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STATE'S EXHIBIT #4
Brown file folder

These are notes regarding Jesse Misskelley.

In the October, 1982 WISC-R, done when Jesse was seven years, three months old, administered by Mr. (not doctor?) Joey A. Crow, psychological examiner, intern, supervised by Dr. Alan Harris, Psychologist. The narrative report states the following, "Tests results indicated that Jesse's global intelligence in relation to his own age group was overall IQ of 67. This placed him in the mild range of mental retardation."

This narrative also states, "At the borderline range of intellectual functioning was his ability to understand words and express himself as well as his moral/ethical judgment and reasoning." (Only the Wechsler, Peabody, Bender were administered. I don't know where the statement about moral/ethical reasoning comes from.)

The report also states that on the Peabody Jesse received in IQ of 93. Misreport narrative states, "There was a 26 IQ point difference in it and the WISC-R's IQ." (At least two tests should not be compared and the Peabody test does not yield an IQ.)

The Bender test had 14 errors and Jesse had an age equivalents of four years, ten months. (This would be indicative of the neurological problem.... Years later Dr. Wilkin's report finds problems with the Bender test as well "... significant problems with perseveration and line quality. We would expect memory problems and difficulty with attention and comprehension. There is indication in Jesse's profile of some mild psychotic characteristics.")

In 1982 Jesse diagnosed as having mild mental retardation in addition to a Conduct Disorder, under socialized aggressive. While the variability is reported in Jesse's scores there is no questioning of his diagnosis of mental retardation, e.g., malingering, working below his potential, identifying the language disability, etc.

Parentheses (some of the notes from 1982 and 1983 made by a therapist Fitzgerald indicate that Jesse has severe emotional problems and that his parents were reluctant to get treatment and did not follow through. However, some of these handwritten notes are poorly copied and difficult to read. Therefore information is missing and a better copy is needed. Many of the progress notes, I believe which are signed by Fitzgerald,

Jesse Misskelley notes continued...

A note of April 5th or 8th, 1983, Consultation with School and Parents, gives the following information: Jesse is functioning in the range of mental retardation but they feel that because of his variability in scores the primary problems emotional

005238

at one of the school tries to get "no LD"

(I do not see them arguing with the mental retardation diagnosis, however). They do want to say that Jesse's aggressive behavior is due to inconsistent parenting and that he needs and out of home placement. The scores reporting that they don't have an appropriate setting for Jesse. His behavior problems are significant to say that he does not have a learning disability therefore placement in the resource room or special Ed program is not appropriate. (They are not refuting the mental retardation. They are saying is mental retardation and severe emotional problems and they are not equipped to handle this. They're probably right.) (I cannot read portions of this and written report. It will be important to get a better copy of this as this is a significant report to know ALL the information).

In 1983 everyone is calling for the residential program and more structured program to deal with Jesse's behavior. It seems to be the consensus opinion that the parents are not able or not willing to deal with Jesse's behavior. I suspect that Jesse is a real "handful" because of his neurological impairments, likely to be the result of FAS, and his attachment problems, history of abuse and violent treatment (which we need clearer information about), is low intellectual functioning and poor coping skills.

Jessi Misskelley notes continued...

Among handwritten comments from March 29 1983 it states that Jessi was afraid to tell his father the truth because he would punish them, father admitted he was physically abused himself and father admitted his fears of possibly abusing his son due to his inability to control his temper. It also says that during the initial intake (it is unclear from a copy what is being reported but it seems that father gave Jessi a whipping and may have done in the intake interview.) Father has a history of alcohol abuse with numerous DWI arrests and public intoxication.

Jesse Misskelley notes continued...

It is reported in the handwritten notes that Jesse's aggressive behavior "has become progressively worse and its likely that is present environment at home is conducive to his inability to control his temper." "It is possible that the clients father has physically abused this child even though there is no physical evidence to verify any physical abuse there is definitely evidence of inappropriate role modeling of poor family structure which hampers Jesse Jr. emotionally and psychological growth."

The following statement is a quote of a quote from father: "I have whipped him on numerous occasions and afterword he usually becalms more manageable but that doesn't stop it from happening again."

005239

Apparently, Jesse's behavior deteriorated around the time of the evaluation. he got into a fight with the principal and with the teacher he was expelled. His parents tried to control Jesse's behavior by "whipping" him. This has not worked, however.

I have the CAT protocol.

Intake report:

Jesse is seven years old data intake is September, 1982.

Under Past Illnesses it states following "when he was a baby father said that he had a high fever, and was taken to the doctor, they could ?? get? his fever under control (sic) was to pack him in ice. He also suffered from a problem with his ear. Jesse's biological mother ran away when he was about 5 months.

at 7 he doesn't know all of his A,B,Cs. and speech was baby talk.

Testing was to rule out brain damage, but this was never conclusively addressed in any reports I have reviewed. There was mention of further neuro assm. needed, but this was never done. Money and parents follow-thru being two big problems. **It is a significant piece of missing information.**

005240

We trust that you will see to it that this matter is addressed to our satisfaction immediately. Thank you in advance for your cooperation.

Sincerely,

Timothy J. Dering, Ph.D.
for John Kincaid, Ph.D.
for Adrienne Casadaban, Ph.D.

cc: file
Bruce Ring, Esq.

- ①
- ② retrieval.
- ③ - m. handicapped ~ understand.
what going on.

Mon. evening
HBO

005241

1983 and 87 reports: & General Notes

'96 was first HBO special.

WISC-R (child's) (10-14-82, age 7-3)

V=67; PIQ=72; FSIQ = 67

WAIS-R (adult) Nov, 1993 (when 18) by Wilkins

VIQ = 70; PIQ = 75; FSIQ = 72 (has a "10" in PA here...?)

1983 report when 7 yo

Misskelley has small stature. Dwarf syndrome?

June 87.rpt BY Joyce Jones, LCSW

This report was done for the court when Jesse was 11yo and is signed by a LCSW. It uses previous psych testing (WISC-R from '83 (when 7yo) = FSIQ=67, VIQ=67, PIQ=72 --I have the protocol).

In this '83 report by LCSW he is clearly labelled "Mild MR."

explosive out of control behavior reported hurting other children. When angry he goes off: stab kid with pencil, broke car windows, hit window with fist.

JK never owns up to wrongs... always blames someone else. (THIS IS HIS STYLE). "lying to get himself out of trouble..."

"failing all subjects... he's just not learning..."

Jesse has an older retarded brother. Mom abandoned them. neglect possible. 4 when mom abandoned. Little information about early hx or development.

Jesse seems dev. immature and impulsive, very much like FAS. His conduct should be explained in that context, if true.

Attachment disorder: hysterical when stepmo wasn't around... "afraid to let her out of his sight."

a neurological exam was recommended, but never done

"MENTAL STATUS: ...He manifests difficulties in related incidents that had occurred and when he did would usually blame others for his misbehavior."

..." does present with severe emotional difficulties which warrant further evaluation."

END OF 1987 REPORT

005242

We ask that you remediate the mess and hazards in and around our suite within the next 30 days and ask for a written response from you, personally, before March 15th. Frankly, we do not want to retain a lawyer and take legal action, nor do we wish to bring the building's condition to the attention of the City of Lafayette, but we we are being left with no choice in the matter, apparently.

We trust that you will see to it that this matter is addressed to our satisfaction immediately. Thank you in advance for your cooperation.

Sincerely,

Timothy J. Dering, Ph.D.
for John Kincaid, Ph.D.
for Adrienne Casadaban, Ph.D.

cc: file
Bruce Ring, Esq.

005243

GOOD

Jessie Misskelley notes Jessie's date of birth is July 10, 1975. He was 17 at the time of his arrest, he is now 28 years old, he will be 29 July 10. I saw him for two days, a total of approximately 12 or 13 hours, on June 29 and 30, 2004 at the Varner unit in Arkansas. I asked.

I asked if he ever had a driver's license. The Jessie said, no, because he quit high school and one has to be 18 to drive if you didn't graduate from high school in Arkansas. He could drive a car, however, and did, she did not drive around town.

I asked him about being called "... forget that. I asked about the term "mental retardation". I asked if that had, in court and trial. He said it had. I asked what he thought about that label being applied to him. He said, you can't make people learn... I didn't want to learn. They have a school here that he didn't go. This is a common theme of Jessie is he could learn but chose not to. He talked about his codefendants Jason Bowlin who helps him understand. Athenian tackles is in maximum security. Regarding Bowlin who helps him with some letters in reading or things he doesn't understand, Jessie said "we help each other. I helped him. He helps me." He made it seem like a reciprocal relationship rather than Jessie needing more help than the Jason are being dependent upon him.

✓✓

I found that the Jessie made statements and that he couldn't substantiate or give a rationale for. For example, he said, regarding the mental health unit staffed, (the place in which my evaluation took place) that he didn't talk to these people. He said he didn't put himself in situations talk to them. I asked why not any said there's other people who need help more than me... that isn't the best example of his failure to substantiate a point. There are others.

✓✓

He often... start over... Jessie could carry on a casual conversation and well. He could talk about the weather and rain, but could not explain opinions like "these people don't know what they're doing in here." When I asked what he meant he could give no specifics at all to his comments.

✓

I asked if he manage his money when he lived in the streets and he said no. Of course, he was only 17 years old when arrested. I asked what he did for money and he told me he did odd jobs. He would help his uncle who was a carpenter for he would help his father who was a car mechanic. He said he would do a variety of odd jobs for his uncle, like being a laborer, or painting. He said he helped him build it back. He said he would help his dad has a car mechanic. He said he would take the motor out. He explained that his dad would tell him what to do and he did it. I asked him what he did and to give examples. Jessie said, "I don't know too much." He also said, "I know what the carburetor is, what heads are." I asked if he ever rebuilt the carburetor?. He was confused and didn't know what I meant by rebuilding the carburetor. He never has done at. He gave me the impression of his ability and knowledge that doesn't hold up when he has asked for specifics about what he does. This is a common feature among people with low intelligence.

I asked Jessie if he could read a map. He said, "if I don't know how to get there, I don't know. If they let me out, even with a map, I couldn't use it. I would nowhere to go."

✓

I asked about shopping. Jessie said he was able to buy jeans for himself and shoes. He knew his shoe size was size 8. He didn't know the sizes of clothes they wore he said he just tried to mind.

005244

Jesse talked about the library and being able to get books out of the library for a week. However, he did not seem that he used the library or read books. He didn't report any. For leisure and games he said that he is able to play Domino's with others. I asked him to explain how the dominoes is played. He talked about a "big 6 and doubled 5. When I asked him to explain further he said, "somebody's got the 6-3 play against. He was not very clear and assumed that my understood more about the game than being naive listener to his explanation. I asked him the object of the game? He said to get to 150 points. He talked about the term "domino". I asked him what that demands and he said that she got points in the other persons canned. "Domino" means out the dominoes. He finally he gets around to answering the question but I note that I have to structure the question and set up several times to get him into position to finally answer and give me the information I am seeking. Jessie is poor at explaining. When I ask you father's play games are of their other games available. Like chess, checkers, other than dominoes. Chess, and checkers are available but he doesn't play anything except dominoes. Sometimes he plays tacky sack with Jason, but Jason is much better at it. The object of the game is to see how many times you can keep it going. He is not good at it. Than his explanation of the game, to keep it going as many times as possible, comes from me rather than Jessie offering that spontaneously.

I asked what job is has that the prison? Than Jessie says he is a "barracks border". This involves and sweeping, mopping, cleaning the showers, wiping windows, cleaning the bathroom. He said it is a good job on his unit because everybody is gone in the morning.

Jesse said he likes wrestling magazines. He talked about people sending him letters, some send him money. The letters come from all over the world. He talked about a book, the Devils in knots" which is a book about his case written by Mara Levitt. He tries to answer the letters of people that right to him. I asked if he knew how much money he had in his account right now. He said he had about \$255. I don't know if that is accurate are not. He talked about the inmates being able to sell things they made, such as leather belts. They could then transfer money from one account to another for a purchase. Jessie said he doesn't do any craps like that to earn money.

I asked what work he would do if he got out? Jessie said vaguely, "I would do whatever it could... try to make a living somehow." What would you like to do? "I'd just like to rest." What job would you like? "I'd like to be a mechanic..." "I'd like to do mechanic work because my dad does it, and I can learn off of him."

I asked Jessie what he weighs and he says, "about 200 lbs.." That seems to be about right.

I asked Jessie ^{How} he keeps score when he plays dominoes. He says the use of pegboard (somewhat like crib age) four they use paper and pencil.

Jesse says he is not receiving any medication now of any kind, psychotropic or medical. I asked if he ever took any medication and he said he took medication for his years when he was younger.

Parale = vt answers

ma R

005245

I asked if he ever felt depressed? Jessie said, "I feel depressed all the time." I asked what he meant. He said, "I don't know... I get down. I want to be alone. I don't want to be around nobody. In here, it's hard to get away." And he ever feel suicidal? "No, it never got that dad." I asked if anything in particular brought on his depression, for example, after a visit with his father? Jesse and Jesse answered, "no, I'll just be sitting around and start thinking, listening to the radio." He doesn't say: one I think about things. I asked why that puts him in it to depressive mood. He says, "I miss my family and friends... I me as riding a bike, playing football, talking to people, watching TV." (But he is able to do the last two in prison. He feels more depressed when he thinks about it and he tries not to think too much. I asked if he feels better or worse after his dad comes to visit. Jesse says, "he was here yesterday." (Yesterday was Monday.) Jessie said, "I know it hurts him (to visit and see Jessie locked up). I want to be out there to help him out... people are going to be around forever. I just wanna help my dad." She Jessie said his dad comes every week for a visit if he has the money to get down to the prison. Gasses got an expensive. I asked Jessie if he knows the price of a gallon of gasoline. He says about a dollar 80 and gallant, which at the time in Arkansas is a good answer. It turns out that his father was visiting on Sunday, not yesterday, as Jessie said earlier. I am the one who makes the correction. Jesse does not catch it. His father visits for approximately two hours between 12 noon and 2 p.m. Does anyone else visit you? No, just my dad. She Jessie said his brother, chief, started writing to him recently and has expressed a desire to visit Jessie. By the Jessie's self-report he is able to read letters and write letters on his own. He tries to write to all of the people who write to him. He keeps a list of addresses and keeps the letters he receives in a box until the box is full. Then he is forced to throw it out because the correction officers making cleanout all the paper, saying it is a fire hazard. I said he could give them to his father to keep, but Jessie isn't interested in keeping them over the long haul.

Depressed

Psy

Getting back to working on the car, I asked if he could change the oil in the car? Jessie said he could do that. I didn't ask them about changing the oil filter. He can he change spark plugs? Jessie said, "no, I don't mess around with them." Obviously, she is not highly skilled in auto mechanics if he doesn't even change the spark plugs.

✓

I asked if there are other hobbies he has, other leisure activities, besides dominoes, anything at all? Jessie says that he collects stamps. What he does is he was stamps from the letters not arrive around the world. Jesse said "I collect anything... postcards. He says he puts the stamps in the photo album. His collection is merely stating in keeping the stamps that come to him. He doesn't try to organize the collection or to get stamps. It is more stamp stating that it is Stamp collecting.

Jessie had an interesting watch. It is an analog watch the that had flames on it. If you pushed a button the flames would move and become animated. He said the number of other inmates wanted to buy the watch off of him but he did not want to sell it. It was a gift from someone in California. He was not specific. He said he had difficulty telling time on the watch. And still cannot tell time very well "unless it is right on the dot." The watch brand is an "fossil" watch brand. He has no digits on the face, only markers for the digits, which makes it harder for the Jessie. He said it is a problem sometimes when others asking for the time. He will say something like, "you have about five more minutes." This seems to cover it.

✓

005246

I asked him if he knows how far the prison is from Little Rock. He says he has no idea pushed him a little bit asking 30 minutes? One our? Two hours? Jesse answers, "maybe two hours." I asked how many miles we are from Little Rock? Jesse does not know.

Jessie said he learned to read better since he has been in prison and has improved his academic skill. He said he went to school for awhile in the prison but he quit. Why? He said because of this stuff teachers did it made him mad. He talked about sexual activity in the classroom and described masturbation. "Everybody does masturbation... forget that. He talked about a everybody masturbating inappropriately at the wrong time and place. He said, "they don't respect themselves." It seemed to discussed him. It seemed to have something to do with his not wanting to go to school, although that isn't clear. It was another instance of Jessie being able to give very good reasons. And get very give a little... give very good reasons for an opinion he held.

Jessie is right-handed he had an appropriate pencil grip. He was a good workers throughout the evaluation. He has considerable trouble with expressive language. He has considerable difficulty getting his meaning across. I noted in the Vocabulary subtest of the WAIS-III that he used a tautology to define words and to explain himself.

The testing conditions were ideal. We used someone's private office in the mental health unit. It was off the main population. There was the door on the office. The office was well lit and quiet. The staff were very supportive. Occasionally inmates swapped by R. who... occasionally inmates walked past the door. There was a window in the door, but it had Jessie situated so that his back was to the door most of the time. Again, the testing conditions a were quite good. The shares were comfortable. The temperature was a comfortable.

I during the Digits Symbol tests he talked about copying the symbols and said, "I mess up when I write a lot." He said he cannot write too quick and the more he writes the more mistakes he makes. He uses printing, he does not write in cursive, except for his signature. He can't go fast or print fast as he writes.

Regarding adaptive ability I note he is very poor adds making change, which is obvious in the Arithmetic subtest of the WAIS-III. Jesse said, "I don't catch on too quick." I asked how he made purchases then he said that he knew what he wanted and bought it. However, this does not cover how he made change and it seemed that he could be cheated and not know it because he counts change so poorly.

Jessie said, "I had been seeing the psychiatrist for as long as I can remember." I asked him why? And he said he didn't know. Why did they send you to his psychiatrist? "I don't know. I've been seeing them ever since." It is quite interesting to note his passivity, lack of understanding, acquiescence, and lack of personal information and personal understanding ... that he would go to see a psychiatrist and not know what it was for, even as an adult.

Regarding competency: the Jessie and that made the following comments and that came from the Comprehension question of the WAIS-III he said that defendants that choose a jury because, "if you go in front of the judge you can't have a lawyer or witnesses... you can't prove your case, but

005247

Competence
OST



~~you can prove your case in front of a jury." Again this is consistent with his lack of understanding and appreciation of court procedures.~~

On the C-TONI test. Jessie was consistent on the most of the task. His ability level was consistent on both the pictorial and geometric categories. There was one test in which he performed unusually high higher than expected. There was no good explanation for why he did better on this single test, Geometric Categories. It seemed that he was guessing and, for whatever reason, he guessed accurately all the way to question 18. I finished the test and went back to explore this subtest further with Jessie. I began with the seven items from item number 12 through item number 18. I asked him if he recalled the answer that he had given previously. On item 12, 13, and 14 Jessie was able to reproduce the same answer as he had given correctly the first time, whether by memory or not. Even though he said the reason he gave those answers were they were only a guess, I gave him credit. However, on items 15, 16, 17, and 18 Jessie was not able to recall or duplicate the correct the answer he gave. Therefore, this reflected a lack of mastery and understanding and his answers were the result of chance factors than abstract reasoning ability. Again, he readily admitted he was only guessing. Interestingly, on item number 14, which he was correct the second time, I asked why he answered item A, why not one of the others. He said, "I don't know it was just the first answer that popped in my head." Again, he has no real mastery for demonstration of understanding of the abstract reasoning required.

The result of testing the limits on the C-TONI with Jessie is that the test score for Geometric Categories is likely inflated by chance, it is inflated by 4 answers. He is correct on these four items as a result of random guessing. He could not duplicate his correct answers on 15, 16, 17, and 18. I would give him credit for items 12, 13, and 14 since he at least "recalled" his first correct answer. If one uses testing the limits to come up with a better estimate of intellectual ability it would change his overall IQ from 69 to 67, lowering it 2 points.

Jessie's approach to the 20 Questions Test on the D-KEFS is quite similar to the C-TONI approach he used... he just gasses with no abstract sense of category or reasoning.

On the morning of June 30, our second day together, Jessie told me he forgot to give a letter to Nancy. The letter was from an attorney, I believe from St. Louis, who wrote to Jessie and expressed an interest to help in the case. Jessie wanted me to pass this letter along to Nancy. I looked at the return address on the envelope. I did not read the letter. I asked Jessie if he could send it himself. Jesse said he could do that but it probably would take too long "unless it is legal mail." Clearly, it was legal mail and I pointed this out to Jessie. If it wasn't legal mail, what is legal mail? A letter from an attorney about his case to his attorney. Jesse said "yeah, I guess." So he decided to keep the letter and send it is legal mail, sending it himself. This is another small example of how poorly Jessie understands the legal questions and rules.

In Jesse's presentation made insist that he is not "mentally retarded" or mentally defective. His reason is because he didn't want to learn. Being smart is wanting to learn. He didn't try. He said this a number of times throughout the testing, especially when he didn't do well on item. Also when discussing getting help you make it seem reciprocal as Jason helps me, and I help him. He said that their others who need mental health help "more than me." When he tries to explain something such as Domino's is quite impaired. He assumes that I knew more.

005248

005249



Score Report

Information

Name: JESSE MISKELLEY	Highest Level of Education (years): 11
Examinee ID:	Date Tested: 6/30/2004
Examiner: TIMOTHY DERNING PhD	Date of Birth: 7/10/1975
Sex: Male	Age at Testing: 28 Years 11 Months
School: N/A	Handedness: Right

Referral Source/Reason for Referral/Presenting Complaints

FORENSIC EVALUATION

Attitude Toward Testing

EXCELLENT. COOPERATIVE

Affect and Mood

APPROPRIATE

Unusual Behaviors and Comments

NONE

Physical Appearance

N/A

Visual/Auditory/Motor Problems

NONE

Language Background

ENGLISH

Diagnostic History

N/A

Current Medications

N/A



005250



Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Trail Making Test

	Raw Score	Scaled Score
Primary Measure: Completion Times		
Condition 1: Visual Scanning	26	8
Condition 2: Number Sequencing	62	1
Condition 3: Letter Sequencing	42	6
Condition 4: Number-Letter Switching	140	2
Condition 5: Motor Speed	23	12

	Sum of Scaled Scores	Composite Scaled Score
Primary Combined Measure: Completion Times		
Combined Number + Letter Sequencing	7	3

	Scaled Score Difference	Contrast Scaled Score*
Primary Contrast Measures: Completion Times		
Switching vs Visual Scanning	-6	5
Switching vs Number Sequencing	1	11
Switching vs Letter Sequencing	-4	6
Switching vs Combined Number + Letter Sequencing	-1	9
Switching vs Motor Speed	-10	1

*A low or high contrast scaled score may reflect different cognitive problems; see examiner's manual.



005251



Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Verbal Fluency Test: Standard Form

	Raw Score	Scaled Score
Primary Measures		
Letter Fluency: Total Correct	29	8
Category Fluency: Total Correct	44	12
Category Switching: Total Correct Responses	8	3
Category Switching: Total Switching Accuracy	7	5

Effort!
wessed up

	Scaled Score Difference	Contrast Scaled Score*
Primary Contrast Measures		
Letter Fluency vs. Category Fluency	-4	6
Category Switching vs. Category Fluency	-9	2

Switching a problem

*A low or a high contrast scaled score may reflect different cognitive problems; see examiner's manual.

	Letter Fluency Raw Score	Category Fluency Raw Score	Category Switching Raw Score	Total Raw Score	Scaled Score
Optional Measures: Conditions 1-3 Combined					
First Interval: Total Correct	11	18	4	33	9
Second Interval: Total Correct	8	12	2	22	10
Third Interval: Total Correct	7	8	1	16	9
Fourth Interval: Total Correct	3	6	1	10	7
Set-Loss Errors	0	0	1	1	11
Repetition Errors	0	0	1	1	11
Total Responses (Correct + Incorrect)*	29	44	9	82	-

*Note: Some Repetition Errors are coded also as Set-Loss Errors; each double-coded error counts as only one response for the Total Responses Measure.

	Percent Raw Score	Scaled Score
Percent Set-Loss Errors	1.2	11
Percent Repetition Errors	1.2	11
Category Switching: Percent Switching Accuracy	89	10



005252



Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Trail Making Test (cont.)

	Raw Score	Cumulative %ile Rank
Optional Measures: Error Analysis		
Omission Errors: Condition 1 (Visual Scanning)		
Commission Errors: Condition 1 (Visual Scanning)		
Sequencing Errors: Condition 2 (Number Sequencing)		
Sequencing Errors: Condition 3 (Letter Sequencing)		
Sequencing Errors: Condition 4 (Number-Letter Switching)		
Set-Loss Errors Condition 2 (Number Sequencing)		
Set-Loss Errors Condition 3 (Letter Sequencing)		
Set-Loss Errors Condition 4 (Number-Letter Switching)		
Time Discontinue Errors: Condition 2 (Number Sequencing)		
Time Discontinue Errors: Condition 3 (Letter Sequencing)		
Time Discontinue Errors: Condition 4 (Number-Letter Switching)		
Time Discontinue Errors: Condition 5 (Motor Speed)		
All Error Types: Condition 4 (Number-Letter Switching)		*

*Scaled Score.



005253



Generally ok.

Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Design Fluency Test

	Raw Score	Scaled Score
Primary Measures		
Condition 1 Filled Dots: Total Correct	6	7
Condition 2 Empty Dots Only: Total Correct	7	7
Condition 3 Switching: Total Correct	9	11
	Sum of Scaled Scores	Composite Scaled Score
Design Fluency Total Correct:	25	8

	Sum of Scaled Scores	Composite Scaled Score
Primary Combined Filled + Empty Dots Measure		
Combined Filled + Empty Dots: Total Correct	14	7

	Scaled Score Difference	Contrast Scaled Score*
Primary Contrast Measure		
Switching vs Combined Filled + Empty Dots	4	14

*A low or a high contrast scaled score may reflect different cognitive problems; see examiner's manual.

	Condition			Total Raw Score	Total Scaled Score
	1 Filled Dots	2 Empty Dots Only	3 Switching		
Optional Measures					
Total Set-Loss Designs	0	0	1	1	13
Total Repeated Designs	1	1	1	3	12
Total Attempted Designs*	7	8	11	26	8

*Note: Some Repetition Errors are coded also as Set-Loss Errors; each double-coded error counts as only one response for the Total Attempted Design Measure.

	Percent Raw Score	Scaled Score
Percent Design Accuracy	85	9



005254



Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Color-Word Interference Test

	Raw Score	Scaled Score
Primary Measures: Completion Times		
Condition 1: Color Naming	29	9
Condition 2: Word Reading	23	9
Condition 3: Inhibition	47	11
Condition 4: Inhibition/Switching	101	1

ok

Diff. into than word in box sometimes

	Sum of Scaled Scores	Composite Scaled Score
Primary Combined Measure: Completion Times		
Combined Naming + Reading	18	9

course

	Scaled Score Difference	Contrast Scaled Score*
Primary Contrast Measures: Completion Times		
Inhibition vs. Color Naming	2	12
Inhibition/Switching vs. Combined Naming + Reading	-8	2
Inhibition/Switching vs. Inhibition	-10	8

ABD

*A low or a high contrast scaled score may reflect different cognitive problems; see examiner's manual.

	Scaled Score Difference	Contrast Scaled Score*
Optional Contrast Measures: Completion Times		
Inhibition/Switching vs. Color Naming	-8	3
Inhibition/Switching vs. Word Reading	-8	2

ADD LOAD

*A low or a high contrast scaled score may reflect different cognitive problems; see examiner's manual.

	Cor. Errors Raw Score	Cor. Errors Cum. Freq. Rank	Uncor. Errors Raw Score	Uncor. Errors Cum. Freq. Rank	Total Errors Raw Score	Total Errors Scaled Score
Optional Measures: Error Analysis						
Cond. 1: Color Naming	0	-	0	-	0	100*
Cond. 2: Word Reading	0	-	0	-	0	100*
Cond. 3: Inhibition	0	100	0	100	0	12
Cond. 4: Inhibition/Switching	2	10	2	25	4	8

*Cumulative Percentile Rank

005255





Can't get context.

Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Word Context Test

Primary Measures		Raw Score	Scaled Score
Total Consecutively Correct	<i>Ability to get it early & stay with it. is more</i>	12	4
Optional Measures		Total Raw Score	Scaled Score
Consistently Correct Ratio	<i>once ok, then ok</i>	100*	12
		*Percent Raw Score	
Repeated Incorrect Responses		2	13
No/Don't Know Responses	<i>High</i>	5	5*
Total Correct-to-Incorrect Errors		0	100*

*Cumulative Percentile Rank



005256



Poor abstract ability & strategies

Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Twenty Questions Test: Standard Form

	Item 1	Item 2	Item 3	Item 4	Total	Scaled
	Raw	Raw	Raw	Raw	Raw	Score
	Score	Score	Score	Score	Score	
Primary Measures						
Initial Abstraction Score*	1	1	1	1	4	4
<small>*Minimum number of objects that can be eliminated by the first question asked regardless of the yes or no answer.</small>						
Total Questions Asked	6	21	12	8	47	3
Total Weighted Achievement Score	4	0	2	3	9	4

	Item 1	Item 2	Item 3	Item 4	Total	Cum.
	Raw	Raw	Raw	Raw	Raw	%ile
	Score	Score	Score	Score	Score	Rank
Optional Measures						
Spatial Questions	0	0	0	0	0	100
Repeated Questions	0	1	0	0	1	15
Set-Loss Questions	0	0	0	0	0	100



005257



Score Report

Name: JESSE MISKELLEY

Test Date: 6/30/2004

Proverb Test

	Raw Score	Scaled Score
Primary Measures		
Total Achievement Score: Free Inquiry	14	6
Total Achievement Score: Multiple Choice	26	10* ^{low}
*Cumulative Percentile Rank		

	Total Raw	Scaled Score
Optional Measures: Free Inquiry		
Common Proverb Achievement Score: Free Inquiry	10	5
Uncommon Proverb Achievement Score: Free Inquiry	4	8
Accuracy Only Score	10	10
Abstraction Only Score	4	D
No/Don't Know Responses	2	12*
Repeated Responses	0	100*
*Cumulative Percentile Rank		

	Total Raw	Cum. %ile Rank
Optional Measures: Multiple Choice		
Common Proverb Achievement Score: Multiple Choice	18	22%
Uncommon Proverb Achievement Score: Multiple Choice	8	12%
Total Correct Abstract Choices	6	11
Total Correct Concrete Choices	1	<1
Total Incorrect Phonemic Choices	0	100
Total Incorrect Unrelated Choices	1	7
Total Incorrect Phonemic + Unrelated Choices	1	18



005258

Jessie Misskelley. 4/30/04
Question:

From word context of D KEYS.

Try to figure, another lang
then work. You gonna say word
& gonna try to say it or stuff.

& Discuss Varner inmate charged
with "Capital murder" on
radio this am. - Know
what 'capital murder' means?
No - if you kill one person
or kill 5 it's all the same.
& dt see no dif.

Rights -

for discussing right & thinks
Right = choice you can. Says
he has No rights as prisoner.
what abt Alton Blake. They h
no right can do anything they
want to prisoners (why they proud)
DK. - Says no rights but up now -
- he can't resist - what if.

005259

the don't feed you - "can't do
anything about it... but sure
can" - (████████████████████)

Then he does get to some
rights but mostly before
what you should do how to
treat people + right -
can't distinguish or
explain.

005260

Joe's interrogator

Ask him a Q. abt a crime. If he knows anything..

The police think that Joe _____ knows st abt a crime.

c. (most imp) The truth (Q) abt what he k about the crime.

d. (Police feeling?) Prob feeling like they believe him. (why) Cuz they trust Joe (why trust) IDK

Joe? Seemed cuz he being Q by 2 police & an atty. (why not get one) ~~the police want~~ ~~get the money~~.. So they shouldnt ask him no Q. (what about appoint) If he dt h an atty ~~police should get~~ ~~with one~~. (Joe says to do) He not saying to talk, just ans their quest.

005261

(If the police are asking Q and Joe doesn't have an attorney - what should he do) Set a bail priest. (Anything else)
No - if he is not under arrest he should not answer. And if he is under arrest - he should still have someone with him - parent or lawyer - but we don't know how old he is.

(Should Joe ask for an attorney or police get him one) He should ask for an attorney.

(Passive is someone who can be prompted along to correct answers but who is passive and ineffective on his own).

Cognitively passive and ineffective. Don't initiate steps to solve problems. But can follow through the process if started and lead them.

005262

Tim

main job of lawyer?

1. To do all the talking for his client and help him out (How) To whatever his client tell him he should believe him. Ask witnesses. (If not innocent?) To get lesser sentence - come to some kind of agreement (with) the judge, no prosecutor.

2. (Tim to do) IDK ... sugg to tell his lawyer everything (else) no

RC-3 - About the house he broke into.

RC-4. That way he can help him out (How) cuz that's what he's there for, and wouldn't have to leave out nothing. (How help his case) IDK how help him but - get him some lesser time. [but ~~know~~ ^{NO} like to ~~how~~ this process works, how me leads to the other]

005263

Police come + get me
said he was going to walk...
Damian + Jordan, so I start
making up lies.

{ Why talk to police?
I didn't trust my lawyer.

{ Trust police more?
They come + get me.

Dan Stedham not trust?

Didn't know how and he
said I was acting like a
horse's ass to Judge Burnett.
Cuz I was acting stubborn
about he was telling me not
to talk to the police and I
wouldn't listen.

(Why talk to police) - just to be
stubborn - not listen.

005264

ADD 3717

.. (I ask about the opposite) (what if...)
if he told me to talk to police
I wouldn't love - cuz I want
to do what I want to do, not
cuz you said it.

(Why was he saying don't talk to police)
I guess to help me out - he k
what I was saying was wrong but
I still told him (the police + DA)

(Even tho Stebbins was trying to help
JK - cuz JK would get into
was trouble JK talked to the
police cuz he wanted to do
what he wanted to do - even
if it hurt him - but didn't see
conseq. anyway)
Would you do that now? No!
I have changed a lot.

They wanted me to testify + wouldn't
do it.

005265

Why do that I DK why - I didn't
do that (crime) I gave them a fake
confession - It wouldn't hurt
me - I knew they didn't have
anything on me cuz I didn't
do nothing wrong - Then they
used the tape against me -
I didn't know they were going
to do that - Every they heard
the police told me first
I just rejected it.

(Why gave fake confession) Just
to get them to leave me alone.
They kept bothering me
from 9 o'clock that morning (June 3)
when arrest til 10:30 @ night.
I told em anything cuz I
wanted them to leave me
alone. I was tired. Wanted
to go home.

005266

Hard

at the time wanted Damien
and Jason to get in trouble -
so gave false confession
to cuz DA said they
didn't have enough on them
to convict.

Told them not testify. DA
but gave tape - they already
had tape from me!

Scene:

Don comes in. Says ① don't
talk to police ② don't testify it
will hurt your appeal.

JK does #2 but not #1 -

cuz ① they already had 2 confes
or tapes. No harm

② oppositional attitude/adolesc.

③ didn't see how it would hurt

005267

9-10-89
MAY 5
JAMES Z
JULY 20 1989

Don S. ...
8 ...
appear ...

unrelated

mail →

FEB 4
1994

Substance taken
DA report

005268

ADD 3721

I would a gift. (Dadnt see trick of
get information)

He said he asked from me the
the boys. Dadnt, but said he did.

"It didnt have no picture of
should never have known.
just like the Sheriffing."

Why say closed when Dadnt?
To make it sound good.

Make up on his own. Dadnt
change boys down so when
got to court there would be
no evidence. "you gotta leave
some evidence behind every
news brought it up."

Thought Dad was an "escape"
giving a phoney story. Dadt would
fall apart. Dadt had never
Dadnt but proved.

Dadnt admit to killing
Only got details, of the crime
see see.
(Why not go to give details?) They had
IDK.

(He made up all the story
about checking them
to get them to leave him
alone,

"When he cant give details
they should have known
right now of what knows."

They have details/Puts
that are Dadnt here.

He's trying to get out of this
in his own fractured
way. TELLABLE plans. No help.
likely pressure. Fatigue
etc.

005269

learned of details from emergency workers.

Karin Johnson Search & Rescue
he used to school in his own
his surviving was friend.
Open 3 + older, knew since
3-4
Rhonda Anderson.

He came in Karin told all
that happened.

Judge Brewster would let
Karin + Rhonda testify

Vicki Hutchinson testified that
she told her he did it.
She had warrant for hot checks

No alibi witnesses.
It was with Vicki she was for
alibi but she smothered

Grand
RS-1 It will want him when he
goes to court. They'll use it
against him.

RS-2 Learn her story. Send her
in his way. (Even they holding)
No... if he don't say nothing +
They don't let of he state if they
wrote it to help him.

RS-3 He shouldn't talk about
murder nobody talk of they do
want to.

RS-5 - looking good. Long he told his
lawyer what he done + his lawyer
going to get him a letter since

RS-4. Think of and (Queen) then the
police don't have nothing on him.
No (they not) He didn't fill police

(X2) Yes. They wonder again.
Swear to God you should fill
the truth every of heart you
→

005270

People don't - but you're supposed to fall in the R. You're supposed

like: "Self-termination" never heard - that means,

Why not police start with OAR to tell Smith whole nothing but. "I have no idea."

Mean: innocent the Roman I. Means I'm the count of your Guilty of you - crime

If you really guilty it's both. Guilty (you're and police (anyone) to prove you are guilty.

Doesn't see defendant's role as separate and independent. (which means he's not a but means likely to confess, not less - if he was G)

Great Murokelly.

White 28 y old almost 29. About 2007 self report - seems accurate. approx 5'7"

Stocky. not muscular. white jump suit. Tattoos on top of head - a clock = "fun thing" name. Saw in a magazine + head. looks like a ghenika

⑧ - concentric circles - Roman numerals but no VII (6)

- no marks up and blurred. - no marks in the clock - no other tattoos noted.

V. cooperative + etc. effort. Break for lunch on Day II (27th) but not Day 22 (30th). Gets interrogated by end of day + no stop. No pulmonary. likes to do well.

005271

Waldley Presentation 2011

no business or any indication
in my movements - side effects.
The hurt - speed & heavy lifting
28 go with plenty of spinning

No fit or observed or reported
in his life.

No stress or any needed.
Vision & hearing fine all the
days he's had problems -
ears & should wear ear
plugs in water (shows) but
doesn't like to. No problems
hearing during exercise.

Some thoughtful answers to best
do he can - never pushed.
checked or smoke
laughs when questions asked
and difficult to beyond him

Waldley Presentation 2011

likes to do well.

Rainy season @ times but reports
to parents.

Heard set the purpose of the
goal had puts up with it even
his he has problem he has
it might help.

Never gets mad of or frustrated
@ me - even when I push
for him & reasons being
goals & market, especially.

was. Carefully on string of
expected he might know -

Very consistent performance

Knows he is "famous" during
the program then there but
doesn't seem to give it much

005272

measuring.

V. somewhat w. R. trying ^{esp} to help him. had special letter to "get out" of him or bring into family.

R. Humbled, R. prints. R. handwriting is good - legible. No curative.

No other steps & improvements or other awarded - but conditions of 1/1 in hospital home. Grandfather for ADD. 5x. Don't know. Improvements, even if brought when alone (to go to Washington).

We can sight read more words than he understands or can define eg. "comparison" "Pond" "Pond"

Wendell Press #4

- SD design seems to give him problems

- every now & then in the kitchen he says a good amount when he can. eg. "Simplicity"

Table - Chair - to form. This comes after several weeks. Synthesis: "green" "Rome" "Making changes" "any math, reading maps" seem to be hard areas.

13 letters C. reading. Immediate memory is good (for him). Delayed recall is ok. Although his confidence & handwriting leads to problems that are related but not strictly memory.

Education would have been a problem but he has been in prison 10 years

005273

Wassell's proof #5
and could have improved a lot
if it was merely appropriate
proving - ~~conclusion~~
proof of limits + ability demonstration
this,

He stated (w/ spelling) (in
scratch paper) when he
can't answer - he will
say nothing.

20 Ques: concrete & literal
no logical shortcuts.
prodding, 1x1 no elaboration

- often unnecessarily the
extraneous unnecessarily exclude
eg. "Prin" - "could be long" etc.
when he gets on the right
track - as with "Vom" - "Vom" etc
he can stay with that. But

He gets on a course and
gets it is wrong and he
has to re-Princk - switch
directions eg. "Mol's in" = make
when he Princk it means
"to steal something" - he
gets V. confused, when ~~deliberately~~
he can't re-shuffle the
categories - not flexible
should think on his feet
well when confused he
is likely to seek help.

Sometimes in word context
his no concrete - moving
out depending on how
well he can think clearly
to Princk that attempting
to Princk Princk the clues
or answers.

005274

Reviews

The essence from proof is
no most definitely clearly
in Reviews = he can't
come up with abstract
meaning himself. But if
you suggest the same,
the words just have to
do much better, when
he failed in his own.

But intentionally, he is
logically inconsistent and
doesn't catch that "that
cannot be" both.

Sometimes he leaves a process
(eg addition) he knows and
can use - for no reason -
just gets in another direction
that is different.

Mostly would this is to
think he is more clear / knows
nothing than he is,
and he just seems cap to
not understanding.

005275

MACCAT-CA™

Jessie Muskatley
6/30/04

The MacArthur Competence Assessment Tool— Criminal Adjudication

**Steven K. Hoge, MD
Richard J. Bonnie, LLB
Norman Poythress, PhD
John Monahan, PhD**

PAR Psychological Assessment Resources, Inc.

005276

Introduction

I'm going to read you a brief story. Then, based on that story, I'm going to ask you some questions about how the legal system works.

Two men, Fred and Reggie, are playing pool at a bar and get into a fight. Fred hits Reggie very hard with a pool stick. Reggie falls and hits his head on the floor so hard that he nearly dies.

F + R go to bar. go into fight
F hit R. i (pool stick)
R falls to ground also kills him

Reviews - OK was the story.

SCORING CRITERIA: ITEM 1

A1 Criteria:

- 1 = Recognition of the role of the defense attorney as representing the defendant's side of the case.
- 0 = Inadequate recognition.

A2 Criteria:

- 1 = Recognition of the role of the prosecutor as being opposed to the defendant in the case.
- 0 = Inadequate recognition.

*Burden of Proof
is shifted*

B Criteria:

- 2 = Responses that meet the criteria for a score of 1 in both A1 and A2.
- 1 = Responses that meet the criteria for a score of 1 in either A1 or A2.
- 0 = Responses that meet the criteria for a score of 0 in both A1 and A2.

ITEM 1 CRITERIA:

- The item score is the higher of:
- (i) The sum of the scores for A1 and A2, or
 - (ii) The B score.
- If (i) and (ii) are equal, the item score is the same.

→ We had just discussed about 15-30 min ago.

UNDERSTANDING ITEM I

A1. Let's say that Fred gets arrested and charged with a crime. Fred gets a lawyer. Fred's lawyer is called the attorney for the defense. What is the job of the attorney for the defense?

Response:

Prove that his client is innocent of the charges
(MEAN. Innoc. full Pr. G) His lawyer has to prove he's innocent -
just like police have to prove he G.

A1 Scoring: 0

1

A2. There is another lawyer involved in Fred's case who is called the prosecutor [use nomenclature appropriate to the jurisdiction]. What is the job of the prosecutor?

Response:

to make you look bad. bring up your
just. not on your side

A2 Scoring: 0

1

Instruction: If A1 = 1 and A2 = 1, go to next page. If not, read B below.

B. Fred learns something about how the legal system works. There are two sides. On one side is Fred's lawyer who is called the attorney for the defense. He will try to show that Fred did not commit a crime. Also, as the case goes on, the defense attorney will tell Fred what his choices are. On the other side is a lawyer called the prosecutor. The prosecutor will try to show that Fred did commit a crime and that there is no excuse for what Fred did.

In your own words, tell me what Fred just found out about the legal system.

Response:

B Scoring: 0 1 2

ITEM I SCORE:

0

1

2

005279

5

SCORING CRITERIA: ITEM 2

ITEM 2 CRITERIA:

- 2 =** Recognition that aggravated assault entails both of the following:
- (a) Knocking Reggie down or hitting him.
 - (b) Intending, trying, or meaning to injure Reggie.
- 1 =** Recognition of one of the above.
- 0 =** Recognition of neither of the above.

SCORING CRITERIA: ITEM 3

ITEM 3 CRITERIA:

- 2 = Recognition that simple assault entails both of the following:
- (a) Knocking Reggie down or hitting him.
 - (b) Intending to knock Reggie down but not intending, trying, or meaning to injure him.
- 1 = Recognition of one of the above.
- 0 = Recognition of neither of the above.

SEE #12
#7

UNDERSTANDING ITEM 3

Fred's attorney tells Fred that he could be found guilty of a less serious crime called "simple assault." This could happen if the prosecutor shows that Fred knocked Reggie down on purpose even though he didn't mean to hurt Reggie when he did this.

In your own words, tell me what facts the prosecutor will have to show in order to prove that Fred is guilty of simple assault.

Response: That wasn't S-def, that he meant to hurt Reggie. The way he defined AGG Assault (I read - what's the diff? I don't understand) it wasn't S-D, on purpose, you meant to hurt him. (goes into def btw Assault + SDef) (diff btw Agg + Simple ass) IDK the diff - assault's assault.

Simple Assault: DA has to prove: that it was in S-Def - meant on purpose.
(DA proves?) Yeah.

(note how twisted and legally illogical this is - makes no good sense.)

Self-defense as aggravator? DA must prove

(DA proves mitigation?)

ITEM 3 SCORE: 0 1 2

005282

Score
Just for "knock down" boost

SCORING CRITERIA: ITEM 4

A Criteria:

- 2 = Recognition of two of the following:
- (a) The jury listens to both sides of the case.
 - (b) The jury renders a verdict (judgment/decision) about the case.
 - (c) The jury could recommend a sentence [*only in jurisdictions where this is the law*].
- 1 = Recognition of one of the above.
- 0 = Recognition of none of the above.

B Criteria:

- 2 = Recognition of both of the following:
- (a) The jury listens to both sides of the case.
 - (b) The jury renders a verdict (judgment/decision) about the case.
- 1 = Recognition of one of the above.
- 0 = Recognition of neither of the above.

ITEM 4 CRITERIA:

The higher of the A or B score. If A and B are equal, the item score is the same.

UNDERSTANDING ITEM 4

A. Let's say that Fred's case goes to court for a jury trial. What are some of the jobs of the jury?

Response:

To listen to b sides of story def. & pros.
listen to all → evide brought into court.
Have mind clear (?) have mind focused on what
in court - not bullgane etc.

A Scoring: 0 1 2

Instruction: If score = 2, go to next page. If not, read B below.

B. Fred's lawyer tells Fred what will happen if his case is decided at a jury trial. A group of people called a jury will listen to both sides of the case. The jury will decide whether Fred is guilty or not guilty.

In your own words, tell me what Fred just found out about the jobs of the jury.

Response:

To find out if he G or NG of his charges
(Else) They supposed to ^{hear} all the evide, both
sides of court

B Scoring: 0 1 2

ITEM 4 SCORE: 0 1 2

005284

11

SCORING CRITERIA: ITEM 5

A Criteria:

- 2 =** Recognition of two of the following:
- (a) That the judge instructs the jury about the law.
 - (b) That the judge rules on the admissibility of evidence.
 - (c) That the judge sees that the rules are followed in order to ensure fairness in the proceedings.
 - (d) That the judge might be responsible for imposing a sentence.
- 1 =** Recognition of one of the above.
- 0 =** Recognition of none of the above.

B Criteria:

- 2 =** Recognition of both of the following:
- (a) That the judge instructs the jury about the law.
 - (b) That the judge rules on admissibility of evidence.
- 1 =** Recognition of either of the above.
- 0 =** Recognition of neither of the above.

ITEM 5 CRITERIA:

The higher of the A or B score. If A and B are equal, the item score is the same.

UNDERSTANDING ITEM 5

A. At Fred's jury trial, what are some of the jobs of the judge?

Response:

Really J's job is to just set these & listen... to say what they can say into court and what they can't eg. "That's irrelevant" if they say st in ct. That's about all a judge can do.

A Scoring: 0 1 2

Instruction: If score = 2, go to next page. If not, read B below.

B. Fred's lawyer says that one of the jobs of the judge at Fred's jury trial is to decide what evidence the jury should be allowed to see or hear. Another job of the judge is to tell the jury about the law.

In your own words, tell me what Fred just found out about the jobs of the judge.

Response:

Judges job is to see what 1 can use & can't in Ct. ... and decide w/ the jurors can hear 2 and can't hear (else) No.

B Scoring: 0 1 2

1+2 = Same thing

ITEM 5 SCORE: 0 1 2

005286

13

SCORING CRITERIA: ITEM 6

A Criteria:

- 2 = Recognition of both of the following:
- (a) That the type or severity of punishment could depend on the seriousness of the offense.
 - (b) That there are at least two possible sentencing options (e.g., jail, prison, probation, fine).
- 1 = Recognition of either of the above.
- 0 = Recognition of neither of the above.

B Criteria:

Same as A criteria (above).

ITEM 6 CRITERIA:

The higher of the A or B score. If A and B are equal, the item score is the same.

UNDERSTANDING ITEM 6

- A. Let's say that Fred is found guilty of either aggravated assault or simple assault. Depending on which crime he is found guilty of, what is likely to happen to him next?

Response:

Knows from earlier question

That he get sentenced - if the jurors found him guilty, he'll find out how much time he'll do (else) No.

A Scoring:

0

1

2

neither sentence option nor offense seriousness

Instruction: If score = 2, go to the next page. If not, read B below.

- B. Fred's lawyer says that Fred is likely to be punished if he is found guilty. If Fred is found guilty of aggravated assault, he will probably spend time in jail or prison. But, if Fred is found guilty of the less serious crime of simple assault, he may just have to pay a fine or he may be put on probation.

In your own words, tell me what Fred just found out about what is likely to happen if he is found guilty.

Response:

It depends what the charge. go to jail or prison - if lesser charge he can pay fine or be sent to probation

B Scoring:

0

1

2

ITEM 6 SCORE:

0

1

2

005288

Recall 15

SCORING CRITERIA: ITEM 7

A1 Criteria:

- 1 = Recognition that pleading guilty to simple assault means that Fred admits that he knocked Reggie down or hit him, but adds Self-defense as the an aggravate
- 0 = Inadequate recognition.

A go over Self-D -

he understands in a way, for the women

A2 Criteria:

- 1 = Recognition that Fred cannot try to prove his innocence once he pleads guilty.
- 0 = Inadequate recognition.

but gets confused then fails to

B Criteria:

- 2 = Responses that meet the criteria for a score of 1 in both A1 and A2.
- 1 = Responses that meet the criteria for a score of 1 in either A1 or A2.
- 0 = Responses that meet the criteria for a score of 0 in both A1 and A2.

understand the (legal) concept behind S-D

ITEM 7 CRITERIA:

- The item score is the higher of:
- (i) The sum of the scores for A1 and A2, or
- (ii) The B score.
- If (i) and (ii) are equal, the item score is the same.

*see #3
#12*

UNDERSTANDING ITEM 7

A. Let's say that Fred is thinking about pleading guilty to simple assault. If he pleads guilty to simple assault, what will he admit to having done?

Response:

A1 Scoring: 0 1

If Fred pleads guilty, can he still try to convince the judge that he is innocent?

Response:

A2 Scoring: 0 1

Instruction: If A1 = 1 and A2 = 1, go to next page. If not, read B below.

B. If Fred pleads guilty to simple assault, he will have to go in front of the judge and admit that he hit Reggie on purpose. Fred will not have the opportunity to prove to the judge that he was really innocent.

In your own words, tell me what Fred just found out about pleading guilty to simple assault.

Response:

B Scoring: 0 1 2

ITEM 7 SCORE: 0 1 2

005290

17

ADD 3743

SCORING CRITERIA: ITEM 8

A Criteria:

- 2 = Recognition of two of the following:
- (a) The right to a trial.
 - (b) The right to force the prosecution to prove its case.
 - (c) The right to offer proof of his innocence or to challenge the allegations.
 - (d) The right to remain silent/protection against self-incrimination.
 - (e) Some rights to appeal his case.
- 1 = Recognition of one of the above.
- 0 = Recognition of none of the above.

B Criteria:

- 2 = Recognition of both of the following:
- (a) Fred would give up the right to a trial.
 - (b) Fred would give up the right to force the prosecution to prove its case.
- 1 = Recognition of one of the above.
- 0 = Recognition of neither of the above.

ITEM 8 CRITERIA:

The higher of the A or B score. If A and B are equal, the item score is the same.

UNDERSTANDING ITEM 8

A. Now, if Fred pleads guilty, he would give up some legal rights. What are they?

Response:

To prove he's innocent. If
(Others) No

} from previous
question +
information

A Scoring: 0 1 2

Instruction: If score = 2, go to next page. If not, read B below.

B. If Fred pleads guilty, he will be giving up some of his legal rights. There won't be a trial. And, the prosecutor won't have to prove the charge against him.
In your own words, tell me what Fred just found out about his legal rights.

Response:

If he plead G - then there never going
to Ct again to prove innocent cuz
he said he guilty - would do his
no good to go back to Ct. (else) No

B Scoring: 0 1 2

ITEM 8 SCORE: 0 1 2

005292

19

ADD 3745

SCORING CRITERIA: ITEM 9

ITEM 9 CRITERIA:

- 2 = Defendant chooses Fact #1 and gives a reason which raises the possibility that the defendant was defending himself.
- 1 = Defendant chooses Fact #1, but gives one of the following:
 - (a) No reason, or
 - (b) A reason why Fact #2 is less important, without specifying why Fact #1 is more important, or
 - (c) A vague or unelaborated reason.
- 0 = Defendant chooses Fact #2.

REASONING ITEM 9

Now I'm going to tell you more about Fred's case. I'm going to tell you about two separate facts. Then, I'm going to ask you a question about which fact would be more important to tell Fred's lawyer.

Fact #1:

After Reggie pushed him, Fred thought he saw Reggie reaching for a knife.

Fact #2:

Before going to the bar, Fred picked up a paycheck at work and took his girlfriend, Julie, to a baseball game.

If Fred's lawyer asks Fred about his reason for fighting with Reggie and for hitting him with a pool stick, which of these two facts would be more important to tell his lawyer?

Circle Answer:

Fact #1

Fact #2

What are your reasons for picking that fact?

Response:

cuz he thought R reaching for knife
(why #) cuz if he thought R reaching
for a knife F could reach fo
P. stick.

Vague +
(mostly rough & D
reasoning)

ITEM 9 SCORE:

0

1

2

005294

21

SCORING CRITERIA: ITEM 10

ITEM 10 CRITERIA:

- 2 = Defendant chooses Fact #2 and gives a reason which suggests that seeking help and emergency medical care for Reggie may indicate that Fred did not intend to hurt him.
- 1 = Defendant chooses Fact #2, but gives one of the following:
 - (a) No reason, or
 - (b) A reason why Fact #1 is less important, without specifying why Fact #2 is more important, or
 - (c) A vague or unelaborated reason.
- 0 = Defendant chooses Fact #1.

REASONING ITEM 10

Here are two more facts.

Fact #1:

At the bar, there was a country and western band playing in the room next to the pool room.

Fact #2:

Fred, himself, called the ambulance because he could see that Reggie was hurt very badly.

If Fred's lawyer wants to know whether or not Fred was trying to hurt Reggie, which of these two facts would be more important to tell his lawyer?

Circle Answer:

Fact #1

Fact #2

What are your reasons for picking that fact?

Response:

why Bec after he seen he knock
R down + almost killed him
his concern was R might be
dead - concern abt his
safety.

ITEM 10 SCORE: 0 1 2

005296

23

SCORING CRITERIA: ITEM 11

ITEM 11 CRITERIA:

- 2 = Defendant chooses Fact #2 and gives a reason which suggests that there may have been a provocation.
- 1 = Defendant chooses Fact #2, but gives one of the following:
 - (a) No reason, or
 - (b) A reason why Fact #1 is less important, without specifying why Fact #2 is more important, or
 - (c) A vague or unelaborated reason.
- 0 = Defendant chooses Fact #1.

REASONING ITEM II

Here are two more facts.

Fact #1:

Fred had been living in the same apartment for the last 6 years.

Fact #2:

The bartender told Fred that Reggie had been in other fights in the bar.

If Fred ~~knows~~ wants to know what Fred might have been thinking at the time of the fight, which of these two facts would be more important to tell his lawyer?

Circle Answer:

Fact #1

Fact #2

What are your reasons for picking that fact?

Response:

Best of R had been in fights —
but then R is known to
cause problems there.

Doesn't get @ explaining
internal process:
Thinking as causative
intent.

ITEM II SCORE: 0 | 2

005298

25

SCORING CRITERIA: ITEM 12

ITEM 12 CRITERIA:

- 2 = Defendant chooses Fact #1 and gives a reason which suggests that there may have been a need to protect himself *Self-defense*
- 1 = Defendant chooses Fact #1, but gives one of the following: *"touching"*
- (a) No reason, or
 - (b) A reason why Fact #2 is less important, without specifying why Fact #1 is more important, or
 - (c) A vague or unelaborated reason.
- 0 = Defendant chooses Fact #2.

*This is an example of
Self-defense confusion
is # See #3
#7*

REASONING ITEM 12

Here are two more facts.

Fact #1:

At the time of the fight, Fred was frightened because Reggie was acting like a tough guy.

Fact #2:

At the time of the fight, Fred had been getting along well with his girlfriend, Julie.

If Fred's lawyer wants to know what Fred might have been thinking at the time of the fight, which of these two facts would be more important to tell his lawyer?

Circle Answer:

Fact #1

Fact #2

What are your reasons for picking that fact?

Response:

Bcs R didnt want to fight F

got drunk + carried away.

reject fact #1

(x2) F didnt want to fight R -

got drunk and it got out of hand thats why Reggie

said he didnt want to fight him.

(Mixes details of who's who)

back/forth = OK, NBD to score

ITEM 12 SCORE: 0 1 2

005300

So plain's, sitj.
not "Thinking" 27
@ time.

SCORING CRITERIA: ITEM 13

ITEM 13 CRITERIA:

- 2 =** Defendant chooses Fact #1 and gives a reason which indicates that drinking alcohol may adversely affect judgment and/or behavior.
- 1 =** Defendant chooses Fact #1, but gives one of the following:
 - (a) No reason, **or**
 - (b) A reason why Fact #2 is less important, without specifying why Fact #1 is more important, **or**
 - (c) A vague or unelaborated reason.
- 0 =** Defendant chooses Fact #2.

REASONING ITEM 13

Here are two more facts.

Fact #1:

At the bar, Fred had drunk a lot of beer before the fight with Reggie started.

Fact #2:

Fred and Julie ate dinner at a restaurant before they went to the baseball game.

If Fred's lawyer wants to know about Fred's emotional state at the time of the fight, which of these two facts would be more important to tell his lawyer?

Circle Answer:

Fact #1

Fact #2

What are your reasons for picking that fact?

Response:

Cuz they was drunk beer
before the fight started
(why ~~is~~) cuz ... need to k
what they were doing b/f
fight start (why) the police
need to know - every detail.
@inck they could smell anyway.
(off-topic)
w/ telling his lawyer.

ITEM 13 SCORE: 0 **1** 2

only = 1

005302

29

SCORING CRITERIA: ITEM 14

ITEM 14 CRITERIA:

- 2 = Any request for a specific piece of information which is not included in this or previous disclosures and which might be relevant to someone making the legal decision.
- 1 = A request for a specific piece of relevant information that was in this or previous disclosures.
- 0 = No request for information, or a request for irrelevant information.

REASONING ITEM 14

Now, Fred has to make a legal decision. Fred's lawyer says that there are two ways to plead. There are good and bad things about both. Here are Fred's choices.

Choice #1:

One choice is that Fred could plead guilty. The prosecutor has talked with Fred's lawyer and has made an offer: If Fred will plead guilty to the less serious charge of simple assault, the prosecutor will drop the more serious charge of aggravated assault; but Fred would have to serve a sentence of 6 months in jail.

Choice #2:

The other choice is that Fred could plead not guilty and have a trial. At trial, he could be found innocent and get no punishment; but this is not likely to happen. Instead, he will probably be found guilty of either aggravated assault or simple assault. If he is found guilty of aggravated assault, he could be sentenced to as many as 10 years in prison.

You have just heard about Fred's choices for dealing with his legal problem. Let's say Fred is your friend and he wants you to give him some advice.

What else would you want to know before you advise Fred?

Response:

*I'd take the 6 mos. (what else know)
was all this worth it ... going to bar +
getting drunk to fight R ... was it
all worth it? (else) No*

ITEM 14 SCORE: 0 1 2

SCORING CRITERIA: ITEM 15

ITEM 15 CRITERIA:

- 2 = Both an advantage and a disadvantage are identified in offering an explanation for the chosen alternative.
- 1 = Either an advantage or a disadvantage is identified.
- 0 = Neither an advantage nor a disadvantage is identified.

This ^{reflects} indicates his belief that a
to defendant has an obligation
to incommute himself and
"do what is right."
Judges often ask is "get lesser
sentence".

note: Jessie needed to be directed
back to the question of his case -
he often started with a No - and I
had to get him back on track.
I introduced this section with
"you, Jessie Misskelley..." and had
to keep redirecting him

REASONING ITEM 15

What do you think Fred should do?

Circle Answer:

Choice #1 (plead guilty)

Choice #2 (plead not guilty)

No choice

What are some of the advantages of [chosen alternative]?

Instruction: If the participant did not make a choice, insert "plead guilty" response.

Response:

That he was G he did it. He should admit to it. (other adv.) Plead G and get that lessor sentence ~~3~~ (?)

SEE Mr. P... → m... A...

What are some of the disadvantages of [chosen alternative]?

Instruction: If the participant did not make a choice, insert "plead guilty" response.

Response:

If you pl G sometimes you get more time. (In this ^{your} case) that he won't be able to go to court to say he was innocent but he could get 10 yrs in prison.

ITEM 15. SCORE: 0 1 2

005306

33

SCORING CRITERIA: ITEM 16

ITEM 16 CRITERIA:

- 2 = The defendant makes at least two comparisons between the legal alternatives.
- 1 = The defendant makes only one comparison between the legal alternatives.
- 0 = No comparisons are made.

REASONING ITEM 16

Instruction: Remember that comparisons between the legal alternatives that are mentioned in the course of answering Items 14 and 15 are scorable here. If the defendant's responses to Items 14 and 15 are sufficient for a score of 2 on Item 16 (see scoring criteria on the facing page), enter score below and skip to Item 17. If not, read the question(s) below.

Tell me the reasons that [chosen alternative, or, if no choice is made: pleading guilty] is better than [other alternative, or, if no choice is made: pleading not guilty].

Response:

PG is good in a way (Q) if you must window
get fine - fighting plead G. ... IDK.
I wouldn't plead G to me auto theft. ϕ

Are there any more reasons that [chosen alternative, or, if no choice is made: pleading guilty] is better than [other alternative, or, if no choice is made: pleading not guilty]?

Response:

no, G is better - should PG if he
did it. $n6$

Instruction: If the defendant has yet to make a comparative response, use the following probe. Skip this probe if a comparison has been made or if no choice has been made.

But how can you explain to Fred that [chosen alternative] is the best choice?

Response:

go to court - get 6 mos + go home.

ITEM 16 SCORE: 0 1 2

005308

35

SCORING CRITERIA: ITEM 17

ITEM 17 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, **or**
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

note shifts as he
continues to try to
answer the Q.

APPRECIATION ITEM 17

We have talked a lot about Fred's case. I would now like to ask you some questions about your situation.

Compared to other people who are in trouble with the law, do you think that you are more likely, less likely, or just as likely to be treated fairly by the legal system?

Circle Answer:

More likely

Less likely

Just as likely

What are your reasons for thinking that?

Response:

cuz it do matter ... it dep on who
you are - how the police can
treat you (just as likely) yeah.
explain(??) if you're a known person - had
some involvment in police
bff... they will come to you
regardless. but if someone not
in trouble... (But you) you always in
trouble. (So then less likely or just as...)
yeah "Less likely" cuz you in the
in law & they go to come to you
every time.

ITEM 17 SCORE: 0 1 2

005310

37

SCORING CRITERIA: ITEM 18

ITEM 18 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, **or**
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

APPRECIATION ITEM 18

Do you think that your lawyer will help you more, less, or about the same as lawyers usually help people who are in trouble with the law?

Circle Answer:

More

Less

About the same

What are your reasons for thinking that?

Response:

It dt matter who you are, your lawyer
is there to help you regardless.
~~not~~ (no matter what you did) Yeah

ITEM 18 SCORE: 0 1 2

005312

39

SCORING CRITERIA: ITEM 19

ITEM 19 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, **or**
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

APPRECIATION ITEM 19

Some lawyers expect their clients to tell them everything about how they got into trouble with the law. Compared to other people facing charges like yours, are you more likely, less likely, or just as likely to tell everything to your lawyer?

Circle Answer:

More likely

Less likely

Just as likely

What are your reasons for thinking that?

Response:

Bcs I want my lawyer to know
everything I my crime that
way he can help me I
if he say to help me I
then its my job is to help him
by telling everything.

ITEM 19 SCORE: 0 1 2

41

005314

ADD 3767

SCORING CRITERIA: ITEM 20

ITEM 20 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, or
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

APPRECIATION ITEM 20

Compared to other people who are charged with the same offense as you are, do you think you are more likely, less likely, or just as likely to be found guilty?

Circle Answer:

More likely

Less likely

Just as likely

still found G (to apply better to
with case
situation)

What are your reasons for thinking that?

Response:

It depends what state you in (Ho)
whatever your involvment in the law.
(your case) In my case I was in
trouble in the law & know I would
be found G. (going ^{to CT.})
now better chance - I can still
prove I'm innocent. Cuz there's
evidence that I clear me
& got better chance (Better than?)
Been locked up the rest of my
life. At least I have a chance
of have hope.

ITEM 20 SCORE: 0 1 2

005316

in state of
himself 43

SCORING CRITERIA: ITEM 21

ITEM 21 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, **or**
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

APPRECIATION ITEM 21

Compared to other people found guilty of this kind of crime, do you think you will get more punishment, less punishment, or about the same punishment if you are found guilty?

Circle Answer: More punishment Less punishment About the same

What are your reasons for thinking that?

Response:

IDK. ^{Think they will} (reduce your sentence?)

I never seen it happen. Hard to say. I never saw no one in my situations.

[Less punishment makes no sense]
(why say less Punishment)

cuz some people ... (why you?)

IDK I really don't.

ITEM 21 SCORE: 0 1 2

SCORING CRITERIA: ITEM 22

ITEM 22 CRITERIA:

Score the reason(s) given for the circled answer as follows:

2 = If the reason(s) given are clearly plausible.

1 = If the reason(s) given are questionably plausible.

0 = If one of the following is true:

- (a) If the reason(s) given are clearly implausible and appear to be based on a delusional premise or a serious distortion of reality, **or**
- (b) If the defendant offers no reason for his or her choice or fails to answer the question.

APPRECIATION ITEM 22

Prosecutors sometimes recommend less punishment if defendants agree to plead guilty. Let's say that the prosecutor makes an offer like that in your case. Compared to other people facing charges like yours, would you be more likely, less likely, or just as likely to plead guilty?

Circle Answer: More likely

Less likely

Just as likely

not appropriate question

What are your reasons for thinking that?

Response:

*Would you plead G to murdering those boys? You get less time
No. (why not) cuz didn't do it.
Wouldn't PG cuz have chance to prove innocence. - (off question)*

ITEM 22 SCORE:

0

1

2

005320

47

MACCAT-CA SCORING SUMMARY

Defendant: Jessie Misskellay
 Examiner: T. Darnley PhD
 Date of Examination: 6/30/04

* notes fail to learn both
 after 10 years

Ability I: Understanding	Ability II: Reasoning	Ability III: Appreciation
Item 1: <u>2</u>	Item 9: <u>1</u> <i>vs. age</i>	Item 17: <u>1</u>
Item 2: <u>2</u>	Item 10: <u>2</u>	Item 18: <u>2</u> <i>ok</i>
Item 3: <u>1</u>	Item 11: <u>2</u>	Item 19: <u>2</u> <i>ok</i>
Item 4: <u>2</u> <i>ok</i>	Item 12: <u>1</u>	Item 20: <u>2</u> <i>*</i>
Item 5: <u>1</u> <i>*</i>	Item 13: <u>1</u>	Item 21: <u>0</u>
Item 6: <u>2</u> <i>* T</i>	Item 14: <u>0</u> <i>Pres. Bgn</i>	Item 22: <u>2</u>
Item 7: <u>1</u> <i>W R</i>	Item 15: <u>1</u>	
Item 8: <u>1</u>	Item 16: <u>1</u>	
		Appreciation Total Number of "0" Scores: <u>1</u>
Understanding Total (0-16): <u>12</u>	Reasoning Total (0-16): <u>9</u>	Appreciation Total (0-12): <u>9</u>

Understanding	Reasoning	Appreciation	Impairment
<u>10</u> -16	11-16	11-12	Minimal/No impairment
8-9	<u>9</u> -10	<u>9</u> -10	Mild impairment
0-7	0-8	0-8	Clinically significant impairment

005321

MACCAT-CA: NORMS AND PERCENTILE RANKINGS

Normative interpretation	Raw score	Understanding				Reasoning				Appreciation						
		Competent		Incompetent		Competent		Incompetent		Competent		Incompetent				
		Confirmed	Incompetent	Confirmed	Incompetent	Confirmed	Incompetent	Confirmed	Incompetent	Confirmed	Incompetent					
Minimal or no impairment	16	92.5	97.5	98.5	90.4	97.9	99.1	90.4	97.9	99.1	90.4	97.9	99.1	90.4	97.9	99.1
	15	77.4	92.2	95.3	71.3	91.0	94.7	71.3	91.0	94.7	71.3	91.0	94.7	71.3	91.0	94.7
	14	60.3	86.7	91.8	52.7	82.9	88.8	52.7	82.9	88.8	52.7	82.9	88.8	52.7	82.9	88.8
	13	44.6	79.9	86.8	38.8	75.8	84.1	38.8	75.8	84.1	38.8	75.8	84.1	38.8	75.8	84.1
	12	32.6	72.1	80.3	28.6	67.7	76.8	28.6	67.7	76.8	28.6	67.7	76.8	28.6	67.7	76.8
	11	23.7	63.6	71.8	20.5	59.2	69.4	20.5	59.2	69.4	20.5	59.2	69.4	20.5	59.2	69.4
	10	18.2	53.9	62.6	14.9	51.2	63.2	14.9	51.2	63.2	14.9	51.2	63.2	14.9	51.2	63.2
	9	14.3	45.2	55.3	10.1	44.3	55.6	10.1	44.3	55.6	10.1	44.3	55.6	10.1	44.3	55.6
Mild impairment	8	11.0	37.3	47.1	6.8	37.5	48.8	6.8	37.5	48.8	6.8	37.5	48.8	6.8	37.5	48.8
	7	8.1	30.9	39.7	4.0	32.0	43.2	4.0	32.0	43.2	4.0	32.0	43.2	4.0	32.0	43.2
	6	6.2	24.9	32.9	2.2	26.3	35.9	2.2	26.3	35.9	2.2	26.3	35.9	2.2	26.3	35.9
	5	3.9	19.3	26.3	1.3	19.6	26.5	1.3	19.6	26.5	1.3	19.6	26.5	1.3	19.6	26.5
	4	1.9	14.7	20.0	0.8	13.3	17.9	0.8	13.3	17.9	0.8	13.3	17.9	0.8	13.3	17.9
	3	1.0	10.6	14.1	0.4	8.5	11.5	0.4	8.5	11.5	0.4	8.5	11.5	0.4	8.5	11.5
	2	0.6	6.1	8.3	0.2	5.3	8.5	0.2	5.3	8.5	0.2	5.3	8.5	0.2	5.3	8.5
	1	0.2	3.7	3.5	0.1	3.2	3.5	0.1	3.2	3.5	0.1	3.2	3.5	0.1	3.2	3.5
Clinically significant impairment	0	0.0	0.9	1.3	0.0	1.2	1.5	0.0	1.2	1.5	0.0	1.2	1.5	0.0	1.2	1.5

Note: The subgroup of clinically confirmed incompetent defendants includes those who had been independently rated as such by a treatment team clinician at the time the research protocols were administered. Percentile rank denotes the percentage of defendants in each of the normative groups who scored below the given raw score.

005322

OBSERVATIONS RELATED TO OTHER POTENTIALLY RELEVANT ABILITIES

The MacCAT-CA provides a standardized method for evaluating 3 primary abilities related to adjudicative competence—understanding, reasoning, and appreciation. Other abilities may also be relevant in evaluating a defendant's competence, although not all may be assessed with a structured instrument and may call for inferences based on individualized clinical observation. For purposes of comprehensiveness and convenience, some other commonly relevant abilities are listed here with space for clinicians to note relevant observations and impressions:

1. Ability to Remember Relevant Events

Observations:

Possible Impairment: Yes No

2. Ability to Communicate in a Coherent Manner

Observations:

Possible Impairment: Yes No

3. Ability to Function in Courtroom Roles

Observations:

Possible Impairment: Yes No

4. Other (_____)

Observations:

Possible Impairment: Yes No

005323

51

- Age, IQ, Education

- Shared Burden of proof.

- MR contaminated: via i/v, statements
CST ("swabs")

- lacks mastery - inconsistent.

"How get lawyer to stop."

- can't mean to tell judge

- impaired ability to learn + use information
to plead & convince judge innocent

LEARN DA has to prove Self-Defence

- impairment means no intent, Rights

STRATEGY, weigh + evaluate choices
no hypotheticals, no bigger picture of
context - impact + consequences.

- no.

- can't express a narrative (seems like lying)

Tell a story - connect facts [assist the state for
Plea Bargain - Don]

IRRATIONAL - Reasoning

not BOTH (A) nature of the right being abandoned
(B) the consequences of decision to
abandon it

- VOCABULARY + VERBAL IS INADEQUATE
- WAIS III, GROSS, PPVT III -

- UNUNDERSTANDING, Society's Rules (comprehension)

ADVERSARIAL NATURE "YES/NO/MAYBE"

STATEMENT Against lawyer's ADVICE Police Believe yes + trust him. DA prove self Del.

- ARBITRARY LOGIC = concrete (eg golf ball hits car)

mean pull a gun on anybody, then did, then not.

Investigation one night as passing - y'd see "man
long time - DA's story turned around - no sobriety
20 Q TEST. 8 DAYS LATER.

MR compromises link: How telling lawyer ev. Help case - IDK
why that important

B of MIND - gullible not see others motives. (10. def's, police
thoughts, emotions (his + hers)



WECHSLER ADULT INTELLIGENCE SCALE - THIRD EDITION

Name JAS'L MISKELL

Date 6-29-04

Examiner T. Denny PhD

Handedness (circle one): Left Right

Response Booklet

Symbol Search

Sample Items

\oplus	\ominus	\oplus	L	<	T	~	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
=	\boxplus	\cap	\boxplus	L	~	\otimes	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
~	L	=	\cap	T	\approx	\boxplus	<input type="checkbox"/> YES	<input checked="" type="checkbox"/> NO

Practice Items

≠	<	~	≠	±	<	\ominus	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
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Digit Symbol—I.L.

P.

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F.R.

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Samples

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He can't have
to be taking
any case
app to
to be
would be
same
his of for
S union
S union

'Legal help' mean - if you have probst ask to
Dumb can help you.

COMPREHENSION OF MIRANDA RIGHTS—RECOGNITION (CMR-R)

Instructions: Circle S (same) or D (different). Correct answers are underlined.

- 1. S D
- 2. S D
- 3. S D
- 4. S D
- 5. S D
- 6. S D
- 7. S D
- 8. S D
- 9. S D
- 10. S D
- 11. S D
- 12. S D

CMR-R TOTAL SCORE 10
(0-12)

How can
you get
legal help
if you are
poor.
You can't do
nothing about
it.

COMPREHENSION OF MIRANDA VOCABULARY (CMV)

Instructions: Record answer and circle score.

I. Consult. I want to consult with him. <i>(mean say more) just wanna talk with you example before you can say anything I'd like to talk it over with him. (c. talk)</i>	2 <u>1</u> 0
II. Attorney. The attorney left the building. <i>Emb that rep of you court. (anyone else than who rep in court) I guess. It's anybody that gives you good advice in court - or anywhere (could I be an atty) yeah. (my job title)</i>	2 <u>1</u> 0
III. Interrogation. The interrogation lasted quite a while. <i>Questioning ppl for long time or, trick and make saying st that is not right law - K R/Johnson who police (they not that of. I knowed of fight. 2 guys not attorney. getting to bottom. the future but diff. (How Cruzan ask. (2) 1 0</i>	2 1 0
IV. Appoint. We will appoint her to be your social worker. <i>Appoint sb to you so you can talk abt ut with ppl for you working. (Appoint mean) Talk to ppl abt your problems.</i>	2 1 <u>0</u>
V. Entitled. He is entitled to the money. <i>10K any idea inherit the money or st? To receive</i>	2 1 <u>0</u>
VI. Right. You have the right to vote. <i>Means you can do it if you want to. (any more) like a choice. whatever you choose you 2 live is that. like voting - if you want to you can - but you don't h to</i>	2 <u>0</u> 0

(Does evb have right to vote) No. Felonies so evidently it isn't the
right cuz you dt h it.
If you're a felon you can't vote or buy a gun (0-12)
(apart to Macdonald) A right is like a choice to you h any rights
as a felon you can't - until after 5 yrs. (all other) get to determine rights

CMV TOTAL SCORE 5
(0-12)

if you don't love
 in lawyer
 say can
 help me
 should be
 same -
 this is for S union
 of prison

'Legal help' mean - if you have probles + ask for
 help smb can help you.

COMPREHENSION OF MIRANDA RIGHTS—RECOGNITION (CMR-R)

Instructions: Circle S (same) or D (different). Correct answers are underlined.

1. S D
 2. S D
 3. S D
 4. S D
 5. S D
 6. S D
 7. S D
 8. S D
 9. S D
 10. S D
 11. S D
 12. S D

CMR-R TOTAL SCORE 10
 (0-12)

How can
 you get
 legal help
 if you are
 poor
 you can't do
 nothing about
 it -

COMPREHENSION OF MIRANDA VOCABULARY (CMV)

Instructions: Record answer and circle score.

I. Consult. I want to consult with him. <i>Example</i> (mean say more) just wanna talk with you before you can say anything I'd like to talk it over with him. (C. B.)	2	1	0
II. Attorney. The attorney left the building. <i>Emb</i> That pep of you court. (anyone else than who pep in court) I guess. It's anybody that gives you good advice in Ct. - or anywhere (could I be an atty) yeah (my job title)	2	1	0
III. Interrogation. The interrogation lasted quite a while. <i>Based</i> questioning ppl for long periods of time or, talk about what says st. that is not right law - K R person who police (use) not that k of. (K R person of fight - 2 guy not interrog.) getting to bottom. like interview but diff. (How) Cruzman ask	2	1	0
IV. Appoint. We will appoint her to be your social worker. <i>Appoint</i> sb to you so you can talk abt ut w/ that not future plob your holing. (Appoint mean) Talk to ppl abt your problems.	2	1	0
V. Entitled. He is entitled to the money. <i>10k</i> any idea inherent The money or st? To Receive	2	1	0
VI. Right. You have the right to vote. <i>Means</i> you can do it if you want to. (say more) like a choice. whatever you choose you'll 2 like it that. Like voting. If you want to you can - but you don't h to	2	0	0

(Does evb have Right to vote) No. Felonias so eventually it put the
 right cuz you dt h it.
 If you're "a felon" you can't vote or buy a gun (0-12)
 (can't to make a state) a right is like a ~~choice~~ ~~you~~ ~~h~~ ~~any~~ ~~rights~~

CMV TOTAL SCORE 5
 (0-12)

FUNCTION OF RIGHTS IN INTERROGATION (FRI)

Instructions:
Record answer and
circle score.

(Sum NI scores) 8
NI Subtotal 8
(0-10)

Joe's Interrogation *he has broken into!*

NI-1	(2)	1	0	<i>knows about crime</i>
NI-2	(2)	1	0	<i>see notes on sep. page!</i>
NI-3	(2)	1	0	<i>the truth.</i>
NI-4	(2)	1	0	<i>misses adversarial believe him, read him</i>
NI-5	(2)	1	0	<i>But mixed. Scored. not lawyer.</i>

(Sum RC scores) 10
RC Subtotal 10
(0-10)

Tim and His Lawyer

RC-1	(2)	1	0	
RC-2	(2)	1	0	<i>Supp to tell lawyer every thing</i>
RC-3	(2)	1	0	<i>off story makes up. files in</i>
RC-4	(2)	1	0	<i>Part dzt to how this helps.</i>

(Sum RS scores) 8
RS Subtotal 8
(0-10)

Greg's Interrogation

RS-1	(2)	1	0	
RS-2	(2)	1	0	
RS-3	(2)	1	0	

but important misunderstanding

Greg's Court Hearing

RC-5	(2)	1	0	<i>assumes guilty but ok end. so happy!</i>
RS-4	(2)	1	0	
RS-5	(2)	1	0	<i>no right against self-incriminating</i>

FRI
TOTAL
SCORE
8
(0-30)

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NOTES

Examinee's description of events, thoughts, and feelings during time surrounding the arrest, custody, and interrogation

Interview observations and mental status examination

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MISSKELLEY NOTES

Page 1 of 4

Misskelley notes regarding my evaluation. I saw him on Tuesday and Wednesday, June 29 and 30, 2004.

There are a number problems in the competency findings regarding Jessie Misskelley's competency to stand trial. **For example, he believes that the burden of proof is shared by the defendant and by the prosecution.** This is a fundamental issue. And because he believes the burden of proof is shared he believes that he must prove his innocence and that he has an *obligation to tell the truth* about any criminal activity the end of that he has no protection as a defendant not to incriminate himself. Therefore, he does not understand or appreciate his constitutional rights in the basic premise of law that he does not have to incriminate himself, it has to be proven by the prosecutor that he committed a crime.

So, unlike the Scott Petersen trial in which the defense's strategy is to sit back and to put doubt into the minds of the jurors without asserting anything about Petersen's innocence, Misskelley completely misses the point.

In addition Misskelley *misunderstands the fundamental point of self-defense.* When we were discussing aggravated assault versus simple assault and the differences between the two, he slipped into **self-defense instead of simple assault.**

For him there is no differentiation among charges of assault. Assault is assault. *He so grossly misunderstands the parameters of intent on the importance this plays in the law facts he misunderstands the self defense is not an aggravator it is a mitigator.*

He said that in simple assault ... **the D.A. has to prove that it was in self-defense, it wasn't on purpose.**

The D.A. has to prove this? Yeah.

This is in response to the question... in your own words tell me what facts the prosecutor will have to show in order to prove that Fred is guilty of simple assault.

Jesse is able to understand concepts for the moment when they are explained to him, like self-defense. But he was confused shortly thereafter.

Jesse does not understand a fundamental concept that if he took a plea bargain and pled guilty he would not be able to convince the judge that he is innocent (logical error).

The importance of this is showing back even logically mutually exclusive alternatives are not things that Jesse understands. This does not have to do with one's familiarity with the law, it just has to do with basic logic and common sense. We would expect the average person on the street to be able to figure out for himself that if you plead guilty he cannot continue to convince the judge of your innocence. They are obviously inconsistent. However, the logic escapes Jesse. This is the sort of saying the Jesse cannot be assisted by competency training. He will always have these failures of an appreciation of abstract concepts and recognizing logical conclusions.

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MISSKELLEY NOTES

Page 2 of 4

At times Jessie could not keep facts straight. On item 12 of the MacArthur he got mixed up about Fred and Reggie, who was who, several times within the same answer.

He also told me during his interrogation he was confused about the clothing the children wore after being shown the picture of the crime scene. Also about the shoestring. He simply cannot keep facts straight.

That item 13 in Jesse slipped off the point of the question. He was asked which of two facts would be important to Fred's lawyer wanted to know about Fred's feelings at the time of the fight. The fact was Fred drank a lot of beer before the fight. Jesse gets off the point why that would be important with respect to his defense and telling his lawyer to the he begins to talk about the fact that the police need to know every detail of what happened before the incident, and even goes so far as to say that in the emergency room doctors would smell the alcohol anyway. This demonstrates an **inability to stay with the point** regarding his defense and how to craft his defense.

Importantly, in item 14, regarding the two choices of plea bargain, the question is asked... What else would you want to know before you advise Fred? Jesse states he would take the six months, he ignores the point of the question which asks what information he would want to gather to make a decision or advise his friend in making a decision. When he's asked again what else he would want to know? His only question is... **Was all this worth it? Again, it shows a complete lack of understanding and appreciation of the premises and infrastructure of a legal defense and the construction of a legal defense.**

Again, fundamentally Jesse's understanding of what he should do in plea bargain situations is skewed by his belief that a guilty defendant has an obligation to incriminate himself and "do what is right." It is secondary that the defendant would get a lesser sentence.

In the last section of the MacArthur, Appreciation, in which Jesse's specific situation is discussed, he had **difficulty staying on track with his case and not talking about hypotheticals. He sought to generalize.** This is a means to keep an answer *relative*. It is a masking technique so that an answer cannot be judged to be right or wrong because "it depends." In the end, Jesse has a few definite opinions about his case. He doesn't understand his case adequately. He understands that he has a chance to go back to court and prove his case.

At times Jessie would **give an answer that changed as he explained.** For example, when he was asked about being compared with other people who are in trouble with the law, do you think that your more likely, less likely, or just as likely to be treated fairly by the legal system... Jesse answers just as likely. He says he thinks that because it doesn't matter... it depends on who you are... how the police can treat you. I asked him to explain this. He says if you are a known person to the police and have had involvement with them before, they will come to you regardless. But if you're someone who is not in trouble... I redirect him I'm talking about his case... he said I'm always in trouble... I

005337

asked, so less likely or just as likely?... he said he now is **less likely** to be treated fairly because you're in trouble with the law and they're going to come to you every time. *So he answers the question just as likely because he is thinking about a hypothetical and not his specific case. It is impossible for anyone talking with Jesse to understand his meaning without continuing to follow through with him.*

Similarly, in the Appreciation item 20 he says that's he is less likely to be found guilty but it depends on what state you're in. Again, I asked him about his case.. He says he would be found guilty because he has been in trouble with the law. But he has been found guilty already! However in Jesse switches and says now he has a better chance because he can still prove he's innocent. "There is evidence that will clear me." What is important in his answer is that there really are three parts.

- First he says it depends what state you're in and what kind of record you have with the police.
- Then he says he was in trouble with the law so "I know I would be found guilty."
- And then in the third part he says he has a better chance now because there is evidence that will clear me.
- And, actually, there is a fourth part in which he says he has a better chance now the better being, not better than his original trial, but the better because going back to court with the new case is better than being locked up the rest of his life. At least he has a chance.

This is very slippery and subtle misunderstanding and me as communication that is typical of Jesse.... and the follow-up question, appreciation item 21, says he believes he will get less punishment if he's found guilty on appeal, after I work through the question with him... will they reduce your sentence?... he says I never saw it happen. It's hard to say. I never saw no one in my situation. **So the fact that he has an opinion he would get less punishment makes no sense and I asked him about that...** he says because some people... when I ask him why you would get less punishment? He finally says I don't know. I really don't.

This brings up the issue that short questions that have an answer provided are easier for Jesse and he is more likely to answer in an attempt to look smart and informed, when and if he is asked to provide information and a rationale for his answer. **Therefore the waiver of Miranda rights with someone like Jesse is meaningless.** He doesn't understand now he didn't understand then in the fact that he says he understood is just like his giving answers on the MacArthur. He simply throws out an answer but he doesn't reflect what he knows, his opinion, or what he is thinking. **Without substantiation (in his own words) what someone like Jessie Misskelley says about his waiver of his Miranda rights is meaningless. I AM ABSOLUTELY CERTAIN OF THIS.**

I AM SEEING HIM OVER 10 YEARS LATER, AFTER HE HAS HAD CONSIDERABLE EXPOSURE TO LEGAL CONCEPTS AND HE IS 28 YEARS OLD. WHEN HE IS ARRESTED HE IS ONLY 17 YEARS OLD, EXTREMELY

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**NAÏVE, VULNERABLE, AND UNSOPHISTICATED IN THE ADULT WORLD.
EVEN 10 YEARS LATER HE DOES NOT UNDERSTAND.**

Regarding competency... there was a story on the Pine Bluff radio station on June 30 about an inmate in the Varner unit, the Super-max section, who is being charged with the death penalty as a result of killing another inmate. I mentioned this to Jesse in the morning. I asked if he understood "capital murder" he did he know what that meant. Again, and consistent with his failure to differentiate among the levels of criminal charges, **Jesse said he did not see any difference in that if you kill one-person or kill four or five it's all the same. He sees no difference.** This is a masking technique because he argues on moral ground rather than legal ground. And it allows him to "escape" the legal question about the difference between "capital murder" and other kinds of murder charges.

Regarding Miranda rights... for Jesse the legal right means you can choose if you want to. We have very interesting discussion about the prisoners in Iraq. According to Jesse you have no rights as a prisoner. He was absolute about this. I asked him about the prisoners in Iraq. He said they have no rights as a prisoner. I asked him why everyone was making such a big deal about the way they were treated, why would anyone care if they had no rights? He cannot resolve that in doesn't know what the up the law is about. I make it a more personal question. But what if they stop feeding you at the prison. At first he says he can't do anything about it, but then interestingly, he says he would sue them. Again, this is logically inconsistent. How can you sue the warden when in prison if you have no rights? At this point, a dim light bulb goes on for Jesse who says well you do have some rights. Clearly, he fails to recognize his rights as a prisoner on last/until it is brought to very concrete immediate level. If he were to be pushed further, I am certain, although I didn't ask him, that he would waiver on his rights as a prisoner cannot see them as rights.

In item number 7 of the MacArthur the issue comes up if I Fred pleads guilty to simple assault what will he admitted to having done and Jesse's answer is that he will have to admit he hit him with the pool stick. I ask anything else? He says, admit it was in self-defense. This shows a confusion that Jesse has about simple assault and certainly about self-defense.

He then he is asked if Fred pleads guilty, can he still try to convince the judge that he's innocent? Jesse answer is yeah, I guess. In the context of these questions in the court in this demonstrates Jesse's poor understanding of the system. It might be argued in Jesse's case that after being found guilty, he is appealing his case. However, I this is very different than the question which is asking about Fred pleading guilty to simple assault. Also if someone were to say ... well he could, on appeal... but Jesse doesn't say that.

One issue about the validity of these findings is that Jesse is able to use the information from the questions that inform the subject to taking the MacArthur. In other words, when he is given the information, he comes back with an improved answer. He is not trying to 'play dumb.'

005339

Misskelley: Grisso Test

Notes from Grisso's test: **Instruments for Assessing Understanding and Appreciation of Miranda Rights.** Who could have this test on the second day, June 30, 2004.

COMPREHENSION OF MIRANDA RIGHTS (CMR)

You do not have to make a statement and have the right to remain silent.

- "You have the right to remain silent and you don't have to talk to anybody.... means you don't have to give out a statement and you don't have to talk to nobody."
- Anybody? Anyone in particular? "No, goes for anybody."
OVERGENERALIZED, NOT SPECIFIC TO POLICE INTERROGATION LACKS RATIONALE FOR "RIGHT TO REMAIN SILENT"

Anything you say can and will be used against you in a court of law.

- "What ever you say they will bring it up against you in court. They will use against you."
- What do you mean, use against you? "What ever you say they can bring it up in court."
- They? The police. (UNDERSTANDS "TATTLETALE")

You are entitled to consult with an attorney before interrogation and to have an attorney present at the time of the interrogation.

- "Before the police can talk to you can have have an attorney with you before they ask you any questions, but if you give up that right they can keep on.. It means you can have an attorney before they question you... I didn't have an attorney before interrogation... (THIS IS A 2-POINT ANSWER).
- Why not?... I don't know. I just didn't have one....
- Did you give up your rights?... "Since I was under age my dad was supposed to sign a form--he didn't sign it."...
- Why did you give up your Miranda rights? "Cuz I had nothing to hide--all I knew was what I was told." (NOTE HE DOES NOT CHALLENGE THIS PREMISS, IT IS THE SAME FINDING BY HILL IN HIS ANALYSIS OF JM'S CONFESSION)

If you cannot afford an attorney, one will be appointed for you.

- "If you don't have the money for an attorney then the police or judge will appoint one to you."
- The police will appoint an attorney for you? "Yeah, or the judge."
- Either one? "The judge gets the say so."

SUMMARY OF THE FIRST SECTION

Jesse does not have an understanding of the right to remain silent as it applies to his legal situation with the police and as it is an indication of his right against self-incrimination. He is too general in his description saying you don't have to talk to *anybody*. He is not specific to the legal situation. Yes, it includes the police, but it is too broad and too

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imprecise. This wouldn't be much of a problem for another defendant, except we know Jesse has very poor understanding and defense of his rights. (THERE are no instances of Jesse asserting or defending his rights at any time in any manner).

- Regarding the fact that **anything you say can and will be used against you in court...**
- Jesse seems to have very good understanding that anything he says will be brought up in court. He has also had a personal experience of this happening when he made statements to the police that were taped and he was surprised that they were played in court to even though he said he would not want to testify. So he has concrete in the immediate experience of this.
- Also it is the "tattletale" Miranda right which is familiar even to children and is a relatively easy thing to understand.

Regarding his being entitled to consult with an attorney before interrogation... Jesse seems to understand this rights more now than he did when he was 17 years old. At that time he was relying more on his father, who either was unavailable and/or unwilling to support him, or was never contacted by the police and/or was kept from the being a knowledgeable advocate for his son.

- It will be important to look into the circumstances of the father's involvement in the day of arrest and interrogation.
- Was he called?
- What would he have done?
- Was he involved in other interrogations (eg, school, other petty crimes) with Jesse?

Also with this it brings up a **theme** that Jesse uses throughout. He is **innocent** and all he knows his what was told to him either by the young man who worked as an emergency search and rescue person or by the police who fill Jesse and with details. **He felt he had nothing to hide.** Additionally, Jesse believes he has the obligation to incriminate himself if he did have something to hide.

Jesse would be an ineffective guilty defendant who had something to hide from the police. He would be unable to keep it from the police for very long. He is not very skilled, and would be easily (and quickly) broken by the police if he were truly guilty. It wouldn't take much to break down his alibi, story, false explanations, excuses, etc. The fact that it took over 12 hours to break him down is indicative of the fact that he probably was fed information and they were shaping his confession during the "interrogation" rather than breaking down someone who was guilty, getting him to admit his guilt and participation. I doubt Jesse could resist the persuasive force and tactics of the police if you're guilty for so long a time. Jesse's confession has a different quality. He is not denying a lack of involvement. He is trying to get (along *with* the police) a coherent story. He ends up trying to help them as he incriminates himself.

Finally for the fourth part if you cannot afford an attorney one will be appointed for you... and Jesse is a bit unclear on this. Again he has a theme that comes up regularly that the

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police will I get a lawyer for him. It speaks to the mushiness of his understanding regarding the adversarial nature of the police interrogation and his role as the defendant. The Jesse they are much more together in the center and have a **shared burden of proof** so that **it is the police's responsibility to get a lawyer for Jesse and to make sure his rights are protected, it is the responsibility of Jesse to tell the truth.** However, he does recognize that this juncture that the judge wields a lot of authority and has the final say so. What is interesting about the last right, to have an attorney if you can't afford one, it would seem that in Jesse understands this concept until we get to number 11 in the next section, **RECOGNITION**. In this section he is asked if the statement If you cannot afford an attorney, one will be appointed for you is the same as **YOU CAN GET LEGAL HELP IF YOU ARE POOR**. Jesse says those are different. He asks, "how can you get legal help if you're poor? You can't do nothing about it." I asked him what the term "legal help" means and he says "if you have problems and ask for help somebody can help you..." finally after about five minutes of going over this territory with Jesse he says, "if you don't have money to pay for a lawyer they can appoint one to you." He has come to a better understanding and concedes: "It would be the same." Again, this is after five minutes of probing and redirecting.

This is an interesting feature about Jesse that he knows certain facts and information in one setting or situation but there is times when generalization fails. This is such an instance.

Summary RECOGNITION (same/different) section, the 12 questions using same/different responses. In 2004, after over 10 years exposure to the legal system, Jesse misses only 2 of the 12 questions. [The first was already discussed.] The other item he misses is question number 2. Regarding the question: **YOU DO NOT HAVE TO MAKE A STATEMENT AND HAVE THE RIGHT TO REMAIN SILENT.** Question 2 asks is this the same as: You should not say anything until the police ask you questions? Jesse says these are the same. Again, reflecting the passivity and permeability of his understanding of his rights as the defendant. What good is it to assert your right to remain silent if it exists only when the police are not asking you questions? but breaks down when they begin to ask you questions.

COMPREHENSION OF MIRANDA VOCABULARY CONSULT. I want to *consult* with him.

- "Talk."
- What do you mean, can you say more? "Just wanna talk with you."
- Can you give an example? "Before Jason can say anything I'd like to talk it over with him. (Jason is his codefendant). ..."
- I ask: if a couple of guys are talking about the Laker's game, is that *consult* also? "Yeah. Discussing."

Jesse does not distinguish *consult* from "talking with" in terms of advising, he defines it in terms of conversing, talking, discussing... but not advising.

This is a 1-point answer in which discourses involved, but without the notion of aid, advice, or recognition of a directive use of the discourse such as pursuant to a decision.

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ATTORNEY. The attorney left the building.

"Somebody that represents you in court." (Seems he is talking about a defense attorney only, I want to know if he understands that the prosecutor is also an attorney.) I ask: Is there anyone else, other than the person who represents you in court, who is an attorney? "I guess. It's anybody that gives you good advice in court... *or anywhere.*" To clarify: Could I be an attorney if I gave you good advice? "Yeah." To insure that he does not mistakenly think I am an attorney, I review with Jesse my job and title, he understands that I am a doctor, a psychologist, who is evaluating him for his attorneys. He says, "You're a doctor. You're *bound* to know something about the system or the law and know right from wrong." He knows that I am a professional. (Note: he is depending on me to tell him right from wrong also). Therefore, by Jesse's definition, I, too, would be "a lawyer" because I am part of a professional category, and someone who could give him informed advice."

This question/answer has three elements. A *lawyer* is someone who: is empowered to act in the interest of another person and legal proceedings; someone a specially trained in law and legal processes; and/or in accurate synonym like public defender, legal counsel, etc. Jesse's answer is scored one point because it contains only one of the three elements listed, an attorney is somebody who represents you in court. While Jesse's answer includes a correct example, his criteria is too inclusive. It shows how easily manipulated he would be because he could be told virtually any type of a professional is a lawyer and he would not have any criteria to argue.

INTERROGATION. The interrogation lasted quite a while.

"Questioning people for long periods of time or tricking them into saying things... saying something that is not right." ... I asked who that would be? Jesse says, "the police." Anybody else? "Not that I know of," he says. I give the example of a school principal after a fight, asking 2 guys about what happened... is that in interrogation? He said that's not interrogation it's just getting to the bottom of what happened. "It's like an interrogation but it's different." How is it different? "Because when you ask about the fight it doesn't take that long." (Jesse is equating interrogation with duration... interrogations take a long time.) So, I ask, if the police talk to you only 10 or 15 minutes that's not an interrogation? Jesse says "No."

Clearly the criteria and Jesse is using has to do with the length of time of questioning. Again, this speaks to his lack of understanding of the adversarial nature of his interaction with the police. Even a very brief period of questioning by detectives can be an interrogation. This distinction escapes Jesse.

Further, he can they easily confused and manipulated to believe that casual contacts are sure to questions, more informal are nothing to be concerned about. Further, when he says he does not want to testify, but he will allow his statements to be tape-recorded, this is indicative of his confusion and lack of understanding of how serious his statements are in the legal context..

Further, when he is shown pictures of the crime scene and asked to narrate the details of the crime scene, Jesse does so without recognition of the seriousness of his statements and how aggravating and "bad" this looks. To him it is merely an exercise to please the police and accommodate their requests. It doesn't make sense to him, but if

*not purpose
concrete*
long
time

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that's what they want... many things don't make sense to him, this is only one more example.

Clearly, he does not understand the significant legal implications of his giving the police an accurate description of the crime scene or making other statements that are inherently incriminating. Jesse fails to recognize the incriminating nature of the statements were made to the police in this context, in this situation. It is over his head.

APPOINT. We will *appoint* her to be a social worker.

"Appoint somebody to you so you can talk about what ever problem you're having." What does appoint mean? "Talk to people about your problems."

0-point answer. Does not include the idea that someone is named, selected assigned, designated, etc.

They will appoint an atty.

ENTITLED. He is *entitled* to the money.

"I don't know."... You have any idea what it means? "Inherit the money or something? To receive"...

technically 1-point = idea of receipt without notion of qualification. (but this comes from the clue sentence ... better: "he is entitled to a day off")

RIGHT. You have the *right* to vote.

"It means you can do it if you want to."... Can you say more? "Like a choice. What ever you choose you have to live with that. Like voting... if you want to, you can, but if you don't..., but you don't have to."... Does everybody have the right to vote? "No. Felonies (can't) so evidently it isn't the (sic) right because you don't have it. If you're a felony (sic) you can't vote or buy a gun."... What about going to McDonald's, you could go there whether you want to or not, making that choice? "A right is like a choice." ... Do you have any rights as a prisoner or inmate, any at all? "No." I asked him about problem in the prison in Iraq (Abu Grahb). He had seen all the news stories about the abuse of Iraqi prisoners. What was all the concern and attention that story was getting if prisoners, especially Iraqi prisoners have no rights, who would care they are getting abused, so what? He has a difficult time trying to answer this question, and doesn't know why the story created such a furor. I make it more concrete and ask what would happen if they stopped feeding them at the Varner unit. **Jesse said he would sue them.** I ask what he would be suing them about if they don't have any rights? He doesn't get the logical inconsistency of his own statement. His explanation has more to do with a difference between prisons and prisoners and humane treatment "should treat that way" versus "rights." When I ask him to explain the difference, he can't.

He gets 1 point for the idea of being allowed to do something, without the notion of protection of privilege "you can do it if you want to".

FUNCTION OF RIGHTS IN INTERROGATION

I tell Jesse I'm going to show him several pictures of people doing things and that after each picture I'm going to ask him questions about what he thinks the people in the picture could be doing and thinking and feeling. I ask him to give me just a short answer.

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Picture 1: JOE'S INTERROGATION

I tell them this is a picture of a guy named Joe who is in the police station. There has been a crime in the police want to talk to Joe.

What is it that the policemen will what Joe to do? Jesse answers, "Ask him a question about a crime. If he knows anything."

Finish this sentence the police think that Joe...?

Answer: "The police think that Joe knows something about a crime."

What is the most important thing the police might want Joe to tell them?

Jesse answers, "the truth."

The truth about what?

"About what ever he knows about the crime."

How are the policemen probably feeling?

"They're probably feeling like they believe him."

Why do they believe him? "Because they trust Joe."

Why would they trust him? "I don't know."

How is Joe probably feeling?

"Scared because he is being questioned by (numeral to) police without an attorney. no \$

Why not get one? "He probably ain't got the money... so they should ask him no questions."

What about appointing an attorney, we talked about that earlier? "If he doesn't have an attorney the police should go find one."

What is Joe supposed to do? He's not supposed to talk, not answer their questions.

If the police are asking questions and Joe doesn't have an attorney what should he do?

"Sit and be quiet."

Anything else? "No, if he is not under arrest he should not answer, and if he is under arrest... he should still have someone with him, a parent or lawyer... but we don't know how old he is."

Should Joe ask for an attorney or should the police get him one? "He should ask for an attorney."

(I have a note that Jesse is someone who can be pointed along to a correct answer and lead, but he is passive and ineffective on his own. (See the 20 Questions Test). He doesn't initiate steps to solve problems, as asserting his right are asking for lawyer. Generally he depends on others, such as the police, to look out for him and had his best interest in mind. However, Jesse can follow through a problem-solving process if it is initiated for him and each step is laid out so that it is a small stretch for him to answer the question correctly.)

It is Jesse's understanding that if the person is not under arrest he shouldn't answer any questions, also that the police cannot *hold* a person who is not under arrest.

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TIM AND HIS LAWYER

It is explained to Jesse that in this picture this is Tim. He is in the police station because the police think he broke into a house. The police have not questioned him yet. Here Tim is meeting with his lawyer. The lawyer is asking to him some things before Tim goes to be talk to buy the police.

What is the main job of the lawyer?

"To do all the talking for his clients and help him out."

How? "Do whatever his client tells him he should believe him. Ask witnesses."

And if Tim is not innocent? What is the job of the lawyer in that case? "To get a lesser sentence... come to some kind of agreement."

With? "The judge,... no, the prosecutor."

While he is with his lawyer, what is Tim supposed to do?

"I don't know... he supposed to tell his lawyer everything."

Anything else? No.

What is the main thing to his lawyer will be talking to him about?

"About the house he broke into."

Imagine the Tim as lawyer is saying I want you to tell me exactly what you did in tell me the truth about what happened. Then Tim tells him that he did the crime. Why would Tim's lawyer want to know that?

"That way he can help him out."

How? "Because that's what he is there for, and he wouldn't have to leave out nothing."

[I am confused] How does this help his case? "I don't know how it helps him out - (it) gets him some lesser time."

- *(Jesse provides no link between the fact that Tim tells him he did the crime and the way this would help him out. He says he would get lesser time but he doesn't explain how the process works. He doesn't even offer pity or clemency for being honest telling the truth, etc.)*

GREG'S INTERROGATION

This is Greg. The police have taken into the police station because they want to talk to him. He stole some money from a store but the police are not sure he did because nobody saw Greg do it. They are getting ready to ask him questions. Greg knows he doesn't have to talk if he doesn't want to, and he is trying to decide whether to talk are not.

Finish this sentence. If Greg decides to tell the police about what he did, then the things that Greg's says...?

"It will hurt him. When he goes to court. They'll use it against him."

If Greg decides not to talk what is the most important thing the police are supposed to do?

"Leave him alone. Send him on his way."

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Can they hold him? "No... if you don't say nothing and they don't know if he stole the money they have no right to hold him."

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