

1 Q She was an excellent student, wasn't she?

2 A Yes, she was, and continues to be.

3 Q You talked about tools and using the right tools.
4 Tests that you use in your field are just tools, aren't
5 they, Doctor?

6 A They are just tools. As I said before, they are
7 not direct measures. They are not exact measures.

8 Q When a publisher prints a new version of a test
9 and it's available to the field, is the new version always
10 better than the last version?

11 A No.

12 Q Hypothetically, if a carpenter gets very attached
13 to a hammer, but there is a new hammer that comes out that
14 works on batteries and does all of the work for you, many of
15 us might say that new hammer is better, right?

16 A That's correct.

17 Q But a guy that's been using that hammer that he's
18 had for 25 years may say, I'm not going to use that new
19 hammer and I'm sticking with the one I'm familiar with that
20 works for me, correct, Doctor?

21 A Correct, if the carpenter has been doing it for 25
22 years. You need a carpenter that's been doing it for that
23 long.

24 Q So, are you saying that Dr. Mignone's experience
25 is not sufficient enough for her to say I've used this test

1 for many years and under these facts, I'm more comfortable
2 with it versus a brand new test that I haven't used yet?

3 A Correct, yes sir. She teaches IQ testing. We are
4 supposed to, as forensic psychologists, stay abreast of the
5 latest developments in our ethical obligation. The reason
6 why is because the norms are updated to reflect societal
7 culture; what we do, what we say and how we react to the
8 world. Even the language that is used in the test is
9 updated to reflect more accuracy.

10 You are right. We all, including myself, may be
11 more comfortable with the earlier editions. We have to
12 learn new MMPIs and PAIs, because they are improved. The
13 reason why they change is because there are problems or
14 difficulties with them, or we find better ways. But we
15 don't have a choice.

16 We don't choose to use the older versions. Our
17 ethical standards, which I brought with me, mandate that we
18 use the most update versions that are approved by our
19 profession.

20 Q So, you are saying that she violated ethical
21 standards by using the test that she used?

22 A I don't think she'd be sanctioned for it, because
23 they are aspirational forensic specialty guidelines. But
24 certainly she didn't live up to those aspirations, in terms
25 of test administration. She was correct when she said she

1 could use that test up to year, absolutely. But that is not
2 using the best technical information that we have available
3 to us, especially in a case of this magnitude.

4 Q So, you think that the IQ test that she gave got
5 it wrong?

6 A There are no malingering scales on IQ tests. No
7 matter which one she gave, if the person didn't give their
8 best effort, it wouldn't matter. I think it was an
9 inappropriate test from the beginning to give, because it
10 yields minimal information. Having given a test, you would
11 always strive to give the best test possible; the latest
12 version of the test based upon societal norms. If you don't
13 do that, you are not fulfilling the aspirations of the
14 forensic specialty guidelines.

15 Q Let's talk about why Dr. Mignone gave that test.
16 You had done some testing in the case well before
17 Dr. Mignone did any testing, correct?

18 A Yes.

19 Q And for a substantial period of months, you were
20 reluctant to tell the defense what test you had given, isn't
21 that correct, Doctor?

22 A That is not correct. I wanted a mutual exchange
23 of data. That mutual exchange of data did not occur,
24 because I had concerns from having dealt with individuals
25 from Nova Southeastern University --

1 Q We will get there.

2 A -- that there would be a changing of data or
3 correction of data. So, because of that, I requested, from
4 the previous attorney, Ms. Vogel, a mutual exchange of data
5 so that opinions couldn't be modified based upon what I had
6 done or opinions that I had formed.

7 Q But you knew that these doctors did not want to
8 test until they knew what had been given because they didn't
9 want to violate any of the standards that are contained in
10 these very manuals, didn't you?

11 A Sure, which was one reason why they shouldn't have
12 given those tests. By the way, I think it's a misnomer to
13 say you can't give the test. There's nothing in those
14 manuals that says you can't give a test, even the IQ test.
15 It says you have to account for the differences, which is
16 about a five point improvement. In the IQ test, you have to
17 account for the differences, which is about a five point
18 improvement. You have to account for the difference.

19 So, if you know that Dr. Brannon gave it last week
20 and you gave it this week, like the IQ test, you have to put
21 in there that any change in IQ might be as a reflection of a
22 practice effect. It doesn't mean you can't give the test.

23 Q I understand, but there are recommendations in
24 those guidelines that say a certain period of time, you
25 should consider not giving the test, correct?

1 A Sure. I read in Dr. Seligson's depo, they said
2 there were six months that you couldn't give an MPI-2 when
3 you could give it the next say. So, I was shocked to see
4 those time limits. They, seemed to be setting their own
5 rules.

6 Q In terms of sharing mutual exchange of data, there
7 was actually a hearing set in front of the Court that you
8 were subpoenaed to, to address the issue of why you wouldn't
9 turn over the data that you had for your testing, correct,
10 Doctor?

11 A Yes.

12 Q And we actually had to get a Court Order before
13 you would actually share your information, correct?

14 A My understanding was that before data would be
15 exchanged -- because after that Court hearing is when the
16 data was exchanged. My understanding was that that hearing
17 was about a mutual exchange of data.

18 Again, my concern was, based on prior experience,
19 I didn't want anything changed or altered once my position
20 and my opinion was known. It's very important forensically
21 that we do independent evaluations.

22 The defense and the State has their experts do
23 independent work. Based upon that independent work, you
24 arrive at your own conclusion. If you alter or modify your
25 opinion based on what somebody else did, that is

1 problematic. That is ethically problematic.

2 Q Doctor, let's be fair. You are talking about
3 personal and professional problems you've had with these
4 doctors during the course of your work at Nova University
5 years back when you talk about people changing results.

6 A I have never had a problem with any doctor on a
7 professional basis within this case. None of these doctors
8 are the people I'm referring to. There are other doctors
9 from that university, which is the reason why my partner and
10 I resigned from there.

11 Q We are going to talk about that. We're going to
12 get there.

13 A It was not any of the doctors involved in this
14 case.

15 Q It was the doctors that work very closely in
16 association with Dr. Mignone and Dr. Seligson, Dr. Walker
17 and --

18 A They did in the past, yes.

19 Q And that resulted in allegations both ways,
20 investigations and eventually your resignation from your
21 position at Nova University, didn't it, Doctor?

22 A And their being removed from the Public Defender's
23 Office. Because of changing test scores, they were thrown
24 out of the Public Defender's Office. So, when that --

25 Q Doctor, that is my office so I know a little bit

1 about these circumstances.

2 A I read all of the reviews, the American
3 Psychological Association's reviews of what they called one
4 of the worst test practices they had ever seen. So, that's
5 problematic.

6 Q Doctor, aren't you having some issues with the
7 Public Defender's Office right now yourself?

8 A I do.

9 Q And that is because the Public Defender's Office
10 has now gone to a rotation of experts, so that the majority
11 of the work that you were getting from that office, you are
12 no longer getting, isn't that correct, sir?

13 A I do have some concerns, Mr. Reres. That was one
14 of the concerns, certainly. This happened recently. I have
15 spoken to Mr. Finkelstein about it, and it seems that it has
16 been corrected. I spoke to him through e-mail and I spoke
17 with him in person yesterday.

18 So, yes, there are a number of concerns there.
19 That was one concern. Another that I certainly felt badly
20 about was that you were demoted from your position as the
21 head of homicide. Everyone recognize that you --

22 Q Thank you, Doctor, but I don't think it was
23 necessary to suggest that --

24 A Well, I was concerned about it and I did speak to
25 one of your colleagues about that at length; Mr. Raticoff,

1 as a matter of fact. So, I was concerned about the way you
2 were treated.

3 Q Would you agree, Doctor, that my demotion had
4 absolutely nothing to do with this case or your involvement
5 in any case at any time?

6 A You asked me what I was concerned about and issues
7 that I have, so I was listing those issues. I think you are
8 clearly recognized as the best attorney in that office,
9 Mr. Reres, and I mean that with my whole heart. I have said
10 that many times to people. But I think that was capricious
11 and unfair, what happened to you.

12 Q Thank you, Dr. Brannon, and I will hug you after
13 we finish cross examination.

14 A Well, it's genuine, Mr. Reres. I think that even
15 though we have been on opposite sides of cases, I've had
16 great respect for you throughout the years when I've worked
17 with you and when I've worked against you.

18 Q And I do too, Doctor.

19 A I think that was unfair. And I think what
20 happened for a brief period of time with me as well was
21 unfair. I have made the necessary adjustments and changes.
22 I contacted Mr. Finkelstein who, in the course of his
23 e-mails with me, thanked me for the e-mail correspondence
24 and also asked about my daughter who was in the hospital.
25 She had a concussion and was in the hospital. So, he was

1 kind enough to do that. We exchanged some pleasantries. He
2 fixed it and we took care of the problem.

3 Not me, but you all, as attorneys, live in a very
4 adversarial world where fighting is part of that world. As
5 a psychologist, when I join into that, I have to do what the
6 Romans do. So, yes, there's disagreements, fights and
7 concerns that happen. So, yes, I had one for a brief period
8 of time with your office.

9 Q And by fix it, do you mean that you are no longer
10 contemplating suing the Office of the Broward Public
11 Defender?

12 A I never contemplated that, never once. By the
13 way, I couldn't do that. I wouldn't be able to do it. I am
14 not an employee of the Public Defender's Office. They can
15 decide on whoever they want to provide evaluations. They
16 can hire me and give me every single evaluation or they can
17 spread them out among a hundred people. But there is no way
18 of suing them.

19 Besides, from a business standpoint, Mr. Reres,
20 that would be a terrible idea, because then I would be
21 conflicted out of every other case in Broward County.

22 Q I promise we will get on to the business aspect of
23 this in just a moment. Is there also potentially an issue
24 regarding my office right now with a defendant by the name
25 of Ernest Whitefield; Dohn Williams?

1 A I know the case, but when you say an issue.

2 Q The issue is that you were consulted by
3 Mr. Williams about that defendant?

4 A Yes.

5 Q And you determined that we were not going to pay
6 you enough to work on that case?

7 A Right, several years ago; yes.

8 Q But then the State hired you on that same case?

9 A Yes, with Mr. Williams' knowledge.

10 Q And you are aware that Mr. Williams is
11 investigating whether or not that is a violation of your
12 ethics as a doctor?

13 A He agreed to it in the beginning when he knew I
14 was being hired. So, at this point, if he is investigating
15 it, that is beyond my knowledge. That is interesting, since
16 he agreed to it initially.

17 Q But isn't that true, Doctor? We weren't paying
18 you enough, so you went to the side that was?

19 A No, I didn't go to that side. What happened was,
20 I wasn't getting paid. I turned down the evaluation.
21 Another doctor took the evaluation much later in the game.
22 The State contacted me. Mr. Williams was made aware of
23 that. He didn't raise an objection to it and I was hired by
24 the State. I didn't go knock on the State attorney's door
25 right after that. I think it was over a year later, as a

1 matter of fact.

2 By the way, the defense routinely pays more than
3 the State. I don't want to insult Mr. Zaccor, but if I was
4 working for you right now, Mr. Reres, I would probably make
5 twice as much money as I am making with Mr. Zaccor right
6 now.

7 Q I doubt that very much. There's been many
8 changes. Maybe you should talk to Mr. Finkelstein.

9 A I haven't been invited to the party.

10 Q I understand. Let's move off of this topic, but
11 we'll get back to it. Let's talk about some of the things
12 you talked about in your cross examination.

13 Doctor, you indicated that the initial intake form
14 at the Broward County Jail did not reflect any symptomology
15 of mental illness on the part of Barnard Joseph, correct?

16 A Correct, on the initial placement form of
17 December 24th? Is that what you are referring to?

18 Q Right, and you conceded that wasn't a doctor that
19 evaluated him then?

20 A Yes, that's correct.

21 Q And you've agreed that virtually a few hours later
22 when the jail psychologist had an opportunity to evaluate
23 Mr. Joseph and the circumstances of this case, he was placed
24 on suicide watch immediately?

25 A That's correct. He said he wanted to hurt

1 himself.

2 Q And that report, the initial evaluation at the
3 jail, is based completely on self report? They are not
4 going through his psychiatric history, right?

5 A Correct, all of it is; whether he says he wants to
6 kill himself or not, or whether he says he has symptoms or
7 not. So, yes, absolutely it is.

8 Q He tells them that he has no psychiatric history
9 at all, correct?

10 A Well, it's more than that. He doesn't display any
11 psychiatric symptoms, because they are not only listening to
12 what he has to say, but they are --

13 Q That is non-responsive. He specifically says I
14 have no history of mental health problems, correct?

15 A Neither then or at any time in the past?

16 Q Right.

17 A Correct.

18 Q They don't have the Broward General medical
19 records immediately?

20 A Correct.

21 Q But I'm sure subsequently someone made the jail
22 aware; wait a minute, the mom tried to Baker Act him about a
23 month ago?

24 A I don't know the sequence of that. I just know
25 that their initial assessment of him was that he belonged in

1 the general population.

2 Q And that evaluation, the initial screening at the
3 jail, the same as the PAI you gave, is based entirely on his
4 self report, and you would concede that this is a poor
5 historian in terms of his own life, correct?

6 A Sometimes by choice.

7 Q But that is your opinion?

8 A Well, he told Dr. Butts that he didn't speak
9 English, that he only spoke Creole. He told me he didn't
10 know two plus two, or the color of a pen. So, clearly, he
11 can perform better than that. So, the data is there. It's
12 not just my opinion. It shows in the data.

13 Q And that is your opinion, Doctor, that he has done
14 that?

15 A I was there. I was sitting there when it
16 occurred.

17 Q Again, Doctor, other doctors look at that and
18 don't come to the same conclusion, correct?

19 A Your expert did, Dr. Fichera.

20 Q One of them did.

21 A Correct.

22 Q When you testify in a criminal case, Doctor, there
23 is usually somebody saying something different than what you
24 are saying, isn't that true?

25 A When you are testifying, sure, because when it's