

1 they have never complied with the rules of procedure in this
2 regard. He has psychiatric disorders. It sounds to me like
3 he is going to say he is insane.

4 MR. EVANICK: Those rules require us to notify
5 the Commonwealth that we intend to allege that the Defendant
6 is insane. Under the McNaghten standard, meaning that he
7 did not know what he was doing or he did not know the nature
8 of his conduct, he did not know his conduct was wrong. The
9 testimony has related to neither of these issues. The testi-
10 mony relates to the mental state of a person who suffers from
11 the personality disorder that relates to how that person
12 perceives things, how he carries out his actions, whether he
13 does show in planning intent or whether he reacts to a
14 situation without thought. Therefore, it goes to the issue
15 of whether his actions are intentional or simply reactions.
16 It would seem without plan, showing no intent.

17 THE COURT: Since the elements of premeditation
18 and intent are involved in the various degrees of criminal
19 homicide, we feel that the testimony of this witness is
20 admissible for that purpose. We will permit him to testify.

21
22 ALLEN GREENSTEIN,
23 called as a witness, being duly sworn according to law,
24 testified as follows:

25
DIRECT EXAMINATION

1 BY MR. EVANICK:

2 Q Will you state your name, doctor.

3 A Dr. Allen Greenstein.

4 Q Where do you reside, doctor?

5 A Professional address, 509 East Hillcrest Road,
6 York, Pennsylvania.

7 Q Are you a psychologist engaged in the practice in
8 the state of Pennsylvania?

9 A Yes, I am.

10 Q Licensed by the State?

11 A Yes, I am.

12 Q Doctor, would you tell the Court what your pro-
13 fessional training is.

14 A I earned my Bachelor's Degree in the City College
15 of New York in 1964. I earned my Doctorate in Clinical
16 Psychology at the University of Texas in Austin in 1968. I
17 interned at Saint Elizabeth's Hospital, Washington, D.C. for
18 the period of a year. I functioned as a supervisory psycholo-
19 gist at that same hospital from 1968 to 1970. I came to York
20 in 1970 as the Chief Clinical Psychologist of York County
21 Mental Health Center. I was awarded my license to practice
22 psychology in the Commonwealth in 1973 and I received national
23 certification by the National Register of Health Services
24 provided in psychology in 1977. In 1980, we established the
25 York Guidance Center. I am the director of that agency and

1 THE COURT: Dr. Greenstein testified regularly
2 in York County Courts. We are familiar with his qualifications
3 and find that he is qualified to testify as a clinical psy-
4 chologist. You may go ahead.

5
6 DIRECT EXAMINATION (continued)

7 BY MR. EVANICK:

8 Q Doctor, what were the circumstances under which
9 you saw the Defendant eleven years ago?

10 A Larry Hake was referred to me by the Probation
11 Department. He was being seen in that office because of
12 charges of incorrigibility filed against him by his parents.
13 At the same time, he had been suspended from his high school.
14 The Probation Department requested a psychological evalu-
15 ation in order to set up a program for possible psychotherapy
16 and the school wanted to have some type of program in place
17 before they would readmit him into active studies.

18 Q What did your evaluation and examination reveal?

19 A The evaluation eleven years ago revealed Larry
20 Hake to be an angry, bitter, rebellious, defiant adolescent
21 who would not respond to authority, who felt very much
22 rejected at home, who had little capacity to form genuine,
23 positive emotional relationships and who instead reacted
24 with anger, revenge and aggression as the typical type of
25 behavior.

1 Q Did you form a diagnosis at that time?

2 A At that time, I called him a passive/aggressive
3 personality.

4 Q When did you see the Defendant this year?

5 A I saw Larry Hake on August 31st, 1982.

6 Q What test did you administer?

7 A I administered the following tests: The Bender
8 Gestalt Projective Drawings, the Rorschach, the Minnesota
9 Multiphasic Personality Inventory, Wechsler Adult Intelli-
10 gence Test, as well as interviewing him.

11 Q What did your examination of the Defendant reveal
12 on this occasion?

13 A The formal evaluation revealed Hake to be a chronic
14 social and emotional maladjusted individual. He appears to
15 be someone who has had to insulate his personal conscience,
16 his own awareness of his feelings, tension, rejection,
17 anxiety, doubts, insecurities and has developed a veneer of
18 hostility, suspicion, distrust, watchfulness and vigilance.
19 The kind of individual who has to always be in control of
20 situations, in control of himself and in control of other
21 people, control of events, who becomes easily threatened
22 when there is any threat to this kind of control, when some-
23 one will argue with him, when someone will doubt him, when
24 anyone will perhaps raise any kind of question that he is
25 not able to get what he wants. What results partially from

1 am so employed to this time.

2 Q You've been employed to evaluate the Defendant?

3 A Yes.

4 Q What materials were given to you to assist you in
5 that evaluation?

6 A I was given the transcripts of Mr. Hake's conver-
7 sations with the police and what appeared to be a variety
8 of depositions from other individuals having some knowledge
9 of the case.

10 THE COURT: Excuse me, Mr. Evanick. Mr. Ness,
11 do you wish to cross-examine Dr. Greenstein?

12 MR. NESS: On his qualifications. I object.
13 He hasn't established him as an expert in his field. He
14 hasn't given me the chance to cross-examine. I ask his
15 testimony be stricken.

16 THE COURT: Do you want to cross-examine?

17
18 CROSS EXAMINATION (On qualifications)

19 BY MR. NESS:

20 Q How many times have you examined Mr. Hake?

21 A Once recently and once eleven years ago.

22 Q Is that sufficient to permit you to draw certain
23 conclusions today?

24 A Yes.

25 MR. NESS: I object to his qualifications.

1 this kind of personality style is so much energy is developed
2 or directed toward exercising power and control and there is
3 little left for developing realistic genuine emotional close
4 personal attachment. In addition, there is very little
5 awareness of what he is doing.

6 Let me see if I can describe that better. He
7 lacks insight. He doesn't understand himself. He responds
8 immediately. This is a man who tends not to experience
9 doubt and anxiety, tends to experience the world always
10 through the eyes of anger and tends to respond reflexively.
11 He is very much like many other adults that I've seen who
12 have been involved in abusing children. He has been abused
13 as a child himself. He raises the specter of himself,
14 feeling rejected and unwanted within the context of his
15 own family, incidents of being hit with a crowbar and ratchet
16 wrench by his father. He has always seemed to see other
17 siblings in his family seem to get what they want and avoided
18 punishment and he always experienced himself as the butt of
19 this type of punishment. This is what I believe started his
20 angry rebellion from authority and what was certainly contri-
21 butory to the first time I had seen him.

22 Overall, he is an angry, suspicious, vigilant,
23 aggressive and challenging individual who is psychologically
24 compensating for very long-standing feelings of alienation
25 and lack of worth. He needs to control. He needs to have

1 dominion and power over others and responds without thinking
2 when any of that is challenged. The adolescent I saw in
3 1971 has psychologically fulfilled all the worst possible
4 cases for maladapted behavior considering the type of person
5 he is. His personality style has been finalized. There are
6 very little elements he is able to change at this point. He
7 will be suspicious, watchful, explosive, I think for the
8 remainder of his life. I did call him a chronic personality
9 disorder with explosive and paranoid features.

10 Q Doctor, when a person suffers from this disorder
11 and is challenged, what does he do?

12 A Most of the time, there is instantaneous sense of
13 tension and reflexive need to discharge that tension. There
14 is immediate anger and immediate need to grab control over
15 a situation.

16 Q Does he have any ability to control that?

17 A Under circumstances that don't provoke him and
18 are not challenging, then he is able to fairly well control
19 himself. Under circumstances when he feels challenged or
20 threatened, I believe that response would be reflexive. It
21 would not be meditated or helped by thinking or planning. I
22 don't think he would have much control over his behavior
23 under those threatening circumstances.

24 Q He had formed a relationship with the decedent
25 did he not?

1 A Yes.

2 Q How did he describe that relationship to you?

3 A He described himself, his relationship with the
4 deceased as a very positive one. He seemed to see his
5 relationship with her and his own part in it as being affec-
6 tionate and kind and caring and he thought of himself as
7 being protective of the deceased.

8 Q How do you reconcile that with his conduct for
9 the decedent?

10 A Well, I think there are two elements to it. Mr.
11 Hake, I believe does not have insight into what he is doing.
12 He doesn't understand himself, rationalizing everything else
13 away. That connects to the second part. Mr. Hake explained
14 to me that he was asked to take a role of punishing agent
15 in the family because the mother indicated she was becoming
16 ineffective in handling the child. Mr. Hake believes that
17 he was at times trying to teach the child the appropriate
18 ways of behavior and because he had convinced himself that he
19 was doing right, he continued to see himself as caring,
20 affectionate, kind and protective.

21 Q At the same time he is injuring the child, he
22 sees himself in that fashion?

23 A Yes.

24 Q Would a child be able to either through its behavior
25 or what it says anger an individual like this?

1 A Yes, a child most often does not comply instantaneously
2 with any requirements or instructions given to it. Mr. Hake
3 is the kind of individual who demands instantaneous compliance.

4 Q Would a child be able to anger an individual to
5 the extent he would lose control of himself?

6 A Yes.

7 Q His temper would flare up?

8 A Yes.

9 Q At that point in time, does that individual react
10 or does he think about what he is going to do in response to
11 the situation?

12 A I believe most often he would react. He would
13 respond without thought.

14 Q Under what circumstances would he think before he
15 did something?

16 A The only circumstances I think that would promote
17 thinking or planning would be one in which he was punishing
18 on instruction, in which he was attempting to discipline a
19 child in accordance with some type of belief in what children
20 should do and he would sit down or try to explain something
21 to the child. I think under those circumstances there would
22 be thought. I think, however, once the process is started if
23 the child did not comply instantaneously, then this is the
24 type of individual whose behavior would escalate automatically
25 and he would become more aggressive.

1 MR. EVANICK: I have no further questions.

2
3 CROSS EXAMINATION

4 BY MR. NESS:

5 Q What you recited, is the history that permits you
6 to draw this conclusion. your interview with Hake and trans-
7 cripts of Mr. Hake's interview?

8 A Not entirely. The entire battery of psychological
9 forms are the bulk of my report.

10 Q That would be included in the interview, his
11 testing?

12 A Well--

13 Q Are you telling us that Mr. Hake when he would
14 commit a violent act is doing this as a result of overwhelming
15 temper and that he is not in the position to plan or decide
16 what he is going to do in an act of extreme violence?

17 A I think it is most likely in a case like this. I
18 may be hedging the answer. In cases like this, if he is
19 stimulated, if he is angry, if his temper has been incurred,
20 he would be--he would be reflexive. There would not be
21 thought. There would not be a consistent logical sequential
22 plan that went on in his behavior. He would just react.

23 Q Would this be what governed most of his conduct?

24 A I think a lot of it.

25 Q You would not expect Mr. Hake to perform an act

1 of violence that required cold planning?

2 A I cannot say that it is outside the realm of
3 possibility.

4 Q Would you consider using a firearm to rob someone
5 a violent act?

6 A Yes.

7 Q Do you have any history on his participation of
8 that?

9 A I don't have specific history of that.

10 Q If that had occurred, would you consider such an
11 act as not a result of temper, but required planning, deliber-
12 eration?

13 A An act of armed robbery, yes.

14 Q For personal gain?

15 A Yes.

16 Q You were not given any such act as part of your
17 history?

18 A Mr. Hake provided me with some fleeting accounts
19 of his ongoing problems with the police, without details.

20 Q Are you characterizing an armed robbery of a
21 stranger or victim as a problem with the police?

22 A With society is what I should say.

23 Q That would not affect your conclusion, that infor-
24 mation?

25 A No.

1 Q So that again would be because Mr. Hake may have
2 been abused as a child, that he would go out and commit a
3 planned armed robbery?

4 A I am not trying to excuse, I am trying to describe.

5 Q I understand.

6 A Mr. Hake--I said it is not out of the realm of
7 possibility for Mr. Hake to plan an act such as armed robbery.
8 My attention was drawn primarily to the responses within the
9 family setting and what the general tone of the psychological
10 evaluation demonstrated, which is an aggressive type of--

11 Q Extremely aggressive?

12 A Yes.

13 Q Capable of killing?

14 A Yes.

15 Q You say his personality has been crystalized, not
16 likely to change?

17 A Yes.

18 Q Mr. Hake will kill again?

19 A This job does--

20 Q Is there a possibility that he will kill again?

21 A I would be reluctant to make any of those predic-
22 tions. His personality, however, forms the possibility of
23 further aggressive acts.

24 Q Mr. Hake knows the nature of what he is doing?

25 A Yes.

1 Q He knows what he is doing is wrong?

2 A Yes.

3 Q And he has a personality that permits him--that
4 would make it likely that he would kill?

5 A It would make it likely that he would perform
6 aggressively. I can't go that far, that he would be able to
7 kill.

8 Q Well, did you have as part of your history abuse
9 of firearms periodically?

10 A No.

11 Q Would that make a difference if you had as part
12 of the history a consistent use of firearms?

13 A Make a difference to what?

14 Q In your conclusion that it is in effect an uninten-
15 tional act when he commits aggressive behavior?

16 A I still say to you that Mr. Hake is capable of--
17 it is not out of the realm of possibility for him to plan an
18 aggressive act. His personality is such that he is reflex-
19 ively aggressive. The history of the use of firearms would
20 not necessarily change the findings of the psychological.

21 Q If you had as part of your history a use of fire-
22 arms on a number of occasions, the robbery of a stranger,
23 victim with a firearm, wouldn't you conclude that Mr. Hake
24 in committing an act of violence and aggression is capable of
25 forming intent?

1 A At times, yes.

2 Q Mr. Hake in committing an act of violence and
3 aggression has sufficient mental capability of seeing the
4 results of this act of violence or aggression, doesn't he?

5 A Yes.

6 Q He would be cognizant that his act of aggression
7 resulted in serious bodily injury?

8 A Yes.

9 Q He would know that if he committed a similar act
10 of violence or aggression, the same bodily injury or perhaps
11 even death would be likely to result?

12 A He would be capable of coming to that conclusion.
13 I don't think he would come to that conclusion, however.

14 Q Did you have as part of your history the extent
15 of the injuries or did you get that from Mr. Hake?

16 A No, I got that as part of the history.

17 Q From what source did you get that?

18 A From Mr. Evanick. He provided me with a great deal
19 of the material.

20 Q So what you got was from the defense?

21 A That's who gave it to me, yes.

22 Q Did you talk to a pathologist as to the extent of
23 the injuries?

24 A No.

25 Q Did you talk to the police as to the extent of the

1 A In no way.

2 Q Did she appear to be adequately nourished?

3 A Yes, sir.

4 Q Did you express an opinion at that time as to
5 whether this conduct, whatever it was that caused these
6 bruises, should be permitted to continue?

7 A Yes, I certainly did.

8 Q What did you tell--

9 MR. EVANICK: Your Honor, I think that might
10 be relevant depending on who he told it to. I am not sure
11 that if he expressed an opinion it is relevant.

12 MR. NESS: This would have to be linked in
13 with Beverly Mackereth who said that after this meeting in
14 the hospital she had a conversation with Mr. Hake.

15 THE COURT: Overruled. He may testify.

16

17 BY MR. NESS:

18 Q Go ahead.

19 A I forget the question.

20 Q Did you express an opinion as to whether the
21 force or the conduct used to cause bruising like this should
22 be permitted to continue?

23 A Yes, I explained to the mother and also to the
24 social worker from Children's Services that I was concerned
25 about the amount of force that had been applied and that

1 this was an inordinate degree of discipline and that the
2 child should not be permitted to return to the home where the
3 person, the boyfriend of the mother was living and that it
4 would be necessary that the child be placed in some other
5 residence so as to be spared the possibility of further abuse.

6 Q Did you form a conclusion in your mind as a
7 professional that these bruises were sufficient to cause
8 you to be concerned about the safety of this child?

9 A Yes, that there was also another factor that was--
10 that the social worker had explained.

11 Q Something was told to you by the social worker?

12 A Something was told to me that the--

13 MR. EVANICK: I object. It is hearsay.

14 MR. NESS: Well, he is a physician. Every-
15 thing Dr. Mihalakis testified to was hearsay and he is giving--

16 THE COURT: If he is using this as a basis
17 for doing something that he did, I'll permit it for that
18 purpose.

19

20 BY MR. NESS:

21 Q Go ahead.

22 A The social worker had explained that the person
23 who had inflicted this spanking, the boyfriend of the mother
24 had some kind of experience--some previous experiences with
25 the police and that--

1 MR. NESS: I will agree that it should be
2 stricken.

3 THE COURT: Sustain the objection at this
4 point. We will strike it.

5 MR. NESS: Cross-examine.

6 MR. EVANICK: No questions.

7 THE COURT: That's all. You may step down.

8
9 (Whereupon, the following discussion was
10 held at sidebar);

11
12 MR. EVANICK: Your Honor, at this time, I
13 move for a mistrial by weight of the introduction of a
14 prior criminal record of the Defendant.

15 THE COURT: There has been no criminal record--

16 MR. EVANICK: There has been reference that
17 would imply at least to the Judge that the Defendant has a
18 prior criminal record.

19 THE COURT: As I recall, the testimony was
20 that he said something about a previous problem with the
21 police.

22 MR. NESS: Previous involvement with the
23 police was his words.

24 THE COURT: I have no idea what that means,
25 none, believe me, Mr. Evanick. No, I refuse the mistrial.

1 injuries?

2 A No.

3 Q Did you talk to my office as to the extent of the
4 injuries?

5 A No.

6 What Mr. Evanick apparently got, he got from Mr.
7 Hake in the course of his interview with Mr. Hake. I received
8 the transcripts that were I think from the tape recording and
9 other such material.

10 Q What other such material?

11 A There were interviews with physicians. There were
12 interviews with neighbors.

13 Q What physicians?

14 A I really can't recall at the present time.

15 Q I take it you had as part of your history that
16 there had been a pattern of abuse over a period of approxi-
17 mately three weeks?

18 A Yes.

19 Q That this abuse was serious?

20 A Yes.

21 Q That there had been a report from Dr. Kirby that
22 there appeared to be penetration of the rectum by a large
23 object?

24 A Yes, I was aware of that.

25 Q And that this abuse was not a one-time incident,

1 but serious abuse that took place over a period of a number
2 of weeks?

3 A Yes.

4 Q When you think that to penetrate the rectum in the
5 fashion that Dr. Kirby described with a concentric bruising
6 down to the rectum itself and a laceration of the rectum
7 would be an act requiring some intent?

8 A Yes.

9 Q The infliction of human bite wounds on an indi-
10 vidual would be an act that would require some intent?

11 A I think I know what you are referring to and there
12 would be some intent involved in the act of biting, yes.

13 Q When you talked about an intentional act or inabil-
14 ity to form intent, you are not talking about an aimless
15 flailing of arms or sudden outburst of anger, is that what
16 you're talking about where someone will throw a body against
17 the wall or haul off and hit someone?

18 A Let me see if I can explain also using the biting
19 incident as an example perhaps. I believe that there has
20 been times that Mr. Hake went to punish or discipline a
21 child and did so with clear intent to teach the child to
22 behave in whatever ways were acceptable and teach the child
23 through physical punishment. I think a lot of that or some
24 of that started with clear formation of intent. However,
25 I think once the child did not instantaneously comply, then

1 Mr. Hake escalated his behavior or lost control of any reasoned
2 approach and became the reflexively, aggressive person that
3 I described. The biting incident if I can relate to that.
4 I think the biting incident was a combination of this kind
5 of event. As related to me by Mr. Hake, the biting incident
6 took place when the girl--the child had allegedly defecated
7 while taking a bath. Mr. Hake came in and saw this occurred
8 and said to the girl, you are going to be punished. The
9 child then when she was being lifted out of the bathtub,
10 bit Mr. Hake. Mr. Hake--

11 Q So Mr. Hake says--

12 A So, Mr. Hake says--I am just relating this. What
13 happened then, I think Mr. Hake instituted a process where
14 he continued to promote the defiance on the part of the child
15 by the teasing her or arguing with her or biting her.

16 Q In lay terms, egging her on, so he could punish
17 her further?

18 A And he bit her again. So Mr. Hake says at that
19 point, I don't think he was reasoned in his response. I
20 think he was angry. He was going to get control. He was
21 going to teach this kid not to do this thing to him. I don't
22 believe it was a planned act at that moment. It was, I'm
23 going to teach you a lesson and you're going to listen.

24 Q Don't you recall from his statement that after he
25 started biting her, she calmed down. He calmed down. She

1 said that I was only kidding when I said I hated your guts
2 and then he bit her again. What rowed him that time?

3 A I don't recall that part of the statement.

4 Q Let me read it to you. You had the statement?

5 A Yes.

6 Q "I was bathing her and that was after she--when
7 she went to the bathroom twice in her pants." Your recollec-
8 tion is she went in the tub?

9 A That was Mr. Hake's story.

10 Q He changed his story when he spoke to you?

11 A Yes, I was just relating his story.

12 Q Don't these discrepancies have any significance?

13 A I am not really sure. It would be wise to make--

14 Q "And I asked her why she did it and she just
15 argued with me and made me mad. I lost my temper and I
16 pulled her out of the bathtub and when I was pulling her out
17 of the bathtub, that's when she bit me in my finger and went
18 to claw me on my face and chest and when she bit me in my
19 finger, I told her that I was going to get even with her and
20 bite her back and I bit her in the stomach and I calmed down
21 and I thought it was all over. I put her back in the bathtub
22 and told her to go ahead and wash herself and she hollered
23 at the top of her voice that I hate your guts. I said, do
24 you really and she said, no, I was only kidding. And it made
25 me mad again and I bit her on the leg." And you say there

1 is no element of intent?

2 A I think the element there is to teach this child a
3 lesson.

4 Q Doesn't that mean in the fashion when he said his
5 purpose was to get even, not to teach her a lesson, retri-
6 bution?

7 A I think--I don't mean teach this girl a lesson by
8 teaching. He was going to teach her that he was the boss
9 and he wanted immediate compliance and he did not want any
10 comments about being hated. It is not teacher--it is a
11 question here of asserting his domination through power.

12 Q And that's what getting even means, somebody hits
13 you, you hit them back?

14 A Yes.

15 Q No intent even though he says that was his intent?

16 A The intent is to dominate through power.

17 Q Right.

18 A Yes.

19 Q The way you dominate is to inflict serious bodily
20 injury?

21 A That's one of the ways.

22 Q And Mr. Hake intended, didn't he, to inflict serious
23 bodily injury?

24 A Yes.

25 Q I'm not talking about necessarily intent to kill,

1 but when he intended to inflict serious bodily injury, he
2 could form intent to direct such force that could inflict
3 serious bodily injury on a vital part of the body, such as
4 head or trunk of the body, is that true?

5 A It's possible, yes.

6 Q Let me show you some photographs that you may not
7 have as part of your history. I show you the photograph
8 which we marked Commonwealth Exhibit No. 9, which is a
9 child's head and this child's head, Mr. Hake would be capa-
10 ble of forming the specific intent to direct a blow to the
11 head in one of these angry outrages?

12 A It's not an accident that the blow has fallen on a
13 particular part of the body.

14 Q Mr. Hake although angry was capable of forming the
15 intent in his mind to direct the force at a child's head?

16 A The only thing that I feel comfortable in being
17 able to say is that his intent was to dominate through power
18 and I think he then responds reflexively and struck out in
19 whatever way he could. I don't really know if--this is not
20 an accidental blow. That's the way--

21 Q Are you saying it could have been an accidental
22 blow to that part of the body, that Mr. Hake is engaged in a
23 mindless flailing of arms or banging?

24 A I don't think he was engaged in a mindless flailing
25 of arms. I think his response was immediate. He was aggress-

1 ive in whatever way he knows.

2 Q He was capable of forming in his mind, however,
3 immediate--it may be we are not talking about hours of pre-
4 meditation, he was capable of forming in his mind the idea,
5 however vague you want to determine it, I'm going to strike
6 this child in the head. Now he may not have enunciated in
7 that fashion, but he was capable of the physical act of
8 forming in his mind a blow to the head.

9 A He was capable of--I think he was striking out to
10 what was available to him to strike out. I really don't know
11 how--I know what you are asking me. I just don't know how
12 much I can testify to with any degree of confidence that
13 there was a fleeting idea that I will direct this blow to
14 the eye of the child. I think the idea is, I'm going to
15 strike out and I'm going to hit whatever there is to hit.

16 Q You hit people, like hitting a punching bag?

17 A Yes.

18 Q Do you recall in your statement that Mr. Hake said
19 he struck the child repeatedly with a fist, backward blows?

20 A Yes.

21 Q This took place on again and off again for a period
22 of three weeks since he moved in?

23 A Yes.

24 Q Do you recall that portion where he states that
25 he intentionally kicked the child with such a degree of

1 force that he could not walk on his foot the next day?

2 A I recall reading that, yes.

3 Q He was capable, wasn't he of forming an intent to
4 do such an act?

5 A I think the kicking incident was a reflexive inci-
6 dent. I don't think that was a planned act. I think he was
7 angry and he kicked.

8 Q After these acts are over, he can see the conse-
9 quences of what he did, couldn't he?

10 A Yes, he is able to certainly see the consequences of
11 his acts.

12 Q Didn't take into consideration that part of the
13 history where Mr. Hake says the reason I didn't seek help
14 for this child who was obviously in distress as a result of
15 this is because I was going to get arrested, doesn't that
16 show some consciousness of what he was doing, that he knew
17 what he was doing and that he knew he was applying deadly
18 force to the child?

19 A Mr. Hake is very typical of of an adult who abuses
20 children, who hides the act after the act is over. He cert-
21 ainly recognizes the seriousness of the act and does not
22 learn necessarily to prevent himself from doing it again.

23 Q Well, what you are saying is, this may be a bit
24 romantic, that he has a total disregard of social duty or a
25 wickedness of disposition or hardness of heart or don't

1 those terms crop up?

2 A I don't think we usually use those words, hardness
3 of heart.

4 Q Hardness of heart, wickedness of disposition,
5 disregard of social duty, they are apt descriptions of Mr.
6 Hake's conduct?

7 A I will say, yes, assuming that I understand what
8 you are saying.

9 Q Mr. Hake is also capable of forming an intent to
10 inflict serious bodily injury on another human being, isn't
11 he?

12 A Yes, he is capable of forming an intent.

13 Q Mr. Hake is capable of forming such intent to
14 inflict serious bodily injury upon a child, isn't he?

15 A He is capable of formulating an intent.

16 Q He is capable of carrying out that intent, isn't
17 he?

18 A Yes.

19 Q In fact, doctor, that's exactly what Mr. Hake did
20 here, isn't it, form an intent to inflict serious bodily
21 injury on a vital part of this child's body and he did it.

22 A I would like to repeat my point of view on this.
23 I think there have been times when a clear intent was formed
24 by Mr. Hake to physically punish the child. When Mr. Hake
25 then did not get what he wanted, instantaneous compliance,

1 specific obedience, I think he lost his temper, lost control
2 of his behavior and his behavior escalated in aggression.

3 Q Right. Mr. Hake is a personality you could charac-
4 terize him as a killer, is that what you are saying?

5 A It is not a psychiatric term.

6 Q You have a dead child here and you know--

7 A It is not for me to decide at this point.

8 MR. NESS: That's all.

9

10 REDIRECT EXAMINATION

11 BY MR. EVANICK:

12 Q Doctor, Mr. Ness' questions have all been postu-
13 lated on what Mr. Hake could have done, do you have an
14 opinion within a reasonable degree of certainty what he did
15 do with respect to how he would react to the circumstances?

16 A I am not sure I understand what you are asking me.

17 Q Mr. Ness' questions were postulated on what he
18 could have done, correct?

19 A Yes.

20 Q Do you have an opinion as to what he did do?

21 A My opinion is and I could restate it, but I
22 believe I just said it to Mr. Ness. I think there have been
23 times when Mr. Hake did have an intent to carry out physical
24 punishment to teach the child a lesson. I think most of the
25 time, however, his responses were reflexive, without thinking

1 and based on anger, lack of empathy and compassion and mean-
2 ness, if we can use a commonplace term, but a reflexive act
3 must of the time.

4 MR. EVANICK: I have no further questions.

5 MR. NESS: I have none.

6 THE COURT: That's all, doctor.

7 MR. NESS: I'm sorry, I have one question.

8

9 RECROSS EXAMINATION

10 BY MR. NESS:

11 Q You recall that portion of Mr. Hake's statement
12 when he was in the course of abusing this child and he
13 said to the effect that he thought he seriously hurt her?

14 A I can't recall it.

15 Q Perhaps this will refresh your recollection.
16 Actually, there were two parts of his statement as I inter-
17 preted. Let me refer you to them and ask if you recall them.
18 Where he says, "How hard did you spank her?" "Was it hard
19 enough to hurt her?" "Yes." And later on in the statement--

20 MR. EVANICK: What page?

21 MR. NESS: Reading from page one, statement
22 one. Then I am about to go to statement one, page 11.

23 "Do you think you hit her hard enough last night to really
24 hurt her bad?" "Yeah." And he continued then, I'm going to
25 that portion that I previously referred to where Mr. Hake

1 said that I was afraid I was going to get arrested, so I
2 didn't seek treatment for the child. Now, that's--he at
3 least knew those various times that he had inflicted serious
4 bodily or thought he had inflicted serious bodily injury on
5 the child, that would be an appropriate conclusion from that,
6 wouldn't it?

7 A I would think so.

8 Q But yet don't you find the probability of some
9 elements of intent that after this happened, after he under-
10 stood that he had probably inflicted serious bodily injury
11 upon the child, he continues the same course of conduct which
12 is likely to cause additional serious bodily injury?

13 A I think I answered that question before. I think
14 Mr. Hake is aware enough to recognize that. But this aware-
15 ness does not prevent him from moderating his behavior.

16 Q It would not prevent him again from using a fire-
17 arm to commit a crime of violence, would it?

18 A It would not prevent him.

19 Q You're saying there is nothing to prevent Mr. Hake
20 from engaging in similar conduct that's likely to result in
21 death or serious bodily injury?

22 A Mr. Hake has the personality to be explosive,
23 aggressive, combative. It's possible.

24 MR. NESS: That's all.

25 MR. EVANICK: I have no further questions.

1 THE COURT: That's all, doctor. You may
2 step down.

3 MR. EVANICK: May we approach the bench for
4 a minute?

5
6 (Whereupon, the following discussion was held
7 at sidebar:)

8
9 MR. EVANICK: My client has just informed me
10 that he no longer desires to testify, so could we recess
11 and resume at 1:00 o'clock?

12 MR. NESS: That he does not--

13 MR. EVANICK: No longer desires to testify.

14 THE COURT: Okay. I will have to--we will
15 come back at 1:00. I will question him concerning that.

16 MR. NESS: Do you have any other witnesses?

17 MR. EVANICK: Well, not without him we don't.
18 Would you direct the Sheriff bring him up to my office so
19 I can talk to him?

20
21 (Whereupon, the discussion at sidebar was
22 concluded.)

23
24 THE COURT: Very well. In accordance with
25 the request of counsel, we are going to recess at this point