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The empty chair doctrine revisited : an examination of the relative influences of attorneys and judges

Rob Johnstone
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relative influences of attorneys and judges**

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San Jose State University, 1993

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THE EMPTY CHAIR DOCTRINE REVISITED:
AN EXAMINATION OF THE RELATIVE INFLUENCES
OF ATTORNEYS AND JUDGES

A Thesis
Presented to
the Faculty of the Department of Psychology
San Jose State University

In Partial Fulfillment
of the Requirements for the Degree
Master of Arts

by
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May, 1993

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ABSTRACT

THE EMPTY CHAIR DOCTRINE REVISITED: AN EXAMINATION OF THE RELATIVE INFLUENCES OF ATTORNEYS AND JUDGES

by Rob Johnstone

The empty chair doctrine allows attorneys and judges to draw the attention of jurors to the absence of a potential witness; in doing so, the jurors are led to draw negative inferences. The study described in this paper attempted to replicate previous data evidencing the effect of the empty chair doctrine on juror decision making. Additionally, the study attempted to discern whether a judge's instructions or an attorney's comments regarding the nonattendant witness hold a stronger influence over jurors.

The results replicated the earlier study; there was a significant difference in conviction rates between the group of subjects that received both the judge's instructions and the attorney's comments and the group that received neither. In terms of the relative influences of attorneys and judges, the data supported the hypothesis that the mere mention of the missing witness by either a judge or an attorney is sufficient to affect the decision-making processes of jurors.

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The Empty Chair Doctrine Revisited:
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of Attorneys and Judges
Rob Johnstone
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Running Head: THE EMPTY CHAIR DOCTRINE REVISITED

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Abstract

A United States Supreme Court ruling known as the empty chair doctrine allows attorneys and judges to draw the attention of jurors to the absence of a potential witness; in doing so, the jurors are led to draw negative inferences. Earlier research by Webster, King, and Kassin (1991) provided support for the hypothesis that under certain conditions, jurors hold litigants responsible for the absence of central witnesses. In addition to replicating the earlier results, the study described in this paper also attempted to discern whether a judge's instructions or an attorney's comments regarding the nonattendant witness hold a stronger influence over jurors. A simulated trial design was implemented utilizing the same trial transcript as in the Webster et al. study. This transcript described a trial in which a central witness did not testify on behalf of the defense. One hundred and twenty subjects were divided into four conditions, which were formed by the inclusion or exclusion of the judge's instructions and the attorney's comments concerning the absent witness. The results of the study replicated the Webster et al. study; there was a significant difference in conviction rates between the group of subjects that received both the judge's instructions and the attorney's comments and the group that received neither. In terms of the relative influences of attorneys and judges, the data supported the hypothesis that the mere mention

of the missing witness by either a judge or an attorney is sufficient to affect the decision-making processes of jurors.

The Empty Chair Doctrine Revisited:
An Examination of the Relative Influences
of Attorneys and Judges

In the 1893 court case Graves v. United States, the U. S. Supreme Court ruled that "if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not creates the presumption that the testimony, if produced, would be unfavorable" (p. 121). This axiom has become known as the missing witness rule or the "empty chair" doctrine, and has been surrounded by controversy in the century following its inauguration. Although the justification for the introduction of the doctrine is relatively straightforward (the prevention of the concealment of evidence), there are significant objections to continued implementation of the doctrine.

A primary source of resistance to the empty chair doctrine has emerged from the fact that there are many plausible explanations for the absence of a witness in court. A defendant may wish to spare relatives and close friends the extreme tensions involved in a courtroom appearance (Webster, King, & Kassin, 1991). Additionally, recent psychological research on the credibility of witnesses has shown that witness factors such as low assertiveness, unattractiveness, or race can actually have a negative effect on jurors' considerations of their testimony (Stier, 1985). Based on

these findings, a litigant may wish to avoid the appearance of a witness, even if his testimony should theoretically assist in the case.

Another significant objection to the missing witness inference deals with the inconsistent message sent to the jurors concerning the consideration of evidence. As Kassin and Wrightsman (1988) pointed out, jurors are constantly reminded to base their verdicts solely on evidence given in the courtroom, yet the missing witness rule paradoxically allows the juror to ponder matters that are not a result of direct testimony.

In the first attempt to elucidate the numerous processes surrounding the "empty chair" doctrine, Webster, King, and Kassin (1991) found that under certain conditions, jurors will hold a litigant responsible for the absence of a witness. The first condition is the most intuitively obvious; jurors only form an adverse inference about a missing witness if empty chair comments are introduced by the opposing attorney and/or the judge. When empty chair comments are not introduced, jurors tend to subscribe to the "out-of-sight, out-of-mind" principle, and form no negative opinions about the defense as a result of the absent witness.

A second requirement for jurors' negative assessments concerns the status of the nonattendant witness. If the missing witness would have provided some vital information to the case, the

witness is known as central. Conversely, when the absent witness is not clearly essential to the case, he/she is known as peripheral. Webster et al. found that the jurors only blamed the defense for a missing witness if the witness would have been central; the jurors felt in this case that the defense was preventing the court access to potentially incriminating information. It is interesting to note that Webster et al. also reported that jurors blamed the prosecution in cases of missing peripheral witnesses; apparently the jurors felt that because the prosecuting attorney was drawing attention to the absence of a non-central witness, the prosecution's case was not powerful enough to convict the defendant. In light of previous research that has evidenced the tendency for subjects to ascribe a high level of importance to relatively unimportant data (Fazio, Sherman, & Herr, 1982; Leippe, 1985; Newman, Wolff, & Hearst, 1980), this finding is not particularly surprising. Based on this research and the results of the Webster et al. study, the current study focused solely on the role of central witnesses.

The results of Webster et al. certainly seemed to have important courtroom implications, but as it stood the research did not allow for the complete extrapolation of the study's results. Important questions lingered in the wake of the Webster et al. study. First, the research needed to be replicated, as this study was the first attempt at empirical research in this area. As it was a

groundbreaking study, Webster et al. did not attempt to ferret out the active components of the empty chair manipulation; they merely investigated the combined effects of the attorney's comments and the judge's instructions. It remained necessary to discern whether it was the attorney's comments or the judge's instructions that had a more salient effect on jurors' inferences. It was also possible that the cumulative effect of these two variables produced the adverse inferences. This study investigated precisely this question - is it the attorney's comments, the judge's instructions, or a combination of the two that is inducing jurors to hold the absence of a central witness against a litigant?

Method

Subjects

The subjects who served as mock jurors in this study were 120 female and male undergraduates at San Jose State University, drawn from introductory psychology courses. It would have been ideal if 120 subjects who had previously served on juries could have been obtained; however, this was unlikely as most of the students in introductory psychology courses had not yet had the opportunity to serve on a jury. Consequently, the subject pool was screened to ensure that subjects were at least eligible for jury duty at the time of the study. As such, subjects needed to be U.S. citizens of at least eighteen years of age.

Subjects were assigned randomly to one of four conditions, forming a 2x2 factorial design with the inclusion or exclusion of the attorney's and judge's comments:

1. Control condition - jurors were exposed to neither the opposing attorney's comments nor the presiding judge's instructions concerning the absence of a central witness.
2. Attorney's comments condition - jurors were exposed to the opposing attorney's comments concerning the absence of a central witness, but the presiding judge did not instruct the jury regarding the missing witness.
3. Judge's instructions condition - jurors were exposed to the predeliberation instructions of the presiding judge regarding the absence of a central witness, but the opposing attorney did not comment on the absence.
4. Combined condition - jurors were exposed to both the opposing attorney's comments and the judge's instructions regarding the absence of a central witness.

Procedure

As one of the central goals of this study was replication, the procedure was made as similar as possible to the procedure in the Webster et al. (1991) study. Subjects participated in small groups (8-12 people) and were asked to read the same trial transcript that was used in the Webster et al. study, a modified version of a 1979

trial, *State v. Wilson*. This trial decided the fate of Charles Wilson, a man who pleaded not guilty by reason of insanity to the murders of his wife and neighbor. In this trial both the prosecuting attorney and the presiding judge commented upon the absence of a central witness.

Previous research by Gallun (1983) has established a 50% conviction rate for this trial. This fact allowed for the manifestation of possible influences such as the empty chair doctrine: since all other variables were identically presented, the conditions were ideal for the empty chair doctrine to exert an effect on the subjects.

In the Webster et al. study, subjects followed the statement of an initial verdict with a period of jury deliberation. After this deliberation, a second verdict was elicited from each subject. The results from the initial study showed no significant differences between the pre- and post-deliberation verdicts. Therefore, the period of deliberation was eliminated in the current study. Additionally, as statistical analyses of data on individual subjects were being performed, this exclusion eliminated the possibility of contamination of an individual subject's data by input from other subjects during the period of deliberation.

The transcript was adjusted as follows for each condition (see Appendix A for the actual transcript and the adjustments made in each condition):

- Condition 1 - Both the attorney's comments and the judge's instructions about the absence of the central witness were removed from the transcript.
- Condition 2 - The attorney commented on the absence of the witness, but the judge's instructions were removed.
- Condition 3 - The judge instructed the jury to note the absence of the witness, but the attorney's comments were removed.
- Condition 4 - Both the attorney's comments and the judge's instructions remained in the transcript.

At the completion of the transcript reading, all subjects gave a verdict (with the possible responses of guilty and not guilty by reason of insanity), and then filled out a post-trial questionnaire, which is provided in Appendix B. This questionnaire asked the subjects for responses on the following items:

1. Certainty of verdict - subjects judged their own confidence level in their verdict using a 9-point Likert-type scale.
2. Influence of various actors - subjects assessed, using a 9-point Likert-type scale, the relative influences on their

decisions of the prosecuting and defense attorneys, witnesses, and the judge.

3. In addition, the subjects were asked to give a possible reason why the missing witness was not called by the Defense.

Results

Verdicts

The dependent variable of most interest was the subject's verdict on the case. The verdicts were collected for each subject, and group totals for guilty verdicts and for not guilty by reason of insanity verdicts were obtained for each of the four conditions. Overall, 76 subjects voted guilty and 44 voted not guilty, for a conviction rate of 63%. Table 1 shows the frequencies of verdicts for the various groups and their respective conviction rates. A chi-square analysis was performed to assess the significance of the observed frequency differences. In terms of replicating the Webster et al. study, the comparison of most interest was between the group that received both the attorney's comments and the judge's instructions about the absent witness and the control group that received neither the instructions nor the comments. These groups corresponded exactly to the groups in the earlier study. The results showed that the group that received the instructions and comments had a significantly higher conviction rate (77%) than the control group (43%), $\chi^2(1, n = 60) = 6.94, p < .01$.

Table 1

Frequencies of Guilty and Not Guilty By Reason of Insanity (NGRI)Verdicts for the Four Experimental Conditions

Condition	Voted Guilty	Voted NGRI	Conviction Rate
Att. & Judge	23	7	77%
Judge	21	9	70%
Attorney	19	11	63%
Neither	13	17	43%

To resolve the question of whether or not the judge or the attorney exerts a greater influence upon juries' verdicts, further chi-square tests were performed upon the data. There was no significant difference between the conviction rates of the group that received solely the attorney's comments about the missing witness (63%) and the group that received only the judge's instructions regarding the absence of a witness (70%), $\chi^2(1, n = 60) = 0.30$. In addition, there were no significant differences in conviction rates among the three groups (77%, 70%, 63%) who received mention of the absent witness, $\chi^2(2, n = 90) = 1.26$.

While these data do not permit a distinction to be drawn between the relative influences of attorney's comments and judge's instructions, a further analysis provided some insight into the matter. When the groups that received one piece of information (either the judge's instructions or the attorney's comments) were collapsed together, and the conviction rates of the combined group were compared with those of the control group (67% and 43%, respectively), the combined group's conviction rate was found to be significantly higher, $\chi^2(1, n = 90) = 4.57, p < .05$. When considered in tandem with the earlier data, these results suggest that the mere mention of the missing witness by either a judge or an attorney is sufficient to affect a jury's verdict.

Confidence ratings

The certainty of verdict ratings was measured using a 9-point Likert-type scale, with "1" representing uncertainty and "9" representing certainty. The means for the four conditions (attorney's comments and judge's instructions, judge's instructions, attorney's comments, and neither), were 6.97, 6.60, 6.97, and 6.47, respectively. A one-way analysis of variance revealed no significant differences among the groups, $F(3,116) = 0.47$. In addition to the one-way ANOVA, a further analysis was conducted on the certainty of verdict ratings. When the mean certainty ratings of the subjects who responded guilty ($M = 6.99$, $n = 76$) were compared, utilizing a t -test, with the mean ratings of the subjects who responded NGRI ($M = 6.34$, $n = 44$), it was found that the subjects who responded with a guilty verdict had a significantly higher rating of certainty in their verdicts, $t(118) = 1.73$, $p < .05$.

Influence ratings

Subjects' ratings of the importance of the six participants in the trial were judged using a 9-point Likert-type scale, with "1" representing no importance and 9 representing utmost importance. A mixed 4x6 within-subjects ANOVA was performed to analyze the influence ratings data, with the four experimental conditions forming the nonrepeated factor and the ratings of the six trial participants forming the repeated factor. The six participants that

the subjects were asked to rate the relative importance of were: the prosecuting attorney, defense attorney, judge, Sgt. Bircher (the police officer who first arrived on the scene), Steven Marshall (the absent witness who was a close friend of the defendant), and Drs. Fritz and Meyer (mental health experts who testified to the defendant's insanity). The ANOVA did not reveal a significant interaction between the various participants and the experimental groups, $F(15,580) = 0.80$. In addition, there was a nonsignificant main effect for the experimental conditions, $F(3,116) = 1.44$. There was a significant main effect for the various participants, $F(5,580) = 24.59$, $p < .001$, but this variance merely reflects the fact that subjects rated the six participants differently.

Again, a separate analysis was performed to investigate potential differences in importance ratings between the subjects who voted guilty and the subjects who voted NGRI. Six separate t -tests were performed to compare the various mean importance ratings, and there were significant differences between the groups for a number of the participants. Of most interest, the mean importance ratings of Steven Marshall, the missing witness, were significantly higher in the group of subjects who voted guilty ($M = 5.57$, $n = 76$) than in the group who voted NGRI ($M = 4.10$, $n = 44$), $t(118) = 3.28$, $p < .001$. Subjects who voted NGRI considered Drs. Fritz and Meyer to be more important ($M = 7.32$) than those subjects

who voted guilty ($M = 5.67$), $t(118) = 4.23$, $p < .001$. Not surprisingly, those subjects who voted guilty considered the prosecuting attorney to be more important ($M = 6.80$) than did those who voted NGRI ($M = 5.61$), $t(118) = 3.50$, $p < .001$. Conversely, those subjects who voted NGRI considered the defense attorney to be more important ($M = 6.99$) than did those who voted guilty ($M = 6.34$), $t(118) = 1.67$, $p < .05$. There was not a significant difference between the two groups in terms of the importance of Sgt. Bircher or the judge, $t(118) = 1.31$ and 1.41 , respectively.

Discussion

This study's attempt at replication of the Webster et al. study was successful; as in the earlier study, the direction of attention of jurors by both the judge and the attorney toward the missing witness was found to have a strong effect on jurors' decision making processes. As indicated in the results section, there was a marked difference in the conviction rates between these two groups. Those in the no-comment condition voted for conviction only 43% of the time while those who received both sets of comments voted for conviction 77% of the time. Furthermore, while this study was unable to detect a difference in influence between the judge's instructions and the attorney's comments concerning the absent witness, it did provide valuable evidence showing that the mention of the missing witness by either party still exerted a significant

effect on the jurors. Subjects who received the singular reference to the missing witness by either the judge or the attorney (the combined group) had a 67% conviction rate, as opposed to the 43% conviction rate achieved by the control group.

The data also evidenced an interesting trend with regard to the certainty of the verdict ratings given by the subjects. While there were no differences among the confidence ratings of the subjects in the four experimental conditions, a significant difference was found in confidence ratings between those subjects who voted guilty and those who voted NGRI. Not surprisingly, given the previous research on the insanity defense (Gallun, 1983), those subjects who voted NGRI had a lower level of certainty in their verdicts than did those subjects who voted guilty.

As with the certainty of verdict ratings, the data concerning the relative influences of the trial participants did not show any significant differences among the experimental conditions. While there were significant differences among the ratings received by the various participants, these differences were not very meaningful. Given that this was the repeated factor of the design, it stands to reason that the subjects would consider the participants to be of varying degrees of importance.

More importantly, when the subjects were differentiated by verdict, some interesting differences were found. With regard to

the empty chair doctrine, the finding of most interest was that the missing witness, Steven Marshall, was considered less important by the subjects who voted NGRI. Therefore, regardless of whether or not the jurors who voted NGRI received any information about Mr. Marshall, they considered him unimportant in their formation of a decision on the case. In a related finding, these same subjects who voted NGRI considered the defense's expert witnesses who testified to the insanity of the defendant, Drs. Fritz and Meyer, to be far more important in their decision making processes than did those jurors who voted guilty. In addition, as would be expected, those jurors who voted guilty rated the prosecuting attorney as more influential and those who voted NGRI rated the defense attorney more influential. However, these data do show that credibility was certainly an issue of tantamount importance in this case; the verdict a juror rendered was predicted quite accurately by the consideration of whose testimony (or lack thereof) the juror believed.

It should be noted that it is not a trivial interpretive fact that the data on influence ratings were collected after the subjects had given their verdict. This sequencing could lead to a possible confounding confirmation bias, as it is possible that subjects' ratings of the various participants were affected by which verdict they rendered. Future studies might attempt to collect influence

ratings prior to the subjects' rendering of the verdict; however, it is possible that this procedure would affect the subjects' verdicts.

Conclusion

This study was successful in its attempt to replicate the Webster et al. study. After analyzing the results of both this study and the Webster et al. study, it is clear that under certain conditions, the empty chair doctrine exerts a significant influence in the courtroom. It is now in the hands of legal policy-makers to decide if the extent of this influence is justified. The fact that one reference to the absence of a witness can have such a profound effect on jurors' decisions seems dangerous, especially since, as mentioned earlier, there may be valid reasons for the absence of a witness. In addition, it seems highly inappropriate, given our legal system's usual insistence on relying solely upon evidence that has been admitted as testimony, that the absence of testimony should produce such a marked effect.

References

- Fazio, R. H., Sherman, S. J., & Herr, P. M. (1982). The feature-positive effect in the self-perception process: Does not doing matter as much as doing? Journal of Personality and Social Psychology, 42, 404-411.
- Gallun, E. (1983). The effect of the insanity defense and its consequences on jury verdicts. Unpublished honors thesis, Williams College.
- Graves v. United States, 150 U.S. 118 (1893).
- Kassin, S. M., & Wrightsman, L. S. (1988). The American jury on trial: Psychological perspectives. Washington, D. C: Hemisphere Books.
- Leippe, M. R. (1985). Influence of eyewitness nonidentifications on mock jurors' judgments of a court case. Journal of Applied Social Psychology, 15, 656-672.
- Newman, J., Wolff, W. T., & Hearst, E. (1980). The feature-positive effect in adult human subjects. Journal of Experimental Psychology: Human Learning and Memory, 6, 630-650.
- State v. Wilson, 454 U.S. 587 (1979).
- Stier, R. H. (1985). Revisiting the missing inference: Quieting the loud voice from the empty chair. Maryland Law Review, 44, 137-176.

Webster, T. M., King, H. N., & Kassin, S. M. (1991). Voices from an empty chair: The missing witness inference and the jury. Law and Human Behavior, 14, 31-42.

APPENDIX A
TRIAL TRANSCRIPT

STATE V. CHARLES WILSON (1979)

ENCLOSED IS AN EDITED TRANSCRIPT OF A REAL TRIAL IN WHICH THE DEFENDANT, CHARLES WILSON, WAS CHARGED WITH THE CRIME OF FIRST DEGREE MURDER. THE DEFENSE CLAIMS HE WAS SUFFERING FROM MENTAL ILLNESS AND IS THEREFORE NOT GUILTY BY REASON OF INSANITY. THE LAW IN THIS CASE PROVIDES THAT IF A DEFENDANT IS TO BE FOUND NOT GUILTY BY REASON OF INSANITY, HE OR SHE IS AUTOMATICALLY COMMITTED TO A PSYCHIATRIC INSTITUTION. READ THE TRIAL CAREFULLY AS IF YOU WERE ON THE JURY DECIDING THE CASE. AFTER CONSIDERING ALL THE EVIDENCE, YOU WILL BE ASKED TO RENDER A VERDICT.

State v. Wilson

Judge: Does the Counsel for the Government wish to make any opening remarks?

Counsel for the Government: Yes, your honor. Counsel for the Defense, ladies and gentlemen of the jury. As you know, at this time, it is customary for me, representing the people of the United States to make what is known as an opening statement. Whatever I may say during this opening statement is not evidence, as you understand. It is solely for the purpose of giving you, the jurors, a bird's eye view of the evidence that will be presented from the witness stand.

Now I would like to give you a little background on the defendant, Mr. Charles Wilson. Mr. Wilson is a fairly ordinary man and has been for most of his life. He has all the normal emotions: happiness, sadness, excitement, anger, jealousy -- all the same emotions that you or I have. Prior to December 19, Mr. Wilson was feeling one of these emotions -- he was jealous; extremely jealous that his wife was conducting relations with another man. He did what you or I might do if we were in a similar situation: he looked for evidence of some sort of extramarital affair, some sort of proof to support his suspicions. When he found the evidence he needed to

convince him that he was right, he became even more jealous and very angry, so angry that he plotted to kill his once beloved wife and her suspected lover.

We don't know for sure what happened on that fateful night of December 19. Mr. Wilson claims to have lost his memory for the unfortunate event, and the only other persons present, Mary Lou Wilson, and Earl Maddox, are now dead as a result. I believe Mr. Wilson lured his once friendly neighbor and his wife's now suspected lover, Earl Maddox, over to his house with some made-up story and confronted him with his information, while Mary Lou was still at work. When Mr. Maddox tried to disclaim Mr. Wilson's facts and defend himself, Mr. Wilson became enraged and killed him then and there, in cold blood. Mary Lou came home shortly after to find the dead body of her former friend waiting for her on the kitchen floor. She became very upset, which Charlie interpreted as evidence of her infidelity. This, in turn, convinced him that he was right and further upset him, which allowed him to carry out his plans to kill her as well.

We don't know the facts, we can only speculate to what went on that evening. What we do know is that Mr. Wilson realized he had committed a terrible crime, and called the person whom every sane man calls when he knows he is in a legal bind, his lawyer, John F. Bailey. Mr. Bailey advised him

to call the police, who arrived at the scene of the crime within a matter of minutes. They found not a raving lunatic, as perhaps the defense will try to convince you, but a rational man fully aware of the awful act that he had just committed. It was only after Mr. Wilson had the opportunity to confer with his lawyer, and to realize what big trouble he was in, that he came up with his insanity scheme to save him from the punishment he deserves.

The question the people of the United States are asking you to decide is not whether Mr. Wilson killed Mrs. Wilson and Mr. Maddox. Mr. Wilson admits he did just that. The question is, was Charles Wilson sane at the time he committed this terrible crime? Did he understand what he was doing and work out and carry through an elaborate plan to kill Mrs. Wilson and Mr. Maddox? Members of the jury, given the evidence which we expect to prove, and the instructions you shall receive from Judge Morgan at the close of the trial, we will ask you to return a verdict finding the defendant guilty of first degree murder. Thank you.

Judge: Does the Defense wish to make any opening remarks?

Counsel for the Defense: Yes, your honor. May it please the Court, ladies and gentlemen of the jury. I want to remind you once again that what the opposing counsel or myself may say at this

time of the trial is not evidence. It is only what we feel the evidence will prove later on in the trial.

Ladies and gentlemen of the jury, as the Counsel for the Government told you, we are not here to decide whether Charles Wilson killed his wife and Earl Maddox. We know he did it, he knows he did it, and he is dreadfully sorry he did it. The question you will be asked to answer at the close of this trial is, should Mr. Wilson be held criminally responsible for his actions? Our first inclination is to hold all parties responsible for their actions, but I think you will agree that some exceptions need to be made. Would you hold a young child who unknowingly picks up a real gun, thinking it is a toy just like the others he has played with so often, and shoots his brother criminally responsible? Would you hold someone whose brakes give out and kills a fellow driver criminally responsible? I think you will agree that we cannot apply the same standards to each and every case. According to this state's legal standard, if you find, and I think you will, that Mr. Wilson was suffering from mental disease or defect and therefore lacked substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law, you will have to deem Mr. Wilson not criminally responsible.

Nor are Charles Wilson's psychiatric problems, as the Prosecution contends, a newly invented excuse. Mr. Wilson has had a history of psychological problems throughout his life. At one point he was so distressed that he even sought expert psychiatric help. Through these experts he was able to trace his problems back to his childhood, to an extremely traumatic childhood event. At the age of five, he found his mother in bed with another man, a man other than his father. From that day forward, little Charlie Wilson was never the same. He repressed that memory and tried to keep it in the corner of his mind. Unfortunately, this repressed memory has come back to haunt him throughout his life, first causing problems with his parents and later difficulties with his relations with women. It was at the root of his obsession with infidelity -- he could not tolerate any unfaithfulness whatsoever. It caused him to create an illusory affair between his wife and Mr. Maddox, when not a shred of evidence for such an affair existed. Finally, this obsession caused him to go crazy -- to receive false messages and, in turn, to send messages that no sane man would ever send, to shoot his beloved wife and neighbor.

Mr. Wilson often confided his irrational fears and obsessions to his life-long friend Steve Marshall, a man who has tried to help Mr. Wilson cope with his problems throughout their long, close friendship. Indeed Mr. Marshall has known

the defendant for 25 years. During the week he killed his wife and neighbor, Wilson spoke to Mr. Marshall. He has even talked to co-workers at his place of employment about his troubles. As you will see, ladies and gentlemen, psychological disorders have long plagued Charles Wilson.

I think you have received all of the facts you will be convinced that Charles Wilson did not realize what he was doing, could not appreciate the wrongfulness of his act, and was unable to control his behavior on the evening he shot his wife and neighbor.

According to the law, ladies and gentlemen of the jury, the burden of proof rests on the Prosecution. Judge Morgan will instruct you that the Prosecution must prove beyond a reasonable doubt that Mr. Wilson was sane and in control on the night of December 19. If you have any doubt whatsoever as to Mr. Wilson's sanity, according to the law, you should return a verdict of not guilty by reason of insanity. I believe after hearing all of the evidence there will be more than a reasonable doubt in your minds whether Mr. Wilson should be held responsible for his behavior on the night in question.

Judge: Will the Government please call its first witness?

Counsel for the Government: The State would like to call Brandon Scholz.

Judge: Is Mr. Scholz in the courtroom? Would you please step up and be sworn?

Baliff: Raise your right hand. Do you swear to tell the truth, the whole truth, according to the facts?

Mr. Scholz: I do.

Counsel for the Government: Would you please state your name and occupation for the Court?

Mr. Scholz: My name is Brandon Scholz and I work as a private detective.

Counsel for the Government: Would you please tell the Court of your relationship to the defendant, Mr. Wilson?

Mr. Scholz: Yes, he hired me on November 20 to follow his wife because he suspected her of having relations with another man.

Counsel for the Government: In other words, he was concerned that she was having an affair and was jealous, is that correct?

Mr. Scholz: That is correct, sir.

Counsel for the Government: Would you say at the time of your dealing with Mr. Wilson that he seemed rational?

Mr. Scholz: Yes, sir.

Counsel for the Government: Logical?

Mr. Scholz: Yes, sir.

Counsel for the Government: Coherent?

Mr. Scholz: Yes, sir.

Counsel for the Government: Did he give you any reason to suspect he was having any sort of psychological problems whatsoever?

Mr. Scholz: No, sir.

Counsel for the Government: No further questions.

Judge: Does the Defense wish to cross-examine?

Counsel for the Defense: Yes, your honor. Mr. Scholz, did you find any evidence that Mr. Wilson was having an affair or seeing any other man?

Mr. Scholz: No, sir. I did not.

Counsel for the Defense: How many days did you work for Mr. Wilson?

Mr. Scholz: Ten.

Counsel for the Defense: And how much do you charge per day?

Mr. Scholz: Two hundred dollars per day.

Counsel for the Defense: So that made Mr. Wilson's bill come to \$2000. Is that correct?

Mr. Scholz: Yes, sir.

Counsel for the Defense: Didn't that somehow make you suspicious: here is this guy who is spending a lot of money for you to trail his wife and you couldn't come up with even a shred of evidence?

Mr. Scholz: No, sir.

Counsel for the Defense: Aren't investigators trained to be perceptive?

Mr. Scholz: Yes, but --

Counsel for the Defense: No further questions.

Judge: The witness may step down. Government may call its next witness.

Counsel for the Government: Thank you, your honor. We would like to call Sergeant Raymond K. Bircher to the witness stand.

Judge: Is Sergeant Bircher in the courtroom? Would you step up, sir, and be sworn?

Baliff: Raise your right hand. Do you swear to tell the truth, the whole truth, according to the facts?

Sergeant Bircher: Yes, sir, I do.

Counsel for the Government: Would you please state your name and occupation for the jury?

Sergeant Bircher: Raymond Bircher, B-I-R-C-H-E-R, Sergeant for the Milwaukee City Police Force.

Counsel for the Government: How long have you held this position?

Sergeant Bircher: Well, I first joined the force in 1962. I was promoted to Sergeant six years ago and have served in that capacity ever since.

Counsel for the Government: Could you please tell the court of your role in the December 19th murder?

Sergeant Bircher: Well, I arrived at the scene of the crime at 8:50. No one seemed to be around but there were two bodies, one male and the other female, on the kitchen floor. I examined

the bodies to see if they were alive -- both were dead. Both bodies were badly bruised and bloodied, and there were compound fractures on several limbs. Their skulls had somehow been smashed. I also found a gunshot wound in the upper abdominal cavity of Mrs. Wilson and in the head of Mr. Maddox.

Counsel for the Government: Where was Mr. Wilson at this point?

Sergeant Bircher: I looked around and found him in the living room.

He came over when he saw me and told me he had killed them both and that he had already called his lawyer.

Counsel for the Government: Did he call his lawyer before calling the police?

Sergeant Bircher: Yes, sir. That is the impression I had.

Counsel for the Government: Sergeant Bircher, could you tell the Court, in your opinion, did Mr. Wilson seem like he was crazy, like he was a raving madman who would shoot people without knowing why?

Counsel for the Defense: Objection, your honor. Counsel is leading the witness.

Judge: Objection sustained. Strike it from the record. Counsel, rephrase the question.

Counsel for the Government: Could you describe the defendant's mental state for the Court, Sergeant Bircher? Would you say he was coherent -- that he understood your questions?

Sergeant Bircher: Yes, sir. He seemed to be alert and aware of this situation.

Counsel for the Government: And he understood what he had done?

Sergeant Bircher: Yes, sir. He confessed to it.

Counsel for the Government: While searching the house, did you find anything strange?

Sergeant Bircher: Yes, I found a tape recorder which was still playing.

Counsel for the Government: Your honor, I would like to enter as exhibit A, the cassette tape which was playing in the tape player Sergeant Bircher refers to.

Tape: (woman's voice): My husband would not stop questioning me -- he thinks I am fooling around.

(man's voice): Do you want me to come over and talk to him?

(woman's voice): No, I don't think that would be a good idea.

(man's voice): Well, you know I think you ought to start fooling round, because when people start accusing, it usually means they are guilty themselves...

Counsel for the Government: Sergeant Bircher, have you been able to identify the voices on the tape?

Sergeant Bircher: Yes, sir. The female voice is Mary Lou Wilson, the male voice belongs to Earl Maddox.

Counsel for the Government: Sergeant Bircher, could you interpret the meaning of this tape and its place in the scenario of December 19?

Counsel for the Defense: Objection, your honor. Jury can interpret this for themselves.

Judge: Objection sustained. Rephrase the question, Counsel.

Counsel for the Government: I withdraw the question. Thank you, Sergeant. No further questions.

Judge: The Defense may cross-examine.

Counsel for the Defense: Thank you, your honor. Sergeant Bircher, have you had any sort of psychological training?

Sergeant Bircher: No, sir.

Counsel for the Defense: Do you consider yourself an expert at judging a person's mental state?

Sergeant Bircher: No, sir.

Counsel for the Defense: In your police reports do you have any record of what Mr. Wilson said in his phone call to the police station the night of December 19.

Sergeant Bircher: Yes, apparently he said, "Come help them -- I don't want them to die." Is that what you are referring to?

Counsel for the Defense: Yes. And were there any other notes as to his behavior on the phone that night?

Sergeant Bircher: Yes, sir. He was in tears. The operator noted that he seemed quite upset.

Counsel for the Defense: Disturbed, isn't that the word she used?

Sergeant Bircher: Yes, sir.

Counsel for the Defense: Do most murderers call up after having killed their victims first to report the killing and second to ask for help, because they "don't want (their victims) to die"?

Sergeant Bircher: No, sir. I wouldn't think so.

Counsel for the Defense: So you would describe Mr. Wilson as being somewhat atypical?

Sergeant Bircher: Of a murderer?

Counsel for the Defense: Yes

Sergeant Bircher: Yes, sir.

Counsel for the Defense: Thank you. No further questions.

Counsel for the Government: The Counsel for the Government calls Todd Jones.

Judge: Step up and be sworn, sir.

Baliff: Do you swear to tell the truth, the whole truth according to the facts you will give?

Mr. Jones: I do.

Counsel for the Government: Would you please state your name, occupation and place of employment for the court?

Mr. Jones: My name is Todd Jones and I am a floor superintendent at the Briggs and Stratton plant on Farwell Street.

Counsel for the Government: How long have you worked for Briggs and Stratton?

Mr. Jones: Twenty-three years, sir.

Counsel for the Government: Could you please tell us your relationship to the defendant, Mr. Wilson?

Mr. Jones: I've been his immediate supervisor for eight years. I have also been his and his wife's friend for most of that -- or at least until this happened.

Counsel for the Government: And Mr. Jones, how would you describe Mr. Wilson -- this is at least prior to the difficulties he has had recently?

Mr. Jones: Well, he was always a good, considerate, hard-working, conscientious -- you know, a good guy.

Counsel for the Government: Did you ever see him act "crazy"?

Mr. Jones: No, I did not.

Counsel for the Government: Have you had any contact with him since his arrest?

Mr. Jones: Yes, sir. He called me on the phone on February 17.

Counsel for the Government: Would you please describe the phone conversation you had with him for the Court?

Mr. Jones: Well, he called me up and said he was in some psychiatric hospital, but he sounded pretty damn normal to me. Anyway, he said, "you know, Todd, it didn't happen the way they said it did in the newspapers. I'm okay -- really I'm going to be okay." Then he went on to say that he really wanted to know whether he could have his job back when the trial was over.

Counsel for the Government: So he said he was not crazy, that he was fit to work and wanted his job back, is that correct?

Mr. Jones: Yes, sir.

Judge: Cross-examination?

Counsel for the Defense: Thank you, your honor. Mr. Jones, I would like to ask you about something which happened about two years prior to today. We were going through some of Mr. Wilson's papers and noticed he had to take some time off. Could you tell us a little bit about that?

Mr. Jones: Yeah -- well, he just said he was having problems.

Counsel for the Defense: What kind of problems?

Mr. Jones: He wasn't very specific and he didn't really seem to want to discuss it. He just said it was personal.

Counsel for the Defense: Personal? Hmm...did it occur to you that his problem might be psychological? Wasn't it likely that he was having some sort of emotional difficulties even as early as two years ago?

Mr. Jones: Yes, that's possible, I guess. We all have problems, though.

Counsel for the Defense: Thank you. No further questions.

Judge: The Prosecution may call its next witness.

Counsel for the Government: Your honor, we have no further witnesses. At this time, we rest our case.

Judge: Is the Defense prepared to present its case at this time?

Counsel for the Defense: We'd like to call Dr. Tony Meyer to the stand at this time.

Judge: Stand up and be sworn, sir.

Baliff: Do you swear to tell the truth, the whole truth, according to the facts you will give?

Dr. Meyer: I do.

Counsel for the Defense: Could you please state your name and occupation for the Court?

Dr. Meyer: Dr. Anthony Meyer, practicing psychiatrist.

Counsel for the Defense: Where and when did you get your degree?

Dr. Meyer: I graduated from the University of Wisconsin-Madison Medical School in 1960.

Counsel for the Defense: Dr. Meyer, where is your practice?

Dr. Meyer: I'm on the staff at Columbia Hospital and I also have a private practice. My office is at 320 Oakland Avenue.

Counsel for the Defense: Could you please tell the Court about your relationship to Mr. Wilson?

Dr. Meyer: He came to me two years ago as a private patient because he wasn't getting along with his wife. He was extremely jealous and over-protective of her. We discussed his problems and finally traced them back to a repressed scene of his mother in bed with another man. When he was 5 years old, apparently he came home from school one day and found

his mother with someone who looked like his uncle - we don't know who it was due to the fact that Mr. Wilson had repressed the memory for so long it didn't all come back, but I felt that most of his emotional problems and problems with women were caused by this traumatic memory. We talked about this at some length, worked through the memory, and both decided that I really couldn't do much more for him.

Counsel for the Defense: So, he had been having these problems for a long time?

Dr. Meyer: Yes, sir.

Counsel for the Defense: And did you cure him?

Dr. Meyer: Well, psychiatric problems aren't something that can be cured like a cold or a broken arm. Usually, with a problem like Mr. Wilson's all we can do is make him better able to deal with the problems.

Counsel for the Defense: So, in other words, you could say his problem was still there and could rise to the surface any time to cause more serious problems?

Counsel for the Government: Objection. Counsel is leading the witness.

Judge: Sustained. Rephrase the question, Counsel.

Counsel for the Defense: Dr. Meyer, is Mr. Wilson still suffering the effects of his psychological problem?

Dr. Meyer: Yes, sir, he is.

Counsel for the Defense: To the best of your knowledge, did Mr. Wilson have any close friends?

Dr. Meyer: Yes, in fact he often spoke of a man named Steve Marshall. I believe that they were very good friends.

Counsel for the Defense: No further questions.

Judge: Does the Counsel for the Government wish to cross-examine?

Counsel for the Government: Yes, thank you, your honor. Dr. Meyer, how many times have you testified in cases like this one?

Dr. Meyer: Eight or nine.

Counsel for the Government: I see, and when you speak of repressed memories causing later difficulties, that is basically a psychoanalytic diagnosis, is it not?

Dr. Meyer: That's right.

Counsel for the Government: Isn't it true that there are anywhere from 12-100 different theories of personality and that psychoanalytic is just one of those; that no theory has won much more acceptance than any of the others?

Dr. Meyer: Well, some are more accepted than others. Also, I am not an orthodox psychoanalyst, I incorporate other theories into my work when I think they are appropriate considering the case in question.

Counsel for the Government: In other words, you formulate your own theory as the need may be? You disregard theories that have been subject to years of criticism, in favor of your own

personal theory which has not yet been scrutinized by any of your peers?

Dr. Meyer: No, I just maintain an open mind and incorporate whatever ideas I feel will help to describe and explain the case in question.

Counsel for the Government: Thank you. No further questions.

Judge: Redirect?

Counsel for the Defense: Just one question, your honor. Dr. Meyer, a psychiatrist who borrows and synthesizes concepts from a variety of theories is usually described as eclectic, is that right?

Dr. Meyer: Yes, sir. I describe myself as eclectic in my orientation and practice.

Counsel for the Defense: Are most psychiatrists eclectic?

Dr. Meyer: Yes, I'd say that the vast majority of psychiatric and psychological professionals are eclectic rather than committing themselves to a single, all-encompassing theory. It simply means you are willing to acknowledge the uniqueness of each individual case.

Counsel for the Defense: Thank you. No further questions.

Judge: Counsel for the Defense may call the next witness.

Counsel for the Defense: The Defense would like to call Dr. Richard Fritz.

Judge: Stand up and be sworn, sir.

Baliff: Do you swear to tell the truth, the whole truth according to the facts?

Dr. Fritz: I do.

Counsel for the Defense: Could you please state your name and occupation for the Court?

Dr. Fritz: My name is Richard M. Fritz and I am a practicing psychiatrist.

Counsel for the Defense: Dr. Fritz, from where did you receive your degree, and when?

Dr. Fritz: I graduated from Johns Hopkins in 1958.

Counsel for the Defense: And where do you now practice?

Dr. Fritz: I am chief of the psychiatric staff at the Milwaukee General Hospital.

Counsel for the Defense: How long have you worked there?

Dr. Fritz: Since 1970. Prior to that I worked at Milwaukee Medical Associates.

Counsel for the Defense: Dr. Fritz, you have examined and spoken with Mr. Wilson, is that correct?

Dr. Fritz: Yes, sir.

Counsel for the Defense: How long have you known him?

Dr. Fritz: I met him six months ago and have been working with him since then.

Counsel for the Defense: Could you describe his mental state for the Court?

Dr. Fritz: I have diagnosed him as a paranoid schizophrenic with obsessive tendencies.

Counsel for the Defense: And how did you arrive at this diagnosis?

Dr. Fritz: Through extensive psychological testing. We administered the MMPI, the Rorschach, and the TAT to Mr. Wilson. My diagnosis was also based on my personal observations of Mr. Wilson's behavior during interview sessions.

Counsel for the Defense: So you have based your conclusions on many different sources, is that right?

Dr. Fritz: Yes, sir. And they all point in the same direction.

Counsel for the Defense: Could you please describe what your diagnosis of paranoid schizophrenic with obsessive tendencies means?

Dr. Fritz: The symptoms of his mental disease involve disturbances in thinking, mood, and behavior, and the ability to recognize and deal with reality. He suffers from delusions -- irrational beliefs held in spite of evidence that they have no basis in reality and obsessive thought -- recurring irrational thought. He also has amnesia for the event in question -- despite every effort to get at his memory (hypnosis, going back to the scene, etc.), he is unable to retrieve it.

Counsel for the Defense: Thank you. No further questions.

Judge: Cross-examine?

Counsel for the Government: Dr. Fritz, did you physically examine Mr. Wilson?

Dr. Fritz: No, I usually don't. The psychiatric diagnosis is concerned primarily with the patient's thought, feelings, and behavior. These things don't show up on physical examinations.

Counsel for the Government: So, then you depend a great deal on what Mr. Wilson told you.

Dr. Fritz: Yes. But more on how he said it. The patterns, his narrative, the things he didn't say, his behavior, mood, and so on. While, of course, I listened carefully to what he said, I certainly didn't take it at face value.

Counsel for the Government: Did you check any of his statements with other witnesses?

Dr. Fritz: No.

Counsel for the Government: Don't people sometimes misrepresent themselves, especially when they have a great deal to gain by doing so?

Dr. Fritz: Yes, but it is hard to do a credible job of simulating mental illness. A man may try to talk or act bizarrely or describe some previous occasions when he did, but speaking or acting crazy is one thing and a clinical pattern of mental illness is quite another. In any event, I do not believe Mr. Wilson tried to stimulate mental illness.

Counsel for the Government: If he were successful in his efforts, you wouldn't believe he had tried to fool you either. Is that so?

Dr. Fritz: I suppose so. But it is not likely to be successful unless, of course, he has gotten an M.D. degree, taken an internship and a three-year psychiatric residency, examined 1,000 mentally ill people and read several hundred books on the subject. I don't think Mr. Wilson has done any of these things.

Counsel for the Government: No further questions.

Judge: Witness may step down. Counsel for the defense may call next witness.

Counsel for the Defense: No further witnesses. The Defense rests its case.

Judge: Would Counsel for the Government care to argue its case at this time?

Counsel for the Government: Yes, your honor. We do have a closing argument to make.

Judge: I would first like to admonish the jury that the arguments of Counsel are not evidence, but are Counsel's interpretations of what the evidence does show, and the theories that Counsel draws from the evidence which you have received from the witness stand.

Counsel for the Government: May it please the Court, Counsel for the Defense, members of the jury. I wish to express the appreciation of everyone here for the close attention you have given us throughout the trial. Members of the jury, what is the question you have to decide today? It is not if Mr. Wilson killed his wife and neighbor, because as I said earlier, he has admitted that he did just that. The question is: was Mr. Wilson legally sane on that day in question, not whether he is today or will be tomorrow, but was he sane on the evening of December 19?

Now I realize sanity is a difficult thing to pin down, but let's look at the evidence and not go by what Mr. Wilson tells us -- as the psychiatrists have had to do because they were not there. What is the first thing Mr. Wilson did after the murders? He called his lawyer, a very sane thing to do. What is the second thing that Mr. Wilson did? He came up with an insanity excuse to help him get out of the trouble he was in, ironically enough, another very sane thing to do. And finally, what was Mr. Wilson worried about as he spent his days in the psychiatric hospital? He was worried about getting his job back, also a very sane thing to think about. The experts who were on the scene at the time in question -- Officer Heffling and Sergeant Bircher -- testified that he seemed perfectly coherent and reasonable. He understood their questions and

he understood what he had done. It is only those experts hired by the defendant who come to the conclusion that he was not sane on that December evening - and they were not even there. They are basing their conclusions on examinations and interviews with him long before the fact in Dr. Meyer's case, and long after, in the case of Dr. Fritz, he had been able to think of how to make this insanity defense work to his best advantage, and long after the guilt of having killed two people in cold blood had worked into his soul and made him go a little crazy.

It is on these so called psychiatric experts which the case rests, and you have seen how expert they really are. They base their conclusions on what Mr. Wilson has told them, they have no scientific evidence or proof that what they say is or ever has been correct. The Defense told us several times in their efforts to substantiate the defendant's alleged history of psychiatric problems, that Mr. Wilson talked to friends about his troubles as well. He has a friend, for example, named Steven Marshall. I put it to you, ladies and gentlemen -- where is Mr. Steven Marshall? Mr. Marshall is a man with whom Mr. Wilson has been close friends for some twenty-five years, yet he has not been introduced in this courtroom. Is it possible that Mr. Marshall would not have corroborated the potentially misinformed opinions of the attending

psychiatrists? I think it is. Members of the jury, if your close friend were in this kind of trouble, wouldn't you want to be there to help him? I think, in weighing the evidence, you will come to the conclusion that I have. Mr. Wilson was not insane at the time in question--he was very sane, so sane as to be able to come up with the not guilty by reason of insanity defense. Therefore the State asks that you return a verdict of guilty. Thank you.

Judge: Would the Defense care to argue its case at this time?

Counsel for the Defense: Yes, thank you, your honor. Ladies and Gentlemen of the jury: this is my final opportunity to give my side of the argument so please listen carefully. I'm going to talk about two phrases I've talked about before, that are very important in the decision you are about to make: burden of proof and reasonable doubt. I think if you apply these terms to the facts and the evidence as we have heard them today, you're going to come back with a verdict of not guilty by reason of insanity. The Prosecution has the burden of proof and must prove beyond a reasonable doubt that Mr. Wilson was sane on the night of December 19. That means that if you have any reasonable doubt as to Mr. Wilson's mental state on the evening in question you will find him not guilty.

Now, I realize it is difficult to incorporate a verdict of not guilty into your final verdict, when in fact you and I both

know he did it. What you really want to say is that he is guilty, but insane. He did it, but he didn't have the mental state the law had in mind when it said don't do these things. He didn't have the control or the intent; he was suffering from a mental disease. Our legal philosophy is such that those people who suffer from mental disease, lack the criminal intent, or don't have the control the law had in mind are deemed not responsible, just as that young boy who might shoot his brother with a gun believing it was a toy would not be held responsible. Therefore they cannot be found guilty. So if you feel he lacked the proper mental state but was guilty, you can return a verdict of not guilty by reason of insanity and rest satisfied that your verdict is right. Thank you, ladies and gentlemen.

Judge: Ladies and gentlemen of the jury, you have just heard the case of State v. Wilson. Now it is my obligation to instruct you on the law, after which you will deliberate and arrive at a verdict. In the American legal system, the defendant is to be considered innocent until proven guilty. The Prosecution has the burden in this case, to prove beyond a reasonable doubt that the defendant was sane on the evening in question. In order to assist you in your decision of sanity the following standard will apply:

A person is not responsible for criminal conduct, if, at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity either to appreciate the criminality of his conduct or conform his conduct to the requirements of the law.

Mental disease or defect do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Furthermore, if, according to the appropriate procedures, the court is shown that a witness is available to one of the parties alone, and the anticipated testimony of the witness would elucidate some material issue, and the party who fails to produce the witness offers no explanation, then the fact-finder may be permitted, but is not required, to infer that the testimony would have been unfavorable to the party who failed to call the witness; however, that inference does not supply affirmative or substantive proof, but merely affects the weight or credibility of the evidence.

You will now consider the facts and arrive at a verdict.

APPENDIX B
QUESTIONNAIRE

VERDICT (Circle One):

Not Guilty By Reason of Insanity

Guilty

POST-TRIAL QUESTIONNAIRE

1. Please use the following scale to assess the level of confidence you had in your verdict. (Circle one)

1	2	3	4	5	6	7	8	9
very unconfident		somewhat unconfident				somewhat confident		very confident

2. Please use the following scales to assess the relative importance of the following people in your verdict.

Prosecuting attorney:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important factor

Defense attorney:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important factor

Judge:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important factor

Sergeant Bircher:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important

Steven Marshall:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important factor

Drs. Fritz and Meyer:

1	2	3	4	5	6	7	8	9
not at all important		not very important		important		very important		most important factor

3. Please briefly give a possible reason that Steven Marshall was not brought to testify by the Defense.