characteristics by which the
8 initial sexual assault and then the killing or the
9 killing and the sexual assault is done by the
10 perpetrator.

11 So, for instance, an example of a
12 situational element would be a blitz attack on the
13 victim. Another example would be to abduct the
14 victim and take the victim to a place and abduct her
15 through a ruse or a con.

16 Q And the second term, paraphilic?

17 A Yes. Paraphilic is a technical term that
18 means a sexually abnormal desire. Paraphilia, if you
19 break it out, philia means a love for, philic, a love
20 for; para means outside or beyond what is considered
21 normal.

22 There are now about 14 paraphilias that are
23 diagnosable; among them a pedophilia, that's a love
24 for children, a sexual love for children. Another
25 paraphilia is a transvestism, where there is a desire

1 to dress up as a member of the opposite sex.

2 And typically in rehearsal fantasy there is
3 an identified paraphilia, and this refers to the act
4 which the person -- the sexual act which the person
5 desires to carry out on the victim. This is
6 typically rehearsed in fantasy, and also is tied in
7 specifically with the signature component of the
8 sexual homicide.

9 Q Please continue with demographic.

10 A Demographic described the characteristics of
11 the preferred victim. These can be very general,
12 such as a child under the age of 10; or they could be
13 very specific, such as an elderly woman who has --
14 who lives alone and has gray hair. It describes,
15 again, typically, the physical characteristics of the
16 victim that is being sought out by the sexual
17 homicide perpetrator.

18 Q And relational?

19 A Relational describes the relationship in the
20 fantasy, the preferred relationship in the fantasy.
21 In the case of a sexual sadist, the relational
22 component might be that he wants his victim to be a
23 sex slave for him and to stay in his place of
24 abduction for a number of days or weeks while he
25 performs certain sexual acts on her.

1 In another case, the relational component
2 may just be a preference that the victim be a
3 complete stranger and be unknown to the perpetrator.
4 In another case, the relational component may be a
5 person who doesn't know the perpetrator, but the
6 perpetrator knows the other person from a distance;
7 in other words, has gathered long-distance data on
8 the victim.

9 Q And the last category, self-perceptual?

10 A Yes. This is the element that describes how
11 the perpetrator wants to see himself and how he wants
12 to feel during the rehearsal fantasy and hopefully
13 during the sexual homicide, if it is carried out.

14 And the self-perceptual could carry a range
15 of characteristics of the individual; but typically
16 in rehearsal fantasy, there is a component of being
17 the dominant one, the one that is in control, in the
18 case of sexual homicide rehearsal fantasy.

19 Q In your review of the materials that you
20 were provided and the productions, did you find
21 groupings that fit within these categories of
22 rehearsal fantasy?

23 A Yes, I did.

24 THE COURT: Why don't we take a break there
25 and come back with that question, okay? Let's take

1 the morning recess. Please rise as the jury leaves.
2 We'll be in recess.

3 (A recess was taken from 9:55 a.m. until
4 10:10 a.m.)

5 THE COURT: Please return the jury.

6 (The jury entered the courtroom.)

7 THE COURT: Please be seated. You may
8 continue.

9 Q (By Mr. Gilmore) Dr. Meloy, before going
10 through each of the individual categories, I would
11 like to ask you if there is generally accepted in the
12 literature, in your experience, a figure as to the
13 frequency of the occurrence in sexual homicide.

14 A Yes.

15 Q And what would that be?

16 A The data indicates -- and this is generally
17 data from the FBI uniform crime reports, that sexual
18 homicide occurs in less than 1 percent of homicides
19 committed in the United States each year.

20 Q I think just prior to the break, I was
21 asking you if you had an opportunity, in your review
22 of the productions of Mr. Masters that were provided
23 to you by the Fort Collins Police Department, to
24 group references within those productions. You
25 previously talked about the number of times certain

1 categories appeared.

2 Did these categories then seem to fall
3 within the five categories of rehearsal fantasy?

4 A Yes.

5 Q Beginning, again, with the situational
6 category, did you determine how that category was
7 reflected in the productions?

8 A Yes. In terms of the situational category
9 in the productions; namely, both the narratives as
10 well as the drawings, there was items that related to
11 surprise or blitz attack.

12 Q And, primarily, did these occur in the
13 narratives?

14 A It was primarily in the narratives, correct.

15 Q And, again, for the record, how many times
16 did the -- was the reference made to a surprise
17 attack or sneak attack or a blitz attack that you
18 found in the narratives?

19 A I found 126 items.

20 Q Continuing with the paraphilic category, did
21 you identify a paraphilic representation within the
22 productions?

23 A Yes, I did.

24 Q And on the screen I've noticed that the word
25 "picquerism" is indicated as a paraphilic

1 representation?

2 A Yes.

3 Q Would you, first of all, define for the jury
4 what picquerism means?

5 A Yes. Picquerism is a paraphilic behavior in
6 which a cutting instrument is used on a victim for
7 sexual pleasure, and that cutting instrument could be
8 an instrument that cuts in a variety of ways. It
9 could penetrate in a variety of ways.

10 And typically it is an instrument that
11 represents, not only in fantasy, but also in
12 emotional and sexual arousal, the act of penetration
13 of the person and has a sexual meaning for the
14 individual. It is -- the term itself is derived from
15 the French "piquer," which means to cut or to stab or
16 to penetrate.

17 Q Did you find evidence in the productions of
18 preferences that you felt fell within the category of
19 picquerism?

20 A Yes, I did.

21 Q I'd like to show you a number of slides, if
22 you could just briefly review them as we go along and
23 relate your opinion as to how they fall within that
24 general category of picquerism.

25 This has previously been identified as part

1 of the productions of Mr. Masters. Would you speak
2 to that as it relates to picquerism?

3 A Yes. This is, in my mind, a representation
4 of the fictional character Freddie Kruegger,
5 originally seen in the first Nightmare on Elm Street
6 movie, and it's a representation of him and his hand
7 with stiletto blades extending from four fingers of
8 the hand.

9 Q And how does this category or the stiletto
10 blades relate to the paraphilia of picquerism?

11 A In the fictional behavior of Freddie
12 Kruegger, he used his knife-bladed hand to cut and to
13 penetrate and to mutilate and stab generally women in
14 the movies that were done on this fictional
15 character.

16 Q The next slide?

17 A This has a representation of several
18 items -- excuse me -- related to picquerism. First
19 of all, we have an interest in drawing various
20 penetrating cutting instruments. We see -- we see an
21 arrow and then four different knives, and then also
22 we have a butterfly knife represented here.

23 We also have a drawing of, again, Freddie
24 Kruegger, identified by the horizontal stripes on his
25 sweatshirt, his scarred face, and a hat. And then

1 also the four stiletto-like knives coming out of his
2 hand, and that represents the picqueristic nature or
3 the interest in cutting, stabbing, slicing
4 instruments in this particular drawing.

5 Here we have another drawing. And my
6 attention was taken to this particular point where we
7 have a hand holding what appears to be a
8 survival-like knife with an upper serrated edge and
9 then also something dripping from the knife. And,
10 again, this represents a drawing or an interest in
11 stabbing or cutting, using a sharp instrument.

12 This, again, is another drawing where we
13 have the hand of Freddie Kruegger and the four
14 stiletto-like blades emerging out of a victim where
15 there is cutting and dismemberment of the body. We
16 see the separation here of the leg. We see the
17 evisceration of the victim in this case. We see
18 blood pooling in what I would assume would be
19 intestines here. We also see the removal,
20 dismemberment of an arm here.

21 Then we also see the -- a characteristic
22 that appears in relationship to the Freddie
23 Kruegger-like cutting instrument, and that is cutting
24 marks along the side -- the right side of the face of
25 the horizontal --

1 MR. CHAMBERS: Your Honor, excuse me. I
2 object to this testimony. The exhibit speaks for
3 itself. The witness is simply up here describing
4 what the picture is. As I understand the Court's
5 ruling, he can express opinions as to its relation to
6 fantasy structuring, but that's not what's happening
7 with this question and answer.

8 THE COURT: He may relate what he observes
9 briefly, but not for him to interpret the picture or
10 give an interpretation. That's not his role, and
11 that's not what he's allowed to do.

12 MR. GILMORE: Thank you, your Honor.

13 Q (By Mr. Gilmore) In this slide, do you
14 find any evidence of picquerism?

15 A We have the evidence in the use of the arrow
16 to penetrate, the representation here of the
17 stiletto-like fingers on the Kruegger figure, and a
18 nail penetrating through the tongue of a person here
19 into a -- into a board, and then we also have a
20 person cut open here.

21 Q Thank you. Do you find any evidence of
22 picquerism in the next slide?

23 A Yes. We have evidence of sharp semicircular
24 blades here, cutting instruments, in relationship to
25 a person. We also have a knife here in relationship

1 to the cutting of a person.

2 Q Next slide. In regards to this particular
3 slide, again do you find any evidence of picquerism?

4 A Yes. We have a knife here in the left hand
5 being used to cut into a vagina.

6 Q That's your opinion, that that relates --
7 appears to you to be a vagina?

8 A Correct.

9 Q Next slide?

10 A Here we -- it looks like a survival knife
11 with a serrated edge being held by an individual, and
12 some dismemberment or cutting of the individual who
13 appears to have a soldier helmet on.

14 Q Would this, again, be a reference to Freddie
15 Kruegger?

16 A Correct.

17 Q The same comments you made earlier?

18 A Yes.

19 MR. CHAMBERS: Judge, I have the same
20 objection.

21 THE COURT: Okay. I think it's -- please
22 don't expand on it. Just briefly identify just
23 areas. I think it's the follow-up questions that the
24 objection is appropriate to. Please continue.

25 Q (By Mr. Gilmore) Did you find any evidence

1 in this slide of references to picquerism?

2 A Yes. A series of knives.

3 Q Thank you. And, likewise, in this slide?

4 A Yes. This is a knife.

5 Q Do you find any evidence in this particular
6 slide of reference to picquerism?

7 A Yes. We have a knife being cut into the
8 abdominal area of an individual.

9 Q Next slide?

10 A We have a knife being used to cut into the
11 throat of an individual.

12 Q Next slide?

13 A Yes. Here we have an individual holding two
14 knives and what appears to be blood dripping from the
15 individual holding the knives, and a dismembered
16 victim. This appears to be a survival knife.

17 MR. CHAMBERS: Judge, objection.

18 THE COURT: Once again, just answer the
19 questions asked and don't make comments beyond that.

20 Q (By Mr. Gilmore) Am I correct in
21 presuming, then, that your opinion is that knives are
22 evidence of picquerism?

23 A They're evidence of it if they're associated
24 with -- additionally associated with cutting into a
25 human being.

1 Q Returning back to the original slide then,
2 in the demographic category, did you determine a
3 category of representations within the productions
4 that you felt fell within the demographic category?

5 A Yes.

6 Q What was that category?

7 A Vulnerable females.

8 Q Did you find a number of references within
9 the materials to the concept of vulnerable females?

10 A Yes.

11 Q Again, I'm not going to ask you specific
12 questions, but would these be examples of your
13 opinion regarding vulnerable females?

14 A Yes.

15 Q This slide, each of these slides would be
16 representative of that category?

17 A Yes.

18 MR. CHAMBERS: I think, for the record, we
19 need to be putting on the record what slides are
20 being shown, your Honor. I don't object if
21 Mr. Gilmore just states it.

22 THE COURT: JT-109.

23 Q (By Mr. Gilmore) The next slide is -- I
24 believe that was in evidence. For the record, we
25 could refer to it as JT-109A P-47. Did you feel this

1 fell within the demographic category of vulnerable
2 females?

3 A Yes.

4 Q Next slide. This is part of the -- for the
5 record, the narratives. Can you read the slide,
6 first of all?

7 A Would you like me to read? Yes, I can read
8 it.

9 Q For the record, this is JT-113A page 64. Is
10 there a reference, I believe, about the fourth line,
11 to females?

12 A Yes.

13 Q And did you feel that was a reference to the
14 idea of vulnerable females?

15 A Yes.

16 Q Continuing with the rehearsal fantasy
17 categorizations, then, under relational, did you feel
18 there were certain items in the productions that
19 related to that category?

20 A Yes.

21 Q And did you group them under a heading of
22 stranger?

23 A Yes.

24 Q Would you explain to the jury how that
25 categorization was arrived at?

1 A That categorization refers to material in
2 which a person or persons unknown to the fantasy
3 characters would die or be victimized by the
4 perpetrator, typically in the narratives.

5 Q Would these have a relationship, then, to
6 the characters in the narrative or be, I believe you
7 said, strangers?

8 A Sometimes there were relationships, but
9 there were also many instances of killing that were
10 related to a stranger as a victim.

11 Q And, finally, within the character of
12 self-perceptual, did you find evidence of that in the
13 productions?

14 A Yes.

15 Q Would you relate to the jury the nature of
16 that finding?

17 A The nature of that finding was the fictional
18 stories referring to a character named Mace, and that
19 character I also found through the self-as-aggressor
20 category tied into the case.

21 Q And describing the self-perceptual category
22 then, in terms of the rehearsal fantasy. Can you
23 explain to the jury the thought process that would be
24 going on in an individual that is fantasizing and
25 perceiving himself to be someone that he isn't?

1 A I would, in the productions --

2 MR. CHAMBERS: Excuse me. I believe this is
3 calling for an opinion, just so it's clear.

4 Q (By Mr. Gilmore) Your opinion?

5 A In my opinion, in the productions I would
6 look for evidence that there was a relationship, a
7 personal identification between the producer of the
8 narratives and the fictional character that had been
9 created in the narratives.

10 And that is specific references between the
11 producer of the narratives, in terms of his personal
12 name, and the fictional character identifying himself
13 as that person.

14 Q Okay. Did you find references of that
15 nature in the productions?

16 A Yes.

17 Q Again, this is one of, I believe, the
18 narratives, if you recognize that?

19 A Yes.

20 Q Is there a reference to the character
21 identifying himself with the character Mace?

22 A Yes.

23 Q Did you find other references throughout the
24 narratives in which the writer would identify himself
25 with the main character Mace?

1 A Yes.

2 Q Do you recall specifically any of those
3 references?

4 A Yes, I did.

5 Q Can you quote one or two of those references
6 to --

7 A Yes. It had been about five years since I'd
8 been in a real battle. I was called Mace, but my
9 real name was Tim.

10 Q And are there a number of similar references
11 between Mace and Tim Masters?

12 A Correct.

13 Q Received into evidence, again, for the
14 record, of this slide, JT-109D, did there appear to
15 be a recruiting form for Mr. Masters into the Recon
16 Army?

17 A Correct.

18 Q Generally, in your reading of the narrative,
19 how did Mr. Masters perceive himself to be in terms
20 of the character Mace?

21 MR. CHAMBERS: In his opinion?

22 MR. GILMORE: Strike that, your Honor.

23 Q (By Mr. Gilmore) In your opinion, how did
24 Mr. Masters perceive himself to be as he related to
25 the character Mace in his productions?

1 A The Mace character was written about a cold,
2 unfeeling individual, who killed numbers of
3 individuals and was a member of a Army force referred
4 to as the Recons, and the emotional state of Mace was
5 repeatedly characterized as being detached with the
6 only present feeling being one of anger.

7 Q You earlier in your testimony described a
8 category that I believe we called, or you called, the
9 color red?

10 A Correct.

11 Q Do you recall that?

12 A Yes.

13 Q Were you able to further divide or
14 subcategorize that color --

15 A Yes.

16 Q -- that category?

17 A Yes.

18 Q And did the references to the color red seem
19 to divide themselves into different groupings?

20 A Yes.

21 Q What were those groupings?

22 A The three groupings were, one was blood; two
23 was a reference to the Reds, who were the enemy in
24 the fictional accounts; and three were redheaded
25 women or girls.

1 Q We also previously referred to the pairing
2 of sex and violence, and you discussed the Pavlovian
3 relationship between them --

4 A Yes.

5 Q -- do you recall that?

6 Do you find such evidence of pairing in the
7 productions?

8 A Yes.

9 Q I'm sorry, let me back up a minute.

10 In the self-perceptual category that we
11 talked about in the materials seized from Ridgecrest,
12 California, did it appear that Mr. Masters was still
13 engaging in his fantasies in a degree of
14 self-perception?

15 A Yes.

16 Q And did he have a new character referred to
17 in the narratives of Madic?

18 A Yes.

19 Q Did you find evidence, again, of the direct
20 correlation between Mr. Masters assuming the role of
21 a different individual?

22 A Yes.

23 Q Thank you. For the record, JT-109A P-51, do
24 you find any pairing of sex and violence in this
25 production?

1 A Yes.

2 Q Would you please describe to the jury what
3 you found?

4 A There is a drawing of Velvet magazine up
5 here, which is a pornographic magazine, and then two
6 knives.

7 Q For the record, JT-113 P-03, do you find any
8 evidence of pairing of sex and violence in this
9 production?

10 A Yes.

11 Q Would you describe what your opinion is as
12 to the pairing here?

13 A The pairing is the woman is -- with lipstick
14 on and a brassiere and having a gun held to the back
15 of her head with a male saying, "You die, Bitch."

16 Q JT-109D P-09. Do you find any pairing of
17 sex and violence in this drawing?

18 A Yes.

19 Q Briefly, what evidence did you find of it?

20 A In this pulled-out portion, there is a woman
21 being sexually penetrated from behind, and a man
22 stating, "Hey, That's my wife you're fucking."

23 Q And there appears to be violence in
24 connection with the drawing, or not?

25 A Yes. In terms of his what appears to be

1 upset and anger at what's happening.

2 Q Does there also appear to be a fire and
3 people dying?

4 A Yes. In the juxtaposed is a fire with
5 people dying with the word "People's."

6 Q I don't believe that slide relates to the
7 sex and violence. Excuse me. Would you relate --
8 I'm sorry.

9 JT-109C P-07. Do you find any relationship
10 between sex and violence in this drawing?

11 A Yes.

12 Q Would you comment on what that is, please?

13 A It is in the phrases above the skull's head,
14 "Someone Raped and killed me, now Im gonna get even."
15 The raping, the sex, the killing being the violence.

16 Q In your review of the materials seized from
17 Ridgecrest, California, did you find any evidence of
18 a continued relationship or pairing of sex and
19 violence?

20 A Yes.

21 Q Particularly in the -- one of the narratives
22 involving the character Madic that we referred to
23 earlier, do you recall quoting that narrative?

24 A Yes. I can't quote the quote to you off the
25 top of my head, but I do recall that.

1 Q Do you recall generally the statement with
2 that narrative?

3 A Actually, I don't at the moment, no. I'd be
4 happy to look it up.

5 Q Do you think you have it on the podium with
6 you?

7 A Uh-huh. There is a statement that I found.

8 Q Would you repeat that, please?

9 A Yes. It gave me a hard-on to see at least
10 10 Reds drop instantly.

11 Q And, again, in your opinion that would be
12 the pairing, again, of sex and violence?

13 A Correct.

14 Q Dr. Meloy, based on your experience and your
15 expertise and, again, as reflected in the literature,
16 is there a generally accepted principle that the
17 sexual homicide perpetrator will return to the scene
18 of the crime?

19 A There is data that some sexual homicide
20 perpetrators will return to the scene of the crime.

21 Q And in your opinion, what purpose does that
22 serve?

23 A In the FBI study that was published in 1988,
24 the two main purposes in a sample of approximately
25 110 cases was, one, to relive the fantasy of the

1 sexual homicide; and, two, to participate in the
2 ongoing criminal investigation of the killing.

3 Q Lastly, Dr. Meloy, do you have an opinion
4 then, based on the work that you've done in this
5 case, your experience, and expertise, as to whether
6 or not the productions of Mr. Masters that you
7 reviewed are, in fact, fantasies?

8 A Yes.

9 MR. GILMORE: Thank you. I have no further
10 questions, your Honor.

11 THE COURT: You may examine.

12 MR. CHAMBERS: If I could have just one
13 moment, your Honor.

14 CROSS-EXAMINATION

15 BY MR. CHAMBERS:

16 Q Hello again, Doctor.

17 A Hello.

18 Q Doctor, are you ever wrong?

19 A Yes.

20 Q What's your error rate?

21 MR. GILMORE: Your Honor, I'm going to
22 object unless there's some foundation as to what we
23 are talking about.

24 THE COURT: Please rephrase your question.

25 Q (By Mr. Chambers) How often are you wrong?

1 MR. GILMORE: Again, what --

2 THE COURT: Please rephrase your question.

3 Q (By Mr. Chambers) In terms of your
4 opinion, how often are you wrong, or do you know?

5 A I've never -- I've never done a formal study
6 of my error rate in terms of my professional opinion.

7 Q You frequently testify to your opinions in
8 court?

9 A Actually, I wouldn't characterize it as
10 frequently. It has been frequent recently, but
11 generally not.

12 Q Your opinions are not always accepted in
13 court?

14 A Correct.

15 Q Not always accepted by jurors?

16 A Correct.

17 Q You have previously testified in this state;
18 is that correct?

19 A Yes.

20 Q I believe most recently you testified in
21 Colorado Springs?

22 A Correct.

23 Q You testified as a witness on behalf of the
24 defense in that case?

25 A Correct.

1 Q And I believe the client's name was Lucas
2 Salmon?

3 A Correct.

4 Q And Mr. Salmon was found guilty of
5 first-degree murder?

6 A Correct.

7 Q In that case you testified that Lucas Salmon
8 did not and could not --

9 MR. GILMORE: I object to the relevancy of
10 prior testimony. He's been qualified as an expert;
11 and whether he testified and whether the result of
12 that case, without getting into all the facts of that
13 case --

14 THE COURT: We're not here to retry another
15 case.

16 MR. CHAMBERS: I don't intend to go into
17 facts, your Honor.

18 THE COURT: I think you can ask him what
19 opinions he gave in that case, and that's --

20 MR. CHAMBERS: That's all I'm going to do.

21 THE COURT: -- that's all we'll allow.

22 MR. GILMORE: I would object again, as to
23 whether that was a sexual homicide or not.

24 THE COURT: I think that's appropriate, was
25 it a sexual homicide? What was the opinion?

1 Q (By Mr. Chambers) That was a sexual
2 homicide, wasn't it?

3 A Correct.

4 Q And in that case you testified that Lucas
5 Salmon did not deliberate?

6 A According to Colorado law, correct.

7 Q But the jury found beyond a reasonable doubt
8 that he did deliberate?

9 A Correct.

10 Q So they found beyond a reasonable doubt that
11 you were wrong?

12 A They didn't -- yes, they concluded an
13 opinion that was not my opinion, correct.

14 Q Now, I believe you said you bill your time
15 at \$300 an hour?

16 A Correct.

17 Q And you've been billing your time in this
18 case at \$300 an hour?

19 A Yes.

20 Q And you put in over 100 hours?

21 A Yes.

22 Q How many hours have you put in?

23 A I think 120 hours to date.

24 Q You talked about some of the books that
25 you've written; for instance, you wrote The

1 Psychopathic Mind?

2 A Yes.

3 Q This is your work?

4 A Yes.

5 Q And it's a work that you relied on somewhat
6 in forming your opinions and testifying today?

7 A It provides background material for my
8 knowledge base, yes.

9 Q When you write a book such as this, it gets
10 reviewed?

11 A Correct.

12 Q This book was reviewed?

13 A Yes.

14 Q It was reviewed in Psychoanalytic Quarterly?

15 A I don't know that. I didn't see that
16 review.

17 Q Are you familiar with the Louis Schlesinger
18 review?

19 A Yes, I am familiar with that one.

20 Q Where he said that, Meloy's idea of
21 psychopathy includes such a widely diverse group of
22 individuals that one must question the concept's
23 usefulness as a psychodynamic formulation since it
24 can apply to just about anyone?

25 A What's the question?

1 Q You're familiar with that review of your
2 work?

3 A Yes. I didn't remember him specifically
4 saying that.

5 Q Now, your education is you have a Ph.D. in
6 clinical psychology; is that accurate?

7 A Correct.

8 Q And throughout your testimony you used the
9 word "science"?

10 A Correct.

11 Q Used the word science to refer to your
12 discipline?

13 A Correct.

14 Q It is certainly an open question as to
15 whether or not psychology is a science?

16 A Not to me.

17 Q There are those who disagree with you?

18 A Yes.

19 Q For instance, are you familiar with the
20 article by Donald Fiske, in American Psychology,
21 where he poses the question, Is psychology a science?
22 And he answers, Most psychologists see themselves as
23 following the scientific method or, most precisely, a
24 scientific method, but it is clear that psychology is
25 not a science?

1 A I'm not familiar with that article.

2 Q You disagree with that?

3 A Yes.

4 Q You disagree with the comments of J. Zusman
5 in his address to the 1990 annual meeting of the
6 American Psychological Association, where he says,
7 The scientific foundation of mental health testimony
8 is seriously deficient?

9 A This is Jay Ziskin, the attorney?

10 Q J. Zusman.

11 A No. That sounds like something Jay Ziskin
12 would say, but I don't know who J. Zusman is.

13 Q You disagree with that?

14 A Yes.

15 Q Do you disagree with McFall in his address
16 to the Society for a Science of Clinical Psychology,
17 where he said, "'It is time to declare publicly that
18 much of what goes on under the banner of clinical
19 psychology today is not scientifically valid,
20 appropriate or acceptable'"? Agree?

21 A I think there are some things that occur
22 within the profession of psychology that I would not
23 agree with, but I generally disagree with that
24 statement in terms of characterizing the entire
25 profession as not being science.

1 Q You are familiar with a textbook written by
2 Hall and Lindzey?

3 A Well, I'm familiar with a textbook they did
4 on learning theory that was part of my training, but
5 I'm not sure what textbook you're referring to. I
6 know they've done a number.

7 Q You used the Hall and Lindzey textbook in
8 your graduate --

9 A The one on learning theory, yes.

10 Q In that textbook they say, "The fact of the
11 matter is that all theories of behavior are pretty
12 poor theories and all of them leave much to be
13 desired in the way of scientific proof. Psychology
14 has a long way to go before it can be called an exact
15 science." Do you disagree with that?

16 A There may have been some truth in that when
17 that book was published, which I think was about 30
18 years ago.

19 Q The fact of the matter is that clinical
20 psychologists or clinical psychology cannot agree on
21 its scientific base?

22 A I disagree with that.

23 Q Clinical psychology cannot agree on what is
24 scientific?

25 A What is the question?

1 Q Can clinical psychology agree on what is
2 scientific?

3 A Yes.

4 Q Would you agree with the statement, Across
5 the full range of the field of clinical psychology,
6 about anything goes?

7 A I would not agree with that.

8 Q Are you familiar with the article by
9 Professor Sechrest in the Journal of Consulting and
10 Clinical Psychology when he said, "Clinical
11 psychology today cannot agree on its scientific base
12 because it cannot even agree on what is scientific.
13 Across the full range of the field, apparently about
14 anything goes"? You disagree with that?

15 A I disagree with that.

16 Q That's a peer-reviewed article, right?

17 A I would assume so if it's in that journal,
18 correct.

19 Q The nature of psychology is somewhat
20 dictated by the nature of the subject matter. Would
21 you agree with that?

22 A I think scientific -- various scientific
23 disciplines are always dictated by the nature of what
24 they're studying.

25 Q Absolutely. For instance, the nature of

1 chemistry is dictated by the nature of chemists --
2 chemicals?

3 A Chemicals, correct.

4 Q And the nature of psychology as a scientific
5 discipline is related to the subject matter, which is
6 human behavior and the workings of the human mind?

7 A Correct.

8 Q Mental-health disciplines have been
9 described by others as soft sciences. Are you
10 familiar with that designation?

11 A Yes.

12 Q They lack the precision of natural sciences?

13 A I think in some areas of applied psychology,
14 such as mental-health psychotherapy, that is true,
15 and I think in other areas it is not true.

16 Q Because psychology is or has been described
17 as a soft science, the validity and the reliability
18 of the observations and inferences made by
19 psychologists are often called into question?

20 A I don't think that's true.

21 Q Are you familiar with the article in
22 Psychiatry and the Law, a peer-reviewed publication,
23 by Jeffrey Whitman, where he says, "The mental health
24 disciplines have been described as 'soft' sciences
25 that lack the precision and 'cumulative character' of

1 many of the natural sciences, a state of affairs that
2 often calls into question the validity and
3 reliability of our observations and inferences"?

4 Do you disagree with that?

5 A I generally disagree with that, yes.

6 Q Would you agree with me, sir, that there is
7 a difference between the ability to explain and the
8 ability to predict?

9 A Yes.

10 Q When we talked about different scientific
11 disciplines, some advanced scientific knowledge is
12 characterized by an ability to predict?

13 A I would assume in some cases that is true in
14 other disciplines.

15 Q For instance, chemistry. If certain
16 chemicals are mixed, chemists can predict the
17 reaction?

18 A That is probably generally true.

19 Q Astronomy. Astronomers can predict years in
20 advance when an eclipse will occur, and they can
21 predict it to within seconds?

22 A I think when you focus on eclipses, that's
23 correct.

24 Q And would it be fair to say that the ability
25 to predict is a hallmark of true scientific

1 knowledge?

2 A In certain areas of certain disciplines,
3 absent discovery of new phenomenon that then needs to
4 be studied, which alters prediction in the future.

5 Q Would you agree that a measure of validity
6 of a science is its ability to predict?

7 A That's one measure of validity. It is
8 called predictive validity. There are others.

9 Q In fact, a measure of the validity of
10 forensic psychology's study of sexual homicide is the
11 ability to predict?

12 A That's one measure of validity, yes.

13 Q Predictive studies in sexual homicide have
14 not been done?

15 A Correct.

16 Q You mentioned Mr. Ziskin. You're familiar
17 with him?

18 A Yes.

19 Q You're familiar with his work?

20 A Yes.

21 Q You're familiar with Ziskin's three-volume
22 set?

23 A Actually, yes. I'm familiar with later
24 editions than I think the one you have, unless that's
25 the latest edition.

1 Q This is a couple of months ago.

2 A Okay. Then that must be the newest edition.

3 Q Plus the sup?

4 A No, I'm not familiar with the supplement.

5 Q (Mr. Chambers dropped books on the floor.)

6 Good thing I'm a lawyer, not a surgeon.

7 Ziskin, as you said, is a lawyer?

8 A Correct. Yes.

9 Q And he also has a Ph.D. in clinical
10 psychology from the University of Southern
11 California?

12 A Correct.

13 Q Do you disagree with Ziskin's statement
14 that, "If tests of prediction have not been performed
15 and passed, then no matter how persuasive an
16 explanation may seem, it cannot be considered
17 scientifically established, proven or trustworthy"?

18 A I would disagree with that.

19 Q Would it be fair to say that in forming the
20 opinions that you expressed today, you have relied on
21 your years of experience?

22 A That's been a component of what I've relied
23 on, yes.

24 Q Sir, would it be fair to say that research
25 shows that the validity of clinical judgment and the

1 amount of clinical experience are unrelated?

2 A There have been some studies in certain
3 areas that have shown that, correct.

4 Q For instance, the study by Robyn Dawes,
5 published in Behavioral Sciences & the Law, where the
6 findings were, "Research shows that the validity of
7 clinical judgment and amount of clinical experience
8 are unrelated"?

9 A What was the context of that study? Was
10 that --

11 Q Mental health experts performing diagnostic
12 and predictive judgments.

13 A Yes. I accept your representation of his
14 findings, yes.

15 Q The fact of the matter is, there is really
16 no relationship between the amount of clinical
17 training and experience and accuracy of clinical
18 judgments?

19 A That hasn't been measured in the area of
20 forensic work yet.

21 Q Are you familiar with the work, the study,
22 by Louis Goldberg, published in American
23 Psychologist, where he finds that the amount of
24 professional training and experience of the judge or
25 clinician does not relate to his judgmental accuracy?

1 Are you familiar with that?

2 A Not that study, no. What was he -- what
3 were they attempting to predict?

4 Q He was measuring the accuracy of clinical
5 judgments by clinical psychologists, correct?

6 A Yes. I am not familiar with the study, so I
7 don't know what the context was.

8 Q Are you acquainted with a study by
9 Professor David Rosenhan, titled on being sane in
10 insane places?

11 A Yes, I am.

12 Q What that study shows is, that study
13 demonstrates a 100 percent error rate among
14 mental-health professionals?

15 A For voluntary psychiatric admission
16 diagnoses of psychosis.

17 Q 100 percent error rate?

18 A Correct.

19 Q They were wrong every time in that study?

20 A In the sample that was collected, yes.

21 Q Are you familiar with the concept of base
22 rates?

23 A Yes, I am.

24 Q Base rate is the frequency with which
25 something occurs?

1 A In a given time frame. That's an important
2 fourth element -- or third element, I'm sorry.

3 Q So if a symptom appears in 1 out of
4 100 people, it has a base rate of 1 percent?

5 A You have to have the time element. So if it
6 was a symptom over the course of one year, appeared
7 in 1 person out of 100, it would have a base rate of
8 1 percent, correct.

9 Q Would you agree with me that base rate
10 information is critical in order to know the value of
11 diagnostic science?

12 A Yes. If you're speaking specifically about
13 diagnosis, I also agree with that.

14 Q What was the base rate among 15-year-old
15 males in 1987 for making violent drawings?

16 A I do not know.

17 Q Do you know Wayne Lawson?

18 A Do I know him personally? No.

19 Q Do you know who he is?

20 A Yes. I've never met him, but I know from
21 the material in the case, yes.

22 Q Are you familiar with teachers at Fort
23 Collins High School who said 70, 80 percent of the
24 students in the school participated in violent
25 drawings?

1 MR. GILMORE: I'm going to object. I
2 haven't heard that in the evidence at all.

3 MR. CHAMBERS: Well, let me -- I can
4 rephrase the question.

5 THE COURT: Please rephrase the question.

6 Q (By Mr. Chambers) You reviewed all the
7 evidence in this case, all the discovery prepared by
8 the police. Is that your testimony?

9 A Correct.

10 Q So you're familiar with that information?

11 A Not specifically the way you recounted it.
12 I have a different familiarity with it --

13 Q Okay.

14 A -- that I'd be happy to state.

15 Q Are you familiar with the concept of
16 confirmatory bias? Let me define it for you.

17 A Yes. Actually, I think if you ask me to
18 define it, it probably wouldn't be as clear as I'd
19 like it to be.

20 Q Okay. I'm not trying to trick you.

21 Are you familiar with the tendency to
22 maintain beliefs even in the face of counterevidence?

23 A Yes.

24 Q It's the idea that people get stuck on a
25 belief, correct?

1 A Correct.

2 Q And what they do is, they just allow their
3 belief structures to be confirmed?

4 A Correct.

5 Q No matter what the evidence?

6 A Yes.

7 Q It also involves paying attention to
8 evidence that supports their belief and disregarding
9 counterevidence?

10 A Correct.

11 Q Would you agree with me that professional
12 people are as susceptible to confirmatory bias as any
13 other?

14 A Yes. We have to guard against that.

15 Q Police officers are susceptible to it?

16 A Yes.

17 Q Now, you talked about the volume of material
18 that you reviewed in this case. You reviewed a large
19 volume of material?

20 A A large volume of material.

21 Q Are you of the opinion that this expanded
22 database permits more accurate conclusion?

23 A It permits accurate conclusion up to a
24 point, and then we just have, in a sense, repetitive
25 validation and support of the conclusion.

1 Q There's been research done that shows that
2 the accuracy of psychological judgment does not
3 increase significantly with increased information?

4 A That was the point I just made.

5 MR. CHAMBERS: One moment, please, your
6 Honor.

7 (Brief pause.)

8 Q (By Mr. Chambers) You talked during your
9 direct examination about the idea of displaying the
10 victim?

11 A Correct.

12 Q And what you talked about is the frequent
13 occurrence that in sexual homicides the victim is
14 displayed?

15 A Yes. That does occur, I think,
16 approximately about half the time in the FBI
17 research.

18 Q Half the time. So half the time it doesn't
19 occur?

20 A Correct. The body would be hidden.

21 Q You also talked about the concept of posing.
22 And that is where it's a typical finding in sexual
23 homicides that the body is positioned in a particular
24 way?

25 A Yes.

1 Q Now, you talked about Robert Brittain's
2 work, and you called it a very important paper?

3 A Correct.

4 Q And in that work, Brittain said, and I
5 quote: "The victim is commonly found in the position
6 in which the criminal assault took place, without any
7 attempt, for example, to arrange the limbs"?

8 A Yes. Dr. Brittain said that.

9 MR. CHAMBERS: Could I have on the screen
10 the chart that you had, organized and disorganized,
11 please?

12 Q (By Mr. Chambers) We have back up on the
13 screen this chart. It's different characteristics of
14 an organized as opposed to a disorganized sexual
15 homicide. You testified to this previously?

16 A Yes.

17 Q And there is a distinction that you find
18 useful in analyzing sexual homicides?

19 A Yes.

20 Q And if you look at the very bottom, the last
21 two items under organized, typical to an organized
22 sexual homicide is the weapon is not at the scene?

23 A Correct.

24 Q And there is no forensic evidence at the
25 scene?

1 A Minimal forensic evidence, yes. Typically
2 evidence of it being cleaned or --

3 Q Such as there's a noticeable absence, or
4 typically an absence of forensic evidence linking the
5 perpetrator to the scene?

6 A Yes. That would probably be how they
7 characterize it.

8 Q And in those type of situations, it is
9 typical that the victim of the body -- the victim has
10 been transported, correct?

11 A Yes. That that would be in the organized
12 category, if in a case they occurred, both those
13 criteria were met.

14 Q That's why you have what you describe as
15 different scenes in organized sexual homicide: An
16 abduction scene, an assault scene, and a dump scene?

17 A Correct.

18 Q Now, you discussed at some length the
19 concept of fantasy, and you said on your direct
20 examination that the purpose of fantasy is to express
21 hostility towards women in a private way?

22 A Yes, I did say that, correct.

23 Q And so you're particularly interested in
24 private fantasies?

25 A Private fantasies are very important, yes.

1 Q The reason for that is people tend to be
2 more honest about what's inside their head when
3 they're expressing it in private as opposed to
4 sharing their thoughts with someone else?

5 A Yes. Particularly they wouldn't necessarily
6 express this kind of material to somebody that they
7 were very emotionally close to.

8 Q And rehearsal fantasy, in particular, is
9 something that is kept below the surface?

10 A Yes. I've described it as being
11 subterranean fantasy.

12 Q Very private?

13 A Private to people the person is invested in
14 emotionally, correct, where he has a relationship
15 with them.

16 Q Not talked about with other people?

17 A Well, carefully talked about, if talked
18 about at all, yes.

19 Q Well, you're aware that in this case the
20 drawings and productions of Tim Masters were openly
21 shared with other people?

22 A I don't know for a fact that the 2,200 pages
23 were.

24 Q You know who Wayne Lawson is?

25 A Correct. Again, as I said, I haven't met

1 him personally.

2 Q There are sexual homicides in which fantasy
3 played no role?

4 A Yes. No or minimal role if they were
5 particularly impulsive.

6 Q There are sexual homicides which are
7 spontaneous acts of violence?

8 A It appears a minority of sexual homicides
9 are that way.

10 Q There are sexual homicides which are
11 spontaneous acts of violence?

12 A Correct.

13 Q There are sexual homicides where violent
14 fantasy is not present?

15 A Or there is no data that supports that it
16 was present, correct.

17 Q Well, you're familiar with the work by
18 Prentky, Burgess, et al?

19 A Yes. The 1989 study?

20 Q Yes.

21 A Correct.

22 Q And their finding was that violent fantasy
23 was present in only 23 percent of single murderers?

24 A Correct.

25 Q And they also concluded by saying these

1 preliminary findings, based on a small sample of
2 offenders, provides tentative support for the
3 hypothesis that fantasy life may be importantly
4 related to repeated acts of sexual violence?

5 A Yes. I wondered about that low rate, the
6 23 percent. I did two things, was to look at other
7 research and then have a conversation with Robert
8 Prentky last week about it.

9 Q That was his finding when he did this study?

10 A That was his finding when he did that study,
11 correct.

12 Q Including the word tentative hypothesis and
13 may be important?

14 A Correct.

15 Q Let me return for just a moment to the
16 concept of base rates.

17 Would it be fair to say that the
18 significance of any link between fantasy and behavior
19 would be more obvious if normals did not engage in
20 sadistic fantasy?

21 A Correct.

22 Q And, in fact, in the work of MacCulloch that
23 you have described as being enormously important, he
24 makes that very point?

25 A I don't recall him making that point, but

1 I'd be happy to hear the statement that he made.

2 Q Well, he says, "The significance of the link
3 between prior fantasy and behaviour would be more
4 obvious if normals did not engage in sadistic
5 fantasy"?

6 A Yes. He did say that in the study.

7 Q And the research also shows that allegedly
8 normal men engage in sadistic fantasy?

9 A That is absolutely incorrect.

10 Q Well, MacCulloch in that very study which
11 you've called enormously important, says, A recent
12 study of sexual fantasies in 94 allegedly normal men
13 seemed to show that they engaged in fantasy which
14 was, in part, controlling and sadistic.

15 A This was the MacCulloch 1983 study?

16 Q The one that you called enormously
17 important.

18 A Yes. In the 1983 study, that is correct.
19 There's been other work since.

20 Q In fact, Prentky in his work that you rely
21 upon, says, "It is commonly accepted that 'normal'
22 people often have sexually deviant fantasies"?

23 A I don't know what you're quoting from. I'm
24 assuming it's the 1989 article?

25 Q The presumptive role of fantasy in serial

1 sexual homicide?

2 A Yes. He did say that then, and there has
3 been subsequent research which has shown that that
4 was incorrect.

5 Q In fact, sir, you engage in violent
6 fantasies?

7 A In sexually sadistic fantasies.

8 Q Violent fantasies?

9 A I have at times had angry fantasies where I
10 have violent images in my mind, and I spoke about
11 that actually in my second book.

12 Q You've had predatory fantasies?

13 A I did mention that at times I've had that,
14 yes.

15 Q What you say is -- you're talking about your
16 motivation for writing this work called Violent
17 Attachment -- my personal motivation is to understand
18 my own psychopathology, both the ontogenetic roots of
19 my occasional homicidal feelings, predatory
20 fantasies, and identifications with the nonhuman and
21 phylogenetic basis upon which I share these
22 intrapsychic capacities with other Homo sapiens?

23 A Yes. In plain English, I'm talking about
24 getting angry and wanting to hurt some people at
25 different times.

1 Q And you said that you engage in predatory
2 fantasies, that's where violence is actively sought
3 out?

4 A No. That's where there's some planning,
5 like to get back at somebody, like developing a plan
6 to get back at somebody that you're angry at.

7 Q Predatory violence is not actively seeking
8 out violence?

9 A I didn't say predatory violent fantasies.
10 That's a misquote.

11 Q Well, my own occasional homicidal feelings,
12 predatory fantasies?

13 A Right. I separated the two, just for
14 moments like this.

15 Q Are you having a violent fantasy now?

16 A No, actually, I'm not.

17 Q I just have a couple of questions for you
18 about your analysis of the drawings and writings of
19 Tim Masters.

20 You described categories for structuring an
21 analysis of fantasy or productions?

22 A Correct.

23 Q And the five categories are situational,
24 paraphilic, demographic, relational, and
25 self-perceptual?

1 A Yes. Those were not my suggested
2 categories. That was from other work.

3 Q Those are categories that you use and used
4 in your opinions today?

5 A Correct.

6 Q And I believe you expressed the view that
7 sexual fantasies are usually closely linked to the
8 particular crime?

9 A There will be components of the sexual
10 fantasy, yes, that will oftentimes fit quite closely
11 the facts of the sexual homicide that have been
12 expressed in a preoffense setting.

13 Q Close factual correlations between fantasies
14 and the facts of a particular homicide?

15 A Correct.

16 Q And the closer the productions of an
17 individual are tied to the details of particular
18 crime, the tie to the linkage between the fantasy and
19 the crime?

20 A Yes. The closer the details of the fantasy
21 productions and the details of the crime, the closer
22 the fit there, we get a fabric for understanding the
23 motivation for the sexual homicide.

24 Q Now, you've talked about one of the
25 categories being situational?

1 A Correct.

2 Q That's the situation in which the
3 perpetrator wants to encounter the victim?

4 A Correct.

5 Q As evidenced by his productions?

6 A Correct.

7 Q In all the productions you reviewed, there's
8 not a single production where a woman was stabbed in
9 the back?

10 A That's correct.

11 Q There are productions which show shooting,
12 drowning, bombing, being chopped up by a meat
13 grinder, being sawed in two by a saw; but not one by
14 a woman being stabbed in the back?

15 A Not specifically in the back, correct.

16 MR. CHAMBERS: I'm sorry, your Honor, just
17 trying to organize my thoughts here.

18 Q (By Mr. Chambers) Would it be fair to say
19 that many of Mr. Masters' productions had military
20 settings, military themes?

21 A Correct.

22 Q I want to direct your attention to a
23 particular production and ask you if you remember
24 reading this.

25 I quote: I turned my head quickly as if

1 expecting to see half the garrison behind me, but
2 there was no one. I turned back around in time to
3 catch the intense one running straight at me. He
4 couldn't have been more than 3 feet away. Damn, he
5 was fast. I drew the knife across the gook's throat
6 and then held it low for an upward thrust as the
7 intense one continued in so fast that he couldn't
8 stop to save his life. He saw my knife and realized
9 his mistake too late. He'd underestimated the wrong
10 person. When he was close enough, I thrust the knife
11 into his chest. It sank in up to the hilt.

12 There is nothing in that passage about
13 anybody being stabbed in the back, correct?

14 A Correct.

15 Q It's a stabbing in the chest?

16 A Yes.

17 Q And it is in a military setting?

18 A Correct.

19 Q You would agree with me, there's nothing
20 sexual about that?

21 A Correct.

22 Q However, you described that passage as being
23 a graphic portrayal of sexual homicide, have you not?

24 A I don't specifically remember doing that,
25 no. If you could show me where I did that.

1 Q I only have one copy of this.

2 MR. CHAMBERS: May I approach the witness
3 stand, your Honor?

4 Page 132. If I could just very briefly
5 examine from here, your Honor?

6 THE COURT: You may.

7 Q (By Mr. Chambers) Just so we're clear,
8 we're talking about the same thing: I drew the
9 knife, held it low for an upper thrust, the intense
10 one sank in up to the hilt, looked into his eyes --
11 and then, just, if you could review your comment.

12 A Yes. Well, the comment was not related to
13 that phrase. It's talking about, we see more graphic
14 portrayals of sexual homicide, but that wasn't
15 specifically to that -- those two lines. That's not
16 what I said.

17 Q Okay. The second category that you utilize
18 is what you refer to as paraphilic?

19 A Yes.

20 Q It's a reference to the sexual act that the
21 perpetrator wants to carry out?

22 A Correct.

23 Q It deals with actual specific sexual
24 activity?

25 A Correct. Or some civilized sexual activity.

1 Q Now, if we could pull up some of the
2 drawings that the witness looked at earlier, JT-97 is
3 the very first one.

4 Now, the paraphilic descriptor that you used
5 is picquerism?

6 A Correct.

7 Q Which means you're talking about actual
8 specific sexual activity involving a knife or cutting
9 instrument?

10 A Yes. It has two components to it: One is a
11 preoccupation with cutting instruments; and two is
12 the use of those cutting instruments to penetrate or
13 to slice or to cut into a human being.

14 Q And in sexual activity, when you --

15 A Correct. That the picquerism is sexualized.

16 Q JT-97 N-1. There's nothing sexual about
17 that drawing; would you agree?

18 A Correct.

19 Q JT-101 P-14? 14? P-14? Thank you. I'm
20 sorry.

21 There's nothing sexual about that?

22 A No. Just the blood dripping.

23 Q JT-108 N-32. Nothing sexual there?

24 A I'm not certain.

25 Q JT-109C P-48. Nothing sexual there?

1 A Correct.

2 Q JT-112A. Nothing sexual there?

3 A Correct.

4 Q JT-113 P-16 -- that's a good one. We can
5 use that one. There's nothing sexual there?

6 A There's nothing obviously sexual there.

7 Q Despite the fact that there's nothing sexual
8 in any of those drawings, in your direct examination
9 you said that each one of those drawings were
10 evidence of the paraphilia of picquerism?

11 A Correct. Because they contain the first
12 element that I just mentioned as examples.

13 Q You had developed some experience, some
14 expertise in Rorschach. I believe you discussed that
15 during your direct examination?

16 A Correct.

17 Q Rorschach is what's commonly or frequently
18 referred to as the inkblot test?

19 A Correct.

20 Q It's an instrument where the patient
21 responds to ambiguous inkblots, and conclusions are
22 drawn based upon the response?

23 A Correct. Some more ambiguous than others,
24 right.

25 Q You're familiar with the female anatomy?

1 A Correct.

2 MR. CHAMBERS: Can I have JT-109A P-40?

3 MS. BLAIR: There.

4 Q (By Mr. Chambers) You described that as a
5 knife being inserted into a vagina?

6 A Correct.

7 Q There's no pubic hair?

8 A Correct.

9 Q There's no legs?

10 A Correct. It's a part object.

11 Q What does that tell you about yourself that
12 when you're shown a drawing of a knife cutting
13 through a flat surface, you see a knife being
14 inserted into a vagina?

15 A That's a very important question. And to
16 address that I need to do it empirically. What I
17 also did was a sampling of other individuals to ask
18 them what they perceive that to be.

19 MR. CHAMBERS: So did I. I have no further
20 questions.

21 THE COURT: People.

22 REDIRECT EXAMINATION

23 BY MR. GILMORE:

24 Q First, Dr. Meloy, I'd like to --

25 MR. GILMORE: If I may approach the witness,

1 your Honor.

2 THE COURT: You may.

3 Q (By Mr. Gilmore) I've handed you what's
4 been identified as People's Exhibit 125 for
5 identification. Do you recognize that photograph?

6 A Yes, I do.

7 Q Does it appear to be an enlargement of the
8 last slide that you were shown?

9 A Correct.

10 Q Within that slide and within that drawing,
11 do you have an opinion as to the characteristics
12 which do represent the vagina?

13 MR. CHAMBERS: Excuse me. I don't know
14 what's on the screen here.

15 MR. GILMORE: Oh, sorry.

16 Q (By Mr. Gilmore) Is that a photograph
17 enlargement of the slide that you just last asked
18 about?

19 A Correct.

20 Q And is that an enlargement of that same
21 slide?

22 A Correct.

23 Q And do you find characteristics within that
24 photograph that in your opinion indicate or represent
25 a vagina?

1 A Correct.

2 Q You indicated that you did speak with other
3 people or did a sampling on your own?

4 A Correct.

5 Q What was the result of that sampling?

6 A I asked six different individuals about
7 this, without providing them with any data that would
8 bias or confound their responding, and the majority
9 of those individuals saw it as a knife cutting into a
10 vagina.

11 Q You've been questioned about a number of the
12 publications that you referred to in your direct
13 examination.

14 Let me ask you first about the work done by
15 MacCulloch. When was that done?

16 A 1983.

17 Q And you've indicated that since that time
18 there's been other research done in the area?

19 A Correct.

20 Q And you indicated, I believe, that you felt
21 this was an important work at that time?

22 A Absolutely at that time it was.

23 Q Okay. Can you relate to the jury, again,
24 why that was an important work at that time?

25 A Because it made suggestions based upon a

1 small sample of individuals concerning the
2 relationship between rehearsal fantasy, sexualized
3 violent fantasy, and sexual homicide.

4 And it established those linkages in terms
5 of behavioral trials, that there would be components
6 of the fantasy that would be acted out in the sexual
7 homicide. It was a small sample, but it lay the
8 groundwork for subsequent research with larger
9 samples of individuals.

10 Q And are you familiar with other research
11 that has been done in regards to this specific point?

12 A Yes, I am.

13 Q I've placed another slide to your right.
14 Does this reflect a sampling of the research that has
15 been done?

16 A Correct. Actually, it's more than a
17 sampling. It includes the majority of the studies
18 that have been done since the MacCulloch studies, so
19 there have been four additional studies to date.

20 Q So in the MacCulloch study then, the
21 frequency of the appearance of rehearsal fantasy was
22 81 percent?

23 A Correct.

24 Q Prentky studied two different frequencies
25 based on whether it was a multiple murder or single

1 murder?

2 A Correct.

3 Q That's the figure of the 23 percent that you
4 were questioned about?

5 A Correct.

6 Q These are based on self-reporting of
7 individuals that have been convicted or somehow
8 identified as committing a sexual homicide?

9 A Yeah. The serial murderers were from the
10 FBI sample where they were interviewed in a custody
11 setting. The single murderers were drawn from the
12 Massachusetts Treatment Center. It was a treatment
13 center, and the data was gathered from primarily file
14 data records, not extensive personal interviewing.

15 Q And then you refer to a study by Dietz, et
16 al., in 1990?

17 A Correct.

18 Q And that was a sample of 30 individuals?

19 A 30 sexual sadists, to be specific.

20 Q What was the frequency of rehearsal fantasy
21 among them?

22 A It was indirectly measured, but I think it
23 can be inferred from the recordings of data in the
24 case done by the perpetrators, and the data that
25 recorded the offenses as a way to stimulated fantasy

1 between offenses was 53 percent, the majority of the
2 individuals.

3 Q And Myers in 1997, specifically dealing with
4 adolescent sexual murderers?

5 A Correct. They had a small sample, 14
6 adolescent sexual murderers.

7 Q What was the frequency of rehearsal fantasy
8 among that sample?

9 A 67 percent.

10 Q I also noticed on the slide there's a more
11 recent study by Prentky. This is the same individual
12 that did the study in 1989?

13 A Correct.

14 Q Would you relate, if you're aware, the
15 nature of that study?

16 A Correct. This is a study that I actually
17 just became aware of in the past 10 days when I
18 talked to Robert Prentky and he sent it to me. And
19 this was the National Institute of Justice study
20 funded by the federal government.

21 And what they did was they looked at a very
22 large sample of men that were both incarcerated in
23 Vermont, Pennsylvania, and Canada, and also men in
24 the United States and Canada that were not
25 incarcerated.

1 The groups were made up of individuals who
2 had never been convicted or charged with any sexual
3 offense, that were just normal males in the
4 community, up to individuals who had committed sexual
5 offenses, including rape, and also individuals that
6 were offenders but had never been convicted of a
7 sexual offense.

8 And what their research looked at first was
9 whether or not this large sample of men, totaling --
10 if I can add it in my head -- approximately 580 men,
11 if they had ever forced themselves sexually on a
12 woman. And this is how they defined coercion. This
13 is not specifically talking necessarily about sexual
14 homicide at all, but it's talking about the -- as
15 Robert Prentky said to me, the will to be coercive,
16 the will to force yourself sexually on another
17 person.

18 And then what they did is they looked at
19 also the degree to which these individuals reported
20 paraphilic fantasy. So they ended up with two
21 groups: 212 coercive men who did this once as
22 adults, and 361 noncoercive men.

23 And what they found was there was
24 significantly greater paraphilic fantasy in the
25 coercive males than in the noncoercive males,

1 significant to a .001 level, meaning that the chance
2 of it being a random finding was only .001, less than
3 1 percent.

4 Q That figure, .001, establishes some validity
5 within your knowledge?

6 A Correct. Yes. I mean, this is additional
7 validation work on the importance of rehearsal
8 fantasy and its variations since the MacCulloch study
9 was published in 1983.

10 I also looked at another study which is not
11 on here on the overhead because it is not specific to
12 sexual homicide, but if I could relate those
13 findings.

14 Q Do they relate to the idea of what you just
15 talked about, the coercive --

16 A They relate to the, yes, the normal
17 occurrence of this and whether this occurs in normal
18 males or not, because I know that's been raised.
19 This was a study done by the University of Chicago
20 that was published in 1992. It was a very large
21 random probability sample of 3,500 adults throughout
22 the United States to do a study of their attitudes
23 and preferences regarding sex.

24 And in the sample -- in the sample, of 3,500
25 individuals, half of them were males, age -- I think

1 it was 18 to 44. And in that particular study where
2 they're sampling the attitudes and beliefs of these
3 individuals, the finding was that 98 percent of the
4 males did not have the attitude or desires to force
5 themselves sexually on another woman, and that was
6 normative data.

7 Q Okay.

8 You were questioned extensively about the
9 field of psychology, and you were read a number of
10 articles from different journals and professional
11 magazines?

12 A Correct.

13 Q Are there always ongoing articles within the
14 profession as to the validity of an examination of
15 the profession?

16 A That's a measure of a good profession, is
17 where validation is always raised as an issue in the
18 particular discipline of science that is being
19 pursued.

20 Q And do all psychologists agree with each
21 other on all points?

22 A Absolutely not.

23 Q Do you agree with all other psychologists?

24 A No.

25 Q Do they all agree with you?

1 A No.

2 Q You were questioned in this case about the
3 idea that the fantasy is a private matter, it's a
4 private express -- excuse me, when there are
5 productions, that those are private expressions of
6 fantasy?

7 A Typically there's a desire to keep that
8 material private from certain individuals, yes.

9 Q And I believe you indicated that you felt
10 that it particularly expressed itself, not showing
11 those productions to those emotionally close to the
12 individual?

13 A Correct.

14 Q Are you aware, from the information that you
15 received from the Fort Collins Police Department,
16 whether or not Mr. Masters' father was aware of his
17 productions?

18 A Yes, I'm aware of the information.

19 Q What is that?

20 MR. CHAMBERS: Judge, that necessarily calls
21 for hearsay.

22 MR. GILMORE: Your Honor, it's the same
23 question that the defendant asked, is he aware of the
24 material that's within -- he's basing his opinion
25 on --

1 THE COURT: Based on the question asked, the
2 Court will allow him to give an answer. Objection
3 overruled.

4 A He was not aware of the material.

5 Q (By Mr. Gilmore) Was his sister Serena
6 aware of the productions?

7 A She was not aware of the productions.

8 Q You were questioned concerning the category
9 of situational in your structure of rehearsal
10 fantasy. You were questioned about the existence of
11 any evidence of an attack on a woman or stabbed in
12 the back -- excuse me, a woman stabbed in the back?

13 A Correct.

14 Q Is that the name of your category?

15 A No.

16 Q Is your category blitz attack?

17 A Well, there were a number of categories.
18 That was one of them, correct.

19 Q And the situational setting, you felt that
20 that was represented by a category that you labeled
21 blitz attack?

22 A Correct. You are absolutely right. I
23 misunderstood the question.

24 Q Are there more than 130 references to blitz
25 attack?

1 A There are actually 126 items.

2 Q And in your opinion, did there appear to be
3 evidence at the crime scene of a blitz attack?

4 A Yes.

5 Q You were read a portion of the transcript in
6 which you were questioned about a knife and the --
7 maybe for reference, the garrison and upward thrust
8 of the knife. Do you remember that question?

9 A Correct.

10 Q Do you recall also being quoted a section:
11 "I sliced sideways and twisted the blade, enjoying
12 the pain stricken sounds he made"?

13 A Correct.

14 Q Is the enjoyment of pain related in any way
15 to sadistic behavior?

16 A That, by definition, is sadistic behavior,
17 as long as it's the pain of another.

18 MR. GILMORE: I have no further questions,
19 your Honor.

20 THE COURT: Further questions?

21 MR. CHAMBERS: No, thank you.

22 THE COURT: Okay. May this witness be
23 excused then?

24 MR. GILMORE: Yes, your Honor.

25 THE COURT: Okay. You may step down.

1 You're hereby excused.

2 Ladies and gentlemen, we're going to take a
3 brief recess, and we'll bring you back in a few
4 minutes once we decide how we're going to be
5 proceeding. Take a short recess at this time.
6 Please rise as the jury leaves.

7 (The jury left the courtroom.)

8 THE COURT: Take a short stretch break, come
9 back in about two to five minutes, if you can. Short
10 stretch break and come back.

11 (A recess was taken from 11:48 a.m. until
12 11:53 a.m.)

13 THE COURT: Please be seated. People.

14 MR. GILMORE: Your Honor, I would like to
15 introduce or admit People's Exhibit 125 that was just
16 testified to, and I think from talking to the clerk,
17 there may be some others, I guess, in the nature of
18 housekeeping, to go through the exhibits and make
19 sure --

20 THE COURT: Okay. 125, any objection?

21 MR. CHAMBERS: No.

22 THE COURT: Received.

23 As far as your exhibits are concerned, it
24 appears 83 and 84, those are the two photos, view of
25 the body from the bedroom and view from the south,

1 were not received. Do you intend to offer it?

2 MS. BLAIR: Your Honor, I neglected to move
3 for their admission during the testimony of
4 Lieutenant Broderick. I would move for their
5 admission.

6 THE COURT: Any objection?

7 MR. CHAMBERS: No.

8 THE COURT: Received.

9 Then it appears that 87 and 88 -- there was
10 no testimony on 88 that I recall.

11 MS. BLAIR: Your Honor, actually, what we
12 did was just end up marking 87-8 -- no, excuse me.
13 87-8 is just a tab, it was not a slide. And then 88
14 was --

15 THE COURT: 88 we received. Talking about
16 87, miscellaneous papers, that was testified to but
17 not offered.

18 MS. BLAIR: People would move for its
19 admission.

20 THE COURT: Any objection?

21 MS. BLAIR: Miscellaneous papers from the
22 yard/shed.

23 MR. FISCHER: No objection.

24 THE COURT: Received.

25 MR. CHAMBERS: We should say no objection as

1 to -- what was it, 125?

2 THE COURT: We haven't got there yet.

3 MR. CHAMBERS: The one that they just --

4 MR. GILMORE: Photograph we just admitted.

5 MR. CHAMBERS: As to that and 88, except for
6 objections previously made.

7 THE COURT: Okay. Thank you. And then
8 let's see, we're down to -- it looks like everything
9 else that was testified to has been offered and
10 received.

11 Oh, I'm sorry, I apologize. 116 was
12 testified to by Linda Wheeler-Holloway, that was a
13 drawing done in '92. That was not offered. I
14 apologize.

15 MS. BLAIR: I would offer that for
16 admission, your Honor.

17 THE COURT: Any objection?

18 MS. BLAIR: That's a yellow legal sheet that
19 Mr. Masters --

20 MR. FISCHER: No, your Honor. No objection.

21 THE COURT: Okay. Received.

22 Now, defendant -- People anticipate resting
23 then?

24 MR. GILMORE: Yes, your Honor.

25 THE COURT: Okay. Mr. Masters, we've gone

1 over this several times before, I'm sure you recall,
2 the advisement regarding various rights that you
3 have, which you do have a couple rights. It is your
4 decision to decide which of them you wish to
5 exercise.

6 You have the right to remain silent; that
7 is, not to take the stand and testify. If you
8 exercise that right, the jury will be given an
9 instruction advising them that the defendant is never
10 compelled to testify, and the fact that he does not
11 cannot be used as an inference of guilt and should
12 not prejudice him in any way.

13 You, likewise, do have a right to testify;
14 that is, to take the stand and testify on your own
15 behalf. If you do so, you may be cross-examined on
16 any matter regarding your testimony. If you made
17 previous statements differently, they can be used to
18 impeach you to show simply that you testified or made
19 a statement differently on a previous occasion.

20 And it is your decision. You should consult
21 with counsel, but it is your decision whether you
22 wish to exercise your right to remain silent or your
23 right to testify.

24 Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about
2 either of your rights or the impact depending on
3 which one that you exercise?

4 THE DEFENDANT: No.

5 THE COURT: Okay. Will the defense be
6 presenting any evidence?

7 MR. CHAMBERS: We expect to present one
8 witness, your Honor.

9 THE COURT: Being? And approximately how
10 long?

11 MR. CHAMBERS: Half hour max.

12 THE COURT: Okay. I know we talked about
13 the timing of closing statements, but it appears to
14 me if we're done within a reasonable period of time,
15 we ought to think about getting them in so we give
16 the jury plenty of time to deliberate. We'll go
17 ahead and bring them back now.

18 Are you going to have your witness available
19 1:15, 1:30?

20 MR. CHAMBERS: Yes.

21 THE COURT: We'll bring the witness back and
22 then kind of go from there.

23 MR. GILMORE: Your Honor, counsel have
24 talked, we would make a joint request of both counsel
25 to do closing statements tomorrow. They are going to

1 be lengthy, and the People do want an opportunity to
2 present a number of slides that we do not have
3 organized in the fashion to present them at this
4 time.

5 THE COURT: My concern is if you take the
6 amount of time that you've talked about, we will be
7 well into Thursday before we get the case to them in
8 the afternoon, is my concern, and then --

9 MR. GILMORE: I'm confident we can finish
10 before lunch, your Honor.

11 THE COURT: If you are confident in that
12 regard, then and putting them over until tomorrow,
13 will allow you to do that. I think I want to make
14 sure this jury has plenty of time. I'm willing to go
15 along with you on that, but -- okay. Let's go ahead
16 and let them go at this point, bring them back at
17 1:30. We'll finish the evidence and go from there,
18 okay?

19 Please return the jury. Please rise.

20 (The jury entered the room.)

21 THE COURT: Please be seated. Ladies and
22 gentlemen, we're going to take the recess at this
23 time. We're going to bring you back at 1:30. At
24 that time we anticipate probably fairly early this
25 afternoon of completing the presentation of evidence.

1 At that time we'll make the decision whether
2 or not to proceed to closings, or if it appears it
3 may be more appropriate to allow everyone to get
4 organized so that we can have a better focus
5 presentation made, we may bring you back tomorrow
6 morning and do the closings in the morning and allow
7 you then to deliberate. But we'll make that decision
8 this afternoon.

9 So we're getting close to the end of the
10 case. The evidence, as indicated, telling you, will
11 be concluded this afternoon. We either will submit
12 the case to you this afternoon or tomorrow.

13 My guess is probably what we're going to do
14 is let you go home early, get everything prepared,
15 bring you back in the morning, and so that we can --
16 in the morning counsel make their closing statements
17 to you, give you lunch, and then you can start your
18 deliberations.

19 Once you begin your deliberations, it's up
20 to you as to, you know, how long you need. Some
21 jurors ask, How long do we deliberate? That's up to
22 you. We place no limits on you. We usually don't
23 encourage you to stay at night once you put in a good
24 day, suggest it's better to break at a reasonable
25 time, if you need that amount of time to go home and

1 come back and continue.

2 So you may or may not need to come back
3 Friday. That's going to be strictly up to you and
4 the amount of time that you reasonably need. I'm not
5 saying that you will or you won't. It's just
6 something that once you started your deliberations,
7 that you'll need to kind of think about and decide
8 for yourself.

9 And so it's important not to discuss the
10 case with anyone. Don't go seek information out,
11 don't talk to anyone as you come and go, don't be
12 reading newspapers about this or other trials. All
13 those matters we've discussed. We're really getting
14 into a critical stage. Make sure you conduct your
15 activities so you don't have contact with others,
16 that you don't put yourself in a position that you
17 may have to say, Look, I'm a juror in this case, will
18 you please quit discussing the matter. And also make
19 sure you do have plenty of rest, because it is a very
20 taxing procedure.

21 So at this time see you back at 1:30, okay?
22 We're in recess until 1:30.

23 (The jurors left the courtroom.)

24 THE COURT: Counsel, approach the bench very
25 briefly.

1 Okay. The record should reflect the jurors
2 have been excused.

3 MR. GILMORE: The People are intending to
4 rest when we bring the jury back.

5 THE COURT: Defense any --

6 MR. CHAMBERS: Our client moves for judgment
7 of acquittal based on the record.

8 THE COURT: Court finds that the matter is a
9 question of fact for the trier of fact to decide.
10 Request for judgment of acquittal is denied. Counsel
11 be back about 1:25 or so and take a look at any
12 additional instructions.

13 People indicated they might have a lesser to
14 be considered, and then we'll finish up the evidence.
15 And then after that we'll address any other motions
16 and finalize the instructions and bring the jury back
17 tomorrow, and in the morning we can do the final
18 closings. It looks like that's probably an
19 appropriate way to go.

20 See you back about 1:25.

21 (A recess was taken from 12:05 p.m. until
22 1:38 p.m.)

23 THE COURT: Defense ready?

24 MR. CHAMBERS: Yes, sir.

25 THE COURT: People ready?

1 MR. GILMORE: Yes, your Honor. Has the
2 Court reviewed all the defendant's exhibits already?

3 THE COURT: No, I haven't done that yet.

4 MR. GILMORE: Okay.

5 MR. FISCHER: I've given you an updated list
6 with the last exhibit -- quite a few that have not
7 been -- they've been identified, but have not been
8 asked, and we won't be asking to put them in. If you
9 want me to redact the list to just the ones we put
10 in --

11 THE COURT: When you finish your testimony,
12 or whatever it is you want to offer, whatever
13 exhibits you want to offer, go through them and we'll
14 do it at that time.

15 Okay. Please return the jury.

16 (The jury returned to the courtroom.)

17 THE COURT: Please be seated. People,
18 additional evidence?

19 MR. GILMORE: Your Honor, at this time the
20 People would rest their case in chief.

21 THE COURT: Ladies and gentlemen, the People
22 have completed their presentation of the case in
23 chief. It is now the opportunity, if defense wishes,
24 to present any evidence to do so. We already told
25 you they have no obligation. It's simply up to them.

1 Do you wish to present evidence?

2 MR. CHAMBERS: Yes, your Honor. We would
3 call John Yuille.

4 JOHN YUILLE,
5 called as a witness on behalf of the Defendant,
6 having been first duly sworn, testified as follows:

7 THE CLERK: Please be seated.

8 MR. CHAMBERS: May I inquire?

9 THE COURT: You may.

10 MR. CHAMBERS: Thank you.

11 DIRECT EXAMINATION

12 BY MR. CHAMBERS:

13 Q Sir, would you please state your name and
14 spell your name for the record.

15 A John Charles Yuille, Y-u-i-l-l-e.

16 Q How are you employed?

17 A I'm employed in two ways. I'm a professor
18 in the Department of Psychology at the University of
19 British Columbia, and also I have a practice as a
20 forensic psychologist.

21 Q How long have you been -- how long have you
22 had both of those employments?

23 A I've been a professor since 1968. I
24 received my doctorate in '67 and took a position at
25 University of British Columbia in 1968, so 31 years

1 at that.

2 Q Could you briefly review your educational
3 background?

4 A As I said, I have a doctorate in psychology;
5 I received it in 1967. I also have a bachelor's
6 degree and master's degree, both in psychology. I
7 spent a year as a postdoctoral fellow at McGill
8 University in 1967-'68 and then joined the faculty at
9 the University of British Columbia, where I have been
10 other than sabbatical leaves, one of which I spent at
11 University of Salzburg in Austria as a guest
12 professor, and one year spent at Cornell University.

13 Q Are you a member of any professional
14 associations?

15 A Yes. I am a fellow of the Canadian
16 Psychological Association, American Psychological
17 Association. I'm a founding member of the
18 International Congress of Applied Psychology Forensic
19 Group. I belong to the American Psychology and Law
20 Society, among other groups that I belong to.

21 Q What's the American Psychology and Law
22 Society?

23 A It's a division of the American
24 Psychological Association that focuses on issues
25 related to the intersection between psychology and

1 law.

2 Q Are you familiar with the term "forensic
3 psychology"?

4 A Yes.

5 Q What is that?

6 A Forensic psychology is concerned with how
7 psychology gets applied to the criminal justice
8 system in the broadest sense. So it relates to the
9 kind of work that psychologists -- some psychologists
10 do with police, police training, police selection,
11 police operations, expert testimony in court, and
12 also work done by psychologists in the prison context
13 or other incarceration contexts.

14 Q Do you have expertise in the area of
15 forensic psychology?

16 A Yes. I'm the chair of the forensic
17 psychology program at the University of British
18 Columbia. This was one of the first programs in
19 North America, certainly the first program in Canada
20 of its kind.

21 As of this summer, because we're joining
22 forces with another department in Vancouver, we'll
23 have the largest forensic program that exists
24 currently in psychology.

25 Q The largest where?

1 A In the world, as far as I know.

2 Q Okay. Have you received any awards?

3 A Yes. As I said, I'm a fellow of the
4 Canadian Psychological Association. I've received
5 teaching awards, research awards. I've received
6 fellowships, a variety of different recognitions of
7 my work.

8 Q Are you familiar with the field of study
9 designated the philosophy of science?

10 A Yes, I am.

11 Q What is that field of study?

12 A Philosophy of science is concerned with the
13 underpinnings of science as an enterprise of
14 determining when is a scientific knowledge
15 acceptable, when is it not; what are the rules,
16 either explicit or implicit rules, that function when
17 someone's engaging in the process of science. So, if
18 you like, the study of the foundation of science.

19 Q Do you have expertise in the area of
20 philosophy of science?

21 A Yes, I do. I've written in this area. I
22 have taught courses in the philosophy of science at
23 the university level, both graduate and
24 undergraduate.

25 Q Briefly, what sort of things have you

1 written and taught about in that area?

2 A Well, I've written about the issue of when
3 is certain kinds of knowledge in psychology, in
4 particular, when does it achieve a certain level of
5 acceptance and how does psychology compare to other
6 approaches to science.

7 Q Have you ever been called and qualified to
8 testify as an expert witness?

9 A Yes, I have.

10 Q How many times?

11 A I really have no idea. I first appeared in
12 court in 1975, so it's almost 25 years, and I've
13 testified in just about every province in Canada and
14 a considerable number of states in the United States.

15 Q Okay. Have you ever testified in criminal
16 cases?

17 A Yes. Most of the testimony I provide is in
18 criminal contexts.

19 Q Have you testified on behalf of people who
20 have been accused of crimes?

21 A Yes. About 80 percent of my testimonial
22 experience is at the request of the prosecution,
23 about 20 percent at the request of the defense.

24 MR. CHAMBERS: At this time I'd offer
25 Dr. Yuille as an expert in forensic psychology and

1 the philosophy of science, ask that he be allowed to
2 express opinions in those areas.

3 THE COURT: People?

4 MR. GILMORE: If I may voir dire.

5 THE COURT: Briefly.

6 VOIR DIRE EXAMINATION

7 BY MR. GILMORE:

8 Q Dr. Yuille, do you have any experience in
9 the area of sexual homicide?

10 A Yes, I do.

11 Q Could you relate that, please?

12 A Yes. Other than reading the literature and
13 so on in this area, I've been working in particularly
14 the Canadian prison system for about 25 years. And
15 in particular, I've been working at one prison that
16 is used mostly to house sex offenders.

17 And for about a decade now, I and my
18 graduate students have been doing research with sex
19 offenders of a whole variety of sorts: Pedophiles,
20 rapists, and those who commit sexual acts in the
21 context of murder.

22 I'm currently conducting a large-scale piece
23 of research that we're calling "Memory for Murder,"
24 in which we're investigating a whole variety of
25 aspects of murder, but it includes murders conducted

1 in the sexual context.

2 Q On your curriculum vitae, you do not list
3 sexual homicide as any of the areas of your research
4 interest; is that correct?

5 A That's correct, yes.

6 Q And in the curriculum vitae, under the areas
7 of expert testimony that you've been qualified in,
8 you don't mention anything about sexual homicides; is
9 that correct?

10 A That's correct, yes.

11 Q Have you lectured on the subject of sexual
12 homicide?

13 A Yes, I have.

14 Q Okay. And to whom or where?

15 A I teach both graduate and undergraduate
16 courses in forensic psychology, and the topic of
17 sexual homicide is always included -- I shouldn't say
18 always, but most of the time included in the
19 curriculum for those courses.

20 Q So lectures would be in the course of your
21 employment as a professor?

22 A That's correct.

23 MR. GILMORE: I have no other questions,
24 your Honor.

25 THE COURT: Any objection?

1 MR. GILMORE: No objection.

2 THE COURT: The Court will find that the
3 witness has expertise in the area of forensic
4 psychology and the philosophy of science; which
5 means, once again, he can give opinions as to those
6 areas. His testimony is for you to weigh as that of
7 other witnesses.

8 You may proceed.

9 MR. CHAMBERS: Thank you.

10 DIRECT EXAMINATION

11 BY MR. CHAMBERS:

12 Q Dr. Yuille, in connection with this case,
13 have you reviewed reports that were generated written
14 by J. Reid Meloy?

15 A Yes, I have.

16 Q And have you reviewed productions, drawings,
17 and narratives of Tim Masters?

18 A Yes, I have.

19 Q Particularly those productions that were
20 pulled from a large volume by Dr. Meloy as being most
21 significant to his opinion?

22 A Yes.

23 Q And, specifically, have you seen all of the
24 drawings and narratives that have been shown during
25 this case previously?

1 A Yes.

2 Q Did you have an opportunity to observe and
3 listen to Dr. Meloy's testimony?

4 A Yes.

5 Q Let me first of all ask you this question:
6 Is psychology a science?

7 A With respect, it's difficult to answer the
8 question as it's put, and the reason is that science
9 comes in different forms. For example, sciences like
10 chemistry and physics and certain -- most aspects of
11 biology are often called basic sciences or natural
12 sciences.

13 Certainly, psychology is not the same as
14 they. Psychology's a different enterprise and is
15 better classified as a social science. One of the
16 key differences between social science and basic
17 science is precision.

18 Physics and chemistry and some of the other
19 basic sciences are characterized by a considerable
20 amount of precision and capacity to predict. Within
21 psychology there's enormous variability in this
22 regard, but the discipline can be characterized as
23 having a lack of precision and an inability to
24 predict.

25 Q So is it your opinion that psychology lacks

1 the precision or liability of these pure sciences?

2 A Yes, it does.

3 Q In the field of psychology, specifically
4 forensic psychology, is the state of knowledge
5 sufficient to permit drawing of any conclusion tying
6 fantasy to sexual homicide?

7 A No.

8 Q Why?

9 A Well, the state of research at this point is
10 simply -- it's relatively new. The research is
11 flawed.

12 Q Relatively new. What's that mean?

13 A Well, this research area has been in
14 existence for less than a couple of decades. There
15 are only a handful of studies that have been done so
16 far. There's just not a large body of research.

17 But also -- and more importantly, I think,
18 is that the research at the present time is -- has
19 problems associated with it. This is understandable
20 given the nature of what's being studied, but most of
21 the research involved small sample sizes. That's
22 difficult to generalize from samples that are -- are
23 small in number.

24 The research is all retrospective that in
25 the research people are being asked to look back or

1 report backwards about -- or from their past about
2 things that they may have thought or said or done.
3 And in psychology it's well understood that
4 retrospective studies like this are a beginning, but
5 certainly one can't draw from conclusions based upon
6 them.

7 The biggest problem though with the existing
8 research is the lack of controls. In doing research,
9 it's essential to determine if you find that
10 something may occur in a particular group of people,
11 to have some control group that -- some group that
12 represents a different set of people, and find out
13 the extent to which the same thing exists in them.

14 So, for example, if you study a group of
15 people, let's say, that commit murder, and you find
16 that all of them wear a certain aftershave or report
17 a particular sort of fantasy, let's say, you've got
18 to have a control group to find out, Is this
19 something that also occurs with the same frequency or
20 a high enough frequency in the normal population that
21 it therefore doesn't mean anything that it occurs in
22 the group of murderers? Or, indeed, is this
23 something distinctive of the murderers? Without the
24 control group type of research, no firm conclusions
25 can be drawn at all.

1 Q Does that have to do with the concept of
2 base rates?

3 A That's correct. Base rate refers to the
4 extent to which something -- at least in this
5 context, it's the extent to which something occurs --
6 the frequency with which it occurs in the normal
7 population.

8 Q Well, let me talk or ask you a couple of
9 questions about base rate and occurrence within a
10 normal population. Are you familiar with research on
11 the issue of the presence of fantasy in normals?

12 A Yes.

13 Q And what is the state of research on that?

14 A Well, the state of research is inadequate.
15 We simply do not have nearly enough research on the
16 issue of how frequently people engage in sexual
17 fantasies who otherwise are normal, who don't act out
18 in any way.

19 There are a couple of studies that have been
20 done on this. One of the first ones was done back
21 about 1980 -- in fact, was done in Montreal -- in
22 which a group of men, 94 -- in quotes, men -- by
23 putting quotes means that no one, there was no known
24 pathology or no known criminal background and so on
25 with these people. And they were asked about their

1 sexual fantasies.

2 And the reporting of sexual fantasies was
3 very high of a whole variety of types, but certainly
4 I think what's most germane here is that the
5 fantasies that people reported were analyzed and
6 ground into what kinds of fantasies there were; and
7 the second most important grouping, if you like, the
8 second most frequent grouping were fantasies about
9 rape, about doing something dirty or doing something
10 forbidden, about tying people up, about engaging in
11 aggressive sexual acts towards someone else.

12 And this study, in fact, is often cited in
13 the literature as an indication of the fact that
14 normal people do, in fact -- a proportion of normal
15 people experience these kinds of deviant fantasies.

16 If I might, in fact, I'd quote from a study.
17 This is in 1997, paper by Johnson and Becker. And I
18 quote, Many normal people experience deviant sexual
19 fantasies, including sadism; however, not everyone
20 who suffers from sexually sadistic fantasies goes on
21 to act them out.

22 Q What's that have to do with base rates?

23 A Well, what this means is that we know that
24 sexual fantasies, including sadistic fantasies, occur
25 in the population and occur in people that are

1 otherwise normal, or at least they're not committing
2 offenses.

3 As I said, the research at this point is
4 relatively weak, and so we can't say with any
5 confidence yet what those base rates are, but because
6 we don't know the base rates, we also can't say at
7 this point, draw any firm conclusions about those who
8 do commit crimes and link between those and sexual
9 fantasies.

10 Q Are you familiar with any other research on
11 that issue?

12 A Yes. I guess the best example is that one
13 of the things that's often done in psychology is that
14 after a few studies have been done in a particular
15 issue, someone may write a kind of a review article
16 in which they'll summarize what the current state of
17 knowledge is, bringing together the various pieces of
18 research that have been done.

19 The Psychological Bulletin, which is a
20 journal published by the American Psychological
21 Association, certainly one of the most prestigious
22 journals in the field, is a place that often
23 publishes these articles that review the current
24 state of knowledge.

25 And in 1995 there was a paper published on a

1 review of the current state of knowledge about sexual
2 offenses in general, tried to review a whole variety
3 of sexual offenses, and the conclusion that they came
4 to -- and again, I quote, is: Most important, there
5 is no evidence that sexual fantasies by themselves
6 are either a sufficient or a necessary condition for
7 committing a sexual offense.

8 Q Given that, do you have an opinion as to the
9 relationship of fantasy to sexual homicide?

10 A Yes. I think at the present time our state
11 of knowledge is premature, that we -- that all we can
12 say at this point is that we have some evidence to
13 show us that some people that commit these homicides
14 engage in fantasy; some people do not.

15 The Prentky study has already been a focus
16 of testimony here that showed that a minority of
17 people that commit a single sexual murder report
18 having these fantasies.

19 So quite a proportion of people who commit
20 these homicides do not report fantasies; and equally
21 important, as I just suggested, a number of people
22 who have these fantasies don't commit homicides. So
23 the link between the fantasies and the homicides is
24 extremely tentative, it's premature to draw any
25 conclusions at this point.

1 MR. CHAMBERS: Thank you, sir.

2 THE COURT: You may examine.

3 MR. GILMORE: Thank you, your Honor.

4 CROSS-EXAMINATION

5 BY MR. GILMORE:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Let me -- if I understand what you're
9 saying, do you feel there's any relationship between
10 sexual fantasies and the committing of sexual
11 homicide?

12 A I don't think that we can draw a firm
13 conclusion at this point.

14 Q Do you think there's any relationship
15 between those to sexual fantasy, people engaging in
16 sexual fantasy and commission of sexual homicide?

17 A What the literature shows at the present
18 time is that the reporting of fantasies -- of these
19 fantasies occurs more frequently among those
20 convicted of these offenses than among people not
21 convicted; but exactly what that relationship is
22 like -- is it enough to permit us to draw any
23 conclusions? I don't think so.

24 In fact, I think it's very clear that our
25 state of knowledge doesn't permit diagnosis on this

1 basis at the present time, let alone prediction.

2 Q Okay. There's been no diagnosis given in
3 this case.

4 A No, I understand that. I'm just trying to
5 characterize the state of knowledge, that at the
6 present time it's exploratory.

7 Q Okay. Are there any studies that you are
8 aware of that less than 23 percent, the Prentky study
9 that we talked about -- less than 23 percent
10 correlation between the reporting of sexual fantasies
11 and the committing of sexual homicide?

12 A No. The range usually goes from about that
13 to a high in the 80 percentage, depending on the
14 study.

15 Q So am I correct that at least the one
16 constant in all the studies is people that commit
17 sexual homicides, a certain percent of them are
18 reporting sexual fantasies?

19 A That's correct.

20 Q Okay.

21 A And one of the problems we have is, why is
22 there such a range in these studies? And we have, at
23 the present time, very little knowledge about what
24 the reason for that is.

25 Q But all the studies report some correlation?

1 A All of the studies report that a -- that at
2 least some proportion of people who commit these
3 offenses report having fantasies, yes. But then so
4 do a group of normal people.

5 Q I'd like to ask you, then, if you have --
6 strike that.

7 In the studies that you're talking about,
8 primarily we're dealing with self-reporting?

9 A That's correct, yes.

10 Q What studies are you aware of that, in
11 addition to self-reporting, have other corroborative
12 evidence of sexual fantasies prior to the offense?

13 A Well, most of the studies rely on
14 self-report. Off the top of my head, I can't think
15 of ones that have the other evidence that you're
16 inquiring about.

17 Q If you were conducting a study, do you have
18 an opinion as to whether or not self-reporting of
19 fantasies would be more or less accurate than the
20 existence of preoffense productions?

21 A I'm not sure -- more or less accurate with
22 respect to what?

23 Q The existence of a sexual fantasy.

24 A I think that production -- if there's some
25 materials that have been prepared, it's an indication

1 that that kind of fantasy is present, yes.

2 Q Did you have an opinion in the materials
3 that you reviewed as to whether or not the
4 productions of Mr. Masters are fantasies?

5 A Yes, I think they are fantasies, yes.

6 Q And generally, fantasies that are prepared
7 under the belief that they are private and not going
8 to be reviewed by other people tend to be true
9 expressions of those fantasies; would you agree with
10 that statement?

11 A Well, first of all, I use the term "fantasy"
12 in a different sense. I don't include that it has to
13 be private, and it's not clear to me that that is
14 true in this particular instance. But I don't see
15 private -- the private nature of them as a
16 prerequisite. For example, Tolkien's trilogy The
17 Lord of the Rings is a fantasy.

18 Q You don't see any need, then, to have the
19 productions in this case considered private by the
20 maker of the productions?

21 A Important for what purpose?

22 Q I mean, you don't consider that to be a
23 prerequisite or important to you, the fact that they
24 are not private or they are private?

25 A I don't think that that's necessary one way

1 or the other to classify them as fantasy.

2 Q In your review of the materials in this
3 case, did you come to an opinion -- strike that.

4 Are you aware of the division within the
5 concept of sexual homicide as to organized and
6 disorganized?

7 A Yes.

8 Q Okay. Did you come to an opinion in this
9 case?

10 MR. CHAMBERS: Beyond the scope of direct
11 examination, your Honor.

12 THE COURT: Overruled. You may answer.

13 MR. GILMORE: Thank you, your Honor.

14 Q (By Mr. Gilmore) Did you come to an
15 opinion as to whether or not this was an organized or
16 disorganized sexual homicide?

17 A Yes.

18 Q What was your opinion?

19 A That it appears to be disorganized with
20 organized elements.

21 Q Did you agree with Dr. Meloy's assessment
22 then?

23 A Yes.

24 Q And so the jury understands, the material
25 that you reviewed in this case consists of

1 Dr. Meloy's report?

2 A Two reports, yes.

3 Q Two reports? And a number of the -- a
4 percent of the slides -- or, excuse me, the
5 productions that were produced by Mr. Masters?

6 A Yes.

7 Q Have you had an opportunity to view the
8 entire, some, 1,200 pages of productions --

9 A No.

10 Q -- prior to the homicide?

11 A No.

12 Q You're aware of approximately 1,000 pages of
13 productions after the homicide?

14 A Yes.

15 Q Is it of any importance to you the duration
16 of the fantasy productions?

17 A Importance in what respect?

18 Q The -- I may not be using the right word --
19 the strength of the fantasy or the importance of the
20 fantasy to the individual, the obsessiveness of the
21 fantasy?

22 A No. I wouldn't draw conclusions about any
23 of those things. It's clear that this is a
24 continuing interest.

25 Q The conclusion you would draw, then, is that

1 this is a continuing interest that lasted for
2 approximately 12 or 13 years?

3 A Yes.

4 Q In your listening to Dr. Meloy's testimony
5 this morning, did you disagree with his opinions
6 regarding rehearsal fantasy?

7 A Can you be more specific?

8 Q The structure of rehearsal fantasy that we
9 talked about, the -- five categories.

10 A No.

11 Q -- those are accepted --

12 A Well, they are used. As I say, this is a
13 new field, and I don't want to use the term
14 "accepted" in the sense that we're at a state where
15 we believe that this is the best way to classify
16 things, but it is -- it's a proposed way of
17 classifying fantasies.

18 Q And all sciences are evolving constantly; is
19 that a fair statement?

20 A Yes, that is.

21 Q Even the hard sciences?

22 A Yes.

23 Q And I think we had an example this morning
24 of astronomy. As our level of sophistication gets
25 better, we find new stars, new planets, new moons,

1 things of that nature, that didn't exist before?

2 A Yes.

3 Q So we're talking about a continuum in the
4 development of any one particular science?

5 A That's correct.

6 Q Thank you.

7 In your review of the material, did you
8 attach any significance to the development of the --
9 in the narrative of the character Mace as an alterego
10 of the person writing the narrative?

11 MR. CHAMBERS: Judge, I object. This is all
12 beyond the scope of direct examination.

13 THE COURT: He indicated in response to your
14 question that he listened to and considered the
15 testimony of Dr. Meloy, so he may answer.

16 A Can you repeat the question, please?

17 Q (By Mr. Gilmore) Did you attach any
18 significance to the writings of the defendant, in
19 particular the narratives, that seem to present an
20 alter ego of the writer in the character Mace?

21 A I don't think that we are at the state of
22 knowledge where we can be attaching significance.

23 Q Okay. So the fact that someone writes a
24 story and says, I'm this character, and the character
25 portrays certain attributes or emotions, that doesn't

1 tell us anything about the writer?

2 A It may, but there's many possible
3 explanations. And in psychology, we are only to make
4 those inferences after we've met with the individual
5 in question.

6 Q Did you agree with Dr. Meloy concerning the
7 concept -- I won't say general acceptance -- the
8 concept that a perpetrator in a sexual homicide
9 typically would return to the scene?

10 A I don't think he said typically, but
11 certainly some do, yes.

12 Q You reviewed a number of studies that
13 were -- you were questioned about on direct
14 examination. Are you familiar with the Myers study
15 that was talked about by Dr. Meloy dealing
16 specifically with adolescents committing sexual
17 homicide?

18 A Yes, I am.

19 Q And that study seemed to find, generally, a
20 percentage of individuals in the study that
21 self-reported sexual fantasy prior to the committing
22 of sexual homicide?

23 A That's correct, yes.

24 MR. GILMORE: Thank you. No further
25 questions, your Honor.

1 THE COURT: Further questions?

2 REDIRECT EXAMINATION

3 BY MR. CHAMBERS:

4 Q I take it from your testimony that there are
5 some issues upon which you and Dr. Meloy are in happy
6 agreement?

7 A Yes.

8 Q Do you agree with Dr. Meloy on a scientific
9 basis for drawing conclusions regarding the link
10 between fantasy and sexual homicide?

11 A Absolutely not.

12 MR. CHAMBERS: Thank you.

13 THE COURT: Further questions?

14 MR. GILMORE: No, your Honor.

15 THE COURT: May this witness be excused
16 then?

17 MR. CHAMBERS: Yes, your Honor.

18 MR. GILMORE: Yes, your Honor.

19 THE COURT: Thank you, sir. You may step
20 down. You're excused.

21 THE WITNESS: Thank you, your Honor.

22 MR. FISCHER: Your Honor, at this time the
23 defense would rest also.

24 THE COURT: Okay. The defendant has
25 completed their presentation of their evidence. And

1 do the People have any further evidence to present?

2 MR. GILMORE: Your Honor, if I could just
3 have a few moments.

4 THE COURT: Okay.

5 (Brief pause.)

6 MR. GILMORE: No, your Honor.

7 THE COURT: Okay. Mr. Fischer, Defendant's
8 Exhibits C through F, I through M, and Q through T.
9 Are those the ones that you have?

10 People, likewise?

11 MR. GILMORE: Your Honor, are those the ones
12 that are not being --

13 THE COURT: Those are the ones that were
14 offered and received.

15 MR. GILMORE: I don't believe it was.

16 THE COURT: C through F, I through M, those
17 were all photographs. And then, likewise, then, Q
18 through T is what we have done as being --

19 MR. GILMORE: No. I didn't believe it was,
20 and I would have some argument to make.

21 THE COURT: No. You're correct. It was not
22 received, it was testified to.

23 MR. FISCHER: That's correct. I think we
24 still have some clarification on that as well as
25 People's exhibits of the same nature, your Honor.

1 THE COURT: Basically, we'd received
2 Defendant's Exhibits C through F, I through M, and Q
3 through S. Those are the ones that have been
4 received.

5 Ladies and gentlemen, the evidence has now
6 been completed. What we're going to do is ask that
7 you be back tomorrow morning at 9 a.m. This would
8 give us the time to go ahead and put the exhibits
9 together, finalize the instructions.

10 And counsel assured me that if we proceed in
11 this fashion, by three hours tomorrow, by noon, they
12 should be able to get their closing statements done.
13 We'll anticipate getting closing statements at 9,
14 finish by noon, have lunch brought in for you, then
15 you can begin your deliberations.

16 As indicated, the matter is then in your
17 hands, as far as time or what have you. We usually
18 don't encourage you to continue deliberating into the
19 evening unless you wish to. It's been a long day and
20 raises other concerns; but if you wish to do so,
21 we'll go ahead and try to make those arrangements for
22 you.

23 So, basically, please keep in mind that you
24 are not to discuss the case, don't seek information,
25 don't talk to anyone. You haven't received the final

1 instructions, nor have you heard counsel's closing
2 statement. So if you go ahead and put your notes and
3 books back in the jury room, you're free to go.
4 We're going to stay here and address some other
5 matters. Any questions?

6 See you tomorrow morning, 9 a.m. Take just
7 a short recess and then come back. Brief recess.

8 (The jury left the courtroom.)

9 (A recess was taken from 2:15 p.m. until
10 2:28 p.m.)

11 THE COURT: Please be seated.

12 Okay. The Court has looked at People's
13 Exhibit 102, and based on the People's argument
14 regarding the knowledge of the female anatomy, if
15 counsel want to come forward, I will allow the ones
16 on top to be part of the exhibit. The rest of the
17 exhibits therein, the Court sees no relevancy
18 thereto. But the ones on top I will allow to go to
19 the jury.

20 MS. BLAIR: That's fine with me.

21 MR. FISCHER: That's plenty graphic.

22 THE COURT: The other ones will be pulled
23 out.

24 MS. BLAIR: Could you just seal them?

25 THE COURT: Now, the newspaper, which was

1 Exhibit --

2 MR. FISCHER: I think that was 80, I
3 believe. Yes, 80. People's Exhibit 80.

4 MR. GILMORE: I believe that was testified
5 to and was admitted. The People have argument to
6 make on the Loveland Herald-Tribune.

7 THE COURT: Is your position that 80 should
8 go to the jury? That's the question.

9 MS. BLAIR: Your Honor, the evidence was
10 that that was found in the defendant's room and that
11 he had gained some knowledge from reading that
12 article, and I don't believe it is relevant and
13 should go to the jury.

14 THE COURT: Okay.

15 MR. FISCHER: My position is they want that
16 to go to the jury, then I will ask for Defendant's
17 Exhibit --

18 THE COURT: We don't tie things together.
19 Let's deal with them one at a time.

20 MR. FISCHER: My position is, I don't think
21 either of the newspapers should go to the jury,
22 because I don't want this case decided on what's said
23 in the newspaper. If the Court is going to rule that
24 that is admissible, I'm going to move for admission
25 of Exhibit T, is all I'm saying.

1 THE COURT: The question is whether 80 is
2 admissible. Evidence brought forth, it wasn't in his
3 possession. The question is basis for knowledge.
4 The Court has read the article, as such, on there,
5 and it does have some information, but nothing of
6 significance that in any way -- that any potential
7 prejudice would overcome the limited issue on which
8 it's being offered, so the Court will receive 80.

9 People, anything further regarding your
10 exhibits? And we'll get to yours.

11 MS. BLAIR: No, your Honor.

12 MR. FISCHER: So, Exhibit T, your Honor, I'm
13 just discussing with Mr. Gilmore, involves two
14 separate articles, involves the second portion of the
15 article that is not in that paper of the Coloradoan
16 article, then it also involves an article on which I
17 asked Detective Broderick out of the Loveland Herald.
18 We would ask that that be put into evidence, because
19 again it revolves around the same issue of what
20 knowledge Mr. Masters had of the crime.

21 And because of the Court's previous ruling,
22 then it becomes even more relevant and more important
23 that it does, in fact, come in. If the Court feels
24 we should separate them out to at least the second
25 page of the Coloradoan article, which is not included

1 in Exhibit 80 and the Loveland Herald article, I have
2 no objection to doing it T-1 and T-2. I think we
3 need them in to further explain this issue.

4 THE COURT: People? And, Mr. Fischer, as I
5 understand it, T-1 is what?

6 MR. FISCHER: I got in discovery from the
7 police department just a Bates page which was, I
8 believe, looks like it's 150 or 159. On that page it
9 contains one section of the Coloradoan article and
10 the second half is the Loveland Herald.

11 THE COURT: From what date?

12 MR. FISCHER: Both from the same date, 2/11
13 of '87, the day of the murder. And I would say for
14 the Court, they seemed -- and Detective Broderick was
15 worried, one writes Loveland Herald on it. I got
16 this in discovery from them, so the police department
17 must have written this on these pages. I think it's
18 on your same Bates page, if you want to confirm that.

19 THE COURT: The purpose for which you
20 believe it's admissible?

21 MR. FISCHER: Well, there has been much
22 discussion and there was much discussion as to
23 Mr. Masters' knowledge of the crime during his
24 interviews the next day on February 12th, and we went
25 through nine hours of interviews. They seem to make

1 issues and points of what his knowledge was of the
2 crime.

3 THE COURT: Is there any evidence he had
4 access to the Loveland paper, direct testimony, this
5 came from his house?

6 MR. FISCHER: This is left with the fact
7 that Mr. Masters had gone to school the next day and
8 had talked with other students and there was rumors
9 all over the school. The question is, do the people
10 in the community have knowledge of the issues of
11 which Mr. Masters has?

12 And I think we can certainly use the
13 Loveland paper for -- maybe it's a tenuous relevancy
14 issue, but we've had a lot of that in this case, and
15 I think clearly that the Loveland paper speaks to
16 what is available for information in the community
17 regarding the homicide, and Mr. Masters certainly had
18 an opportunity -- because it wasn't until the next
19 day he was interviewed -- to garner some of this
20 information through the rumor mill at Fort Collins
21 High School, which has clearly been established.

22 THE COURT: People, your position?

23 MR. GILMORE: There's no evidence in the
24 record of any kind that the defendant had any access
25 to the Loveland Daily Herald, that anyone had access

1 to the Loveland Daily Herald. There's no testimony
2 that it had anything to do with this case.

3 The only indication that this is from the
4 Loveland Herald is somebody's writing, who I don't
5 know whose it is, there's nothing that says, The
6 Loveland Daily Herald, or anything else. I think
7 this may be Detective Reed's handwriting on here. I
8 have no idea. She didn't testify.

9 I'm trying to jog my own memory as to Steve
10 Getzug, who he was reporting for. I don't remember.
11 I mean, we could put in -- if this is relevant, we
12 could put in articles from The Denver Post and
13 anything else. There's just -- this is an article
14 that was a copy in the police files.

15 THE COURT: I understand. Please see that
16 it stays with the Court. The objection is sustained.
17 The Court cannot find that it represents knowledge of
18 the community or represents knowledge that would have
19 been made available to the defendant. There's no
20 direct link, as such, that it would in any way be
21 either representative of what he knew or made
22 available to him before his interview.

23 As indicated the testimony regarding the
24 other exhibit, it came directly from his residence,
25 so that clearly is a causal connection.

1 MR. FISCHER: Not to disagree with the
2 Court's ruling, but there is a portion of the
3 Coloradoan that was testified to on this Exhibit T --

4 THE COURT: The Coloradoan's been received.

5 MR. FISCHER: This portion of the Coloradoan
6 has not been received.

7 THE COURT: This is what came from the
8 defendant. That's the link. We don't have any link
9 with that. You have to have evidence, Mr. Fischer,
10 simple as that. So if you'll please see --

11 MR. FISCHER: I'm not trying to argue,
12 Judge.

13 THE COURT: At this point, if you just
14 follow what I said, see the exhibit goes back to the
15 reporter. See the exhibit returns to the reporter.

16 MR. FISCHER: I will.

17 THE COURT: Now --

18 MR. FISCHER: I'm doing it. I'm trying to
19 take this off. I'm sorry.

20 THE COURT: Okay. People, additional issues
21 or motions?

22 MS. BLAIR: Your Honor, we just had an
23 additional instruction to commit to the Court. I
24 have, I believe, 15 copies.

25 THE COURT: Okay. Defense?

1 MR. FISCHER: Your Honor, our position is,
2 as the Court well knows from the preliminary hearing,
3 there was objection to reducing this charge from
4 first to second based on their view of the evidence.
5 Nothing has changed in regards to their position as
6 far as the knives and how this attack occurred.
7 Based on that, we would ask this instruction not be
8 given.

9 THE COURT: Okay. People, your position?
10 Is this something you believe you're entitled to
11 have --

12 MR. GILMORE: I believe we're entitled to it
13 as a right, yes, your Honor. I don't think any
14 argument we made at preliminary hearing binds us
15 here. I think it's possible the jury could determine
16 that instead of planning, the defendant was perhaps
17 just out that evening and came across her, and
18 hopefully that part of the evidence, and this is the
19 other part of the evidence.

20 THE COURT: Court will include the tendered
21 instruction of a lesser included.

22 Anything further from the People in the way
23 of motions, instructions, or other issues?

24 MR. GILMORE: Not that I can think of, your
25 Honor.

1 THE COURT: Defendant?

2 MR. FISCHER: Your Honor, you are -- and I
3 guess I was handed a copy of the instruction
4 regarding the newspaper --

5 THE COURT: Yes.

6 MR. FISCHER: -- article. I assume that's
7 included in the back where you want it to be; and
8 assuming the instructions have not changed from the
9 ones that were tendered three weeks ago, they're
10 fine.

11 THE COURT: We'll go ahead and give you an
12 opportunity, as soon as I finish numbering them here.
13 We'll make a set for you.

14 MR. FISCHER: Thank you, your Honor. Is the
15 one regarding the lack of defendant's testimony in
16 the packet?

17 THE COURT: Right. Yes.

18 MR. FISCHER: Okay. Thank you, your Honor.

19 THE COURT: Okay. Mr. Gilmore, if you want
20 to come forward and get the instructions and show
21 them to other counsel. Tender to you instructions 1
22 through 17 and the proposed verdict form. We will
23 send in an original and five copies, but only the
24 original will have the verdict form. The verdict
25 form will not be on the five copies.

1 MR. CHAMBERS: Judge, we're just trying to
2 recall if there was any limited purpose evidence.

3 MR. FISCHER: I think at one time, your
4 Honor, you did -- it was a hearsay objection.

5 THE COURT: It was a hearsay matter. Told
6 them it won't be received for the truth of the
7 matter, just --

8 MR. CHAMBERS: Okay.

9 MR. GILMORE: Your Honor, for the record,
10 I've reviewed instructions 1 through 17 in the order
11 that the Court's supposed to give them, as well as
12 the verdict form. We have no objections.

13 MR. CHAMBERS: Your Honor, first of all,
14 we'd make a motion for judgment of acquittal at the
15 end of all the evidence.

16 THE COURT: Court understands that the
17 granting of the instructions is -- you believe there
18 should be none and the Court should grant that. The
19 Court will deny your motion and understand that you
20 object to any instructions as the Court should direct
21 a verdict in this matter.

22 MR. CHAMBERS: Correct. Other than that, we
23 have no objection to the instructions, no objection
24 to the form of the verdict, no additional
25 instructions to tender.

1 THE COURT: Okay. Thank you. We'll go
2 ahead and make a copy of these for you and just give
3 us -- if you want to wait a few minutes. And the
4 Court now -- as far as the exhibits are concerned, we
5 will probably wheel that into the jury room after
6 closing statements and put it against a wall.

7 We do have an easel, if you would leave it
8 here and tell the jury if you want an easel we have
9 one available, and then we can then bring the other
10 exhibits in to them. We do want you to stay and make
11 sure that you go through the other exhibits. We'll
12 put them in as close to numeric order as possible.

13 We'll try to put all the clothing together
14 in one box and put the rubber gloves there, and we'll
15 admonish the jury that those exhibits have been made
16 available for them, but do expect that they should be
17 careful in handling them as it does have some dried
18 matter on them. But beyond that, I think that's
19 probably all I need to say.

20 People agree?

21 MR. GILMORE: I'm sorry, I have another
22 matter I need to bring up to the Court, if I can
23 approach.

24 THE COURT: Can you just --

25 MR. GILMORE: Yeah. I was just thinking

1 that based on all the hearings we had in this case,
2 that there may be a need for an instruction
3 concerning specifically the issues that we've been
4 addressing in this case on the character evidence and
5 propensity issue, that there should be a limiting
6 instruction that it relates to motive, identity.

7 MR. CHAMBERS: If Mr. Gilmore is thinking
8 about Stull, a Stull-Honey type instruction, we are
9 not requesting that.

10 MR. GILMORE: I just wanted to bring that up
11 and put it on the record.

12 THE COURT: I think the record can be pretty
13 clear. We tried to do just -- by virtue of the
14 Court's rulings, could or could not, that I realize
15 we strayed close and maybe over the line on a couple
16 of occasions on it, but otherwise tried to hopefully
17 address that issue, not personalize it as such.

18 MR. CHAMBERS: That's S-t-u-l-l dash
19 H-o-n-e-y.

20 THE COURT: Okay. So what I was stating to
21 you is, as far as just advise the jury that the
22 clothing has been received as an exhibit; that if
23 they feel the need to examine it, that rubber gloves
24 have been made available, such as was used by the
25 witnesses when handling it, because of potential

1 contaminants on the clothing. Do I need to say
2 anything beyond --

3 MR. GILMORE: No.

4 MR. FISCHER: No. I want to clear up one
5 other matter.

6 I know that there was another issue
7 involving testimony outside of the Court's order
8 regarding the pornography found in 1998. I know that
9 was just introduced in a lot of those documents in
10 the '98 search. I'm assuming that you didn't
11 introduce any of those pornographic websites?

12 MS. BLAIR: No, I did not.

13 MR. FISCHER: I know it was testified to,
14 but I objected and you cut it off. I just wanted to
15 make sure none of that was coming in.

16 THE COURT: Right. That's why I think you
17 needed to spend a few minutes to make sure we only
18 have those permissible exhibits. And I appreciate
19 you bringing that up.

20 MR. FISCHER: Thank you, your Honor.

21 THE COURT: Anything else, then, that either
22 People can --

23 MR. GILMORE: I can't think of anything
24 else, your Honor.

25 THE COURT: We'll kind of modify the tables

1 a little bit and turn them at an angle and try to put
2 the podium in the center. Are you going to be using
3 any exhibits during closing statement that you can
4 think of at this point?

5 MR. GILMORE: Yes. I do anticipate using
6 exhibits, and we may try to use some of the slides.

7 THE COURT: Okay.

8 MR. CHAMBERS: Has the time for closing
9 argument been amended given that we're shooting to be
10 done by noon?

11 THE COURT: I assume that you're -- do your
12 best guess; an estimate is you're going to try to
13 stick to an hour and a half each?

14 MR. GILMORE: I will give my best efforts.

15 THE COURT: I'll give you a little leeway,
16 but try to get it in that so we can be done with it
17 in that parameter. We'll take a couple of -- take a
18 stretch break after yours, stretch break after yours,
19 so you will get up and move around a little bit
20 between the various closings, okay?

21 MR. CHAMBERS: Judge, can I just request
22 that the district attorney make available tomorrow
23 all of the slides that have been shown to the jury?
24 Because I may want to use them during my closing
25 argument. I think it's unfair if the district

1 attorney is going to use some of them that the
2 defense cannot have access to the same evidence.

3 THE COURT: I agree. If it's going to be
4 used on one side, you'll have to bring them all back.

5 MS. BLAIR: So I have to run the slide show
6 during his closing argument?

7 THE COURT: Yeah. Unless you can train him
8 to do it.

9 MS. BLAIR: I can give him the mouse.

10 MR. CHAMBERS: She can give me the mouse.

11 THE COURT: If you want to give him the
12 mouse and show him today how to do it.

13 MR. CHAMBERS: I'm trainable.

14 THE COURT: Kind of spend some time here and
15 go over it.

16 MS. BLAIR: Your Honor, all of the others
17 are in evidence. The slides are just reproductions
18 of those originals. We spent hours and hours
19 preparing slide shows for different witnesses. We
20 don't have a slide show for the closing as of yet.
21 I'm going to have a presentation for closing only.

22 Are you asking me to bring in the
23 presentation that I prepared for Jim Broderick for
24 the purpose of their closing?

25 THE COURT: I think what you need to do now

1 is go over which slides you want and have them pull
2 those. It's either available to both or none. If
3 there is anything that you use during the
4 presentation, the answer is, yes, they have to be
5 made available, if they want to use them, if you're
6 going to use them. If one has it, then the other has
7 to be made available to them. Okay?

8 So if you need to discuss it, if you want
9 anything, give an idea what you're talking about and
10 you can pull out what you want, show you how to
11 operate it and go from there, okay?

12 MR. CHAMBERS: Very well.

13 THE COURT: Counsel, please stay and go over
14 the exhibits, make sure we've got them in order.
15 We've got a brief -- some criminal matters at 8:30.
16 We should be done by 9:00. Bring them in, go over
17 the instructions with them, when we move the
18 instructions that are presently in the notebooks now
19 and then, as indicated, give them the original and
20 five copies. The original will have the verdict form
21 on it. I'll read it and I'll go over the verdict
22 forms with them and then we'll go into your closing,
23 okay?

24 MR. CHAMBERS: Very well.

25 MR. FISCHER: Thank you.

1 THE COURT: I appreciate counsel's
2 cooperation. I know it's been a difficult case.
3 Your presentations and cooperation have been
4 professional, yet maintaining the responsibilities
5 each one of you do carry.

6 And I forgot to ask you, Mr. Masters, the
7 decision not to testify was yours?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: We'll be in recess.

10 (The trial was in recess at 2:52 p.m.)

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