Testimony of Richard Coons

DIRECT EXAMINATION
13
14 BY MR. S. PRESTON DOUGLASS:
15 Q. Would you please state your name.
16 A. Richard E. Coons, C-O-O-N-S.
17 Q. Are you a medical doctor?
18 A. Yes, I am.
19 Q. Are you a psychiatrist?
20 A. Yes.
21 Q. Where do you practice psychiatry?
22 A. Austin, Texas.
23 Q. And how long have you practiced
24 psychiatry in Austin, Texas?
25 A. Twenty-two and a half years.
Sandra M. Halsey, CSR., Official Court Reporter
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1 Q. With respect to your educational
2 background in medicine, would you please tell the jury
3 what your training and background is.
4 A. Yes. I attended the University of
5 Texas medical branch in Galveston, graduated with a
6 Doctor of Medicine Degree in 1968.
7 I did a rotating internship at the
8 University of Cincinnati, Cincinnati General Hospital in
9 1968 and '69. That basically means rotating through
10 surgery, internal medicine, pediatrics, OB/GYN, emergency
11 medicine and so forth.
12 Then, when I completed my internship,
13 I moved to -- I came back to Galveston and did a
14 three-year general psychiatry residency. Basically, that
15 is specialty training in my area, which has to do with
16 the diagnosis and treatment of nervous and mental
17 disorders.
18 When I completed the residency, I was
19 chief resident in the department of psychiatry and
20 neurology in 1971 and '72.
21 When I completed my medical training
22 in psychiatry, I then served as a major in the United
23 States Army Medical Corps at Fort Sam Houston in San
24 Antonio. I ran the drug and alcohol program for Fort Sam
25 for two years, and was a psychiatric consultant for
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1 Brooke General Hospital.
2 When I completed my military duty in
3 1974 I moved to Austin, where I have practiced ever since

in general and forensic psychiatry.
I am board certified by the American
Board of Psychiatry and Neurology as of February, 1975.
My medical license is on file with the district clerk in
Travis County where I practice.
Q. Do you have any privileges at local
hospitals in Austin?
A. Well, I'm not hospitalizing at the
present time. I took -- I am in a clinic of 12 doctors
and several of us just do office practice and don't do
hospital practice.
Q. All right. In the course of your
experience in forensic psychiatry, have you had occasions
to testify in court?
A. Yes.
Q. And, can you tell the jury perhaps how
many times you have testified in court, and on what
subjects you typically testify in court and render
opinions for juries on?
A. Since 1974 when I moved to Austin, I
have done virtually all of the criminal forensic
psychiatry in Austin. That is to say, I evaluate people

that are charged with crimes to determine whether they
are competent to stand trial, whether they were sane at
the time, things of that nature.
I also have some consultation in the
criminal area and various jurisdictions, and in fact, I
have done some evaluations for Kerr County, Fredricksburg
and other places around.
And I also consult in civil litigation
cases where there are issues of whether someone was --
had sustained a mental or emotional injury or brain
damage or something of that nature.
Q. Okay. Have you --
A. That is in addition -- excuse me -- to
my clinical practice of treating patients.
Q. In your clinical practice have you had
occasion to treat people who have been the victim of or
the witness to traumatic injuries or events?
A. Yes.
Q. Are you familiar with the body of
literature that deals with the responses of people who
are either victims of or witnesses to traumatic events?
A. Yes.
Q. Dr. Coons, have you been asked to come
and talk with the jury about, as an expert, on the issues
of memory?

A. Yes.
Q. Is there a body of research and accepted legal treatises and medical treatises that deal with memory?
A. Yes.
Q. And how it relates in a forensic field?
A. There's a significant body of research and data available.
Q. Are you familiar with that research and data?
A. Yes.
Q. And, I want to ask you as it relates to traumatic events, are you aware of research that relates to memory and the effects of memory?
A. Yes.
Q. Now, if you will, with respect to the issues of memory, can you give the jury an overview as to the aspects of memory, how memory is formed and how memory is retained?
A. Yes. Memory -- people who write about memory and who study it divide it into either three or four different categories. I'm going to do the four category description.
First of all, a person perceives

something. They see it, they smell it, they hear it, they touch it, and in some way they experience something. That is the -- what we call perception.
Then, that having been experienced that way it is then processed in the brain, in some way. It is assessed, it fits in with other data that you have, or it doesn't fit in, or there are feelings associated with it, unhappy feelings, fear, pleasurable feelings, anger, or neutral, like numbers, or something of that nature. And then it is stored.
Now, there's a lot of research about how memory is stored, but basically the brain works by electrochemical means, and so, there is some electrochemical phenomenon that is going on in the brain in different areas. We know that certain types of data are stored in different areas of the brain. So you have the storage part.
Then you have retrieval of memory. That is, someone asks you about something, you recall it

or you have a spontaneous recollection, or you see something that reminds you of something, that is called retrieval. So we have initial perception, processing, storage and retrieval.
Q. Now, that is how the information is brought into the brain and how it is stored; is that

right?
A. Stored and then of course the issue of retrieval.
Q. All right. Now, can you tell the jury, is there a wide range of literature and accepted material on how traumatic events affect memory?
A. Yes.
Q. Okay. Can you tell the jury about some of the literature that you have reviewed and you think is authoritative on memory?
A. Well, I would say there are two people who have written extensively, actually, probably three, about memory. One is a man named Bessel Van der Kolk. He is an MD at Harvard University and he has done a huge amount of research on data and trauma, and how trauma and memories are stored in the brain, how there is an interruption if something is overwhelmingly traumatic to someone and they may not actually store it, or they may not be able to retrieve it for some reason.
Elizabeth Loftis is a psychologist at the University of Washington in Seattle, and she is a psychologist who has done a lot of research on altered memories, where people can have memories of things that actually never occurred, or they will have a memory that has been changed by some intervening event.

There is also a man named Rogers, who is a PHD, who has done a lot of research on this and he talks about how memory is changeable. So a person can have a different memory at different times about an event that they have, to some degree, perceived.
Q. With respect to trauma and how it affects a memory in a person's memory as they perceive a trauma?
A. Well, if you think about anxiety or traumatic anxiety. If you think about a little bit of anxiety, a little bit of alertness can improve memory, a little bit. That is, your attention is drawn to something and that can cause you to focus on it, it has

an emotional impact to you, and your perception, processing, storage and retrieval will be improved because of that.
If you go beyond that kind of medium level of anxiety associated with it, and you get into trauma, we see the memory qualities and the intensity of it drop off.
Until you get to extremely overwhelming trauma to an individual where they may blot it out, they may have an amnesia for what has happened, a traumatic amnesia, that they simply do not store it properly or it is cut off from the feelings associated

with it or it is altered in some way.
Q. When a person experiences trauma of a significant nature -- well, first, when we talk about this kind of trauma, can you describe for the jury, you know, in examples, what sort of trauma you mean and how does that affect in terms of, what types of trauma can cause someone to have memory lapses or memory problems?
A. It's fairly well known in abuse of children, children will blot these things out and not recall traumatic events. In adults, it would tend to be something where your bodily integrity is threatened, death of yourself, or some loved one, or someone important to you. Annihilation type things would be an example.
Q. Is that kind of trauma frequently found in automobile accidents?
A. It certainly can be, I don't know about -- it's not a high percentage. But, you know, it's not -- you wouldn't expect it in a fender-bender, but in a situation where family members might be killed, then it would -- it can have partial or complete amnesia for those events.
Q. Okay. And certainly, Doctor, would you agree, that that type of trauma could be induced from attacks or witnessing attacks either to yourself or a

loved one?
A. Yes.
Q. When trauma confronts the memory and the person's mind tries to recall events that have trauma, or trauma-induced events, how does the mind work? How does it react and how does the mind recall those events?

A. I'm afraid I have no idea what you have asked me.
Q. Well, let me ask you this: How does a person who is the subject of a traumatic event, how does that person recall things? For instance, are you familiar with the term dissociation?
A. Yes, sir.
Q. Okay. Can you describe dissociation to the jury?
A. Dissociation is a psychological defense mechanism. What it does is it causes a person not to experience something that would be overwhelming to them.
In other words, emotionally, psychologically traumatic. They dissociate it. They do not perceive it in terms of what's going on. They can dissociate part of it, they can dissociate the feeling, they can dissociate the experience of it, but it's a

psychological defense mechanism. It protects the person from overwhelming psychological trauma.
Q. Okay. In what kind of -- based on your training and experience -- in what kind of situations can a person have those dissociation factors in their memory?
A. Well, it would vary from person to person. Whatever would be catastrophically overwhelming to a person could potentially cause dissociation. Some people would not dissociate, other people would be a lot more vulnerable to it.
Q. Are you familiar with a phenomenon that occurs in memory lapses and dissociation, where a person may recall a traumatic event and that traumatic event is recalled, in effect, like snapshots? Are you familiar with that?
A. Yes.
Q. Can you explain that to the jury?
A. Well, memory is not like a videotape. We have discovered that with research. You don't -- if you are thinking back to last Friday's football game or the Super Bowl, you don't start at the kick off and go through all the beer commercials and so forth to the end. You have recollections perhaps of special plays that

occurred or the touchdown or something, and you have these snapshot-type vignettes, although they may be action, they are shorter in duration than the whole game. So, the mind doesn't work like a videotape. Now, when people try to remember something, they try to go back and piece it together as if it were a videotape, but that is not the way the memory works.
Q. So, am I correct, Dr. Coons, that a person remembers, in effect, snapshots in different parts of the traumatic event?
A. They can. I mean it depends. You know, it depends on how traumatic it is. If it's lightly traumatic, they may have a good recollection of it, if it's extremely overwhelming, they may have no recollection of it, or they may have periods that they -- or incidents that they recall of it. And those would tend to be not the most traumatic portions.
Q. So what you mean by that is, the portions that the person would recall are the -- those parts that are, in effect, removed from the source of the trauma?
A. Yes. If the trauma is such that it is overwhelming to the person, the parts that will be removed are the parts that would have overwhelmed them.

Q. Okay. Can you give the jury examples that illustrate that type of dissociation?
A. A traumatic event where a person's children have -- are in the house and they wander around through the crowd asking, where are my children, yet, they know they are in the house, they have heard them scream or something of that nature. Where a person is overwhelmed by what's -- in other words, to actually perceive what was going on would be psychologically overwhelming to them so they dissociate it and they don't recall it.
Q. Okay. Now, what phenomenon occurs with the mind when it experiences those snapshots of memory, but there are gaps, does the mind accept very well gaps in memory?
A. Well, the mind tries to fill in the gaps so that our experiences in life make sense. And people tend to do that with things that are familiar to them.
If you go to -- if you talk with someone who is becoming senile and you ask them what they had for breakfast, they may tell you bacon and eggs

because that is what they have had 80 percent of the time in their life, but actually they may have had cereal or something for breakfast that morning. They are

confabulating. They are trying to fill in the gaps. The term is confabulation. And you will see that both in people with organic brain damage or people who have an imperfect memory.
They will try to make it make sense.
They will try to fill it in with data. The data can either be imagined, it can be from their life at another time, it can be from suggestions made to them by other people, "Did this happen? Well, I think maybe that is what happened." And then, they take that in as a piece of data now that is -- they assume is a part of their memory.

Q. Am I correct, Dr. Coons, that what you are trying to tell me is that the mind will struggle to fill in those gaps?

A. Yes, it would.

Q. All right.

A. The mind does not like a vacuum, the mind does not like for things not to make sense, so it will try to fill in those gaps.

Q. Have you seen, in your clinical experience, examples of that?

A. Yes.

Q. Okay. Can you give the jury an example of traumatic situations where the mind has tried

to fill in gaps?

A. Well, in mistaken situations where -- I was involved in a case one time where there were five witnesses to a shooting. And all five people, only one person had an ax to grind, that was the person who shot the other one. The others are just bystanders, and they all had significantly different stories about what happened.
And it was a situation in a convenience store, where one man shot another. And the witnesses had some people on this aisle, sometimes they were on that aisle, or they had them standing this way or this way, and they had them saying different things, some of them, the witnesses, had them close together, others had them far apart.
And they were -- all four of those

17 uninvolved witnesses, with no ax to grind, had
18 significantly, materially different stories about
19 something that happened in the morning in a convenience
20 store.
21 Q. And that was after they had been --
22 this was within close proximity to the event?
23 A. Oh, yes. I mean they -- the police
24 showed up right after this and split them all up and took
25 a statement from them and everybody's statement was

1 different. They had been through a traumatic situation,
2 a shooting, and a man is dead in a convenience store, but
3 most of them thought it had to do with the robbery and so
4 forth. It actually wasn't, it was -- it wasn't a
5 robbery.
6 Q. And, is that frequently like that game
7 you will see frequently played at birthday parties or
8 something, where one person will tell a story and then
9 you whisper it to the next person and to the next person
10 and the next person and when that story has made the
11 complete circle, it's different from when it started?
12 A. Well, that's a game called Gossip.
13 And there is a significant difference in gossip. But
14 what has happened is these people have their own set of
15 ideas about what is going on here and then they try to
16 tailor -- their memory of the event is altered by their
17 own perceptions, their anxiety.
18 These people in the convenience store
19 thought they were in grave danger themselves with gunfire
20 going on, so it distorted their memories.
21 Q. How is a situation resolved? How do
22 you resolve a situation where you have different stories,
23 from dramatically -- from the same perspective in effect,
24 people sitting in the same room, how do you resolve that?
25 How do you explain that?

1 A. How do you explain it?
2 Q. Well, how do you resolve the
3 differences between these? Do you chalk it up to
4 differences in perceptions or how do you resolve that?
5 A. Well, they can't all be right. As a
6 matter of fact, maybe nobody is right. Maybe they are
7 all incorrect because their stories are all different.
8 But you know, you may not be able to
9 find out exactly what went on from those witnesses. They
10 have a memory of it and whatever their memory is belongs

to them, correct or incorrect.
Q. Is it true, Doctor, that many times an eyewitness or even a victim can be the worst person to relate an event?
A. Yes. Particularly in traumatic situations.
Q. That, in effect, would be the last person you would want to try to explain what happened?
A. Well, I mean, you would want to hear what that person said, but you have to take into consideration that they -- that their memory may be distorted of it, as it often is.
Q. Earlier you talked about the type of things that can lead to the altering of memory when memory is trying to fill in the gaps.

A. Yes.
Q. Okay. As you said, the mind kind of wants to run like a videotape, but the mind doesn't run like a videotape.
A. That's right.
Q. Then you gave some factors that when someone tries to fill in the gaps in their memory, what can happen. Can you go back through those factors to the jury? And in particular, I want you to go into suggestibility.
A. Well, I mean memory is made up of data. Where the data comes from, I mean, you could dream it up yourself, somebody could suggest it to you, it could be an actual memory, it can be a distortion, distorted memory of what actually occurred.
But, we know, for example, there is a concept of recovered memories, which are, in fact, not correct, or the -- you can produce memories in people of situations which absolutely did not occur.
That is Elizabeth Loftis' work at the University of Washington. I mean she has demonstrated over and over again, how you can suggest to someone, show them a videotape of a situation with cars at an intersection and ask them, "How far was the white car from the stop sign when the red car went by?"

And they will say, "Well, I think it was about 100 feet. And it was not a white car at all and there was not a stop sign."
Now, you ask them: "Well, what were

the colors of the car?"
"Red and white."
Now, "Was there a stop sign?"
"Yes."
Things of that nature. By suggestion
you can give people and they will include it in their
memory and they can pass a polygraph on it.
Q. Is it safe to say that a person who
has the gaps in the memory wants to rely on the
suggestion to try to fill in those gaps?
A. Yes.
Q. And, when a person --
A. Wait a minute. When you say they want
to rely on the suggestion. I can't say that they want to
rely on the suggestion. They want to have a memory of
it. The mind abhors a vacuum and it wants an answer, and
unfortunately, some of those answers come from incorrect
data.
Q. What is the best way, Dr. Coons, to
recall memory that has been -- I want to use the word
lapse, but dissociation -- what is the best way to

retrieve that memory?
A. Well, if it, in fact, is there, you
allow the person to tell you. You don't ask them, well,
did this happen or did this happen or did this happen,
because, if they don't know, they may select one of those
things as an actual memory when it wasn't true.
Q. Now, when you say, you want to allow
them to recreate the memory. Is it also important what
type of atmosphere and surroundings that person is in
when you try to recreate the memory or help them recreate
the memory?
A. It is best when it is a supportive,
quiet, calm, not emotionally charged situation.
Q. Is it in fact counterproductive to try
to deal with gaps in memory, with suggestions in an
emotionally charged atmosphere?
A. Yes. You run the risk of suggesting
data that the person will then incorporate into their
memory. And, thereby get a distorted recollection.
Q. Can you give the jury an example of
that?
A. Yes. We have had situations where,
for example, there are some false memories that come from
what's called iatrogenic production of false memories,
where the doctor or the therapist will suggest things to

a person which they then will take in and form as a memory of abuse or something that actually didn't happen but they now accept it as truth.
Q. Dr. Coons, let me work through with you in a hypothetical situation. Assume with me, Doctor, that you have a young mother, 26 years of age, that the mother is very committed to her children, two young boys as well as a toddler, I want to say, but really an infant-aged child.
That that mother is not only deeply committed, but spends a great deal of her time with those boys.
And also assume that the relationship between the mother and the boys is healthy, and that there is no prior history of abuse, there is no prior history of neglect.
And also assume with me, Doctor, that the marriage is stable, that there are the typical rough seas, for want of a better word that a marriage would have, but by and large, a stable marriage, without periods of separation or threat of divorce, that sort of thing.
Also, assume with me, Doctor, that that mother becomes the subject of a traumatic event, an attack. And assume with me, Doctor, that that mother

is -- witnesses, and is present when the oldest two boys are killed, that she is the victim of a blunt trauma attack to her arms, a stabbing attack to one arm, and what has been described as a large slash wound to her neck.
Now, with the hypothetical of a mother in that situation, I want to ask you first, Doctor, in dealing with the relationship to a mother and child, is there any stronger bond that you are aware of?
A. That is generally the strongest, the most intense, particularly with younger children that are requiring a protection and nurturing and care by a mother.
Q. Can you explain that bond to the jury? I mean, it's fairly obvious, but what research and psychological data shows that that bond is as strong and as primary as it is?
A. Well, I don't know that anybody has

done a specific study that shows it. I think we know from dealing with families and dealing with mothers and children and family dynamics that that is an extremely strong bond.
We also know from dealing with mothers whose children are ill, for example, or in trouble in some way, their emotional response is extremely strong.

Q. And moving back to --
A. In general. I mean, there are some mothers who don't have a close relationship with their children, but that is the exception rather than the rule.
Q. Moving back to the hypothetical of a mother as I have described, who is the subject of a traumatic attack to herself and also the killing of her children by violent injuries. Would it be consistent with your training and experience and your knowledge, with memory, and what you have testified to the jury, that a mother in that situation would dissociate from that trauma?
A. Well, it's certainly very possible. That is the kind of overwhelming trauma that leads to dissociation, not always, but can lead to dissociation.
Q. When you talk about an overwhelming trauma, could an overwhelming trauma, described as I have, dissociate a person even to the extent that their first recollection of the traumatic event is after the event, such that there is no recollection of the event itself, the traumatic event?
A. Yes.
Q. And is that recognized as, I don't want to use the word common, but is it recognized as a response which has happened in the past and is not beyond

the realm of possibility?
A. That's right.
Q. Okay. And are there -- in the course of a traumatic event, are there certain things which can bring a person -- and I don't want to use the word trigger -- but bring a person into recollection? Do you know what I am trying to get at?
A. Not yet.
Q. Okay. If a person is dissociated and begins to have recollection of events, let me ask you, Doctor, would it be consistent that contact with a child, that strong bond, could be the stimulus to start

13 recollection and start the memory process back again?
14 A. Yes.
15 Q. Can you explain that to the jury?
16 A. Well, I mean nobody dissociates
17 forever. I mean, they don't just dissociate and that is
18 the end of mental functioning.
19 At some point, they start becoming
20 aware of what is going on again, after a dissociative
21 experience. And a child's appearance or touch or
22 whatever could be that stimulus.
23 Q. Okay. Would it be consistent with the
24 aspects of memory that you have testified to in
25 dissociation, that upon recalling in that hypothetical

1 situation, the events as they occurred, that, in effect,
2 snapshots would be recalled by the person and that it
3 would be consistent to have lapses of memory?
4 A. If a person has been traumatically
5 overwhelmed to the point where they have had
6 dissociation, they may not go from a completely
7 dissociated state to a completely alert, aware,
8 attentive, normal state.
9 It may come back in, with vignettes or
10 occurrences. It may not just be like a marble rolling
11 off the table. You go from complete dissociation to
12 complete normality.
13 Q. Okay. So you would expect that there
14 would be periods of clarity and periods of vagueness, and
15 periods of clarity?
16 A. Let's say that that would not be
17 uncommon, that is certainly feasible.
18 Ordinarily a traumatic event, a person
19 doesn't go from dissociated to normal. They go from
20 dissociated to starting to get back with what is going
21 on.
22 Q. Okay. And would it be common that the
23 point that the person has the greatest amount of
24 dissociation would be the most intense part of the
25 traumatic event?

1 A. Whatever to them would be the most
2 anguished, emotionally anguishing is the most likely to
3 be dissociated.
4 Q. Is it also common, Doctor, that in the
5 course of remembering and trying to fill in the gaps,
6 that a person would remember the most insignificant

matters while not remembering the most significant matters?
A. Yes.
Q. Can you explain how that works?
A. Well, as a person moves from the dissociation that is involved with an extremely traumatic event, as they return to awareness, they are going to be -- their attention and so forth is going to be spotty and you would expect it to be with less emotionally charged things, certainly not traumatically overwhelming.
Q. Let me ask you this, Doctor: If a person has been in a traumatic event, would it be common that that person would have a very sketchy memory, and then would be able to remember later, the further you are removed from the traumatic event, even specific details? For instance, let me give you an hypothetical.
Let's assume that a person is in a traumatic event, an attack, is then confronted with a number of police officers questioning her immediately

after the traumatic event, is questioned and asked about (sic) paramedics about her wounds, and then begins to be removed from the scene to be transported by ambulance to a hospital.
Now, in that traumatic -- in that hypothetical, would it be unusual for that victim of a traumatic attack to begin remembering, the further removed from the traumatic event, to be able to start remembering things as small and detailed as how long in the ambulance, what the paramedic may look like, what hospital the paramedic's taking them to, if there is a controversy as to which hospital to go to?
A. Yes. The further out from the -- necessity for dissociation, minding that dissociation is a psychological, protective mechanism, then, the farther out you are from that, the more normal your perceptions and memory you would expect to be.
Q. Now, an example of a mother who has been involved in an automobile accident with a child and the child may be killed, are there points where the mother -- would it be common -- let me ask you this: Would it be common for the mother to completely block out the traumatic events of the automobile accident, but remember with detail the events that follow, such as what medical treatment was rendered, how long it seemed to

take to get to the hospital, very detailed events later?
A. Yes. If the event is traumatic to her, you would expect her level of excitement to impair her memory. As the traumatic effect on her diminishes, you would expect her memory to be better.
Q. Going back to the first hypothetical that I gave you, would it be unusual for -- when the mind tries to explain and you try to explain when your first memory and what brought it about, would it be unusual to have that first memory be in the middle of an event, because you have in effect, blocked out the traumatic event, and would it be unusual to say: "My first recollection is waking up."
Would it be unusual that the recollection must be, "Well, I must have been asleep"?
A. Let's say it's reasonable to say that, because a person -- a person who is dissociating doesn't know they are dissociating. All they know is the first thing I recall is such and such. And most of us would associate that with waking up. But people who dissociate do not know that they are dissociating.
Q. So, the mind in trying to struggle for an explanation of why they don't remember a traumatic event, the mind would -- it's not uncommon for a person to say, "I woke up." Would you agree with that, Doctor?

A. Well, I don't know how many I have actually asked about that, but that certainly is the most logical explanation for how a person would perceive that. How else are they going to explain not recalling the rest of it, other than to say, "Well, I woke up," or, "I came to," since they don't know they are dissociating.
Q. Okay. Now, I want to ask you a little bit about medications and how medications can affect recall and memory. Can you tell the jury how, if you have a person who is dissociated, how would medications affect the ability to begin recall and how would it impair the ability to begin recall?
A. Well, you can have a beneficial effect from sedating-type medications for recall because it will decrease the anxiety, or you can have further distortions because of the distorting effect of the medication, so you can have either one.
Q. Okay. Are you familiar that medication can be a disinhibitor?
A. Yes.
Q. In effect, certain medications can

23 cause a person to be more relaxed and more likely to
24 relate an event due to the medication?
25 A. Yes. And it's kind of like alcohol,

1 it's a disinhibitor, and removes anxiety.
2 Q. Okay. I want to --
3 A. Well, now are you talking about pain
4 medications, generally, analgesics and sedative-type
5 medications?
6 Q. Right. For instance, Demerol, could
7 Demerol have those effects?
8 A. Yes.
9 Q. What about Phenergan?
10 A. Yes.
11 Q. Certainly, the type of medications
12 that are used in general anesthesia could have that
13 effect, isn't that true, Dr. Coons?
14 A. Well, it depends on whether you're
15 talking about a premedication and often people are given
16 something like Valium, or Demerol before they receive an
17 anesthetic to calm them down, relax the muscles, so they
18 use less anesthetic.
19 Then, when you are waking someone up,
20 if they have had an anesthetic, then they come out of
21 that as they blow off either the gases or they metabolize
22 if it's an intravenous anesthetic, they will metabolize
23 it.
24 Q. Okay. Let me talk to you in terms of
25 another hypothetical. Imagine that a victim of a violent

1 attack has been operated on, been placed under general
2 anesthesia, been through surgery for some hour and
3 fifteen minutes, upon arrival to a recovery room,
4 approximately 6:00 A.M. receives 25 milligrams of
5 Demerol, the same dose of Phenergan, and then begins to
6 come out of the effects of those medications, awakens to
7 consciousness.
8 And then assume, Doctor, that the
9 person begins to come in contact with a steady stream of
10 family members, nurses, as well as police officers, who
11 begin to suggest and question as to the events
12 surrounding an attack.
13 Also assume, Doctor, that the victim
14 has dissociated significant portions of the traumatic
15 event. Could improper questioning and suggestions given
16 to that victim greatly affect their recall and their

memory?
A. Yes. And you would expect -- I would expect them to be, for a person to be more vulnerable to suggestions and questioning and provided data as a part of the interrogation, as a result of the medications than if they hadn't been on medication.
Q. All right. When a person is confronted with questions like -- let's say you're trying to identify an attacker and a person is confronted with

questions, "Was the person this size," and brings in a live person, "Was it my size, or was it this guy's size," and the person is given some choice, suggested a choice, can that begin to lead to the type of suggestion which would cause false memories?
A. Yes. They are asked to make a decision about -- I mean if the person is asked what size the individual was, that is an open-ended question. If they say, "Was it this size or this size," then they are placed in a position of making a choice. And the mind has a tendency toward filling in the gaps and would have a tendency toward making a selection.
Q. So suggestibility would cause someone to pick A or B?
A. Yes, it can, it doesn't have to, but it can.
Q. Now when that begins to be recounted over and over again, how does the retelling a story, even if wrong, over and over again, begin to affect memory? Does it get to where it's ingrained in the mind?
A. Yes. I think I am a whole lot better basketball player now than I was when I was playing basketball. You know, you recall things that strengthens the memory over a period of time.

Q. Now, after a person has continued to recount stories and also been suggested versions over a period of time.
A. I'm sorry?
Q. After you have been suggested -- for instance, is it not unusual for people to say, "Well, you have a stab wound on your arm and you were attacked. How did you get that? And could it be this or could it be that?" And when a person's memory -- people want to try to help you out; isn't that right? Have you seen

that frequently?
A. Yes, yes.
Q. What they try to do is say, "Well, could this have happened?" How does that affect suggestibility with a person's mind? Does the mind latch on to those suggestions?
A. It certainly can. That is a phenomenon that we try to avoid, is contamination. You let people tell you what happened rather than try to offer them suggestions. That is, that's not the best way to do it.
Q. Okay. Let me ask you this, are you familiar with Dr. Phillip Resnick?
A. Yes, sir.
Q. Is he an authoritative doctor and well

recognized and respected?
A. Well, Phil Resnick is probably the best teacher that I have ever experienced in terms of his command, in terms of his ability to present material, the clarity of his thought and so forth. He is one of the most renowned forensic psychiatrists in the world, certainly America.
Q. Okay. You use the term confabulation?
A. Yes.
Q. And I'll ask you: When the mind tends to fill in the gaps, and you term that confabulation, is that unintentional?
A. Yes.
Q. That is the result of the mind -- the old term is, the mind plays tricks on you?
A. Yes. Well, I mean, it's not so much the mind plays tricks on you, it's that you are coming up with answers to questions whether the data is there to back it up or not.
Q. Okay.
A. You ask somebody in a nursing home, "What did do you today," and they will often just fill you up with information which is wrong.
Q. Let me ask you in terms of hypothetical situation. Imagine that in -- assume,

Doctor, that you have a young lady 26 years of age, who has been the witness and victim of a traumatic event, the same lady, loss of children, very dear to her.
That that woman has been the subject

of dissociation as to the traumatic event, that the lady has been repeatedly questioned over and over again as to the event, and that some of that questioning has been the form of suggestion as to the event.
And assume, Doctor, that the lady is completely cooperative throughout the process with authorities to try to aid the authorities in finding the attacker or the perpetrator of the offense.
And assume for a minute, that the lady comes into contact with a police detective of 20 years experience, and that, in the course of a three-hour questioning, she is, as many as 6 to 12 times suggested, "You did this killing, you were the one that did this act."
And assume that the person made statements to the effect of, "Well, if I did it, I don't remember it."
Would you in many respects expect the person to make that type of statement?
A. I would expect someone who has experienced dissociation to wonder what happened, to --

if they experience dissociation, that there are things, there are aspects of it that they don't recall.
And that I wouldn't find that unusual.
A person who is seeking to fill in the gaps might well entertain what is being suggested by a veteran detective.
Q. Now, let me ask you this then: Does the failure and assuming the hypothetical that this cooperative person does not say, "But I didn't do it."
Would that surprise you, that the person would not make that affirmative statement?
A. I guess, I mean, your hypothetical doesn't involve what the person did say, but if the person is saying, someone else did it, that is tantamount to saying, I didn't do it. I mean, that --
Q. Well, if a person has consistently said there was another attacker?
A. Yes.
Q. Then that is the same statement of, "I didn't do it."
A. Yes, to me it is.
Q. And you wouldn't expect a person who was in the midst of saying there was another person that did it, would be expected to say, there was another person that did it and I didn't do it.
A. I don't think I have ever -- it's

redundant.
Q. Now, let me ask you a couple of questions first, Dr. Coons. You have testified in court before in cases that Richard Mosty was involved in and also cases that I was involved in; is that correct?
A. Yes -- well.
Q. And that has been for and against?
A. Yes.
Q. All right. You have testified some years ago in a case, State of Texas versus Randy Wohls (phonetic), where you were a State's witness and Mr. Mosty represented the defendant; is that right?
A. Yes, sir.
Q. And then you had testified in two other cases that Richard and I were in, one in Gillespie County and one in Kimble County; is that right?
A. Yes.
Q. And you were paid for your testimony here today; is that right?
A. I am going to send a bill, I hope I will be paid.
Q. Yeah. What is your hourly rate?
A. $360.00 per hour.
Q. Okay. And, had you previously consulted Richard Mosty sometime last month, about memory

and those issues?
A. Yes. He called me and asked me if I would talk with him and he came to Austin and we talked.
Q. Okay. And is it fair to say that over the course of your career, that you have testified numerous times for the State of Texas?
A. Yes, many times.
Q. Have you in the past been retained by Dallas County to testify?
A. I have been -- yes, I have testified in Dallas as a prosecution witness.
Q. For the district attorney's office?
A. Yes.

MR. S. PRESTON DOUGLASS: If I can have one moment, your Honor?
THE COURT: All right.

BY MR. S. PRESTON DOUGLASS:

20 Q. Doctor, let me ask you: For a mother
21 to kill her children, wouldn't it take an overwhelming
22 impetus for that to happen?
23
24 MR. TOBY L. SHOOK: Judge, I will
25 object to this going outside of the scope of the 705

1 hearing.
2 THE COURT: Sustained.
3
4 BY MR. S. PRESTON DOUGLASS:
5 Q. You're familiar with that bond, are
6 you not?
7
8 MR. DOUGLAS MULDER: Well, Judge, do
9 we need to have another hearing?
10 THE COURT: I don't think we do. I
11 think that Mr. Douglass is perfectly capable of pursuing
12 this in question and answer form. Go ahead, Mr.
13 Douglass.
14 MR. S. PRESTON DOUGLASS: Well, we may
15 need another 705 hearing is what I'm trying to say.
16 THE COURT: What was the last
17 question?
18 MR. TOBY L. SHOOK: Well, the purpose
19 of that was to get that all out in the first place.
20 MR. S. PRESTON DOUGLASS: Well, I
21 thought I made that clear. Let me go into one other
22 thing.
23 THE COURT: Please go ahead. Well,
24 let me see both sides a minute up here.
25

1 (Whereupon, a short
2 Discussion was held
3 Off the record, after
4 Which time the
5 Proceedings were resumed
6 As follows:)
7
8 BY MR. S. PRESTON DOUGLASS:
9 Q. Doctor, the question I asked you was:
10 For a mother to kill children, would it not take an
11 overwhelming impetus to start that event into fruition?
12 A. Well, I would answer that by saying
13 that it would depend on the mother. Unfortunately, some

14 mothers are not as close to their children, some mothers
15 are psychotic or something of that nature.
16 But in general, and in particular, if
17 you stick with your hypothetical person in this case, I
18 would say that it would. It would take -- and that is an
19 extremely unusual event for a mother with a good
20 relationship with her children.
21 Q. Let's talk about psychosis for a
22 minute. A person who is psychotic is one who -- can a
23 person be psychotic and turn that on and off like a water
24 faucet?
25 A. No.

1 Q. A person who is psychotic would show
2 signs of psychosis prior to a psychotic event; is that
3 right?
4 A. Yes.
5 Q. Is it consistent --
6 A. When you say prior to a psychotic
7 event, I mean, generally, psychosis doesn't just turn off
8 and on. It comes on and it stays and you -- if it's of
9 any particular intensity, people are going to recognize
10 that the person is talking to God or hearing voices or
11 something of that nature.
12 Q. Is it consistent with psychosis if --
13 from a mother's standpoint, wouldn't there be signs of
14 failure to keep up, failure to keep up your personal
15 appearance, failure to keep up your home, failure to
16 carry on as you had in every day life?
17 A. If the psychosis is at all intense, it
18 will be apparent and it will adversely affect your
19 functioning.
20 Q. To the point that -- let me ask you
21 this other question, Doctor: When you see someone with a
22 psychosis, is it often that that psychosis carries on for
23 a number of hours after the psychotic event, such as that
24 person remains psychotic?
25 A. Well, I mean, there are only reasons

1 that you would be -- one would be psychotic. You can
2 become psychotic from taking LSD or something of that
3 nature. You could be schizophrenic. You can have a
4 manic-depressive illness where you get manic and hear
5 voices and things like that. Those are not short term
6 things. They tend to last a while. So, you are not
7 talking about a matter of hours. So, I mean that would

8 be real unusual.
9
10 MR. S. PRESTON DOUGLASS: Thank you,
11 Doctor. Pass the witness.
12 THE COURT: Mr. Shook.
13
14
15 CROSS EXAMINATION
16
17 BY MR. TOBY L. SHOOK:
18 Q. Dr. Coons, just a few questions. Did
19 you make any reports or notes in regards to this case?
20 A. No.
21 Q. Okay. In fact, the first time you
22 were contacted was by Mr. Mosty in December; is that
23 right?
24 A. Yes.
25 Q. Okay. Did he come and speak to you

1 about what you have talked about in front of the jury,
2 memory and things like that?
3 A. Yes. I mean, I know that memory was a
4 large part of what we talked about.
5 Q. Okay. And then, when was the next
6 time you were contacted?
7 A. I next spoke with Mr. Mosty at about
8 9:00 o'clock last night, when I returned his phone call.
9 Q. All right. And, you have not
10 interviewed the defendant in this case, Darlie Routier?
11 A. That's right.
12 Q. Okay. You have not gone over or seen
13 her voluntary statement, have you?
14 A. I don't think so.
15 Q. Her husband's voluntary statement?
16 A. I don't think so.
17 Q. You haven't looked at any police
18 reports or summaries of evidence, anything like that,
19 have you?
20 A. I don't believe I have.
21 Q. You have looked at maybe a couple of
22 photographs, I believe?
23 A. Several. I think there were some
24 pictures of the home and some pictures of Mrs. Routier,
25 her arms and a cut on her neck.

1 Q. Okay. You have not reviewed any
2 medical records, have you?
3 A. No.
4 Q. Have you talked with anyone else in
5 regards to this case besides Mr. Mosty and Mr. Douglass?
6 A. Mr. Mulder.
7 Q. And Mr. Mulder. Okay. Anyone else?
8 A. And the investigator.
9 Q. Okay. Anyone else other than that?
10 A. I don't think so.
11 Q. Okay. Consulted with any other
12 doctors in regards to this case?
13 A. No.
14 Q. Have not talked to Dr. Lisa Clayton
15 about this case at all, have you?
16 A. No.
17 Q. Okay. And, you have not interviewed
18 any family members of Darlie Routier, have you?
19 A. No.
20 Q. And you have not interviewed any of
21 her physicians that attended her the day of the attack,
22 have you?
23 A. That's right. I have not.
24 Q. None of the nurses?
25 A. No.

1 Q. And none of the police officers?
2 A. That's right.
3 Q. Okay. You have not viewed, what we
4 call the Silly String videotape, the grave site videotape
5 that was made, have you?
6 A. No.
7 Q. Okay. You have just rendered some --
8 well, you have given us some information about memory and
9 what you know about memory and sometimes when someone
10 blocks certain aspects of memory out. Is that called
11 traumatic amnesia?
12 A. Well, that is not a diagnosis, but
13 that is a term that is used.
14 Q. What is that term used for exactly?
15 A. Well, it's not an exact term. I mean,
16 the way I would describe it is that the person undergoes
17 a psychological trauma and has -- and not does not recall
18 then what happened for some period of time.
19 Now, you can have a traumatic amnesia
20 for physical reasons if you have a concussion or
21 something of that nature.
22 Q. And you are not telling this jury that

23 in your opinion Darlie Routier was suffering from any
24 type of traumatic amnesia or anything like that?
25 A. I don't know her.

1 Q. Okay. You all have a term you use
2 called malingering; is that right?
3 A. There is a term called malingering.
4 Q. What -- could you explain to the jury
5 what malingering is?
6 A. Basically, claiming that you have
7 something that you don't.
8 Q. Okay. And, are there certain types of
9 cases in which you are trained as a psychiatrist to be
10 very careful that a person is malingering?
11 A. Yes, sir.
12 Q. What types of cases are those?
13 A. Oh, if a person has -- would have some
14 advantage from lying about having some kind of a problem,
15 that is basically lying about it, for money or some
16 advantage.
17 Q. Okay. Money is one of them. Also,
18 obviously, if a person is accused of a crime, that is
19 another situation where you often have to be very careful
20 of malingering; is that right?
21 A. Yes, that is true. I mean, if there
22 is any advantage to be gotten from something, someone --
23 you always want to be careful that that is not what is
24 going on.
25 Q. Okay. And, when a person is accused

1 of the crime of murder, capital murder, do you not have
2 to be even extra careful in those situations, that a
3 person might be malingering or lying, specifically
4 saying, I have amnesia. I can't remember what happened.
5 A. Yes, you would want to be careful
6 about that.
7 Q. Okay. If there was evidence that the
8 crime scene may have been staged in some ways, would that
9 make you even more cautious that this person may be
10 malingering?
11 A. Sure. You would take that into
12 consideration.
13 Q. Okay. If the offense was planned, if
14 there was evidence that the offense may have been planned
15 sometime, would that also make you more cautious about
16 malingering?

A. I don't think it would make me more
cautious. I mean, you would have -- the cautious factor
would be the same. Certainly, you would take that into
consideration.
Q. Okay. And, the type of memory
blockage that you have talked about, a person that
forgets a traumatic event, is that some type of mental
disorder that you all have described in the DSM-IV?
A. Well, it can amount to -- it can fit

under a diagnostic category, but it is a psychological
defense mechanism that occurs. So, it can occur in the
absence of a diagnosable mental illness, if you will.
Q. Okay. So, the person can have that
memory blockage and not -- well, usually what are the
situations which would be the medical disorder?
A. Well, it would probably always amount
to -- I'm just thinking -- at least something like an
adjustment disorder with mixed emotional features or
something of that nature. I mean, it would probably
qualify for a diagnosis.
Q. Okay. Does it fit in, I think you
call it post-traumatic stress syndrome?
A. No.
Q. Okay.
A. But I mean you can have, dissociation
could be a part of a post-traumatic stress disorder.
It's seen in people who are highly traumatized. They may
dissociate part of what has happened to them.
Q. Now, let's talk a little bit about
medications, we're talking about Demerol. Demerol is a
painkiller; is that right?
A. Yes.
Q. Okay. If a person is given a very
small doses of Demerol -- well, first of all, let me ask

you this: Is Demerol like truth serum in any way?
A. Well, there is no truth serum, all it
is, is a sedating substance. Alcohol works, "in vino
veritas," is the Latin for it which means, "In wine, the
truth." People get drunk and tell things that they
probably shouldn't be.
And, then, you could use Sodium Amytal
or various barbiturates, you can use tranquilizers,
things like Demerol are sedating and that would work.
So there is nothing magic about it,

there is no one truth serum.
Q. Right.
A. All it does is it gets you drunk, it gets you intoxicated so that you are less anxious, and can tell things that you want to tell, basically is what it does.
Q. If you don't want to tell things, like, maybe not wanting to confess to murdering your children, a small amount of Demerol is not going to make you do that to detectives, is it?
A. Not going to make you do what?
Q. Make you confess all of sudden.
A. No, I mean it's just like, you know, a couple of beers or something like that.
Q. Okay. You wouldn't expect, if a

person, let's say, is cold-blooded enough to murder their own children, and they don't want to be punished for that, they want to get away with it, and they are given 25 milligrams of Demerol, then the detectives come in the room, they are not going to jump up and say, "You got the goods on me. I did it." You wouldn't expect that, would you?
A. Well, you would expect them to be more likely to tell under those circumstances where their defenses are lowered. But, simply, I mean if that is all you are talking about, in an adult 25 milligrams of Demerol on its own, you wouldn't expect to have that much effect.
Q. Okay. That is a pretty light dosage, 25 milligrams, in an adult?
A. It depends on what it's associated with. If it's, you know, 25 milligrams of Phenergan along with it and a person who's also been premedicated perhaps with Valium for their surgery, or who is coming out from under an anesthesia, you add all those things together.
Q. Now, you talk about people try to fill in the gaps and they are open to suggestion. Is that what we're talking about?
Someone says, "Well, did it happen

this way?"
And then they go, "Yeah. I think it happened that way."
A. I don't know about open to suggestion.

They are vulnerable to suggestion because there are gaps in their memory and so people tend to try to fill in the gaps.
Q. In Mr. Douglass's hypothetical, he gave you the mother that witnessed a traumatic event. A central part of his hypothetical was people making suggestions about how this event actually took place. If that were removed from the hypothetical, if people didn't suggest in any way how the event took place, would that change your opinion in any way?
A. Well, I mean, if no suggestion was made, then no suggestion was made.
Q. Right.
A. If you ask a question like, "Well, did he run off," well, then that suggests that maybe he ran off rather than walked off or crawled off or stayed or whatever. That is what I am saying, rather than saying, "Tell me what happened. Tell me everything that you can recall happened."
Q. And if a detective, let's say, went to

this woman in the hypothetical and said, "Tell me what happened."
And she said, "I was asleep. I felt some pressure on me and there was a man standing over me and we had a struggle on the couch and then he ran off."
That wouldn't be a suggestion on his part in any way, would it?
A. No, that would not.
Q. And if, let's say, nurses later on during the day just said, "What happened?"
And she said, "A man was standing over me with a knife and tried to stab me, and he ran off and I chased after him."
That wouldn't be a suggestion on their part, would it?
A. Not if that is the only thing you are considering, what that one individual said, no, they have just asked, tell me what happened.
Q. Okay. If, let's say, in the situation where the woman who wakes up after going into some surgery and there are detectives there, that they want to question her about the event.
And there is a nurse there watching over her who is very observant, and says that the detectives didn't suggest any answers in any way. They

just methodically went step by step and asked her what happened, didn't suggest answers. That wouldn't be a situation where she is getting her memories from another person, would it?
A. Only to the extent of -- if the answer is not suggested, you can still encourage someone to form an answer by saying, "And then what did he do," you see, that causes the person to have some need to come up with an answer for that. And that is leading to some extent.
Q. Okay. But that is not true in every case, is it?
A. What isn't true?
Q. That, if someone just asked, "What happened next," that they are going to try to think up something?
A. Well, then what did he do was my idea.
Q. Okay. Then what did he do?
A. Then there is an assumption that he did something else that she noticed that she ought to come up with and there is an inclination on the people who don't -- for people who don't recall to come up with an answer.
Q. You talked about them blocking out the most stressful part of the event and then remembering small, trivial details or details that aren't as

important?
A. Ordinarily, you would expect a person to block out the most traumatic thing to them. The other things that they could remember would be less traumatic to them.
Q. Okay. In the situation you were given, an attack on your children, obviously, and on yourself, would be a very traumatic event?
A. I would anticipate that it would.
Q. Would it also be a very traumatic event if you were watching your children lying there bleeding to death and dying?
A. Yes.
Q. Okay. You actually might have gone over there, touched them, watched their eyes roll up, watched them quit breathing. That would be a very traumatic event, would it not?
A. I would anticipate that it would.
Q. If you observed your husband breathing

into the mouth of one of the children and blood came out of holes created by stab wounds in the chest, that would be an extremely traumatic event, would it not?
A. I would expect it would be quite traumatic.
Q. Would those be the type of events that you would block out also?
A. Maybe.
Q. Okay.
A. You know, it depends on whether your memory of it is spotty or not.
Q. Okay. And, many times in these situations you have talked about, a person will block out an event for several hours at a time; is that right? For instance, the automobile, where maybe a mother has her children killed in an automobile accident, she may not remember the driving before the accident and to several hours later?
A. Ordinarily that is not the way it works. Usually, the traumatic dissociation or traumatic amnesia will occur for a fairly short period of time, and then the person will begin being more attentive to what is going on.
Q. Okay. Well, let me ask you this: If there is a traumatic event and they block out that portion, and then they're taken to the hospital and they go on, that should end the amnesia there, that is the one portion they block out, that very traumatic part; is that right?
A. Not necessarily. I mean, if they are dealing with the idea that their children have died or something other, then the trauma can continue. I mean, I would expect the most traumatic situation to be immediate and -- but it is certainly traumatic to think that your children have just died, so you may be psychologically dissociated to some extent because of that.
Q. Okay. Would you believe it -- would it be consistent then that if a person has blocked out the traumatic event and they are taken to the hospital, and if they made rather -- well, if they made rather inculpatory statements, let's say to the nurses about what happened and were able to describe the attack without any suggestions to them, and later on when you

ask them about that, they also had no memory of talking to these nurses; would that be inconsistent with this type of situation?
A. Well, the fact that a person did recall some aspects of what happened would indicate that they have a memory of it. And I mean, that it wasn't forever erased from their memory, that there is some memory of it that might be able to come out under certain circumstances.
That is the way I would answer that.
Q. The -- you said a mother's bond with their child is extremely strong. That's common sense, is it not?

A. Well, most mothers' bonds with their children are extremely strong. I think almost anybody knows that.
Q. Okay. And it's a well known fact and common sense will tell you that a mother will fight to the death to try to save her children, will they not?
A. Some will, some won't.
Q. If she has a strong bond with her children, they certainly will, won't they?
A. A strong positive bond and then given the personality of the mother. You have some very timid people who will run from confrontation and so their timidity overwhelms their bond with their child, for example, but some will fight to the death.
Q. Let's say they are not a timid person?
A. Yes.
Q. Okay. And they have a strong, positive bond with their child. They will fight to the death, will they not?
A. Well, they will fight hard.
Q. And, if you were interviewing someone who was accused of murder and claiming to have traumatic amnesia, would it be important to look at maybe some of the physical evidence as maybe, for instance, a discrepancy between how the children were killed and the

wounds they received and then the actual wounds that the mother received?
A. I'm not sure what you have asked me there.
Q. Okay. If I could make -- for instance, would it be important to you that, if you have

7 a situation where a mother has survived and her two
8 children have been murdered, she is the suspect, and the
9 medical doctors who treated her, and it's their opinion
10 that the wounds she received are superficial?
11 A. Would it be important for what
12 purpose?
13 Q. In your assessment as to whether this
14 person would be malingering or lying to you about --
15 A. If that were the question I was asked,
16 yes, it would.
17 Q. Okay. Would that -- just one second.
18 And, is it always important to gather most facts about a
19 case when you are rendering an opinion from the most
20 sources?
21 A. Well, you ought to have an adequate
22 amount of data to answer the questions that you are
23 asked.
24 Q. Okay.
25

1 MR. TOBY L. SHOOK: Okay. That's all
2 I have then, Judge.
3 THE COURT: Anything?
4 MR. S. PRESTON DOUGLASS: Yes.
5 THE COURT: Will this be lengthy? If
6 it's lengthy, I'm going to excuse the jury.
7 MR. S. PRESTON DOUGLASS: Well, it
8 could be lengthy.
9 THE COURT: All right. Thank you.
10 Let's take a 10 minute break, please.
11
12 (Whereupon, a short
13 Recess was taken,
14 After which time,
15 The proceedings were
16 Resumed on the record,
17 In the presence and
18 hearing of the defendant
19 but outside the presence
20 of the jury, as follows:)
21
22
23 THE COURT: Let the record reflect,
24 that these proceedings are being held outside the
25 presence of the jury. All parties in the trial are

present.
MR. JOHN HAGLER: Your Honor, at this time, it is our understanding that both sides are going to rest and close.
We do at this point in time move for a judgment of acquittal, or a motion for a directed verdict, and we would reurge our previous motion.
THE COURT: All right. Motion denied.
Thank you. All right. Bring the jury back in, please.

(Whereupon, the jury
Was returned to the
Courtroom, and the
Proceedings were
Resumed on the record,
In open court, in the
Presence and hearing
Of the defendant,
As follows:)

THE COURT: All right. Let the record reflect that all parties in the trial are present and the jury is seated.
Mr. Mulder.
MR. DOUGLAS MULDER: Yes, your Honor,

and ladies and gentlemen of the jury, at this time the defense will rest.
MR. GREG DAVIS: Your Honor, the State will close.
MR. DOUGLAS MULDER: We close.
THE COURT: All right. Ladies and gentlemen, both sides have rested and closed. That's all the testimony you are going to be hearing in this case.
I have to get together a Charge of the Court and we will go over that now. And then you are going to be recessed until tomorrow morning at 9:00 o'clock. You will hear arguments and then you will retire and consider the case and reach a verdict.
So, the same instructions as always:
Do no investigation on your own. You will decide this case on the testimony you hear, and the evidence you receive in this courtroom.
Do not talk about this case among yourselves yet, because it isn't finally over. If you see or hear anything about it on the radio, TV or the newspapers, please ignore it. In fact, it would be a good idea if you didn't read any papers or listen to the

23 radio or watch any TV news broadcasts while this is going
24 on.
25 Wear your juror badges at all times

1 when you are in the courthouse area, and we will see you
2 down here tomorrow morning at 9:00 o'clock.
3 MR. RICHARD C. MOSTY: Your Honor, may
4 we talk about one thing first?
5 THE COURT: Yes, sir.
6
7 (Whereupon, a short
8 Discussion was held
9 Off the record, after
10 Which time the
11 Proceedings were resumed
12 As follows:)
13
14 THE COURT: All right. So we will see
15 everybody down here tomorrow morning at 9:00 o'clock. If
16 everyone will remain seated please until the jury clears
17 the courthouse.
18
19 (Whereupon, the jury
20 Was excused from the
21 Courtroom, and the
22 Proceedings were held
23 In the presence of the
24 Defendant, with her
25 Attorney, but outside

1 The presence of jury
2 As follows:)
3
4 THE COURT: All right. Mr. Davis,
5 Mulder, all you fellows. Doug, come over here.
6 MR. GREG DAVIS: Yes, sir.
7 MR. DOUGLAS MULDER: Yes, sir.
8 THE COURT: Okay. The charge is --
9 MR. JOHN HAGLER: I want to look at it
10 one more time. I think we're in pretty good shape.
11 THE COURT: Who is going to argue? We
12 have an hour and a half to the side, who is going to
13 argue?
14 MR. DOUGLAS MULDER: Richard is going
15 to open. I will close. We will take 45 minutes a side.
16 THE COURT: 45 minutes each. Well,

17 the State opens.
18 MR. GREG DAVIS: Yes, sir. Mr. Shook
19 will open.
20 THE COURT: Mr. Shook.
21 MR. GREG DAVIS: Well, 10 minutes a
22 side and then summarize.
23 THE COURT: All right. You want 10 or
24 15 minutes?
25 MR. TOBY L. SHOOK: To open with.

1 THE COURT: Well, just --
2 MR. TOBY L. SHOOK: Well, I don't know
3 yet, Judge. Can I tell you in the morning?
4 THE COURT: That's fine. So you are
5 going first?
6 MR. RICHARD C. MOSTY: Yes.
7 THE COURT: 45 minutes. If you don't
8 use it all up, you get what's left of the 45 minutes.
9 MR. DOUGLAS MULDER: Yes, sir.
10 THE COURT: You will close, Mr. Davis?
11 MR. GREG DAVIS: Yes, sir. I will.
12 THE COURT: All right. Thank you.
13 We will see everyone here in the
14 morning.