Understanding Adolescents ! A Juvenile Court Training Curriculum

6

EVALUATING YOUTH COMPETENCE IN THE JUSTICE SYSTEM

American Bar Association Juvenile Justice Center
Juvenile Law Center ! Youth Law Center

Robert G. Schwartz and Lourdes M. Rosado, Editors

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In 1999, responding to the crisis in juvenile indigent defense, the ABA, in partnership with Youth Law Center and Juvenile Law Center, created the National Juvenile Defender Center (NJDC). NJDC supports lawyers who represent children in delinquency and criminal proceedings throughout the country by improving access to counsel and the quality of representation. In order to develop the capacity of the juvenile defense bar, NJDC offers a variety of services including training, technical assistance, advocacy, networking, and resource and policy development. NJDC and its eight Regional Affiliates work together to provide quality representation for every child involved in the justice system. NJDC will ensure continuity in the development of each Regional Affiliate, coordinate efforts to provide a national voice on quality, access, and policy issues, and serve as a catalyst for change in the defense of children.

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Prepared with support from:

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This talented and diverse group of people created a curriculum that we hope will aid juvenile court practitioners in the many difficult decisions they have to make every day, and result in better outcomes for our children and our communities at large.

THE PROJECT TEAM
June 2000

Preface

Background

In 1996, the John D. and Catherine T. MacArthur Foundation funded the Youth Law Center, the Juvenile Law Center, and the American Bar Association Juvenile Justice Center to develop and provide training for juvenile justice professionals around the country. The goal of the project was to develop a training curriculum that applied the findings of adolescent development and related research to practice issues confronted by juvenile court practitioners at the various decision-making stages of the juvenile justice process.[1] The long range objective was to improve the quality of decisions made by juvenile court practitioners.

Two jurisdictions – West Palm Beach, Florida and Oakland, California – agreed to serve as pilot training sites. Project staff worked with juvenile court professionals at both sites and a national advisory committee of practitioners and trainers to identify the training topics. The topics chosen were relevant to adolescent development and related research, unique to juvenile court practice, and typically excluded from professional training curricula.

Over the course of two years, the project sponsored a series of trainings in the pilot sites. The trainings were developed and delivered by experts from all parts of the country. Project staff recruited trainers with specialized knowledge in the relevant subject matter whose expertise was broadly relevant to juvenile court practice. The trainings were cross-disciplinary -- delivering the information to judges, prosecutors, defenders and probation staff at the same time. In both sites, the presiding juvenile court judge set aside specific dates for the trainings, and either closed the courts or lengthened the lunch recess. Most of the trainings were three hours long.

Project staff then created training modules that corresponded to the training topics. The resulting modules incorporate the materials developed by the trainers; supplemental research, literature and training materials; and feedback from the pilot sites. The completed modules were reviewed by a group of professionals with broad expertise in each subject matter.

The Training Modules

The training curriculum consists of six separate modules:

Module One: *Kids Are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court*

Module Two: *Talking to Teens in the Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims*

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[1]The Foundation also launched the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice in 1997. The mission of the Network is to develop new knowledge regarding the assumptions on which the juvenile justice system functions, and to improve legal practice and policy-making with accurate information about adolescent development. For more information about the Network, please consult its website: http://www.mac-adoldev-juvjustice.org.

Module Three: *Mental Health Assessments in the Justice System: How To Get High Quality Evaluations and What To Do With Them in Court*

Module Four: *The Pathways to Juvenile Violence: How Child Maltreatment and Other Risk Factors Lead Children to Chronically Aggressive Behavior*

Module Five: *Special Ed Kids in the Justice System: How to Recognize and Treat Young People with Disabilities That Compromise Their Ability to Comprehend, Learn, and Behave*

Module Six: *Evaluating Youth Competence in the Justice System*

The modules were designed for maximum flexibility and broad application. The modules stand alone, so that jurisdictions can use any individual module or any combination of modules. Each module contains extensive information on the topic, which can form the core of the training, as well as a "tool kit" containing interactive exercises, hypothetical cases, video clips and other training tools. The information in the modules is sufficiently general to apply in any jurisdiction. However, the tools can be adapted to make the subject matter relevant to the daily practice of participants in any particular training site. The curriculum also contains an extensive literature review listing materials relevant to the training topics and related subjects. Selected articles can be assigned for reading prior to the trainings, or the literature review can be made available as a general resource.

Project staff also incorporated the advice of adult learning specialists and professional trainers who served as consultants to the project. These consultants recommended that trainers emphasize a limited number of basic concepts in each subject area and actively engage participants in the learning process. Thus, each module contains a list of the major themes to be discussed, and the subsequent information refers back to those main themes. Similarly, the modules contain several interactive exercises to involve the audience in the training process and to draw upon their experiences to illustrate significant points.

How to Use the Curriculum in Your Jurisdiction

Effective use of this curriculum in a local jurisdiction requires an individual or group of people to organize trainings that are tailored to the specific needs of practitioners. It is important to engage practitioners in the planning process from the beginning. Organizers can work with representatives from the relevant professional groups to determine what areas they are interested in covering. This feedback will help organizers decide whether to present the entire curriculum or select individual modules.

Organizers can also ask the participants to recommend potential trainers. Trainers should have expertise and experience in the relevant subject matter. Familiarity with local juvenile court practice is also helpful. However, it is even more important that the trainer be skilled in engaging the audience in the learning process, drawing from their experience and utilizing tools to make the subject matter relevant to daily juvenile court practice. Straight lecture format – even by a learned and interesting trainer -- is not usually an effective method for presenting the material. Potential sources for trainers are local colleges and universities; law schools; local chapters of national organizations, such as the American Psychological Association; and local or state professional organizations and societies. Organizers may also contact the American Bar Association Juvenile Justice Center for suggestions for experts to conduct the trainings.

Organizers can work with trainers to adapt the curriculum to make it relevant to local practice and current issues. Again, consultation with the relevant professional groups is important. For example, a fact pattern in the curriculum may require some changes to accurately reflect state law, local practice and current trends. Similarly, a video clip in the tool kit may present a scenario that is not representative of the issues important to the audience.

Organizers can also decide whether to conduct cross-disciplinary trainings, or to train professional groups separately. There are advantages and disadvantages to each approach. Cross-disciplinary trainings ensure that all of the juvenile court practitioners benefit from the same information. Issues raised and insights gained from the trainings may lead to changes in practice, which will be more successful if there is shared understanding and consensus among juvenile court professionals. Training the professions together also presents the opportunity for lively discussions among practitioners who have different roles and perceptions of the juvenile court process. On the other hand, candid discussion may be less likely with traditional adversaries in the same room. Attorneys or probation officers might also be reluctant to openly discuss local problems in the presence of juvenile court judges. There is also some advantage to tailoring the presentation of information to the specific professional groups because they are likely to use the information differently. Organizers should consult with the professional groups and determine what means of delivering the training best meets their needs and concerns.

Executive Summary

The goal of Module Six is for participants to develop an understanding of the competencies that young people must have to perform different tasks in the juvenile and adult criminal court process, the skills needed by an expert conducting competency evaluations, and the elements of good competency evaluations. The issue of competence arises in many places in the juvenile court process -- *Miranda* and waiver of rights before making a statement, adjudicative competence in juvenile court, adjudicative competence in criminal court, and transfer between juvenile and criminal court, for example. Competence has become a more important issue than in the past because of changes in state laws increasing the severity of sanctions juveniles face, lengthening commitments in the juvenile justice system, increasing transfers to criminal court, and adding more long-term consequences for delinquency adjudications and criminal convictions. Consequently, juvenile court professionals routinely call on mental health professionals to conduct evaluations that will help answer the ultimate legal question: is this child competent?

Competence means having capacities that are directly connected to performing the task at hand. But the decision of whether a youth is legally competent can not be based on the level of ability alone, but on the degree of match or mismatch between the youth's abilities and the demands of the situation. Trial competence, for example, can not be treated as a single capacity for which the youth is either clearly able or significantly deficient. Sometimes juvenile respondents will be unimpaired in some areas but have significant problems in others. This requires a sophisticated analysis of the juvenile's abilities over the spectrum of tasks and decisions that the youth must perform during the court process.

In this Module, participants will learn:

! Qualifications and role of a professional conducting a competency evaluation.

! Elements of a good competence evaluation.

! Principles of forensic assessment relevant to competence to waive *Miranda* rights and for adjudicative competence.

! How to use competence evaluations to make key decisions at different stages in the juvenile and adult criminal court process.

Participants acquire this information and these skills by engaging in a number of interactive exercises, including analyzing evaluations and examining a mental health professional in court.

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I. Introduction

A. **Goal of this module.** The goal of this module is for participants to:

1. Understand the competencies that young people must have to perform different tasks in the juvenile and adult criminal court process.

2. Appreciate the skills needed by an expert to conduct a competency evaluation.

3. Know the elements of a good competency evaluation.

4. Learn to use evaluation findings at different stages of the juvenile court process.

B. **What is "competence"?** "Competence" means having capacities that are directly connected to performing the task at hand, such as:

1. Having the capacities to make a meaningful decision about the particular issue to be decided, e.g., to waive *Miranda* rights.

2. Having the capacities to participate in a process, such as a juvenile or criminal court trial, with all that the process entails; the more complex the process, the greater the demand on the youth's capacities.

C. **Where does the issue of "competence" arise in the juvenile court process?**

1. Capacity to have waived *Miranda* rights at the time of a statement.

2. Adjudicative competence in juvenile court.

3. Adjudicative competence in criminal court.

4. Transfer between juvenile and criminal court (e.g., in Virginia, judicial transfer decision must consider whether youth would be competent to stand trial as an adult, and Arkansas requires a finding of competence to stand trial as an adult when the state seeks to transfer 11-13 year olds to criminal court).

This module focuses on waiver of *Miranda* rights, and on adjudicative competence.[2]

D. **Why has competence become a more important issue?**

1. States have changed their juvenile and criminal codes to increase the severity of sanctions that juveniles face.

2. States have authorized longer periods of incarceration in the juvenile justice system.

3. Many states have lowered the age for transfer to criminal court.

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[2]Current knowledge of adolescent development in general is covered in Module One, *Kids Are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Court.*

4. More juveniles are transferred to criminal court.

5. There are more long-term, collateral consequences for delinquency adjudications and criminal convictions (ranging from juvenile adjudications being used to enhance adult sentencing, to loss of the right to vote).

E. **Summary of major themes covered by this module**

1. A forensic assessment usually involves a one-time evaluation for which there is no opportunity to make corrections over time. It is distinct from an assessment used for treatment purposes, which is revisited as new information is gathered over the course of treatment. Forensic evaluations – such as those to assess competency – thus require the best possible information "up front."

2. Information for a forensic evaluation must include extensive background information, interviews with third parties, record reviews, etc. An evaluator cannot presume the "accuracy" of self-reported data, and must avoid relying on a single source of information.

3. The decision of whether a youth is legally competent should not be based on the level of capacity alone, but on the degree of match or mismatch between the youth's capacities and the demands of the situation. Different cases present different demands.

4. "Trial competence" should not be treated as a single capacity for which the youth is either clearly able or significantly deficient. Sometimes juvenile respondents will be unimpaired in some areas but have significant problems in others. This will require court and counsel to explore whether there are remedies for the problem areas.

F. **Source of principles guiding juvenile forensic assessments**. Principles that underlie good juvenile forensic assessments – which are distinct from evaluations for treatment purposes – are the same principles discussed in Module Three on mental health assessments.[3] Support for these principles – which are discussed in this module – are found in professional ethical standards, law, national standards, and standards of practice.

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[3] See Module Three: *Mental Health Assessments in the Justice System: How to Get High-Quality Evaluations and What to Do With Them in Court*

Interactive Exercise: Understanding the basic requirements for competence evaluations and evaluators

Step One: Trainer should hand out case profile of Mary Doe attached as Appendix A, and ask participants to read the profile to themselves.

Step Two: Trainer should pose the following discussion questions, designed to elicit from the participants their understanding of the: (a) qualifications and role of a competence evaluator; and (b) minimum criteria for a good competence evaluation. (This information is covered in Parts II and III of the curriculum which follow.)

- What qualifications and experience would you look for in a mental health professional to perform a competency evaluation of Mary Doe?
- Is the result of an IQ test sufficient to measure competence to stand trial? What else should the court want to know? What other information does the psychologist need to obtain about Mary in order to form an opinion on her competence? What other tests should be performed?
- What weight should the court give to the fact that Mary was well-oriented and able to carry on a conversation with the psychologist in determining whether she is competent to stand trial?

II. Requirements for competence evaluations/evaluators

A. Is the examiner qualified to evaluate *children and adolescents*?

1. Juvenile and criminal courts too often use forensic examiners who only have experience evaluating adult defendants. Whether the assessment is for use in juvenile or criminal court, or for transfer of youth between the courts, the evaluator must have specific training and experience in evaluating and diagnosing children and adolescents.

2. Diagnosing mental disorders in adolescents is a more difficult task than diagnosing adults. Many disorders experienced by adolescents are not the same as disorders of adults, and even those that have the same names – e.g., depression – do not look the same in adolescents as in adults. Many professionals highly experienced in forensic evaluations of adults will not be able to tell you, for example, the criteria for diagnosis of attention deficit disorders, will misinterpret the meaning of conduct disorder, or will lack basic knowledge of legally relevant developmental factors.

B. **Does the examiner understand the legal issue?** For example, in juvenile court an evaluator asked to assess a youth's competence to stand trial may not understand the issue because until recently the concept usually had not been raised in juvenile court.

C. **Were the psychological tests administered and their interpretation appropriate for children?**

1. Psychologists should use tests that have been designed for adolescents, not adults, to examine youths under 18. For example, when administering the Minnesota Multiphasic Personality Inventory (MMPI), evaluators should use the version designed for adolescents, not the one for adults.

2. Interpretations must also be appropriate for children. For example, many forensic clinicians are beginning to use the Hare Psychopathy Checklist, which was designed to identify individuals with certain traits – i.e., callousness or lack of remorse -- that are well ingrained and not likely to change. The test was developed for adults, though some clinicians use it for adolescents. The problem is that we don't know whether it means the same thing for adolescents, since some youth who score high *may* be developing psychopathic personalities, while others may be passing through a temporary phase. The results can be easily misinterpreted.

D. **Has the examiner received a developmental and mental health history on the youth?** A competence evaluation cannot be done merely with a clinical interview and a test or two. There must be a developmental history that includes information from parents about the youth's life-long development, and records regarding the youth's academic and mental health history.

For example, in *Miranda* cases courts have said that developmental disabilities and learning difficulties are important factors to consider when deciding whether youth could comprehend and make competent waivers of their *Miranda* rights. Intelligence testing alone will not pick up many kinds of developmental deficits. The picture will

be clearer when the case is set in the context of good information about the youth's pre-school development, academic performance across the school years, and his/her history of behavioral development at home.

E. **Does the examiner describe legally relevant functional abilities?** It is not enough that examiners say that a youth is not mentally retarded or that the youth is mentally ill. Examiners must provide direct evidence about what the youth does or does not understand. Clinicians should be informing the court or counsel about how the youth functions when actually dealing with the information or situation that is at issue.

For example, every evaluation for capacity to waive *Miranda* rights should include, at a minimum, evidence about what the youth thinks that each component of the *Miranda* warning means. Every evaluation for competence to stand trial should include specific evidence about what the youth does or does not comprehend about the charges, the possible consequences of the trial, the trial process, the roles of people in the trial, etc. Thus, the evaluation should include more than just "yes" or "no" answers to inquiries. The youth should be able to explain the charges, consequences, etc.

F. **Does the examiner have appropriate methods for assessing the relevant capacities?** A number of special methods – tests and interview schedules – are now available to experts for examining youths' capacities related to questions of legal competence. For example, there are commercially available instruments for assessing what youth do and do not comprehend regarding the *Miranda* warning and its significance. While examiners don't have to use special forensic clinical methods in every case, they should know them, have them available, and be able to explain why they did not use them.

G. **Does the examiner address more than the youth's "mere understanding?"** Examiners should be required to explore how youths interpret what they understand, and whether their beliefs allow them to use their understanding meaningfully in making *Miranda* waiver decisions or participating in their defense. Examiners should also go beyond "understanding" and examine the youth's capacity for decisionmaking.

For example, in the *Miranda* context, youths may clearly know they can have someone called a "lawyer" but may not know what a lawyer does, or that lawyer-client communications are confidential, or that the lawyer is not just another agent of the court. The examiner who stops with "mere understanding" of the *Miranda* warning– "I can have a lawyer"– will not get to those other issues.

III. The Role of the Evaluator

A. **A mental health professional should only accept referrals for evaluations within his/her area of expertise**. The evaluator should have:

1. knowledge, skill, experience and training in child and adolescent development.

2. knowledge, skill, experience and training in juvenile or criminal justice issues, in particular with adolescents who are involved with the justice system.

3. knowledge, skill, experience and training in evaluating competence of juveniles in the context of specific legal proceedings (such as a transfer hearing, or a juvenile court proceeding).

B. **An evaluator should decline referral for an evaluation when s/he is unlikely to be impartial**. Are there any sources of potential bias, either internal (e.g., anger at offenders, belief that punishment is always wrong) or external (e.g., pre-existing extra-professional relationship with defense attorney, prosecutor, youth, or family) that would keep the mental health professional from considering the data fairly and reaching a balanced conclusion?

C. **A mental health professional should decline an evaluation referral to avoid a dual relationship.** A psychologist cannot be the therapist to and evaluator of the same youth. Mental health professionals are strongly discouraged on ethical grounds from maintaining dual relationships with a client. Typically, such dual relationships would involve a professional role (e.g., therapy or assessment) combined with a personal or business relationship. Treating therapists could generally *not* play the role of evaluating forensic expert in juvenile proceedings.

   Problems arise when the evaluator seeks to obtain treatment records or consult with the therapist, since in most jurisdictions, only the patient/youth can waive the patient/therapist privilege or release confidential treatment records. The question then arises as to whether the youth is competent to waive the privilege. When reasonable efforts to obtain records fail, an evaluator may have to present the court with an informed judgment about the youth's capacities without reviewing treatment records or consulting with the therapist.

D. **The evaluator should ensure that appropriate authorization to conduct an evaluation has been obtained**, i.e., the evaluator should obtain a court order or consultation request from defense counsel.

E. **The evaluator must identify the relevant legal questions and forensic issues.**
1. The evaluator should be able to identify and recite the state's specific legal definition for the type of competence in question.

2. The evaluator should identify the forensic issues that must be investigated in order to answer the legal question at hand. What are the abilities, capacities, and/or skills that a young person needs in order to be competent in this particular area?

3. The evaluator should then identify the specific legal question(s) which the court will ultimately decide, i.e., the youth's competence to waive *Miranda* rights, the youth's competence to stand trial.

IV. Principles of Forensic Assessment Relevant to Competence to Waive *Miranda* Rights

A. Relevant U.S. Supreme Court decisions

1. *Miranda v Arizona*, 384 U.S. 436 (1966): A suspect of crime has constitutional rights to avoid self incrimination and to advice of counsel prior to or during in-custody legal proceedings such as police questioning. Unless the suspect has made a "knowing and intelligent" waiver of these rights, his or her statements may not be used in subsequent delinquency or criminal proceedings.

2. *In re Gault*, 387 U.S. 1 (1967): Juveniles have a constitutional right to counsel and to avoid self-incrimination.

3. *Fare v. Michael C.*, 442 U.S. 707 (1979), in which the Court permitted into evidence a juvenile's confession made to his probation officer:

    a. While mere fact of being a juvenile does not invalidate waiver of rights, juveniles as a class are at greater risk than adults of having deficiencies in the intellectual or emotional characteristics required to satisfy the standard for valid waiver. Each case is to be decided on "totality of the circumstances" rather than any single factor such as age, intellectual functioning, or mental disorder. Legal descriptions of " totality of circumstances" focus on two broad types of factors: features of the situation in which youth confessed, and characteristics of the youth relevant to abilities to understand and apply the *Miranda* warnings.

    b. Juveniles' confessions require special scrutiny, *Haley v. Ohio*, 332 U.S. 596 (1948) and *Gallegos v. Colorado*, 370 U.S. 49 (1962).

B. Standard for competent waiver of *Miranda* rights

1. Waiver must be voluntary, knowing, and intelligent, based upon the totality of the circumstances.

2. Totality of circumstances involves an assessment of the interaction between:

    a. The circumstances of the interrogation/confession, and

    b. The characteristics of the youth.

    Gallegos recognized that youth may fear police or give greater deference to authority than adults, that they are more susceptible to suggestions than adults, and that an assessment of "voluntariness" requires close scrutiny to ensure that youth are not coerced. However, in *Colorado v. Connelly*, 449 U.S. 157 (1986), the Supreme Court held that absent police coercion, a defendant's mental state alone would not make a confession involuntary. The Court has never addressed the circumstances under which police conduct that would not be coercive for adults might be coercive with adolescents. Rather, it has left lower courts to determine "voluntariness" under the "totality of circumstances" test.

C. **Focus on age**. Despite the "totality of circumstances" standard, judicial decisions on competence to waive *Miranda* rights tend to cluster around chronological age: courts, focusing on IQ, education and prior experience, tend to exclude confessions of children 12 or under, and admit confessions of youth who are 16 or older. Courts vary widely in cases involving 13-15 year olds. *Note to trainer: trainer should cite cases from local jurisdiction.*

D. **Retrospective versus present-time evaluation**. Unlike adjudicative competence, competence to waive *Miranda* rights requires a *retrospective* evaluation. What did the youth understand *at the time* he or she was interrogated? Current capacities are more relevant if the youth has permanent deficits, such as mental retardation**.**

E. **Empirical studies raise questions about the criteria that courts have used to determine competence.**

Empirical studies show that most juveniles who receive a *Miranda* warning do not understand it well enough to waive their constitutional rights in a "knowing and intelligent" manner. For example, Dr. Thomas Grisso conducted tests to determine whether juveniles could paraphrase the words in the *Miranda* warning, whether they could define six critical words in the *Miranda* warning such as "attorney," "consult," and "appoint," and whether they could give correct true-false answers to twelve re-wordings of the *Miranda* warnings. **Most juveniles 14 and under, and many juveniles 15-17, did not understand the *Miranda* warning as well as the average adult offender.** Compared to adults, juveniles were far less able to understand the four components of a *Miranda* warning. Juveniles demonstrated significantly less comprehension of at least one of the four components of the warning. **Juveniles most frequently misunderstood the *Miranda* advisory that they had the right to consult with an attorney and to have one present during interrogation.** Other research has made similar findings.[4]

Younger juveniles exhibit even greater difficulties understanding their rights. Juveniles younger than 15 demonstrate significantly poorer comprehension of the nature and significance of *Miranda* rights. The level of comprehension exhibited by youths 16 and older, although more comparable to that of adults, left much to be desired.

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[4]A replication of Grisso's study in Canada reported that very few juveniles fully understood their warnings and that the youths who lacked comprehension waived their rights more readily. "[I]t seems likely that many if not most juveniles who are asked by the police to waive their rights do not have sufficient understanding to be competent to waive them." Another study reported that youths interpreted the warning that "anything can and will be used against you in a court of law" to mean that "any disrespectful words directed toward police would be reported to the judge." A study of urban, black high school students who participated in a year-long "Street Law" course reported that education about *Miranda* rights did not improve students' understanding or comprehension in ways that would enable them to take meaningful advantage of their rights. Barry C. Feld, *Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel* in T. Grisso & R. Schwartz, eds., YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE. Chicago, IL: University of Chicago Press (2000) (footnotes omitted).

F. **Analyzing legal competencies**. Every evaluation of a youth's capacities – whether to waive *Miranda* rights or to participate in the trial process – must be done within a framework that evaluates the three basic components of legal competency. These components are functional, causal, and interactive.

1. **Functional abilities.** This includes the specific capacities, skills, and abilities relevant to each of the areas of the legal standard being evaluated; in the context of waiving *Miranda* rights, these are the:

   a. Ability to **comprehend** *Miranda* warning (KNOWING what the words mean).

   b. Ability to **grasp the significance** of rights in the context of the legal precess (KNOWING that you don't have to speak to the police, that anything you say can be used against you in court).

   c. Ability to **process information** in arriving at a decision about waiver (INTELLIGENTLY determining whether under the present circumstances it is in your best interest to talk to the police).

2. **Causal factors.** Does the youth have cognitive or developmental deficits, or suffer from emotional disturbance, learning disabilities, mental retardation or other mental disorders, that interfere with his or her ability to understand the situation and decide whether to waive *Miranda* rights?

3. **Interaction of abilities and situational demands**. Competency evaluations must consider the abilities of the youth in the context of the demands of the interrogation. What is the impact on the youth's abilities of factors such as the duration of the interrogation, whether a parent was present, the time of day, location, availability of food, bathroom breaks, etc.?

G. **Instruments for assessing whether a youth has the capacities to waive *Miranda* rights.**

1. Comprehension of *Miranda* Rights (CMR). Examiner presents each of four main *Miranda* warning statements to youth, reading each while showing it to the youth in printed form. Youth is then asked to describe what each statement means "in your own words." Each response is scored "adequate," "questionable," or "inadequate" according to detailed scoring criteria provided for each warning, allowing a total CMR score (0-8) to be calculated. (NOTE: This test alone does not provide an evaluation. The examiner must still conduct an interview and gather other information. Note, too, that this instrument focuses on the knowing and intelligent part of *Miranda* criteria, not voluntariness.)

2. Comprehension of *Miranda* Rights–Recognition (CMR-R). This instrument does not require youth to paraphrase, and thus may be helpful in identifying the youth who understands the warning but does not have the verbal ability to express this understanding. The youth is presented with three statements following each warning and is asked to say whether each of the three statements is the "same" or "different" from the warning. A total of 12 statements are presented, half of which

are the same and half of which are different. Total CMR-R score is the number of correctly identified statements.

3. Comprehension of *Miranda* Vocabulary (CMV). This is a vocabulary test that uses six key words in the *Miranda* warning and asks the youth to explain the meaning of each. Objective scoring criteria are used to score the youth's definitions and produce total CMV scores (ranging from 0-12.) The purpose of this instrument is to provide additional information with which to interpret the source of youths' poor understanding when manifested in the CMR and CMR-R instruments.

4. Function of *Miranda* Rights in Interrogation (FRI). This instrument assesses a youth's appreciation of the relevance of the *Miranda* warnings in the legal context, i.e., the reason that each of these rights is important. FRI poses four situations described in brief vignettes and drawings: youth about to be questioned by police officer after arrest; youth consulting with defense counsel; a youth being pressured by police officers to make a statement; and a youth in a hearing before a juvenile court judge. The youth is then asked a series of questions that focus on the youth's appreciation of the adversarial nature of the encounter with police officers, the advocacy nature of attorney-client relationship, the protective nature of the "right to silence" despite the authority of the police officers, and the role of an earlier confession or assertion of the right to silence at a later court hearing. The responses are again scored according to objective criteria.

Interactive Exercise: Competence to Waive Miranda Rights

Trainer should ask participants the following questions about a competence to waive *Miranda* rights evaluation:

! What are the key questions that such an evaluation should answer?
! Who must the evaluator interview?
! What records must the evaluator review?

H. **Evaluating competence to waive *Miranda* rights: what the evaluator should do.**

1. **Key questions that the evaluation seeks to answer:**

   a. Did the youth understand and appreciate the significance of the *Miranda* warning?

   b. Was the youth capable of exercising autonomous choice about waiver of the *Miranda* rights?

   c. Was the youth's confession reliable? This last question is often asked by lawyers or judges who make the referral for an evaluation, but it is rare that an evaluation alone can answer this question.

2. **Use the instruments described in Part IV.G. *supra*.**
3. **Obtain records.** The evaluator should obtain various records, including:

a. delinquency and dependency history and records, including those of previous parole/probation in community

b. arrest report

c. school performance

d. academic evaluations

e. mental health evaluations and records

f. medical evaluations and records

4. **Interview parents or custodians.**

a. Parents or custodians should be interviewed for information about the interrogation. This should include a detailed chronology of events surrounding the arrest and questioning. The chronology should begin a few days before the arrest and continue to a few days after the arrest.

b. Parents or custodians should also be interviewed for information about the youth's life course development, including: birth/medical/injury history; social developmental milestones; educational history; history of emotional disturbances; and mental health issues (especially those resulting in mental health treatment).

5. **Interview other parties present at interrogation**. This would include police and attorneys.

6. **Interview youth**. This should include reviews of the statement, the *Miranda* waiver form, and the youth's prior legal experience, so his/her sophistication can be evaluated. Evaluator should, at minimum, ask youth what each of the *Miranda* questions means.

7. **Administer psychological testing to youth**. This would include tests to assess:

a. intelligence

b. academic skills

c. personality and psychopathology

d. brain dysfunction (if indicated by history or observations)

8. **Analyze other data relevant to reasoning and processing information.**

a. intellectual functioning
b. grossly impaired judgment

c. brain damage

d. severe psychotic symptoms (delusions, hallucinations, confusion)

e. level of education

f. time of interrogation (capacity for attention and concentration)

g. experience with juvenile system and prior interrogation

9. **Analyze other data relevant to "voluntariness,"** such as whether there is evidence of mental retardation.

10. **Consider all relevant factors that may affect the youth's abilities to use his or her capacities.** Such factors include psychosocial maturity, mental disorder, and emotional disturbance. In addition, research shows that adolescents' decision-making is affected by stress, and by large fluctuations in mood and emotion.

V. Principles of Forensic Assessment Relevant to Juvenile Evaluation for Adjudicative Competence

A. **Introduction to adjudicative competence.** Adjudicative competence, or competence to stand trial (which includes the entering of a guilty plea), is one protection that has taken on new implications in the modern context of punitive approaches to youth who misbehave. Concerns about the capacities of immature youths to understand the nature of the adjudication process and to make critical decisions related to it are being raised in legislatures and courts across the nation. Historically, defendants could lack adjudicative competence because of their mental health status or mental retardation. For the first time, *immaturity* is being considered in adjudicative competence determinations, i.e., some defendants, by virtue of their age and developmental status, lack the capacities to be a competent defendant.

Interactive Exercise: Adjudicative Competence

Trainer should pose the following questions for discussion:

- What are the values underlying the principle that only competent people should be tried?
- What are the elements of adjudicative competence?
- What must a defendant/respondent be able to do and/or understand before a court will judge him/her competent to stand trial?
- What are the consequences if a defendant/respondent is competent in some areas but not others?
- What are the consequences if a defendant/respondent is not competent because of developmental immaturity?

B. **Legal background of adjudicative competence.**

1. The "test" for adjudicative competence was enunciated by the U.S. Supreme Court in *Dusky v. United States*, 362 U.S. 402 (1960): "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has rational as well as factual understanding of the proceedings against him."

2. In *Drope v. Missouri*, 420 U.S. 162 (1975), the Court held that the incompetence doctrine was "so fundamental to an adversary system of justice," that conviction of an incompetent defendant, or failure to adhere to procedures designed to assess a defendant's competence when doubt has been raised, violates the due process clause of the federal Constitution. "It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." Nor is such a defendant competent to enter a plea of guilty in lieu of a trial. *Godinez v. Moran*, 509 U.S. 389 (1993) holds that the legal tests for competence to stand trial and competence to plead guilty (and waive counsel) are the same. Incompetence bars adjudication, whether by plea or trial, and this includes any pretrial proceedings that could be adverse to the defendant's interests.

C. **Purposes of adjudicative competence**. Adjudicative competence in juvenile and criminal proceedings serves three important purposes:

1. **Preserving the integrity of the criminal process**. The credibility of the criminal process is undermined if the defendant lacks a basic moral understanding of the nature and purpose of the proceedings against him or her.

2. **Reducing the risk of erroneous convictions.** The accuracy or reliability of the adjudication is threatened if the defendant is unable to assist in the development and presentation of a defense.

3. **Protecting the defendant's decision-making autonomy**. To the extent that decisions about the course of adjudication must be made personally by the defendant, he or she must have the abilities needed to make decisions.

D. **Elements of adjudicative competence**. Adjudicative competence has two components.

1. **Competence to assist counsel.** The minimum conditions legally required for participating in one's own defense generally include the capacity to:

   a. understand the charges and the basic elements of the adversary system;
   b. appreciate one's situation as a defendant in a delinquency or criminal prosecution; and
   c. relate pertinent information to counsel concerning the facts of the case.

   These abilities, taken together, fulfill *Dusky*'s requirement that the defendant be able "to consult with counsel with a reasonable degree of rational understanding."

2. **Decisional competence.** A defendant who is competent to assist counsel may nevertheless not be competent to make specific decisions regarding the defense of his or her case that arise as the trial process unfolds.

   a. Case law reflects four criteria that may be invoked in determining decisional competence:

      1) the capacity to understand information relevant to the specific decision at issue (understanding);
      2) the capacity to appreciate one's situation as a defendant confronted with a specific legal decision (appreciation);
      3) the capacity to think rationally about alternative courses of action (reasoning); and
      4) the capacity to express a choice among alternatives (choice).

   b. The capacities required for trial in juvenile court are likely to be different than those in criminal court because the youth will have to understand different concepts and outcomes. The greater the severity of the consequences in a juvenile proceeding, the more that adjudicative competence in juvenile court should resemble the competence required for adult criminal court.

1) Thus, in states that use blended sentencing, the juvenile will need to understand the implications of a plea, or a right to a jury trial, or the implications of taking the witness stand, in ways that will differ from the competencies required for the traditional juvenile court. A youth in juvenile court who is charged with an offense that can lead to transfer to criminal court will need to know that his or her exposure to transfer in the future will be enhanced by a guilty plea (admission) today.

2) In some states, such as Virginia, transfer to criminal court is explicitly conditioned on a finding that the youth is competent to stand trial as an adult.

E. **Analyzing legal competencies.**

As with the analysis of competencies necessary for the waiver of *Miranda* rights, the evaluation for adjudicative competence will examine functional, causal and interactive factors.

1. **Functional abilities** can be analyzed by examining 13 capacities that arise during four aspects of the trial process.

a. **Understanding of charges and potential consequences**

1) Ability to understand and appreciate the charges and their seriousness
2) Ability to understand possible dispositional consequences of guilty, not guilty, and not guilty by reason of insanity
3) Ability to realistically appraise the likely outcomes

b. **Understanding the trial process**

1) Ability to understand the roles of participants in the trial process (e.g., judge, defense attorney, prosecutor, witnesses, and, where applicable, jury)
2) Ability to understand the process and potential consequences of pleading and plea bargaining
3) Ability to grasp the general sequence of pretrial and trial events

c. **Capacity to participate with attorney in a defense**

1) Ability to adequately trust and work collaboratively with attorney
2) Ability to disclose to attorney reasonably coherent description of facts pertaining to the charges
3) Ability to reason about available options by weighing their consequences
4) Ability to realistically challenge prosecution witnesses and monitor trial events

d. **Potential for courtroom participation**

1) Ability to testify coherently
2) Ability to control own behavior during trial proceedings
3) Ability to manage the stress of trial

2. **Causal factors.** The assessment should include a description of the causal connection between the youth's clinical and developmental status and deficits in competence abilities. This is particularly important because of the later question of remediation, that is, whether the youth's functional deficits can be modified (i.e., whether and how competence can be developed or restored). Does the youth have cognitive or developmental deficits, or suffer from developmental immaturity, emotional disturbance, learning disabilities, mental retardation, or other mental disorders that interfere with his or her ability to participate in the trial process? The tendency should be resisted to treat trial competence as a single capacity, for which the youth is either clearly able or significantly deficient.

   a. Can the deficits be fixed, or be made less problematic? For example, if the youth cannot understand written or technical language, will it help if the attorney explains proceedings and important decisions slowly and in very basic terms?

   b. If the evaluator observes no significant deficits, then this should be noted clearly.

   c. Sometimes defendants will be unimpaired in some areas but have significant problems in others.

3. **Situational factors.** Because competence depends upon the degree of match or mismatch between the youth's abilities and the demands of the youth's situation, the evaluator must know the youth's legal situation and the trial circumstances that the youth might face. Court or counsel should inform the evaluator if any of the following situations are probable, since each in its own way may place a greater demand on the youth's capacities:

   a. The trial is in criminal court rather than juvenile court;

   b. The juvenile court hearing is for the purpose of deciding whether the youth should be transferred to criminal court;

   c. Plea bargaining is likely to be involved;

   d. The evidence against the youth is uncertain, so that the youth's ability to provide a coherent, personal account of events is likely to be relevant;

   e. The trial process is likely to involve many witnesses;

   f. The trial is likely to require a complex legal defense;

   g. The defendant is likely to have to testify;
   h. The trial is likely to be lengthy; or

   i. The defendant has fewer sources of social support.

F. **Evaluating adjudicative competence**: **what the evaluator should do**

1. **Use multiple sources of information for each area being assessed**. Avoid single sources of information, in particular self-reporting. Sources should include:

    a. a clinical interview

    b. collateral reports (e.g. family members, teachers, employers, therapists, case managers, parole/probation officers)

    c. records

        1) delinquency and dependency history and records, including those of previous parole/probation in community
        2) arrest report
        3) school performance
        4) academic evaluations
        5) psycho-social history
        6) mental health evaluations and records
        7) medical evaluations and records

2. **Use structured interview guides for "competence to stand trial" abilities.** Most of these guides were not designed for adolescents but are flexible enough to be used with them. They include:

    a. Competency Assessment Interview (CAI) examines the thirteen functional abilities described above as relevant for competence to stand trial.

    b. Fitness Interview Test-Revised (FIT-R) provides greater structure for the interview than the CAI while focusing on three main areas: understanding of the proceedings, understanding of the possible consequences of the proceedings, and the ability to communicate with counsel.

    c. MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA) is highly structured and uses an objective scoring system. Questions are grouped into four areas: understanding of charges and trials; appreciation of the relevance of information for a defense; reasoning with information during decision-making; and evidencing a choice. (The MacCAT-CA must be modified when assessing competence to stand trial in juvenile court.)

3. **Use competence screening instruments to assess defendants' understanding of trial related concepts.**

    a. Competency Screening Test (CST)

    b. Georgia Court Competency Test-Mississippi State Hospital (GCCT-MSH)

    c. Brief Symptom Inventory (BSI) (screens for mental and emotional disorders, though BSI results in research studies have raised questions about it)
    a.-c. are brief paper and pencil tests that are best used as screening instruments to determine whether competence should be more thoroughly examined. They

have limited use for adolescents, especially regarding competence in juvenile court. For adolescents, a better instrument is:

d. Competency Assessment to Stand Trial-Mental Retardation (CAST-MR), which was developed for adult defendants with mental retardation.

4. Administer psychological tests. These include tests that identify:

   a. Mental/emotional disorders (e.g., Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A), Million Adolescent Clinical Inventory (MACI)). These are objective measures, though they all have limitations with youth in the justice system. The MMPI-A is so long that it is beyond the attention and reading capacities of most delinquent youth, and the MACI has not yet been normed for juvenile court samples.

   b. Intellectual functioning (e.g., Wechsler Intelligence Scale for Children - III).

   c. Academic achievement (e.g., Wide Range Achievement Test - 3).

   d. Behavior (e.g., Child Behavior Checklist, but its focus on behavior problems is usually less relevant than clinical symptoms for explaining functional deficits related to trial competence).

5. **Consider clinical characteristics**:

   a. mental or emotional disorder, particularly

      1) depression
      2) schizophrenia
      3) brain dysfunction
      4) impulsivity
      5) anger control problems

   b. intellectual functioning, particularly developmental disability/mental retardation

   c. academic functioning deficits

   d. attention-deficit/hyperactivity disorder

   e. post-traumatic stress disorder

   f. conduct disorder

   g. substance abuse

6. **Assessing developmental maturity**. **This is a significant way in which juvenile evaluations differ from those of adults. At age 14-15, juveniles in general begin to look like adults cognitively, but they may not catch up to adults on**

measures like risk-taking or future perspective until age 17 or 18. A developmental maturity assessment should consider:

a. age

b. interests

c. peers, and role with them

d. psycho social judgment

e. cognitive maturity

VI. Contents of a Well-Prepared Assessment

B. **The assessment should focus on forensic issues.** A good assessment should describe the youth's functioning in areas relevant to forensic issues (e.g., capacities for assisting counsel) rather than merely offering an opinion on the ultimate legal question (e.g., competence to stand trial).

C. **The assessment should describe findings and their limits.**

1. Findings and opinions should be clearly described and well supported in report.

2. Evaluator should be able to report that he or she considered other possibilities and rejected them for specific reasons. ("Yes, I took that into account, but my conclusion comes from other information, in particular X, Y, Z.")

D. **The assessment should attribute information to sources.** All important factual information in a forensic evaluation should be attributed (e.g., "According to John, his school attendance has been fair although his grades have been poor; however, a review of his school records indicates that he has been late or absent for nearly two thirds of scheduled school days for the present year, and has passed only two subjects"). Thus, all parties should be able to determine where a particular piece of information was obtained.

E. **The assessment should use plain language and avoid technical jargon.** When technical terms cannot be avoided, they should be explained clearly.

E. **The assessment should include sections on:**

1. Identifying information, including:

   a. who is being evaluated

   b. age, school grade and status

   c. current charges

   d. reason for evaluation

   e. who requested/ordered evaluation

2. Procedures used by the evaluator, including:

   a. records reviewed

   b. persons interviewed other than the youth

   c. procedures used with client

      1) interview

2) specific psychological tests
3) other procedures

d. where evaluation was conducted, with a description of the testing conditions

e. how long evaluation took

f. notification of purpose given and whether the child understood it

3. Relevant history

4. Current clinical functioning

5. Relevant forensic issue and capacities/functioning

6. Conclusions

7. Recommendations

Interactive Exercise: Analyzing Competence Evaluations

The purpose of this exercise is for participants to learn how to assess the strengths and weaknesses of competence evaluations.

Step One: Break the participants into small groups. (If at all possible, make sure that there is representation from each of the professions – judges, prosecutors, defense attorneys and probation officers – in each group.) Ask each group to select one individual to act as a recorder and reporter for the group. Hand out: (a) one of the competence evaluations attached at Appendix B; and (b) the work sheet attached as Appendix C. Ask participants to read over the selected evaluation, and complete Part A only of the worksheet.

Step Two: Reconvene as a large group to lead participants through a critique of the competence evaluation, using the worksheet to guide discussion.

VII. Interpreting the Evaluation

A. The examiner must consider the ways in which the youth has manifested strengths and deficits in *legally relevant functional abilities*. The examiner must further offer explanations, if they are available from the data, for any deficits. The examiner must explain the significance of the deficits in light of the demands of the youth's trial. If the youth appears incompetent, the court will want to know about the youth's prospects for being restored to competence.

B. A part of the interpretation should focus on the youth's deficits that might reduce the attorney's ability to represent the youth effectively. The deficits that make a difference here are those that cannot easily be remedied, e.g., a youth who has a psychotic delusion that everyone is against him, the traumatized youth who, because of childhood abuse, refuses to talk to adults, or the immature or fearful youth who can only shrug her shoulders. Other youth may lack the capacity to communicate with the attorney because of neuropsychological deficits, which prevent the telling of a coherent story. Still other youth with, for example, ADHD, may have difficulty keeping track of evidence in a prolonged trial, and thus may be unable to monitor or evaluate information that arises during the course of the trial.

C. The evaluator's interpretation must address those important decisions that only the defendant can make, such as the right to a jury trial or the right to plead guilty. A youth may lack the ability to think abstractly, or may be able to think abstractly but may not have the judgment necessary to make choices. "Poor judgment" is not a bad decision, per se, but is one that is clearly influenced by psychopathology or by characteristics of the youth that are in developmental transition.

D. The deficits must be interpreted in light of the complexity of the forthcoming proceedings. Some youths with monitoring and memory deficits due to an attentional disorder may have little difficulty in a brief juvenile court trial, but would be unable to deal with lengthier proceedings, especially those that may involve publicity and media attention.

VIII. Disposition in Incompetence Cases: Restoring the Youth to Competence– Rules Developed in the Adult System

A. The examiner must provide information to the court on whether the conditions responsible for the defendant's incompetence can be changed. The examiner must form an opinion concerning:

1. Whether an intervention exists that could increase the defendant's relevant abilities.

2. If so, the likelihood of change if that intervention were employed.

3. The time that is likely to be required to bring about the necessary change.

B. The likelihood of restoring a youth to competence will vary, depending upon whether incompetence is due to:

1. Mental disorder

2. Mental retardation and specific cognitive disabilities

3. Developmental immaturity

C. Some experts suggest that if the youth is incompetent to stand trial as an adult, the case should remain in or be remanded to juvenile court.[5]

D. Similarly, if the youth is incompetent to stand trial in juvenile court, the case should be treated as a dependency case (like those cases in which child accused of crime is younger than the lower age limit for delinquency jurisdiction).

Interactive Exercise: Pre-hearing Interview of Competence Evaluator

The purpose of this exercise is for participants to learn how to effectively question the professional who prepared a competence evaluation in anticipation of the professional being called as a witness at the competency hearing. The trainer should be prepared to act the role of the evaluator for this exercise. If possible, the trainer should arrange for additional forensic psychologists and psychiatrists to play-act the role of evaluator so that this exercise may be conducted in small groups.

Step One: Randomly assign participants to the role of either the defense attorney or prosecutor in the case.

Step Two: Direct participants to fill out Part B of the exercise worksheet attached at Appendix C in preparation for their interview with the

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[5]Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence and Youthful Offenders* in Thomas Grisso & Robert G. Schwartz, eds., YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE. Chicago, IL: University of Chicago Press (2000).

evaluator who conducted the evaluation which they read earlier in the class.

Step Three: Select one “defense attorney” and one “prosecutor” to conduct separate interviews of the expert in front of the large group. After these interviews are completed, allow other participants to ask additional questions that have not already been covered. Trainer will critique the questions during the course of the exercise, and make suggestions on how to fine tune them, and suggest additional questions.

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APPENDIX A

Case Profile for Interactive Exercise

Mary Doe is a 13-year-old eighth grader at Suburban Junior High School. Late one Friday night she calls 911 and tells the dispatcher, "I just stabbed my step-father." Police arrive, finding the step-father dead.

Police take Mary to the station house. Her mother, who was at a charity event, comes to the station and is in the waiting room while Mary is interrogated. After giving Mary her *Miranda* warning, police question Mary. She says that her step-father was cruel to her, and she "couldn't take it any more."

Under the law of Everystate, Mary is charged as an adult. Her defense attorney files a motion for a competency evaluation. The criminal court judge orders the court's chief psychologist to conduct an evaluation. The psychologist visits Mary at the juvenile detention center, where she is being held. Mary appears well-oriented and has no difficulty keeping up her end of the conversation. He learns from her that she is a B student in a regular education program at Suburban. She has never been arrested before, and has had no disciplinary problems at school other than infrequent truancy. Mary says that she saw a psychiatrist after sixth grade because she was unhappy. She stopped after six months, but reports that she saw him again once about a month ago because her mother insisted.

The psychologist reports to the court that he administered an IQ test and inteviewed Mary. Mary's IQ was 90. The psychologist observes that Mary has no cognitive difficulties, no evidence of retardation or mental illness, and that he has "no doubt that she is competent."

APPENDIX B

Sample Competence Assessments for Use in Interactive Exercises

Includes:

9. Mark Haas evaluation on competence to waive *Miranda* rights.
10. Hillary Simpson evaluation on competence to waive *Miranda* rights.
11. Christopher Cowan evaluation on competence to waive *Miranda* rights.
12. Hope Wood evaluation on competence to stand trial.
13. Bobby Carlysle evaluation on competence to stand trial.
14. Diego Alvarez evaluation on competence to stand trial.

Psychological Evaluation Re: Comprehension of *Miranda* Rights

NAME: Mark Haas
DATE OF BIRTH: October 7, 1986.
CHRONOLOGICAL AGE: 9 years 8 months
DATE OF EVALUATION: June 10,11,12,13,1996
LOCATION OF EVALUATION: University Legal Clinic, University Law School
EXAMINER: Courtney Rosenberg, Ph.D., ABPP
DATE OF REPORT: June 27, 1996

IDENTIFYING DATA AND REASON FOR REFERRAL:

Mark Haas was referred for a psychological evaluation by Attorney Sarah Combs in order to assist in determining his competence to make a knowing, intelligent, and voluntary waiver of his *Miranda* rights. Mark was arrested on April 5, 1996, on the charge of First Degree Murder related to an incident alleged to have occurred on April 1, 1996.

STRUCTURE OF THE EVALUATION:

Prior to my evaluation, I informed all parties I interviewed that I am a psychologist, and that I was asked to evaluate Mark Haas concerning his comprehension of his *Miranda* rights. I informed them that the content of the interview, assessment results, and my observations would be shared with his attorney in the form of a psychological evaluation report, that the report potentially would be introduced into evidence in court, and that I might be asked to testify in court.

I was provided with a copy of the version of the *Miranda* warning used in the Metropolis Police Department jurisdiction; a copy of the statements given by Mark Haas to the Metropolis Police Department; Metropolis Police records concerning the alleged incident; a Juvenile Court Pre-trial Services Court Report, undated, by Ms. Jennifer D. Smith; and the Report of Postmortem Examination dated April 2, 1996, by Dr. Stuart J. Gittleman. In addition, I have had contact with Ms. Anne Haas (Mark's mother).

EVALUATION TECHNIQUES ADMINISTERED:

Clinical Interview (2 hours)
Mental Status Examination
Wechsler Intelligence Scale for Children, 3e, (WISC-III)
Wechsler Individual Achievement Test (WIAT)
Comprehension of *Miranda* Rights (CMR)
Comprehension of *Miranda* Rights, True/False (CMR-TF)
Comprehension of *Miranda* Vocabulary (CMV)
Function of Rights in Interrogation (FRI)

RELEVANT BACKGROUND INFORMATION:

Personal History. Ms. Haas said Mark is the third of three boys. She said Mark's biological father sees him about once a month. Mark enjoys spending time with him. He works as a cook at a Kentucky Fried Chicken. Ms. Haas said Mark's father treats him well. There is no history of abuse

or neglect. Ms. Haas said she formerly worked as a day care provider. She then became a Department Of Public Welfare (DPW) foster mother. Since the alleged incident, she has been unemployed. She is dating Mr. Andrew Johnson, who has a good relationship with Mark. He is employed as a truck driver. Ms. Haas described her relationship with Mark as "good." She said he listens well and does what he is supposed to do. She described him as "easy going." She said he gets along "fine" with his brothers. She said they argue over "petty simple little things," but from her perspective they do not argue more than most siblings. She said they do not engage in physical fights. Mark's older brothers are ages 14 and 16. Ms. Haas said there is no history of physical abuse, sexual abuse, neglect, mental illness, or substance abuse in the family. She said she lives in a safe neighborhood and does not worry when the children play outdoors.

When asked who is in his family, Mark said he has a mother and two brothers. He also named a father, four aunts, the children of his aunts, his grandfather, and two uncles. He said he gets along with his mother. When asked what he likes about her, he said, "She fix me dinner and she bought me clothes." He could think of nothing he wished was different about her. His brothers are ages 16 and 14. When asked to describe his 16 year-old brother, Mark said, '"He likes to play basketball and he likes to play the game, 'Playstation.'" He said his 14 year-old brother likes to play games, skate, and play basketball and football. Mark said his mother has a live-in companion named Andrew Johnson. When asked what he likes about Mr. Johnson, Mark said, "He take me to play basketball, he fix my bike for me one time." He could think of nothing he wished was different about Mr. Johnson. When asked how his mother disciplines him, Mark said, "Sometimes she whoop me." He said she "whoops" him "kinda soft," only once in awhile. Mark said that when he is in trouble with Mr. Johnson, "He tell my mamma to whoop me." Mark said he gets along "okay" with his brothers. He said he does not fight with them.

With respect to his educational background, Ms. Haas said Mark finished second grade. He is a third grade student. He earned good grades but had some difficulty in reading. She said his teacher told her he needed a little help in reading." She said Mark had no behavior problems in school. She said, "The teacher said he's nice." He had no history of visits to the principal's office, suspensions, or truancy. Mark was offered an alternative school placement after the arrest. Ms. Haas declined the offer because he would have been the youngest child in the class (she said the lowest class in alternative school is fifth grade). She also declined because she did not see a need for counseling for Mark.

Mark said he gets Bs in school "and sometimes I get As and Cs." He said he likes school. His favorite subject is math. He could think of nothing he disliked about school. He said he was never in trouble with the teacher or the principal in school. He has no history of truancy or suspensions.

Ms. Haas said she has lived in her current residence for four months. Mark has made five or six friends his age, who come over nearly every day. She said his friends seem like good children. She is not worried they might have a bad influence on him. She said he does not fight with his friends.

When asked about his friends, Mark said, "They're good." He plays with peers from his school and his neighborhood. They "play games" together such as "soccer, basketball." He said he never fought with his friends. He did not know whether any of his friends ever got into trouble. He shrugged and said, "I don't think so." Mark said he has never tried alcohol or drugs.

When asked what kinds of weapons he had, he looked surprised and said, "Nothing." He said he does not know anyone who has guns or knives.

Medical History. Ms. Haas said Mark has had no major illnesses or injuries. She said he began talking at age one, walking at 11 months, and he was toilet trained at age two. She was not worried he was delayed.

Psychiatric History. Mark has no psychiatric history. He has no history of trauma. Prior to the alleged incident, the only death he experienced was his grandmother's death. His grandmother died when he was about age five.

MARK'S ACCOUNT OF THE CIRCUMSTANCES OF THE ARREST, THE *MIRANDA* WARNING, AND THE CONFESSION:

Mark said he did not recall being read his rights or given a warning. When asked if the police read him something from a piece of paper, he shook his head no. When asked if the police asked him questions such as whether he understood what they were saying, he said, "No."

Mark said, "It was on a Sunday when I first talked to them. The police, they had came to pick up my mother. Then they took us to the police station. They said it was only gonna take an hour." He said he did not go to the police station with his mother. He said, "They took her." He said, "Then at nighttime she was still down there. Then they came to pick me and my two brothers up. Took us down there." He said he rode in the same car with his older brother David. They rode "in a detective car." He said it was not a police car with lights on it, but it had writing on it that indicated it was a police car.

Mark said the police told him, "Put on some clothes," He had been wearing a t-shirt and some shorts. He changed into "some blue jeans and another shirt." He said there were two police officers. When asked if the police officers told him why they were picking him up, he said, "No." They did not talk to him or David during the ride to the police station. He said, "Then they put us in a room and they put David in one room, they put me in a other room. They put Simon in another room." He said, "Then people was coming in and asking us questions. The police was asking us questions."

Mark said he could not recall how many officers questioned him. He knew it was more than one and less than five. He said, "It was like three." He said, "First they start asking me questions, then my mother came in." When asked what the police asked him before his mother came in to the room, he said, "I can't remember." Mark said when his mother came in the room, "They were asking her questions." He said he did not remember what they asked her. He did not recall that they read something to her. He did not recall whether they said something to her that sounded like the *Miranda* warning.

When asked if his mother gave the police permission to talk to him, Mark shook his head no. When asked if the police asked his mother if it was okay if they talked to him, Mark shrugged and said, "I don't know." He said the police officers did not give him and his mother a chance to talk to each other before they asked him questions. He said they did not ask him if he wanted to talk to his mother before he talked to them. When asked what his mother said about talking to the police, he said, "Nothing."

Mark said one police officer "had gave me a pop and a bag of potato chips." He said, "He asked me do I want it and I said yes." He did not describe any angry behavior in the police officers. He said one man was "nice, the one that bought me the pop." When asked if he felt afraid of the officers that night, he said, "No." When asked if he knew what the officers were up to that night, he said, "No."

When asked what kind of questions the police asked him, Mark said he did not remember. When asked what he thinks they asked him about that Sunday, he shrugged and said, "I don't know." When asked if the police questioned him on Sunday about the death of Robert Scoles, he said, "Yes, but I can't remember that." When asked if the police asked him about a fight with Robert Scoles, he said, "Yes." When asked what the police asked him, he said, "Did we have a fight?" He could think of no other questions the police might have asked him. Mark said he was in the interview room "for four hours, it was ten o'clock." He said he left the police station "at two." He said he knew it was four hours "because I had looked at the time, and then the Police came in the room and said, 'Y'all can get ready to go.'" He said he felt "happy" when the police told him he could go home. Mark said his mother did not say anything to him on the ride home. He did not remember talking with his mother later about what happened at the police station. He said his mother did not bring it up at all.

Mark did not recall what day it was the next time he talked with the police officers. He recalled, "It was in the morning time." He was "at my auntie's house." He said, "Then they came to pick us up from there. Me and David." He said the police officers did not say why they wanted to pick them up. He said, "They was gonna take us to the police station." He said two officers came to get them. He and his brother rode in the same car.

Mark said, "Then they took us in a room. Me and him was in a room together that time." He said he and David did not talk about anything. He said, "Only one officer came in. He asked us how old we were, what grade we in, when we got birthdays. That's the only thing he asked." He said, "Then we stayed in the room for a long time. Then my momma came down. Then she came to pick us up. Then we went home." He said the police asked him no other questions that day. When asked specifically if the police questioned him that day about the death of Robert Scoles, he shook his head no.

MS. HAAS ACCOUNT OF THE CIRCUMSTANCES OF THE ARREST, THE *MIRANDA* WARNING, AND THE CONFESSION:

Ms. Haas said on Sunday afternoon, at about 12:30 p.m., the police rang the bell. Her son David answered the door. Two detectives came in and informed her there is an investigation when a child dies. She invited him to her table, but they asked if she would accompany them to the police station. She expressed concern that there was no childcare for her children (she had her three sons and five foster children in her home). The police officers told her she would only be gone for one hour. They encouraged her to have her oldest old son mind the children.

Ms. Haas said she went to the police station in the police car. She said the police officers talked with her about how nice her house was. She said when they arrived at the station, an officer said he needed to call the coroner's office. She said two officers (Detective Pedro and Detective Hoddy) put her in a room and locked the door. They asked her to describe what happened on Saturday when the child died. They left and made a telephone call. They said they needed to leave and pick up the coroner's report. She inquired why they needed to do so

given that they had just told her they would get it by telephone. They assured her they would be gone only a short time. They were gone for two hours.

Ms. Haas said when the detectives returned, they "had a different attitude." She said, "They came back in and said I was wasting their time. They said I knew what happened to the boy. She exchanged expletives with them. They left the room. When they returned, the officers said they had her children in the other room. The officers told her that her children had admitted to a particular behavior. She said it was not possible. She explained why. The police informed her that Mark admitted to a particular behavior. Ms. Haas informed them that incident had occurred nine days before the alleged murder. The police officers told her Mark admitted to another particular behavior. She responded with an explanation. She said the police officers interpreted her child's behavior in a different way. She told the police they were not going to close the case with her children.

Ms. Haas said the officers left. She said they closed the door each time they left. They returned after another 30 or 40 minutes. She confronted the officers about telling her children they committed a particular act. She said the officers told her they had told the children something else. A female officer entered the room for a short time but asked no questions. It turned out she was a youth officer. About one hour before they left the station, the officer took her into a room with her other son. She explained what took place in the room with her other son. She was in the room for about the 20 minutes.

Ms. Haas said the officers took her out of the room. A youth officer explained the children were not going to jail, but the case had to be closed whether it was justifiable homicide or some other behavior. The officers took Ms. Haas to a room where Mark was sitting. One of the detectives, either Mr. Pedro or Mr. Hoddy, and a youth officer were in the room. A third individual (female) was in the room. Ms. Haas could not recall her name or position.

Ms. Haas said Mark started "saying what happened." She said from her perspective, they were putting words in his mouth. A detective yelled at Mark and used expletives. A detective informed her outside the room that Mark admitted to a particular behavior. Ms. Haas left the station at about 1:30 a.m. She called Mr. Johnson to pick them up and transport them home.

Ms. Haas said no officer read her the *Miranda* warning. She then said they might have read the *Miranda* warning but she did not pay attention. She said, "I was out of it." She said she was operating under the assumption that Robert Scoles died of illness--choking on vomit (she had been informed of this by the physician on Friday evening), so she did not see a reason to pay attention to the *Miranda* warning. She said she had not eaten since Friday evening and she was tired. She felt optimistic that her children would be exonerated. She did not recall reading or signing a card or piece of paper with the *Miranda* warning. She said they did not give her an opportunity to consult with her son before they questioned him. She said Mark was at the station for three hours before she was informed he was there. She said she knew it was three hours because the officers told her they picked him up at about 2:30 or 3:00 p.m.

Ms. Haas said on Wednesday she was visiting her sister. The police came to her sister's residence. DPW had taken the four foster children out of her home on Sunday. A DPW officer had been calling constantly threatening to take her children and asking her to sign a document. She refused to sign it. DPW asked her not leave her home so she would not talk to the press. The police officers advised her she might need an attorney. She began to trust the police

officers, thinking they were trying to help her. She called Detective Hoddy for advice about whether she was obliged to talk to DPW. When the police officers arrived at her sister's home on Wednesday, she was "happy to see them" because she thought they would help her keep her children rather than losing custody to DPW. The police officers asked her to come with them. She had her oldest son with her. She was confused concerning why they did not want to take her oldest son. The officer said her oldest son was safe there.

Ms. Haas said she was picked up by Detectives Pedro and Hoddy. They informed her that her two sons were in protective custody until the investigation was over. At the station, at around 4:00 p.m., Ms. Haas asked for the youth officer. Ms. Haas was ill and had not eaten well for five days. When she asked the youth officer for her children, the youth officer said, "The officers didn't tell you they arrested your children?" Ms. Haas "nearly fainted" and the youth officer began to pray for her. The youth officer called the detective and asked why Ms. Haas was not informed her children had been arrested. The detective cursed at her. She hung up and called the detective's supervisor. She asked the supervisor why the detective was being unprofessional and cursing at her, and why he had not informed the mother that her children had been arrested. The youth officer again told Ms. Haas her children were under arrest and she had to process them.

Ms. Haas said when the youth officer returned with their children, the boys were handcuffed together. Ms. Haas was informed her that 14 year-old son would be taken to juvenile detention. The nine year-old would be assessed to determine if he should be hospitalized or sent home. After they interviewed Mark, they decided to send him home. The youth officer informed Ms. Haas there would be a court hearing in the morning. The youth officer told her she did not need an attorney. Ms. Haas said she was not read her rights, nor were her children read their rights in front of her. She was not given an opportunity to consult with her children.

POLICE RECORDS CONCERNING THE ARREST, THE *MIRANDA* WARNING, AND THE CONFESSION:

Based on information from the Metropolis Police Department, Mark's statement is recorded in cursive writing on a small form. Because Mark does not have the ability to read cursive handwriting, it is unlikely he had an opportunity to review what was written. There is nothing in the police records that specifies when and whether the *Miranda* warning was read to Mark. There is no *Miranda* card or sheet of paper that bears Mark's or his mother's signature.

ASSESSMENT RESULTS:

Mental Status Examination. Mark presented with no evidence of problems with self care skills. He was dressed in casual play clothes. He separated easily from his mother, but he was anxious to return home at the end of each assessment session. He was cooperative and compliant during the assessment. He had no difficulty paying attention. He sometimes was mute. He sometimes showed animation in his face (e.g., a puzzled look) during his elective mutism. When queried during periods of muteness, he typically said he did not know the answer to the question. He made few spontaneous statements. His spontaneous speech was limited to the expression of manners (e.g., saying Bless you, or Thank you). He gave brief responses to questions during small talk. He did not ask for clarification when he misunderstood questions or instructions.

Mark showed no behavioral abnormalities. He showed an unusually low level of kinetic behavior for a boy his age. He did not show any attention seeking behavior. He did not emit any behavior that required setting limits. He sometimes sucked on his pinky fingers. His mood was calm with little affective expressiveness or variation. His speech was simple but coherent. He had limited vocabulary and expressive language abilities. To the extent that he was able to describe information in a narrative sequential manner, his speech was organized. He responded to questions in a concrete manner. He showed no evidence of distorted perceptions in his speech or behavior.

Mark was oriented to person, place, and approximate time of day. He had difficulty describing his situation or describing the reason for the evaluation. His appetite was variable as observed over lunch breaks. He described no difficulty with sleep or energy. His energy level was adequate throughout the assessment, but he showed passive behavior. He showed fatigue on the final day of the assessment. When the interview contained distressing questions, he showed passivity and withdrawal.

Cognitive Functioning. On the WISC-III, Mark obtained a Full Scale IQ of 78, placing him in the "Borderline" range of intellectual functioning. His Full Scale IQ falls at the 7th percentile relative to children his age. His Verbal IQ was 76 and his Performance IQ was 83 (a nonsignificant discrepancy). Relative to his other subscale scores, he demonstrated strength on the Arithmetic subscale (associated with calculation abilities and concentration skills) and weakness on the Similarities subscale (associated with abstract conceptual reasoning skills) and the Coding subscale (associated With decoding skills, rote memorization skills and rapid learning skills).

On the Wechsler Individual Achievement Test (WIAT), Mark obtained a total composite score of 84, which is at the 14th percentile relative to children his age. Results suggest he is functioning at an age level of seven years and six months. He obtained a Reading Composite Score of 78 (the 7th percentile relative to children his age, age equivalent of 7:9), a Mathematics Composite Score of 92 (the 30th percentile, age equivalent of 9:0), a Language Composite Score of 95 (the 37th percentile, age equivalent of 8:9), and a Writing Composite Score of 75 (the fifth percentile, age equivalent of 5:9).

Abilities Related to Comprehension of Miranda. The Comprehension of *Miranda* Rights measure is an objective method for assessing an individual's understanding of the elements of the standard *Miranda* warning. It requires the individual to paraphrase each of the four elements of the *Miranda* warning. On the CMR measure, Mark obtained a score of zero out of a possible eight points. The results of the CMR suggest Mark did not understand any of the elements of the *Miranda* warning.

The Comprehension of *Miranda* Rights, True or False Version (CMR-TF) consists of 12 true-or-false items in four sets of three items. Each set corresponds to one of the four components of the *Miranda* warning. The purpose is to assess a person's understanding of each element of the *Miranda* warning by ability to identify whether or not a particular preconstructed sentence has the same meaning as the *Miranda* warning statement. On the CMR-TF, Mark obtained a score of four out of a possible 12 points.

The Comprehension of *Miranda* Vocabulary (CMV) measure is an objective method for assessing an individual's understanding of six critical words which appear in standard *Miranda*

warning. On the CMV, Mark obtained a score of zero out of a possible 12 points. Results of the CMV suggest Mark did not understand key vocabulary words in the *Miranda* warning. When the language was simplified, he still could not define the key words. In response to multiple choice cues, he agreed that the phrase "talk to" was the same as saying words and a lawyer is someone who defends you in court. He thought questioning was unrelated to talking or answering questions. He agreed it was consistent with asking questions and it is something that lawyers and police officers do. He said it is not something that teachers or mothers do.

The Function of Rights in Interrogation (FRI) is a structured interview format. The interview questions occur in the context of visual stimuli (four standard drawings depicting relevant police, legal, and court procedures), followed by a paragraph to produce a context in which the subject is to respond. On the FRI, Mark obtained a score of 11 out of a possible 30 points. Results of the FRI suggest Mark did not understand the police might be interested in obtaining a confession or that they police might display emotional behavior consistent with the intention of dealing with the suspect as an adversary. He did not understand the main job of a lawyer or the role of a detained individual when meeting with a lawyer. He understood the police thought a suspect might have done something and they were interested in learning "what did he do." He understood a detained individual's lawyer might wish to discuss whether he committed a crime. He did not understand why a lawyer might need to know whether the detained individual committed a crime. He did not know a statement or confession would be used against a defendant in a court of law. He did not know the role of the police should the detained individual refuse to give a statement. He knew the police could not force a detained individual to talk. He did not know whether there would be consequences in court if a detained individual refused to give a statement. He thought that once the case reached court, a judge could compel a defendant to confess to a crime.

When I asked Mark to read the version of the *Miranda* warning used by the Metropolis Police Department, he read it in a halting manner. It took Mark nine minutes and 28 seconds to read the *Miranda* warning. He read it in the following manner:

> "Do you understand that you had a right to remain silence? Do you understand that an an, Can I skip this word? Anything you say can and may be used against you in court or other p p? Do you understand that you have the right to talk to a law law lawyer before we aks you any questions and to have him with you during questioning? If you cannot afford a or other w wi other other wi (pause) a lawyer and you want one, a lawyer will be a asss ap a p (yawn) (puzzled look) um for you, and we will not aks you any questions until he was has been ap. If you do to answer now with or without a lawyer, you still have the right to stop the questioning at any time or to stop the questioning for the purpose, I mean, yup purpose, of co con (scratching his head) ummm a lawyer. You may waive of a and your right to remain silent and you may answer questions or make a statement without cosuting c su ting a lawyer a lawyer if you so dr whew deesh deesh. Do you understand each of these r rights? Do you wish to answer questions at this time?"

When I asked Mark to read his statement, he could not read it because he does not have the ability to read cursive handwriting.

INTERPRETATION OF PSYCHOLOGICAL ASSESSMENT RESULTS:

Mark was raised by his mother in Metropolis. She has been the primary parent. His father has had some involvement with him, but his visitation is infrequent. Mark has a good relationship with his mother's dating partner. He has an extended family support system. Based on his mother's report, Mark lives in a safe neighborhood and he plays with safe peers in the neighborhood. He is making academic progress, but he has a reading problem. He has no history of serious medical or mental health problems.

Mark's educational history is unremarkable. However, cognitive testing suggests his abilities fall in the "Borderline" range of functioning. He learns and understands less than about 90 to 95 percent of his peers. Achievement assessment results are consistent with the cognitive assessment results. The results suggest he currently is functioning in the five- to early nine-year-old age range of achievement, with the greatest deficits appearing in abstract conceptual reasoning skills, reading skills and writing skills.

To illustrate Mark's level of achievement, he can read basic one-syllable words and some two-syllable words. He did not show consistent ability to read words with three or more syllables. He comprehended only simple paragraphs of information that he read. His listening comprehension was stronger than his reading comprehension. His capacity for oral expression was comparable to children his age, but he had difficulty providing a narrative with descriptive information. For example, he used words such as "here" and "there" rather than identifying specific locations by their name or description. He did not elaborate or distinguish essential from unessential details. He did not resolve inconsistencies even in response to direct questions. He spelled the word things, "thigs," right, "Rigth," counting, "conting," and eight, "eagth." He has not mastered punctuation and basic grammar. When asked to write a paragraph describing a home he would like to build, he wrote one sentence with little detail and no punctuation. He can add and subtract two-digit numbers, and solve simple multiplication problems.

Mark did not comprehend the main elements of the *Miranda* warning, key vocabulary words in the *Miranda* warning, or the consistency or inconsistency of statements that were the same or different from the *Miranda* warning. He had a vague notion that the warning involved talking, police officers, and lawyers. Although he understood a lawyer might be interested in talking to a detained individual about a crime, he did not know what the lawyer might do with this information. He did not understand the meaning of the word "right." He did not understand the interest the police have in obtaining a confession, nor did he understand a suspect's potentially adversarial relationship with the police officers. He did not appreciate how to apply the information in the *Miranda* warning to the circumstances of an individual who might be a suspect in a crime. He did not understand that a defendant's right to remain silent extends to the courtroom. It is unlikely he was malingering a poor performance on the *Miranda* Comprehension measures. His performance was consistent with his level of intellectual functioning and his academic achievement. Based on the assessment results, it is unlikely he understood the meaning or significance of the *Miranda* warning on the day or days that it was read or told to him by the Metropolis police.

Mark's mother does not recall whether she or Mark were read the *Miranda* warning. She described herself as fatigued, deprived of food and in emotional distress during the period of time she was expected to act as an interested adult. She described herself as ill-informed of her son's arrest status. She said they were not given an opportunity to consult prior to the police questioning her son.

CONCLUSIONS:

1. In my clinical opinion, Mark has a deficit in his reading and writing skills and his overall intellectual functioning is limited compared to his peers.

2. In my clinical opinion, Mark did not understand the core elements of the *Miranda* warning.

3. In my clinical opinion, Mark's lack of understanding of the core elements of the *Miranda* warning is related to his lack of experience with the legal system, his low fund of knowledge, his intellectual limitations relative to children his age, and his deficit in reading and writing abilities.

4. Because Ms. Haas does not recall whether Mark was read the *Miranda* warning, her role in advising Mark concerning his rights is unclear. She described herself as fatigued, hungry, and in emotional distress when Mark was questioned by the police.

Courtney Rosenberg, Ph.D., ABPP
Assistant Professor of Psychiatry
Diplomate, American Board of Professional Psychology,
Specialty in Forensic Psychology

Psychological Evaluation Re: Comprehension of *Miranda* Rights

NAME:	Hillary Simpson	NAME:	Bart Laks
DOB:	September 17, 1966	DOB:	February, 15, 1984
AGE:	30 years 11 months	AGE:	13 years 5 months

DATE OF EVALUATIONS: September 8, 1997
LOCATION OF EVALUATIONS: Offices of Attorney Lisa Campbell
EXAMINER: John W. Smithers, Ph.D.
DATE OF REPORT: October 5, 1997

IDENTIFYING DATA AND REASON FOR REFERRAL:

Ms. Hillary Simpson and her 13 year-old son Bart Laks were referred for psychological evaluations by Attorney Lisa Campbell. Ms. Simpson was referred for an evaluation in order to assist in determining her competence to advise her son concerning his *Miranda* rights. Bart Laks was referred for an evaluation in order to assist in determining his competence to make a knowing, intelligent, and voluntary waiver of his *Miranda* rights. Bart Laks was arrested on August 16, 1997, on two counts of Murder and three counts of Arson.

STRUCTURE OF THE EVALUATION:

Prior to my evaluation, I informed all parties I interviewed that I am a psychologist, and that I was asked to evaluate Ms. Hillary Simpson to gather information concerning her abilities related to advising her son concerning his *Miranda* rights, and to evaluate Bart Laks concerning his competence to waive his *Miranda* rights. I informed them that the content of the interview, assessment results, and my observations would be shared with Attorney Campbell in the form of a psychological evaluation report, that the report potentially would be introduced into evidence in court, and that I might be asked to testify in court. I was provided with a copy of the version of the *Miranda* warning used in the Shelbyville Police Department jurisdiction; a copy of the statement given by Bart Laks to the Shelbyville Police Department on August 16, 1997; a copy of a memorandum from the Social Security Administration confirming that Ms. Simpson receives SSI disability and she is classified as mentally retarded; raw test data from Dr. Julius Hibbert concerning a recent psychological evaluation of Bart Laks; and Bart's school grade and behavior reports from C. Montgomery Burns Middle School in Shelbyville.

EVALUATION TECHNIQUES ADMINISTERED:

Ms. Hillary Simpson:
9/8/97 Clinical Interview (1 hour)
9/8/97 Wechsler Adult Intelligence Scale-Revised (WAIS-R)
9/8/97 Woodcock-Johnson Psychoeducational Battery
9/8/97 Comprehension of *Miranda* Rights (CMR)
9/8/97 Comprehension of *Miranda* Rights, True/False (CMR-TF)
9/8/97 Comprehension of *Miranda* Vocabulary (CMV)
9/8/97 Function of Rights in Interrogation (FRI)

Bart Laks:
9/8/97 Clinical Interview (1 hour)
9/8/97 Comprehension of *Miranda* Rights (CMR)
9/8/97 Comprehension of *Miranda* Rights, True/False
9/8/97 Comprehension of *Miranda* Vocabulary (CMV)
9/8/97 Function of Rights in Interrogation (FRI)

Raw Data Provided re: Bart Laks:
7/17/97 Wide Range Achievement Test, Level 2
7/31/97 Wechsler Intelligence Scale for Children, 3e (WISC-III)
7/26/97 Bender Gestalt Visual Motor Test

RELEVANT BACKGROUND INFORMATION:

Ms. Hillary Simpson is a 30 (nearly 31) year old woman with two sons (ages 8 and 13) in her custody. She is twice divorced, and she supports herself with SSI disability. As indicated above, her current classification by the Social Security Administration is "mental retardation."

Ms. Simpson said she has an eighth grade education. She attended special needs classes in a special education classroom throughout her education. She said she did not recall repeating any grades, but she could not otherwise explain why she was age 17 in ninth grade. She became pregnant during the eighth grade school year. She left school in ninth grade at age 17 after she married.

Ms. Simpson said she was healthy during her childhood. She received no serious injuries and she never lost consciousness. Ms. Simpson said she has never been arrested. Her history of involvement with the court system is limited to having sought restraining orders at various times.

Bart Laks is a 13 year-old student in the 8th grade. He attended Montgomery Burns Middle School in 6th and 7th grades. He currently is placed in a special program for children involved with the legal system and for children with school infractions. Bart said his grades were good until last year. His early school records contain comments that he was bright but he craved attention. His grade reports from middle school indicate he earned grades ranging from A's to C's, with one D+ which he brought up to a final grade of C+. He was absent 28 times and tardy 4 times in 6th grade. He earned grades ranging from A's to F's in 7th grade. He was absent 24 times and tardy 11 times in 7th grade.

Bart said he was in two car accidents (once as a passenger with his mother and boyfriend, and once as a passenger with his godfather); however, he received no injuries and he never lost consciousness. He has no history of previous arrests. He recalled his father was arrested for drinking and driving five years ago.

MS. SIMPSON'S UNDERSTANDING OF THE CIRCUMSTANCES OF THE *MIRANDA* WARNING, THE CONFESSION, AND THE ARREST:

Ms. Simpson said she and her son were interviewed by the police on two occasions. She said she misunderstood what the police officers told her son. She said, " I thought the police told him he had to remain silent. . . I thought he couldn't have any attorney until later." She

said two police officers came to her home and said they "hadda go down to the police station and they hadda ask Bart some questions." She said, "They put him in this small room with two cops and me and they started questioning him." Ms. Simpson said the police officers did not read Bart his *Miranda* rights during their initial interview of him. They asked him questions "about the fire."

Ms. Simpson said she, her son Bart, a police sergeant, and Officer Ned Skinner sat in the questioning room for about two and one half hours. She said Bart sat next to a police officer, who sat next to the second officer. Ms. Simpson was seated next to a table in close proximity to the second officer, and some distance from Bart. Ms. Simpson recalled leaving the room for a period of time to have a cup of coffee and a cigarette. She could not recall on which day she left the room for coffee and a cigarette.

Ms. Simpson said the officers were "nice for a good half hour," and then they were "nasty. . . mean tone of voice." She said the officers told her, "He ain't telling the truth." She said, "I told Bart to tell the truth. . . he said he didn't do it." The officers were "nice until they decided Bart was lying. . . they said, 'You better tell us and tell us now,'. . . I just backed off... I didn't know what to say...they were pressuring my kid." She said the police officers threatened to "lock Bart up right now." She said, "All I kept saying was Bart please tell them the truth so we can get out of here and go home." After one and one half hours of questioning, Bart started "crying a few minutes." She said Bart "cries when he tells the truth," so, "I told them he was telling the truth then." She said, "They were being real strict with him. . . they finally let us go home that night." She said she and Bart did not discuss the matter at home. She said, "All I said was I hope you didn't do it and I dropped it."

At this point, Ms. Simpson jumped to the next day of questioning as she gave her account. She said the officers asked herself, her brother, and her ex-boyfriend Moe if they would like to go outside for a cigarette. While they were out smoking a cigarette the police "came for me, one of the cops, and said Bart was ready to make his statement. . . I went upstairs. . . they had moved him to the computer room. . . they had his statement already written out on the computer. . .they said they had half of it on the computer. . .you could see it anyway." She said, "They typed the rest of his statement. . . they read it to me. . . I didn't understand what they said." Ms. Simpson said she repeatedly requested that the police allow her brother to enter the room because she was "illiterate." The police would not allow her brother to be in the room.

Ms. Simpson said she could not remember when the police read Bart the *Miranda* warning. She said, "I don't know, but they showed me a warrant for his arrest when I was in the hallway. She said, "The cop said to him. . . in the little room. . . 'You just killed somebody, how do you feel now, there's two people dead.'"

Ms. Simpson was asked to clarify what happened on the first day and what happened on the second day of questioning. She said on the second day the police called her. She told them to wait until her children returned home from school, and then she would bring Bart to speak to them. She could not recall how she got to the police station that night. She said, "They brought us upstairs into that little room and they started questioning him some more." The same two police officers were present, as were Bart and herself. They sat in the room for about 10 to 20 minutes at which point she requested to use the telephone. She called her brother and he and her ex-boyfriend came to the police station. She said, "From there, they

started questioning him some more."

Ms. Simpson said, "From the get go I told them I don't know how to read. . . both days I said I wanted someone there with me. . .I told them I don't know how to read or write. . . they didn't say anything." She said her brother asked to speak with Bart and the police officers allowed him to do so for a few minutes.

Ms. Simpson again said after the cigarette break, she "saw the statement on the computer. . . they were questioning him about the fire. . . I guess they must have stopped in the middle because they came down quickly and said he was all ready to give a statement about what happened." The police took Bart's statement and then informed her they were "keeping him." She said, "They promised him he would come home with me if he made a statement; that's why he made his statement." She said, "They said, 'If you tell us the truth, we'll let you go home with your mother.'"

Ms. Simpson said "After the whole statement was done, they read it to me. . . I didn't understand his statement either. . .they had me sign the statement. . . Ned signed as a witness . . . I kept asking for my brother." She said, "They read *Miranda* in the other room--before he went in the computer room." She then said the police read the *Miranda* warning "in the little room...they didn't do it right away. . .they kept asking him questions. . .they showed us the warrant for his arrest, then they read him that. . .then I went outside." She then said she does not recall whether the police read the *Miranda* warning in "the little room," or whether they read the warrant. She said she was standing in the hallway while they read it.

When asked for clarification concerning when the police officers read the *Miranda* warning, Ms. Simpson said, "I think they read it to us because I said I don't know how to read. . . I asked for my brother." She told the police officer, "I don't understand what you're saying." The police officer asked whether she understood and she replied, "No." She said the police officer told her, "You must understand." She said, "I finally said yes because I was mad." She said they inquired about her understanding of the entire *Miranda* warning rather than asking specifically about each point in the *Miranda* warning. She said, "If they would have explained it, I would have understood and my kid would have never said nothing that day until we got a lawyer."

BART LAKS' UNDERSTANDING OF THE CIRCUMSTANCES OF THE *MIRANDA* WARNING, THE CONFESSION, AND THE ARREST :

Bart said the police came to his house at about 5:00 p.m. and asked him and his mother to go to the police station. He said the police told him they wished to question him, but he would be able to return home. They told Bart there was nothing to worry about. He said he was questioned for two to three hours at the police station. He said everyone sat in a circle, with Sergeant Wiggum and Officer Ned Flanders sitting in closer proximity to one another than anyone else. He recalled sitting between Sergeant Wiggum and his mother. He said Sergeant Wiggum and Mr. Flanders asked Ms. Simpson whether they had permission to talk with Bart. He recalled that his mother replied, "Sure." He said no one asked his mother any further questions and no one said anything about his rights.

Bart said the two officers told him, "We already know you did it; your friends ratted you out, so you might as well admit it." Bart did not admit to anything on the first day. He said his

mother advised him to, “Stop lying, just tell the truth." He told his mother he was not lying. The officers repeated that someone had “ratted on him.” He said the officers initially used a regular tone of voice and “Then they started yelling at me, ‘Stop playing <expletive>, we know you did it.’” He said, “They yelled for a half hour, they took turns.”

Bart said on the following day, the police called his mother requesting she bring him in. After Bart ate dinner they left for the police station at about 5:30 or 6:00 p.m. He said the officers immediately took him into the same room. He could not recall the arrangement of the chairs. He said he does not recall them asking his mother’s permission to speak with him prior to the questioning. He, his mother, Sergeant Wiggum, and Mr. Flanders were in the room for two hours. His mother “said nothing during the whole time. . .sat and listened to them.” He said, “They asked the same questions over and over. . .never read me my rights.” He said, “They were mean. . . yelling and swearing at me... told me if I wanted to play hard they could play hard too. . .told me I'm gonna find myself in jail.” He said a fifth person, Officer Skinner, entered the room for ten minutes and “started swearing at me. . .spit on me. . .said, ‘Don’t look too [expletive] comfortable, this ain’t no joke.’”

Bart said while the third officer was in the room, the other two officers left with his mother and asked if she wanted a cigarette. She joined Bart’s uncle outside for a cigarette. While she was outside, Officer Skinner took Bart into the Lieutenant’s office. Sergeant Wiggum returned and joined them. He said, “We all sat down; he turned on the computer; Wiggum read me my rights; after I heard my rights, he started typing my name and date of birth.” Officer Skinner then told Bart they were going to take a statement. Bart said, “He said, ‘What happened that night?’ and I told him my statement and stuff.” He said, “Before they finished my statement they said, ‘If you say you were there we'll let you go home with your mom and you’ll be all right.’ I said I was there; Wiggum asked me if I wanted a soda and I said, ‘Yeah’; Skinner walked out of the room; he came back in and said, ‘We got a warrant out for your arrest so you’re coming with us.’”

Bart said Officer Skinner was seated at a desk in front of a computer. Bart sat next to the desk, and Officer Wiggum stood behind them. He said his mother remained in the hallway after she returned from smoking a cigarette. Bart said one third of his statement was completed when his mother returned. He said Sergeant Wiggum and Officer Skinner informed his mother they were taking Bart’s statement and she said, “All right.” Bart finished his statement and Officer Skinner read the statement to Bart while Sergeant Wiggum read the statement to Ms. Simpson.

Bart said, “They told my mother they had read me my rights; they read the rights to her that they had read to me.” As he described the reading of the *Miranda* warning, Bart said, “They read a paper to me, they were leaving words out and putting words in.” He said they did not give him a copy of the warning, but he could see it as they held it and read it to him. He said they read it to him only one time. Bart said Officer Skinner asked him whether he understood his rights and he said, “Yes.” He also recalls listening as Officer Wiggum asked Ms. Simpson if she understood her rights. He said, “She said yes, but later on that night she said she really didn’t understand it and I said I didn’t either.” He said, “They used the word attorney, not lawyer. I asked mom what an attorney was and she said, ‘It’s something like Jane Tolliver. . .an attorney.’” Bart said no one asked him or his mother whether they had any questions about the *Miranda* warning.

BEHAVIORAL OBSERVATIONS AND MENTAL STATUS OF MS. SIMPSON:

Ms. Simpson presented dressed in casual clothing. She spoke slowly and she had difficulty with word finding and with articulation. Her predominant mood was frustration, especially during the formal psychological testing. She said, "They gave me this test before and it's real frustrating." She gave responses suggestive of acquiescence (or the tendency to agree to things she does not understand) and limited assertiveness skills (difficulty understanding how and whether she is permitted to ask questions and seek clarification) . For example, she sometimes said, "Yes" and sometimes said, "I don't know," in response to complex nonsensical questions asked by the examiner, and she alluded to the fact that she felt compelled to enter into a romantic relationship with her ex-boyfriend because of his assistance with her son's bail.

ASSESSMENT RESULTS, MS. HILLARY SIMPSON:

Cognitive Functioning: On the WAIS-R, Ms. Simpson obtained a Full Scale IQ core of 69, placing her in the "Mentally Deficient" or "Mentally Retarded" range of intellectual functioning. Her obtained Verbal IQ score was 70, and her Obtained Performance IQ was 72. Relative to people her age, she currently is in the 2nd percentile of intellectual functioning.

On the Woodcock-Johnson Psychoeducational Battery, Ms. Simpson obtained a Reading Cluster Score of 451, which is a grade equivalent of I.8 and an age equivalent of 7, and which falls in the less than 0.5 percentile relative to people her age. She obtained a Mathematics Cluster Score of 455, which is a grade equivalent of 2 and an age equivalent of 7 years 2 months, and which falls in the less than 0.5 percentile relative to people her age. She obtained a Written Language Cluster Score of 462, which is a grade equivalent of 1.8 and an age equivalent of 7 years 4 months, and which falls in the less than 0.5 percentile relative to people her age. She falls in the "Severe Deficient" range of achievement.

Abilities Related to Competence to Render Advice Concerning Miranda Rights: In the Comprehension of *Miranda* Rights (CMR) measure, four core items contained in the *Miranda* warning are read one by one to the examinee, while they read along on a card. After each item is read, the examinee is asked to explain what each item means. The examinee can score up to two points of credit for each correct explanation. The maximum score is 8 points. Ms. Simpson obtained a score of 3 on the CMR.

The Comprehension of *Miranda* Rights, True or False Version (CMR-TF) is a 12 item measure which assesses the examinee's ability to discern whether statements read to the examinee are the same or different from that contained in the *Miranda* warning. The examinee can score up to one point of credit for each correct response for a maximum score of 12 points. Ms. Simpson obtained a score of 7 on the CMR-TF.

The Comprehension of *Miranda* Vocabulary (CMV) is a measure of the examinee's understanding of six critical words contained in the *Miranda* warning. The word "entitled" was omitted from the administration of this measure to Ms. Simpson because the *Miranda* warning used by the Shelbyville Police Department does not use this word or an appropriate substitute. The examinee can score up to two points of credit for each correct word definition. Ms. Simpson obtained a score of 2 (out of a possible 10 points) on the CMV.

The Function of Rights in Interrogation (FRI) is a measure in which the examinee is

sequentially shown four cards depicting relevant police, legal, and court procedures. Each is accompanied by a brief scenario provided by the examiner in order to establish a contextual set for responding. The examinee is asked a total of 15 questions about the sets of stimuli. The examinee can score up to two points of credit for each correct definition for a maximum score of 30 points. Ms. Simpson obtained a score of 22 on the FRI. She often referred to her attorney in describing her understanding, suggesting she learned much of the information relevant to this measure after she hired her.

BEHAVIORAL OBSERVATIONS AND MENTAL STATUS OF BART LAKS:

Bart presented dressed in clothing typical of adolescents. He had a friendly demeanor and he occupied his leisure time talking to other people in the office. His mood was nervous and he showed signs of motor restlessness during the evaluation; however, he was cooperative with all assessment tasks. Because of the recency of Bart's school testing, the IQ test was not repeated. The raw data were relied upon from previous testing.

ASSESSMENT RESULTS, BART LAKS:

Cognitive Functioning: On the WISC-III, Bart obtained a Full Scale IQ score of 81, placing him in the "Low Average" range of intellectual functioning. His obtained Verbal IQ score was 79, and his Obtained Performance IQ was 87. Relative to adolescents his age, he currently is in the 10th percentile of intellectual functioning. Results suggest he has average attention and concentration skills; however, he likely performs poorly on material that requires abstract thinking, reasoning, and understanding of social nuances.

On the Wide Range Achievement Test, Bart obtained a Reading Score of 49, which is a grade equivalent of the end of 7th grade and which falls in the 50th percentile relative to adolescents his age. He obtained a Spelling Score of 22, which is a grade equivalent of the beginning of 6th grade and which falls in the 34th percentile relative to adolescents his age. He obtained an Arithmetic Score of 28, which is a grade equivalent of the beginning of 7th grade and which falls in the 30th percentile relative to adolescents his age.

Abilities Related to Competence to Waive Miranda: On the Comprehension of *Miranda* Rights (CMR) measure, Bart obtained a score of 3 out of a possible 8 points. On the Comprehension of *Miranda* Rights, True or False Version (CMR-TF) , Bart obtained a score of 11 out of a possible 12 points. On the Comprehension of *Miranda* Vocabulary (CMV) , Bart obtained a score of 6 out of a possible 10 points. He said he did not know the word "attorney" when the *Miranda* warning was read to him. He learned the word later. On the Function of Rights in Interrogation (FRI), Bart obtained a score of 22 of a possible 30 points.

INTERPRETATION OF PSYCHOLOGICAL ASSESSMENT RESULTS:

The assessment results for both Ms. Simpson and Bart are valid and interpretable. Neither Ms. Simpson nor Bart have a history of having been arrested and accordingly they would not have had a previous opportunity to hear or try to understand the *Miranda* warning. Ms. Simpson showed consistent effort during the assessment, and she expressed frustration when she had difficulty on the assessment tasks. She defended herself by pointing out that although she has problems (e.g., she cannot perform multiplication and division), she has ways of compensating for her deficits (e.g., by using a calculator). Her failures on tasks were not remarkable for

uniqueness or oddities which would lead one to suspect the presence of malingering.

For example, Ms. Simpson showed no signs of malingering as evidenced by the consistency of her effort and her scores across the various evaluation methods, her statements of concern that she might do poorly, and her statements defending the ways in which she uses compensatory methods (e.g., use of a calculator) to make up for her deficits. Her approach to various difficult test items was consistent with that seen in people who are not malingering. For example, she used trial and error approaches and she made naive statements in response to difficult tasks in a manner similar to those seen in people at the same level of intelligence.

In Bart's raw data, provided by a previous examiner, there are no signs of inconsistent responding. His scores on achievement testing are consistent with what would be expected based on his IQ test results, and there is no intrasubtest scatter on either test. Bart made defensive remarks about material he learned relevant to the *Miranda* subsequent to his confession; however, he did not attempt to feign ignorance of the material. For example, he pointed out he now knew the definition of the word attorney even though he did not know it at the time the warning was read to him.

Assessment results confirm that Ms. Simpson obtained a Full Scale IQ score consistent with mental retardation, and her achievement scores also are consistent with mental retardation. Results indicate her intellectual functioning is less than that of 97 percent of people in her age range. She has a low fund of information, a limited vocabulary, and severe difficulty with abstract thinking. Results suggest her repertoire of behavior in social situations is limited. Her mathematical skills are limited to addition and subtraction. Bart's intellectual functioning is at the low end of the "Low Average" range. He has difficulty with abstract thinking, reasoning, and understanding social nuances. It is likely he has difficulty discerning subtle social cues such as how to understand what is expected of him in subtle, complex, or ambiguous social situations.

Results of the Woodcock-Johnson indicate Ms. Simpson's achievement in reading, mathematics, and written language is comparable to that of a seven year-old performing at a first or second grade level. Her achievement in reading (which consists of word-letter identification, learning new words, and passage comprehension), mathematics (calculation and applied problems), and written language (dictation and proofing) is less than that of 99.5 percent of people in her age range. Results of the Wide Range Achievement Test indicate Bart is one to two years behind what is expected of youths his age with respect to academic achievement.

The specific measures of abilities related to competence to waive *Miranda* (the CMR, the CMR-TF, the CMV, and the FRI) used in this assessment have their basis in measures found to be valid and reliable in a standardized study of adolescents' and adults' understanding of the *Miranda* warning. One word, "entitled," was omitted from the CMV because the word had only one comparable substitute ("right") and that word already was contained in the CMV.

Ms. Simpson's CMR score is poor. The average score in the comparison sample was four points higher than her score. Ninety-seven percent of the comparison sample performed better than she did on this measure. When asked to explain, "You have the right to remain silent," Ms. Simpson understood there is a choice about whether or not to speak. She understood the choice pertained to the questions asked by the police. When asked to explain, "Anything you

say can be used against you in court," she repeatedly parroted the words "against you" but she could not define or explain what it meant. She said, "I'm not too sure on that. . . whatever you say, they can use against you. . . that's all I know." She did not associate it with self incrimination or the potential for negative consequences. When asked to explain, "You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning," Ms. Simpson explained this meant she could tell a lawyer what happened and then the lawyer would tell the police what she said. She did not comprehend the advocacy role of an attorney. When asked to explain, "If you cannot afford a lawyer, one will be appointed for you before questioning if you wish," she thought a lawyer would be appointed for her when she went to court. She did not understand she immediately could request a lawyer at no cost. When probed further, she understood that she could stop talking during questioning, but she did not understand she could request an attorney at any time before or during questioning.

Bart performed worse than 97 percent of the comparison sample on the CMR. Com-pared to other 13 and 14 year-olds in the sample, his score was in the average range. When asked to explain, "You have the right to remain silent," Bart's response suggested he was dir-ected or compelled to be quiet. When asked to explain, "Anything you say can be used against you in court," he replied if he said something "bad" to the judge, it would be held against him; however, he did not know what "held against" meant. On inquiry, he parroted the words "held against" several times in an attempt to explain it, but he did not associate it with self incrim-ination or the potential for negative consequences. When asked to explain, "You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning," he said he did not know what an attorney was when he was questioned. His response suggested he believes the function of a lawyer is to sit beside him and explain things; however, he did not comprehend the advocacy role of a lawyer nor did he comprehend his freedom to ask advice from the lawyer. When asked to explain, "If you cannot afford a lawyer, one will be appointed for you before questioning if you wish," he understood someone would call a lawyer for him, but he did not understand the lawyer's services were gratuitous.

Eighty-two percent of the comparison sample performed better than Ms. Simpson on the CMR-TF. She thought the statements, "You do not have to say anything about what you did," "What you say might be used to prove you are guilty" and "You can have a lawyer now if you ask for one," were inconsistent with information contained in the *Miranda* warning. She said the statement, "If you don't have the money for a lawyer the court will appoint a social worker to help you," was consistent with information contained in the *Miranda* warning. Bart made only one error on the CMR-TF. He thought, "You should not say anything until the police ask you questions," was consistent with information contained in the *Miranda* warning .

On the CMV, Ms. Simpson's definition suggested "talk to" included only her unidirectional statements to people; however, she did not comprehend its association in the *Miranda* warning with seeking advice from an attorney. She described an attorney as someone who "stands up and talks for you." When asked for elaboration, her explanation implied that the attorney simply repeated what the client said. She did not comprehend the advocacy role of the attorney. She did not know the meaning of the word "appoint." For example, when asked to define "appoint," she said, "When somebody's making a point to you." She defined questioning as, "When they ask you questions what happened and why it happened. . . the cops and your lawyer." She could not define the word "right" without parroting the word. She kept saying, "You have your own rights." When asked for an example of a right, she said, "You can talk."

Bart understood that "talk to" involves bidirectional conversation. He defined a lawyer as someone who "sticks up for his client." He defined "questioning" as "questions about the case they're gonna charge you with." When asked to define "appoint," he said, "I have no clue." He defined "right" as "What you can do and can't do." His definition did not involve the notion of constitutional protection of this privilege.

Both Ms. Simpson and Bart obtained scores of 22 on the FRI. In the comparison sample, the average FRI score was 23 for juveniles and 26 for adults. Neither Ms. Simpson nor Bart understood their communications with their attorney are privileged. Ms. Simpson continued to show a deficit on this measure in her understanding of the advocacy role of an attorney. She made errors consistent with the attorney acting as a spokesperson for the client without advocating on behalf of the client or providing legal advice to the client. Her responses suggested she believes although a client can exercise a right to remain silent, the attorney must repeat what the client tells him or her. Her responses also suggest she believes her right to remain silent does not pertain when the person asking questions is a judge. She believes she must answer any question posed by a judge. Bart's FRI responses also show a deficit in understanding the advocacy role of an attorney. His responses suggest the must tell his lawyer what happened so his lawyer can in turn tell the judge. He believes the lawyer functions as a witness. He also believes he must answer any question posed by a judge.

Ms. Simpson's limitations in understanding what took place prior to and during her son's confession is reflected in her confusion about various details. As she gave her account of what lead up to the confession and arrest, Ms. Simpson had difficulty separating events in her memory, and she confused details from both of the days of questioning. For example, she confused in which room various aspects of the questioning took place, and she confused the reading of the *Miranda* warning with the reading of her son's confession, and with the reading of the warrant for his arrest.

Ms. Simpson's description of her behavior during the questioning suggests she believed her role was to advise her son to "tell the truth." By her account, she was sitting in closer proximity to the police officers than to her son. Her placement in the room was consistent with her view of herself as one of his adversaries rather than his ally. Her description suggests she viewed the police officers as authority figures to whom it was her job to respond with compliance. For example, she said when police told her that her son was not being truthful, she responded by asking him to be truthful. When he made statements consistent with the desire to remain silent, she encouraged him to speak.

According to her description, although she did not specifically request an attorney, Ms. Simpson emitted behavior consistent with the desire for assistance. She repeatedly said she did not understand the content of her son's statement. She told the police officers she could not read or write. She saw to it that her brother was at the police station during the ques-tioning. She requested the presence of her brother while the police read her son's statement to her, and while they read the *Miranda* warning. She initially said she did not understand the *Miranda* warning; however, in response to what she perceived as pressure from the police, she then said she understood the *Miranda* warning. Ms. Simpson's account of what happened suggests her emotional state was one of confusion, frustration, and being upset during the questioning and the reading of the *Miranda* warning, thus exacerbating her limitations.

CONCLUSIONS:

1. In my clinical opinion, Ms. Simpson has general functional limitations of the type associated with a diagnosis of Moderate Mental Retardation. Based on observations of Ms. Simpson's behavior and the IQ and achievement test results, Ms. Simpson currently has a number of functional limitations. Her educational achievement is at the second grade level, and her intellectual abilities are in the 2nd percentile relative to adults her age. She has a history of special assistance in her academic studies and in her adult life. She was in special education due to learning problems, and she currently is on SSI disability with a classification of "mental retardation."

2. In my clinical opinion, Ms. Simpson's cognitive limitations interfered with her ability to understand the *Miranda* warning and to advise her son about his rights on the night of her son's arrest. Assessment results suggest she performed below average on specific measures of the content of the *Miranda* warning, and she did not understand key words in the *Miranda* warning. Her description suggested some of her correct responses resulted from information she learned after she hired an attorney. She showed a deficit in understanding what it means to have something held against you. She believes it is a lawyer's job to tell the police (and later the judge) what his or her client has confided. She had difficulty comprehending the issue of confidential communications or the role of advocacy in the attorney-client relationship. She did not know the meaning of the word appoint, and she failed to understand her right to request a lawyer for her son at any time during the questioning. Ms. Simpson viewed the police officers as authority figures in a position to offer her direction and advice about her son. She had difficulty understanding their adversarial relationship with herself and Bart. She followed their lead in attempting to convince Bart to "tell the truth." For example, results of the CMR-TF suggest she thought Bart was compelled to answer questions and to tell the truth. She did not understand that information he provided would be used to prove his guilt. Her account of the questioning, her son's confession, and his arrest suggests that prior to and at the time of the reading of the *Miranda* warning she did not understand her advisory role in relation to her son's rights, and her emotional state was one of confusion, frustration, and upset.

3. In my clinical opinion, Bart lacks abilities associated with competence to waive his *Miranda* rights. He has limitations in abstract thinking, reasoning skills, and understanding social nuances. On specific measures associated with comprehension of the *Miranda* warning, he did not understand core elements of the warning. He confused the right to remain silent with what he thought was a requirement to remain silent until questioned by the police, he could not explain what it meant to have something held against him, he mistakenly believes his lawyer must tell the judge what he says, and he believes he must answer any question posed by a judge. He did not know the meaning of the word "appoint" and he did not understand the services of his lawyer to be free.

John W. Smithers, Ph.D.
Assistant Professor of Psychiatry
Designated Forensic Psychologist

PSYCHOLOGICAL EVALUATION Re: Comprehension of *Miranda* Rights

NAME: Christopher Cowan
DATE OF BIRTH: August 9, 1978
CHRONOLOGICAL AGE: 18 years 3 months
DATE OF EVALUATION: November 7,1996
LOCATION OF EVALUATION: Smalltown Jail
EXAMINER: Cynthia Pollack, Ph.D., ABPP
DATE OF REPORT: January 20, 1995

IDENTIFYING DATA AND REASON FOR REFERRAL:

Christopher Cowan was referred for a psychological evaluation by Attorney Kevin Robinson in order to assist in determining his competence to make a knowing, intelligent, and voluntary waiver of his *Miranda* rights. Christopher was interviewed at the Smalltown Police Department on May 13, 1996, and on May 14, 1996. He was arrested on the charges of Accessory Before and After to Murder and Illegal Possession of a Firearm related to an incident alleged to have occurred on May 10, 1996.

STRUCTURE OF THE EVALUATION:

Prior to my evaluation, I informed all parties I interviewed that I am a psychologist, and that I was asked to evaluate Christopher Cowan concerning his comprehension of his *Miranda* rights. I informed them that the content of the interview, assessment results, and my observations would be shared with his attorney in the form of a psychological evaluation report, that the report potentially would be introduced into evidence in court, and that I might be asked to testify in court. I was provided with a copy of the version of the *Miranda* warning used in the Smalltown Police Department jurisdiction; a copy of the statements given by Christopher Cowan and Robert Griffin to the Smalltown Police Department; other police records and witness statements concerning the alleged incident; and a copy of the May 26, 1996 Grand Jury of Smalltown County minutes concerning the alleged incident. I interviewed Mr. Peter Jenkins (Christopher's step-grandfather/adopted father), and Ms. Kelly Parker (Christopher's biological mother/adopted sister).

EVALUATION TECHNIQUES ADMINISTERED:

Clinical Interview (1 hour)
Wechsler Adult Intelligence Scale, 3e (WAIS-III)
Woodcock Johnson Psychoeducational Battery
Comprehension of *Miranda* Rights (CMR)
Comprehension of *Miranda* Rights, True/False (CMR-R)
Comprehension of *Miranda* Vocabulary (CMV)
Function of Rights in Interrogation (FRI)
Minnesota Multiphasic Personality Inventory, 2e (MMPI-2)

RELEVANT BACKGROUND INFORMATION:

When asked about his family background, Christopher said his grandmother took custody of him directly after his birth because his birth mother was only 15 when she gave birth to

Christopher. Christopher's biological mother said when she moved out of her parents' home at age 18, "My step-father wouldn't let me take Christopher. He said they had raised him." Although his grandparents did not formally adopt him, they raised him. Christopher refers to his grandparents as his father and mother. Christopher has four biological paternal half brothers and one biological maternal half sister, but he was not raised with his biological siblings. He did not meet his biological father or paternal siblings until he was age 12.

Christopher said he has four siblings in his adoptive family. His oldest sister (biological mother) is Kelly, who is age 37 or 38. Matthew is 36, Simon is 28, and Sandra is 27. His oldest sister left home to live on her own shortly after he was born. Christopher said he got along well with Matthew. He said, "Matthew tells me keep the faith." He said Matthew encourages him. Matthew has two jobs (one is at a warehouse). Christopher said Simon, "lived a tough life: He did drugs, he sold drugs. He did time too. But now he changed. He changed a lot. He works in the Oakmont. He talks to me. He gives me a lot of positive words. When I talk to him I feel happy." Simon is employed as an HIV AIDS counselor at the Oakmont. Christopher said he likes Sandra and he resided with her and her boyfriend in Georgia for about six months. Sandra has two twin children. She currently works in a clinic as a record keeper.

Christopher's grandfather said Christopher moved in with his mother when he was age 16. He had some emotional distress because he was adopted by his grandparents but his younger sister was not. His biological mother said, "He was jealous. Why couldn't I raise him?" He also stayed there because Christopher's grandmother continued to move back and forth between the Dominican Republic and Miami (she needed the warm climate of the Dominican Republic and the medical care in Miami for her illness). Christopher's biological mother, Kelly, works as a billing clerk in a clinic in Smalltown. Christopher described ambivalent feelings toward Kelly. He said his biological father, Mr. Randy Cowan, is, "All right." He said, "I'm not used to him." He said he is close to his biological paternal half brothers.

Christopher described a good relationship with his grandmother. He said, "There was a lot of love." When asked about his relationship with his step-grandfather, he said, "Same thing. I'm real close to him." His grandparents visit him in the jail. He described a harmonious family history with no physical abuse, sexual abuse or neglect. He said his parents did not have problems with alcohol. He said his grandmother suffered from a tumor. She had five operations. When Christopher was in third grade, the family feared his grandmother would die from the tumor. His grandmother passed away on September 4, 1995, six years after the operation. He said, "It was a big loss for me, a real big loss." Christopher's biological mother said when Christopher's grandmother passed away, "He was severely depressed; very withdrawn. He wasn't talking to the family." She said, "He wouldn't talk to people. He was really into himself. He didn't want to do anything. He was arrested when he was down at his lowest."

Christopher was raised in Miami for 11 years, then his grandparents relocated to the Dominican Republic for four-and-one-half years. His grandparents wanted to retire there; however, they moved him back and forth "four or five times" because of his grandmother's need for medicine that she could not get in the Dominican Republic. He had difficulty in school in the Dominican Republic because they taught school in Spanish only. His biological mother said, "People in the Dominican Republic make fun of Americans who learn Spanish in America." Christopher said, "I didn't like the Dominican Republic. I had to start over a new life, make new friends, meet new people, go to a new school. I was like nervous." He returned to Miami for good at age sixteen and one half.

With respect to his educational background, Christopher said he finished seventh grade (His grandfather and biological mother said Christopher finished sixth grade but did not graduate seventh grade.) He was held back in first grade in Miami, in sixth grade in the Dominican Republic, and in eighth grade in Miami. He left school in eighth grade. He did not recall why he was held back in first grade. Christopher's biological mother said Christopher had problems in math and reading. She said, "He was not a very smart kid. He couldn't spell well. He's not good at reading."

Christopher said in sixth grade he was held back because of problems in reading and spelling. He was held back in eighth grade because, "I was lazy, never did my homework, I was always late with my homework. I wasn't dedicated." In elementary school he earned average to above average grades. In junior high school, his grades fell to an average to below average level. He said he was never truant. He said, "My grandma was real strict about that, my grandfather too." He said he did not have conduct problems in school. He was never suspended. His grandfather confirmed that Christopher had good relationships with his teachers and he was not truant from school.

Christopher said he left school in eighth grade because, "I was in eighth grade. I moved back to the Dominican Republic, just to live, with my family. I tried being a wise guy. I went to school there, I didn't bring papers. I lied and said I passed eighth grade. They gave me a certain day to bring my school records. I was there a half-year. My papers arrived. They found out I didn't pass eighth grade. They told me if I did well there, they would keep me there (in ninth grade). I didn't do well. I was embarrassed. The teachers all liked me. The principal found out my grades were real low. He said they were going to have to throw me back in eighth. I didn't go to school no more, I just walked out. I never went to school again." Christopher's grandfather confirmed that Christopher had difficulty with school in the Dominican Republic. He said, "It was hard for him in the Dominican Republic because it was all Spanish." Christopher said after he returned to Miami he enrolled in classes to study for his GED. His biological mother said she helped him with homework when he studied for the GED classes. She said, "He was excited about school, but his job got in the way of studying because he was called to cover a lot." He attended classes at Smalltown Adult Education. He did not have an opportunity to take the GED examination.

Christopher has an occupational history. He helped his grandfather in his landscaping business two to three days per week. His first formal employment was at a store called __________. He worked as a cashier and a truck receiver for two to three months. He left the job because he did not have transportation to work. He then worked as a security guard for five to six months at Carlton in Smalltown. Christopher's grandfather said Christopher had no problems with his employment. He said, "Everybody loved him. He worked a lot of hours. He would work two shifts when they needed him. However, Christopher said he was laid off because of a mistake, "They caught me sleeping, so they let me go." (He said he worked at night, but he did not sleep during the day.) He was suspended from his job two weeks before he was arrested.

Christopher said he has no history of serious medical problems. He never sustained a head injury or lost consciousness. He has no history of mental health treatment. Christopher's grandfather said no one suspected that Christopher needed mental health treatment. However, when his grandmother died, "Christopher's life wasn't the same. I know that hurt him a lot." With respect to his substance use background, he said he first tried alcohol at age 16. He said, "I

don't drink. I hate alcohol." He tried beer at a party only one time. He did not use it again because it made him vomit. He first tried marijuana at age 16. His heaviest period of use included daily use. He smoked Philly blunts up to nine to ten blunts per day. His drug of choice is marijuana. He said, "You could say I'm married to marijuana. I'm a pot head." He said after his grandmother passed away, his marijuana use stopped and then it dramatically increased. His heaviest use occurred after her death. He said, "I would be high. I would smoke again. I felt nothing. I was quiet. I was always visiting her grave too." His last use was the day before his arrest. He also tried powder cocaine on New Year's Day and one or two other times.

With respect to his legal history, Christopher said he was accused of breaking into a house at age 11. He did recall having been read his rights. He was in the custody of the police for one-half hour to an hour. He was questioned by the police and then his biological mother bailed him out for $25. He said, "I didn't call my grandmother because I knew she would flip." He defaulted on his court date because of a move to the Dominican Republic. Five years later, he was apprehended, but the case was dismissed. He was never placed in DYS. He was never the subject of a CHINS petition.

CHRISTOPHER'S ACCOUNT OF THE CIRCUMSTANCES OF ARREST, THE *MIRANDA* WARNING, AND THE CONFESSION:

Christopher said, "I didn't know nothing about what the police knew, that they arrested the murderer. That morning I called Jonathon Cresswell. He was sleeping. His mother picked up the phone. She said, 'Is your name Chris?' I said, 'Yeah.' She said, 'Yesterday the police came and picked up my son for questioning. They asked about you. If I were you I would go to the police station and say what happened.' She got her husband on. He told me, 'Go to the police station. They got Robert.'" Christopher said, "So then, that's when I went." I called my mother. I told her about what happened. She started crying. I said, 'I'm going to go to the police station.' I told her to meet me at the park. She picked me up. We went straight to the police station."

Christopher said, "I went and they asked me who are you here for. My mother was talking for me. She said, 'This is my son. He was involved with something that happened, a murder. He wants to talk to the guy who's taking the case.' So then the police officer called this officer. The officer showed up. And then they had us waiting for like a half hour until this other detective came. So then they brought me in the room. They offered me soda. And then they started questioning me."

Christopher said, "I've never been in a position like that in my life. I was scared. I told them what I knew." He said the police officers were "like saying words to scare me." He said they told him, "'If you don't talk you're going to do life. They're going to put the blame on you that you killed the kid.'" He said, "They would be friendly and then they would get upset." He said, "I was frightened. I was really scared." He said, "I was just frightened, I told them what happened. " He said, "That was my first statement. I gave my first statement. Then they put me in the cell." He did not recall how long he was questioned by the police. He was placed in the cell for one day.

Christopher said, "The reason why I gave my second statement was, I was in the cell. We all were down there. They were all like screaming, calling my name, especially Robert. He was saying, 'If one of you guys is snitching, ratting me out, I know a lot of people in jail. If I find

out that one of you is snitching on me, I'm going to send your statements to other prisoners. They'll know you're a rat. You'll be done with.'" He listened to them "for a whole day or night--I don't know how long because I couldn't tell if it was day or night." He said, "Robert would call me, 'Chris, Chris, what did you say.' He was doing the same thing to Edwin." Christopher said he did not sleep all night. He said, "I couldn't. I was scared." He said, "That's when I asked for an officer. I asked to give another statement. I just threw everything on me. I was frightened."

Christopher said, "I said a lot of lies about myself because with a case like that, Robert said when I got to jail and they find out I'm a rat, they was gonna shank me and put me in PC--protective custody thing--that's where they got all the rapists and rats and stuff. I was really scared. I thought about it the whole night. That's when I came up and told a whole different story." He said, "I didn't want to get beat up. Especially upstate. I was scared. I never been in a situation like that." Christopher said he confessed to elements of the crime that he did not commit, including: (a) "I said I gave the pager number for Robert to get the gun;" and (b) "I said that the gun was mine. I said I was holding it."

He said during the second interview, the police officers accused him of having lied to them in his first statement. They asked why he was not truthful the first time. He said, "Even Robert's statement said Edwin gave him the gun. I didn't want to be looked on as a rat. Those people have problems in jail." He said, "They were just typing. They asked me questions."

Christopher said in the first police interview, he was shown a card with his rights. The police read it out loud to him. After reading all of his rights, they asked him if he understood his rights. Christopher said he understood his rights. He said, "I understood like the lawyer part, and that's about it. I said I understood I thought I was gonna go home. I just wanted to get things quick and get out of there." He said he was read his rights before he gave a statement. His mother was present at the time he was read his rights. She did not offer any advice about his rights. He said, "She didn't understand them herself." He said she left the room after he was read his rights. He said, "She said that she couldn't be here for the questioning. So she just walked out to the hall and sat down." She did not leave the police station until he was handcuffed. He said the police would not allow them to confer again after his mother left the room.

Christopher said in the second police interview, "I'm not sure, but I think they did. I think they read it to me." He does not recall whether they asked if he understood his rights. He said, "I just signed the card." He said, "I understood attorney and silent." He said he did not recall when he was read his rights on the day of his second statement. He said he was too frightened that he was going to jail for life.

When asked what he understood about his rights at the time of the police interviews, he said, "I had no clue. I mostly heard those words on the Cops shows. I never thought of it happening in real life. He said he thought the *Miranda* warning meant, "I was going to jail." He said he did not ask for a lawyer at any point. He said, "I didn't know I could just go get a lawyer and come with me. I thought I was going home to tell you the truth. I thought I was gonna say something, what I know about it, and just let me go."

Christopher said he did not know he was under arrest until he heard his mother crying. He said, "They told her the charges that I had. I heard her crying. They arrested me." He said he knew he was under arrest when "they cuffed me." He said he was handcuffed after he gave

his first statement. Christopher said he did not realize he was in police custody. He said, "I thought I was going home. I thought I could leave there. I didn't know I couldn't go home until I heard my mother crying." He said, "I don't know. I was alone. My mother left. I didn't know I had rights to do something like that. If I did, I'd have got a lawyer."

When asked if the police detectives used force during their interrogations of him, Christopher said, "Sort of. Because they were like, we want to know everything you did since you got up this morning. I don't care what it was. So I thought I had to sit there. They're cops. They're detectives." He said the police did not physically threaten him. He said, "They were saying if you don't say nothing, the charges that you're gonna do is 25 years. You're never gonna see the streets. I was like, 'wow.' I did get intimidated. I was scared." When asked if he believed what the police were telling him, he said, "Of course. I would have never given a statement. I would have just stayed shut." Christopher said he did not want the police to tape record his interrogations because he does not like the sound of his voice on audiotape. He said, "I heard myself singing on a recording. I sounded like a girl." He was afraid he would sound like a girl if he spoke on tape. He said, "It's embarrassing."

MS. KELLY PARKER'S ACCOUNT OF THE CIRCUMSTANCES OF CHRISTOPHER'S ARREST, *MIRANDA* WARNING, AND THE CONFESSION:

Ms. Kelly Parker said Christopher received a call from an individual advising him to go to the police station. She said, "I took him to the police station." She said upon arrival, they waited one half hour before speaking to the police. She said, "The police asked him about Edwin first. They said, 'We need to read you your rights.' They read them. They didn't ask if he understood." Ms. Parker said she was "nervous, with a tight stomach." She said, "I said, 'I don't think I want to hear what happened.' The two police officers said, 'You can step out."' When asked if she or Christopher signed a *Miranda* card, she said, "They had him sign after they read them." She said, "The police had me sign one later."

During the police interrogation, Ms. Parker called some relatives. She became worried because, "It was taking a long time." When the police detectives came out of the interview room, she asked if she could go into the room. She said, "The officer said he'd ask Chris. He said it seemed like Christopher was doing okay. Everything was fine. He said he would ask Chris. He never came out." She said she asked another police detective in the hallway whether she could go in the interview room. She said, "He said, 'If they need you they'll let you know."'

Ms. Parker said the police detectives brought her back into the room and asked her to sign Christopher's statements. She said, "I didn't want to know what was in the statement. He said, 'You have to sign here.' I signed. When we went outside, he said, 'We're going to have to charge your son with accessory after the fact. I found out the next day in court that he would be charged with murder before and after the fact."

When asked about her comprehension of *Miranda*, Ms. Parker said, "We've never been through that. You see it on TV. They arrest you anyway and if you don't talk, they beat you up. We didn't know you can keep your mouth shut and have a lawyer. How could we come up with the money for a lawyer? We didn't understand what they were saying, that he had a right not to answer the questions. We figured he had to answer them." She said, "Chris was scared. You could see it in his face."

POLICE RECORDS CONCERNING THE ARREST, THE *MIRANDA* WARNING, AND THE CONFESSION:

According to Smalltown Police Department Records, Christopher Cowan signed a sheet of paper containing the *Miranda* warning at 1:00 p.m. on May 13, 1996. His mother also signed the sheet of paper. Two officers witnessed the signatures (Detective Darnell Brown and Trooper Charles Phillips). At 2:09 p.m. Christopher Cowan signed the bottom of the form, declining to have his statement electronically recorded. His signature was witnessed by the same two officers. According to Christopher's May 13, 1996, statement to the Smalltown Police Department (at 2:10 p.m.), the *Miranda* warning was issued as follows:

> "I have come to the Smalltown Police Station of my own free will, with my mother, to tell what I know about the shooting that happened on Pompano St. Thursday night. I have been read my *Miranda* Rights from a piece of paper by Det. Darnell Brown. On that piece of paper I have also been read that I have the choice of having my statement typed or electronically recorded. I have chosen to have my statement typed and Det. Brown is typing it for me. I have signed the bottom of the paper to have it typed. I have not been forced or promised anything in exchange for what I am about to tell these officers. In the room with me is my mother, Tpr. Charles Phillips and Det. Darnell Brown. As we are starting to talk about what happened my mother doesn't want to be in the room with us anymore and it's OK with me. My mom is going to wait for me in the hallway."

According to police records, Christopher then gave a statement to the Smalltown Police Department.

According to Smalltown Police Department Records, Christopher Cowan signed another sheet of paper containing the *Miranda* warning at 12:29 p.m. on May 14, 1996. His mother did not sign that *Miranda* warning. Two officers witnessed the signatures (Trooper Charles Phillips and Officer #617, signature illegible). At 12:32 p.m. Christopher Cowan signed the middle and bottom of the form affirming that he was informed of his right to a prompt arraignment (and his arraignment date) and declining to have his statement electronically recorded. Both signatures were witnessed by the same two officers. According to Christopher's May 14, 1996 statement to the Smalltown Police Department (at 12:25 p.m.), the *Miranda* warning was issued as follows:

> "On Monday May 14, 1996 at approximately 12:25 PM Detective Humphries of the Smalltown Police Department and this officer spoke to Christopher Cowan in the Smalltown Police Department Criminal Bureau. Detective Humphries read a Smalltown Police Department form to Cowan advising Cowan of his *Miranda* warnings, his right to a prompt arraignment, and the opportunity to provide an electronically recorded statement. After each section of the form was read, Detective Humphries asked Cowan if he understood what was read to him. Cowan stated he did and signed his name under each section. "

According to police records, Christopher then gave a second statement to the Smalltown Police Department. According to the minutes of the Grand Jury of Smalltown County, dated Friday, June 23, 1996, Trooper Charles Phillips testified that Christopher Cowan was advised of his *Miranda* rights prior to questioning. He testified that the English language was not a problem for Christopher, that Christopher was sober. When asked whether Christopher's mother was present during the interview, Trooper Phillips testified, "She was present at first and for the

reading of the rights, and she decided she didn't want to sit in on the conversation and she waited out in the hall." Trooper Phillips did not offer further testimony or details about the *Miranda* warning or Christopher's demeanor during the interview. Trooper Phillips testified that Christopher was placed under arrest after he gave his first statement.

Trooper Phillips testified that Christopher was re-advised of his *Miranda* rights on May 14, 1996, and that he signed a waiver of his rights that day. He provided no further testimony or details about the *Miranda* warning or Christopher's demeanor during the second interview.

BEHAVIORAL OBSERVATIONS AND MENTAL STATUS:

Christopher presented dressed in institutional clothing. He showed no problems with self care skills. He described his mood as "alone some days, real depressed." His slow motor movements and sad facial expressions were consistent with his report of depression. He said, "Every day I feel scared." He copes by "making a lot of phone calls." He said talking to his family helps him to feel better. Prior to jail, his mood was both "happy" and "sad." He said he felt sad when he thought of his grandmother. He described no problems with regulation of his moods.

Christopher described no problems with the integrity of his thoughts prior to his arrests. He said, "I was always with my girlfriend and my best friend from the Dominican Republic." He described no perceptual distortions or disorganization in his thinking. He said, "I felt a lot of depression, I felt alone. I missed my grandmother a lot. That's when I started smoking a lot. A real lot." He said he had no thoughts of harm to self or others since his incarceration.

ASSESSMENT RESULTS:

Cognitive Functioning: On the WAIS-III, Christopher obtained a Full Scale IQ score of 77, placing him in the "Borderline" range of intellectual functioning. His obtained Verbal IQ score was 72 and his obtained Performance IQ was 83. Relative to his other subscale scores, he demonstrated weakness on the Vocabulary subscale.

On the Wechsler Individual Achievement Test, Christopher's composite standard score was 64, which is in the first percentile of functioning (ninety-nine percent of individuals his age score better than him). His composite score suggests he is functioning at an age equivalent of 11 years old. Christopher obtained a standard score of 78 on the Basic Reading subscale (7th percentile, age equivalent of 11:3), 655 on the Mathematics Reasoning subscale (1st percentile, age equivalent of 9:6), 69 on the Spelling subscale (2nd percentile, age equivalent of 10:0), 83 on the Reading Comprehension subscale (13th percentile, age equivalent of 11:0), 73 on Numerical Operations (4th percentile, age equivalent of 11:3), 61 on the Listening Comprehension subscale (0.5 percentile, age equivalent of 7:3), 94 on the Oral Expression subscale (34th percentile, age equivalent of 11 :9), and 64 on the Written Expression subscale (1st percentile, age equivalent of 8:0).

Affective and Personality Functioning: On the Validity Scales of the MMPI-2, Christopher obtained an elevation on Scale F. The scale was elevated at a level that suggests an exaggeration of symptoms for three possible reasons: (a) a plea for help; (b) malingering; or (c) psychosis. The FB, TRIN, and VRIN scales were elevated, suggesting that reading problems and fatigue affected the MMPI-2 results. The TRIN scale suggests when Christopher was in doubt, he acquiesced to items. The clinical scales that were elevated on the MMPI-2 (Paranoia,

Psychasthenia, Schizophrenia, and Mania) suggest if Christopher was exaggerating his symptoms, he specifically was attempting to exaggerate a paranoid psychotic disorder. Given that his IQ falls in the Borderline range, it is doubtful he could exaggerate in such a sophisticated way. In addition, the possibility of malingering is further diminished because Christopher did not endorse symptoms of a thought disorder during his interview. Accordingly, it is likely Christopher is bothered by bizarre and unwanted thoughts, but he is fearful of admitting those problems except when it is unclear to him that problems or symptoms are associated with a thought disorder (many of the MMPI-2 items are not manifestly associated with a particular disorder). His F Scale is not exaggerated as highly as is seen in forensic populations such as those attempting to malinger a mental illness that would be favorable to an insanity defense. It is at a level more typical of inpatient psychiatric populations.

Nonetheless, because of possible reading problems, Christopher's MMPI-2 results are interpreted with caution. The Supplementary and Content scales are not interpreted because of the elevated FB scale, On the Clinical Scales, the profile (8-6-9-7) is suggestive of serious mental illness, with the most common diagnosis being Schizophrenia, Paranoid Type. Hallucinations, delusions, and extreme suspiciousness are common. Shyness, social with-drawal, and disabling emotional turmoil are common. Difficulty handling the responsibilities of everyday life is common. Individuals with this profile have difficulty distinguishing between real and imagined threat. As a result, they may feel anxious and tense much of the time. They have difficulty with thinking and concentration. Confusion, a slow stream of thought, and thought blocking are common. Some agitation, excitability, and grandiosity may be present.

Comprehension of Miranda: On the Comprehension of *Miranda* Rights (CMR) scale, Christopher obtained a score of 6 out of 8 possible points. He had difficulty defining what the phrase "used against you in court" meant, and he had difficulty identifying when a detainee has the right to consult with an attorney. On the Comprehension of *Miranda* Rights-Recognition (CMR-R) scale, Christopher obtained a score of 10 out of 12 possible points. He thought the statement, "What you say might be used to prove you are guilty," was inconsistent with the *Miranda* warning. He thought the statement "If you won't talk to the police, then that will be used against you in court," was consistent with the *Miranda* warning. On the Comprehension of *Miranda* Vocabulary score (CMV), Christopher obtained a score of 4 out of 12 possible points. He did not receive full credit for any of the vocabulary words. Two of the words he had difficulty defining ("interrogation" and "entitled") do not appear in the version of the *Miranda* warning used by the Smalltown Police Department. When asked the meaning of the word "questioning," Christopher said, "when they ask you questions." In general, his definitions of words were vague.

On the Function of Rights in Interrogation (FRI) subscale, Christopher obtained a score of 19 out of 30 possible points. Christopher had difficulty comprehending the intention of the police during an interrogation. He understood they wanted information about the crime, but he had difficulty understanding they might be seeking incriminating information. He understood the role of an attorney before an interrogation, but he had difficulty comprehending a detainee's right to silence during an interrogation. He understood that an admission of involvement in the crime might get the defendant into trouble, but he was unclear about whether the detainee was compelled to speak during police questioning. He did not know what would happen in court to a defendant who refused to give a statement to the police. He did not know if he would be obliged to testify in court if he refused to give a statement to the police.

INTERPRETATION OF PSYCHOLOGICAL ASSESSMENT RESULTS:

Christopher Cowan is a late adolescent boy who was informally adopted by his grandmother and step-grandfather. They resided in Smalltown, but moved back and forth between Smalltown and the Dominican Republic when Christopher grew into early adolescence. Because of the moves, Christopher's education was disrupted by his need to adapt to a different culture and a Spanish-only teaching system in the Dominican Republic. Between the ages of eleven and sixteen and one half, Christopher's education was disrupted by the moves. He graduated sixth grade. He attended seventh and ninth grades, but he did not pass those grades. He had reading problems, and in junior high school he lacked the motivation to consistently follow through on homework assignments. He left school because of his embarrassment that he was not keeping up with his age mates, and because the school system was going to place him back into eighth grade after he already attended ninth grade classes. Although he was described as a good worker, Christopher was not successful in maintaining employment.

Christopher had some emotional adjustment problems in adolescence. Although he loved his grandparents, he was confused about why he was adopted by his grandparents when his sister was not. He reportedly suffered from depression when his grandmother passed away. Based on his biological mother's report, Christopher was depressed over his grandmother's death at the time of his arrest. He withdrew and became somewhat mute. Based on Christopher's description, he was emotionally distressed and he abused marijuana heavily after his grandmother's death. Based on Christopher's report and my observations, Christopher remains grief stricken over her death. Christopher has no history of mental health treatment.

Christopher's legal history contains only one prior incident. He did not recall having his rights read to him at that time. He recalled hearing the *Miranda* warning on "cop shows" on television. He did not describe significant legal experience that would aid in his comprehension of *Miranda*. Christopher did not appear to malinger lack of comprehension of the *Miranda* warning at the time that he was administered the *Miranda* comprehension measures. Malingering lack of comprehension is detected primarily on the CMR-R. Because this is a "same/different" assessment, a chance result would produce at least fifty percent correct items. (Malingering typically results in a less than chance result.) Christopher's result on this assessment measure was greater than chance. In addition, there was a correspondence across measures in the type of items that he failed. Finally, because of the consistency in his results across the two measures, he does not appear to have malingered a poor result on the intellectual and educational assessments. His poor vocabulary skills are seen across all of the assessment measures.

Based on his description, Christopher decided to go to the police station on the advice of the parents of another witness. Records confirm that he went voluntarily to the police station. His mother accompanied him to the station. She remained with him until after the *Miranda* warning was read and then she left the room. She reportedly offered no consultation to Christopher concerning his *Miranda* rights. She did not ask for time to consult with him alone. She reportedly later changed her mind about wanting to be in the interview room, but she was unsuccessful in gaining re-entry into the room.

Based on Christopher's description, he was "scared" during the questioning. He said the police officers used words to scare him. He said he was frightened because the officers told him he might do life in prison if he did not talk to them and because "they" might put the blame on Christopher for the murder. He said the officers were both "friendly" and "upset" during the questioning. He thought he was obligated to answer their questions by virtue of their status as

police officers. His assumption that he must respond to their authority is consistent with his level of intellectual functioning. His mother said Christopher appeared "scared."

Christopher said he gave the second statement because he was in fear of the threats that he heard overnight in the holding cell. He was especially in fear because of the threats made by Robert Griffin. He said he did not sleep that night because he was "scared." He said he was in fear of getting beaten up in prison or being placed with rapists in prison. He gave the statement because he was "frightened." He said because of his fear of Mr. Griffin and his fear of retaliation in prison, he confessed to two elements of the crime that he did not commit.

Christopher said although he told the officers that he understood his *Miranda* rights, he did not fully understand his rights. He knew he had a right to an attorney, but he did not realize he could ask for one right away or at any point during the interview. He expected he would give a statement and then go home. He did not have the subjective sense that he was in police custody until he heard his mother crying. He did not realize he was under arrest until he heard his mother crying. He said at the time of the second interview, he was frightened of going to jail for life, so he did not focus on his *Miranda* rights. His mind was occupied with fear.

The police records do not contain information about the manner in which the *Miranda* warning was presented to Christopher Cowan. Christopher signed two *Miranda* forms. According to police records, the first one was signed one hour and ten minutes before the interview. The second form was signed four minutes after the interview.

The assessment results suggest Christopher understood some elements of the *Miranda* warning, but he had difficulty comprehending some key elements. For example, he had difficulty understanding at what point a detainee has a right to an attorney. He had difficulty understanding the impact of providing information to the police that incriminated himself. He did not know the consequences of refusing to speak to the police, but he thought it might be used against him in court. He did not know whether he had a right to protect himself against incrimination in a court of law should he be asked to testify. He did not know if he could be compelled to testify.

Assessment results suggest Christopher functions in the "Borderline" range of intelligence, with particular problems understanding vocabulary. His level of educational achievement is comparable to the average 11 year-old child, with some skills falling below that level. For example, his listening comprehension is comparable to the average 7 year-old child. These results suggest special precautions indicated for a seven to 11 year-old child would have been appropriate during the *Miranda* warnings and police interviews.

Reading problems affected Christopher's personality assessment results, but the results raise suspicion that he may suffer from symptoms related to a paranoid thought disorder. At the time of the police interviews, he reportedly was suffering from grief and depression over his grandmother's death. He showed signs of grief and depression during the clinical interview. His grief and depression likely contributed to emotional vulnerability at the time of the interviews. If he suffered from a thought disorder at the time of the interviews, his compromised mental state would further contribute to vulnerability during the interviews.

CONCLUSIONS:

1. In my clinical opinion, Christopher Cowan has deficits in his cognitive functioning which impaired his comprehension of some of the elements of the *Miranda* warning. Because of the pervasive and intractable nature of his deficits, it is likely his comprehension of *Miranda* was impaired at the time of the police interviews.

2. In my clinical opinion, Christopher Cowan suffered emotional distress at the time of the police interviews because of his grief and depression over his grandmother's death, because he was frightened over what he perceived to be verbal threats by the police officers who interviewed him, and because he was frightened over what he perceived to be verbal threats by Robert Griffin and others in the holding cell on the night between his first and second police interview.

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Psychiatric Report on Competence to Stand Trial and Need for Care and Treatment

CASE NAME: Hope Wood
REFERRED BY: Random County Juvenile Court
DOCKET NUMBER: 0000000000
PERSONS INTERVIEWED: Hope Wood (defendant); Arthur Taylor (father); Annette Johnson (stepmother); Virginia Wood (mother)
DATES OF INTERVIEWS: October 8, 12, 15, 19, 21, 24, 25, 26, 28, 2001
CLINICIAN: Marcus Welby, M.D
DATE OF REPORT: November 5, 2001

Hope Wood is a 10 year-old girl (b. 7/15/91) who was committed by the Random County Juvenile Court to the Suburban Hospital child psychiatry program on September 30 for evaluation of competence to stand trial under the authority of Chapter 000, ss. AA and BB of the General Laws. Her father is Arthur Taylor (35 years old) and her stepmother is Annette Johnson (43 years old); they live in Smallville. Her mother is Virginia Wood (31 years old); she lives in Washington, DC. Hope faces a charge of aggravated assault and battery and aggravated rape, stemming from allegations that she sexually assaulted her stepsister's infant son James on September 28, 2001, causing the infant to suffer very serious physical injuries which are expected to leave substantial residual deficits.

Evaluation of Hope by Dr. Smith at court after her arraignment on September 30 found her to have a history of mental health treatment and conduct problems, and to appear somewhat guarded. Dr. Smith also noted an "extremely limited understanding of the functioning of a court of law", and she recommended inpatient evaluation. This evaluation has included

1) Review of the following records:

   a. school records

   b. record of mental health evaluation and initial treatment at Regional Medical Center, July 2000

   c. records of medication treatment with Cynthia Steel, M.S., R.N., C.S., October 2000 to September 2001

   d. record of testing and other evaluation at the Downtown Hospital Learning Disorders Unit, September 24, 2000

   e. intake evaluation at Village Mental Health in early June, 2001

   f. camper evaluation, Valley View Summer Camp, August, 2001

g. Smallville Police Department incident reports and notes of interviews with family members (including Hope) on September 28 at her home and at the Smallville Police Station

h. Smallville Hospital medical records of James' treatment beginning September 30, 2001

i. Dr. Smith's evaluation at court, September 30, 2001

j. record of current hospitalization at Suburban Hospital, including admission notes, progress notes, test results, and a report of psychological testing conducted by Dr. Ruth Psyche on October 20, 2001

2) Telephone conversations with Dr. Smith (Random County Juvenile Court Clinic), Ms. Jane Wynne (Valley View summer camp), Dr. Jones (psychiatrist at the Metropolitan Boulevard mental health clinic, Washington, DC), Mr. Douglas Bilko (of the same clinic), schoolteachers Ms. Granger and Ms. Evans (Brown Elementary School in Smallville), Dr. William Field (Department of Youth Corrections Clinical Director), intake clinician Leslie Joyce (Village Mental Health), defense counsel Paul Bridge, Peri Mason, and Evelyn Burke, and Assistant District Attorney Roger Karp.

3) The following clinical interviews:

a. Hope, and Hope and Mr. Taylor together at Suburban Hospital on October 8 (about two hours)

b. Mr. Taylor and Ms. Johnson at the Random County Juvenile Court Clinic on October 12 (about two hours)

c. Hope at Suburban Hospital on October 15 (about an hour)

d. Mr. Taylor at his home in Smallville on October 20 (about 75 minutes)

e. Hope at Suburban Hospital on October 21 (about 75 minutes)

f. Ms. Wood by telephone on October 24 (about an hour)

g. Mr. Taylor by telephone on October 25 and October 28 (total 25 minutes)

h. Hope at Suburban Hospital on October 26 (about 90 minutes)

WARNING OF LACK OF CONFIDENTIAL COMMUNICATION:

The hospital record includes a well documented account of Dr. West, Hope's attending psychiatrist, warning Hope that she was in the hospital for court-ordered evaluation and that her communications would not be confidential; Hope voiced her understanding of that warning to Dr. West. In my initial interview with Hope I reiterated this warning to her, but (as noted below) she did not speak in this interview, and thus did not express her understanding of it. In my subsequent interviews with Hope I offered this warning again; she did appear to understand it, as she responded to my questions as to whether our conversation would be confidential by

saying, "No," and as to whom I would tell about what we talked about by saying, "The judge." She re-confirmed this understanding in a subsequent interview with Dr. West.

In my initial interview with Mr. Taylor I made the same explanation, and he acknowledged that what he said to me would not be confidential. Ms. Johnson's initial response to an inquiry about her expectations was that the interview would be confidential, but acknowledged the non-confidential nature of the court-ordered evaluation upon further explanation. I also made the same explanation to Ms. Wood in our telephone interview, and she said that she understood.

CLINICAL HISTORY:

The history provided here comes from records noted above and from interviews. It is presented here organized by topic. A brief summary of this history and other clinical data is provided later in this report, prior to the section on competence to stand trial.

Family history. Records indicate that Hope's mother's family has a history of substance abuse. Hope lived with her mother until she was about seven, and then moved to her father's care. She has reported to hospital staff that she had not seen her mother in four years, as her father had not allowed her to, but as detailed below, she appears to have seen her mother last in February of 2000. Current family constellation includes Mr. Taylor (34), his wife Annette Johnson (42), her mother Winona Johnson (62), and her six children ages 21 to 5, as well as Hope.

Mr. Taylor reported that he was born in Atlanta. His parents separated when he was quite young, and his mother moved to Washington to live with her mother. His mother was a strong and independent woman, who has worked for thirty years as the head cook in a hospital. His mother has two sisters, one who is currently caring for his grandmother in Washington, and another who lives in Alabama. He has a sister in Arkansas who has been married for 15 years and has four children; and a brother who is "a party guy," moving from job to job. Ms. Johnson reported that Hope's maternal grandfather is a distant cousin of hers, and there is considerable mental illness in that side of the family, with multiple cousins, aunts, and uncles with bipolar disorder, schizophrenia, and ADHD. Hope's maternal grandmother was alcoholic and lived on the street; her mother's two sisters also abused drugs and alcohol, "had sex with the neighborhood," and "had kids all over town."

Mr. Taylor explained that he and Hope's mother lived together in Washington until Hope was about three years old, and that for the first couple of years, things went okay. However, Ms. Wood had a young son who was about two years older than Hope; this child died in a car accident at the age of four when staying with his godparents. After this child died, "Things started to go down." Ms. Wood was "seeing someone else on the side," they were "arguing a lot," and eventually her mother and sisters "were all getting evicted" and moved in with them. There was "constant noise, people drinking; when her brother wasn't in jail he was stealing from the house." He recalled "waking up with beer cans all over the house," and he felt that there was nothing he could do. He felt that if he stayed, he (or someone else) would get hurt, and so he moved out as the "family was heading for destruction."

He noted that when Hope lived with her mother in Washington, DC, she continued to be exposed to drugs, sex, violence, alcohol, police, and generally unstable circumstances. Hope would sometimes stay with her mother's sister, who lived across the street from Ms. Johnson. Ms. Johnson characterized Hope's mother as "quite unstable, always pawning her off," and she

described Hope (who would come across the street to play with her children) as active, aggressive, sometimes a loner, and given to aggressiveness, lying, and stealing. Her daughter Frieda (now 11) was close with her for a while, but then they were not, owing to Hope's stealing from her. She also noted that Hope preferred to play with older children. She "knew something was wrong" with her, but she had no occasion to do anything about it.

After a few years, Mr. Taylor said he went to court to seek custody; when Ms. Wood didn't show up at court for the second hearing (at a time when Hope was in Mr. Taylor's care), Mr. Taylor received full custody. He said of Ms. Wood, "She knew it was time - she had no place, and she gave up." Hope lived with Mr. Taylor and Mr. Taylor's mother from the spring of 1998. Mr. Taylor and Ms. Johnson first became involved with one another in late 1998, and began living together in the middle of 1999. Hope preferred to spend time with Ms. Johnson and her children rather than being with her grandmother.

Ms. Johnson said when Hope came to her, she was lacking in structure and discipline. She had a lot of conduct problems in school, with aggressive, impulsive, and oppositional behavior; she was abusive to the dog, and put dirt in her teacher's drink. She continued to visit on weekends with her mother, but it was common that Ms. Wood would not bring her back at the end of the weekend, and that they had trouble finding her. She would look forward to her visits with her mother, but upon her return she "was totally different - stubborn - no one could tell her what to do." Ms. Johnson reported that she moved to the Metropolis area in April of 2000 as she has family here, and hoped that she could get more help for Hope. She lived in Milltown at first, and moved to Smallville in the summer of 2000. Mr. Taylor joined her in August from Washington.

Ms. Wood's account of the family history differed in a few important respects from that of Mr. Taylor. She acknowledged that she had developed a substance abuse problem after the death of her son, but she explained that she was introduced to drugs by Mr. Taylor, who had been using the entire time that they lived together (and had spent some time in jail when she was pregnant with Hope). She noted that she has three nephews with ADHD and a sister who has been treated for bipolar disorder.

Ms. Wood reported that Mr. Taylor did not work during the time they lived together, and that he was physically abusive to her during this time (though she explained that Hope probably did not witness this directly, as it would happen at night when Hope was in another room). She said that she tried to separate from Mr. Taylor, but he would "stalk me," following her to work and "constantly coming up behind me." After the death of her older son (in about 1993) she began using substances, and shortly after that she succeeded in having Mr. Taylor removed by calling Federal marshals; he was subsequently incarcerated for five years on charges including armed robbery (by her report). During this time (from when Hope was about two to about seven), Ms. Wood's drug use increased, and over time her life circumstances deteriorated. Hope became more anxious about Ms. Wood's well being and it was hard to leave her; she would not want to stay with Mr. Taylor's mother (even when Ms. Wood was homeless). Though when she first went to school (at age four or five) she did fine, later she had a hard time staying in school because of her anxious need to be with her mother.

When Hope was about seven, Mr. Taylor was released from prison, and Ms. Wood asked him to take custody of Hope because she could not care for her in her condition at that time. (Mr. Taylor confirmed this account when questioned directly after my conversation with Ms. Wood.) Mr. Taylor was sober at the time and agreed to take Hope in September 1999. After

that, Hope visited a few times with Ms. Wood; she would complain to her about how Ms. Johnson didn't like her, and that she was always being blamed for things that went wrong in that family, and "no one believed her." Ms. Wood said, "She hated it there." She noted that Mr. Taylor was sensitive to Hope's complaints, but was "in the middle, trying to keep the peace, but having a hard time." Ms. Wood was incarcerated about six months after Mr. Taylor took custody of Hope (early March 2000), and she has not seen Hope since then. After her release in April 2001, Mr. Taylor discouraged her from seeing, calling, or writing to Hope, since Hope was having such a hard time then that he felt contact with her mother might make her worse. Hospital unit staff have reported that Hope complains about life in her current family, saying she "hates it there." Treatment records indicate that Hope learned in April or May of 2001 that her mother had been in jail, and that this knowledge appeared to contribute to her deterioration at that time.

Mr. Taylor currently works as a nurse's aide at a health care facility near his home in Smallville. He finds this stressful, as he is often with people who are seriously ill, including some young people who have suffered traumatic injuries. He noted that he has gained some understanding and support from nursing staff there regarding Hope's difficulties. Ms. Johnson does not work outside the home. Mr. Taylor described his situation now with Ms. Johnson's family as "sometimes difficult" in light of what has happened, but "being married and being good church people has helped." James' mother was hospitalized psychiatrically for about a month following James's injury, but he said that she is now "doing better" and will be going to work soon. The other children go to school; Mr. Taylor noted that the children tend to be "slow" and "don't like authority." The family attends the Mount of Olives Church in Metropolis.

Ms. Wood reported that she is working, is on probation, has completed substance abuse counseling, has been sober since March of 2000, attends church regularly, and is currently in treatment with a psychiatrist; Dr. Jones confirmed that she is his patient. She suffered substantial depression during the time she was incarcerated, and she had experiences with "highs" when she was drinking. She has been prescribed lithium, though she is not taking it currently as she had side effect problems. Ms. Wood has petitioned the court to regain custody of Hope, and Mr. Taylor said there is going to be a hearing on this matter in mid-November. Mr. Taylor indicated that he is not sure whether it would be good for Hope to see her mother again, but that he would need some assurance as to her reliability if he were to support renewed contact.

Hope said that her favorite people in the family are her mother and father. She does not remember moving from her mother's care to her father's. She complained that she feels she can never think about her mother. She does not have a picture of her, but she does remember what she looks like. She recalled playing video games with her, watching TV together, and having her put her to bed and read to her.

Developmental history. Mr. Taylor said that Ms. Wood did not appear to be using substances during her pregnancy with Hope, and that her labor and delivery were without problems; Hope weighed seven pounds, six ounces, and "seemed to be a normal baby." Neither of them had any difficulty taking care of her as an infant; she walked at about ten months and began talking around the same time. After she began to move around she was "into everything," and Mr. Taylor said that she did not respond to discipline especially well.

Ms. Wood noted that Hope is her second child, born when she was twenty-one. She was not using substances when she was pregnant, and had no problems with her pregnancy,

labor, or delivery. Hope was a calm, happy baby, who was not hyperactive, but was sociable and "got along well with everyone." Her early development was unremarkable. She said Hope was not overactive or impulsive as a toddler; she responded to supervision and did not need extraordinary punishment.

School history. Hope is noted to have had school problems in her preschool years; her kindergarten record suggests that her learning in kindergarten was mixed, and that she once bit another student, leaving marks. Her grades in first grade were C's and D's; she had multiple conduct problems resulting in official reports, including fighting, pushing another student into a toilet, pulling down her pants (and those of others) to show and look at their genitals, and telling a boy on the school bus she would suck on his penis. Her grades in second grade were all D's, and she transferred schools twice that year. She was failing in third grade, and was expected to be retained, but she left in April. She was rated satisfactory in respect for authority, but needed to improve in obeying rules, respecting other students, listening, following directions, and completing work. Mr. Taylor reported that the schools constantly disciplined Hope, and would call in Mr. Taylor in response to Hope's misbehavior, but never did undertake an evaluation or special education services.

At the Brown Elementary School, Hope was noted to "need improvement" in her overall conduct over the course of third grade, and to be weak in "social habits", specifically "courteous - considerate" and "works-plays well with others." Her work habits and academic achievement were all rated satisfactory plus, or better. Ms. Granger (her third grade teacher) described Hope as hyperactive (especially if she had not taken her medication), and sometimes as lethargic (either from too much medication or from not sleeping at night); but as competent in her schoolwork, and generally not aggressive or disruptive in her conduct. She recalled only one event in which she had been at all aggressive or angry, in which she wrote nasty comments on a school picture about individual classmates with whom she had had a problem on the playground. However, she noted that this had been short-lived, and that she calmed down on her own and tried to fix the damage. Ms. Evans had Hope in school for only 9 days this year; she described her as likable, conscientious about getting her work done, and bright. She noted that she was hyperactive and distractible, but that she did not have problems with the other children, and did not fight.

At a two week summer camp in August of 1999 Hope was rated outstanding on almost all qualities, and very good on the rest. She was described as "a happy kid", "a breath of fresh air", and "by far the best all around camper of the summer. She knew the difference between right and wrong and was always willing to try new things." She was noted to "get frustrated ... once but [counselors] let her have her moment as it was the only time she ever did anything bad." This is a camp program for inner city youth, many of whom have child protective service involvement; but it does not especially cater to children with mental or developmental disorders or conduct problems; its evaluations often include critical comments, which Hope's did not. During her stay at this camp, Hope continued on the same medication she had been taking previously, but instead of taking her Effexor all at once (112.5 mg), she took it in divided doses (37.5 mg at each meal).

Hope said that she had fun at camp, recalling a couple of kids with whom she had made friends; and she said that she had been happier there than at home. Within the hospital she has not taken part in school classes because she has been on constant observation, but her teacher said that she works eagerly on papers she gives her; she generally accepts criticism without difficulty, though sometimes she "shuts down."

Trauma history. Hope was reportedly exposed to criminal behavior, sexual activity, domestic violence, and physical punishment by her father (with a belt and switch) and by her father's grandmother (with a switch), but reportedly never severely enough to leave marks. As noted above, Hope has experienced disrupted attachments and a sense of being an outsider in her family. She was noted in an intake at Village Mental Health to have been sexually abused by a cousin in early childhood. However, the basis for this report is unclear. When I asked Ms. Joyce what Mr. Taylor or Ms. Johnson had reported specifically as a basis for this note, she said that she could not recall specifically. When I asked Mr. Taylor about it, he said that he was not familiar with any account of Hope having been sexually abused. Ms. Mason reported that Ms. Wood had also told Mr. Bridge that she did not know of any history of sexual abuse. When I asked Hope if she had ever been sexually molested or abused, she became very agitated at the question, was angry at being asked, and claimed briefly not to understand. She then denied ever having any such experience.

Treatment history. Mr. Taylor and Ms. Johnson noted Hope's early conduct problems, including hurting a dog and picking up dirt to put in a teacher's coffee at school. They reported that they took Hope for help at a local mental health center, where she was begun on Ritalin, and recommended for a special education evaluation. Mr. Bilko reported that he saw Hope one time (April 9, 2000) for an evaluation, and heard a variety of concerns from her father and stepmother. These concerns included that Hope had school problems including poor attention, concentration, and conduct; aggressive behavior with other children and with animals; urinating and defecating outside the house; and a history of witnessing sexual behavior in her mother's home. She was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), conduct disorder, and dysthymia, and was recommended by the clinic child psychiatrist for treatment with Ritalin. Mr. Bilko said that medication was not begun at that time, however, and that Hope did not return for a scheduled follow up in a month.

Ms. Johnson moved to Milltown at around this time. Hope attended school there for a month or two, and began to have behavior problems; she was expected to be evaluated the next year, but the family moved to Smallville. Ms. Johnson said that Hope was seen for counseling for a few months at the Regional Medical Center in the spring and summer of 2000. The RMC record shows an evaluation visit by Ms. Johnson in July 2000, and a single play therapy session a week later with Hope, in which she showed "good concentration" and "seemed somewhat depressed." A few other appointments were made, but not kept. The evaluation noted the history presented here as well as symptoms of enuresis (until shortly before that time), nail biting, and difficulty speaking when under stress. The record refers to Ms. Johnson as Hope's foster mother; it indicates that Hope was abandoned by her mother in her aunt's care, that her aunt gave her to Ms. Johnson, and that Hope had been taking Ritalin since March of 2000 with a good response.

Hope was seen for neurological and psychological evaluation at the Learning Disorders Unit at Downtown Hospital in August of 2000 (where again Ms. Johnson was referred to as her foster mother, and her father's whereabouts were characterized as unknown). Hope was noted to have ADHD, and was recommended for special attention at school as well as medication. She repeated grade three at the Brown Elementary School, where (according to Ms. Johnson) she was expected to have a special education evaluation, but where the school said "without the paperwork they couldn't do anything." She continued to misbehave, and her teacher told Ms. Johnson that "every day with her was a battle."

She began taking medication (Adderal and Clonidine, under the care of Ms. Steel in Smallville) in the fall of 2000; Ms. Johnson said that she also began having counseling with Mr. Gray of Village Mental Health in January of 2001, but the treatment record includes no mention of this. Mr. Taylor and Ms. Johnson said that Hope did not appear to be getting any better, and over time appeared to be becoming more depressed and to be isolating herself further. Her dose of Adderal was increased, and Effexor was added as well. Her behavior at school got worse, and she continued to lie and steal. According to Ms. Johnson, "She seemed to have highs and lows."

In May Hope became more labile, agitated, kicking the dog, being aggressive to others in the family, and sleeping with knives under her pillow. She shaved her eyebrows and part of her head. Ms. Johnson took her for a crisis evaluation, and was encouraged to put knives out of Hope's reach. She went to summer school in July, but was asked to leave because of her hyperactivity. She went to overnight camp for two and a half weeks in August, where Ms. Johnson said, "I guess she was okay, I never heard anything about it." In the late summer, Hope reportedly wandered off with a stranger, and was missing for long enough to cause her family considerable concern. When she returned, she claimed that she had simply gone to McDonalds, that she had been interested in playing softball, and that nothing untoward had occurred. At the end of August she showed more aggressiveness with the dog. She told her father, "I love the devil, the devil is my boyfriend." She was noted to throw rocks and to have hurt other children. On September 11 she was seen "putting a stick in the dog's rectum." A neighbor remembered her "terrorizing the dog… the dog would bark and then Hope would yell and the dog would yelp or cry and then start barking again." She was taken to a crisis visit with Ms. Steel on September 28, and at that visit she was prescribed Tenex and sent home. That night James was injured and Hope was arrested.

According to the records of Cynthia Steel (clinical nurse specialist in Smallville), Hope began treatment with her in the fall of 2000. She was noted to be hyperactive, distractible, to have "a problem with [her] mood", to have trouble going to sleep, and to have a history of aggressive conduct problems. She was diagnosed with both PTSD and ADHD; she had begun treatment with Adderal, and her dose was increased to 20 mg twice a day; Clonidine was added at bedtime to help with sleep. She appeared initially to become less impulsive in response to these changes. In December she was noted to be anxious and "very quiet all the time" and to be aggressive to people and animals. Clonidine was added in divided doses during the day, and she showed initial improvement in anxiety and aggressiveness, though she was tired in school.

In February she appeared more anxious and sad, and Effexor 37.5 mg was added to treat anxiety symptoms. In March her mood seemed to improve but her conduct in school was noted as "yelling and screaming and distracting", and she continued to appear anxious; she was also noted to be wetting her bed. In April her teacher noted that she did not work well with other children, and had bad conduct and manners, but no major temper outbursts. Effexor was increased to 75 mg a day. In May she was noted to continue having problems with attention and conduct in school, stealing money, and to be tired in school.

In June she was noted to have shaved her head and eyebrows, and to be stealing and lying. She had a crisis evaluation at Village Mental Health and then was seen for intake the following week. (She did not keep subsequent appointments there despite multiple phone calls from the agency, and the case was closed on July 19.) She appeared depressed and was

having crying spells. Effexor was increased to 112.5 mg per day. She was said to have hid a knife under her pillow, and to have "just learned where her mother is." Ms. Steel encouraged her family to enroll her in psychotherapy. In July she was noted to continue to steal, and to be up at night, but later in the month she was noted to be much improved. In late August she was noted to have gone off with a stranger to play ball. On September 28 she was seen by Ms. Steel who noted that she was "out of control" having "put a stick up dog's rear end x 2 ... stealing other children's things - mood swings - acts like nothing bothers her - disruptive in school - picks at mouth." She told Ms. Steel, "I've been bad - lying - stealing." Her daytime Clonidine was changed to Tenex. She was expected to begin psychotherapy within the next few days. Ms. Steel indicated by phone to Dr. West that other members of the family are involved in treatment at the same agency, and that she had urged the family to pursue more frequent visits and additional therapy, but they did not comply.

Mr. Taylor said that he was not entirely sure how to understand Hope's condition. He noted that Hope has been diagnosed with ADHD and hyperactivity, but that "no one's really had any definitive idea." His own understanding is that Hope is "emotionally disturbed, she lacks trust in people" and is easily let down when people are not consistent with her. He said that Hope has sometimes been "like any other kid," but that she has always been too much "to herself," preferring to be alone even when she seemed otherwise to be in a good mood. She has enjoyed playing outside, and always seemed to be making friends with people the family didn't know. She seemed to make only one good friend in school. He reported that they had considered taking out a status offense petition.

He said that Ms. Johnson sometimes complains that he shows favoritism towards Hope and against her boys. He said that she may think he is "too hard" because of his military background, but, "I try to teach children not to be lazy - don't lay around, help out. Her kids are crybabies." He noted that, in contrast, Hope (despite her problems) is willing to work and help out in the house and yard. He feels that it has been helpful for Hope to give her positive attention, and they enjoy going to the park together and playing ball. Hope's medicine "may have made her more relaxed" and pay better attention; he noted that before taking it, in school "her eyes were all over the place."

He feels that now Hope needs "really, really intense therapy. She wants to trust someone, to know people aren't going to leave her. She wants to be a normal little girl and she doesn't know how." He would not want Hope to "come out the way she went in," and that she would need to have her "mind disturbance and hearing things" dealt with. He noted that if Hope were to be released from custody, he could not bring her back to the family, and would have to take her somewhere else; he "would not want to put them or her" through the stress of having her return to the family. He noted, "When a child has a label, she gets treated bad even for the smallest things, even in the family." Hope acknowledged that there has been discord in the family concerning her bad behavior, and that she has sometimes been too readily blamed for things; but she did not offer any specifics or speak spontaneously on the point.

HOSPITAL COURSE:

Hope has been on constant one-to-one supervision during the hospital stay, and has mostly spent time in her room. She has tolerated this level of restrictiveness without major explicit complaint, has related reasonably well with her one-to-one staff people, and has consistently spoken of liking it in the hospital. Though she has related spontaneously with unit

staff around activities and school, she has consistently been more guarded and resistant in clinical interviews, especially in response to unstructured open questioning about emotional experiences.

Her mental status was unremarkable on admission, though she complained briefly of past auditory hallucinations upon admission, and from time to time since then; she hears someone speaking her name and calling her stupid, telling her to shut up. Admission nursing assessment noted a history of headaches and sleep difficulty. Progress notes characterize her manner generally as blunted and avoidant, but with intermittent problems with being oppositional, occasionally tearful, and sometimes quite agitated. She was noted to have trouble sleeping at times, and to grind her teeth at night.

She made some vague threatening comments in the first week of her stay, threatened to strangle herself with a torn sheet, and voiced anxiety about being supervised in the bathroom by staff. During her second week she had multiple episodes of auditory hallucinations of being taunted and called stupid, sometimes associated with head banging. She was noted to wail and cry after her constant observation staff was switched from a favored staff to a different one. When she expressed a liking for that female staff person, calling her her "girlfriend", the staff person explained to Hope that she was simply a staff member, and in response to this she became extremely agitated, saying to her, "I hate you, you don't like me," then holding her head, covering her face, thrashing on her bed, and putting her fingers in her ears. She acknowledged having had auditory hallucinations during this outburst. Hope has been noted by staff to show marked and intense feelings of possessiveness and jealousy towards particular staff.

She continued to cry on and off throughout that shift, and she threatened to strangle herself with a sheet. She voiced feelings of sadness at missing her father and her mother; she reported auditory hallucinations, threatened to bang her head, and proceeded to do so. She indicated that she bangs her head in an attempt to eliminate the hallucinations. She complained of being unable to go to sleep because of fear of hearing voices, and was noted to be tearful. She complained of voices insulting her mother, and was described as tearful and "running around out of control, screaming, hyper, loud, doesn't know what she is feeling." Staff prevented her from banging her head. On the next two days she was noted to be loud and oppositional in the early morning, but otherwise calm. Several days later she was noted to be making sharp objects by tightly folding paper, and stabbing stuffed animals with them; she was told not to, and the "paper nails" were taken away. Later on the same day she became frustrated when the Legos she was playing with were taken away, and she began banging her head with severe agitation, crying, and loud threats to kill staff members; she noted that she was hearing voices at the time. Still later she was noted to be laughing and to appear happy, but later still she was banging her head again.

My last interview with her was on October 26; she became agitated in that interview in response to questions about the events which led to her admission, though she appeared to calm down after I stopped the interview. Later that evening, she became quite severely agitated, making loud and explicit threats to another patient on the unit. In the several days since then, she has continued to show intermittent periods of agitation.

On admission she continued on Effexor (antidepressant medication) 75 mg a day and Clonidine (blood pressure medicine used to reduce agitation and impulsiveness) 0.05 mg twice a day and 0.1 mg at bedtime; her dose of Adderal (stimulant medication) was changed on

admission from 20 mg twice a day to 10 mg three times a day. She has taken Benadryl (sedating antihistamine) as much as twice a day on an "as needed" basis to help with anxiety. Because of concerns that her increasing Effexor dose might have contributed to her behavior problems prior to admission, her Effexor dose has been gradually reduced, and was 20 mg once a day on October 26. She has not shown any clear change in mental state with this reduction. Her hallucinations have continued intermittently, and her manner has continued to be variable; staff have noted that at some times when she becomes very agitated, her entire state appears changed, as though she were a different person. She was begun on Zyprexa (antipsychotic medication) 2.5 mg/day on October 26.

MENTAL STATUS:

Appearance/Behavior/Relatedness. Hope presented as a casually dressed and groomed small African American girl with braces on her teeth, who was frequently pulling at her lip. For my first interview with her, I was introduced to her by hospital staff and we were shown to a quiet office. She had been working on math problems, and was hoping for a chance to play video games; thus she was not happy at the interruption. She explained this, and then said that she was not talking. She proceeded to spend about an hour drawing a picture, not speaking spontaneously, and not responding at all to any questions. Her manner was petulant and angry. She made little eye contact, other than an occasional guarded, sidelong look. Her drawing of a face was noteworthy for her beginning with eyes, nose, and mouth, and then (after pausing with some apparent puzzlement) filling in the outline of the head; for very intense, careful, focused, and deliberate drawing, with multiple erasures; and for the apparent significance of the final image, which was a face with an intense angry grin, sticking its tongue out, and wearing a "Guess?" T-shirt. When she was done with this picture and we stopped, she spoke with other staff members about playing Nintendo, but remained very determined in her refusal to speak with me. When I returned to speak further with her along with Mr. Taylor, she sat fairly still on her bed, responded to questions, and then spoke with some spontaneity.

In the second interview I sat with her in her room. She began by expressing her reluctance to talk, but was moderately responsive to questions and occasionally spontaneous. She was intermittently distracted by activity outside the room. She became more spontaneous in her expression after she began lying on the floor and speaking while she threw a stuffed animal up and down. As she spoke of the events which led to her arrest, she intermittently spoke in an uncharacteristically deep voice, and shortly after that she became increasingly expressive and loud, with her speaking intermittently interrupted by singing, by brief high-pitched screaming, and by reciting spontaneous poems (including content of being chased and tortured, and running away) in different voices which were difficult to interrupt. When we were briefly interrupted for her to take her scheduled 4 PM medication, she claimed that she had taken it at 3:30 (she had not), responded to the nurse's question as to how she was doing by saying, "Bad", and indicated that she wanted to stop talking. When I said we had a few more minutes, she continued to laugh and rhyme, perseverating, and became louder and louder, responding to any attempt to interrupt her by becoming more agitated, pressured, and loud. She completed a long riff on the name "Jackson" by saying, "I got nothing more to say Jackson!", but then she began again and would not speak further with me.

In the third interview she related more calmly, sitting in her bed and responding to questions, but not speaking spontaneously. When I told her I had received her camper evaluation and that it was very positive, she smiled broadly, asked if she could read it, took a

long time doing so, and then refused to give it back. When other children were screaming outside her room, she got off her bed and opened the door, yelling in an irritable way for them to be quiet. Later she noticed a schoolteacher in the hallway, and got up to express her disappointment to her that the teacher had not given her any work to do that day; she spoke with other hospital staff then about her schedule for the rest of the day, in a manner notable for its spontaneity, warmth, and enthusiasm, which was in marked contrast to her manner within the individual interview. As the interview proceeded, she complained about answering questions, and said, "I'm not going to sit here and talk all day, lose all my breath."

In the fourth interview she again was very reluctant to talk, saying that she was too tired and had lost her voice. However, when offered a written exercise to work on concerning trial competence issues, she accepted it with some enthusiasm, completed it, and was able to carry on discussion about it for about forty-five minutes with some spontaneity. Later, however, when asked other questions about her history in a more familiar and unstructured open interviewing style, she became agitated, put her hands over her ears, and complained about the endless talking.

Mood and affect. Asked to describe her current mood, Hope said, "I don't know." She did not respond when asked about her usual mood, though she did say that she has fun playing Nintendo and playing outside. She said that she sometimes has good moods, and that she doesn't know about bad moods. When she told the other children to be quiet, she was clenching her fists, and she acknowledged feeling angry. She said that she feels angry when people ask her to talk about James. She could not answer about how long this feeling lasts or what she does about it; she said, "I just feel mad, 'til that person gets out of my face, or I'll hurt them." She asked, "Why do we have to talk about things that make me mad?" She complained with some pressure about having had to do psychological testing, but she could not articulate how it made her feel. She did not respond to my question about how she feels when she thinks about her mother, though she has told hospital staff that she misses her and feels sad. She did not convey feelings of sadness in her interviews with me, but her affect was noteworthy for its intensity and for its variation. Her emotions did not change in a rapid labile manner, but did vary quite dramatically from time to time, over a range including quite tense withdrawal, angry agitation, raucous hilarity, mild irritability, and pleasant enthusiasm. As noted above, she has repeatedly voiced suicidal ideation and threats to others during the course of her hospitalization.

Speech and thought. Hope's speech observed with unit staff was normal in pace, productivity, volume, and prosody. In her interviews with me her speech was usually slower, more cautious, and somewhat halting, but it showed marked variability (as described above). At times of greater agitation its pressured, disjointed, perseverative quality suggested disorganization in her thought process, though she denied any subjective abnormality in her thinking. She denied having any intrusive thoughts or dreams about the events involving James. She spontaneously reported (in the first interview with her father, "Sometimes I hear things, they tell me ' I hate you - you're stupid, you're retarded.' " The voice "sounds like a big man" with a loud, deep voice, which she hears inside her head, on both sides. She said that in response she tells it "No", but she can't make it go away. It sometimes goes away on its own, and sometimes keeps her from sleeping; it sometimes leads her to bang her head. She said that she had this experience in the past, probably going back to the summer, but she was not sure how far back.

Mr. Taylor presented as a casually but neatly and appropriately dressed and groomed African American man who related in a calm, careful, and deliberate manner, in general conveying a sense of concern for Hope's problems but of some caution regarding the evaluation process.

Ms. Johnson presented as a casually dressed and groomed African American woman of early middle age who related responsively and with some spontaneity in the initial interview, especially in describing Hope's problems and her efforts to obtain help for her. When I arrived at Mr. Taylor's and her home for the second interview, Mr. Taylor said she "didn't feel much like talking" that day, and she only joined this session for a few minutes at the end.

RESULTS OF SPECIAL DIAGNOSTIC CONSULTATIONS:

CT scan of her head, EEG (waking and sleeping), gross chromosome analysis, physical and neurological examinations, and routine blood tests (including thyroid function tests) conducted during this admission were all within normal limits. These results suggest the absence of any active neuropathological, epileptic, or metabolic process contributing to Hope's emotional and behavioral problems.

Projective testing of emotional functioning conducted at Suburban Hospital found Hope to be somewhat withdrawn and avoidant, especially regarding material with emotional content, especially concerning aggressiveness. Testing showed evidence of her misperceiving her environment and having compromised reality testing. "In unstructured, ambiguous situations, she tends to distort stimuli and interpret the world in ways that differ from other children her age. Even in obvious situations, though her perceptions are accurate, they tend to be idiosyncratic and unconventional." She was noted not "to see relationships as positive and does not anticipate pleasant interactions with others." She did not show much empathic sense for others' feelings. She appeared to rely on denial and counterphobic responses as defenses. She did show explicit anxiety about bedtimes, which was associated with being put to bed by males. She expressed concerns suggesting she feels damaged, and about being ridiculed and teased by others. Testing results in summary suggested general guardedness, distorted perception, lack of investment in relationships, and disorders of attachment and trust.

Psychometric testing at Downtown Hospital in August 2000 included the WISC-III, finding a verbal IQ of 79, performance IQ of 84, and full scale IQ of 80 (the low end of the Low Average range). She showed variability among subtests, with relatively low scores on comprehension (reflecting relative weakness in social judgment) and block design and object assembly (reflecting difficulty with time limits, perceptual organization, and trial and error learning). She did not show obvious problems with hyperactivity or distractibility in this test. On other tests she showed problems with distractibility on more complex tasks; difficulties with sequential memory; variable mild difficulties with auditory discrimination and memory; good visual integration; and generally average academic achievement except for some mild relative weakness in reading comprehension.

Routine achievement testing in school in her second year of third grade in Smallville (Iowa Tests of Basic Skills) found the following national percentile ranks:

Reading vocabulary	52	Reading vocabulary	60
Reading comprehension	48	Reading comprehension	34

Reading total	50	Reading total	48
Spelling	98	Language- capitalization	60
Math - concepts	36	Language - punctuation	67
Math - problems	70	Language - usage/expression	81
Math total	55	Sources - maps & diagrams	65
Social studies	58	Reference material	65
Science	11	Sources total	63

Taken together, these scores indicate slightly better than average academic achievement compared to other third graders, with relative weaknesses in conceptualization and comprehension.

Similar testing (Stanford achievement) in second grade in Washington showed achievement about twenty to thirty percentage points lower than these levels.

BRIEF CLINICAL SUMMARY AND DIAGNOSTIC OPINION:

Hope is a small 10 year-old girl with a family history of mental illness and substance abuse; reportedly normal early development, but uncertain temperament in toddlerhood; exposure to disrupted attachments, domestic violence, sexual activity, and possible sexual abuse in early childhood; loss of contact with her mother and a developing sense of being scapegoated within her step family in recent years; a history of hyperactivity, attention problems, and conduct problems in school and at home in her early school years (and more especially at home in recent years); specific problems of sexual provocativeness in her early school years, aggressiveness with other children, and cruelty to animals; cognition marked by low average tested IQ in 1990 but mostly average school achievement; a history of treatment over the past year with medicines for hyperactivity and distractibility, depression, and impulsiveness; and an uncertain response to treatment, as her course over the past year has included apparent worsening dysphoria, emotional instability, enuresis, sleep difficulty, and intermittent aggressiveness.

During her stay in the hospital she has been noted to complain of self-persecutory auditory hallucinations dating back to before her admission. She has shown quite marked variations in her emotional functioning and behavior, including some pleasant spontaneity around schoolwork and recreation; some periods of extreme agitation associated with disorganized thinking, hallucinations, head-banging, and threats against herself and others; and an overall guardedness in dealing with emotional issues. Her mental status has been noteworthy for variability, for relatively consistent intolerance of sad affect, and for the intensity and apparent discomfort of her intermittent auditory hallucinations. Psychological testing confirms impairment in reality testing, poor tolerance of dysphoric emotion, and guarded avoidance.

Some uncertainties remain about details of Hope's history, the potential importance of which is unclear. The nature and extent of her exposure to domestic violence and the quality of her attachment to her mother are not clear. Her sexual provocativeness in her early school years, her sexual cruelty to the dog, her anxiety about being put to bed by males, and her agitated antagonism on being asked if she had ever experienced sexual abuse are all consistent with a history of suffering sexual abuse; but they do not specifically indicate that she has been sexually abused, and they may stem from other sources. It is not clear what (if anything) may have happened to her when she was missing for a brief time in August or September. The exact

nature of the deficits of Ms. Johnson's children remains unclear, as is the specific nature of Hope's difficulties in getting along with them and with Ms. Johnson.

The hospital treatment team has offered provisional diagnoses of Psychotic Disorder Not Otherwise Specified, Attention Deficit Hyperactivity Disorder, and Mood Disorder Not Otherwise Specified. The lack of specificity of these diagnoses reflect appropriate continuing uncertainty as to the true nature of Hope's mental disorder. This uncertainty exists in part because of the uncertainties in her history, in part because of the complexity of interactions among abnormalities in her development and various environmental influences, and in part because of the fact that at her age it is difficult to predict into what specific type of course her disorder will evolve.

The single condition which best accounts for Hope's history and variety of symptoms is Post Traumatic Stress Disorder. This is a somewhat tentative diagnosis because of the residual uncertainties about the nature of Hope's early life experience, but it would account for her emotional guardedness, avoidance and tension; for her intermittent agitation and hyperarousal; and for her hallucinations and the dissociative quality of her altered voices and manner when she assumes different emotional states. In assessing hyperactivity and distractibility in childhood it can be difficult to distinguish between manifestations of PTSD (with intermittent hyperarousal, preoccupation, and dissociation) and ADHD; that Hope has a reported strong family history of ADHD may mean that she does have an independent disorder of temperament characterized by a consistent propensity for hyperactivity and distractibility independent of her trauma history and its repercussions, but this is essentially impossible to determine. Her irritable mood, sleep problems, and self-deprecatory hallucinations over the past year suggest that she has suffered from depression along with PTSD; her behavioral and emotional instability could prove to be early manifestations of a developing bipolar disorder, but it is probably too early to make this diagnosis other than as a tentative speculation. Hope also meets diagnostic criteria for conduct disorder.

ADDITIONAL CLINICAL INFORMATION RELEVANT TO COMPETENCE TO STAND TRIAL:

In this court a criminal defendant may be found incompetent to stand trial if he or she lacks a rational and factual understanding of the charges against him or her, or a sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding. The question of how the issue of competence to stand trial applies to a juvenile delinquency or juvenile waiver proceeding in this court is not fully clear from the statutes, and has never been the subject of appellate review.

Hope and her family conveyed the following regarding these issues:

UNDERSTANDING OF THE LEGAL PROCESS:

Charges and potential consequences. Hope told Dr. West that she is "charged with a crime - I am charged with assault and rape." She added that she knows James is badly hurt. In speaking with me she first explained that she was "under arrest for hours" before she went to the courthouse and then to the hospital. She said that she understood that the people involved with the court are interested in helping her, and she suggested that her having been sent to the hospital is consistent with this understanding. She said that she will not be in trouble for this offense, as she was only arrested for a short time. She does not expect to be locked up,

but instead expects to stay in the hospital for repeated periods of forty-five days. Then she expects her aunt to come from the South and take her to live with her there. She said that if anyone messes with her aunt, they will have to deal with her father. She said that she could not think of any other possible outcomes to the case. She said that her father would allow her to go, and indeed is planning to come along with her. A progress note reports that she told a staff person that she expects to go south with her aunt, but she likes being in the hospital, and she expects that when she leaves she will misbehave so that she can come back.

In a subsequent written worksheet (which I prepared for this purpose), Hope filled in blanks expressing her understanding that she was arrested for "rape", that the charge against her is "hurt", that she is the defendant, that she will have to return to court, and that the worst thing that could happen to her would be that she would go to jail. On the same exercise, she checked off "hospital, youth corrections, adult prison" as places she could possibly be sent as a result of the case; she did not check home, another family, a residential school, or camp as potential outcomes. She marked the following statements "false": "I will be able to go home whenever I want to," and "The judge doesn't have the power to lock me up."

Mr. Taylor was not aware of the options available to the court, and did not have any idea what to expect. Hope said that her father has not talked with her about this.

Trial process. In the written exercise, Hope first answered the question, "What is the purpose of a trial?" by saying "I don't know." After some discussion she understood that a trial is like an argument between two sides, which a judge (or maybe a jury) will listen to and decide who is right. When asked again after a break about this point, she said a trial is "like an argument, and figure out who's telling the truth about the case."

Though she did understand that it was possible that she could go to jail or prison as a result of the current charge, she was not familiar with the juvenile waiver process. After brief instruction on this point she was able to explain that a judge would hold a hearing to decide whether she would "stay in juvenile court" or "go to adult court," and she understood that only if she went to adult court could she then go on to prison. She understood that the judge would hear from witnesses (see below), but she was not very clear on how the judge would decide the issue. After some discussion she was able to repeat that the judge could send her to adult court if he found that she was dangerous, and if "he thought I wouldn't learn to be better" from treatment in a juvenile placement; but she had no idea how the judge might go about deciding those questions.

Roles. Hope initially said that she did not know why she has a lawyer, or what her lawyer's job is. She recalled that in the courtroom were her lawyer and another lawyer "who told the judge what happened." In the third interview she said that her lawyer's job is to help her in court, and that the other lawyer is against her. The judge "makes orders about where they're going to put me and what's going to happen." When asked if the judge could decide whether she could go to another state or not, she said, "How could the judge tell me whether I could go down South - she's not my mom or my dad, not even for one second!"

In response to some very brief instruction, Hope learned that her role in court is that of the defendant; the name of the lawyer who "tells what happened" is the prosecutor, and that person's job is also to show the court what the defendant did wrong; and the judge listens to witnesses and decides what happened. Asked the function of a jury, she said, "I don't know

nothing about jewels." A brief effort to correct this misunderstanding about vocabulary was unsuccessful, but a more detailed effort in the following interview led her to recall TV shows where a group of people sits on the side and listens. After some discussion she understood that a jury is a group of "probably ten or twenty" people, who listens to the trial and decides "who's right." We did not discuss the issue of deciding between a jury and a bench trial.

In a written "fill in the blanks" exercise given in the final interview, Hope filled in "prosecutor" as "the lawyer working against me"; she filled in "be on my side" as "my lawyer's job"; she filled in "make the orders" as "the judge's job." In addition to her lawyer, she marked "my father" and "my mother" as "people on my side," and did not mark the judge, her stepmother, the prosecutor, the jury, or the police. She marked "the judge" and "the prosecutor" as "people against me", and did not mark her father, mother, stepmother, the jury, or the police.

Ms. Mason noted that though Hope considers her a friend and ally, and knows in general that her role is "to be with her in court and talk with her and help her," she does not seem to have any differentiated understanding of what Ms. Mason's job as her lawyer actually entails. She said that when she met with Hope on October 27 (the day after my last meeting with her), Hope did not have a good idea of the role of the prosecutor.

Evidence. Asked what the role of the police were in court, Hope said, "To make sure nothing happens." She defined a witness as a "person who tells if a person is lying or telling the truth." She did not initially know who would question a witness, or who would listen to the witness. In the written exercise Hope filled in "tell the judge the truth" as "a witness's job." Hope's definition of the term "confession" was "talk," and she said that she was not sure if there had been a confession in her case (despite the ample police accounts of her having admitted to assaulting James).

Pleadings and findings. Hope was initially unfamiliar with her options as to pleading. After quite brief instruction to which she attended and responded well, she was able to say that her options included pleading guilty ("I did it"), not guilty ("I didn't do it"), and not guilty by reason of insanity ("I did it but I was crazy and couldn't help it"). In a subsequent interview she recalled the first two of these options spontaneously, but did not remember the third. She was not able to answer spontaneously questions about what would happen in response to various pleas, but after some discussion she understood (both immediately and on being questioned again later) that after a plea of not guilty, the judge would not simply believe the defendant, but instead would "have a trial, to find out if they're telling the truth." Asked how the judge would find out, she said first, "By asking the prosecutor what she did," but when asked further, she said that the judge would not necessarily believe the prosecutor, since the prosecutor "might lie." I explained that if the plea is not guilty by reason of insanity, then the trial would be about questions of mental illness.

When questioned again after a break of a little over an hour, Hope showed incomplete retention of these concepts. She said that if the defendant pleads guilty, "Then there's a trial about if she's really guilty or not." If the defendant pleads not guilty, "Then there's still a trial about if she's telling the truth." If the defendant pleads not guilty by reason of insanity, "Then the prosecutor makes a deal and there's not going to be a trial. The deal would be about going to youth corrections or a hospital."

COLLABORATION WITH COUNSEL:

Communication and trust. Hope said that her lawyer's name is Peri Mason, and shrugged, "She's all right." She said that she can talk with her, and told me that she had told Ms. Mason everything she had told me. Mr. Bridge said that Hope had been initially reluctant to speak with Ms. Mason about the events leading to the assault, and sat with her fingers in her ears as she tried to discuss it with her. She was noted to be tearful following this visit. Mr. Bridge told me that in a subsequent conversation with Ms. Mason, Hope had spoken more willingly, and had conveyed a bit of information about the alleged offense. Ms. Mason had indicated that Hope was bright and able to communicate, though it was not clear that she was yet fully informed as to the specifics of the legal proceedings; she also had concerns about her depression and potential for self-harm.

In the written exercise, Hope marked "my father," "my mother," and "my lawyer" as people she "can probably get good advice from." She did not mark her minister, stepmother, friends, doctor, or the prosecutor.

Mr. Taylor said that Hope's lawyers appear to be helpful, and are working hard to gain Hope's trust.

Ms. Mason reported that she has met with Hope three times at the hospital and spoken with her a few times on the telephone. In the first meeting she barely spoke at all. In the second meeting she spoke "in bits and pieces" about the events of the night of September 28, but was not been able to offer a sequential, coherent account of these events to her. In the third meeting she indicated that it was important for Ms. Mason to understand what happened in order to help her, and Hope became more agitated and avoidant, and then threatening to other children and verbally abusive to staff; she did not offer any further information about the events in question, but she was able to calm down and discuss her expected appearance in court coming up in November. She has communicated with some spontaneity with Ms. Mason when speaking about Nintendo games, and has been somewhat distracted from other conversation by her games and her stuffed animals. She has shown a special concern with the reliability (or lack of it) of others' promises.

Ms. Mason noted that she has provided special education tutoring with young children in the past and is generally comfortable with children and successful in communicating with them. Though Ms. Mason said that, in general, Hope appears to consider her an ally and friend, Hope has been quite limited in her communications with her. She noted that Mr. Bridge will be trial counsel, but that Hope has never met him.

In her interviews with me, Hope offered an account of the events of the night of September 28, both spontaneously and then in response to questions; this account was moderately detailed but was somewhat disjointed and clearly incomplete. This account is included in my separate, sealed report on criminal responsibility, and will not be provided here (to avoid any concerns about self-incrimination). Though I do not know (and did not ask specifically) what Hope conveyed to Ms. Mason regarding these events, her accounts of the very limited extent to which Hope has spoken to her about them suggests that what Hope has been able to convey to her thus far about the events in question is also limited, and may even be more limited than what she told me.

Decision making. Hope was unfamiliar with the term "plea bargain," and with the concept of negotiated settlement. She was familiar in general with the concept of "good deals" and "bad deals", and said that if she were offered the chance to stay in the hospital in exchange for a guilty plea, that would be "a good deal." However, she averred that this would be a good deal even if she had to stay in the hospital for the rest of her life; she did not seem to appreciate the meaning of "the rest of your life," as her discussion of this hypothetical included comments about what she would do when she went home. When asked if it would be a good deal if the prosecutor offered a commitment to youth corrections in exchange for a guilty plea, she said this would be a bad deal; however, the reason she gave for this judgement was, "'Cause I hate the prosecutor - she's a *bitch*! I offer her a good fist, if she's lying on me!"

Mr. Taylor noted that the detectives did warn Hope and him that Hope did not need to talk, and that he had encouraged Hope to tell them what happened; but that the detectives then questioned her in a leading and "tricking" manner, as police tend to do.

Attention and conduct. Ms. Burke reported that Hope's arraignment was a fairly informal proceeding at which she appeared somewhat puzzled but comported herself appropriately. In general, Hope appears to respond better in structured situations than in unstructured ones, and would probably not be disruptive in court. However, she has also showed consistent evidence of finding it difficult to tolerate discussion of her alleged offense. Therefore at present she may be expected to be at somewhat increased risk for irritability, avoidance, and impairments in attention and participation in court, in response to explicit discussion of the allegations against her.

OPINIONS REGARDING COMPETENCE TO STAND TRIAL:

Mental disorder. As reviewed above, Hope suffers from marked difficulties with emotional instability, guardedness, depression, distractibility, and intermittent disorganization in her thinking and perception.

Understanding of proceedings. Hope shows a rudimentary understanding that she is charged with a crime and that she faces a legal proceeding with potentially aversive consequences for her. She has shown a consistent understanding of the nature and seriousness of the offenses with which she is charged, but her understanding of the potential consequences has been inconsistent. She has shown a basic understanding of the trial process (as an argument between two sides to determine what is true), but her appreciation of details of the process (especially concerning her plea options and their consequences; the presentation and nature of evidence, especially concerning her statement to the police; and the specific roles of both prosecuting and defense attorneys) has been incomplete and inconsistent. Her understanding of the waiver hearing process includes a basic appreciation that she may face either juvenile or adult proceedings and penalties, and that a judge will decide this based on how well she can be expected to learn from juvenile intervention.

Collaboration with counsel. Hope recognizes Ms. Mason as a friend and ally, but does not have a well-developed understanding of how Ms. Mason may be expected to help her, or of what she herself needs to be able to do to help Ms. Mason to do her job. She has never met Mr. Bridge, and can be expected to have some difficulty establishing initial communication with him, in light of her overall guardedness. It appears likely that Hope has not so far been able to provide a complete account of the events in question. Hope's understanding of her plea options is limited,

and her decision making about even simple hypothetical negotiated settlements was irrational.

Both Hope's parents appear to be poorly informed about the potential outcomes of the case, and about options for Hope's defense. Furthermore, Hope's mother has re-opened the question of Hope's legal custody, and is currently in an uncertain situation regarding her access to Hope and ability to counsel her.

Summary of opinion. Hope's level of understanding of the proceedings is quite basic, and includes some inaccuracies and significant incompleteness. Though she has a basically positive relationship with her lawyer, her ability to communicate with her lawyer about the details of the alleged offense and about complex defense issues is substantially impaired by her guardedness and by her vulnerability to emotional disorganization. Whether Hope's relative deficits in understanding and substantial deficits in collaboration are significant enough that she should be considered unable to take part fairly in the delinquency proceeding is beyond my expertise as a psychiatrist, for two reasons.

First, it is not clear what the actual demands of this trial process may prove to be, so I cannot offer any summary conclusion as to Hope's overall ability to meet those demands. (For example, if the anticipated process were to be a negotiated solution resulting in Hope's treatment needs being met, with clear, appropriate, and uncontested contributions from her parents on her behalf, then Hope's own contributions to the process might appropriately be expected to be limited; but if the anticipated process will include an adversarial proceeding concerning either fact issues or mental state issues, Hope's participation would presumably need to be more substantial.)

Second, the ultimate determination of how much capacity a defendant needs to have in any of the specific areas concerned in order for any trial process to be fair is not a clinical determination. It is a determination of an appropriate standard for fairness in the legal process. Such a determination can only be made by a judge, based on the overall circumstances of the individual case.

Remediation. If Hope were to be found currently not competent to stand trial, she could in my opinion be expected to learn the details of the trial process in a matter of weeks, in response to specific teaching. I would not expect that her mental disorder would pose a substantial impediment to this learning, though it would likely contribute to some intolerance of extended lessons, some intermittent disruption in the learning process, and a need for a longer total time than would be needed without the disorder. I would expect that her ability to develop a relationship with her lawyer of sufficient comfort and trust to enable her to discuss the difficult issues in the case in a rational, consistent, and productive manner, with appropriate family involvement, would take considerably longer (from several months to a year or more). Such progress would depend on her disorder being more successfully treated than it has been so far, enabling her to be less guarded, unstable, avoidant, and irrational; and it would depend on clarification of her family circumstances, so that she can count on reliable support over time from one or both parents.

OPINIONS REGARDING CARE AND TREATMENT:

The hospital treatment staff is of the opinion that Hope is mentally ill and that failure to retain her in the hospital would lead to a likelihood of harm. I completely concur with this

opinion, based on the description of her mental disorder offered above, and on her continuing hallucinations, marked emotional instability, and threats to self and others, in addition to the specifics of the allegation against her in this case. The Suburban Hospital is prepared to receive Hope back from court for continuing treatment

The appropriate authority for returning Hope to Suburban Hospital depends on the legal proceedings, as follows.

Competent/continued. If the court determines that Hope is competent to stand trial and the case is continued for adjudication, then Hope can be returned to the hospital on a voluntary basis, where she will remain in the same secure status she has had thus far. The hospital has submitted a petition for voluntary remand to be used in this event.

Competent/adjudicated. If the court determines that Hope is competent to stand trial and she is adjudicated delinquent, then I would recommend that the court order her to return to Suburban Hospital for a further pre-sentencing evaluation, under the authority of Ch. 000, s. C. In the likely event that she would need to remain in the hospital following that evaluation, she would be subject to further civil commitment per Ch. 000, s. D; such commitment could be undertaken along with probation supervision or following a commitment to youth corrections.

Competent/adjudicated NDRI. If the court determines that Hope is competent to stand trial and she is adjudicated not delinquent by reason of insanity, then the court can commit her back to Suburban Hospital under the authority of Ch. 000, s. D or s. F. The s. E commitment can be ordered by the court without need for a hospital petition, and is for a period not to exceed forty days; however, the total commitment period for combined AA and E commitment is not to exceed fifty days, and therefore a E commitment at this point should be for no more than ten days. A s. F commitment would be for a period of six months, and requires the hospital to petition for the commitment; it can be renewed by court order yearly thereafter, if the involuntary commitment standard continues to be met. Suburban Hospital has submitted a petition for s. F commitment for this purpose.

Incompetent/dismissed. If the court determines that Hope is not competent to stand trial and the case is dismissed, then I would recommend that Hope be returned to Suburban Hospital under the authority of Ch. 000, s. D. The s. F petition may serve as the initiating basis for this commitment.

Incompetent/continued. If the court determines that Hope is not competent to stand trial and the case is continued, then I would recommend that she be returned to Suburban Hospital under the authority of Ch. 000 s. E (for ten days, as above), or Ch. 123 s. F (for six months, as above). Commitment under s. E is on the court's initiative without a petition; commitment under s. F requires a petition, which Suburban Hospital has submitted for this purpose.

Detention. If the court does not agree that Hope should be returned to Suburban Hospital and elects to have her detained instead, it is my understanding that the detention authority would place her either in a non-secure shelter facility, or in a secure detention facility with adolescents. In my opinion, neither of these options would meet Hope's clinical needs, and she would likely deteriorate and need hospitalization in any event.

Longer term treatment. If Hope were committed under the provisions of s. D, she would be

eligible for discharge upon a determination by hospital staff that she was sufficiently treated that she no longer met the threshold for involuntary commitment, though legally she could be retained in this hospital as a voluntary patient if her custodial parent were to request it and the hospital were to agree. If she were committed under the provisions of s. F, she would also be eligible for discharge upon a determination by hospital staff that she was sufficiently treated that she no longer met the threshold for involuntary commitment; however, in that event the District Attorney would be a party to the matter, and could object to the hospital's determination of eligibility for discharge.

Marcus Welby, M.D.

City Juvenile Court
100 Main Street
City, State 00000

Clinical Report on Competence to Stand Trial

CASE NAME: Bobby Carlysle
PROBATION OFFICER: Steven Ford, City Juvenile Court
DATES SEEN: September 15 & October 8, 2001
CLINICIAN: Michael Berman, M.D
DATE OF REPORT: October 14, 2001

Bobby Carlysle is a 14 year-old boy (b. 11/11/87) who lives in XYZ Suburb and attends the Carver Middle School. He is before the City Juvenile Court on a charge of indecent assault and battery, stemming from an allegation that he touched a girl inappropriately on a school bus. He was seen in the spring by Dr. Montgomery at the City Juvenile Court Clinic regarding competence to stand trial, and he is currently re-referred for updated evaluation of competence to stand trial. Evaluation has consisted of:

1) Review of Dr. Montgomery's previous court clinic report and of Bobby's hospital record from Elmhurst Hospital (records were also requested from Presbyterian Hospital, City Medical Center, Dimock-XYZ Suburb Counseling, and St. Joseph's Children's Hospital, but have not been received).

2) Telephone conversations with Bobby's attorney Robin Matthews and with Department of Mental Retardation caseworker Danielle Keating (I left a message for Dr. Sanchez but the call was not returned).

3) Clinical interviews with Bobby and his mother on September 15 and with Bobby alone on October 8, at the City Juvenile Court, totaling about three hours.

Prior to beginning the interviewing I explained the purpose of the evaluation and its lack of confidentiality to Bobby and his mother. Bobby said that he understood that the judge and lawyers would learn what he said in the evaluation, and said that if there was something he didn't want people to know, he would not say it.

CLINICAL HISTORY:

Bobby has a maternal family history of depression and alcohol abuse, and experienced significant fetal alcohol exposure throughout his gestation. His early motor development was good, but his language development has been problematic. His early speech was marked by stuttering. From about age four he had a preoccupation with matches which reportedly came close to causing serious fires. This abated spontaneously at about age eight (along with his stuttering); at that time (by mother's report) his aggressive and impulsive behavior got worse. He has demonstrated hyperactive and disruptive behavior in school and at home from preschool years, and problems with impulse control and aggressive conduct with resulting conflict with mother, sister, and peers. His judgment in dealing with peers has been poor; he has shown

interest in having friends, but has been consistently victimized without appearing to learn how to behave or whom to avoid. He has been overactive, distractible, and forgetful in school.

In recent years his family has raised concerns about Bobby's safety and their own, because of his impulsiveness and aggression. He has had difficulty in the past maintaining himself in after school and summer programs because of his behavior. He has been involved for a few years in treatment (primarily psychopharmacological, with some counseling) at City Medical Center, and has been treated with a variety of medications including Wellbutrin, Ritalin, Cylert, Tenex, Prozac, and Elavil, without (apparently) any definitive benefit. He was most recently hospitalized in early October of 2001 at Presbyterian, because he had been increasingly agitated and aggressive. His current medications include Tenex and risperidone (for impulsiveness), and Depakote (for emotional instability). (His mother noted that an additional medicine had recently begun at Presbyterian, but she was not sure of the name, and the name she offered [Tomex] was not one I knew or could find.) He has been involved for case management with the Department of Mental Retardation, but Ms. Keating (who recently took over the case) was not sure what specific services he or his family were receiving. His mother has reportedly been abstinent from alcohol for twelve years and maintains steady employment.

Past psychological testing (October 2000) found a full scale IQ of 65 (verbal 62, performance 73), consistent with overall mild mental retardation, especially in language related areas. He has shown consistent serious difficulty both with expressive and receptive language functions. His attention is adequate for simple stimuli, but when tasks become even moderately complex, he is not able to maintain attention and becomes more impulsive. His school functioning has been poor both in learning and in conduct.

During his first year, Bobby was noted to have spells with characteristics of seizures (sudden angry outbursts followed by periods of unresponsiveness), but these did not continue past age 18 months. A neurological evaluation at Children's Hospital in 1999 found no basis for concern about organic brain pathology. CT scan of the head in 2000 was normal. Bobby has suffered from asthma, and has had many injuries and broken bones as a result of his reckless behavior.

MENTAL STATUS:

Bobby presented as a large, somewhat overweight African American early adolescent boy who related in a pleasant and cooperative but very passive manner. He frequently yawned and seemed tired, and maintained a general demeanor of dull, bland puzzlement through most of both interviews. He offered almost no spontaneous speech, and was responsive to questions only with one or two word answers, or with an occasional sentence. It was common that he did not respond to questions at all until he was prompted with multiple choice options. His responses to such questions were consistent over time, suggesting that they were valid indicators of his thoughts; but these responses may at times have reflected his perception of what was expected.

In general his affect was calm and showed little variation, and he appeared to be somewhat sedated. He did show indications of explicit anxiety when considering the possibility of going to jail, and of embarrassment when discussing the specifics of the charges against him. He became somewhat less responsive and more oppositional in a subtle and passive way after about an hour of the second interview, when speaking of dispositional options; he replied "Yes" when asked if he was tired. He offered little enough spontaneous speech that it was not possible to determine the presence or absence of disorganized thought or bizarre thought content or perception from his speech; but he did not describe any such abnormalities, and he did not manifest any of the signs of agitation or emotional instability which commonly accompany disordered thought or perception.

In the second interview he recalled having met with me before; he did not remember my name accurately, though he said he was confident he was right. He did remember his doctor's name, but not the names of the medications he takes. He was able to recall three complex items perfectly both immediately (showing good attention for simple, rote material) and after twenty minutes (showing good short term memory retention). He could say the names of the days of the week in order both forwards and backwards, showing good attention. He did not know the first month of the year, and when primed with "January" he listed nine of the remaining months with only one out of order. He could give reasonably detailed, concrete directions for getting from the courthouse to his home by public transportation.

SPECIFIC CLINICAL INFORMATION RELEVANT TO COMPETENCE TO STAND TRIAL:

In this state's courts a criminal defendant may be found incompetent to stand trial if he or she lacks a rational and factual understanding of the charges against him or her, or a sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding. The question of how the issue of competence to stand trial applies to a delinquency proceeding in this state is not fully clear from the statutes, and has never been the subject of appellate review.

Bobby and his mother conveyed the following regarding these issues:

UNDERSTANDING OF THE TRIAL PROCESS:

Charges. Bobby initially claimed to have no idea what the court process was about, though he acknowledged that it stemmed from "something that happened," and that he was embarrassed to provide any further details. In the second interview, however, he said that he is in court as a result of being said to have "touched a girl." He explained that it is considered wrong to touch someone "in a private area," he pointed to his lower abdomen saying, "Like down there," and responded with a nod when asked if he is accused of touching a girl in a private area.

Potential consequences. Bobby knew that he had been arrested as a result of this charge, and has had to appear in court on several occasions. He noted that one consequence of this is that he has had to "see a whole bunch of different people." At several points he indicated an awareness that he could be locked up or sent to a secure facility as a result, and he showed familiarity with and anxiety about the possibility of being on the sex offender registry.
Ms. Matthews indicated that though Bobby may have a rote understanding of the theoretical consequences of the delinquency proceeding, he appears to maintain a naive view that it is an essentially benign process in which people will try to help him; he does not appreciate that the prosecution is fundamentally against him.

Ms. Carlysle conveyed a very clear and explicit understanding of the proceedings and potential consequences, and as she reviewed them with Bobby, Bobby attended carefully; when she spoke of the possibility of Bobby being locked up, Bobby's nostrils flared, his eyes opened wider, and he stared open-mouthed for a few moments, suggesting considerable anxiety at this possibility. He then said that he thought he would not be going to jail, though he could not explain why not.

Roles. Bobby was initially vague on the question of what actually happens in court, other than that "people get helped out." In the first interview Bobby had difficulty articulating the roles of the various people in court. He knew that Ms. Matthews was his lawyer, and that the judge was there to "listen" and to "figure out who's right and who's wrong, between the lawyers and the kids." He recognized the prosecutor as "a blond lady lawyer [who is there] to help the girl." He added that she "says things that might be bad for me." In the second interview, he volunteered that of the "bunch of people" he has had to deal with, some are "trying to help me

out - like my lawyer" and others are "trying to help the girl out." He could not offer details of how the girl was helped.

Evidence. Bobby conveyed a basic understanding that the judge would listen to people's stories and decide who to believe. He was familiar with the term "witness", defining it as "people there who saw it." He could not answer whether the girl might be a witness.

Pleadings and findings. Bobby showed a spontaneous understanding that he could offer either a plea of guilty (meaning "I did it") or innocent (meaning "I didn't do it"). He did not spontaneously understand that a plea of not guilty would not simply be believed, but would lead to a hearing. However, he was able (after instruction) to say that if he were to plead innocent the judge would then hear evidence ("ask somebody else"), and he showed a basic understanding of the hearing process ("judge listens and decides who's right"). He said that the judge would decide "if you're guilty or not" and then "if you go to jail or not."

CAPACITY TO COLLABORATE WITH COUNSEL:

Communication and trust. In the first interview Bobby was aware that Ms. Matthews works "in the court", and with some support and explanation from his mother, he recalled that her job is to help him in the court. He said that he would follow her advice, and that if she told him not to talk, he would not. In the second interview he identified her explicitly as his lawyer, and said that she would be the one person whose advice he would rely on.

Bobby declined to provide an account of the events in question, even after I assured him that I would not include that account in my report, but was asking only in order to assess his memory and capacity to recount the events. He said that he did not want to talk about it, but that he does remember what happened, and that he has told Ms. Matthews about it.

Decision making. Bobby showed a good spontaneous understanding of the concept of bargaining. He said (in response to questioning) that $20 for a popsicle would be a bad deal, whereas $1 for a pair of sneakers would be a good deal. Getting a candy bar in exchange for making all the beds in the house for a week would be a bad deal, since it would be "not good enough for me"; getting a day without homework in exchange for getting 100 in six tests would be a good deal; having to stay after school for four hours if he failed to read six books would be a bad deal. Bobby said that it would be a good deal if he pled guilty in exchange for a promise that he would not be locked up, but if pleading guilty meant that he would be identified as a sex offender and everyone would know, then it would be a bad deal, as he would be very embarrassed.

In the first interview (with his mother) Bobby indicated that his mother's advice would be his most important direction in making decisions; he noted that if his mother told him to trust Ms. Matthews, he would. In the second interview (by himself), when asked whom he would ask for advice in court (especially if he were uncertain as to whether a deal was a good one or not), he said, "Robin," and he said that he would accept Ms. Matthews' advice even before that of his mother.

Ms. Matthews noted that Bobby is extremely passive and compliant in his dealings with her, and she has strong doubts as to his capacity to make any autonomous decisions. He seems consistently to focus on pleasing others and to respond to questions with the answer he believes is desired or expected; he does not demonstrate any autonomous detail or understanding that would enable her to be confident that he is able to think for himself. She noted that Bobby's mother (in her experience) appears to be fairly dominating in her interaction with Bobby; this may help to make up for Bobby's lack of understanding, but it also appears to undermine Bobby's own engagement in the process.

Ms. Carlysle was somewhat skeptical about Bobby's assertion that he would rely on her for advice, as she noted that he actually tends to be somewhat oppositional to her advice in ordinary matters around the house. However, she also said, "When he is scared, he comes running for help."

Participating in and withstanding the stress of a hearing. Ms. Matthews raised serious concerns as to Bobby's capacity to testify in his own behalf, should that be necessary. In addition to noting his general paucity of expressive language, she noted that in the accounts of the events in question which he has offered her, there have been inconsistencies sufficient to raise questions as to the adequacy of his recall and ability to offer a valid account. Furthermore, she noted that Bobby's apparently weak understanding of the true adversarial nature of the proceedings, along with his general difficulties with attention and impulse control, have made it impossible for her to instruct him effectively in what he should and should not say as a witness.

OPINIONS REGARDING COMPETENCE TO STAND TRIAL:

Mental Deficits. Bobby suffers from mild mental retardation, from specific deficits both in expressive and receptive language, from deficits in attention interfering with abstract reasoning and judgment, from poor social judgment, and from impulsive and aggressive conduct, all with consistent manifestations from early childhood. These multiple developmental deficits appear likely to stem at least in part from fetal alcohol exposure. Treatment has consisted primarily of psychotropic medication targeted at reducing impulsiveness and emotional instability; it appears to have been only intermittently successful in helping Bobby to contain his behavior, and only marginally successful in improving his ability to learn.

Specific Capacities. Bobby manifests a consistent awareness that he faces legal proceedings relating to being accused of having touched a girl inappropriately. He has shown a consistent basic awareness that these proceedings put him at risk for aversive state action, but he does not have any detailed understanding of what the specific ranges of potential consequences might be, and he does show some minimization and avoidance of potential aversive consequences. However, he has shown consistent awareness that these consequences potentially include being locked up and being on the sex offender registry. He demonstrated a basic awareness that the court hears evidence and determines the facts, and decides on disposition. He trusts his lawyer and would follow her advice. He had a basic understanding of the process of negotiation and showed some consistent judgment in his consideration of a few simple possible points of negotiation in the current case.

Despite these basic capacities, Bobby's difficulties in using language and in maintaining focus in coping with complex issues can be expected to present some significant problems for the legal process. It is not clear that he would have sufficient language skills or focus to be able to be effective in giving testimony on his own behalf, which might (depending on other evidence) prove to be critical in defending against the current charge. Despite his rudimentary understanding of dispositional options, his vagueness, inconsistency, and difficulty coping with complexity raise questions as to his ability to understand or competently agree to details of community treatment as conditions of probation supervision.

Whether these specific deficits are substantial enough that Bobby could not take part fairly in the delinquency proceeding is beyond my expertise as a psychiatrist, for two reasons. First, it is not clear what the actual demands of this trial process may prove to be, and so I can't offer any summary conclusion as to Bobby's overall ability to meet those demands. Second, the ultimate determination of how much capacity a defendant needs to have in any of the specific areas concerned in order for a trial to be fair is not a clinical determination. It is a determination of an appropriate standard for fairness in the legal process; such a

determination can only be made by a judge, based on the overall circumstances of the individual case.

Capacity for Remediation. Bobby's course appears to have marked by some intermittent variation in his irritability and focus. In the second of these two interviews (conducted after his recent hospitalization at Presbyterian) his focus and responsiveness was marginally better than in the first. It is reasonable to expect some mild waxing and waning in these general capacities over time, but (in light of his course so far) it is not reasonable to expect any substantial improvement over the near future in his overall cognitive functioning, in his language abilities, or in the strength of his relationship with his attorney. It is possible that with improvements in his overall plan of education and treatment he might show some significant gains in language functioning and conceptual focus over the longer term future, but this is very difficult to predict one way or another.

CONSIDERATIONS REGARDING CARE AND TREATMENT:

Bobby does not present currently with the specific combination of mental disorder and risk to self or others which would warrant acute psychiatric treatment in a hospital or other acute care facility. However, there may be some improvements possible in his overall treatment plan in the community.

The Department of Mental Retardation can help provide in-home training for Bobby's family in behavioral management, which might help to contain Bobby's behavior better in that context. Given Bobby's cognitive deficits, his apparent vulnerability to exacerbation of his distractibility and irritability by stimulating environments, and his poor peer skills and vulnerability to negative peer influences, his overall growth and development might be fostered better in a school that is smaller and calmer than Carver, and that included specific skill building treatment in peer relations. Ms. Keating suggested that adjudication of the current charge against Bobby might be important in determining appropriate services for Bobby, since some school and after school programs may be reluctant to admit him until the issue of whether he poses some sexual risk is determined.

Michael Berman, M.D.

Lakeview State Hospital
Lakeville, XX 00000

Competence to Stand Trial Report

CASE NAME: Diego Alvarez
DATES SEEN: September 11 & 23, 1997
CLINICIAN: John Jones, M.D
DATE OF REPORT: September 25, 1997
NEXT COURT DATE: October 30, 1997

Diego Alvarez is a 16 year-old boy who was committed to Lakeview State Hospital on August 4 by the Somerset County Juvenile Court after having been found incompetent to stand trial. He faces charges of aggravated rape and sodomy, allegedly having forced himself sexually on a neighborhood girl on two occasions.

CIRCUMSTANCES OF ADMISSION:

Diego is from a Spanish-speaking Mexican family, and he has a history of special education involvement. His attorney had raised concerns about his ability to understand and take appropriate part in the legal proceedings. The court originally ordered a competence to stand trial evaluation by its court psychologist, Dr. Santiago; that first evaluation was conducted in Spanish and English under my supervision by Dr. Santiago. She concluded that Diego's cognitive difficulties would present serious impairments to his trial capacity. The court raised questions about the implications of Dr. Santiago's report, and I provided a second report offering clarification and specific additional recommendations to the court. This report indicated that Diego was not likely to improve sufficiently to be competent to stand trial in the short term; it also concurred with other recommendations for long-term specialized residential care, and recommended interim placement with the Department of Human Services. At court on August 16, DHS indicated that it did not have an appropriate interim placement to offer pending long-term residential placement. The court found Diego not competent to stand trial and ordered hospitalization. A second hearing on Diego's competency to stand trial will be held on October 30, 1997, and this evaluation is prepared at the Juvenile Court's request to aid in that determination.

SOURCES OF INFORMATION:

This evaluation is based on the following sources:

1. Dr. Santiago's report and discussion with Dr. Santiago of her findings and conclusions.
2. 2. Past clinical reports obtained from Children's Resource Center, St. Jude's Children's Hospital, Longwood Hospital, and the Somerset County Department of Human Services.
3. Review of hospital record and consultation with treatment staff at the Lakeview State Hospital.
4. Clinical interviews with Diego at Lakeview State Hospital on September 11 and 23, 1997.

As noted in my report to the court dated XYZ date, review of previous records yields the following relevant clinical data, in summary.

Diego suffers from a chronic illness (tuberous sclerosis) which involves the development of abnormal tissue in various parts of the body including the brain. His illness includes an abnormal EEG and epileptic seizures, and psychological testing has demonstrated clear and consistent impairments that suggest damage in the left frontal and temporal regions of the brain.

Psychological testing has consistently demonstrated verbal functioning at the low end of the mildly mentally retarded range (VIQ in the low fifties). Some past testers have suggested that his true level of functioning might be higher than this, and that tests might not be assessing him adequately because he is bilingual. However, Dr. Santiago, who is bilingual herself and an expert in bilingual assessment, indicates that his overall language functioning is not indeed higher than these tests have shown, regardless of language. Diego also shows significant problems with short-term memory, and specific assessments of his social and emotional maturity indicate that he is quite delayed in these areas as well.

Dr. Santiago's specific questioning of Diego regarding his understanding of the nature of the delinquency and transfer proceedings against him shows very marked impairments in his basic understanding of the nature of an adversarial proceeding, as well as in his capacities to learn and retain even the most basic information.

Clinical history is noteworthy for past indications of suicidal behavior and of serious impairments in family supervision, and for more recent indications of tantrumming and of aggressive conduct problems. Past evaluations have been consistent in making strong recommendations for placement in a very structured, full-time residential treatment program with a specialized capacity for treating mentally retarded adolescents with conduct problems.

NONCONFIDENTIALITY WARNING:

Before interviewing Diego the first time I explained to him that what we talked about would not be secret, and that I would tell it to the court. When I asked him to explain this back to me (to demonstrate his understanding), he said nothing, and stared vaguely past me. When I asked him if I would tell anyone what we talked about, he shook his head no. I repeated the warning and then asked him if I would tell the judge what we talked about; he shrugged his shoulders, apparently indicating that he was not sure.

Before the second interview (at which Dr. Drake, his primary therapist, was present), I reminded him of the same warning, though he indicated that he did not remember having spoken with me before. After explaining the lack of confidentiality to him, I then asked if he thought that I would keep secret what he told me. He appeared puzzled, but nodded his head yes. Further attempts to clarify this part at the start of the interview yielded only blank looks and the appearance of greater anxiety, which he was able to acknowledge in response to questions from Dr. Drake. In the course of this interview, with Dr. Drake's support, Diego was able to be significantly more communicative than he was in his initial interview with me. At the conclusion of this interview, I asked him again whether he thought I would tell anyone what we had talked about; with a thoughtful and serious demeanor, he shook his head no. I asked if he remembered what I had told him about telling the judge; he shook his head no. I told him again that I would tell the judge what we talked about; he said, "Okay." I asked again if I would tell anyone; he said, "No." I asked if he thought I would tell the judge; he said, "Yes."

HOSPITAL COURSE:

Consultation with Dr. Rasco and Dr. Drake (Diego's primary clinicians) and with other program staff, and review of the hospital record, indicate that Diego had considerable difficulty adjusting to the hospital program. Though efforts were made to tailor a program to his specific needs, he continued to be confused and overstimulated by the complexity and demands of this program, which is designed for patients with mental illness rather than for those with retardation and organic psychological deficits. He has not shown signs of the sort of psychiatric disturbances for which this sort of hospital program is ordinarily appropriate. In addition, he tended increasingly to be victimized by taunts from other patients, contributing to his confusion and agitation. He has become hypervigilant, provocative, and increasingly assaultive in

response, leading in turn to the need for physical restraints. Despite these difficulties, he has not shown any indications of any sexually aggressive behavior during this hospitalization.

During the last two weeks of the hospitalization, his behavior has shown noteworthy improvement. He is described as more talkative, energetic, and cheerful, and less fearful, withdrawn, agitated, and impulsive. He is noted to have been able to respond with more consistent success to a structured behavior management program based on simple rewards. Medication changes towards the end of the period of hospitalization (see below) appear to have contributed to these changes. However, it is clear that he has over time been able to establish a warm and supportive sense of personal connection with at least some of the hospital staff, and it is likely that these comfortable attachments have also contributed significantly to the improvements in his mood and behavior.

RESULTS OF SPECIALIZED CONSULTATIONS:

Neuropsychological testing was conducted on September 7 by Dr. Susan Miller. Results were consistent with previous evaluations, finding substantial cognitive deficits, especially in language and short-term memory, consistent with overall functioning at about a 5 to 8 year-old level developmentally. Recommendations were for placement in a residential setting with instruction in a substantially separate classroom situation.

Diego has been seen to have a few small fits while in the hospital. Some of these have included the characteristic tonic-clonic movements and reduced consciousness and confusion generally characteristic of epileptic seizures; others have not included these characteristics, and so may have been either smaller seizures or possibly "pseudoseizures", i.e., a form of learned behavioral disturbance that patients with epilepsy sometimes develop as a consequence of having genuine seizure activity. His seizures have not involved any important medical complications.

Neurological consultation by Dr. Pitt led to an increase in his dose of carbamazepine (Tegretol, an anticonvulsant which also has antidepressant and mood stabilizing qualities) within the last two weeks. This change has coincided with notable improvement in Diego's mood and behavior. Though Dr. Pitt's note is not yet available, he reportedly also recommended a gradual reduction in Diego's dosage of primadone (Mysoline, a barbiturate anticonvulsant) in the hope that reducing this drug might help improve his cognition somewhat.

MENTAL STATUS:

Diego presented as a tall adolescent of medium complexion who was casually but appropriately dressed and groomed. His behavior was remarkable in the first interview for his generally vague manner and minimal reponsiveness, complaints of feeling sleepy, and ultimately sitting perfectly still and nonresponsive with his head in his hand. He described his current feelings as "tired, sleepy." He was able to repeat a few single words and numbers, a series of three numbers, and a series of three single syllable words. He was not able to repeat longer series of numbers or words, and when asked to repeat after a few minutes the series that he had originally repeated, he did not respond. When offered alternative possibilities in a multiple choice format, he did not respond to two and answered yes (incorrectly) to one. He appeared to understand that he is in a hospital (in that he answered "yes" when asked if this was a hospital, after answering "no" to whether it was a farm or a school). When asked why he is in the hospital, he said, "to learn, to work." When asked how he was sent here, or if he recalled being in court, he did not respond.

The second interview was conducted about two and a half weeks after the increase in his Tegretol dose, and after he had been fairly consistently described as less irritable and more engaged for about ten days. In this interview, with Dr. Drake present, he continued to be only

minimally responsive to questions from me, and to appear blank and anxious; he explicitly acknowledged feeling quite nervous in response to a question from Dr. Drake. He smiled warmly in response to her reminders of the conversations that they had had in the past week, and he was quite attentive to and apparently enthusiastic about her support. In response to the use of simple drawings as a way to orient him to specific questions about the legal process, he became slightly more explicit in his responses to questions in this area. However, he explained fairly directly that when he is nervous, he often prefers to be silent and to stare into space.

INFORMATION SPECIFICALLY RELEVANT TO COMPETENCE TO STAND TRIAL:

This information is based in part on Dr. Drake's accounts of conversations between her and Diego, and in part on Diego's direct communications in his interview with her and me together on September 23. In this interview he was initially unresponsive to questioning. However, in response to her reminding him that they had talked about the allegations and about his once having seen a trial on television, and in response to my drawing some simple pictures of a courtroom scene, he was able to begin to talk with some specificity regarding the issues below.

Understanding of the charges. During the initial weeks of his hospital stay, Diego tended to avoid talking about the circumstances of his hospitalization. He was described as seeming sad when the issue of the charges against him was raised with him, but it was not clear whether his sadness had something to do with the case, or simply with his having been told that he should not expect to be returning home.

Toward the end of his hospital stay, Diego had several conversations with Dr. Drake which demonstrated some more specific understanding. Dr. Drake reported that he seems to understand that he is charged with rape, though it is not at all clear that he understands what this word means. She said that he told her that it means "punching someone in the face", and when she asked him if it had anything to do with sexual activity, he said no. However, from his account to her of the victim's allegations, and of his own account of the events in question, it did appear to be clear that he understood that one important element of the case concerns a dispute between him and the victim regarding sexual activity between them. He indicated in our interview that if the victim's story is determined to be true, then he could go to jail. He indicated that if the story is determined not to be true, he would then not go to jail, but that he could still go to "residential", and he voiced anxiety at this prospect.

Understanding of the trial process. By placing figures in the picture of the courtroom scene, Diego was able to identify the judge as the person who bangs a hammer on the desk, and who decides whom to believe. He characterized the girl (the victim) as telling her story to the court, in response to questions from two lawyers and the judge. One lawyer sat at a table on one side of the courtroom with the girl; this was her lawyer, and was there "to help her." The other sat at a table on the other side of the courtroom with Diego; his job was "to help me." He said that the story the girl would tell would include bad things about him; his lawyer would help him by asking her whether what she was saying was really true. In this account he demonstrated an implicit understanding of the concept of pleading. Regarding other kinds of evidence, Dr. Drake noted that in a previous conversation they had discussed the possible role of blood testing in the case, and Diego had shown some simple understanding that he, the victim, and the baby would all need to be tested, and that the results would have some significance. In this interview, he alluded to blood tests, but he could not explain their purpose or significance.

Regarding the specific features of the transfer hearing process, Diego seemed initially puzzled by the idea that some judges were for children and others for grownups. However, he did voice the idea that age 18 might have some importance in the legal process. He was not able otherwise to discuss or show any understanding of the transfer process.

Ability to collaborate with counsel and withstand the stress of the trial process. As noted above, Diego has a basic understanding that his lawyer is there to help him in a process of questions and answers concerning a dispute. When asked what he would do if the girl were to tell a story in court that was not true, he replied, "I tell my lawyer." He has explained in some detail his own account of the events leading to the charges in conversations with Dr. Drake, suggesting that with adequate support and comfort, he might be able to communicate similarly with counsel.

IMPRESSIONS REGARDING COMPETENCE TO STAND TRIAL:

Diego suffers from a chronic neurological illness, one consequence of which is mental retardation. Repeated evaluations have consistently demonstrated overall cognitive functioning in the five to eight year-old range, with language functioning more impaired that non-language functions. The fact that repeated evaluations over time, conducted in both Spanish and English, have been so consistent in these findings, suggests that this is a valid assessment of his abilities. It is not very likely either that further Spanish evaluation would yield different results, or that gradual reduction in primadone dosage will result in any marked improvement in cognition. Cognitive deficits also include important difficulties with attention and with memory functioning.

In addition to his delays in cognitive development, Diego has also shown some symptoms of anxiety and depression, which appear to have remitted within the past few weeks. It is important to note that although his impulse control and relatedness appear to have improved along with this symptomatic improvement, his basic cognitive ability remains the same. Furthermore, he continues to demonstrate significant anxiety and tendency to withdraw in the face of dealing with strangers, especially regarding his legal involvement.

Despite his deficits, Diego has now been able to demonstrate that he has a basic, simple understanding of the fact that he is the subject of a legal proceeding stemming from an event the substance of which is in dispute; that this proceeding could result in his going to jail; that there are two sides to the dispute, each of which is represented by a lawyer; and that the judge will be involved in resolving the dispute by determining what is true. He does not appear to understand the trial process beyond these simple basics. He does not currently appear to understand even the basics of the transfer hearing process.

Because of his emotional immaturity and anxiety, as well as because of his cognitive impairment, effective communication with counsel will present special challenges. It is very likely that he will not be able to communicate effectively with his lawyer concerning this case without spending considerable time helping him to become comfortable and familiar with the lawyer personally, and with the legal context. It would also very likely be necessary to use special aids in helping Diego to communicate, such as pictures, dolls, and toys, similar to what would be useful in helping a child of approximately kindergarten age to communicate. Because of his memory problems, it would be necessary to offer frequent reminders about important information, and not to rely on him to remember things on his own.

In my opinion, because of the likely problems that Diego will have in becoming sufficiently comfortable with counsel and with the legal process to consult effectively with his attorney, he remains not competent to stand trial. However, despite his cognitive delays and memory impairments, in my opinion he could be considered to be competent to stand trial in a juvenile adjudicatory proceeding, if he were offered sufficient support and preparation along the lines suggested above. In my opinion he is not competent to take part in a transfer hearing, because of the significantly greater complexity of the decisions that are required of a defendant in this specific proceeding; and it is doubtful in my opinion that he can develop reasoning capacities that would be sufficient to respond to that level of complexity.

NEED FOR CARE AND TREATMENT:

While in the hospital, Diego has not demonstrated signs of the sort of explicit mental illness for which this sort of hospital program is ordinarily helpful. Furthermore, he appears to have suffered from anxiety, increased confusion, and impulsiveness as a result of exposure to the high level of activity and stress that tends to prevail in this unit for acutely mentally ill adolescents. I would strongly recommend against his being returned to the hospital, and in fact I would encourage any efforts to arrange for him to be discharged to a more appropriate placement even before the expiration of his s. 16a commitment period.

Long-term placement should be in a highly structured, full-time residential treatment program for cognitively impaired adolescents. His medical condition should not present any special complications in this regard; he will require the sort of intermittent assessment of his neurological status and seizure control that would be appropriate for anyone with epilepsy. Pending access to such a long-term program, I would recommend placement in a well-supervised specialized foster placement, able to provide a calm, structured environment appropriate to his developmental impairment. The progress that he has made in the final weeks of this hospitalization in areas of engaging with staff and becoming more pliable and well-controlled are especially hopeful signs regarding the likely success of such an interim placement.

Hospital staff have consulted at length with representatives of DHS, the school department, and DMR, concerning access to and funding for appropriate long-term residential placement. Although DHS has been involved with the family for a number of years and has sought residential treatment for Diego this year, DHS has indicated that it has exhausted its options with regard to residential programs. In light of Diego's improvement during the final weeks of his hospitalization and current relative stability, it would appear to be quite reasonable for DHS and the school department to arrange sharing of the cost of placement, pending Diego's becoming eligible for longer-term services from the Department of Mental Retardation.

John Jones, M.D.

APPENDIX C

Worksheet for Exercise on Analyzing Competence Evaluations

Exercise Worksheet

PART A

Analyzing Competence Evaluations

Complete the following questions as a group.
Site sections of the report to support your answers to each question:

1. Did the examiner accurately state the legal question at hand?

2. Did the examiner know and understand the legal standard for competence (to waive *Miranda* rights or to stand trial)?

3. Did the examiner describe the legally relevant functional abilities to the question at hand? If yes, indicate in the report where the examiner described them. If no, list the legally relevant functional abilities that must be assessed to answer the question at hand.

4. Were the psychological tests administered and the tests' interpretations age-appropriate for the child evaluated? What, if anything, did these tests tell you about the child's legally relevant functional abilities?

5. *(If reviewing a Miranda waiver evaluation)*: Did the evaluator adequately account for the unique situational demands of the interrogation in question in determining whether the child was competent to waive his/her *Miranda* rights?

6. (If reviewing a Miranda waiver evaluation): Did the evaluator adequately discuss how causal factors (i.e., cognitive or developmental deficits, emotional disturbance, learning disabilities, mental disorders, etc.) may or may not have interfered with the child's ability to understand the interrogation and decide whether to waive *Miranda* rights?

7. *(If reviewing a competence to stand trial evaluation):* Did the evaluator understand the distinction between competence to assist counsel versus decisional competence?

8. *(If reviewing a competence to stand trial evaluation):* Did the evaluator adequately account for the unique situational demands of the prospective trial in determining whether the child was competent to stand trial?

9. (If reviewing a competence to stand trial evaluation): Did the evaluator adequately discuss how causal factors (i.e., cognitive or developmental deficits, emotional disturbance, learning disabilities, mental disorders, etc.) may or may not interfere with the child's ability to assist counsel both before and during the trial? To make descisions regarding his/her defense and the case overall?

10. Are there other methods and/or tests for assessing the legally relevant functional abilities that the examiner did not employ? If yes, list them here.

Exercise Worksheet

PART B

Pre-hearing Interview of Competence Evaluator

Complete the following questions individually
in your role as either the defense attorney or the prosecutor

1. Formulate 1-3 questions intended to elicit from the psychologist how the **tests** that were administered to the child defendant relate to the evaluator's ultimate opinion on competence.

2. Formulate 1-3 questions for the psychologist about how the **background information** of the child defendant relate to the evaluator's ultimate opinion on competence.

3. Formulate 1-3 questions for the psychologist about how the **clinical interview** with the child defendant relate to the evaluator's ultimate opinion on competence.