

**IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
PEORIA COUNTY, ILLINOIS**

THE PEOPLE OF THE )  
STATE OF ILLINOIS, )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 2005-CF-275  
 )  
FRANK M. PICL, )  
 )  
Defendant. )

**SENTENCING HEARING**

REPORT OF PROCEEDINGS of the hearing had before the **HONORABLE STEPHEN A. KOURI**, Judge of said Court, on the 25th of September, 2006.

**APPEARANCES:**

**MR. KEVIN W. LYONS**  
State's Attorney of Peoria County, by  
**MR. LARRY EVANS**  
Assistant State's Attorney  
REPRESENTING THE PLAINTIFF;

**MR. HUGH TONER**  
Attorney at Law  
REPRESENTING THE DEFENDANT.

REPORTED BY: Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317



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I N D E X

STATE'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
PAUL KELLY	7	19		
DEFENDANT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
W. CLAY MACAULAY	23	30	35	
DORIS BERNARD	36	42		
STEVE BRADBURY	44	50	52	53
STEVE BRADBURY			53	
MICHAEL LEVAN	54	60	64	
JERRY LINDSEY	65	70	76	
SHIRLEY HANNON	78	93	104	
ANNA SAXON	105	114	119	
THOMAS PENN	120	127		
DAVID RADEMAKER	131			
WILLIAM MITCHELL	136	139		
GREG DANIEL	139	144		

1 THE COURT: Let's go on the record. This is Case  
2 No. 05-CF-275, People of the State of Illinois versus  
3 Frank Matthew Picl. Mr. Picl, the defendant, is here  
4 with his attorney, Hugh Toner, and the State is  
5 represented here this morning by Assistant State's  
6 Attorney Larry Evans. Is the State ready to proceed?

7 MR. EVANS: Yes, Judge.

8 THE COURT: Mr. Toner?

9 MR. TONER: We are, Judge.

10 THE COURT: At the outset we have kind of had a  
11 unique twist in the case and then Mr. Picl pled guilty  
12 several weeks ago, but mentally ill, and he has since  
13 waived that part of it or relinquished that part, the  
14 mentally ill part, but we had at the earlier hearing  
15 taken the factual basis. And I don't know that I have  
16 formally accepted the plea, which I want to do right  
17 now, but in so doing, I have spent some time once again  
18 reviewing the charges, and I would like the State to  
19 tell me -- because I want to be absolutely clear on  
20 this -- what are the sentence ranges -- and I want  
21 Mr. Picl to listen very carefully to this -- what are  
22 the sentencing ranges we are dealing with with each  
23 count? And, in particular, I am interested in wanting  
24 to know whether the State believes they are entitled to

1 have extended-term sentencing on these counts or  
2 enhanced sentencing.

3 MR. EVANS: Judge, it's the People's position with  
4 regard to Count 1, a Class I felony, the range of four  
5 to 15 years; Count 2 to which the defendant likewise  
6 pled guilty, Class I, 4 to 15 years; Count 3, Class I,  
7 again, a range of 4 to 15 years; and then I'll skip  
8 ahead to Count 6, Judge, a Class II, that would be the  
9 normal range of 3 to 7 years.

10 With regards to 4 and 5, theft, the State's  
11 position is that the sentencing range is 4 to 15 years  
12 that can be extendible by this Court to 30 years. And  
13 the authority for that, Judge, is Supreme Court case  
14 People versus Graves, 2003, where there was the  
15 Appellate Court, I believe it was the Third District  
16 that felt that the enhancement under that particular  
17 extension provision of 730 ILCS 5/5-5-3.2, Subsection  
18 (b)(4)(ii) was an impermissible enhancement with the  
19 Appellate Court that -- because what they interpreted  
20 the charges to encompass identical elements. However,  
21 the Supreme Court said that this is not an identical  
22 element. The allegations are not related to deception,  
23 and, again, in Counts 4 and 5 there is no allegation of  
24 deception.

1 THE COURT: That dealt with age?

2 MR. EVANS: That dealt with enhancement based on  
3 age, Judge, yes, sir.

4 THE COURT: Of an elderly person?

5 MR. EVANS: Yes.

6 THE COURT: Mr. Toner, do you have any disagreement  
7 with how he's recited what the potential penalties are,  
8 range?

9 MR. TONER: I have no particular disagreement with  
10 those -- with his recitation. I have some argument  
11 about it.

12 MR. EVANS: Judge, if I could, for the record,  
13 People versus Graves, that Supreme Court case I have  
14 cited is a 207 Ill. 2d 478, 479, Illinois Decisions,  
15 502, 3d, November 2003.

16 THE COURT: Thank you.

17 Mr. Picl, you have heard what the possible  
18 sentence ranges are?

19 THE DEFENDANT: I have.

20 THE COURT: You understand that to be the range?

21 THE DEFENDANT: I do.

22 THE COURT: The Court based on the factual basis  
23 that was provided some weeks ago and the admonitions  
24 and waivers that were given, admonitions by the Court

1 and the waivers given by the defendant at that time,  
2 the Court accepts his plea of guilty as voluntary and  
3 we will proceed to sentencing today.

4 I have the presentence investigation, and the  
5 way I would like to proceed is hear statements --  
6 State's side of this and their position on aggravation,  
7 then hear the defendant's position on mitigation. Then  
8 I'll hear some argument by both sides. And then at the  
9 conclusion of the argument -- and I'm going try to be  
10 quiet during all of that -- I'm going to ask some  
11 pretty tough questions of both sides, particularly on  
12 this side (indicating).

13 So we'll see how it goes. I'm sure we are  
14 going to go beyond today. As I have indicated to the  
15 attorneys, we are going to hear one witness this  
16 morning, hear more witnesses this afternoon in another  
17 courtroom, 213, probably start up around 1:30, and then  
18 we'll go into tomorrow, and if we go past tomorrow, we  
19 go past tomorrow. I'm not sure what courtroom we are  
20 in tomorrow, but probably 213, also.

21 Mr. Evans, if you are ready to go.

22 MR. EVANS: Yes, Judge. People would call  
23 Mr. Kelly to the stand, Paul Kelly.

24 THE COURT: Mr. Kelly, please step forward and

1 raise your right hand.

2 (Thereupon the witness was duly sworn.)

3 THE COURT: Go ahead.

4 PAUL KELLY

5 called as a witness on behalf of the Plaintiff, after

6 having been first duly sworn, was examined and

7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. EVANS:

10 Q Sir, tell us your name, please.

11 A Paul Kelly.

12 Q And, Mr. Kelly, what is your present

13 profession?

14 A I'm executive director of Independence

15 Village.

16 Q What is the Independence Village, sir?

17 A It's an independent retirement community, not

18 a nursing home. Most of the residents there still

19 volunteer their time. Our goal is basically to let

20 them continue living independently as long as possible.

21 Q Where is Independence Village located?

22 A 1201 West Northmoor in Peoria.

23 Q How long have you been employed as a director?

24 A Since February of 1999.

1 Q You said, we are not a nursing home. Explain  
2 what you mean by that.

3 A Well, majority of our residents have lived  
4 there for many years, some more than ten years, and  
5 they are able to take care of their own day-to-day  
6 activities generally and live in an independent setting  
7 rather than skilled nursing facility.

8 Q Did you have an occasion to meet a resident,  
9 new resident in the summer of 2004 by the name of Alice  
10 Varga?

11 A Yes. I meet all the residents prior to them  
12 moving in, and when they move in, go over the residence  
13 handbook and several things about Independence Village.

14 Q Is this something then that you did  
15 specifically with Alice Varga?

16 A Yes, I did.

17 Q The evidence in this case shows that Ms. Varga  
18 at that time would have been 84 years old. Is that  
19 your recollection, her age being approximately 84?

20 A I believe so.

21 Q At that time when she first came, what was she  
22 coming into Independence Village as? Is there any  
23 classification of care and treatment?

24 A No. All of the residents come in living



1 independently. There is a home health agency in the  
2 building. So should they need some supplemental  
3 health, they are able to get that within the confines  
4 of their own home.

5 Q So when she first came into your establishment  
6 to live, she came as an independent person; is that a  
7 fair characterization?

8 A With some support services, yes.

9 Q Do you recall what support services?

10 A Initially, I believe it was -- and this is  
11 offered to everyone that comes in -- escorts for three  
12 days until they learn the lay of the land. And I don't  
13 know specifically what other services she might have  
14 had. She may have had medication reminders, things  
15 like that.

16 Q Now, with regard to Mrs. Varga, did she pay --  
17 or can you explain to the Court, please, the manner and  
18 the mechanism of payment for her stay at Independence  
19 Village?

20 A Yes. It's all private pay. They pay their  
21 own bill every month. There is no supplement from  
22 Medicare or any type of insurance.

23 Q So every month, then, is the individual  
24 resident billed by your --

1 A Yes. We send a statement usually by the 26th,  
2 27th of the month, and then the rent is due for the  
3 next month on the 6th.

4 Q Now, at the time that Mrs. Varga came into  
5 Independence Village, was she also with an individual  
6 by the name of Frank Picl?

7 A Yes.

8 Q And do you see Mr. Picl in court today?

9 A Yes, I do.

10 Q Could you describe him and point to him?

11 MR. TONER: Stipulate to the identification of  
12 Mr. Picl.

13 MR. EVANS: That's fine.

14 THE COURT: Let the record show this witness has  
15 identified Mr. Picl.

16 MR. EVANS: Q Now, at the time that you --  
17 strike that.

18 Had you known Mr. Picl before you met her -- met  
19 him at the time Mrs. Varga became --

20 A No. This was the first time I met him.

21 Q What was your relationships with Mr. Picl in  
22 relation to Mrs. Varga when she came --

23 A He initially made the contact with our sales  
24 director, came, toured the apartment. Generally set up

1 all of the arrangements for her coming in.

2 Q And did Mr. Picl on occasion likewise visit  
3 Mrs. Varga?

4 A Yes, he did.

5 Q Do you recall with what regularity?

6 A Very regularly. I mean, we saw Frank pretty  
7 often.

8 Q When you saw Frank, as you characterize it,  
9 was it for the purpose of visiting Mrs. Varga?

10 A Yes.

11 Q Now, at some point after her -- during her  
12 stay, did you have some questions concerning her --  
13 payment of her I guess you would call it rent?

14 A Yes. Generally, we expect it by the 6th, but  
15 if someone is getting a social security check or it's  
16 coming from a trust, we certainly give four or five  
17 days leeway. Then we send out a letter to remind  
18 people. If it gets to, say, the 20th of the month,  
19 usually I'll follow up with a phone call just to see if  
20 there is a problem.

21 Q Let me back up a moment. When you first met  
22 Mrs. Varga when she first came to Independence Village,  
23 how would you describe her?

24 A She was very lively. Kind of a spunky little

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1 lady. Very conversational. Really was looking forward  
2 to and I think enjoyed the socialization with the  
3 people there. She was very happy and I think grateful  
4 that her husband, Frank, had left her well provided  
5 for, and I think she was looking forward to kind of  
6 living in a manner in which she was really looking  
7 forward to.

8 Q And during the time at least initially now  
9 when she was staying at Independence Village, did she  
10 appear to enjoy living at your establishment?

11 A Yes, I believe so.

12 Q Now, with regards to payment of Mrs. Varga --  
13 is rent the proper term?

14 A Yes.

15 Q What, if anything, occurred -- what, if  
16 anything, did you do when there first became questions  
17 about her timely payment?

18 A Initially, I was the one that made several  
19 follow-up calls either to Frank or his office that  
20 we're getting late in the month and certainly we need  
21 to take care of this. As time went on, we did get some  
22 checks back NSF from the bank that we got late in the  
23 previous month.

24 Q NSF being not sufficient funds?

1 A Yes.

2 Q Probably a stamp like they do on the checks?

3 A Yes.

4 Q After receiving those checks back, what would  
5 you do, if anything, to follow up, sir?

6 A I would certainly follow up with a call. You  
7 know, procedure is we would get a cashier's check or  
8 some sort of a bank check if there had been an occasion  
9 like that. So that's what we did as far as following  
10 up.

11 Q On the occasions you followed up and talked  
12 with the defendant, what, if anything, would occur  
13 after those conversations?

14 A Generally, they were taken care of within a  
15 matter of a few days. We did at one point offer to  
16 give ACH which is an electronic draft which a number of  
17 our residents do for convenience.

18 Q Who did you give that or make that offer to?

19 A I made the offer to Frank and I left the form.  
20 I don't believe the form was ever picked up.  
21 Certainly, we did not receive it back.

22 Q Now, did this activity concerning a late  
23 payment, did that continue for Mrs. Varga?

24 A Yes. It continued for several months.

1 Q During that time, what, if anything, did you  
2 do, sir?

3 A Well, you know, initially I contacted Frank.  
4 I then contacted the state's attorney's office because  
5 Alice had indicated to me in coming in and in several  
6 conversations that she would never have to worry about  
7 that, and certainly getting checks back there was some,  
8 I guess, red flags. Our company has 60 properties and  
9 they kind of let us know things to look for as well.

10 Q So the occurrence of a lateness of payment  
11 that was occurring in Mrs. Varga's case, how would you  
12 characterize it? Was that a common occurrence or  
13 uncommon?

14 A No. I have been there seven and a half years  
15 and I have had maybe two instances where I have had to  
16 call people later in the month and really one other  
17 instance of checks coming back.

18 Q Now, with your concern about the payments of  
19 Mrs. Varga, what did you do, sir, with regard to  
20 reporting it to any agency?

21 A I contacted the state's attorney's office and  
22 just let them know that, you know, I didn't know that  
23 anything was taking place, but certainly wanting to be  
24 responsible and putting it to the authorities who can

1 certainly follow up on something like that through the  
2 proper channels.

3 Q Did you report that to Mr. Kevin Lyons, the  
4 State's Attorney of Peoria County?

5 A Yes, I did.

6 Q Shortly thereafter, are you aware that an  
7 investigation began into the activities?

8 A Yes.

9 Q I want to draw your attention to approximately  
10 February -- or, actually, March of 2005. Were you  
11 present during a conversation between investigators of  
12 the state's attorney's office with Mrs. Varga?

13 A Yes. Yes. Each time they came they asked me  
14 to be present with her.

15 Q And specifically can you tell us about a  
16 meeting between the investigators and Mrs. Varga, and I  
17 believe it was March of 2005.

18 A Well, I believe that was when we had to inform  
19 her that there was no money left, that, you know,  
20 certainly there were some red flags and they were  
21 pursuing an investigation to find out what had happened  
22 with her funds.

23 Q Was it indicated to her the amount of funds  
24 that were missing from her account?

1 A I think a ballpark was indicated to her.

2 Q Was that approximately in excess of \$250,000?

3 A Yes.

4 Q Were you present when she received that news?

5 A Yes, I was.

6 Q Can you describe her -- the effect that that  
7 news had on her, please?

8 A Well, she was devastated. Her husband who was  
9 Frank, also, had -- they had not had children. She  
10 thought of Frank as a son, had placed complete trust in  
11 him. And, unfortunately, you know, she looked at her  
12 husband and he was a good provider and that's what he  
13 had done for her and that's something she was very  
14 proud -- she was very proud to live at Independence  
15 Village. It was a very nice place. And I think she  
16 was devastated because she didn't -- she had not ever  
17 had to worry about things like that. Frank had taken  
18 care of that, her husband, and then Frank Picl had  
19 taken care of that for the last several years.

20 Q After she had received the news that her  
21 money, in essence, was gone or missing at that time,  
22 can you describe her demeanor thereafter, sir?

23 A Well, she was obviously distraught. You know,  
24 certainly her whole outlook changed. What she had



1 expected would be the remainder of her life --

2 MR. TONER: Objection. Speculation, what she would  
3 have expected.

4 THE COURT: Sustained.

5 MR. EVANS: Q Can you describe her demeanor,  
6 sir, not what she --

7 A She was devastated.

8 Q When you say she was devastated, what did you  
9 see about Ms. Varga that leads you to say that?

10 A She had several falls within the next week.  
11 Went to the point where she needed 24-hour care from  
12 Spoon River Home Health. Started to have meal trays  
13 sent up to her room rather than down in the dining  
14 room.

15 Q All these effects occurred after being told  
16 that her money was no longer available; is that  
17 correct?

18 A I know she had had some services from Spoon  
19 River prior to, but I do know that the, you know,  
20 meals, the falls, some of those things occurred after.

21 Q Other than the physical effects, did you see  
22 any personality changes that you saw?

23 A Well, probably was up there two or three times  
24 a day. Initially, the caregivers that were with her

1 were very attentive and certainly understood that she  
2 was distraught about this, but, you know, she needed  
3 reassurances that we weren't going to put her out on  
4 the street and that some accommodations would be made  
5 until, you know, there was some sort of a plan.

6 Q Now, following this notification to  
7 Mrs. Varga, did you attempt to work out some  
8 arrangements so she could stay there for a period of  
9 time thereafter?

10 A Yeah. I talked to my boss and then a  
11 representative of the state's attorney's office took  
12 care of paying her rent through a certain period as  
13 well as taking care of some bills with Spoon River Home  
14 Health, I believe.

15 Q At some point, however, Mrs. Varga moved out  
16 of Independence Village?

17 A Yes, she did.

18 Q And where did she move to, sir?

19 A I believe she moved to Bellwood Nursing Home.

20 Q And how is Bellwood characterized?

21 A It's a county-run nursing facility. It is a  
22 skilled nursing facility and a lot of the people that  
23 are there are people that do not have the wherewithal  
24 or the funds to be in other facilities.

1 Q Prior to being told that she no longer had any  
2 money left in her accounts, did Mrs. Varga ever  
3 indicate to you that she had ever any kind of plans to  
4 move into Bellwood Nursing Home from Independence  
5 Village?

6 A No.

7 MR. EVANS: No further questions.

8 MR. TONER: Couple, if I may.

9 CROSS-EXAMINATION

10 BY MR. TONER:

11 Q You say that you think that she may have had  
12 some Spoon River Health Care prior to this being told  
13 to her?

14 A Uh-huh.

15 Q Is that correct?

16 A Yes. I believe she did.

17 Q And one of those things involved the fact that  
18 she had fallen prior to this, too, correct?

19 A Oh, certainly.

20 Q And, in fact, one of the reasons that she was  
21 put in there, it was your understanding, is that she  
22 was falling at her home, correct?

23 A Well, that's not necessarily -- I believe that  
24 she needed to be around people and needed more services

1 than she was getting at her home.

2 Q Now, you said that Belwood is a skilled  
3 nursing facility?

4 A Correct.

5 Q And so there were services that she needed at  
6 Bellwood, correct?

7 A Certainly.

8 Q And those were some of the services that  
9 weren't necessarily provided at Independence Village  
10 because of the type of nature that your organization  
11 has?

12 A No. Because Spoon River who is in our  
13 building is Medicare certified. They are basically  
14 able to provide many of the same services as skilled  
15 nursing facility. This was a move necessitated by  
16 finances.

17 MR. TONER: I don't have any further questions.

18 MR. EVANS: No further questions, sir.

19 THE COURT: You can step down. Thank you.

20 (Witness excused.)

21 THE COURT: Does that conclude what you want to do  
22 this morning, Mr. Evans?

23 MR. EVANS: People have no additional witnesses for  
24 formal aggravation.

1 THE COURT: So now we turn to you, Mr. Toner, and  
2 we'll pick up at 1:30.

3 MR. TONER: Judge, just for scheduling, during the  
4 recess I contacted all my professional witnesses who  
5 were going to be here today. They can all be here  
6 tomorrow morning with the exception of Mr. Gilroy who  
7 is in Lincoln down there because he's all tomorrow. So  
8 he'll be the only witness I would call on Wednesday.

9 MR. EVANS: Judge, respectfully, I would object.  
10 Certainly, the defense has known for a number of  
11 months, a number of months about this hearing and  
12 sentencing set for today. For them not to have a  
13 witness when they have been told as the State has that  
14 we were to start this morning at 9:00 a.m. on the 25th,  
15 and it's the People's position that they should have  
16 had all of their witnesses available, just as they  
17 should have had all these numerous letters which have  
18 been collected in the community within the last couple  
19 of days. It's the People's position that we would ask  
20 the Court before the sentencing, we would like to move  
21 along something extraordinary, but I think it's a  
22 question of not having the witnesses available in a  
23 timely manner even though they have had a number of  
24 months to have these witnesses available.

1 THE COURT: Unless we think we are going to get  
2 done at 10:00 tomorrow morning, which I doubt we are,  
3 I'm going to accommodate you. We had all three days  
4 blocked off.

5 MR. TONER: Thank you, Judge.

6 THE COURT: Looks like we are into Wednesday.

7 With that, we will go off the record and pick  
8 back up at 1:30 in Courtroom 213.

9 (Recess taken.)

10 THE COURT: Let's go on the record. This is People  
11 versus Picl, again, Case No. 05-CF-275. All parties  
12 are present with their respective attorneys.

13 We heard the State's evidence this morning on  
14 aggravation. We are ready to hear, I think, the  
15 defense's evidence on mitigation.

16 Before we do that, I just want to make sure we  
17 are all on the same page. Mr. Evans, if you look at  
18 your Count 5, I just want to point something out to you  
19 and you can look at this maybe at a break or something,  
20 but there is no subsection that you cited in that  
21 statute. There's no Subsection 2C. So I think I  
22 know --

23 MR. EVANS: Judge, I see what the Court's talking  
24 about. I could -- I mean, that would be an error in

1 terms of the preparation mechanically. I could make  
2 the change.

3 THE COURT: You can look at it and then maybe  
4 advise me some time today as to what that all means and  
5 I can hear from the defense, too, on that. All right.

6 Mr. Toner, ready to go?

7 MR. TONER: We are, Judge.

8 Please the Court. We would call Reverend  
9 Macaulay first.

10 THE COURT: Sir, please step forward and raise your  
11 right hand in front of the clerk.

12 (Thereupon the witness was duly sworn.)

13 THE COURT: Have a seat right here and pull that  
14 door.

15 Go ahead.

16 W. CLAY MACAULAY

17 called as a witness on behalf of the Defendant, after  
18 having been first duly sworn, was examined and  
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. TONER:

22 Q Please state your name and spell your last  
23 name for the court reporter.

24 A My name is W. Clay Macaulay, and the last name

1 is spelled M-A-C-A-U-L-A-Y.

2 Q And your occupation or profession, please?

3 A I am a pastor Presbyterian at Westminster  
4 Presbyterian Church in Peoria on Moss Avenue.

5 Q How long have you been a pastor at that  
6 particular church?

7 A Six and a half years.

8 Q In that capacity, do you know Frank Picl?

9 A I do.

10 Q And is he one of your congregation members?

11 A He is.

12 Q And have you had an occasion to meet with him,  
13 consult with him and talk about these events?

14 A I have.

15 Q And, particularly, I'm going to direct your  
16 attention to the last -- approximately 18 months ago,  
17 did Frank come and seek you out?

18 A That's correct.

19 Q And can you tell the judge the circumstances  
20 concerning that?

21 A Yes. As pastor, I read in the newspaper the  
22 situation involving Frank, and as pastor I called Frank  
23 to say I want you to know that the support of your  
24 church is there and left a message for him to that



1 effect. And I think within 24 hours, as I recall,  
2 Frank called me and asked if he could come see me and I  
3 said, by all means. And he came to see me at the  
4 church and we spoke at length on that occasion.

5 Q And do you recall that first occasion that you  
6 met with him after that phone call his demeanor and how  
7 he appeared?

8 A I recall it penitent. And if I may expound  
9 upon that.

10 Q Go ahead, please.

11 A I would say it was an interesting just of  
12 position that Frank was coming to see me, as I recall,  
13 during holy week, the season between Palm Sunday and  
14 Good Friday, and he came to see me during that week and  
15 was expressing remorse over the circumstances involving  
16 the charges against him.

17 Q In addition to his being penitent or  
18 expressing remorse, other recollections about how he --  
19 besides being sorrowed, did he seem upset, did he seem  
20 in good control of himself?

21 A I was certainly impressed with his demeanor  
22 and his sense of control over himself. He definitely  
23 sensed the gravity of the situation as I heard it and  
24 was expressing the seriousness of that charge and that

1 he, as I recall, was indicating he made some mistakes  
2 and was looking to make ways better for him to become  
3 in better control of his life.

4 Q And did he -- did the two of you discuss the  
5 areas of his life that did not appear to be in control?

6 A One that came particularly to mind at that  
7 time was his dependence on alcohol. And as I recall  
8 that conversation, this was right before Frank was to  
9 go into alcohol rehabilitation and had indicated to me  
10 he would be away for some time for that and we  
11 discussed how that was a positive step in regaining a  
12 sense of control over his life..

13 Q And, to your knowledge, did he follow through  
14 on that going through with the alcohol treatment and --

15 A To my knowledge he did, that is correct.

16 Q Did he talk to you then or at some subsequent  
17 time at all about gambling?

18 A Also on that occasion I recall his indicating  
19 his difficulty with gambling, that is correct.

20 Q Now, you mentioned the holy week meeting with  
21 him, and I imagine being a pastor you are pretty busy  
22 during that time. He left shortly after Easter, in  
23 fact, on Easter Sunday of '05 to go up to Minnesota.  
24 While he was in Minnesota or when he got back, did you

1 keep in touch with him either directly or indirectly?

2 A Indirectly. I did try on one or two occasions  
3 to dial a phone number that I had accessible, learned  
4 either that the mailbox was full, his voicemail or the  
5 line was disconnected. On one occasion I seem to  
6 recall leaving a message, and I believe his sister --  
7 and I believe it was his sister, Mary, called me and  
8 said Frank appreciates the concern and we spoke about  
9 the situation in that phone conversation.

10 Q And is Mary, is she or has she been a member  
11 of your congregation as well?

12 A That's correct.

13 Q In fact, is his whole family --

14 A The whole family --

15 Q -- has gone to church --

16 A -- have had a long-standing involvement with  
17 Westminster Presbyterian.

18 Q When Frank came back, has he seen you in the  
19 last 18 months?

20 A Yes. And most recently within the last week  
21 as contact has been made and with my colleague,  
22 Reverend Anna Saxon, an arrangement was made for Frank  
23 to come and actually speak with both of us, and he did  
24 so last Thursday afternoon and we talked for an

1 extended period on that afternoon.

2 Q If you could recall, please -- and I assume  
3 you have seen Frank at some points, if not between then  
4 and now -- how he appears differently, if he does,  
5 between holy week of '05 and now?

6 A One change I noticed was I believe he has an  
7 even greater understanding of the difficulty he had  
8 both with alcohol and with gambling, and I felt that  
9 the time in his alcohol rehabilitation was a time of  
10 greater awakening of himself, awareness of himself, and  
11 we spoke at greater length on the second time when we  
12 saw him within the last week of his difficulty with  
13 gambling.

14 Q Okay.

15 A So I sense that he had a greater sense of the  
16 problems he has had with alcohol and with gambling and  
17 he said to me that he has not had a drink in that  
18 period of time and I believe him.

19 Q Now, you have been a Reverend for a period of  
20 time?

21 A Twenty years.

22 Q And you indicate that most recently you talked  
23 with Reverend Saxon and Frank for a couple of hours?

24 A Correct. Almost two and a half.

1 Q I assume you hear people come to you with all  
2 kind of things?

3 A That's correct.

4 Q I don't know if this is a proper question, but  
5 were you able to get a feeling as to whether or not he  
6 was sincere about what he was telling you and his  
7 intentions here?

8 MR. EVANS: Object. I object to the form of the  
9 question.

10 THE COURT: Could you elaborate on that?

11 MR. EVANS: The feelings of the witness, Your  
12 Honor, is irrelevant to this issue.

13 MR. TONER: I can rephrase the question.

14 THE COURT: Go ahead.

15 MR. TONER: Q Did you have an impression during  
16 this conversation that he was being sincere with  
17 you?

18 A My impression was that he was sincere.

19 Q And what is that impression based upon? What  
20 things were you seeing or what was he saying that would  
21 cause you to reach that conclusion?

22 A The initial expression of remorse, the seeking  
23 of help, the following through on his getting help, his  
24 being willing to talk about the help he needed and has

1 received and his sense of the problem that he continues  
2 to face in terms of the charges that are before him.

3 Q Did he indicate to you that he was going to  
4 continue moving forward towards this facing what he has  
5 to face, including his addiction problems?

6 A He did. He did indicate how he would continue  
7 with his meetings with Alcoholics Anonymous, for  
8 example, and how he has been involved with that with  
9 actually, I think, numerous groups and continuing to  
10 seek the help that he needs with that particular  
11 dependency.

12 MR. TONER: If I may have a moment, Judge.

13 I don't have any further questions of this  
14 witness, Your Honor.

15 THE COURT: Mr. Evans.

16 MR. EVANS: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. EVANS:

19 Q Sir, you are in the business of talking to  
20 persons who come to you as members of your church  
21 community; is that a fair statement?

22 A That's correct.

23 Q And when had you last seen the Defendant Frank  
24 Picl before holy week of last year, sir?

1 A I had seen him on at least one occasion at  
2 formerly Jumer's Hotel, the restaurant, now the  
3 Radisson Hotel.

4 Q When was that, sir?

5 A That would have been about three years ago as  
6 I recall.

7 Q And it was only during holy week of 2005 in  
8 April last year that he came to you and talked with you  
9 about his criminal problems?

10 A That is correct.

11 Q And at that time, did he tell you that he had  
12 taken money from an 85-year-old woman?

13 A As I recall that conversation, he did.

14 Q Did he tell you that he took approximately  
15 \$280,000 from that woman?

16 A I had understood a figure comparable to that.  
17 Perhaps 250,000.

18 Q And did he also tell you that when he did that  
19 he was acting as her attorney?

20 A He did.

21 Q And certainly you were concerned with the  
22 information that he gave you?

23 A Most definitely.

24 Q Just as you would have been concerned as a

1 pastor with the victim of that crime, Mrs. Varga?

2 A I would be concerned of anyone in that  
3 situation, yes, sir.

4 Q These conversations with you, sir, were only  
5 after he was arrested in March of 2005; is that  
6 correct?

7 A The conversation when he came to speak with me  
8 in my study, that is correct.

9 Q Now, you also indicated that the defendant  
10 went into alcohol treatment following your  
11 conversation, correct, sir?

12 A Yes.

13 Q And he followed through, as you described it,  
14 with his treatment program, I think he went to,  
15 according to counsel, Minnesota somewhere?

16 A I believe that is correct.

17 Q Again, these were events that occurred only  
18 after he was arrested, correct?

19 A Conversation, and, yes, his going for alcohol  
20 rehabilitation that I'm aware of, yes.

21 Q Now, in your role, sir, there's probably many,  
22 many of your parishioners that you have talked with  
23 about personal problems; is that a fair statement?

24 A Yes, it is.



1 Q And, sir, you have also, I'm sure, talked to  
2 many persons in your church community that perhaps  
3 drank too much or are alcoholics?

4 A Yes.

5 Q And is there also other persons in your  
6 community that perhaps have talked with you about the  
7 fact that they go to the boat, they go to different  
8 gaming establishments such as the Par-A-Dice Casino?

9 A On some occasions, yes.

10 Q On those occasions when those persons talk  
11 with you, you counsel them and talk with them in your  
12 role as their pastor; is that correct, sir?

13 A That's correct.

14 Q When you talked with Mr. Picl, did he ever  
15 tell you that the reason he stole this woman's money is  
16 because -- solely because he drank too much?

17 A He certainly gave drinking as a primary reason  
18 for his gambling, but I don't recall his saying that  
19 was the sole purpose of his gambling.

20 Q And did the defendant ever talk with you about  
21 his ability to perform in these very courtrooms in the  
22 county as a public defender?

23 A He did discuss that.

24 Q Did he ever tell you how much money he used of

1 Mrs. Varga's to gamble?

2 A That is a detail I cannot recall his giving me  
3 initially if you are referring to that first  
4 conversation.

5 Q At any time?

6 A In the second conversation that we had, that  
7 figure was mentioned. And as I mentioned, I think it  
8 was in the neighborhood of 250,000, if I remember  
9 correctly.

10 Q So it's your best recollection the defendant  
11 told you that he spent approximately \$250,000 of this  
12 money on gambling activities?

13 A That is what I recall.

14 Q Did he ever tell you what he did with the  
15 money of Mrs. Varga that he didn't use for gambling?

16 A No.

17 Q He never talked about that. Thank you, sir.

18 MR. EVANS: No further questions.

19 THE COURT: Mr. Toner?

20 MR. TONER: Couple follow-ups, if I may.

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REDIRECT EXAMINATION

BY MR. TONER:

Q Reverend, in AA, they have an expression about bottoming out or hitting bottom. Is there something that's comparable in your profession? I mean, is it unusual for people to wait until things are pretty bleak until they talk to you?

A In our particular faith system, we have an expression of an awakening, a sense of we have done something wrong and we turn from that and turn towards in our belief God and ask for God's mercy and forgiveness and help in seeking a better life.

Q Now, the \$250,000 that you mentioned, that's what Frank said this money was involved, correct?

A That's my understanding.

Q Do you recall specifically if he gave a breakdown of whether it was gambling or what he had spent it on or did he?

A This is where I'm having some difficulty remembering specifically. I thought I understood the gambling. There may have been some living expenses involved with that. That's what I --

Q You don't have a particular recollection if he did talk about what they were?

1 A Other than just living expenses.

2 MR. TONER: Nothing further.

3 MR. EVANS: No further questions.

4 THE COURT: You can step down. Thank you,

5 Reverend.

6 (Witness excused.)

7 MR. TONER: Call Doris Bernard.

8 (Thereupon the witness was duly sworn.)

9 DORIS BERNARD

10 called as a witness on behalf of the Defendant, after  
11 having been first duly sworn, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TONER:

15 Q Good afternoon.

16 A Hi.

17 Q Please state your name and spell your last  
18 name for the court reporter.

19 A Doris Bernard. B, as in boy, E-R-N-A-R-D.

20 Q And, ma'am, where do you live?

21 A I live at 3509 North Gale in Peoria.

22 Q And are you employed outside the home?

23 A Yes.

24 Q What is it you do?

1 A I'm a floral designer at Geier Florist in West  
2 Peoria.

3 Q And do you know Frank Picl?

4 A I do.

5 Q And can you tell the judge, please, how long  
6 you have known him and how you became acquainted with  
7 him?

8 A I have known Frank about 24 years. I met him  
9 in a courtroom. He was the defense attorney and I was  
10 serving on the jury.

11 Q And I want to expand a little bit. You have  
12 written a letter. So we won't cover those things, but  
13 there came a time, as you indicate in your letter, that  
14 your own son needed an attorney and you contacted  
15 Frank, correct?

16 A Correct.

17 Q Do you recall approximately what year that  
18 was?

19 A 1982.

20 Q And your son, Jeff, had been in a serious car  
21 accident?

22 A Correct.

23 Q And this occurred a short time after you saw  
24 Frank's performance in the courtroom?

1 A A matter of days, yes.

2 Q And you contacted Frank to represent your son?

3 A Yes.

4 Q Now, can you elaborate briefly the -- what  
5 happened to your son and the circumstances -- it was a  
6 serious car accident, correct?

7 A Yes. He was in a car accident on a country  
8 road. He was a senior in high school at the time, just  
9 before his 18th birthday. He was thrown from the car.  
10 He was left paraplegic for life. It was a real  
11 difficult time for Jeff, but for all of us. And that's  
12 how we came to know Frank. I had met -- not met him  
13 personally, but I had seen him in the courtroom and I  
14 went home and I was impressed with him. I said if I  
15 ever need a lawyer I want to hire Frank Picl. So we  
16 went to see him and hired him.

17 Q At that point in time, what were Jeff's plans  
18 as far as going to college?

19 A Before the accident, Jeff had all but a  
20 nomination to the Air Force Academy from Bob Michel,  
21 and that was his plan. So, of course, immediately the  
22 day after the accident he knew that would not be  
23 possible. So then his second choice was to go to the  
24 University of Illinois because that was a favorite of

1 his. So he was determined that that was where he  
2 wanted to go. He didn't know how. He didn't know how  
3 he would manage it physically or financially or  
4 anything, but that was what he wanted to do.

5 Q In addition to serving as Jeff's lawyer, would  
6 it be fair to say that he assumed other duties as kind  
7 of like almost a mentor?

8 A Yes. Frank spent a lot of time with Jeff,  
9 just trying to uplift his spirits and his affirmation  
10 in himself that even though he would have to spend his  
11 life in his wheelchair that his life was not over, that  
12 there were many things out there that he could do and  
13 that he would have to be stronger now than he'd ever  
14 been in his life. He just was excellent to help Jeff  
15 be determined and be strong and overcome all these  
16 obstacles.

17 He had six surgeries after the initial  
18 surgery. It was a long haul, but he did go to U of I.  
19 He graduated in five years because of all the surgeries  
20 he had to go through, but regardless of what hospital  
21 Jeff was in, Frank was always there. He came to our  
22 house when Jeff was unable to get out. He -- we went  
23 to the office. He was just always there, always like a  
24 cheerleader for Jeff to help him realize that life had

1 things out there for him to do that were well worth  
2 doing and could be accomplished if he so wanted to, you  
3 know. So, yes, he was a big influence on Jeff. In  
4 fact, Jeff is an attorney today because of that fact.

5 Q And he works for the Attorney General's Office  
6 in Springfield?

7 A Well, State of Illinois.

8 Q In the last year or so, have you had an  
9 occasion to talk to Frank and do you stay in touch with  
10 him?

11 A Well, I hadn't over the last several years,  
12 but I did write him a note after I read in the paper  
13 what had happened just to let him know that we cared  
14 and that we were there and that our faith in him had  
15 not changed, that he had proven himself to us long ago  
16 and that the Frank Picl that we knew is a good man and  
17 we knew that even if he had done wrong he would come  
18 around and do the very best he could to make it right  
19 because that's Frank Picl. So, yes, I wrote him a note  
20 and I talked to him several times over the last year  
21 and not at great length on any subject, but just to let  
22 him know that we care.

23 Q And you have known him for roughly 25 years?

24 A Right.



1 Q Do you up until what you have read about this  
2 and he's pled guilty, so it's true, you understand  
3 that, do -- would you still -- you said you continue to  
4 believe in him. Would it be fair to say then that you  
5 would take him at his word?

6 A Absolutely.

7 Q Have you talked to him during these -- any of  
8 these conversations about pursuing his recovery and how  
9 he's doing there?

10 A I have.

11 Q And did he seem sincere about that?

12 A Oh, absolutely. He talked -- most recently  
13 sounded like the Frank Picl that I knew from the very  
14 beginning, you know, strong and determined. He knew  
15 that he had done wrong, but he was determined to make  
16 the best of his life that he could, and, you know,  
17 that's all anyone can ask. He's a good man.

18 MR. TONER: If I may have a moment, Judge.

19 I don't have any further questions of  
20 Ms. Bernard. Thank you.

21 THE COURT: Mr. Evans.

22 MR. EVANS: Thank you, Judge.

23

24

1 CROSS-EXAMINATION

2 BY MR. EVANS:

3 Q Ma'am, when was it that you first met the  
4 defendant?

5 A Twenty-four years ago.

6 Q And your son's unfortunate accident was that  
7 same time period, ma'am?

8 A Right.

9 Q And you are thankful for everything the  
10 defendant did for your son starting 24 years ago,  
11 correct?

12 A Right.

13 Q And your opinion about him has not changed in  
14 terms of him being a good man, in your words, even  
15 though if I were to tell you he took almost \$280,000  
16 from an 85-year-old woman?

17 A That's unfortunate. I'm very sorry that he  
18 did that, but --

19 Q But would your opinion about him change,  
20 ma'am?

21 A Not as a person, no, because I know inside he  
22 is still a good person. He made some bad choices. He  
23 did some bad things, but that doesn't make him a bad  
24 person.

1 Q .Aside from being a bad person, did you talk  
2 with the defendant at all in these conversations about  
3 what he actually did, how he took this money?

4 A Well, I didn't talk to him about how he did  
5 it. He, you know, admitted what he had did and he said  
6 he was sorry and wrong.

7 He told me about going to AA, and, you know,  
8 we didn't go into great detail on anything, but I could  
9 tell that -- you know, Frank is -- he knows that --  
10 well, that there are just things in life that we each  
11 do that we're sorry for that we can't go back and undo.  
12 We can maybe never make them totally right.

13 Q Did he handle your son's case appropriately 24  
14 years ago?

15 A Yes.

16 Q And that would have been back in 1982, '83?

17 A '83, uh-huh.

18 Q And other than what the defendant has told  
19 you, you know nothing about how he handled Mrs. Varga's  
20 matters or estate, or I should say her finances, do  
21 you, ma'am?

22 A Right.

23 MR. EVANS: Thank you.

24 THE COURT: Mr. Toner?

1 MR. TONER: I don't have any further questions.

2 Thank you.

3 THE COURT: You can step down. Thank you.

4 (Witness excused.)

5 MR. TONER: Call Steve Bradbury.

6 THE COURT: Sir, step forward, please, and raise  
7 your right hand.

8 (Thereupon the witness was duly sworn.)

9 STEVE BRADBURY

10 called as a witness on behalf of the Defendant, after  
11 having been first duly sworn, was examined and  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. TONER:

15 Q Good afternoon. Please state your name and  
16 spell your last name for the court reporter.

17 A Steve Bradbury, B-R-A-D-B-U-R-Y.

18 Q And, Mr. Bradbury, your occupation and  
19 profession?

20 A I'm currently not working right now.

21 Q And do you know Frank Picl?

22 A I do.

23 Q How long is it that you have known him?

24 A I have known Frank approximately 18 months.

1 Q And how is it that you met him?

2 A I met Frank -- I first met Frank at an AA  
3 meeting and subsequently shortly after that at the  
4 White Oaks Treatment Center.

5 Q And are you involved in AA and at White Oaks?

6 A Yes, I am.

7 Q And in the treatment center, was that the  
8 recovery meeting group?

9 A Yes. It's called the Men's Recovery  
10 Management program, MRM.

11 Q MRM?

12 A MRM at White Oaks.

13 Q You met him 18 months ago. Can you tell the  
14 judge with regard, first of all, to MRM, how often is  
15 it that you meet?

16 A Yes. The MRM program at White Oaks is a  
17 primary outpatient care, intensive outpatient care  
18 program. Part of that program involves alumni from the  
19 program coming back on a weekly basis. This is where I  
20 met Frank. I had gone through that program in August  
21 of 2003 and came back on a weekly basis on Thursday  
22 nights.

23 Q So you came back to help out to go with --  
24 that's why they call it the alumni meeting?

1 A Right.

2 Q People come back to it?

3 A Right.

4 Q With regard to the alumni meetings on Thursday  
5 night, you met him there. On what type of a basis  
6 would you see him there on Thursday night?

7 A Of course, going back over a year and a half,  
8 I can't say for absolutely positive, of course, when he  
9 was in there in the aftercare program. I would see him  
10 on Tuesday nights and Thursday nights and since that  
11 time very regularly on Thursday nights. Frank has  
12 continued to come as an alumni himself having completed  
13 the program. Not all of the alumni are able to come  
14 back. Frank certainly was one that has come back over  
15 that time.

16 Q With regard to -- so he comes back on a pretty  
17 consistent basis?

18 A Yes.

19 Q And while it's encouraged, perhaps, and you  
20 say not everybody can come back, it certainly is not  
21 required, is it, that you come back?

22 A No, absolutely not.

23 Q Now, from the time you first met him with --  
24 until today -- you talked to him there. You talked to

1 him at your AA meetings. Did you form an -- from your  
2 observation, have you seen any change over the last 18  
3 months?

4 A Absolutely.

5 Q And can you tell the judge what you have  
6 noticed and what you take as being significant about  
7 those observations?

8 A It's very difficult to explain because it's  
9 such a dynamic change that happens and it's very subtle  
10 and a lot of times it's -- it's what it means to me,  
11 but, basically, the program over -- you know, being a  
12 part of this program requires a lot of  
13 self-examination. Obviously, from my own experience,  
14 you know, and from the experience that I have  
15 witnessed, you know, people, especially new that are  
16 just coming in, they say it's a thinking disease. I  
17 mean, convoluted thinking. People start to -- people  
18 start to -- they see things more as they are, more as  
19 they -- really as they are, start to come to grips with  
20 reality. I know that's probably a poor explanation,  
21 but people change.

22 Q I have heard the expression that when you talk  
23 about that, you are talking about alcoholism, the  
24 thinking disease?

1 A Correct.

2 Q And somebody in prepping for this told me  
3 it's --

4 MR. EVANS: I object to counsel testifying now,  
5 Your Honor.

6 THE COURT: Sustained.

7 MR. TONER: Q You have heard the expression  
8 90 percent thinking, 10 percent drinking?

9 A I have, yes.

10 Q That would describe alcoholism in the fashion  
11 you are talking about?

12 A Definitely.

13 Q With regards to Frank personally, the things  
14 that -- has he talked to you about, number one, these  
15 charges?

16 A I was -- I have been over the period of time  
17 aware of the charges. Frank has talked about the  
18 charges, not in great detail to me. However, you know,  
19 I am aware. Also, I have read in the paper.

20 Q Are you aware of your observations of how he  
21 approaches recovery?

22 A Yes. What my perception of is he's very  
23 serious, he's involved. He chairs meetings at Share  
24 Clean Air two meetings a week. I know 7:00 a.m. on



1 Monday and 6:00 p.m. on Monday. I see him at meetings  
2 frequently. I go to AA meetings myself personally  
3 every day. And then also at our treatment facility.  
4 So I know he's involved.

5 Q So you know he on a regular basis chairs two  
6 AA meetings on Monday, the 7:00 a.m. and --

7 A Right. He is a cochair, but --

8 Q Is he active in the MRM alumni group?

9 A Yes.

10 Q Have you had an observation concerning how he  
11 helps to support particularly people who haven't made  
12 it through their meeting?

13 A Sure. That's the purpose of the meeting, you  
14 come back to help the new guys that are coming in. You  
15 share your experience. That's what Frank does. He's  
16 there almost every week, as I am, and, you know, he's  
17 trying to impart his experience and help the guys that  
18 are just coming in, and that's what that program is  
19 about and it's something that he does.

20 Q Does he seem to be open with them, telling  
21 them about what this has done with him?

22 A Yes.

23 Q Does he seem to have an impact, I mean, as far  
24 as them listening to him?

1 A Yeah. Well, it's hard to say. I can't put  
2 myself in somebody else's position. I know that -- I  
3 know that that period of time, that in treatment people  
4 are, you know, dazed, confused. This is not anyplace  
5 anybody wants to be. You know, I certainly didn't want  
6 to be there, but --

7 Q Are they helped out by people like you and  
8 Frank's willingness to go back?

9 A Right.

10 MR. TONER: I don't have any further questions,  
11 Judge.

12 THE COURT: Mr. Evans.

13 MR. EVANS: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. EVANS:

16 Q Sir, the defendant you are telling us is a  
17 member of AA meetings now; is that correct?

18 A Yes.

19 Q And that's Alcoholics Anonymous?

20 A Yes.

21 Q And the defendant started coming to these  
22 meetings about 18 months ago?

23 A Yes, sir.

24 Q And that was after he was arrested; is that

1 correct?

2 A Yes, sir, I believe that's correct.

3 Q And you never saw the defendant prior to the  
4 time he was arrested in March of last year, did you?

5 A No, sir.

6 Q And if I could ask you, sir, how long have you  
7 been in the AA program?

8 A Three years.

9 Q Thank you. Now, you say the defendant chairs  
10 meetings. He's the one who kind of runs the AA  
11 meeting, a particular meeting from time to time; is  
12 that correct?

13 A Correct. The AA meeting -- AA chair  
14 facilitates the meeting. He doesn't no more than pick  
15 out, make sure the coffee is on, open the door, pick  
16 the reading.

17 Q So that's passed around among the members from  
18 time to time?

19 A On a volunteer basis.

20 Q The defendant's explanation as to what he did  
21 in taking money from this 85-year-old woman, did he  
22 talk with you about that?

23 A Generally. Not specifically as in certainly I  
24 have heard him share it.

1 Q Has he shared with you or the group as a whole  
2 how much money he took from this woman?

3 A I can't recall, but I would say -- well, I  
4 can't recall for sure. I know it was substantial.

5 Q In his conversations with you or the group,  
6 did the defendant say what he did with the money?

7 A I'm not certain.

8 MR. EVANS: No further questions, sir.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Toner.

11 MR. TONER: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. TONER:

14 Q Mr. Bradbury, are you familiar with the term  
15 hitting bottom?

16 A Yes.

17 Q Can you explain to the judge what that means?

18 A Hitting bottom to me means to -- that a person  
19 reaches a turning point where we can't continue to go  
20 on the way we are going on and to seek help to change.

21 Q So there is a correlation generally between  
22 hitting bottom and seeking help?

23 A Correct. One is almost necessary for the  
24 other to be effective.

1 MR. TONER: I don't have any further questions.

2 Thank you.

3 RECROSS-EXAMINATION

4 BY MR. EVANS:

5 Q Sir, hitting bottom would also be consistent  
6 with the defendant being arrested for taking this money  
7 from the 85-year-old woman, correct?

8 A It could very well, yes.

9 MR. EVANS: Nothing further.

10 THE COURT: Mr. Toner.

11 REDIRECT EXAMINATION

12 BY MR. TONER:

13 Q Would it be fair to say, Mr. Bradbury, hitting  
14 bottom would be consistent with almost as many  
15 different things as there are people involved in AA?

16 A Absolutely.

17 Q Because that's what brings them to the  
18 program, correct?

19 A Correct.

20 MR. TONER: Nothing further.

21 MR. EVANS: No further questions.

22 THE COURT: You can step down. Thank you.

23 (Witness excused.)

24 MR. TONER: Call Michael Levan.

1 (Thereupon the witness was duly sworn.)

2 MICHAEL LEVAN

3 called as a witness on behalf of the Defendant, after

4 having been first duly sworn, was examined and

5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. TONER:

8 Q Please state your name.

9 A Michael Levan.

10 Q And, Mr. Levan --

11 A L-E-V-A-N.

12 Q Do you know Frank Picl?

13 A Yes, I do.

14 Q How is it you know him?

15 A I met Frank back in I believe it was either

16 '80 or '81. I was a sophomore in high school.

17 Q Did you have an occasion to have him represent  
18 you in a criminal case?

19 A Yes. He was appointed my public defender.

20 Q Since then, have you stayed in contact with  
21 Frank?

22 A Yes, I have.

23 Q What's your occupation?

24 A I'm a carpenter.

1 Q And did you some time after that experience in  
2 the early '80s, did you and he have an occasion to help  
3 put on an addition to his house?

4 A Yes. He had talked -- I had seen him around  
5 town and if I was ever downtown I would stop by and say  
6 hi to him. He mentioned he bought the house on Merle  
7 Lane and wanted to enclose to I believe it's called a  
8 breezeway and asked me about how to do it, asked me if  
9 I had plans, we would go from there.

10 Q And the two of you and other people worked on  
11 the --

12 A Yes, we did.

13 Q Over the years have you stayed in touch?

14 A Yes, I have.

15 Q I'm going to direct your attention from the  
16 late 1980's until about 18 months ago. Do you recall  
17 having a conversation with Frank on Easter Sunday of  
18 2005?

19 A Yes, I did.

20 Q Can you relate your recollection of what the  
21 substance of that conversation was?

22 A Well, I couldn't remember -- not to get off  
23 the subject, but I couldn't remember how I had found  
24 out, either from another attorney friend of mine or the

1 newspaper, but I had contacted Frank about the  
2 situation he was in. And if I may say something --  
3 it's -- I don't know how to say this. So I'm going to  
4 say it. You ever heard the phrase can't bullshit a  
5 bullshitter?

6 Q You can't kid a kidder?

7 A That's fine. I'm sorry. You can't kid a  
8 kidder. And Frank was always honest with me about  
9 this. And he had called me. I had left a couple notes  
10 at his parents' home and to call if he needed to talk,  
11 and he had called me a couple times and he was on his  
12 way to rehab, and it was up north, Wisconsin or  
13 Minnesota. I wasn't sure, but he called me on the way  
14 and we talked in detail about what was going on and his  
15 problem with alcohol and his addictive behavior.

16 Q And what did he tell you about that that you  
17 recall?

18 A I remembered he said that he was guilty and he  
19 had done taken this money from this lady and explained  
20 in detail what he had done and was very honest with me.

21 Q That was way back 18 months ago?

22 A Yes.

23 Q And before you hung up from that conversation,  
24 did the two of you do anything else?



1           A     Yes. We said a prayer that he made it through  
2 there and was honest with himself. And we had talked  
3 about alcoholism and how it leads to other addictive  
4 behavior, because my mother was an alcoholic, and I  
5 myself, I don't drink, never have and I went to  
6 counseling myself to deal with it.

7           Q     Now, more recently, in say the last several  
8 months or several weeks, have you seen Frank and talked  
9 to him?

10          A     Yes. On a constant basis.

11          Q     On a fairly regular basis?

12          A     Yes.

13          Q     You are familiar somewhat from your testimony  
14 there about the process of alcoholism and treatment and  
15 things like that. Are you able to observe Frank's take  
16 on this? Is he sincere?

17          A     Yes.

18          MR. EVANS: Object. I object to the form of the  
19 question. Calls for some form of expert opinion. I  
20 think the form of the question does, Judge.

21          THE COURT: Overruled.

22          THE WITNESS: When he was on his way up to  
23 treatment, we had a lengthy conversation and he told me  
24 everything, how he'd -- what he did with the money, how

1 he went to the Par-A-Dice and used the trust check, if  
2 that's the term -- I'm not sure of the term -- and had  
3 gambled the money because he thought he could win. And  
4 we had talked about my brother and his alcoholic  
5 adventures that I told him that it was addictive  
6 behavior. And that because he had been an alcoholic  
7 that you think you cannot overrun, but do things that  
8 are not possible. Your brain and your body convinces  
9 you that you can do these things and succeed.

10 And he had told me that he was wrong and that  
11 he realized that the term hit bottom has been used and  
12 how he was very disgusted with himself for the fact  
13 that he used this lady's money.

14 Q Right now, say within the last three or four  
15 months, how often do you talk to him?

16 A Well, I met him -- I have always left notes at  
17 his parents' house. In fact, before he used to have  
18 his red BMW and I -- I didn't know he had sold it, but  
19 every time I saw it I left a note on it, give me a call  
20 Frank. For some reason, I didn't realize that he sold  
21 the car, and whoever this person was must have  
22 contacted him because I always got a call and we always  
23 talked at length.

24 Q And he continues to do so?

1 A Yes, we do.

2 Q Does he continue to express the same type  
3 feelings towards his recovery?

4 A Yes. I talked to him like -- or we have  
5 talked about that. I have talked to him on the way up  
6 to recovery, and I talked to him I want to say a day or  
7 two after he had finished his recovery period in  
8 Minnesota, and like you can't fool someone. I know  
9 that -- you know, I have been around alcoholics, my  
10 mother and brother. Frank was very sincere to me.  
11 Like I said, you can't fool someone, and I knew that  
12 Frank was honest with me because of my time of knowing  
13 him and everything else.

14 Q You have been to prison before, have you not?

15 A Yes, I have.

16 Q How many times?

17 A Twice.

18 Q From your experience there -- strike that.

19 Did Frank represent you in either of those  
20 cases?

21 A No, he did not.

22 Q From your experience there, do you think that  
23 there's any benefit to be gained from sending Frank to  
24 prison?

1           A       I can honestly say that it's -- it may be a  
2 quick means to an end for the state's attorney's  
3 office, but I don't think that -- if you were to go  
4 into a courtroom today and said to someone you can  
5 either have prison time or probation, 90 percent of  
6 them are going to say prison because probation is too  
7 tough, too many rules, and I believe that is -- in my  
8 opinion, that is what Frank needs is rules because he's  
9 done a fantastic job following the rules set before him  
10 in rehab, and, in my opinion, he's doing a fantastic  
11 job with his rehab. And I know that I'm not a  
12 counselor, but I have been to counseling because of  
13 dealing with alcoholics, and I know there is a  
14 recidivism rate that is very high.

15                   In fact, I had talked to someone who was in  
16 rehab with Frank up there. And they told me that Frank  
17 was very honest about what he said and was very sincere  
18 about his time there. And he's also been sincere to me  
19 since then. I shouldn't say since then. I mean the  
20 whole time.

21           MR. TONER: I don't have any further questions.

22                   CROSS-EXAMINATION

23                   BY MR. EVANS:

24           Q       Sir, what have you been in prison for?

1 A Theft and criminal damage to property.

2 Q How long have you served in prison?

3 A Two-year sentence and a three-year which was  
4 18 months and 9 months.

5 Q How long ago was that, sir?

6 A That was in '81 and '84.

7 Q And you used a comment that this is a quick  
8 end for the state's attorney's office?

9 A For the --

10 Q Is that the term you used, sir?

11 A I believe it is, yes.

12 Q Do you have some hard feelings against the  
13 state's attorney's office?

14 A No.

15 Q Does the state's attorney's office prosecute  
16 you for your criminal offenses?

17 A Not this -- well, different state's attorneys,  
18 but same office, same county.

19 Q Same office, Peoria County State's Attorney's  
20 Office?

21 A Yes.

22 Q And --

23 A But don't take any comment out of context  
24 either.

1 Q Now, you said that the defendant followed the  
2 rules of his treatment program?

3 A Yes.

4 Q Is that according to what the defendant told  
5 you?

6 A No. Other people.

7 Q Others in addition to yourself?

8 A I have never been to treatment myself.

9 Q No. I'm saying other people told you what you  
10 have conveyed to us today, correct?

11 A Yes. And I also asked Frank about these, and  
12 he was very honest with me.

13 Q And he told you that he's complied with the  
14 rules with regard to treatment, correct? The defendant  
15 told you that, also?

16 A No. He never come out and told me, Mike, I  
17 followed the rules. I could gather it by our  
18 conversations.

19 Q Fair enough. Now, do you know yourself as you  
20 sit here today what rules he was required to follow in  
21 handling the money of an 85-year-old woman as he was  
22 acting as an attorney for, sir?

23 A I know he shouldn't have spent the money.

24 Q How about not taking the money?

1 A Well, it's the same thing, spending or taking.  
2 Wasn't his to take or spend.

3 Q Exactly.

4 A And he explained that to me very thoroughly in  
5 many of our conversations.

6 Q Sir, did he tell you, the defendant, what he  
7 did with the money he took?

8 A I remember he -- what comes to mind was that  
9 he told me that he thought that one point he thought he  
10 was a professional gambler and could win the money  
11 back, and I believe he told me he had used it for  
12 living expenses.

13 Q How much did he use for living expenses?

14 A Oh, we didn't get down to dollars and figures.

15 Q How much did he use for gambling?

16 A That I don't know.

17 Q When you talked with the defendant did he  
18 attribute his criminal activity to drinking solely?

19 A No. He didn't do that at all. He never made  
20 an excuse for what he had done or how he handled this  
21 lady's affair.

22 Q And the only time he contacted you about this  
23 drinking problem, if you will, was after he was  
24 arrested, correct?

1 A No. I have known Frank for a long, long time  
2 and we talked about problems before.

3 Q He talked with you about taking money from  
4 Mrs. Varga before he was arrested?

5 A No. Like I said, I found out from another  
6 attorney friend of mine or through the newspaper.

7 Q That was after he was arrested, sir, correct?

8 A If it was in the newspaper, I assume so.

9 MR. EVANS: No further questions. Thank you.

10 THE COURT: Mr. Toner.

11 REDIRECT EXAMINATION

12 BY MR. TONER:

13 Q Very briefly. Your testimony here today is  
14 not for the purpose of some kind of taking a swipe at  
15 the state's attorney's office, is it?

16 A No. I'm not here because of the state's  
17 attorney or Judge Kouri or this lady here (indicating).  
18 I'm here for Frank and I volunteered my services. I  
19 shouldn't say services. My testimony.

20 MR. TONER: Thank you.

21 THE COURT: Mr. Evans.

22 MR. EVANS: No, sir. No further questions.

23 THE COURT: You can step down. Thank you.

24 (Witness excused.)



1 MR. TONER: Call Jerry Lindsey to the stand.

2 (Thereupon the witness was duly sworn.)

3 JERRY LINDSEY

4 called as a witness on behalf of the Defendant, after  
5 having been first duly sworn, was examined and  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. TONER:

9 Q Good afternoon, Mr. Lindsey. Would you please  
10 state your name and spell your last name for the court  
11 reporter?

12 A My name is Jerry Lindsey. My last name is  
13 spelled L-I-N-D-S-E-Y.

14 Q And do you know Mr. Picl?

15 A For approximately 30 years.

16 Q And over the years, has he ever had an  
17 occasion to represent you in court?

18 A Yes. I have an extensive criminal record and  
19 on three or four of those occasions Mr. Picl has  
20 defended me.

21 Q And you indicated in your letter -- I'm going  
22 to ask you to expand on it.

23 A Okay.

24 Q You are now a real estate appraiser?

1 A Residential appraiser, yes, licensed by the  
2 State of Illinois.

3 Q And you indicated in part that's because of  
4 Frank. Can you explain why?

5 A Primarily -- I think the last time that I  
6 was -- I ran afoul of the law Mr. Picl was talking to  
7 me and Mr. Picl told me that he really couldn't  
8 understand why a person that he thought was as  
9 intelligent as me would waste away my life being  
10 convicted of petty thefts. And I think he knew at that  
11 time that I had a drug problem.

12 Q And did he, in fact, do anything to help you  
13 address that drug problem?

14 A He petitioned the court to help me get into  
15 long-term treatment in Peoria, which was a year's worth  
16 of treatment, and -- to help me change my life around.  
17 But I believe that without him being as forceful as he  
18 was with the court to try to get that opportunity for  
19 me, I never would have received it.

20 Q Did you go to that treatment?

21 A Yes, I did.

22 Q Did it take?

23 A Yes. Well, as far as I'm concerned, yes, it  
24 has. I feel like I have been a success at it for the

1 last 16 years, going on 17 years.

2 Q So you are approaching 17 years of being  
3 clean?

4 A I just celebrated my 16th clean and sober  
5 birthday on September 11th.

6 Q Congratulations.

7 A Thank you.

8 Q Besides that, do you have an occasion or have  
9 you had an occasion over the years to see Frank?

10 A I would run into Frank in the courthouse here  
11 when I would come to the assessor's office to get  
12 records for properties, and I would see Frank at Peoria  
13 High School when his daughter would be involved in some  
14 graduation exercise or activities at Peoria High. My  
15 daughter and his daughter both graduated in the same  
16 year, 1999.

17 Q Have you had an occasion to talk to Frank  
18 about recovery?

19 A No, but I have been aware for the last 25 or  
20 30 years that he had a severe drinking problem which  
21 I'm so surprised that nobody else recognized that or  
22 that this problem ever came up before because I had  
23 always expected at some point in place and time to read  
24 in the Peoria Journal Star that a client would have

1 accused him of misrepresentation because of being  
2 intoxicated.

3 Q Some kind of criminal proceeding or just some  
4 kind of proceeding?

5 A Some kind of proceeding, but the reason I  
6 think that never happened is because his persona was so  
7 smooth and that the representation that he has always  
8 provided has been more than par, excellent.

9 Q So despite that, you felt he performed well,  
10 particularly --

11 A Extremely well. Extremely well.

12 Q What kind of an effort does someone have to  
13 put forth towards turning their life around and coming  
14 clean?

15 A Well, the first thing --

16 MR. EVANS: Judge, again, I object at this point.  
17 I think that if it's just with regard to this witness  
18 it would be irrelevant. If not, it's the subject of  
19 expert testimony.

20 THE COURT: Mr. Toner?

21 MR. TONER: I'll rephrase the question. If I can  
22 have a second.

23 MR. TONER: Q So you indicated that you had run  
24 afoul of the law before?

1 A Yes.

2 Q And in those experiences, have you had  
3 occasion to receive both a prison sentence and a  
4 probation sentence?

5 A Yes. And I would consider the last time that  
6 I was arrested and ran afoul is where I actually hit my  
7 bottom, meaning that I couldn't go on anymore the way  
8 that I was existing, and I didn't know the difference  
9 then between existing and living. And each  
10 individual's bottom is different and they teach us in  
11 the 12 steps that usually that bottom either comes with  
12 jail, institutions, or death, but you don't reach that  
13 bottom because you are under an illusion and you are  
14 intoxicated or drug induced.

15 Q Based on your experience, is it harder for you  
16 to -- is it harder for a person to do a rigid probation  
17 or do a prison time?

18 MR. EVANS: Objection. Relevance, Your Honor.

19 THE WITNESS: I think that's a relevant question.

20 THE COURT: He can answer it.

21 THE WITNESS: I have been on probation, and I have  
22 been in penitentiary. I've done both of them. Doing  
23 probation is a lot more difficult than serving  
24 institutional time because when you serve institutional

1 time -- can I finish?

2 MR. TONER: Q Go ahead.

3 A When you serve institutional time you have  
4 rules and regulations, but those rules and regulations  
5 can be ones of your own design to keep your own self  
6 out of trouble. However, but when you are doing  
7 probation and you know that your freedom is on the line  
8 you deal with a more rigid program for yourself because  
9 you don't want to go to penitentiary, but once you are  
10 there you are already there, so you do what you got to  
11 do to survive.

12 MR. TONER: I don't have any further questions.

13 THE COURT: Thank you. Mr. Evans.

14 CROSS-EXAMINATION

15 BY MR. EVANS:

16 Q Mr. Lindsey, what's your extensive criminal  
17 record that you mentioned?

18 A Petty theft.

19 Q Petty theft?

20 A Petty theft and one charge for delivery  
21 charge.

22 Q A delivery charge. What did you deliver?

23 A What did I deliver?

24 Q Right.

1 A Can I tell you the circumstances of it?

2 Q I'm asking what you delivered.

3 A Heroin.

4 Q And you went to prison for that?

5 A No. Actually, I went to prison because of --

6 Q Did you go to prison for the delivery of

7 heroin?

8 A Yes, but I have a reason I would like to  
9 explain.

10 Q I'm not asking that, sir. You did go to  
11 prison for delivery of heroin?

12 A Yes.

13 Q Now, your petty theft is your only other  
14 charges. You told us that was a misdemeanor, correct?

15 A No. Once you are convicted of theft each  
16 theft after was --

17 Q Becomes a felony?

18 A Becomes a felony.

19 Q Is that the one you had probation for, sir?

20 A The last one was what I had probation for and  
21 it was for theft.

22 Q So how many convictions do you have? Delivery  
23 of heroin, theft? Is there another theft in addition  
24 to that?

1 A I'm sure there is plenty of them.

2 Q How many?

3 A I don't know.

4 Q Take a guess.

5 A I don't know. Maybe five, six.

6 Q And you had contact with Mr. Picl; he

7 represented you in court, correct?

8 A Correct.

9 Q And he represented you adequately? He came  
10 into court?

11 A Yes.

12 Q Prepared your defense?

13 A Yes.

14 Q Acted as your attorney?

15 A Yes.

16 Q And, at the time, you knew that he would drink

17 sometimes more than he should?

18 A Yes.

19 Q And yet he could still represent you

20 adequately in front of a judge, right?

21 A The prosecutors didn't mind him representing  
22 me like that, why should I? He did it adequately.

23 MR. EVANS: Judge, I move to strike his nonresponse  
24 to my question.



1 THE COURT: Motion granted. Please listen  
2 carefully to the question and just answer it. I know  
3 there is a lot you want to tell me, but when Mr. Toner  
4 asks the questions, you can answer those. When  
5 Mr. Evans asks, you got to answer those, too.

6 THE WITNESS: I was aware that he might have been  
7 intoxicated when he was representing me.

8 MR. EVANS: Q But he represented you  
9 adequately, didn't he?

10 A Yes.

11 Q Now, you knew based on your experiences with  
12 the defendant -- I think you used the term that it was  
13 just a manner of time or a question of time until you  
14 read about him taking some money from somebody?

15 MR. TONER: Objection.

16 THE WITNESS: No. That's not what I said.

17 THE COURT: Hold on.

18 MR. TONER: My objection was simply that that was a  
19 misstatement of what he had said. I think he cleared  
20 it up. I'll withdraw the objection.

21 THE COURT: Go ahead.

22 MR. EVANS: Q When you knew Mr. Picl, you used  
23 the phrase that it was a matter of time or a  
24 question of time when counsel asked you questions.

1 Do you remember that answer?

2 A Yes. Can I repeat that answer?

3 Q Sure. That's what I'm asking. Do you recall  
4 that, and I'm asking you to explain what you meant by  
5 that.

6 A Right. I said that I was surprised that I had  
7 not read in the paper that Mr. Picl would have been  
8 accused of misrepresentation of a client because I knew  
9 that he was an alcoholic. He didn't know that he was  
10 an alcoholic, but I did.

11 Q I assume then that you used that as basis for  
12 appealing your sentences?

13 A I never appealed one.

14 Q You never appealed it?

15 A No.

16 Q You never brought that to the attention of the  
17 Appellate Court?

18 A No, but neither did none of the attorneys in  
19 the building bring it to their attention either.

20 THE COURT: One at a time.

21 MR. EVANS: Q You never brought it to the  
22 attention of anyone in a position of authority  
23 before today, did you?

24 A I thought I answered that question. No.

1 Q That's correct, my statement that you have  
2 never brought that issue before a judge before today,  
3 did you, in the form of a written motion; is that a  
4 correct statement, sir?

5 A No.

6 Q Which judge did you bring this issue in front  
7 of in the form of a written statement?

8 THE COURT: I think he answered.

9 THE WITNESS: What?

10 THE COURT: Hold on. Hold on. Why don't you  
11 rephrase the question. He may have misunderstood the  
12 question. I think he's testified to this, but now if  
13 he's confused, I'm confused. So ask the question again  
14 maybe a bit simpler.

15 MR. EVANS: Q What you are saying today is did  
16 you ever bring that issue that Mr. Picl was under  
17 the influence of alcohol in any written motion  
18 before a court or an Appellate Court?

19 A I think I heard the question right and the  
20 answer to that is no.

21 MR. EVANS: No further questions.

22 THE COURT: Mr. Toner.

23 THE WITNESS: Please.

24

1 REDIRECT EXAMINATION

2 BY MR. TONER:

3 MR. TONER: Q You were going to mention about  
4 the circumstances surrounding your heroin case.

5 A Yes.

6 Q Would you briefly elaborate on that?

7 A Thank you. I had went to a short-term  
8 treatment program at Proctor Community Hospital. It  
9 was a short program. It was before I went to a  
10 long-term program, and I had made a decision when I  
11 went to Proctor that I wasn't going to use hard drugs  
12 anymore. I wanted to be like everybody else and I  
13 wanted to be able to socialize, but I didn't want to  
14 run afoul of the law. So I chose to do a legal  
15 substance which was alcohol.

16 I was in a club one night and an undercover  
17 agent bought me plenty of alcohol and under the  
18 intoxication he talked me into taking him to buy some  
19 heroin. My point is this. Had I never been  
20 intoxicated, I never would have done that, and today I  
21 feel that the worst drug on the market or attainable is  
22 alcohol because it really deludes you.

23 Q You mentioned your probation and your  
24 long-term residential care. Did going to prison ever

1 do anything to help you or anyone you know with their  
2 addiction?

3 A Probably --

4 MR. EVANS: Your Honor, I would object,  
5 respectfully. This individual is certainly not an  
6 expert in that field.

7 THE WITNESS: I don't know. Being 30 years addict  
8 I should be an expert in something.

9 THE COURT: I'm going to sustain the objection.

10 MR. TONER: I don't have any further questions.  
11 Thank you.

12 THE COURT: Hold on.

13 MR. EVANS: No further questions.

14 THE COURT: You can step down. Thank you.

15 (Witness excused.)

16 MR. TONER: Call Shirley Hannon.

17 THE COURT: Ma'am, step forward and raise your  
18 right hand in front of the clerk, please.

19 (Thereupon the witness was duly sworn.)

20 THE COURT: Have a seat.

21

22

23

24

1 SHIRLEY HANNON

2 called as a witness on behalf of the Defendant, after  
3 having been first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TONER:

7 Q Please state your name.

8 A Shirley Hannon, H-A-N-N-O-N.

9 Q Mrs. Hannon, you live in the Peoria area?

10 A I do.

11 Q And are you acquainted with Frank Picl?

12 A I am acquainted with Mr. Picl.

13 Q How is it that you know him?

14 A I was Mr. Picl's secretary for approximately  
15 13 years.

16 Q And could you tell the judge, please, from  
17 when until when?

18 A I believe I started in the fall of 1989 and  
19 through 2003.

20 Q And during that period of time, did you have  
21 an occasion to work closely with him?

22 A Well, fairly closely. I was actually a  
23 part-time secretary. I came in at 11:30 and worked  
24 until 4:30. So we passed, you know, probably every day

1 at some point or talked on the phone.

2 Q And with regard to that period of time, did  
3 you have an occasion to observe Frank's work habits?

4 A I did.

5 Q And can you describe with regard to his habits  
6 whether or not you noticed him having trouble  
7 organizing, focusing, finishing tasks?

8 A Well, it appeared to me that he could focus in  
9 on one particular thing at a given time, but the whole  
10 picture sometimes I didn't -- I didn't really have any  
11 concern about it because he always seemed to get the  
12 job done and he was very capable of doing things in a  
13 very quick manner. I believe he had a very good mind  
14 for what he was doing and -- but if we had a lot of  
15 things going we just seemed to focus in on one thing  
16 and it seemed like sometimes there would always be a  
17 problem closing out something. There would be one  
18 little thing left to be done and we'd always just kind  
19 of -- that can wait until tomorrow.

20 Q So --

21 A Didn't seem to cause any great problems, but I  
22 was kind of like let's finish this out.

23 Q So finishing tasks was a difficulty?

24 A Uh-huh.

1 Q Is that a yes?

2 A I would say yes.

3 Q And did you notice this on a consistent basis?

4 A Well, I noticed -- when I first started  
5 working there, mostly Mr. Picl's work involved being  
6 assistant public defender. So his days were pretty  
7 much set out for him. I noticed it becoming more of a  
8 problem probably the last couple years I worked for  
9 him. I think I was probably maybe more aware of it.

10 Q What would you notice, the same thing you  
11 described or how would it be different?

12 A I think his drinking became more of a problem.  
13 I think that all of a sudden he became kind of obsessed  
14 with gambling. I think he had some personal matters in  
15 his life that probably were of great concern to him.  
16 And so I just felt that with all the problems that he  
17 had that the drinking was kind of a way to escape  
18 facing these personal problems.

19 Q And when you say personal problems, are you  
20 talking about his family life?

21 A Well, I think he had a health problem and  
22 marital problems.

23 Q His health problem being the back surgery?

24 A Right.



1 Q Let's start with that first. And when you say  
2 the time we are talking about is roughly 1999, 2000, in  
3 there?

4 A Yeah. I would -- yes.

5 Q Subsequent to that, what about when he had the  
6 occasion back I think it was 2001 to injure his back?  
7 Do you recall how that affected him getting around?

8 A I think he was moving pretty slow. I can  
9 remember that he was -- he went to the pain clinic I  
10 think maybe three different times because I believe I  
11 took him and picked him up, and I think he kind of  
12 wanted to avoid the surgery thinking he was going to  
13 get better because I think we all kind of think we are  
14 indestructible, but then I think he ended up with the  
15 surgery and, you know.

16 Q Was this period of time he was also going  
17 through trouble at home, correct?

18 A I think in that same time frame.

19 Q And you mentioned finally this obsession with  
20 gambling. Can you describe what it is that you saw  
21 that would lead you to that conclusion to describe it  
22 as being an obsession?

23 A Well, it seemed like he was spending an awful  
24 lot of time at the boat which I didn't approve of. It

1 was none of my business, but I felt there was more time  
2 being spent on the boat than on matters that needed  
3 attention in the office.

4 Q And those are --

5 A And I think he just seemed like his life was  
6 not going real smooth and this was maybe a way -- maybe  
7 if I go to the boat maybe tomorrow will be better or  
8 we'll do this tomorrow.

9 Q Would he ever say things like that to you or  
10 what --

11 A I wouldn't say he would come out directly and  
12 say, I'm going to the boat, we'll do this tomorrow. It  
13 would be like I have something all set out to be  
14 finished and I was always able to contact him, but then  
15 he never showed up to finish what needed attention.

16 Q Now, to be clear on this, the types of things  
17 that you would have to be finished, I mean, were --  
18 they would have different range, I take it, from just  
19 maybe signing something to just doing a little bit more  
20 work?

21 A Right.

22 Q So it wasn't anything elaborate; he just  
23 couldn't even come in?

24 A No. I don't think it was elaborate. He just

1 didn't come in and get it taken care of. Actually, I  
2 was working out of my house. I had an office in the  
3 house. So it wasn't like I was in an office situation  
4 where, you know, I'm going to leave at 4:30, you better  
5 get here type thing. I was at home and we had a good  
6 working relationship for the most part with me working  
7 out of the home for what I did. I basically kind of  
8 tried to keep his schedule in tact and took incoming  
9 phone calls which I typed every day and they were sent  
10 to him. We reviewed the ones that needed more  
11 attention than others and mostly it involved his work  
12 as a public defender. I mean, he had some private  
13 cases, too, but, you know, it was keeping his  
14 scheduling conference and his trial dates and that and  
15 getting files lined up so that he could take them to  
16 court.

17 Q Let me ask you this. Did you notice any  
18 change in his work habits as far as attention over the  
19 13 years that you worked for him?

20 A I would say the last two or three years his  
21 attention to his work schedule was poor.

22 Q Would that make a difference whether you were  
23 talking about his public defender cases or his private  
24 case or didn't make a difference at all?

1 A I would say it pertained to both cases, his  
2 private and public defender work.

3 Q So it wasn't a --

4 A Seems to me like maybe a last -- I think he  
5 was not a public defender for a few months that I  
6 worked for him. I just can't remember the time frame  
7 on that.

8 Q But it was just -- it wasn't a disinterest in  
9 one or the other?

10 A It was like he couldn't focus in on getting  
11 things done that needed to be done, whether they were  
12 simple things or...

13 Q Now, did you over the course of your  
14 representation or your working for Frank either meet or  
15 hear about Alice Varga?

16 A I did know Alice Varga.

17 Q Can you tell the judge, how is it you knew  
18 her?

19 A Alice Varga was a client of Mr. Picl's when I  
20 was working there. I believe he was handling something  
21 to do with some estate that she maybe -- that she was  
22 involved in a serious accident, and I was working there  
23 at the time.

24 And Mr. Picl took care of Alice very well. He

1 saw to her needs. She was in the hospital and then she  
2 went to the nursing home. When she was able to take  
3 care of herself again at home he was the one who was  
4 there day and night to meet her needs. She finally  
5 decided she could drive again and he took her out  
6 shopping. They got her a car. He took her driving to  
7 make sure, and he kind of got her back into her  
8 normal -- she wanted to go home. He got her back into  
9 her normal routine. She decided she needed this dog.  
10 So they got the dog, and if the dog needed attention,  
11 Frank was the one that took care of -- really her  
12 personal needs, whether it was her medical needs,  
13 whether she needed something from the store. He was --  
14 they lived pretty close and he kept a pretty good eye  
15 on her. If she needed something and he was in court,  
16 she knew that then she could call me and I would get  
17 the message to Mr. Picl.

18 Q Now, from the time this relationship between  
19 the two of them at least in as far as from the time  
20 this started until the time you quit working for Frank,  
21 about what number of years are we talking about?

22 A Well, I would say at least 10 or 11 years. I  
23 think she had her automobile accident, I can't remember  
24 the date, but he represented her -- she -- I mean, he

1 represented her from that time until she went to  
2 Independence Village and, you know, he was always  
3 available. She really counted on him to be available,  
4 whether she was having a good day or a bad day.

5 Q How often would, if you recall on -- if you  
6 can -- would she call him regularly?

7 A Oh, yes.

8 Q Monthly, weekly?

9 A I don't know if I would say daily, but I bet  
10 almost daily after her accident that he had some kind  
11 of communication with her because she had a lot of  
12 needs.

13 Q Now, you mentioned the drinking, the obsession  
14 with gambling. Were you aware of -- did you know Frank  
15 and his kids?

16 A I knew his family and the children, yes, and  
17 his sisters and he had a brother that I knew.

18 Q And is that just you met them over the years  
19 that you had worked for him?

20 A I met them probably right after I started  
21 working for him. I met his parents. I met the girls.  
22 They were young and I didn't see them on a regular  
23 basis, but once in a while they would pop into the  
24 office or when he had an office in the home and I had

1 my office in my home, I had occasion to go to their  
2 home to deliver things and the girls were there and  
3 Jenny, and they were a lovely family.

4 Q Now, when Frank and Jenny were getting  
5 divorced, you were working for him then, weren't you?

6 A I was.

7 Q Can you tell the judge -- that was basically  
8 during the same period of time around when he was hurt  
9 and when he started gambling, et cetera -- what type of  
10 effect did that seem to have on him?

11 A I think I really noticed a big change when the  
12 divorce was final because I don't -- this is just my  
13 feeling. I think he thought that was never going to  
14 happen. I think that he thought this was going to be  
15 all worked out and his family was going to be there and  
16 that was his hope, and when it didn't happen then I  
17 think that took a drastic change on what I saw.

18 Q A drastic change --

19 A In his personality, in his mannerism.

20 Q Did it have an effect on his work as far as --

21 A At that time, I was kind of working out of the  
22 office. I wasn't observing his work habits because  
23 he'd moved back downtown and there was another  
24 secretary who was kind of doing some of the work that I

1 did. So I was basically just getting the mail, doing  
2 the phone messages and bringing him up-to-date every  
3 day on what the mail consisted of and what the messages  
4 were. I do think that sometimes when I had to try to  
5 contact him it took me longer to get him to get back to  
6 me. Usually, I got a call right back, you know,  
7 because if we needed an answer, you know, and it was  
8 just kind of like there would be longer periods of time  
9 before I would get a reply to my phone call.

10 Q How about his personality? Did you notice any  
11 changes there?

12 A The personality that I would say change was I  
13 thought he was drinking more and became just totally  
14 obsessed with his gambling.

15 Q Now, I'm going to bring you -- you said that  
16 you ceased working for him.

17 A I think in January of 2004, but I would say my  
18 last year probably I was just doing minimal work.

19 Q What kind of contact did you have with Frank  
20 from say 2004 until now? How often would you say?

21 A I did not have any contact with him. Once I  
22 terminated my employment, I did not have any contact.

23 Q Did you recently have an occasion to talk to  
24 him?



1           A       Recently, Mr. Picl called and asked if he  
2 could stop over to the house. He wanted to talk to me  
3 and explain his actions and he was concerned how my  
4 feelings -- if he caused me any stress or ill feelings  
5 or anything. So he stopped over and we had a nice  
6 visit and he sort of brought me up-to-date on where he  
7 was. I expressed my shock at what he did because I  
8 never thought I would see -- I just never thought that  
9 that would ever be something I would be reading in the  
10 paper.

11           Q       He told you how he felt about it?

12           A       He told me he was very sorry and that he --  
13 his biggest sorrow probably was Alice knew about it  
14 before she passed away and any sorrow or hurt he may  
15 have caused her because Alice really did think a lot of  
16 Frank and Frank really took care of her from what I  
17 observed, and I observed quite a bit, you know.

18           MR. TONER: If I may have a moment, Judge.

19           THE WITNESS: And Alice was very -- when she would  
20 call me, she told me how much she depended on him. So  
21 that's why I was surprised that, you know...

22           MR. TONER: Q Now, when you and Frank were both  
23 sharing the same office downtown, can you describe  
24 to the judge the condition of the office as far as

1 clutter and piles and things?

2 A Oh, well our filing system was on top of the  
3 desk or on the floor or in the chairs. And I tried to  
4 have an organized system, and sometimes I got my way  
5 and sometimes I didn't, but he knew where everything  
6 was.

7 Q And they were just in piles?

8 A That was just the way it would seem to work  
9 for him. I did get my way on public defender cases.  
10 When they were closed we would box them up, label them,  
11 put them in a box and put them in storage in case there  
12 was ever a need to recall them for some reason, and I  
13 was always -- I could always do what I wanted, but I  
14 just didn't kind of always get my way.

15 Q You mentioned sometimes the final details on  
16 the thing. Would that ever, for instance, include  
17 billing?

18 A Oh, we never did any billing hardly, and that  
19 was always one thing I did not do anything with the  
20 bookkeeping, but there would be times when things  
21 needed to be billed and they wouldn't get billed.

22 Q And would you talk to Frank about this?

23 A Yes, I did.

24 Q Would they be sent or ready to be taken care

1 of and what happens?

2 A They would just get ready to get done, but  
3 they never got done.

4 Q That happened more than once?

5 A More than once.

6 Q His public defender business, you know he'd  
7 get a check every month for that, correct?

8 A Uh-huh.

9 Q But, for example, would the federal work that  
10 he did, you have to bill for that?

11 A We'd have to bill for it and he pretty much  
12 had to get the time lined up, and they had a form that  
13 needed to be filled out, but we just never seemed to  
14 get it done.

15 Q Of all the federal-appointed cases that Frank  
16 did, do you have an opinion percentage-wise of how many  
17 of those would have gotten billed?

18 A I'm going to say maybe there was a time when  
19 we had a lot of them that needed to be billed and his  
20 brother was working in the office. And Bill and I kind  
21 of got everything lined up and it was up to Frank, and  
22 Bill kind of stayed on him and that batch got billed  
23 out. They were paid and then the next batch just never  
24 happened. And I'm not sure. I would say there were

1 six, eight cases that needed to be billed that probably  
2 had some substantial time.

3 Q And substantial money?

4 A Well, yeah.

5 Q Now, the times when you indicated that you  
6 would try to encourage or push Frank along sounds when  
7 you were saying Bill would do the same thing. Would it  
8 be fair to say that Frank needed people to push him and  
9 focus or push him to focus?

10 A I think so. I think he needed a little push.  
11 I think he knew what needed to be done, but I think he  
12 needed that little push. Whether he took the push or  
13 not, that was --

14 Q Did that pushing become harder or more often  
15 toward the end?

16 A Did what?

17 Q Did you have to push him either harder or more  
18 often toward the end of your time working for him?

19 A I think at the end I just did what I could do,  
20 told him what needed to be done and I don't know that  
21 there was any huge push because I was working out of  
22 the office, and basically I felt I was there to take  
23 phone calls, and, you know, I had no control -- lot of  
24 Mr. Picl's work he did himself, like when it came to

1 pleadings and, you know, I didn't do what I would say a  
2 lot of secretarial type work. I could maybe get  
3 something lined up.

4 I can remember an instance of where we needed  
5 a car title for something and I got everything lined  
6 up, the affidavit. Now all we had to do was up to him.  
7 Well, to my knowledge, I don't know if it ever got  
8 done.

9 MR. TONER: I don't have any further questions of  
10 this witness.

11 THE COURT: Why don't we take a five or ten-minute  
12 break at this point. And you are still not done, but  
13 you can step down for a minute.

14 (Recess taken.)

15 THE COURT: We'll go back on the record.

16 Ms. Hannon, if you would step back up, please.  
17 You are still under oath. Mr. Evans.

18 MR. EVANS: Thank you, Judge.

19 CROSS-EXAMINATION

20 BY MR. EVANS:

21 Q Ms. Hannon, you worked for the defendant from  
22 the fall of '89 until did you say January of 2004?

23 A I think it was, January, February, but I think  
24 January, towards the end of January.

1 Q I think the last years you were working out of  
2 your home mainly?

3 A I was.

4 Q Up until I guess it would be some time in 2003  
5 since 1989 you had worked at the defendant's office; is  
6 that correct?

7 A No. When I first started working there he had  
8 his office in the Commerce Bank building. I don't know  
9 how many years we were there, but then he decided he  
10 was going to have his office in his home, I would have  
11 my office in my home.

12 Q When did that change take place?

13 A I just can't remember, but I would say we were  
14 downtown three or four, five years, then to the home.  
15 Then towards the latter part, Mr. Picl had an office  
16 back downtown, but I remained in the home.

17 Q But you were familiar with the defendant,  
18 Mr. Picl, the fact that he was an assistant public  
19 defender, right?

20 A I was.

21 Q And you know he spent most of his day in the  
22 courtroom?

23 A I don't know if he spent most of his --  
24 Fridays he would have scheduling conferences, and then

1 they would set cases on Monday for trial.

2 Q Trial call is Monday?

3 A And then if he had a case to go he spent it in  
4 court, and if he didn't, I don't believe he spent the  
5 day in court.

6 Q Did he have clients other than his public  
7 defender clients?

8 A Yes.

9 Q And he would, I assume, travel to different  
10 courts in the area to represent those people privately?

11 A If he had one outside of Peoria County he  
12 would go to another county or --

13 Q So Mr. Picl was able to perform his function  
14 as an attorney throughout the time that you knew him;  
15 isn't that a fair statement?

16 A I would say he was able to function as an  
17 attorney. I do think he had time -- problems focusing  
18 in on something if something wasn't set for a given  
19 time. He seemed to work well if he had a time frame in  
20 the courtroom, he had to be done, he didn't have any  
21 choice to put it on hold.

22 Q He would procrastinate I think is what you are  
23 telling us?

24 A Yes.

1 Q There is other people that procrastinate in  
2 getting things done, correct, that you know of?

3 A I think so.

4 Q And he, however, as you told us he would  
5 get -- he would handle the problem or he would get the  
6 problem taken care of?

7 A Usually got the problem taken care of.

8 Q And his office was messy sometimes or most of  
9 the time?

10 A I would say messy. It was his way of -- his  
11 filing system was the open filing system, on the floor,  
12 on the desk, on the chair. It worked for him. It was  
13 messy probably to me, but that was his system.

14 Q As you told us, he knew where the items were?

15 A Yes.

16 Q In other words, he knew which pile to go to to  
17 get the pleading perhaps?

18 A Yes.

19 Q Mr. Picl, the defendant, he went through a  
20 divorce. His first divorce was when, do you recall?

21 A I don't remember the year. It was while I was  
22 working for him.

23 Q That caused him quite a bit of discomfort and  
24 stress?



1 A In my opinion, it did.

2 Q And there was also a period of time that the  
3 defendant represented -- when he first began to  
4 represent Mrs. Varga in relation to an auto accident,  
5 correct?

6 A I think he handled one minor thing before  
7 her -- I think maybe she -- it was something to do with  
8 an estate that she was an heir and maybe he just -- I'm  
9 not 100 percent sure, but I think that was first and  
10 then she was involved in the automobile accident.

11 Q And both for his representation of Mrs. Varga  
12 and the heir issue, to use that term, and the auto  
13 accident he received compensation for that, didn't he,  
14 as her attorney?

15 A I believe so.

16 Q Now, as you told us, she became very dependent  
17 on the defendant, correct?

18 A Correct.

19 Q And she would call your office a number of  
20 times?

21 A She would call when she needed something that  
22 needed attention.

23 Q And then you would tell the defendant about  
24 her phone call?

1 A I would.

2 Q Now --

3 A She had access to his number. I think she  
4 would try him, and if she didn't get him that was  
5 probably an occasion he couldn't receive the call and  
6 she would call the office.

7 Q When she would call, you would pass on her  
8 message to the defendant?

9 A Right.

10 Q Were you working for the defendant in January  
11 of 2003?

12 A I was working there, but I had very little  
13 contact with another -- another secretary was in the  
14 office downtown who -- I felt like my services really  
15 were not needed. I basically answered the phone and  
16 picked up the mail. I had probably no contact. I was  
17 not -- I didn't have any problem with the other  
18 secretary, but I felt at that point Frank was using  
19 some poor judgment on how he was handling his practice.

20 Q Now, with regard to Mrs. Varga, though, in  
21 January of 2003, did you, yourself, handle any  
22 documents relating to her assets?

23 A No.

24 Q Did you handle any documents relating to any

1 of her bank accounts?

2 A No.

3 Q Did you handle any documents of the defendant  
4 for his client trust accounts that he had?

5 A No.

6 Q Who handled all of those items first off with  
7 regard to the defendant's own client trust account, if  
8 you know?

9 A I think Mr. Picl handled all the financial --  
10 I did not do any bookkeeping pertaining to his practice  
11 or his -- you know, his private practice.

12 Q As you have also told us, the defendant was  
13 not timely in sending out his billing statements for  
14 the -- for instance, for clients he was representing in  
15 federal court; is that a fair statement?

16 A No, he was not timely.

17 Q And he also wasn't timely in sending out  
18 statements and bills for other legal work he did for  
19 private attorneys -- or private individuals?

20 A No.

21 Q So if he didn't send those statements out, his  
22 income coming into his practice was diminished because  
23 of it, at least partly; is that a fair statement?

24 A I don't know if it was diminished or not.

1 Maybe some of his billing didn't need a statement.  
2 There was a few -- there was not a whole lot of them  
3 that I thought could be billed, but I don't know how it  
4 affected his income.

5 Q Let me ask this.

6 A I would say the federal cases probably  
7 diminished his income, but I think there were times he  
8 spent on the cases the bill would have been sent. It  
9 would have been paid.

10 Q Do you know how much he had in outstanding  
11 billings at least as of your last knowledge of that,  
12 the defendant had when you left his employment?

13 A No. To my knowledge, it wouldn't have been a  
14 great sum.

15 Q Pardon?

16 A To my knowledge, it wouldn't have been a great  
17 sum other than the federal cases.

18 Q Would not have been a great sum?

19 A Right.

20 Q Then with regard to other billings, separate  
21 and apart from his billings to the federal government,  
22 how much would you estimate those other billings were,  
23 let's say the private individuals?

24 A I would say probably minimal because I think

1 mostly if somebody hired him to do something he got his  
2 whatever he quoted as the retainer, it was paid, and...

3 Q Based on your experience, what was the  
4 defendant's source of income at the time that you left  
5 his employment?

6 A I would say his income from his being an  
7 assistant public defender and any personal cases that  
8 he handled, and I have no idea what amount income that  
9 involved.

10 Q And then how about with regard to his  
11 employment as a public defender, assistant public  
12 defender, how much was he making in terms of his  
13 salary, if you know?

14 A I think a little over \$2,000 a month, I think.

15 Q And was that as of the last time that you were  
16 working with Mr. Picl in January of 2004?

17 A I don't know. I really don't know anything --  
18 I would say from 2003 I'd -- I was just kind of like  
19 out of the picture.

20 Q The defendant's brother, Bill, he worked with  
21 you on occasion, I think, in trying to bring up-to-date  
22 the defendant's billings?

23 A I think there was a period of time when Bill  
24 was in the office when we were in the Commerce Bank

1 Building.

2 Q What period was that, ma'am?

3 A Probably in the first three or four years I  
4 worked for him. And I think Bill had a few  
5 disabilities, and Frank always took care of Bill, and I  
6 think he was trying to find something for Bill to do  
7 that he would have the opportunity to use the skills he  
8 had. And so one of the things was we tried to get  
9 these federal cases lined up and Bill worked on that,  
10 and we got a result on that.

11 And then Bill left the office. I think he --  
12 I don't know. I think he went to Chicago and became a  
13 substitute teacher. I'm not sure what path Bill -- I  
14 know Frank always knew where Bill was. There was a  
15 period of time when Bill actually rented a house from  
16 my husband and I, and Frank saw to it that he was  
17 settled in there and he had what he needed and he got  
18 along fine, and then I didn't really follow Bill's  
19 career.

20 Q Let me go back to something you said a while  
21 ago, that you felt the defendant wasn't showing good  
22 judgment. Did you bring your concern to anyone?

23 A No, I didn't. There was nobody to bring it  
24 to.

1 Q Did you talk with the defendant about his poor  
2 judgment?

3 A I think he knew how I felt about the new  
4 secretary, that I didn't feel that my services were  
5 needed and we weren't going to work as a team.

6 Q And you felt that his use of his new  
7 secretary, did you have some conflict with her?

8 A I can't say I had any conflict with her.

9 Q And his new secretary, what was her name that  
10 you are talking about?

11 A Rita.

12 Q That became the defendant's wife at some point  
13 thereafter; is that correct?

14 A I'm not sure. I think they were married and I  
15 think they were divorced, but I know that -- don't know  
16 that -- I was not working there at the time. I didn't  
17 really know too much about Mr. Picl's personal life.

18 Q Did you know that they were having problems  
19 between the defendant and his second wife, Rita?

20 A No. I didn't know anything about his life  
21 with Rita.

22 Q Pardon?

23 A I didn't know a whole lot about his life with  
24 Rita. I knew Rita was a new person in his life, and at

1 that point, like I say, I was working out of my home  
2 doing very little work.

3 MR. EVANS: Thank you. No further questions.

4 THE COURT: Mr. Toner.

5 REDIRECT EXAMINATION

6 BY MR. TONER:

7 Q Two brief questions.

8 With regard to the fact that you thought Frank  
9 was showing poor judgment, was that in relationship to  
10 his hiring Rita or were there other aspects of his  
11 practice that that's what you mentioned?

12 A I think maybe sometimes during the course of  
13 my employment I thought he was showing poor judgment  
14 because he wasn't doing things just the way I thought  
15 they should be done, but...

16 Q But I guess things such as what? What were  
17 the --

18 A Getting things done when we would have two or  
19 three calls, and they just never seemed to get done,  
20 and it would become a problem because I would try to  
21 tell these people, yeah, we're going to get this  
22 resolved, just be patient and it became kind of hard to  
23 put them on the hold plan for --

24 Q You mentioned Frank took care of his brother



1 Bill or made sure his needs were --

2 A I think Frank always knew Bill's whereabouts  
3 and made sure he was taken care of, what I observed.  
4 And I think Bill looked to Frank for guidance and help.

5 MR. TONER: If I may have a moment, Judge.

6 I don't have any further questions.

7 MR. EVANS: No further questions.

8 THE COURT: You can step down. Thank you.

9 (Witness excused.)

10 THE COURT: Please step toward and raise your right  
11 hand.

12 (Thereupon the witness was duly sworn.)

13 THE COURT: Please have a seat.

14 ANNA SAXON

15 called as a witness on behalf of the Defendant, after  
16 having been first duly sworn, was examined and  
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. TONER:

20 Q Please state your name.

21 A Reverend Anna Saxon. My last name is spelled  
22 S-A-X-O-N.

23 Q And where are you a Reverend?

24 A I'm an associate pastor at Westminster

1 Presbyterian Church, 1420 West Moss Avenue here in  
2 Peoria.

3 Q How long have you been assigned to  
4 Westminster?

5 A I have been there a little over 11 years now.

6 Q In that capacity, do you know Frank Picl?

7 A Yes. I have known him for that entire time.

8 Q And how is it that you know him?

9 A I first knew Frank as a part of his entire  
10 family, his wife at the time and his three children as  
11 well as Frank were very active in the life of the  
12 church. And, indeed, Frank was an assistant actually  
13 in leading worship on a fairly regular basis with us  
14 when I first became a part of the staff there.

15 Q So is that -- in your denomination, is that  
16 what they would call an elder?

17 A Well, actually, the service that he provided  
18 in worship was as a lay liturgist, but he has served as  
19 an elder for our congregation which is somebody who  
20 serves on the governing board. He was not currently  
21 serving as an elder when I came to Westminster, but had  
22 previously served.

23 Q As a lay liturgist, what would his  
24 responsibilities be?

1 A He would assist the pastors in leading Sunday  
2 morning worship. So he would be in the pulpit leading  
3 prayers and assisting in the liturgy of the morning  
4 worship.

5 Q When you say first, did that -- and I take it  
6 there was a period of time when he wasn't as active?

7 A Yes. He kind of disappeared after I had been  
8 there for some period of time, became aware that he and  
9 his wife were having marital difficulties, and it was  
10 at that time that he kind of disappeared. And that's  
11 not uncommon with members of the church especially when  
12 there is marital difficulties especially that end in  
13 divorce. Oftentimes both parties just kind of  
14 disappear from the life of the church.

15 Q In doing the math, you said you have been  
16 there 11 years. So you got there about '95?

17 A Uh-huh.

18 Q And for the first period of time up until they  
19 were getting separated he was involved, and that's when  
20 he kind of fell out?

21 A Right.

22 Q Would that -- when was the next time you saw  
23 Frank on that kind of a regular basis, or would you see  
24 him sporadically?

1           A     You saw him sporadically.  Mostly in the  
2 community, sometimes at the courthouse when I might be  
3 here with somebody else that I was maybe working with,  
4 a family or some other issues and I might see him here.  
5 I might see him out and about in the community.

6                     He didn't really reappear at the church other  
7 than occasionally when he would come to worship on  
8 particularly holidays, especially when his daughters  
9 were with him, until about two years ago.  Maybe two  
10 and a half years ago he kind of all of a sudden showed  
11 back up in a new worship service we started on a  
12 Saturday afternoon called our Celtic vespers worship.  
13 He started coming to that on occasion with his father  
14 as well.

15           Q     I want to ask you to back up for a second, but  
16 those two things, first of all, as a pastor, you say  
17 that even after he and his wife separated occasionally  
18 he would be there with his daughters?

19           A     Yes.

20           Q     Did you have an opportunity to know them?

21           A     No.

22           Q     His daughters?

23           A     I had more contact with them as they were  
24 involved in the Sunday school program, but after the

1 divorce they were also getting older and had gone off.

2 Q Going to school?

3 A Yeah. And so I didn't have as much  
4 opportunity with them at that time.

5 Q What about he started taking his dad to the  
6 vespers service on a Saturday?

7 A Uh-huh.

8 Q His dad just lives down the street?

9 A Yes. And they have been long-time members,  
10 and his dad has been having difficulty, and Frank was  
11 making sure that his dad had an opportunity on occasion  
12 to come to worship because that was something his dad  
13 enjoyed doing. Frank stated at the time when he  
14 reappeared, I really need to do this, I need to  
15 reconnect with the church. I was kind of surprised at  
16 that, but I was glad to have him make the first move to  
17 come back.

18 Q Now, you say that was about two years ago?

19 A Yes.

20 Q So would that have been before he was arrested  
21 or --

22 A Yes. Absolutely before he was arrested.

23 Q And he indicated that he connected back --

24 A Yes. He was actually quite emotional about

1 it.

2 Q Did you and he talk about that?

3 A Not in depth. We were at a worship service at  
4 that time, and, I mean, he was kind of erratic talking,  
5 you know, he was jumping around from different things  
6 about bringing his dad back and some of the needs that  
7 his dad had. And I remember asking him about his  
8 brother because he had been back in town, and so he  
9 jumped around a lot of different issues, but did  
10 mention his desire and his need to kind of reconnect  
11 with Westminster and with his faith.

12 Q Now, with regard to the needs of his father,  
13 have you had an occasion to observe this in the last  
14 couple years?

15 A In terms of his father's issues?

16 Q Yes.

17 A Absolutely.

18 Q Can you tell the judge what his father's  
19 current health issues are and then what role Frank  
20 plays in helping to assist those?

21 A It's a little difficult because I would ask  
22 for Frank's permission for confidentiality in terms of  
23 his father's situation.

24 Q His father has some health concerns?

1           A       His father had a number of health concerns --  
2 has, many of now keep him homebound, forms of I would  
3 say dementia, Alzheimer's related kinds of things. We  
4 witnessed that as he would come to worship at various  
5 times, and Frank has been very good at being able to be  
6 the one who could care for his father. And he was  
7 great with him when he would bring him to worship and  
8 other times that I would see them.

9           Q       Does he -- to your knowledge, does he play a  
10 role in that even inside as well as outside the church?  
11 I mean, in other words, outside is he doing other  
12 things than just bringing him to church?

13          A       I have heard from family members as well as  
14 Frank that he does that, but I don't make regular  
15 visits to their home to know that personally.

16          Q       Let's move forward to did you have an occasion  
17 to talk with Frank shortly after he was arrested?

18          A       Actually, my knowledge after he was arrested  
19 was through conversation with Pastor Macaulay who has  
20 previously testified as to the conversation that they  
21 had together.

22          Q       And subsequent there, what contact would you  
23 have had with Frank concerning these -- have you talked  
24 to him about this?

1           A     Yes. I have talked to him more recently about  
2 this situation and what he was -- how he was dealing  
3 with it, and I think it would be wrong to in any way  
4 characterize his comments about some of his addictions  
5 and other things like that as excuses for his behavior.

6                     First and foremost, he admitted the wrongness  
7 of his behavior as regards to his client and accepted  
8 responsibility for the decisions he made and was very  
9 remorseful probably mostly about the breach of trust  
10 and the way that that hurt her. Also concerned about  
11 the monetary aspect as well, but the conversations  
12 about the alcohol addiction, the gambling addiction,  
13 other treatments for mental illness, all came as a way  
14 as his description of coming to grips with a life  
15 that's been out of control and finally coming to terms  
16 with a lot of those things that needed to be addressed  
17 that he had just not recognized or fully addressed  
18 before.

19           Q     You mentioned in your letter that -- you used  
20 a term spinning. Is that spinning out of control?

21           A     I think when he came back two years ago when I  
22 first began to see him back on those occasions back at  
23 worship, my sense and I even mentioned to my colleague  
24 that I felt like Frank's life was spinning out of



1 control. His conversations were erratic. He was at  
2 worship with a strong smell of alcohol on him, all  
3 kinds of things that sent messages to me that he was --  
4 he was having a hard time controlling his life. Like I  
5 said before, his conversation was kind of all over the  
6 map in terms of what he was talking about. So that  
7 would be the -- the way I would characterize my  
8 perception of him at that time.

9 Q But that nonetheless was before he was  
10 arrested --

11 A Right.

12 Q -- and trying to reestablish --

13 A Absolutely.

14 MR. TONER: If I may have a moment, Judge?

15 THE COURT: Sure.

16 MR. TONER: Q In addition to serving in church  
17 positions, have you ever had an occasion or anybody  
18 at your church ever had occasion to ask Frank to  
19 utilize his talents helping somebody else around the  
20 church or community?

21 A Certainly legal advice. And as I said, a  
22 couple times when I have run into him here in the  
23 courthouse or contacted him for advice regarding  
24 somebody that we became aware of in the church, both

1 members and nonmembers who needed some legal advice,  
2 and he has always been very helpful to us in that  
3 regard.

4 Q He steps up to the plate and --

5 A Yes. Gives good advice and we're able to find  
6 the help for the people that need it.

7 Q And that's something that you have experienced  
8 on a consistent basis?

9 A Yeah. I would say so.

10 MR. TONER: I don't have any further questions.

11 Thank you.

12 THE COURT: Mr. Evans?

13 CROSS-EXAMINATION

14 BY MR. EVANS:

15 Q Ma'am, you use the term that he gave good  
16 advice. You don't know what advice he gave to  
17 Mrs. Varga in this case, do you?

18 A No, I don't.

19 Q Do you know anything about the facts of this  
20 case?

21 A I know certainly what I have read. I know  
22 what he's admitted to in terms of the charge.

23 Q Has he admitted taking almost \$280,000 from  
24 this 85-year-old woman?

1 A Yes.

2 Q Has he told you if he's made restitution to  
3 this woman?

4 A He has said he has not at this point.

5 Q Has not? Not a penny?

6 A To my knowledge, not a penny.

7 Q Now, ma'am, your term that you have used, out  
8 of control, that's a term of art that you have used, I  
9 assume?

10 A I'm sorry. Could you help me?

11 Q Out of control, that was a term you used in  
12 describing the defendant?

13 A Yes.

14 Q Now, at the time that you talked to him two  
15 years ago, that was the first time you'd seen him in a  
16 number of years?

17 A Probably two years ago. Would have been back  
18 in 2004. So it had been since the time of his divorce.  
19 So maybe a couple of years.

20 Q He was divorced in 1999?

21 A Well, it was around 2000 because we had seen  
22 him with -- when Pastor Clay had come in 2000.

23 Q When you saw the defendant that time  
24 approximately two years ago, he told you then that he

1 wanted to reconnect with the church?

2 A Uh-huh.

3 Q He had been drinking when you talked with him?

4 A He smelled of alcohol.

5 Q He didn't reconnect with the church, though,  
6 until 18 months ago, correct?

7 A No. At that time at two years, at that  
8 two-year mark was when he began attending and then he  
9 was arrested, and then he's not been regular in church,  
10 but, as I understand, he's also been doing some other  
11 things, but he has been back in church in the last 18  
12 months, yes.

13 Q I know that, but he had not -- from the time  
14 you saw him two years ago, he didn't come back to see  
15 you until holy week approximately 18 months ago?

16 A No. He actually worshipped with us on a few  
17 occasions at that two-year point.

18 Q At that time, did he smell of alcohol?

19 A Yeah.

20 Q And --

21 A I don't know that every time, but it was -- I  
22 noticed it, and it was mentioned to me by another  
23 parishioner at that time.

24 Q Do you have any concern -- and I'm sure you

1 do. I don't mean to phrase it that way. You do have a  
2 concern with what the defendant did in this case?

3 A Absolutely. In fact --

4 Q In your letter -- if I could just ask the  
5 question, please, ma'am.

6 A Sure.

7 Q You say that you are very vigilant regarding  
8 exploitation and abuse of elderly individuals, correct?

9 A Yes.

10 Q And I assume, ma'am -- you said you work  
11 closely with the Center For Prevention of Abuse?

12 A Yes.

13 Q And in your profession, in your ministerial  
14 profession, and I understand that you, yourself, are  
15 not concerned with punishment for someone?

16 A I'm concerned for punishment, but I'm also  
17 concerned that justice is more than punishment, that  
18 there's restorative and a societal element that must be  
19 looked at in terms of not only punishment, but doing  
20 what will restore somebody to being a good and positive  
21 influence and asset to society.

22 Q Who is responsible for stealing Alice Varga's  
23 money?

24 A Frank is, and he's admitted to that.

1 Q And he hasn't returned any money that he took  
2 from her, right?

3 A Not to this point.

4 Q And you are concerned in your field with  
5 reconciliation and restoration, which I believe you  
6 have written to the Court?

7 A Right.

8 Q You feel it's important to restore someone  
9 back into society, correct?

10 A If at all possible, yes.

11 Q You are aware in your contact with other  
12 individuals through the Center of Abuse that taking an  
13 85-year-old woman's sole life savings can have a  
14 debilitating effect, correct?

15 A Emotionally as well as physically.

16 Q As well as physically, right, ma'am?

17 A Yes.

18 Q And you have also seen the horrendous effects  
19 of actions on other elderly persons, correct?

20 A I have seen the effects, yes.

21 Q You haven't seen the effect in terms of  
22 Mrs. Varga, obviously, because you didn't know her?

23 A No, I didn't know her personally.

24 MR. EVANS: No other questions.

1 THE COURT: Mr. Toner.

2 REDIRECT EXAMINATION

3 BY MR. TONER:

4 Q Ma'am, you indicated you have seen this and  
5 you are aware of these effects?

6 A Uh-huh.

7 Q Yet, you still believe that there should be an  
8 aspect of the justice system that deals with the  
9 restorative potential, if applicable?

10 A Uh-huh.

11 Q Is that correct?

12 A That's correct. I think in this --

13 MR. EVANS: Judge, I object at this point. I think  
14 that's the province of the Court at this point.

15 THE COURT: Mr. Toner.

16 MR. TONER: I was going to ask the next question,  
17 if I may.

18 THE COURT: Go ahead.

19 MR. TONER: Q Do you believe in this particular  
20 case that Frank has the qualities that would allow  
21 him to be restored?

22 A I do. I believe that as other folks have  
23 said, you can't go back and undo -- what he has done is  
24 wrong, and he's admitted that. You can't go back and

1 undo that. The next best thing to do is to show  
2 consequences for his wrong choices and wrong behaviors  
3 as well as then provide the opportunity for him to  
4 become productive and also, therefore, to begin working  
5 on restitution.

6 I do believe in what I have seen of Frank and  
7 the commitment he's made to counseling, counseling  
8 alcohol treatment, gambling treatment and the sincerity  
9 that he's shown that he does have the capabilities to  
10 be restored to society in a positive manner.

11 MR. TONER: Thank you. No further questions.

12 THE COURT: Mr. Evans.

13 MR. EVANS: No further questions.

14 THE COURT: You can step down. Thank you.

15 (Witness excused.)

16 (Thereupon the witness was duly sworn.)

17 THOMAS PENN

18 called as a witness on behalf of the Defendant, after  
19 having been first duly sworn, was examined and  
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. TONER:

23 Q Please state your name.

24 A Thomas Penn.



1 Q And your occupation and profession?

2 A An attorney at law, currently public defender,  
3 chief public defender, Peoria County.

4 Q In that capacity, do you know Frank Picl?

5 A I do.

6 Q And how long is it that you have known him?

7 A If I remember correctly, I think I gave Frank  
8 his first job. He was an assistant public defender  
9 when he got out of law school and also worked for me in  
10 my own practice for a number of years. So I have known  
11 him for over 25 years, sir.

12 Q I'm going to -- I'm going to ask you to expand  
13 upon the areas that you wrote in your letter. In your  
14 letter you indicate that you know two Frank Picls.

15 A Yes, sir.

16 Q Could you explain what you mean by that?

17 A Well, first of all, there's Frank Picl the  
18 professional attorney that I have long known to be very  
19 qualified, a man of high integrity. I think I  
20 characterized it in the letter as being in terms of  
21 trial abilities the finest trial attorney I have seen  
22 in the 40 years that I have been here. Served the  
23 interests of his clients well. He dedicated himself to  
24 public defender's work, which can be a thankless task,

1 for over a quarter of a century and served the  
2 interests of those clients, I think, very well. And I  
3 have already said a man of high integrity.

4 Then the other Frank Picl that I came to know  
5 was the addicted Frank Picl. I knew his addiction as  
6 it pertained to alcohol. Because Frank and I had a  
7 professional relationship and didn't spend personal  
8 time together, I was not aware of that addiction  
9 shifting itself to the area of gambling ultimately.

10 Q Now, you indicate that he handled himself  
11 honorably, to your knowledge, in this capacity as the  
12 assistant public defender?

13 A He did.

14 Q With regard to his personal life, did you  
15 notice any changes in that?

16 A Well, many years ago, I certainly became aware  
17 of the fact or had the opinion that Frank was drinking  
18 irresponsibly. Some of this had relevance to my own  
19 life because I'm a recovering alcoholic and I know the  
20 signs. I have been there, done it, and, in a sense,  
21 bought the T-shirt. So I had awareness many years ago  
22 of a problem and would talk to Frank about it  
23 periodically. The other thing I did which I felt I had  
24 the obligation to do as public defender, I alerted

1 through the years many judges -- and I have done this  
2 as to other people who have worked for me as well -- I  
3 alerted many judges to my concern and insisted that I  
4 be notified if there was any signs of impairment as far  
5 as his professional work for me was concerned. I can  
6 honestly say as I sit here that notwithstanding the  
7 problem, I never had one complaint from one judge or,  
8 for that matter, that I can recall any prosecutor that  
9 ever related to me that anything had happened in the  
10 courtroom that had anything to do with his drinking.

11 Frank had a right to make his own life's  
12 choices. I was concerned about the professional  
13 ability and the professional outcome. And  
14 notwithstanding the problems that I knew to exist,  
15 Frank did an exemplary job in representing his clients  
16 at least until a few years ago.

17 Q And when you say a few years ago, what do you  
18 mean by that?

19 A Well, probably in I'm going to guess in 2003  
20 maybe Frank began to talk to me about perhaps getting  
21 out of the practice of law, doing his own thing in a  
22 different direction and that led to his decision to  
23 resign from the public defender's office, which I think  
24 was in 2004. I urged Frank to reconsider that. I had

1 my own concerns that that public defender's position  
2 because of Frank's pride that he always had in his work  
3 may have served as a rudder of sorts, that I had some  
4 fears if that position were resigned that that rudder  
5 wouldn't be there.

6 Q When you say a rudder, you mean something that  
7 a rudder maybe an anchor?

8 A It was something that I think in my mind kept  
9 Frank -- when he was in the courtroom kept him on the  
10 straight and narrow so that he could do his work as  
11 professionally as he did. With those responsibilities  
12 being gone, I had some fears that maybe the addiction  
13 could take even a greater toll on him. I had serious  
14 concerns about that.

15 MR. TONER: May I have a moment, Judge?

16 Q Over the years you indicated that for a while  
17 you and Frank actually had an office relationship in  
18 addition to him being an assistant public defender.

19 A That's correct. That's early in Frank's  
20 career.

21 Q And then the two of you broke off socially and  
22 he had moved on in his own practice and you didn't see  
23 him as much socially?

24 A That is correct.

1 Q And over the years, had you had an occasion to  
2 talk to him about his drinking?

3 A I did.

4 Q And would it be fair to say that it fell on  
5 deaf ears?

6 A There were moments when Frank enjoyed periods  
7 of being clean and sober, but, for the most part, he  
8 would seem to relapse into old habits. Unless you have  
9 lived it or been around it, it's a difficult concept to  
10 understand, but when you are an addict, whatever the  
11 substance is you are addicted to or activity, that  
12 addiction becomes your guide and you do insanely stupid  
13 things to feed and support that addiction. The  
14 objective is to conquer those demons, and that was  
15 something that up to recent times Frank didn't seem to  
16 be able to do.

17 Q You say up until recent times. Did you talk  
18 to him shortly before he went to Minnesota?

19 A Yes.

20 Q And what was his demeanor then at that point?

21 A Well, once this became public, Frank is --  
22 this will sound probably kind of crazy given these  
23 circumstances, but once Frank was exposed, Frank was a  
24 very proud man, and I think that pride contributed to

1 his professional success in the courtroom. He wanted  
2 to do a good job. As long as this was not a matter of  
3 notoriety, it wasn't a problem, but when the whole  
4 thing was exposed and the charges were brought, Frank  
5 became very much a hermit. He was embarrassed to come  
6 downtown. Went I would meet him, we would meet outside  
7 the area because he didn't want to be around people.

8 I saw from the get-go once the charges were  
9 brought a very remorseful, very sorrowful, very ashamed  
10 person as to what he had done, and I spoke rather  
11 frankly to him as to what he had done. There's no way  
12 that those actions can be justified in any way, shape,  
13 or form, and that's clearly -- I'm not here for that  
14 purpose today, and we talked about that on a number of  
15 occasions.

16 For what it's worth, I have every reason to  
17 believe that when Frank Picl tells me today that he has  
18 been clean and sober for a long period of time, I have  
19 every reason to believe that perhaps for the first time  
20 in his life that's the absolute God's truth. I think  
21 he has seen that door open up and I think he's gone  
22 through it.

23 Q That was going to be my next area. That was  
24 before he went into treatment. Have you talked to him

1 more recently?

2 A Yes.

3 Q He's indicated -- does he seem committed to  
4 this?

5 A Yeah. And you are talking to a real sceptic  
6 when it comes to people telling me that they have seen  
7 the light, but, you know, in all honesty, I have every  
8 reason to believe that that situation in Frank's life  
9 may very well be over, whatever happens here.

10 Q Do you have -- you have seen and you have done  
11 an awful lot of criminal work. With the type of  
12 commitment that Frank seems to indicate, do you think  
13 he would be able to complete a probationary period with  
14 conditions?

15 A Absolutely. As I mentioned in my letter, this  
16 could be probation up to 30 years, and I can in good  
17 conscience say that I think Frank could complete a  
18 period of probation with whatever conditions.

19 MR. TONER: I don't have any further questions.

20 THE COURT: Mr. Evans.

21 CROSS-EXAMINATION

22 BY MR. EVANS:

23 Q Mr. Penn, it's still possible for the  
24 defendant to also serve a term of imprisonment; isn't

1 that correct?

2 A Yes, sir. And I believe I referenced that in  
3 my letter as well.

4 Q The defendant did not come to you as his boss  
5 and say, hey, I took the lady's money, what should I  
6 do, did he?

7 A He did not, but then I also was not his boss.  
8 He's an independent contractor.

9 Q But he never approached you beforehand and  
10 admitted any wrongdoing until he was arrested by the  
11 state's attorney's investigators?

12 A I was astonished, Mr. Evans, when I learned of  
13 this because it was so out of character for the man I  
14 knew.

15 Q Now, the defendant has a reputation in this  
16 county as an excellent trial attorney, correct?

17 A That is correct.

18 Q As you have told us, he could try cases well?

19 A Very well.

20 Q He represented his clients adequately?

21 A He did.

22 Q He gave a forceful defense?

23 A He did.

24 Q He always put the interests of the client



1 ahead of his own?

2 A There is no question about that.

3 Q He was prepared for trial?

4 A In my estimation he was.

5 Q He showed up for trial?

6 A Yes.

7 Q And he gave the proper objections and  
8 arguments on the appropriate case?

9 A Well, I wasn't in the courtroom when he  
10 argued, but I certainly heard nothing to the contrary.

11 Q And as you have told us, nobody complained to  
12 you that Frank Picl didn't adequately represent his  
13 client?

14 A No one -- I mean, that is correct, but on the  
15 same line, a lot of people certainly were aware that  
16 Frank at different times in his life was drinking too  
17 much.

18 Q Right. There were times that the defendant  
19 would go on a Friday afternoon or other weeknight he  
20 would go to a local bar and have something to drink?

21 A I'm assuming that's true.

22 Q And when you say that it was known, other  
23 individuals knew that perhaps Mr. Picl had more to  
24 drink than he should have?

1 A Perhaps.

2 Q When you use the term relapse, that meant that  
3 he took that next drink again?

4 A One too many.

5 Q One too many?

6 A Uh-huh.

7 Q Now, you used the term that he shifted to  
8 gambling. Do you know why he started to gamble?

9 A No. As I say, I have no knowledge of that  
10 until the charges were exposed. I'm assuming he  
11 shifted the addiction. Again, those of us who are so  
12 afflicted often when we get rid of one addiction, we  
13 transfer it to another. That's a common activity  
14 within addiction circles.

15 Q How about that he took so much money of  
16 Mrs. Varga he was trying to find a way to get it back  
17 to her?

18 A Again, I never had any conversations with him  
19 along those lines.

20 Q That's another plausible reason to go to the  
21 boat and try to get lucky, try to get some money; isn't  
22 that a fair statement?

23 A I suppose so.

24 MR. EVANS: No further questions. Thank you,

1 Judge.

2 MR. TONER: No further questions. Thank you,

3 Judge.

4 (Witness excused.)

5 THE COURT: Sir, please raise your right hand.

6 (Thereupon the witness was duly sworn.)

7 DAVID RADEMAKER

8 called as a witness on behalf of the Defendant, after  
9 having been first duly sworn, was examined and  
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. TONER:

13 Q Thank you. Please state your name, spell your  
14 last name for the court reporter.

15 A David Rademaker, R-A-D-E-M-A-K-E-R.

16 Q Mr. Rademaker, what's your occupation and  
17 profession?

18 A I'm a union carpenter.

19 Q Do you know Frank Picl?

20 A Yes, I do.

21 Q And can you tell the judge how is it that you  
22 know him?

23 A I met Frank 17 months ago when I went into  
24 treatment at White Oaks Center for alcoholism.

1 Q Did you enter about the same time he did?

2 A I believe about a week after he did in the  
3 program.

4 Q So would it be fair to say that you and he  
5 have gone through recovery together?

6 A Absolutely.

7 Q And did you and he both complete the MRM?

8 A Yes.

9 Q And the aftercare?

10 A Yes, sir.

11 Q And did your schedules coordinate that you  
12 were going along those programs, together?

13 A Yes, sir.

14 Q Would you see him on a regular basis?

15 A Yeah. During the seven weeks that I was there  
16 I saw him daily, and then after that, during the  
17 aftercare program, which went on for eight weeks, nine  
18 weeks.

19 Q And you saw him on a regular basis?

20 A Correct.

21 Q Do you see him at other settings, AA meetings  
22 and things like that?

23 A Yeah. I see Frank about once a week even to  
24 today in an AA meeting or at the -- as we discussed

1 earlier, the MRM alum meetings.

2 Q Have you had an occasion to talk with Frank  
3 about what brings him here today?

4 A Yes, I have.

5 Q And what has he told you about that?

6 A That basically he has exercised bad judgment,  
7 he was very sick, and he did it.

8 Q He freely acknowledged that he stole this  
9 woman's money?

10 A Right.

11 Q Has he in your experience there with that, has  
12 he been candid in acknowledging what he did in moving  
13 toward his treatment?

14 A Yeah. I believe so. There's nothing he can  
15 do about it. He knows that, and he's left with doing  
16 the best he can with his own recovery and helping  
17 others along in their recovery.

18 Q Have you seen him attempt to do that?

19 A Absolutely.

20 Q Can you think of some instances or examples  
21 where he is helping other people along with their  
22 recovery?

23 A Well, after the meeting there's usually a  
24 crowd around him. There's a lot of people that come to

1 AA meetings that are driven to AA meetings because of  
2 legal problems, marital problems, lot of things that  
3 involve the court system, and he has kind of a calming  
4 effect on them for two reasons; A, because he's  
5 obviously facing larger consequences than they are and  
6 presenting himself in a calm manner, and, B, because if  
7 anything can be said about an alcoholic and their  
8 nature, they can make mountains out of mole hills and  
9 you can definitely think yourself into a drink quickly,  
10 and he has a way of quelling the imagination of people  
11 that are going way out there with legal events that may  
12 never come to pass that are unfounded and bringing them  
13 back to reality and getting them through another day  
14 without a drink.

15 Q So you have seen him actually do this on more  
16 than one occasion?

17 A With me, too.

18 Q How has he helped you?

19 A I have been going through a separation with my  
20 wife for some time, and not so much in legal terms, I  
21 guess, but just in terms as a friend, discussing that  
22 with me.

23 Q Is Frank as a friend a good asset to have a  
24 around? Is he dependable?

1 A Yes, he is.

2 Q As the two of you are going through your  
3 recovery process, do you discuss the journey along the  
4 way, so the speak, how you are reacting, what's going  
5 on? Does Frank tell you how he's handling this?

6 A We have gone through the journey pretty much  
7 together. As we said earlier, I mean, that journey  
8 starts out from recovering from insanity. You know, in  
9 my humble opinion, I drank myself to the state of  
10 insanity, and it takes a while for the alcohol to get  
11 out of your system for that sanity to start to return  
12 slowly.

13 Going through that time when the chemicals are  
14 leaving your body and gradually starting to learn  
15 again, I kind of wake up, and I'm 48 years old and kind  
16 of starting to pick up where I left off when I started  
17 drinking in terms of maturing, and it's a journey we  
18 have been going on together.

19 Q Have you noticed those types of changes in  
20 Frank's behaviors as well?

21 A Yeah.

22 MR. TONER: May I have a moment, Judge?

23 Nothing else.

24 THE COURT: Mr. Evans.

1 MR. EVANS: No questions.

2 THE COURT: You can step down. Thank you.

3 (Witness excused.)

4 MR. TONER: If I can have a second, Judge.

5 William Mitchell.

6 (Thereupon the witness was duly sworn.)

7 WILLIAM MITCHELL

8 called as a witness on behalf of the Defendant, after

9 having been first duly sworn, was examined and

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. TONER:

13 Q Please state your name.

14 A William Mitchell.

15 Q And, Mr. Mitchell, you know Frank Picl,

16 correct?

17 A I do.

18 Q How is it you know him?

19 A I first came to know Frank at Alcoholics

20 Anonymous meetings.

21 Q And what group do you go to?

22 A We go to a group called Share Clean Air.

23 Q And when is it that you met him approximately?

24 A More than a year ago.



1 Q And does he come to meetings on a regular  
2 basis?

3 A Yes. Yes. We attend meetings sometimes at  
4 different times, but we often pass each other in coming  
5 and going. Frank attends more than one meeting a day.  
6 So I often see him in the same meeting that I attend.

7 Q And in that capacity, have you had an occasion  
8 to have him talk to you about his recovery?

9 A Yes. To some degree before and after meetings  
10 we do talk. Most of what I know of Frank and his  
11 recovery I have heard him talk about during meetings.

12 Q During the meetings, is there a point in time  
13 when the people talk and give presentation and tell  
14 what's going on with them and discuss things?

15 A Yes. That's the purpose of the meetings is to  
16 discuss our own addictions, in particular alcohol in  
17 this case, and how it has affected our lives and how  
18 our lives are changed because of our recovery.

19 Q In the meetings that you have gone through  
20 with Frank, has he been open in sharing these things?

21 A Absolutely, yes.

22 Q And has he either at the meetings or with you  
23 later or before meetings discussed what brings him here  
24 today?

1           A     To some degree. I'm not aware of all the  
2 details. As a matter of fact, I didn't really know  
3 what was going on with Frank when I first knew him. It  
4 was after he was in the meetings a while that I became  
5 aware of what his problems were.

6           Q     And does he seem genuine about his approach  
7 towards recovery?

8           A     Yes. When Frank -- when I first saw Frank in  
9 meetings, he was like many of us when we first start.  
10 We were like deers in headlights.

11                     As he attended more, he began to relax. He  
12 began to talk about his specific problems, about how  
13 his addictions had affected his life in the past and  
14 how he has begun to realize that what life should be is  
15 what he's learning in Alcoholics Anonymous.

16           Q     And has he expressed what that life should be  
17 or --

18           A     Yes. Yes. Life -- according to what I heard  
19 Frank say life should be one of honesty, of  
20 self-knowledge, of simply doing the next right thing,  
21 and I think that's something that Frank genuinely  
22 accepts and intends to pursue.

23           MR. TONER: I don't have any further questions.  
24 Thank you.

1 THE COURT: Mr. Evans.

2 CROSS-EXAMINATION

3 BY MR. EVANS:

4 Q Sir, the defendant's comment to you that he  
5 wanted to do -- or life should be about doing the next  
6 right thing, this was only something you heard him say  
7 after he was arrested?

8 A Yes. I have known Frank only for little more  
9 than a year.

10 MR. EVANS: Thank you.

11 THE WITNESS: You are welcome.

12 THE COURT: You can step down.

13 (Witness excused.)

14 MR. TONER: Nothing further on that.

15 Greg Daniels I think will be the last witness  
16 for the afternoon.

17 (Thereupon the witness was duly sworn.)

18 GREG DANIEL

19 called as a witness on behalf of the Defendant, after  
20 having been first duly sworn, was examined and  
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TONER:

24 Q Please state your name.

1 A Greg Daniel.

2 Q And do you know Frank Picl?

3 A Yeah. I have known Frank for probably ten or  
4 more years. I'd like to apologize for my dress. I  
5 came from work.

6 THE COURT: You are fine.

7 MR. TONER: Q So you have -- you knew him for  
8 ten years or more?

9 A Sure.

10 Q Did you know him when he was drinking?

11 A Yes.

12 Q And did you and he ever drink together?

13 A Yes, sir.

14 Q You drank at Whitey's?

15 A Yes, sir.

16 Q Would you see him on a regular basis there?

17 A Yes, sir.

18 Q And do you also know him now and see him at  
19 meetings?

20 A Yeah. We cochair Alcoholics Anonymous  
21 meetings together.

22 Q Where do you cochair meetings?

23 A Share Clean Air.

24 Q And do the two of you ever have occasion to

1 discuss now versus then?

2 A In terms of our lives?

3 Q Yeah.

4 A Sure. That's part of the program.

5 Q And what has Frank told you that's different  
6 about his life now as opposed to back when he was  
7 drinking at Whitey's with you? What have you observed?

8 A Well, he's totally changed his life around  
9 just as I have myself. The alcohol, you know --  
10 alcoholism is a disease. I don't know if many people  
11 realize that. It makes you do things that a sane  
12 person wouldn't do. What I have noticed in Frank which  
13 I have noticed in myself, too, his life has totally  
14 changed. He's not the same Frank I drank with. I'm  
15 not the same Greg he drank -- you know, we both turned  
16 our lives around from total chaos to, I hope, on the  
17 right path. He's expressed his remorse of his actions.

18 Q Has he talked to you about those?

19 A Not a lot, but we discussed it. Remorse of,  
20 you know, just normal things in life that -- with his  
21 divorces, things that alcohol brings on. Like I said  
22 earlier, it's a disease, and it's hard to imagine  
23 unless you have set and -- or walked in that person's  
24 shoes. It's not -- it's a lot harder than people

1 think.

2 Q How long have -- strike that.

3 Has Frank ever told you about any other  
4 diseases that he may suffer from?

5 A Physical or mental?

6 Q Mental.

7 MR. EVANS: Judge, I object to conversations.

8 Certainly, this witness is not qualified to mental  
9 illness and this is irrelevant I submit for purposes of  
10 the sentencing.

11 THE COURT: I don't think he asked him to diagnose  
12 him. I think what he asked was has Frank ever told him  
13 about a mental illness. I think he can answer that.  
14 Where we go from there, we'll see.

15 THE WITNESS: Other than a problem with gambling,  
16 no, I don't think he ever mentioned to me he was  
17 mentally deficient.

18 MR. TONER: Q How often do you see him at the  
19 meetings, would you say?

20 A Very often. I see Frank at least a couple  
21 two, three times a week. Like I say, we are cochairs  
22 on the Monday evening meetings. I see him at White  
23 Oaks every week.

24 Q At the recovery meeting?

1           A     Yeah. I see him at a lot of other different  
2 meetings. Our schedules conflict a lot. I work in the  
3 daytime. He goes to a lot -- well, when I was in  
4 recovery, I'd see him in the daytime and evening.  
5 Mostly I see him in the evening now because it fits my  
6 schedule with work and all.

7           Q     Do you see him particularly at meetings, both  
8 AA and in the alumni meeting, the recovery group, do  
9 you see him as providing assistance to people who are  
10 going --

11          A     Definitely.

12          Q     -- into the program, too?

13          A     Definitely. He was an inspiration to me.  
14 When I first got into -- I missed Frank there for a  
15 while because I was still in my abuse and Frank had  
16 gotten -- gone to recovery, and low and behold I ran  
17 into him in recovery, too.

18                 So I missed him for a little point in time  
19 there because I was still out active, but he was in  
20 there. Naturally, when you are not, you are not around  
21 those people. He was not going to bars, but when I  
22 went in there I thought, wow, because we were both in  
23 the same boat. I mean, in the same stage of addiction  
24 and that gave me hope that if he could do it, and all

1 the other people could do it, yeah, I was really --  
2 yeah. That was a big, big plus for me knowing somebody  
3 in there because it's a scary thing to go into. I used  
4 for over 30 years, and when I went in, I seen a fellow  
5 addict that, well, if he can do it, I can do it.

6 Q Have you and he talked about that?

7 A Yeah. Before and after meetings and during  
8 the meetings.

9 MR. TONER: If I may have a moment.

10 Nothing further. Thank you.

11 THE COURT: Mr. Evans.

12 CROSS-EXAMINATION

13 BY MR. EVANS:

14 Q Sir, when did you first meet the defendant?

15 A I would say a little over ten years ago. I  
16 couldn't give you an exact date.

17 Q And you drank with the defendant how long,  
18 sir?

19 A Yes, sir. Probably all those years.

20 Q All ten years you knew him?

21 A Yeah. I would see -- we weren't -- I don't  
22 know how you call it. We weren't drinking pals, but I  
23 would see him.

24 Q You would bump into each other?



1 A Sure.

2 Q I think defense counsel knew that I guess you  
3 drank with him at Whitey's?

4 A Right. A bar I frequented after work.

5 Q And, at that time, he was working as a public  
6 defender, assistant public defender?

7 A Yes, sir.

8 Q And then you've had contact with him now while  
9 you and he are in Alcoholics Anonymous?

10 A Yes, sir.

11 MR. EVANS: No further questions. Thank you.

12 MR. TONER: Nothing on that, Judge.

13 THE COURT: You can step down. Thank you.

14 (Witness excused.)

15 MR. TONER: Actually, we do have one more. Mike  
16 Taylor. That would be it, Judge. He's not here.

17 THE COURT: So you want to break for a few minutes  
18 or you want to break for the evening?

19 MR. TONER: I think break for the evening, Your  
20 Honor.

21 THE COURT: What time do you want to start up  
22 tomorrow -- I'm asking both sides that -- 9:00, 9:30?

23 MR. TONER: Whatever is convenient with the Court.

24 MR. EVANS: 9:30 would be fine. Whatever you want,

1 Judge.

2 THE COURT: We'll cut it down the middle. 9:15. I  
3 think we are back in this courtroom, 213.

4 Off the record.

5 (Discussion held off the record.)

6 THE COURT: Let's go back on the record.

7 Mr. Evans, is there something you wanted to bring up?

8 MR. EVANS: Judge, Your Honor asked a question  
9 before the afternoon proceedings concerning one of the  
10 counts. Could I ask that the Court ask that again? It  
11 was an issue with regard to --

12 THE COURT: I wanted the statutory cites I think on  
13 Count 5 which is one that implicates extended-term  
14 sentencing. I was wanting to essentially verify for  
15 myself, I guess, you know, what you had argued about  
16 extended term on that count, and I was looking up the  
17 case that you cited and so forth and I noticed that --  
18 I didn't think that was an actual accurate cite. I  
19 don't think Subsection A(2)(C) exists unless I have a  
20 faulty statute.

21 MR. EVANS: Judge, I'm referencing 16-1(A)(2)  
22 obtains by deception, control, property of the owner,  
23 and C is the uses, conceals, or abandons or property  
24 will deprive the owner permanently of the use or

1 benefit.

2 THE COURT: I don't have my book open yet, but is  
3 that --

4 MR. EVANS: It's on page 367, Your Honor.

5 THE COURT: We probably have different books. Tell  
6 me -- I have the page open. Tell me what you are  
7 telling me.

8 MR. EVANS: The allegation with regard to that  
9 charge of theft is A --

10 THE COURT: Five.

11 MR. EVANS: 16-1(A)(2)(C).

12 THE COURT: Am I reading this wrong?

13 MR. EVANS: The 5, Your Honor, is -- 1 through 5 is  
14 the manner in which the defendant would obtain certain  
15 property, and then there's the conjunctive and at the  
16 end of 5 which is read in relation to A, B, or C.

17 THE COURT: I see. I'll take your reading of it  
18 and accept that. We will go off the record.

19 (Which were all the proceedings had on  
20 said day in said cause.)

21

22

23

24

IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
PEORIA COUNTY, ILLINOIS

REPORTER'S CERTIFICATION

I, ROBIN L. ROBERTS, CSR, RPR, an Official Court Reporter in the Tenth Judicial Circuit of the State of Illinois, do hereby certify that I reported in machine shorthand the foregoing proceedings had before the HONORABLE STEPHEN A. KOURI, in the above-entitled cause, and that I thereafter caused the same to be transcribed into typewritten form which I now certify to be a true and accurate transcription of same.

Dated this 6th of April, 2010.

---

Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317



IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
PEORIA COUNTY, ILLINOIS

THE PEOPLE OF THE )  
STATE OF ILLINOIS, )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 2005-CF-275  
 )  
FRANK M. PICL, )  
 )  
Defendant. )

SENTENCING HEARING

REPORT OF PROCEEDINGS of the hearing had before the  
HONORABLE STEPHEN A. KOURI, Judge of said Court,  
on the 26th of September, 2006.

APPEARANCES:

MR. KEVIN W. LYONS  
State's Attorney of Peoria County, by  
MR. LARRY EVANS  
Assistant State's Attorney  
REPRESENTING THE PLAINTIFF;

MR. HUGH TONER  
Attorney at Law  
REPRESENTING THE DEFENDANT.

REPORTED BY: Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317

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E X H I B I T S

EXHIBIT NUMBER	IDENTIFIED	RECEIVED
Defendant's Group Exhibit No. 1	101	178



1 THE COURT: Let's go on the record. Case  
2 No. 2005-CF-275, People versus Frank Picl. Mr. Picl is  
3 here with his attorney, Mr. Toner; and State is here  
4 represented by Assistant State's Attorney Larry Evans.

5 Are we ready to continue? . .

6 MR. TONER: We are, Judge.

7 THE COURT: Call your next witness, Mr. Toner. Is  
8 there any matter I need to attend to before --

9 MR. TONER: I don't think so.

10 THE COURT: Call your next witness.

11 MR. TONER: Dr. Sohee Lee.

12 (Thereupon the witness was duly sworn.)

13 SOHEE LEE, M.D.

14 called as a witness on behalf of the Defendant, after  
15 having been first duly sworn, was examined and  
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. TONER:

19 Q Please state your name.

20 A I'm Dr. Sohee Lee.

21 Q And your profession? What type of doctor are  
22 you?

23 A I am a psychiatrist.

24 Q And how long have you been a psychiatrist?

1 A I finished my training in December, 1975.

2 Ever since then, almost 30 years.

3 Q In those 30 years, where have you practiced?

4 A I was in Iowa about less than two years and  
5 the rest of time, in the last almost 27 years in  
6 Peoria.

7 Q And has your practice been predominantly or  
8 exclusively psychiatry?

9 A Yes.

10 Q Where did you attend school?

11 A I graduated from Seoul National University  
12 School of Medicine in Seoul, Korea, and I had my  
13 internship from Southside Hospital in Pittsburg,  
14 Pennsylvania, and had residence training in psychiatry  
15 from Rush-Presbyterian St. Lukes Medical Center in  
16 Chicago.

17 Q Do you have any -- are you licensed in the  
18 State of Illinois?

19 A Yes, I am.

20 Q Are you certified by any boards?

21 A Yes. I'm certified since 1978.

22 Q In what?

23 A In psychiatry and neurology.

24 Q Have you ever testified as an expert witness

1 before?

2 A Yes, I have.

3 Q And in courts here in Peoria?

4 A Yes.

5 Q Other courts as well?

6 A When I was in Chicago and Iowa I testified in  
7 mental health area only.

8 MR. TONER: Judge, at this time, I'm going to  
9 tender Dr. Lee as an expert in the area of psychiatry  
10 subject to counsel's cross-examination.

11 THE COURT: Any objection?

12 MR. EVANS: No objection.

13 THE COURT: Okay.

14 MR. TONER: Thank you.

15 MR. TONER: Q Doctor, do you know Frank Picl?

16 A Yes.

17 Q And how long have you known him?

18 A Well, I had known him personally a long time,  
19 but he has been to my care as a patient since October  
20 of 2000.

21 Q And in October of 2000, can you tell the  
22 Court, please, what he came to you to see?

23 A At that time, he had been treated by another  
24 psychiatrist for two years, and he came to see me for

1 depression.

2 Q And how did you determine that he met the --  
3 or how did you reach the conclusion for depression? Is  
4 that something he told you or what did you do to find  
5 out to -- was that determined through an interview?

6 A Well, depression -- he had feeling of sadness,  
7 unhappy, and had very little energy and interests and  
8 motivation in his life and all the typical symptoms of  
9 depression.

10 Q Did he indicate any particular stressors or  
11 things that were going on in his life that may have  
12 caused that?

13 A I remember that at that time he had had  
14 problem with his marriage and he was struggling with  
15 his professional activity as well.

16 Q And as he came to you in 2000, what, if any,  
17 course of treatment did you prescribe?

18 A What we as psychiatrists usually treat  
19 depression with medication, antidepressant. We believe  
20 this is not just an emotional reaction, but it's a  
21 brain disease, and we usually refer the patient to  
22 another profession for further, more intense  
23 counseling.

24 Q So you are doing two things: You are working

1 on the organic part of it and then there's a person  
2 who's working on the -- working through the other  
3 areas, therapy?

4 A That's right.

5 Q Is that a course of treatment that you talked  
6 about? That's what he did or that's --

7 A Yes.

8 Q And after 2000, did Frank see you again in --  
9 did he continue to see you again in 2001 and couple  
10 times in 2002?

11 A Well, until his last treatment was kind of  
12 sporadic and his compliance was not that good  
13 sometimes, and he was still drinking, and I saw him  
14 twice in 2000, seven times in 2001, twice in 2002, and  
15 I didn't see him at all in 2003, and four times in  
16 2004.

17 THE COURT: I'm sorry. Go over those again.

18 THE WITNESS: Twice in 2000, seven times in 2001,  
19 twice in 2002.

20 THE COURT: I got the rest.

21 THE WITNESS: You got it?

22 THE COURT: None in 2003 and four in 2004.

23 MR. TONER: Q Would it be fair to say that if  
24 he did not see you at all in 2003 he was not getting

1 any medications to the best of your knowledge?

2 MR. EVANS: Objection, Judge. No foundation for  
3 that knowledge on the doctor's part.

4 MR. TONER: Q Let me ask you particularly, he  
5 wasn't seeing you, was he, in 2003?

6 A That time he was not taking any medication  
7 because I didn't give any prescription.

8 Q You said more recently since 2005 he came back  
9 and saw you again?

10 A Yes.

11 Q And how has his compliance been as far as  
12 seeing you and as far as taking medicine since 2005?

13 A Well, his compliance since last year March has  
14 been excellent.

15 Q Takes his meds?

16 A Not only taking medication and keeping  
17 appointment time, but also keeping close contact with  
18 me whenever he had anymore problems.

19 Q That was what you had told him to do and he's  
20 been compliant in that?

21 A Right.

22 Q Have you noticed improvement because of that?

23 A Well, yes, I believe so. He has been on  
24 medication regularly and getting counseling, the cross

1 individual counseling, and he is also getting good  
2 treatment continuously for his alcoholism. After his  
3 treatment from White Oaks, intensive outpatient  
4 treatment, he has been attending AA very faithfully and  
5 very actively involved.

6 Q Now, since March of '05, and according to your  
7 report, you changed his diagnosis and his medication  
8 since -- in March of '05?

9 A Until '05 I treated him as depression.

10 In '05 when I saw him, yes, I noticed a  
11 significant -- also, when I thought back, too, he has  
12 had significant mood swing, and, until '05, March, my  
13 diagnosis was depression with him and since March last  
14 year is bipolar disorder, bipolar II disorder.

15 Q Can you explain to the Judge the difference  
16 between bipolar II and depression?

17 A What -- in psychiatry basically we have a big  
18 category of thought disorder and mood disorder, and in  
19 mood disorder we have major depression and bipolar and  
20 we divide bipolar I and II. The major depression or  
21 dysthymic disorder which is a chronic depression is  
22 only depression, depressed mood. And bipolar disorder  
23 exhibits -- it is a significant mood swing from being  
24 high to the down. Anyone who has experienced any

1 severe manic episode we would say no matter how many  
2 other times depressed in psychiatry we diagnose those  
3 people as bipolar disorder.

4           The difference between bipolar I and II is  
5 well psychiatry still -- compared to other specialties  
6 and that is still rather primitive, we cannot measure  
7 it in blood tests or x-ray, we cannot do that. So the  
8 main thing we do is the severity of the symptom and  
9 duration of the symptom.

10           The bipolar I and II, the difference is the  
11 difference in the severity and duration. Bipolar I is  
12 really the range of the mood swing is very severe, and  
13 when they go through manic episode they lose completely  
14 reality and they become sometimes delusional,  
15 hallucinating and they are overly involved in a lot of  
16 activity. They cannot sleep and that can cause a lot  
17 of problems, too. When they are depressed, severely  
18 depressed, they are suicidal. And the bipolar II, the  
19 severity of mood swing is not as bad as bipolar I.

20           Q     Now, if a person -- is it a common occurrence  
21 when a person that is bipolar, when they start swinging  
22 up or going to the manic phase, do they feel better and  
23 they feel that they don't need their medicine? Is that  
24 something that's common in your experience?



1           A       That is the problem with the compliance, yes.  
2 Sometimes we see the bipolar patient, we treat those  
3 patients with only an antidepressant. Their depressed  
4 moods swing back to manic or hypomanic, less than  
5 manic.

6                    The reason I haven't diagnosed Frank as  
7 bipolar I is he has never been in the hospital. His  
8 condition hasn't been that bad, number one, and also he  
9 was on the antidepressant alone for quite a few years  
10 and his clinical condition from depression never turned  
11 to severe manic.

12           Q       Is that one of the signs that -- one of the  
13 possibilities?

14           A       Yes. Back to your question, yes. Lot of  
15 people, they want to stay on a little high. They don't  
16 want to go down. So sometimes they don't take  
17 medication regularly and they sometimes -- those people  
18 have -- lot of bipolar patient, one of the problem is  
19 the comorbidity with bipolar disorder with some other  
20 personality disorder and substance abuse problems.

21           Q       Is that a common thing that you see?

22           A       It's very common, yes.

23           Q       From -- your report indicated that Frank  
24 discontinued his medication for a little bit in '05.

1 Was that after he discussed that with you?

2 A Well, I think that was a good test. I think  
3 for the diagnosis, too, lot of times we -- again, in  
4 psychiatry, we sometimes confirm the diagnosis with the  
5 outcome of the treatment.

6 He started to take antidepressant again in  
7 March of last year, and after then he went to Minnesota  
8 for the treatment for his gambling and alcoholism, and  
9 that time he was on medication and he was feeling  
10 really good and he wanted to stop medication; I think I  
11 can do it.

12 So he learned a lot of things. He learned  
13 about himself and the nature of the problems he has  
14 had. So then I was seeing him and I told him, yeah,  
15 let's try to do that. And he was seeing other  
16 counselor, too.

17 About five months after he collapsed without  
18 medication, I was out of town that time, and that was  
19 end of December last year. He was extremely depressed  
20 at that time. He was contemplating suicide. So we  
21 started it again, the medication, antidepressant. And  
22 he was doing better, was coming out from depression,  
23 but he -- with antidepressant he experienced more mood  
24 swing, irritability and the racing thoughts. So in

1 March of this year, I started to use mood stabilizer  
2 along with an antidepressant. So he has been very  
3 stable with his antidepressant and mood stabilizer at  
4 this point.

5 Q What's the purpose of a mood stabilizer?

6 What's that do?

7 A Mood stabilizer is -- it is trying to  
8 stabilize the moods. The range of the mood swing, we  
9 try to put it here (indicating). In the past, until  
10 about maybe about 15 years ago, we had only couple of  
11 mood stabilizers we used. Lithium carbonate was mostly  
12 commonly used. Now we use many other medications. He  
13 has been on the Lamictal, L-A-M-I-C-T-A-L. That has  
14 been quite effective for him. We -- I tried another  
15 one, Depakote, and it wasn't doing too good. Lamictal  
16 has been good for him with no side effect.

17 Q And have you been in the -- since you have  
18 changed his medication regimen, have you been adjusting  
19 it from time to time?

20 A First two months we -- especially Lamictal you  
21 have to regulate medication very cautious -- with  
22 caution. It can have some very critical side effect to  
23 it. So start with a low dosage. And right now he has  
24 settled with 25 milligram in morning and 100 milligram

1 at bedtime.

2 Q He's taking other medication in addition to  
3 that, correct?

4 A The other antidepressant he is on -- he is on  
5 two different antidepressants, Wellbutrin and Lexapro.  
6 The reason I use two different antidepressants is we  
7 psychiatrists believe, again, that depression is  
8 depressive feeling and their behavior out of the  
9 depression is brain disease and several  
10 neurotransmitters involved in the brain and we believe  
11 at least three different neurotransmitters involved in  
12 depression, feeling of depression, Serotonin,  
13 Norepinephrine and Dopamine. So he is taking Lexapro  
14 and Wellbutrin and two different antidepressants for  
15 this reason.

16 Q Recently have you added additional medication  
17 in the last couple of weeks?

18 A He was doing a lot better, but yes. I  
19 remember I wrote it down here. On September 13th,  
20 couple weeks ago, he wanted to try some medication for  
21 attention deficit disorder. He has always had a lot of  
22 over symptoms of -- between attention deficit and  
23 bipolar.

24 And, again, this is -- a lot of psychiatry

1 diagnosis come from the outcome of the treatment, and  
2 it was no harm then I prescribed Focalin,  
3 F-O-C-A-L-I-N, five milligram, which is used quite  
4 commonly for attention deficit or attention deficit  
5 hyperactivity type disorder for the children or adult.  
6 And I use a very small dosage because he is on other  
7 medication already, and I didn't change his medication.  
8 He was keeping the same medication, Wellbutrin, Lexapro  
9 and Lamictal and added Focalin, five milligram.

10           And I saw him ten days after, and he had been  
11 on ten days, five milligram, and he reported to me he  
12 felt much different. He was able to focus on his  
13 product lot better and he was able to organize his life  
14 better.

15           Q     Getting back to the disease of bipolar, you  
16 talked about mood disorders and different things like  
17 that. What's the relationship, if there is one,  
18 between bipolar and thoughts of grandiosity?

19           A     Well, grandiosity, grandiose thoughts is a  
20 very common symptoms of bipolar disorder. Bipolar  
21 disorder they feel so good they have inflated  
22 self-esteem, and they think they are someone very  
23 special, but the thought of grandiosity is not only  
24 symptoms of bipolar disorder.

1 Q With those thoughts, how do they relate to a  
2 person's judgment? Can they have an effect or  
3 impairment of judgment?

4 A When they have the thoughts of grandiosity,  
5 yeah, again, that depends on the severity of the  
6 symptom. Some schizophrenic patient, they can have  
7 grandiose thoughts and those people they come with  
8 other symptoms that usually cause a lot of problems.  
9 For -- for instance, they can fly from the top of a  
10 50-story building and do that.

11 Q Left untreated, is bipolar a condition that's  
12 chronic and progressive?

13 A Yes and no. It's -- again, as bipolar  
14 disorder they have some other psychiatric disorder at  
15 the same time as a chemical substance abuse is a big  
16 problem. And underlying personality problem is another  
17 problem. And their life stress is a big problem.

18 And the people can function very well with  
19 medication, counseling, but under the circumstance more  
20 stressful situation, yeah, more -- sometimes internal  
21 stress, too. Taking other medication interact with the  
22 medication patient takes, they can have this other  
23 range in mood swing.

24 Q Focusing particularly back to Frank, you are

1 aware of what he's pled guilty to, correct?

2 A Yes.

3 Q Has he talked to you about this? You know  
4 what he did, correct?

5 A Yes.

6 Q Your report concludes that his bipolar  
7 condition did not exonerate -- and the nature, criminal  
8 nature of insanity, his behavior, but do you believe it  
9 was a contributing factor in any way?

10 A Yes. I think --

11 MR. EVANS: I would ask respectfully for a  
12 foundation in terms of the time period that we are  
13 talking about, Judge. So my objection would be to the  
14 form of the question.

15 THE COURT: Mr. Toner.

16 MR. TONER: If I could focus in on the time period.  
17 I think the time period is alleged in the indictment  
18 but, if I could ask him a particular question.

19 THE COURT: I think what he's wondering about is  
20 when he told him about it or when they talked about it  
21 or what?

22 MR. EVANS: The doctor is apparently being asked an  
23 opinion concerning a condition without a framework in  
24 terms of what time period is discussed, Judge.

1 THE COURT: I'll sustain it.

2 THE WITNESS: In -- as I stated before, I saw him  
3 twice in 2002. I didn't see him at all in 2003. And  
4 in 2004, I saw him four times. That time, he was not  
5 on medication regularly and -- but he was drinking  
6 heavily at that time, not only -- I wasn't -- of  
7 course, I was not aware what was going on about his  
8 activities with the lady, but he had the problem with  
9 his marriage. He was divorced and going through  
10 another relationship that was pretty chaotic, too, and  
11 a lot of this situation and he continued the drinking  
12 and without counseling or proper medication. It's not  
13 hard to speculate that he was more -- he was having  
14 more problem at that time.

15 MR. TONER: Q And with those -- those are the  
16 types of things you earlier mentioned, the factors  
17 that go into the bipolar and the personality  
18 problems and the other factors such as substance  
19 abuse. So getting back to my question. During that  
20 time frame, what effect, if you have an opinion,  
21 based on your medical expertise, would that or those  
22 factors have on his judgment?

23 MR. EVANS: Judge, I -- again, I would object to  
24 the question only with regard to the period of time.



1 If that's for the period of time alleged in the  
2 indictment, then I would withdraw the objection, but I  
3 would like clarification for period of time.

4 THE COURT: Period of time as to what? As to --

5 MR. EVANS: As to -- he's asking the doctor for an  
6 opinion --

7 THE COURT: As to whether or not his condition  
8 would have affected his judgment?

9 MR. EVANS: Right, Judge. Without asking in the  
10 question what period of time. Was it 20 years ago?  
11 That's my objection, Judge.

12 THE COURT: Why don't you re-ask the question  
13 because it got a little disjunctive there anyway.

14 MR. TONER: Q I think we are talking about for  
15 purposes of this question particularly -- we'll  
16 expand backwards perhaps -- between the period of  
17 2002 when he saw him and then through 2004. You saw  
18 him some time in 2002 a couple times, not in 2003,  
19 and I believe four times in 2004, correct?

20 A Yes.

21 Q During that period of time, first of all,  
22 based on the things that you have testified to, do you  
23 have an opinion as to how those factors would have  
24 contributed to his judgment?

1           A     As I think, I believe that his poorly  
2 controlled bipolar disorder must have contributed some.  
3 I don't know how much, what extent, and I believe still  
4 at that time he was able to function in his profession  
5 and I have never received any telephone call from him  
6 about changes of his conditions. And he never ended up  
7 in the emergency room because of any exacerbated  
8 symptoms, but I believe it's poorly controlled bipolar  
9 disorder with alcoholism and gambling problems added.  
10 So poorly controlled bipolar disorder must have  
11 contributed to some degree.

12           Q     Now, you talked about from 2002 until 2004.  
13 You had mentioned early on or little bit earlier in  
14 your testimony that when he came back -- or when he  
15 came and saw you first in say 2000 when he was having  
16 difficulty after his marriage broke up, did you note  
17 anything as far as a difference in his condition as it  
18 presented itself to you between 2000 and 2002?

19           A     One thing I have good memory of, I think his  
20 unrealistic grandiose idea was more than in the past.  
21 You are thinking about -- of course, I didn't know  
22 anything about the managing another person's money, but  
23 he started to talk about going to the Par-A-Dice and he  
24 said that he was sometimes winning and he was studying

1 about gambling, that he is a good reader and he was  
2 reading books and going to practice from what he  
3 learned from in the book. And he one time talked about  
4 being -- he was really frustrated with his profession  
5 over 25 years, and being a professional gambler he was  
6 talking about that. Then I tried to point out that was  
7 not really realistic.

8 Q What effect did that seem to have on him when  
9 you said it's not realistic, you can't do that? What  
10 was his reaction, if you recall?

11 A He believed that he could still do that.

12 Q Now, you mentioned the alcoholism and the  
13 gambling. Do you think that -- you also mentioned the  
14 underlying personality disorders. Would that include  
15 the grandiosity or is that by-product of bipolar?

16 A Yeah. It's a -- certain people, certain -- we  
17 believe this bipolar disorder or schizophrenia is  
18 hereditary, runs in family because children from the  
19 family history -- the chance is much higher to getting  
20 this kind of disease, but at the same time certain  
21 personality tends to develop more disorder. For  
22 instance, schizophrenic patient, some of them are  
23 really -- we can see since very young and early teen  
24 that shows very isolated and very exclusive and quiet

1 and have some strange ideas. And bipolar disorder is a  
2 little different and some -- especially the people  
3 with -- very narcissistic people, they have a lot of  
4 grandiose ideas and self-importance, and I believe  
5 Frank has in personality-wise and obsessive-compulsive  
6 personality and the narcissistic personality, that area  
7 he has, I think, but that personality is ongoing and  
8 since early adulthood. I think that is another factor  
9 of being -- having the grandiose ideas.

10 Q Would -- you mentioned the obsessive  
11 personality disorder. Would that have an effect either  
12 in conjunction with or just by itself on his inability  
13 to be able to focus and finish tasks and, as a result,  
14 become frustrated if he's unable to do so?

15 A Yes. That also attention deficit disorder can  
16 cause that kind of problems, too, yes. Obsessive --  
17 the person with obsessive compulsiveness, they have  
18 that tendency. They are involved in a lot of different  
19 things. It's hard to complete because they try to be  
20 on their own and perfect ideal way.

21 Q Are those problems, the obsessive-compulsive  
22 personality disorder, are they progressive as well if  
23 they are not treated?

24 A Well, personality disorder, there's not much

1 treatment, and also this is, again, the severity of the  
2 problems. We all have -- most professionals they have  
3 certain obsessive compulsiveness in certain area, and I  
4 think even in our textbook we say it's a personality  
5 disorder and a little less than personality disorder we  
6 have another category, personality trait. So I don't  
7 know how can I just -- I will say he has the tendency  
8 in obsessive compulsiveness and narcissistic.

9 Q Are you familiar, without get into the  
10 particulars of Frank's family history, mental health  
11 history-wise -- you had mentioned some of these things  
12 tend to be seen from generation to generation. Would  
13 that be the situation in his case?

14 A Especially we know the schizophrenia and  
15 bipolar disorder has a very strong hereditary factors  
16 even though we don't know what is the real genetic  
17 markers.

18 Q But it is accepted that it goes through  
19 generations?

20 A That's right.

21 Q Do you understand it to have affected prior  
22 generations of his?

23 A And I know Frank at least one -- one of his  
24 brother -- his brother sound like he has bipolar I

1 disorder. He has been in the hospital several times  
2 and is a very -- the functioning has been poor in the  
3 last several years, I believe.

4 MR. TONER: If I may have a moment, Judge.

5 THE COURT: Sure.

6 MR. TONER: Q When you say, Doctor, that -- I  
7 asked you earlier about whether or not you believed  
8 that bipolar and the other factors that you  
9 considered such as personality disorder contributed  
10 to what Frank did here. You said you believed so,  
11 but you couldn't say how much. Is that because this  
12 is the type of thing that you can't quantify?

13 A Well, yeah. That's true. We cannot measure  
14 it. And, also, at the same time, he was able to  
15 function his professional activities. He never ended  
16 up in the hospital, until this, never had been  
17 arrested, he never ended up in the emergency room.

18 Q That's one of the things that you -- you are  
19 making this one of things that you have going is that  
20 as far as a professional, as far as you know, he was  
21 doing okay?

22 A Yes.

23 Q Well, in his capacity as Mrs. Varga's power of  
24 attorney or attorney, what he did here certainly wasn't

1 acting well as a professional; would you agree?

2 MR. EVANS: I object now. Mr. Toner doesn't like  
3 the answer, so he's cross-examining his own witness,  
4 Judge. I object to the form of the question.

5 THE COURT: Overruled.

6 THE WITNESS: I didn't know about his capacity in  
7 that area, but his -- I knew about his being attorney  
8 and public defender.

9 MR. TONER: Q So you are talking pretty much  
10 about his public defender?

11 A Right.

12 MR. TONER: Nothing further.

13 THE COURT: Mr. Evans.

14 MR. EVANS: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. EVANS:

17 Q Doctor, you indicated you are board certified  
18 in psychiatry and was it neurology?

19 A Well, American Board, they have the same  
20 board, American Board of Psychiatry and Neurology, yes.  
21 And we -- when we take exam we have to take neurology  
22 exam and the neurology they should take out of -- they  
23 examine psychiatry.

24 Q And you took that exam in 1970 what, sir?

1 A 1978.

2 Q You actually sit for an exam and take the exam  
3 and pass it to become board certified, correct?

4 A Yes. It's -- that's a written test and oral  
5 test that's by the American Board of Psychiatry and  
6 Neurology.

7 Q Now, you indicated that you have treated the  
8 defendant, Frank Picl, beginning in October of 2000,  
9 correct?

10 A Yes.

11 Q And you have seen him for a number of times  
12 except you didn't see him at all in 2003?

13 A Yes.

14 Q And then four times in 2004?

15 A Yes.

16 Q And at the time that you saw the defendant he  
17 was going through, what, quite a few life-changing  
18 experiences, wasn't he?

19 A Yes.

20 Q He was divorced from his first wife?

21 A Yes.

22 Q He had much conflict in his life regarding his  
23 first wife and the breakup of his marriage, didn't he?

24 A Yes.



1 Q He was very concerned with the effect that the  
2 breakup would have both on his children and his family,  
3 correct?

4 A Yes.

5 Q And that's a normal response for someone who's  
6 going through a stressful event such as that; isn't  
7 that a fair statement, doctor?

8 A Yes.

9 Q So it's nothing unusual that someone would be  
10 depressed or feel bad about the breakup of his actual  
11 life itself?

12 A Yes. You know, it's -- let me put it this  
13 way. We all have a different tolerance.

14 Q Right.

15 A And when ten people exposed to the same damp,  
16 cold weather, somebody will get pneumonia and somebody  
17 won't, and the people with depression or bipolar  
18 depression, bipolar disorder, those people under those  
19 stressful situation, yet they react different.

20 Q Right. Now, people with bipolar disorder  
21 don't all steal money, do they?

22 A Not all, no.

23 Q People with bipolar disorder can lead lives,  
24 normal lives amongst the rest of us in society, can't

1 they --

2 A Not all --

3 Q Let me finish -- in terms of the ability to  
4 function on a day-to-day level?

5 A Yes. Lot of successful professionals that  
6 have bipolar disorder, they are taking medication, they  
7 are having successful state of life.

8 Q Now, during the years you have treated Frank,  
9 you know that he came into this very courthouse on  
10 almost a daily basis to perform his duties as a lawyer,  
11 correct, doctor?

12 A That's what I understand.

13 Q And he was one of those professional people  
14 that you have talked about? He is a professional; is  
15 that correct?

16 A Yes.

17 Q And he was able to represent clients on a  
18 daily basis both as a public defender and as a private  
19 attorney?

20 A Yes.

21 Q He was able to get up in the morning, get  
22 dressed, and come into court?

23 A Yes.

24 Q Now, the defendant had other financial

1 problems other than this incident. Are you aware that  
2 the defendant didn't pay any federal income taxes for a  
3 period of time?

4 A He talked to me a few times about that. He  
5 hadn't done the income tax return, the report for -- in  
6 the last few several years. I don't know which.

7 Q Did he indicate to you that because of his  
8 inability or the fact that he simply didn't file his  
9 returns that he owed the IRS approximately \$100,000?

10 A I don't know. We never talked about in  
11 detail. He talked about he had to do it, but that he  
12 was not able to do it because he didn't know where  
13 he -- he should have started for several years and all  
14 the papers and stacked up.

15 Q Now, doctor, when you saw him when he came in  
16 your office in March of 2005, last year, that was  
17 immediately after he was arrested in this case,  
18 correct?

19 A Yes.

20 Q Now you told Mr. Toner that you are familiar  
21 with what the defendant, Frank Picl, did in this case,  
22 correct?

23 A Yes.

24 Q Do you know how many times he cashed checks of

1 Alice Varga?

2 A No. The only thing I know is I read in the  
3 newspaper.

4 Q Do you know how many times he went to the bank  
5 and received certified checks from monies of Alice  
6 Varga?

7 A No.

8 Q Do you know how many times he took the money,  
9 the certified checks to the Par-A-Dice Casino boat?

10 A No.

11 Q Do you know what he did with the money that he  
12 passed through the account at the Par-A-Dice Casino?

13 A No.

14 Q Did he ever tell you?

15 A No.

16 Q Now, those times when the defendant, as you  
17 understand it, was committing this crime, he wasn't  
18 hearing voices, was he?

19 A No.

20 Q He wasn't being told to do this by some  
21 outside force, was he?

22 A No.

23 Q And you have used the term schizophrenia,  
24 doctor. I know you certainly know the difference. The

1 defendant does not have schizophrenia, does he?

2 A No. He's not schizophrenia.

3 Q As you have told us today, the defendant  
4 suffers from alcoholism?

5 A Yes.

6 Q Bipolar disorder II, correct?

7 A Yes.

8 Q And he doesn't have bipolar disorder I because  
9 he doesn't have the very severe mood swings that we  
10 talked about?

11 A Yes.

12 Q He had mood swings of a lesser amount; he was  
13 up sometimes, he was down sometimes?

14 A Yes.

15 Q Again, the mood swings are not in and of  
16 themselves unusual in someone going through many  
17 life-changing episodes?

18 A Yes.

19 Q Now, are you also aware that the defendant  
20 around this time in 2003 was dating who was to become  
21 his second wife?

22 A Can you repeat the question?

23 Q Were you aware that the defendant in 2002 and  
24 2003 actually was a period of time when he was dating

1 who was to become his second wife?

2 A Yes. I think so at that time.

3 Q Were you aware that there was also apparently  
4 much conflict in that relationship between the  
5 defendant and his soon to be second wife?

6 A Yes. I remember that, yes, was not a stable  
7 relationship. Very chaotic.

8 Q Now, you used the term at one point in the  
9 beginning of your testimony, doctor, the term brain  
10 disease. Do you remember that?

11 A Yes.

12 Q Now, brain disease. Did you perform any tests  
13 on the defendant, any brain scans or any types of  
14 tests?

15 A Yes. We do a lot of MRI or the PET scan on  
16 research base.

17 Q A PET scan. That's the PET?

18 A PET.

19 Q Positive Emission Topography?

20 A That's right.

21 Q Did you do that on the defendant?

22 A No.

23 Q Did you do any brain scan on the defendant?

24 A We don't do it. We do it only on research

1 base. I don't think his insurance would cover it even  
2 if I ordered it.

3 Q Okay. Now, you also used the term -- and I  
4 think you didn't give yourself and your profession  
5 enough credit, but you did say in some ways psychiatry  
6 is somewhat primitive. You used the term somewhat  
7 primitive in terms of testing. Do you recall saying  
8 that on direct examination?

9 A Court examination? What I said is I testified  
10 in out of state only in the mental health court.

11 Q Maybe I misunderstood you.

12 A Yeah. Mental health court.

13 Q You did tell us that the defendant's  
14 conditions of depression that what he has is treatable  
15 or controllable with regard to taking medications,  
16 correct?

17 A Medications, yes, sir, essential.

18 Q Counseling?

19 A Counseling, yes.

20 Q As you say actually in your report, as long as  
21 he keeps sobriety of alcohol and gambling, he should be  
22 able to work after all the legal problems are settled?

23 A With medications and counseling and no  
24 alcoholism and gambling, yes.

1 Q So it's incumbent on the defendant to actually  
2 take the medicine he's prescribed, correct?

3 A Yes.

4 Q And it would be incumbent on him to go to the  
5 meetings or the counseling for alcoholism like he's  
6 going to right now, correct?

7 A Yes.

8 Q When the defendant was stealing money from his  
9 client, he knew what he was doing was wrong, didn't he?

10 A I believe he knew.

11 Q And he actually knew what he was doing, also,  
12 didn't he?

13 A Yes. The same thing. He knew that drinking  
14 was bad, but he couldn't stop it.

15 Q Right. There's many people in our society  
16 that are alcoholics; is that correct, doctor?

17 A Yes.

18 Q And there's many people that go to meetings,  
19 don't take that first drink, and function well in  
20 society, is that correct, based on your experience?

21 A Yes.

22 Q And people that are alcoholics, per se, it  
23 doesn't make them steal money, does it?

24 A No.



1 MR. EVANS: Thank you, sir. No further questions.

2 THE COURT: Mr. Toner.

3 MR. TONER: A couple redirect, if I may.

4 REDIRECT EXAMINATION

5 BY MR. TONER: .

6 Q Doctor, you mentioned -- strike that.

7 Counsel asked you about the fact whether or  
8 not a person who is experiencing particular life  
9 stressors might be depressed and you indicated that he  
10 might be. There is a clinical difference, is there  
11 not, between being depressed and depression?

12 A Yes.

13 Q Can you explain what that is?

14 A People with no depression, no symptoms of  
15 depression, they are able to cope with the problems  
16 with some help from friends, family members and pastors  
17 of the church. And people with severe depression, this  
18 is -- the reason they are not feeling good, the reason  
19 they are not able to do -- the reason they have no  
20 motivation, no interest, that is not just an emotional  
21 problem from the stress. That stress can contribute  
22 changes in the brain that make the people feel that way  
23 and act that way.

24 Q When you talk about these contributing factors

1 and the medical condition of depression, that is what  
2 you think can cause a person to lose his bearing with  
3 regard to judgment?

4 A Yes. Depression is a medical disease like  
5 hypertension or diabetes and even people with diabetes  
6 or hypertension they can be very under the good control  
7 under the stress, outside stress or some change in  
8 food, yet their condition can be changing, too.

9 Q Now, with regard to the fact that you didn't  
10 know the exact amount of money Frank took or how many  
11 times he cashed checks or how many -- or how he spent  
12 it, knowing any of those factors, would that have had  
13 any difference on your conclusion of what you have  
14 testified here today?

15 A Well, I think it's once he got in gambling,  
16 yeah, he became very quickly the pathological gambler  
17 and he was preoccupied with that and he had to do it  
18 and he wanted to do it to recover the money he has  
19 lost.

20 Q Would you indicate and believe that one of  
21 these, be it the alcohol, the gambling --

22 A Alcoholism, gambling, the bipolar disorder and  
23 its underlying personality disorders, they all, yes,  
24 put together, yes.

1 Q They feed off each other?

2 A Yes.

3 Q They drive each other?

4 A Uh-huh.

5 MR. TONER: Nothing further.

6 RECROSS-EXAMINATION

7 BY MR. EVANS:

8 Q Doctor, you indicate that he stole the money  
9 to cover his gambling losses?

10 A What I'm saying is that is a typical pattern  
11 of pathological gamblers. They usually try to gamble  
12 more to recover their money they lost in the gambling.  
13 That's what I'm --

14 Q How much -- I'm sorry. I don't mean to cut  
15 you off. How much did the defendant lose gambling?

16 A I don't know.

17 Q How much did the defendant take from Alice  
18 Varga?

19 A I don't know.

20 Q So your answer is conditioned on him losing  
21 all of the money gambling?

22 A I don't know where the money -- what  
23 percentage of the money was spent in gambling. I have  
24 no idea.

1 Q He didn't have to go to the bank teller window  
2 and take this woman's money, did he?

3 A Again, I have no information about that.

4 MR. EVANS: Thank you. No further questions.

5 THE COURT: Mr. Toner.

6 REDIRECT EXAMINATION

7 BY MR. TONER:

8 Q Assuming you were to have information about  
9 any of that, would that have changed what you have  
10 testified to? Does that make a difference to your  
11 diagnosis?

12 A Tell me again.

13 Q In other words, are any of those questions  
14 that he asked, are they important to your diagnosis?

15 A No, not really. What I'm -- basically all  
16 this bipolar disorder, alcoholism, and a lot of times,  
17 you know, if he was drinking every day and either he  
18 was under the influence or some degree of -- in terms  
19 of that. Gambling, underlying personality problems,  
20 all this, yes, I believe contributed some degree in his  
21 behavior what he did.

22 MR. TONER: Nothing further.

23 MR. EVANS: No further questions.

24 THE COURT: You can step down. Thank you.

1 (Witness excused.)

2 MR. TONER: Judge, may we approach?

3 THE COURT: Sure.

4 (Whereupon proceedings were had at the  
5 bench out of the hearing of the court  
6 reporter.)

7 (Thereupon the witness was duly sworn.)

8 JEFFERY SCHUCK

9 called as a witness on behalf of the Defendant, after  
10 having been first duly sworn, was examined and  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. TONER:

14 Q Please state your name and spell your last  
15 name.

16 A Jeffery Shuck, S-H-U-C-K.

17 Q And your occupation or profession?

18 A I'm an attorney.

19 Q And where are you an attorney?

20 A I'm employed with the State of Illinois. I'm  
21 the Deputy General Counsel for personnel for the  
22 Department of Central Management Services.

23 Q And do you know Frank Picl?

24 A I do.

1 Q And how is it that you know him?

2 A Frank was my attorney back in 1983  
3 representing me in a lawsuit that arose out of an  
4 accident, an automobile accident that I was involved in  
5 that left me paraplegic.

6 Q And your mother testified yesterday. I'm not  
7 going to cover a lot of those details. Did Frank have  
8 an impact on your life as far as being an attorney?

9 A He has, yes.

10 Q And over the years, sometimes more, sometimes  
11 less, you have kept in contact with Frank?

12 A We have kept in touch.. Sporadically over the  
13 23 years that I have known him, but on a somewhat  
14 regular basis, talked about events as they have come  
15 up, and it's important to understand that he  
16 represented me at a time when I was going through a  
17 great period of change in my life. I was very young.  
18 I was 18 years old and then through my time in college  
19 and grad school and law school and having a young  
20 family and everything else, we had many occasions to  
21 talk and discussed different things that were going on  
22 at the time.

23 Q Did he provide a positive impact and effect on  
24 your life?

1           A     He did. One of the things that's most notable  
2 was his example as an attorney when he represented me  
3 in that lawsuit. I had very little exposure to anyone  
4 who was an attorney by that point. As I said, I was  
5 just a teenager, but he was a strong presence. He was  
6 a very prominent figure. He was providing a lot of  
7 guidance and a lot of support for me and my family at  
8 that time when it was very much in need.

9           Q     So at the time, you needed him and he was  
10 there?

11          A     He was. He was.

12          Q     And I'm going to direct your attention to move  
13 forward in the last, say, six months to a year. Have  
14 you talked to Frank about what brings him here?

15          A     We have had several occasions to talk about  
16 why he's in this case and what his future might hold.

17          Q     What has he explained to you concerning why  
18 he's in this case and how he feels about it?

19          A     We have had a number of conversations about  
20 that. It is apparent to me as someone who's known  
21 Frank for as long as I have that he is a different  
22 person now than he was when I first met him back in  
23 1983.

24          Q     In what way?

1           A     He is much more self-aware about a lot of  
2 things that have gone on in his life. Frank always  
3 came across as a very confident, very professional  
4 individual, and at the same time it was also apparent  
5 that he was dealing with the issue of his alcoholism.  
6 He had always had that problem and, yet, managed to  
7 function, and to even thrive in the courtroom setting.  
8 Having become an attorney myself and having had  
9 considerable courtroom experience, I think I have  
10 gained a certain understanding of how the crucible --  
11 the courtroom can cause a person to focus and to be  
12 able to set aside the distractions that are otherwise  
13 present in day-to-day life. And, you know, we have  
14 talked about how he has forever lost that, that that  
15 crucible -- that role as an attorney is something that  
16 will now and forever be behind him, and that's a big  
17 adjustment, you know.

18           We discussed on numerous occasions, you know,  
19 how he viewed the practice of law and the profession  
20 and how in some ways, it was very satisfying and in  
21 other ways less so. And I always did get the  
22 impression that while Frank got a great amount of  
23 personal satisfaction in doing his work and doing it  
24 very well and helping the people he was representing,



1 whether it be in his roles as public defender or his  
2 private clients, that it still left him wanting in some  
3 ways and I think I see now from having discussed it  
4 with him that a lot of those wants and a lot of those  
5 unsatisfying envisions were related to his addictions.  
6 They never really allowed him to focus on his practice  
7 the way he would have wanted to.

8 Q As a person who is an attorney -- you have  
9 been an attorney for a period of time now?

10 A About nine years now.

11 Q Thinking back, were you able to -- I think you  
12 touched on this briefly -- see a different Frank inside  
13 the courtroom as opposed to outside the courtroom?

14 A Well, I have actually never seen Frank the  
15 whole way through a case. The one time I came closest  
16 was in voire dire. Was called for jury duty and was  
17 near to being selected as a panel list and turned out  
18 that Frank was serving in his role as a public defender  
19 on a criminal case and the counsel and court decided  
20 that perhaps it was best that I not serve in that  
21 capacity, but my knowledge of Frank's role in the  
22 courtroom and how he served in that role comes from the  
23 conversations with him and from having talked to  
24 others, including my mom, who have witnessed him in the

1 courtroom over the years that I have known him, rather  
2 than having seen him in that role or setting.

3 MR. TONER: If I may have a moment, Judge.

4 I don't have any further questions. Thank  
5 you.

6 MR. EVANS: I have no questions. Thank you.

7 THE COURT: Thank you.

8 (Witness excused.)

9 THE COURT: Sir, please step forward.

10 (Thereupon the witness was duly sworn.)

11 (Whereupon proceedings were had at the  
12 bench out of the hearing of the Court  
13 Reporter.)

14 THE COURT: Why don't we take a break for about  
15 five minutes. Sir, you step back down and we'll go off  
16 the record.

17 (Recess taken.)

18 THE COURT: Let's go back on the record. And, sir,  
19 have a seat. You are still under oath. We have yet to  
20 ask you a question, including your name. So I don't  
21 know your name.

22 So, go ahead, Mr. Toner.  
23  
24

1 WILLIAM BRUMMITT  
2 called as a witness on behalf of the Defendant, after  
3 having been first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TONER:

7 Q Please state your name and spell your last  
8 name for the court reporter.

9 A William Brummitt, B-R-U-M-M-I-T-T.

10 Q And, Mr. Brummitt, are you acquainted with  
11 Frank Picl?

12 A Yes, I am.

13 Q And how is it that you are acquainted with  
14 him?

15 A I first met Frank at White Oaks when he  
16 entered treatment there approximately 18 months ago. I  
17 was there in my capacity as both a volunteer and as a  
18 recovering addict myself.

19 Q And in the capacity that you volunteer, what  
20 is it that you do there?

21 A Well, primarily, I sit in group, group  
22 therapy, and just offer the observations of someone six  
23 years into recovery might. I also share my meditation  
24 experience every week there with the gentlemen

1 currently in treatment.

2 Q So you do the meditation program as well as  
3 part of the program out there?

4 A Yes. Yes, I do.

5 Q You got to know Frank through those roles?

6 A Both out there at treatment and subsequently  
7 in AA meetings.

8 Q And are you currently Frank's AA sponsor?

9 A Yes, I am.

10 Q Now, do you see him or have you seen him over  
11 the past 18 months on a fairly regular basis?

12 A Yes. At least once weekly.

13 Q And that would be out in the alumni meeting?

14 A That would be on Thursday nights, right. I  
15 should add I would often see him also on Friday at an  
16 AA meeting. Not every week necessarily.

17 Q And having gone through the process of  
18 recovery yourself, working on that, your recovery, have  
19 you noted things about how Frank has changed over the  
20 last 18 months?

21 A I think there has been progress. I think over  
22 the past 18 months -- one of the things about AA is  
23 it's rather foolproof in the sense that if you come  
24 around and hang around a group of people concerned with

1 the spiritual nature of the program that there is going  
2 to be change, and I think that Frank is -- that's true  
3 of Frank as well as everybody that does that. You  
4 know, there has been a definite progress from some --  
5 some of the ways I would characterize Frank when I  
6 first met him are not necessarily the things that I  
7 would say now.

8 Q What were they then? What's different?

9 A When I first met Frank, he tended towards the  
10 arrogant side. He was rather brash, loud, maybe not  
11 completely honest. I should add none of those are  
12 particularly unusual for people, when they enter into  
13 treatment.

14 And I have seen -- over the past 18 months I  
15 have seen a movement towards humility. Certainly a  
16 degree of remorsefulness about what he has done with  
17 his misdirection of the funds that I understand that he  
18 took. And just a greater self-awareness, I believe, of  
19 some of his problems, and I think most -- I think  
20 importantly, I think he sees -- today, I think he sees  
21 the necessity for addressing his spiritual condition on  
22 a lifetime basis. This is not something that's going  
23 to go away. This is something that he's going to have  
24 to deal with on a daily basis for the rest of his life.

1 Q You and he discussed that?

2 A Yes.

3 Q He seems to appreciate and understand that?

4 A Yes. He seems to understand that.

5 Q And have you in your discussions, are you  
6 aware of his taking medication?

7 A I am aware that he takes medication, yes.

8 Q And has he discussed the need for continuing  
9 that regimen as well?

10 A I don't remember specifically talking with him  
11 about continuing his medication. I really couldn't  
12 answer that, I guess.

13 Q When you indicated in your testimony that you  
14 felt that he had some movement toward remorse, what did  
15 you mean by that?

16 A I heard him talk at meetings about what he's  
17 done and about the fact that he's sorry that he's done  
18 it. And, you know, more than just words, you know,  
19 this whole thing, spiritual condition thing is rather  
20 subjective. You know, behind the words I see a certain  
21 attitudinal attitude that's consistent with that.

22 Q So it's not just talking?

23 A I don't think so. We hear a lot of talk in  
24 AA, and usually those are the people that don't

1 continue to come around. In other words, working on  
2 the spiritual condition for the rest of their life is  
3 not something that they're interested in and they don't  
4 come around. Frank has continued to come around which  
5 is an objective thing we say. So he has demonstrated  
6 his interest in that, I think, in that way in that he's  
7 continued to come around.

8 Q In your experience as a participant and person  
9 who helps out, volunteers in these meetings, with  
10 regard to addiction, what role does hitting bottom play  
11 during recovery?

12 A It's -- there's -- it has to happen. It has  
13 to happen. Until it does, what a person needs to do,  
14 they look at themselves, they need to take, the honesty  
15 that must manifest, it's not going to happen. People  
16 think they are ready, and they come back in and they  
17 not necessarily haven't hit bottom yet. Hitting bottom  
18 is probably the greatest teacher of all.

19 Q What about -- you talk about a higher power of  
20 the spiritual side that recognizes something other than  
21 just your own inner will power, correct?

22 A That's true, yes.

23 Q What is it that AA teaches us and why does it  
24 work that you depend on that rather than simple willing

1 your way through this addiction?

2 A Well, as far as addiction and alcoholism, drug  
3 addiction is concerned, will power is of no use  
4 whatsoever. It's something that if it were only that  
5 simple. The will power is not something that I  
6 personally had any luck with at all. I mean, I  
7 recognized eventually my spiritual bankruptcy is what  
8 led to my condition. So I'm not sure if I answered  
9 your question. Perhaps you can ask it again.

10 Q You -- when you talk about -- you say will  
11 power works for some or doesn't work for an addict.  
12 Why not?

13 A Well, how is the best way to answer that?  
14 Because the best way I can put it is that just -- that  
15 it does not work. Will power is not something that is  
16 part of the spiritual picture that we are talking  
17 about. It's more in the line of, I guess, more self,  
18 you know, and in what we are looking for is the --

19 Q Something beyond?

20 A Something beyond ego, kind of like the  
21 opposite, if you will.

22 MR. TONER: I don't have any further questions.  
23 Thank you.

24



1 CROSS-EXAMINATION

2 BY MR. EVANS:

3 Q Mr. Brummitt, the defendant didn't show up at  
4 White Oaks until after he was arrested on this case; is  
5 that a correct statement?

6 A I believe that's true.

7 Q And you understand that he's not here today  
8 because he's an alcoholic, it's because of this crime?  
9 You understand that --

10 A Yes.

11 Q -- as his sponsor?

12 A Yes.

13 Q He's talked with you about what he did?

14 A Yes.

15 Q Did he tell you what he did with the money?

16 A We -- no.

17 Q Did he tell you how much money he took?

18 A I am aware of a certain figure. I'm not  
19 sure -- what the newspaper accounts, other people  
20 talking, talking to Frank myself -- exactly where I  
21 came up with that.

22 Q And the question, though, sir, is does the  
23 defendant in these conversations with you, has he ever  
24 told you how much money he took?

1 A Not to my exact recollection, no.

2 Q Did he tell you the age of the victim?

3 A Yes.

4 Q How old did he tell you she was?

5 A I believe she was in her 70's.

6 Q You used the term misdirection of funds. Was  
7 that your term or is that Frank's terms?

8 A That's entirely my own.

9 Q Did you have any knowledge about the length of  
10 time that defendant took money from Alice Varga?

11 A Not really.

12 Q Do you know how many times the defendant  
13 cashed cashier's checks out of the accounts which were  
14 her assets?

15 A No, sir, I do not.

16 Q Your concern obviously is with the program of  
17 AA and staying sober?

18 A That's true.

19 MR. EVANS: Thank you, sir.

20 THE COURT: Mr. Toner.

21 MR. TONER: Nothing on those points, Judge. Thank  
22 you, sir.

23 THE COURT: You can step down. Thank you.

24 (Witness excused.)

1 THE COURT: Mr. Toner and Mr. Evans.

2 (Whereupon proceedings were had at the  
3 bench out of the hearing of the court  
4 reporter.)

5 (Thereupon the witness was duly sworn.)

6 ROBERT POTTS

7 called as a witness on behalf of the Defendant, after  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. TONER:

12 Q Please state your name.

13 A Robert Potts.

14 Q And how are you employed, sir?

15 A I'm an attorney.

16 Q And you are an attorney in Elmwood, Illinois?

17 A That's correct.

18 Q And do you know Frank Picl?

19 A I know Frank.

20 Q And can you tell the judge, please, how is it  
21 that you know him?

22 A Frank was a friend of my former law partner,  
23 George Whitney. I met Frank on a couple of occasions  
24 during a period of time when George was alive. In

1 1987, George met with a tragic accident and was killed  
2 in an automobile crash.

3           Following that, I had the tremendous burden of  
4 files and work to get done alone. We had an associate  
5 before that who had left and started his own practice.  
6 So we had really a three-man practice, and I was the  
7 only guy.

8           So knowing that Frank had -- was an attorney  
9 and friend of George, I asked him to help me as much as  
10 he could with the work that I had and to take over some  
11 of my partner's files.

12           Q     And did he, in fact, help you out?

13           A     He did, very graciously. I knew he was very  
14 busy with his own public defender -- well, as a public  
15 defender and with his own practice, but he came to  
16 Elmwood one day a week, took files with him, met  
17 clients, closed up many files that I just couldn't get  
18 to and that relationship went on until we were able to  
19 catch up and I could manage on my own and eventually  
20 hire a full-time associate.

21           Q     So I take it that as far as your business  
22 relationship with Frank, that ceased some time, but did  
23 you continue to maintain a social relationship?

24           A     I did. During the course of working together,

1 we became good friends. Our families became good  
2 friends. Frank's wife, my wife, his kids were about  
3 the same age as mine, and we would be together on  
4 several social events many occasions, and I would talk  
5 to Frank on a fairly regular basis by phone and so  
6 forth.

7 Q Now, directing your attention back toward the  
8 late 1989 -- excuse me, 1998 through 2000, in that  
9 area, when he was going through his first divorce.  
10 Were you -- did you still have contact or talk to him?

11 A Well, I did. I was in somewhat of a form of  
12 denial. I heard the rumors, and it never really came  
13 up, and finally there was -- I mean, when you have, you  
14 know, both husband and wife and good friends you try to  
15 deny the fact that they are not getting along, but,  
16 eventually, I learned that they were parting ways and  
17 then had a chance to talk to both Frank and Jenny on  
18 occasion.

19 Q With regard to Frank, can you describe the  
20 impact that that had on him? Was it significant?

21 A He was very devastated. No less. I think  
22 he -- Frank understood the situation, understood his  
23 problem and recognized that.

24 About the same period of time my second

1 tragedy in my life happened, my wife had a brain  
2 aneurysm, had brain surgery, and was in a coma at  
3 St. Francis Hospital. She was in a coma for almost two  
4 weeks, and I stayed at the hospital, slept on the floor  
5 and never went home, and Frank and his wife opened  
6 their home to me and my family and we went over there  
7 and had meals and showers on occasion and so forth. So  
8 at that -- about -- at that time, they tried to be  
9 positive with me and help me through my own deal. And  
10 so, again, I was still in that form of denial at that  
11 point in time because they were trying to help me and  
12 my family through our ordeal. So it never really came  
13 up totally.

14 Q Those are the type of friendship that you had  
15 with Frank. Those are the observations that you had  
16 that when you needed him he produced or --

17 A Oh, absolutely. And his whole family did.

18 Q Now, through the time that you knew him and  
19 you are probably describing almost 20 years, I guess?

20 A Uh-huh.

21 Q Have you had an occasion to observe his moods?

22 A Absolutely. On one occasion I can remember  
23 there was a house remodeling project that Frank took on  
24 a whole new addition and was excited about tearing down

1 walls and building, took a gigantic project on. He was  
2 elated about it. He was focused, excited about it,  
3 something he could do that was positive construction,  
4 doing something with his hands and have a -- it was --  
5 it appeared to be good therapy for him.

6 And when Frank and I would talk, I would try  
7 to be positive to him, and from that point on, I sensed  
8 some depression and, you know, going from one time you  
9 talk to him being real positive and have a good outlook  
10 on things and the next time he was extremely depressed.

11 Q I'm going to ask you two questions.

12 Approximately when would this time frame be as far as  
13 you can recall, if you can, as far as the talking to  
14 him? He built the addition on his house about --

15 A That was before my wife had her aneurysm, and  
16 after she had the aneurysm in 2000 is when I started --  
17 noticed the sadness, the satisfaction with his practice  
18 and with his life and the sense of depression, although  
19 he wouldn't come out -- he didn't -- I never knew that  
20 he was being treated for depression.

21 Q Now, you were aware that he drank, correct?

22 A Yes.

23 Q Now, with this sense of depression that you  
24 were able to pick up during your conversations with

1 him, would it really make a difference in your  
2 observation in the way he presented himself to you  
3 whether he'd been drinking or not?

4 A I couldn't really tell the difference. From  
5 when he was drinking or wasn't drinking in terms of  
6 depression, I couldn't tell because oftentimes our  
7 conversation would be over the phone. I didn't notice  
8 any slurring of words or anything like that. It was  
9 mostly the sadness of the things he discussed about  
10 himself and so forth.

11 Q Now, you attended after -- you were aware he  
12 was arrested, correct?

13 A Uh-huh.

14 Q And last April you attended his daughter's  
15 wedding?

16 A That's correct.

17 Q And did you and Frank have an opportunity to  
18 have a long talk?

19 A We certainly did. My wife and who -- Willa  
20 had a remarkable recovery -- were sitting at the table  
21 and Frank joined us at the reception. We had a good  
22 conversation. He was very positive. He'd been through  
23 some treatment and just had a great euphoria about what  
24 he'd learned about himself, what positive things that



1 had come of the treatment, how he was able to quit  
2 drinking and what he was going to hopefully do with his  
3 life in a state of being alcohol free and nondependent,  
4 but the whole conversation was focused at that time  
5 about being very positive and about his recovery.

6 Q Is that a marked difference from the last  
7 conversations you had had?

8 A Absolutely.

9 Q Now, more recently in the last couple months,  
10 have you had occasions to talk to him on a fairly  
11 regular basis?

12 A I have. Still note the depression, the  
13 remorsefulness of what he has done. He can't  
14 understand it, I don't think, and it's hard to believe,  
15 and, certainly, I don't condone it. It's deplorable  
16 conduct and he would admit to -- he has admitted that  
17 as well. And it's something that I hope he can get  
18 through and get over.

19 MR. TONER: If I may have a moment, Judge.

20 Nothing further. Thank you, sir.

21 THE COURT: Mr. Evans.

22 CROSS-EXAMINATION

23 BY MR. EVANS:

24 Q Sir, what period of time was it that the

1 defendant was doing work for your law firm?

2 A Well, Mr. Whitney passed away in 1987. I  
3 think that relationship went on from immediately after  
4 that date until probably -- it gradually dissipated  
5 over a period of three or four, maybe five years.

6 Q And you are aware of what Mr. Picl has pled  
7 guilty to?

8 A I am.

9 Q And as you have told us, this is deplorable  
10 conduct, is it not?

11 A It is.

12 Q You know as well as all of us that as  
13 attorneys that we have a special obligation to our  
14 clients?

15 A We do.

16 Q Clients trust us in our expertise; you are  
17 aware of that in your experience?

18 A That's our profession.

19 Q And to violate that trust is a serious  
20 offense, correct, sir?

21 A You are absolutely right.

22 MR. EVANS: Thank you. No further questions.

23 THE COURT: Mr. Toner.

24 MR. TONER: Nothing on that, Judge.

1 THE COURT: Thank you.

2 (Witness excused.)

3 MR. TONER: Todd Kollar.

4 (Thereupon the witness was duly sworn.)

5 TODD KOLLAR

6 called as a witness on behalf of the Defendant, after

7 having been first duly sworn, was examined and

8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TONER:

11 Q Morning. Please state your name and spell  
12 your last name for the court reporter.

13 A Todd Kollar, K-O-L-L-A-R.

14 Q And your occupation or profession?

15 A I'm the owner of CGM's, Commercial Grounds  
16 Maintenance.

17 Q And do you know Frank Picl?

18 A Yes, I do.

19 Q And could you tell the Court, please, how it  
20 is you know him?

21 A I know him through the MRM program at White  
22 Oaks.

23 Q And how long have you known him?

24 A Eighteen months.

1 Q So you and he went through the program  
2 together?

3 A Actually, we didn't go through the initial  
4 program together, but I have contact with him on  
5 Thursday nights.

6 Q So you have known him --

7 A Yes.

8 Q -- about that long?

9 So you see him at the MRM alumni meetings?

10 A Those and other meetings throughout the --

11 Q AA meetings?

12 A Yes.

13 Q How often is it that you see him?

14 A I see him quite frequent. He's usually -- at  
15 most of the meetings that I attend, he is usually  
16 there.

17 Q Approximately how many -- well, you have the  
18 one alumni meeting on Thursday nights?

19 A I go to three a week, and I think he goes to  
20 more.

21 Q So you see him on a regular basis usually at  
22 least three times a week?

23 A Yes.

24 Q Have you and Frank talked about your recovery?

1 A Yes.

2 Q What has Frank told you about his?

3 A It's basically at the beginning of when he  
4 first came in, and it was kind of stated earlier, it's  
5 more or less what I have noticed. You know, we talk  
6 about how life is today and how it was before and, you  
7 know, he's actually stated that he seems to be happier  
8 now than he was before, but he has definitely changed  
9 since I first met him.

10 Q You mentioned that there are things that you  
11 have noticed. Why don't you tell us about those.

12 A Well, at the beginning, when he first came in,  
13 you know, and I have been in the courtroom all morning,  
14 he seemed to -- the arrogance level was fairly high and  
15 seemed to -- seems to know exactly what he was supposed  
16 to do at the beginning. And now, you know, there's  
17 definitely been a personality change. He has -- really  
18 has a sense of humility now. He's no longer the center  
19 of the show -- the center of attention. He's a lot  
20 more pleasant to be around.

21 Q Do you attribute -- or in your observations of  
22 your own life perhaps and as well as other people going  
23 through this process, is that part of the process of  
24 moving on, the moving away from being the focal point

1 or the center to --

2 A Oh, that's the number one focus.

3 Q -- looking somewhere other than to yourself?

4 A Exactly, yes.

5 Q And has this become kind of a revelation to  
6 him? Have you talked about that?

7 A You know, usually it's seen from the outside,  
8 from other outside people. I don't -- besides that his  
9 change of that -- you know, we used -- he used to be a  
10 lawyer, and I'm not exactly sure what he's doing now,  
11 but to be happy, and he states that he's happy, now is  
12 kind of a -- I contribute it to the fact that, you  
13 know, he's had the change and he's doing what he needs  
14 to do and that's the lifetime -- that's what we have to  
15 do for our lifetime in order to achieve that, and he's  
16 on that path.

17 And, yeah, I think -- you know, yeah, that's  
18 basically what -- it's -- I don't know how really to  
19 put this. He's never really stated to me that, oh, I'm  
20 doing great, and I think if he would state to me that  
21 if he's doing great, I think that would kind of defeat  
22 that purpose of what he's trying to do.

23 Q But the signs you see and the signs that you  
24 are taught to work on apparently seems to be there?

1 A Oh, yes.

2 Q Does he seem more free or at peace with  
3 himself?

4 A Yes. Yes, he does.

5 Q And you have noticed that as a change?

6 A Yes.

7 Q In your AA experience, and particularly with  
8 regard to Frank, is part of the process realizing the  
9 fact that you have choices and the ability to make the  
10 choices in striving to make a right one?

11 A Can you repeat that?

12 Q Is part of your treatment in talking about the  
13 fact that there are choices to make and you have to  
14 make the next right choice; is that true?

15 A Yes.

16 Q And have you seen him moving toward that  
17 direction as well?

18 A Oh, yes.

19 Q Is that part of the process that helps one  
20 feel better about themselves?

21 A Of having the choice.

22 Q Knowing they have the choice and the idea that  
23 you are supposed to be working towards the next right  
24 one that helps you feel better about yourself in the

1 program?

2 A It would, yes.

3 Q Does that seem to have been working for  
4 Mr. Picl, Frank?

5 A Has --

6 Q Does he seem to be making a step in the  
7 direction towards making the next right choice?

8 A Based on my observation that I see, you know,  
9 again on a weekly basis, he attends and actually is  
10 more active than I am and I am -- I feel that, yeah. I  
11 mean, he's definitely -- definitely in the right  
12 direction.

13 MR. TONER: Thank you.

14 THE COURT: Mr. Evans, cross.

15 CROSS-EXAMINATION

16 BY MR. EVANS:

17 Q Mr. Kollar, you as an alcoholic or the  
18 defendant are no different in terms of makes choices.  
19 We all make choices every day, don't we?

20 A Yes.

21 Q People, millions of people who aren't  
22 alcoholics make choices on a day-to-day basis, right?

23 A Yes.

24 Q So there's nothing unusual about having to



1 make a choice every single day of our life, is there?

2 A After recovery and before recovery I think  
3 there is a huge difference.

4 Q We still have to make choices at both times,  
5 don't we?

6 A Yes.

7 Q And now that the defendant -- you are saying  
8 he feels better about himself because of the choices  
9 he's making today. Is that something he's told you or  
10 something you have seen?

11 A It's what I have witnessed from him.

12 MR. EVANS: Thank you. No further questions.

13 REDIRECT EXAMINATION

14 BY MR. TONER:

15 Q Very briefly, if I may.

16 You mentioned the fact that there are  
17 differences between choices you make before recovery  
18 and after. Could you elaborate on that briefly?

19 A Before as -- is based off my experience as a  
20 recovering alcoholic and drug addict. You lose the  
21 conscious effort to have a choice, and what happens  
22 after recovery is -- and into recovery you have -- it's  
23 a spiritual program where you are so obsessed with  
24 yourself and whatever else that you are trying to do at

1 that time that you know -- and I have heard earlier,  
2 will power is a complete liability. There is  
3 absolutely no will power involved before and once you  
4 make the conscious effort now to do what you need to do  
5 you become -- your thoughts become clearer and you are  
6 able to -- how I kind of say is become a functioning  
7 productive member of society today. And that's  
8 basically how my recovery has been.

9 MR. TONER: Nothing further.

10 RECROSS-EXAMINATION

11 BY MR. EVANS:

12 Q You are not saying, sir, that you couldn't  
13 make a choice even when you were drinking, correct?  
14 You made choices every day when you drank, didn't you?

15 A Yeah. You can -- there were choices to be  
16 made, but they are not controlled by -- you know, I  
17 don't want to come into this as a voices in your head,  
18 but like, for instance --

19 Q Sir, as an alcoholic, did you have a choice as  
20 to what you did during the day before you came into the  
21 program?

22 A As an alcoholic before?

23 Q Before you came into recovery.

24 A Here's an example, if this would be clear.

1 Q I'm asking you if you were able to make  
2 choices, sir. I'm not asking for an example.

3 A Not under my own free will.

4 Q So something was making you do everything you  
5 did before you went into recovery, some outside force?

6 A Yes. Alcohol and drugs seem to have been the  
7 contributing factor in my situation, yes.

8 Q How about in your experience with other  
9 alcoholics? Do they all steal money?

10 A To say do they all is --

11 Q That's my question.

12 A I can't answer if they, do. I don't know them  
13 all.

14 MR. EVANS: Thank you, sir. No further questions.

15 REDIRECT EXAMINATION

16 BY MR. TONER:

17 Q With regard to the choices that you make  
18 before you went into the recovery, do you have a  
19 choice, for example, prior to recovery as to whether or  
20 not you are going to drink or not drink? Is that a  
21 choice you make or are able to make?

22 A You are asking did I have a choice --

23 Q Yes. Is it a choice or is it an obsession?

24 MR. EVANS: Judge, I would object at this time to

1 the relevance as to what this individual witness's  
2 states of mind were.

3 THE COURT: Mr. Toner.

4 MR. TONER: If I could have a minute, Judge.

5 I'll withdraw the question. Thank you very  
6 much.

7 THE COURT: Mr. Evans, anything further?

8 MR. EVANS: No.

9 THE COURT: You can step down. Thank you.

10 (Witness excused.)

11 (Thereupon the witness was duly sworn.)

12 RICHARD L. GRANT, M.D.

13 called as a witness on behalf of the Defendant, after  
14 having been first duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. TONER:

18 Q Please state your name and spell your last  
19 name for the court reporter.

20 A Richard L. Grant, G-R-A-N-T.

21 Q And your occupation or profession?

22 A I'm a psychiatrist.

23 Q Where is your practice, doctor?

24 A I'm not clinically practicing at the present

1 time.

2 Q But you are doing forensic work?

3 A I do forensic psychiatry.

4 Q How long have you been -- are you licensed,  
5 first of all, in the State of Illinois?

6 A Yes.

7 Q How long have you been so licensed?

8 A Since about '83 when I came here.

9 Q Where did you come here from?

10 A Colorado.

11 Q And do you have any certifications?

12 A American Board of Psychiatry and Neurology.

13 Q How long was that -- when did you get that?

14 A 1986.

15 Q Where did you go to school?

16 A Medical school was University of Chicago.

17 Q And when did you graduate from there?

18 A 1959.

19 Q And beyond that, what was your education, if  
20 any?

21 A I did a rotating internship, internal medicine  
22 residency for two years and psychiatry residency for  
23 two and a half years at University of Oregon Medical  
24 School. And then -- well, then I have been on the

1 faculty of four medical schools, University of Oregon,  
2 University of Vermont, University of Colorado, and  
3 here. And there were periods of time in between that I  
4 was full time with two different mental health centers  
5 dealing with the chronic and severely mentally ill  
6 including here at the Human Service Center in Peoria  
7 for eight years.

8 Q And your role at the Human Service Center in  
9 Peoria, you were the --

10 A Staff psychiatrist.

11 Q I'm sorry?

12 A Staff psychiatrist.

13 Q Have you ever testified as an expert witness  
14 in court before in Illinois?

15 A Yes.

16 Q Approximately how many times?

17 A Maybe a dozen.

18 Q Here in Peoria County?

19 A Yes.

20 Q In a variety of psychological areas, correct?

21 A Yes. Quite a range of civil and criminal  
22 cases.

23 Q You testify regarding your forensic work?

24 A Pardon?

1 Q Have you testified regarding your forensic  
2 work in court?

3 A Those were all forensic.

4 Q All forensic work. Okay.

5 MR. TONER: Your Honor, at this time, I'm going to  
6 tender Dr. Grant as an expert in the area of psychiatry  
7 subject to counsel's right to cross-examine.

8 THE COURT: Mr. Evans?

9 MR. EVANS: Judge, I have a couple questions, if I  
10 could.

11 CROSS-EXAMINATION

12 BY MR. EVANS:

13 Q Doctor, how many times have you testified in a  
14 criminal case?

15 A Perhaps six or eight.

16 Q Six or eight?

17 A Yes.

18 Q And were those -- your testimony, was that  
19 relating to insanity?

20 A One was.

21 Q How about the other five or seven?

22 A Oh, what are my choices?

23 Q Well, what were you testifying to?

24 A The criminal cases were sometimes sex

1 offenders and just presenting psychiatric information  
2 about that.

3 MR. EVANS: That's fine. I have no objection.

4 THE COURT: No objection. Court will recognize the  
5 doctor as an expert.

6 MR. TONER: Thank you.

7 DIRECT EXAMINATION (cont'd)

8 BY MR. TONER:

9 Q In your role as a psychiatrist, did you have  
10 an occasion to meet Frank Picl?

11 A Yes.

12 Q And can you tell the Court when that was and  
13 for what purpose you met with him?

14 A I met with him at your request on the 5th of  
15 September to do an evaluation, psychiatric evaluation  
16 to be able to present any information to inform the  
17 Court about his psychiatric condition.

18 Q So that was as it related to this particular  
19 case?

20 A Yes.

21 Q When you met with him on September the 5th,  
22 first of all, approximately how much time did you meet  
23 with him?

24 A I met with him and his sister a little over



1 five hours. And I had talked with him on the phone  
2 over this before that and since which added a bit of  
3 information as well.

4 Q In addition to that, did you review any other  
5 materials?

6 A The materials I reviewed were Dr. Valez's  
7 psychological assessment and Dr. Lee's letter to you  
8 with regard to Frank Picl.

9 Q Going back to -- let's talk, first of all,  
10 about your interview with him on the 5th. What type of  
11 an interview was that? Was it a clinical or did you do  
12 any testing there?

13 A It was predominantly clinical, although I did  
14 do one computerized test that's an assessment for  
15 attention deficit disorder. I may use the term  
16 attention deficit disorder synonymous with attention  
17 deficit hyperactivity disorder. I'll just use ADD.  
18 It's a computerized test.

19 Q So the computerized test you -- that was the  
20 one test you did other than the clinical interview,  
21 correct?

22 A Correct.

23 Q Let's talk about that first. Can you tell the  
24 Court, please, how that test works, what it looks for

1 and what your findings were?

2 A Let me get it out. This is called the  
3 Conners' Continuous Performance Test II, and it's a  
4 test for concentration and attention. And it throws  
5 numbers up on the screen and the person is supposed to  
6 hit the space bar if there is a letter -- it's not  
7 numbers, it's letters. If there is an X, they are not  
8 supposed to hit. It does a variety of rather complex  
9 computations of performances that have to do with  
10 intervals between the time the letter appears and how  
11 quickly and how consistently the person responds, how  
12 accurate they are, just a number of dimensions, and it  
13 gives a score, an overall score as well as individual  
14 scores for different scales comparing the person's  
15 response to a normal population. So it's normed to  
16 people without ADD and then it compares the person's  
17 response to that normative sample.

18 Q And with regard to Mr. Picl's performance on  
19 that, what was -- what were the results of the test?

20 A In simple terms it gives a bar graph of how  
21 likely the person meets clinical criteria for ADD, and  
22 he's at the 50 percent response level.

23 Q What would that indicate to you?

24 A Pardon?

1 Q What would that indicate to you?

2 A Well, a high degree of suspicion for the  
3 presence of ADD. This is not a diagnostic test. This  
4 is a source of information to put together with  
5 clinical data that one collects to see whether or not a  
6 final conclusion is that there's the possibility or  
7 probability of attention deficit disorder.

8 Q What type of clinical information would you  
9 gather and in this particular case did you gather  
10 concerning the possibility or probability of this  
11 condition existing?

12 A The hyperactivity part, attention deficit  
13 hyperactivity is one that usually manifested in early  
14 life. So I would ask questions of him and his sisters  
15 about the evidence of hyperactivity like getting in  
16 trouble in school, being a class clown, things like  
17 that. And in his case, there wasn't -- there were no  
18 examples of that. On the other hand, multiple examples  
19 of difficulty with attention, concentration, sticking  
20 to things, particularly sticking to things that aren't  
21 so interesting or are boring or like, for instance, in  
22 school, not liking the teacher, or in any of his levels  
23 of education, being not interested in the topic would  
24 leave him to daydream, scribble, any number of things

1 that -- those are the questions that I ask, looking for  
2 examples of difficulty with attention, and he had those  
3 despite being very bright.

4 He had -- and he did well in school. He did  
5 less well on courses that he wasn't interested in and  
6 that's a fairly typical -- there's just a whole range  
7 of questions, looking for attentional difficulties.  
8 And I'm talking about just dealing with ADD. In his  
9 case, it's mixed with other diagnostic entities. So  
10 it's hard to parse out just what belongs to the ADD and  
11 belongs to the others.

12 Q Well, you said that there are other things  
13 involved. What other types of diagnoses were you able  
14 to find concerning Mr. Picl and his condition?

15 A I think his principal diagnosis is bipolar  
16 disorder, and in my report I called it bipolar II. A  
17 case could be made for Roman Numeral I, and I can go  
18 into details about the distinction of that.

19 Q Why don't you, please.

20 A Pardon?

21 Q Would you, please?

22 A Okay. The difference between bipolar I and  
23 bipolar II is predominantly there has to be an episode  
24 of manic behavior. It's not whether they're

1 hospitalized. It's not whether they are psychotic.  
2 There has to be at least one episode that meets the  
3 criteria for manic behavior. So the key for separating  
4 those lies in the presence of a manic disorder. So  
5 manic disorder has five criteria. The first criterion  
6 is there has to be a period of abnormally and  
7 persistently elevated expansive --

8 MR. EVANS: Your Honor. I'm sorry. Apparently,  
9 the witness is reading from something. Could I just  
10 ask what he's reading from, Judge. Apparently, this  
11 isn't based on his own recollection.

12 THE COURT: Sir, what are you referring to there?

13 THE WITNESS: Pardon?

14 THE COURT: What are you using?

15 THE WITNESS: I'm sorry. This is the Diagnostic  
16 and Statistical Manual, Roman Numeral IV, TR, the  
17 current DSM.

18 MR. EVANS: Thank you.

19 MR. TONER: I'm sorry about that.

20 THE WITNESS: Thank you.

21 MR. TONER: Q I'm sorry. Continue, if you  
22 would, doctor.

23 A There has to be an elevated expansive or  
24 irritable mood lasting at least one week. And then the

1 B criterion, there has to be inflated self-esteem or  
2 grandiosity, decreased need for sleep, more talkative  
3 than usual or pressure to keep talking, flight of ideas  
4 or subjective experience that thoughts are racing,  
5 distractibility, and i.e., attention to easily drawn to  
6 unimportant or irrelevant external stimuli, has to be  
7 increased in goal directed activity and parenthetically  
8 this could be social, work, school or sexuality, or  
9 under number six, psychomotor agitation. The seventh  
10 is excessive involvement in pleasurable activities that  
11 have a high potential for painful consequences,  
12 engaging in unrestrained buying, sprees, sexual  
13 indiscretions or foolish business investments are given  
14 as examples. There has to be three of these criteria  
15 met of the seven.

16 And C is the symptoms do not meet criteria for  
17 a mixed episode, and unless you want me to, I won't go  
18 into that.

19 Q But with regard to those seven, did you find  
20 three?

21 A Oh, yes. He has inflated -- he has had  
22 inflated self-esteem, he has had decreased need for  
23 sleep episodically. There are times when he is under  
24 pressured speech. And when I met with him, I thought

1 that was true. Flight of ideas. In his responses to  
2 me, he'd get way off the track of the particular thing  
3 that I might be asking him. The distractibility, the  
4 attention too easily drawn to unimportant or irrelevant  
5 external stimuli. That's a little harder to assess in  
6 a one-shot evaluation. You see that over time when you  
7 are treating people and specifically focus on that, but  
8 he's met the first four. Increase in goal-directed  
9 activity; certainly, in his gambling, if not in some of  
10 his other preoccupations. The way he -- I mean, he's  
11 been successful at stopping drinking, but his attention  
12 to and almost compulsive involvement in AA also belongs  
13 somewhere in this mix for latching on to something.  
14 Increase in goal directed activity. And excessive  
15 involvement in pleasurable activity, high potential for  
16 painful consequences, sexual indiscretions are  
17 mentioned in his history. Foolish business  
18 investments.

19 His brother has severe bipolar disorder. And  
20 his interest in trading commodities. He set his  
21 brother up in an office and they attempted  
22 unsuccessfully to do that. And certainly the current  
23 reason to be here has to do with his misusing funds in  
24 a fiduciary capacity, taking funds, taking money.

1 Q Stealing?

2 A Stealing. And excess involvement in  
3 pleasurable activities that have a high potential for  
4 painful consequences. That certainly meets. So he  
5 meets four, five, six of the seven.

6 Criterion D is the mood disturbance is  
7 sufficiently severe to cause marked impairment in  
8 occupational function or in usual social activities or  
9 relationships with others. And I think he meets that  
10 criterion.

11 Q Why?

12 A Well, he certainly has had significant  
13 impairment in his capacity to function as an attorney,  
14 and it's been progressively deteriorating over the  
15 years. And the gambling was -- social activities or  
16 relationships with others, he became preoccupied with  
17 that. He had difficulty in close interpersonal  
18 relationships with partners. Or -- now that's one.  
19 And the next part of the criterion D is or to  
20 necessitate hospitalization or prevent harm to self or  
21 others. Well, that's not relevant, but I think he  
22 meets the first part of this. Or there are psychotic  
23 features. These are two or's. He doesn't have either  
24 the second two, but I think he meets D, the first part.



1           And E is the symptoms are not due to the  
2 direct physiological effect of a substance such as  
3 drugs of abuse, medication or other treatment or  
4 general medical condition of like hyperthyroidism.

5           Now, it's clear he's had substance abuse  
6 long-standing, but he's had periods of time when he  
7 hasn't used substances and these symptoms have still  
8 appeared. So I do not attribute them to the substance  
9 abuse. Alcohol abuse changes the brain.

10          MR. EVANS: Respectfully, Your Honor, I would  
11 object at this time and ask that a question be posed to  
12 the doctor. I think he's answered the question a long  
13 time ago, the original question.

14          THE COURT: Sustained. I do see that it's about  
15 11:44, and I need to break at about 11:45. So why  
16 don't we break now and we'll come back at 1:15.

17                 We'll go off the record.

18                         (Recess taken.)

19          THE COURT: We are back on the record. Mr. Grant  
20 here?

21          MR. TONER: Judge, he was parking the car about 10  
22 minutes, 15 minutes ago.

23          THE COURT: We'll wait a few minutes. In fact,  
24 I'll be back in about five minutes.

1 (Recess taken.)

2 THE COURT: Be seated.

3 We'll go back on the record. Mr. Grant is  
4 back on the stand. Your witness, Mr. Toner.

5 DIRECT EXAMINATION (Cont'd)

6 BY MR. TONER:

7 Q Doctor, you were indicating earlier about the  
8 symptoms of bipolar I versus bipolar II. Would it be  
9 sufficient to say that at the very least there is  
10 sufficient evidence as Dr. Lee found and Dr. Valez  
11 found that Mr. Picl to a reasonable degree of  
12 psychiatric certainty suffers from bipolar II?

13 A I think the critical variable is that he  
14 suffers from bipolar disorder. The distinction between  
15 I and II, and I called it II as well, has nothing to do  
16 with my other opinions about the impact of that on his  
17 behavior. It wouldn't make a difference, I or II.

18 Q So either way, the bipolar is what's pertinent  
19 to your testimony?

20 A Yes.

21 Q And his behavior?

22 A Yes.

23 Q From your clinical interviews as well as  
24 reviewing other sources, were you able to give an

1 opportunity to form an impression how long this bipolar  
2 condition had existed?

3 A It's a bit difficult, but yes, I do.

4 Q And what would that be and why?

5 A Okay. One would look for signals as a youth,  
6 as an adolescent, and into adulthood.

7 The first depressive episode was when he  
8 entered law school that anybody speaks about as a  
9 depressive episode, but he had some unusual brief  
10 episodes of elated behaviors when he was a teenager as  
11 reported by his sisters in a household that was  
12 otherwise very unhappy. He would dance around for a  
13 brief period of time listening to music very  
14 uncharacteristic of him.

15 And then you told me in the presentence report  
16 his mother said that even at age four he was having  
17 episodes of withdrawal, that is a tone down,  
18 withdrawal, isolation kind of thing. By inference, I'm  
19 collecting those two things because in the kids that I  
20 saw with bipolar disorder some of the earliest symptoms  
21 were withdrawal. They weren't depression. Kids that  
22 age don't even say they are depressed. It's just a  
23 change in mood.

24 So because bipolar disorder is a highly

1 genetic disorder, very strong in his family, I would  
2 think that those could have been the early symptoms,  
3 but there isn't any question after he begins to have  
4 recurrent depression that that's a signal for me to  
5 look for bipolar.

6 Q Before we get there, let me touch on one thing  
7 before. Now, you had mentioned that one of the signals  
8 and one of the things you look at is family history  
9 through the generations for these afflictions of  
10 bipolar and other types of mood personality disorders.

11 A Yes.

12 Q And in your observation and your investigation  
13 and interviews, were you able to substantiate whether  
14 or not those, in fact, existed in his family?

15 A Yes.

16 Q And you mentioned he's got a brother who is  
17 bipolar, correct?

18 A Yes.

19 Q His sisters have OCD and some depression?

20 A Yes. And there are other family members,  
21 including a father, who have bipolar disorder and other  
22 relatives. As a matter of fact, there exists a chart  
23 that I was given by one of the sisters where she laid  
24 out all of this, and I can certainly make it available.

1 Q Now, getting back to the recurrent depression  
2 that you mentioned, what would you define as recurrent  
3 depression?

4 A Well, first let's talk about diagnosis of  
5 depression. I'm talking about DSM IV, either dysthymia  
6 which is a diagnosis in here of chronic low level  
7 depression, or major depression recurrent which is a  
8 greater manifestation of depressive symptoms with  
9 criteria. If a person has recurrent depression, let's  
10 say major depression or dysthymia and a major  
11 depressive episode, that is always a cue to me to look  
12 for bipolar disorder because recurrent depressive  
13 episodes are the predominant mode in which bipolar  
14 people are symptomatic. They are less frequently  
15 hypomanic or manic.

16 Q But before we talk about that in relationship  
17 to the bipolar, a little bit more concerning you  
18 mentioned that depression is a medical term of -- or  
19 psychological term of art that is more than just being  
20 depressed or having the blues, correct?

21 A Yes. That's why it's important -- that's why  
22 I made the distinction between diagnostic entities  
23 dysthymia, major depression. Just saying I'm depressed  
24 or people are depressed or down or blue or bummed out

1 doesn't mean they meet criteria for a depression.  
2 Frequently, we get very lost in, well, he's got a  
3 depression. Well, maybe yes, maybe no. So when the  
4 word's used, I need to think criteria, but other people  
5 could think of depression as -- I mean, when a person  
6 has grief with a loss, they have all the symptoms of  
7 depression, but we don't call it that. It's grief  
8 because a loved one has died or a relationship has  
9 ended. It has all the symptoms, but it's usually  
10 self-limiting, but we don't call it depression and we  
11 don't treat it with medication because it's expected  
12 grief, normal grief.

13 Q When you say -- you talk about an external  
14 force such as that, a grief of a -- over the loss or  
15 death of a spouse, for example.

16 A Right.

17 Q Out of 100 people, most of them theoretically  
18 are probably going to have some type of grief, but is  
19 that -- who is that going to cause a true depression to  
20 and why?

21 A Okay. Take 100 people, have them all face the  
22 same circumstances, end of marriage, health problems  
23 that Mr. Picl had for which he seemed to have had  
24 depressive symptoms and perhaps met criteria for

1 depression, according to Dr. Lee in the letter that I  
2 read. Well, out of those 100 people having exactly the  
3 same circumstances, not all the people will have a  
4 depression. Their brain doesn't have the abnormalities  
5 that are genetically derived to have a depression. It  
6 just doesn't occur.

7 Q So medical -- a medical -- or the depression  
8 you speak to is a medical condition affecting the  
9 organic activity of the brain?

10 A Yes. It's a brain disorder.

11 Q Now, when you move in to talking about  
12 bipolar, and you mentioned that the recurrent  
13 depressive episodes that appear, do you indicate that  
14 you would want to rule out bipolar because they appear  
15 more often in a person bipolar than the hypomanic or  
16 manic episodes?

17 A Bipolar symptoms if a person has bipolar  
18 disorder, whatever the number, they spend the  
19 predominant symptomatic time on the depressed side  
20 rather than on the hypomanic or manic side over their  
21 life.

22 Q And that's why it would be expected to be  
23 observed more readily?

24 A Yes.

1           A     Because he has a very long history of being  
2 able to do quite well at things that really interest  
3 him, and I would expect the high arousal thing and  
4 certainly going to -- going in front of the bar and  
5 testifying, being a trial attorney for those people who  
6 like to do it, it's an arousal-seeking behavior. If  
7 people don't like it, they don't do it. And so I think  
8 that that was a high and, therefore, he could do well  
9 at that and really poorly at other things. And I'm not  
10 at all concerned that that mitigates my opinion about  
11 what affected his behavior as far as stealing is  
12 concerned.

13           Q     Now, with regard to that -- you mentioned one  
14 of the factors that is indic -- one of symptoms of this  
15 behavior is his liking or taking risks, correct?

16           A     Yes.

17           Q     Doing jury trials to some extent, would that  
18 be risky behavior or --

19           A     I would think so. I wouldn't want to do it.

20           MR. TONER: If I may approach the witness, Judge?  
21 The record could reflect, Your Honor, I'm showing a  
22 group exhibit to the doctor.

23                    Take a look at those, please. It's Group  
24 Exhibit No. 1. Take a look at those, please.



1 (Defendant's Group Exhibit No. 1 was  
2 previously marked by counsel for  
3 identification.)

4 THE WITNESS: Okay.

5 MR. TONER: Q Have you had an opportunity to  
6 review those?

7 A Yes.

8 Q Now, doctor, if I told you that those were  
9 pictures taken of Mr. Picl's apartment in March of '05,  
10 just prior to his going into treatment --

11 MR. EVANS: Judge, I object to the lack of  
12 foundation.

13 MR. TONER: I'm offering -- I'll lay foundation,  
14 but this is a hypothetical. He's looked at the  
15 pictures.

16 MR. EVANS: In terms of when they were taken and  
17 things like that, Judge, respectfully that's counsel's  
18 opinion in terms of the time period shown in these  
19 photographs. The doctor obviously would have no clue  
20 when these pictures were taken.

21 THE COURT: Sustained.

22 MR. TONER: If I may.

23 THE COURT: Let me see.

24 THE WITNESS: There's a date on the back.

1 THE COURT: Mr. Toner, are you going to offer  
2 these?

3 MR. TONER: I am, Judge, and I would be offering  
4 them through Dr. Valez who was there when they were  
5 taken. I would note that they were developed in April  
6 of '05.

7 MR. EVANS: Judge, if Dr. Valez is going to lay  
8 foundation, I withdraw my objection.

9 MR. TONER: Thank you.

10 THE COURT: That's fine. Go ahead.

11 MR. TONER: Q Doctor, having reviewed those  
12 photos, what impact would that have on your  
13 testimony? Does that confirm aspects? If so, which  
14 ones?

15 A Accumulation of multiple items and having them  
16 all over one's household or one's office speaks to two  
17 things. For one of the more technical word, we call it  
18 clutter. Clutter is stuff that's on its way to where  
19 it belongs. It could belong in the garbage, could  
20 belong in a cabinet, could belong somewhere. That is  
21 an example of clutter. And it's seen in people who  
22 horde things and it's seen in people who have a  
23 combination of ADD and OCD. Not all people with ADD  
24 and OCD have clutter because the OCD part may not be a

1 hording part. The principal part of hording is people  
2 can't bear to throw something away. It's not that they  
3 necessarily need it. I talked to a man who had 12  
4 identical drop cords on the wall in his garage much to  
5 his wife's dislike. He needed them. This represents  
6 the accumulation of materials and no organizational  
7 ability to keep it neat.

8 Q With regard to the illegal activity, the  
9 stealing that Mr. Picl has pled guilty to, to -- and  
10 these next couple questions would be whether or not you  
11 have an opinion based to a reasonable degree of  
12 psychiatric certainty to that, do you believe that he  
13 knew what he was doing was wrong?

14 A Yes. I think he knew that this was illegal.

15 Q Do you believe he was able to control himself  
16 from doing that?

17 A All I can go by is the evidence that he did  
18 not. It would be pure speculation. I think his  
19 judgment was distorted.

20 MR. EVANS: Judge, respectfully, I would ask that  
21 the answer be stricken in its entirety. It's not  
22 relevant. It's speculation only and, therefore, I  
23 would move for its inadmissibility.

24 THE COURT: I think what he testified to was it

1 would be speculation on his part to say yes or no. I  
2 think he answered it the way you probably would want it  
3 answered. So I'm going to overrule the objection. I  
4 think that's what he testified, unless I misunderstood.

5 MR. EVANS: I may have misunderstood it.

6 THE COURT: I thought he said it would be  
7 speculation on his part to say that. He can only go on  
8 what occurred and that his judgment was distorted,  
9 but --

10 MR. EVANS: I misunderstood him, Judge.

11 MR. TONER: Q So you can't say one way or the  
12 other, but to a degree of psychiatric certainty you  
13 can say his judgment was distorted?

14 A Yes.

15 Q Without a doubt?

16 A Yes.

17 Q And that had an impact on what he did?

18 A Yes.

19 Q With regard to people who have bipolar in the  
20 same fashion as Mr. Picl, is there a relationship or  
21 correlation between that and substance abuse?

22 A Yes.

23 Q And what would that be?

24 A Having bipolar disorder -- a person having

1 bipolar disorder, having attention deficit disorder or  
2 having obsessive compulsive disorder, which I think he  
3 has all three, each of those puts people at a higher  
4 risk of substance abuse principally towards  
5 self-medication, and then, of course, substance abuse  
6 changes the brain and takes on a life of its own, but  
7 there is a much higher risk if a person has those  
8 disorders of developing substance abuse.

9 Q And you indicated that at that point it  
10 changes the brain and takes on a life of its own. What  
11 do you mean by that?

12 A Well, continuing use of alcohol changes  
13 neurotransmitter -- neurotransmitter amounts in the  
14 brain. They are pleasure centers in the brain, doing  
15 something that brings pleasure, lights up certain areas  
16 of the brain, and alcohol has a tendency to do that.  
17 And so the reason people have craving for alcohol is  
18 because it makes them feel good and it works by way of  
19 transmitting, neurotransmitter. And so the brain --  
20 what addiction is is craving for another hit of  
21 something that makes the brain feel good, and that's  
22 sort of the mechanism that we are beginning to  
23 understand about the biologic basis of alcohol and  
24 other drug use.

1 Q And when you say you reach this point, one  
2 feels the other?

3 A Yes.

4 Q And would it be fair to kind of draw an  
5 analogy to snowball rolling down a hill; it keeps  
6 spinning and getting bigger?

7 A You mean alcohol use?

8 Q Well, the alcohol use, the bipolar, this kind  
9 of behavior; there's a relationship you said between  
10 them, correct?

11 A Yes. And, for instance, there are brain spec  
12 scans showing that a person without alcohol can have a  
13 wildly active brain that resembles people with bipolar.  
14 They probably do have it, some people. And give them  
15 alcohol and that quiets down. Those parts of the brain  
16 that are overactive quiet down, and, unfortunately, the  
17 judgment part of the frontal lobes falls out, but this  
18 is a self-medication, ill advised. Doctors have better  
19 medications than alcohol.

20 Q That's --

21 A Choose the dose and so forth.

22 Q That's one of the reasons why people  
23 self-medicate?

24 A Right.

1 Q When you talk about cravings, doctor, what is  
2 the relationship, if there is one, between cravings and  
3 choice when talking about addiction, be it alcohol,  
4 substance abuse, or any other type of addiction?

5 A What's the difference between cravings and  
6 choice?

7 Q Is there a relationship between those?

8 A If I'm thirsty, I want water. If I have gone  
9 without water for 24, 48 hours I might call the height  
10 of my desire for water a craving. It's a matter of  
11 degree from desire to craving. That is a stronger  
12 feeling of wanting. That's how I would --

13 Q So craving is just a higher form of desire or  
14 choice?

15 A Yes.

16 Q And one of the natures of an addiction is that  
17 you have these cravings?

18 A Yes. They are stronger than that person  
19 without having used alcohol or people that don't want  
20 to drink at all.

21 Q What about -- what if you were an alcoholic?  
22 Would you have that choice? Could you make that  
23 choice?

24 A Can alcoholics make a choice not to drink?

1 Yes.

2 Q That's by going through the programs and  
3 things of that nature?

4 A Some are successful, yes.

5 MR. TONER: Nothing further. Thank you.

6 THE WITNESS: And medications -- increasingly there  
7 are medications used to help decrease cravings.

8 MR. TONER: Q And those are things that people  
9 work through, then, would it be fair to say, with  
10 therapy as well as medications?

11 A Yes, both.

12 MR. TONER: Nothing further. Thank you.

13 CROSS-EXAMINATION (cont'd.)

14 BY MR. EVANS:

15 Q Sir, you have talked about craving and choice.  
16 Would it be fair to say based on what you know of this  
17 case the defendant had a craving for someone else's  
18 money and stole almost \$300,000? Would that be a fair  
19 type of craving and choice as asked to you by defense  
20 counsel?

21 A No. I don't think that would apply.

22 Q That wouldn't apply to your expertise,  
23 correct?

24 A I don't think it has anything to do with any



1 expertise. I said it didn't apply to the situation  
2 about stealing.

3 Q Let's talk about this situation, doctor. By  
4 the way, you mentioned a brain scan. Did you take a  
5 brain scan of the defendant?

6 A Did I?

7 Q Right.

8 A No.

9 Q So any comments you made about  
10 neurotransmitters in relation to the defendant was,  
11 again, speculation on your part?

12 A No. It's based on my reading of research  
13 evidence about issues such as alcohols affect on the  
14 brain.

15 Q Did you check the defendant's brain with  
16 regard to any type of testing other than what you have  
17 read, doctor?

18 A No.

19 Q Now, you first became involved in this case,  
20 doctor, when exactly? September 5th, I believe you  
21 first met the defendant?

22 A That's when I first met him.

23 Q You spent five hours with him that day?

24 A With him and his sisters.

1 Q And his sisters. And you also interviewed his  
2 sisters, correct?

3 A Yes.

4 Q Much of the information you received about  
5 Frank's life as a young lad, teenager and years when he  
6 was in law school was from the defendant and his  
7 sisters, correct?

8 A Yes.

9 Q You did no independent verification of the  
10 information they gave you, did you, doctor?

11 A I considered talking to the sisters  
12 independent triangulation, validation of information  
13 said by him.

14 Q Did you talk to any disinterested individuals  
15 other than the defendant's sisters concerning the  
16 defendant's childhood and his upbringing?

17 A No.

18 Q Sir, in your experience, individuals,  
19 especially in a criminal setting, might give you  
20 information that may not be completely truthful or  
21 accurate; is that a correct statement?

22 A Indeed, yes.

23 Q And, likewise, would the family members, such  
24 as was the case in the defendant's case, perhaps his

1 sisters weren't completely -- gave you the complete  
2 story of the defendant; would that be a fair  
3 assessment?

4 A Are you asking me could they have distorted  
5 what they knew to be true?

6 Q Yes.

7 A I presume that has to be a possibility.

8 Q Now, so that you met with him five hours on  
9 September 5th. Did you meet with the defendant any  
10 other time?

11 A I talked on the phone several times.

12 Q And did you talk with anyone else concerning  
13 the defendant's condition, if you will, other than the  
14 defendant, his sisters, anyone else?

15 A Mr. Toner.

16 Q Now, at the time that you were asked to  
17 evaluate the defendant, did you receive any  
18 correspondence from Mr. Toner?

19 A No.

20 Q Did you talk with Mr. Toner?

21 A Yes.

22 Q What did he tell you to do? Do you recall?

23 A He didn't tell me to do anything.

24 Q Did he ask you to evaluate his client?

1 Q More frequently?

2 A Yes.

3 Q The result of that, is that somehow caused  
4 bipolar to be misdiagnosed?

5 A Yes, indeed. A researcher in Zurich,  
6 Switzerland, thinks that half the people who have  
7 recurrent depression are probably bipolar and mental  
8 health professionals are missing it.

9 Q With regard to the -- you have read the  
10 information here. With regard to 2000 when Mr. Picl  
11 presented himself to Dr. Lee, would you have an opinion  
12 based upon a reasonable degree of psychiatric certainty  
13 as to whether or not he was bipolar?

14 A Yes.

15 Q And what would that opinion be?

16 A I think he had a depressive episode that was  
17 part of bipolar disorder.

18 Q And with regard to that, what can you tell us  
19 about the nature of the bipolar disorders as far as how  
20 it progresses, whether or not it's chronic, and such  
21 things as that?

22 A Bipolar disorder is a chronic remitting  
23 disorder.

24 Q What do you mean by that?

1 A Chronic meaning it's there over time, but it's  
2 remitting in the sense of its expression of symptoms  
3 either on the high side or low side of mood. So it can  
4 wax and wane in its expression. Generally untreated  
5 tends to get worse over a person's lifetime, but the  
6 essential nature of it is it's remitting up and down.  
7 Normal mood for some people in between, maybe just up  
8 and down for some people.

9 Q Now, what happens -- how is it that you treat  
10 bipolar disorder? What do you do?

11 A There is -- in the literature -- there's been  
12 a lot of discussion. It's not clear, but the treatment  
13 guidelines predominantly say treat the high side of  
14 mood first because --

15 Q High side being the --

16 A The elevated mood, hypomania, mania. If a  
17 person has had both and they present with depression,  
18 you run the risk giving an antidepressant alone of  
19 making the bipolar disorder worse. So with patients  
20 where carefully I comb their history and they are  
21 presenting with depression, and one as a physician is  
22 tempted to give an antidepressant, I have to be careful  
23 because I can make their bipolar disorder worse, put  
24 them into a hypomanic, manic episode treating only with

1 antidepressants. And even if there is just a hint of  
2 bipolar, I have said to people I want to have a mood  
3 stabilizer on board before we start an antidepressant  
4 or before we start stimulant medication for ADD.

5 Q Now when you say -- so the stimulant  
6 medication would be for ADD?

7 A Yes.

8 Q Now, your observation or at least suspicion  
9 based upon what you reviewed, when you looked at the  
10 change in diagnosis in March of '05 and the  
11 introduction of mood leveling as well as of medication  
12 and the change that that exhibited, how does that --  
13 does that confirm or how does that relate to your  
14 earlier suspicion from 2000?

15 A Well, Dr. Lee went from a depression diagnosis  
16 to a bipolar diagnosis and started mood stabilizers.  
17 And is your question about how does that relate to my  
18 opinion about bipolar?

19 Q But, I mean, given the fact -- no. I guess  
20 that's -- since he's -- the medication been changed and  
21 there's indication there's been an improvement,  
22 correct?

23 A Yes.

24 Q So that would confirm -- would that tend to

1 confirm that probably he had been misdiagnosed earlier?

2 A Yes. You don't just catch bi -- Frank didn't  
3 just catch bipolar in 2005.

4 Q And do you believe that he was mismedicated  
5 back in 2000 through 2004?

6 A I wouldn't go that strongly. Based on the  
7 evidence Dr. Lee had, he probably engaged in reasonable  
8 behavior. I just don't think he had all the data that  
9 could have been gathered.

10 Q Do you think that with regard to medication he  
11 was taking and the things that you have heard about his  
12 addictive behaviors, his ADD and OCD, what is the play  
13 or what is the result of the -- these combinations of  
14 factors?

15 MR. EVANS: Judge, I would just respectfully  
16 object. Is he asking the doctor's opinion, I assume?  
17 I think the form of the question is completely  
18 improper.

19 THE COURT: Why don't you rephrase?

20 MR. TONER: Q Given the time frame between say  
21 2000 and 2005.

22 A Yes.

23 Q You know about the behavior as far as drinking  
24 and alcoholism. You know about the medication, what

1 was being taken, when it was taken or no medication,  
2 the bipolar disease and as far as the OCD and the ADD.  
3 What, in your opinion, would be the interplay between  
4 these factors?

5 A Are you asking what is the interplay with  
6 regard to its impact on his behavior?

7 Q Correct.

8 A I think that there was a deterioration of his  
9 function in not filing income taxes which had occurred  
10 before, in not filing briefs, in getting in trouble  
11 with courts because he was not doing things that he had  
12 done before, and as nearly as I can determine from the  
13 history, the beginnings of bad judgments and risky  
14 behaviors, taking money from someone. That's a  
15 deterioration of function from his prior function, and  
16 I think those things were elements -- were the result  
17 of this combination of disorders. Those disorders  
18 permitted bad judgment to happen.

19 Q And can you explain then why concerning  
20 ethical and moral decision-making how that judgment  
21 would get distorted because of these combinations of  
22 factors?

23 A I can't explain how it happens. I only know  
24 that it happens. It's listed as a symptom of manic



1 disorder or hypomanic disorder, poor judgment, a change  
2 in judgment from a person's previous state. The fact  
3 that it occurs and is called a symptom of a hypomanic  
4 or manic episode is the reason that I attribute a  
5 change in his behavior to the disorder. It permitted a  
6 different judgment to be made on his part that was  
7 illegal as far as the money is concerned.

8 Q So, in other words -- bipolar having a bipolar  
9 illness did not cause him to steal, correct?

10 A You mean just having bipolar? No.

11 Q It was a combination of these other factors?

12 MR. EVANS: Objection to the form of the question,  
13 Your Honor, and now counsel is testifying.

14 THE COURT: Sustained.

15 MR. TONER: Q What factored into that happening  
16 in your opinion?

17 A If you took 100 people with his combination of  
18 disorders and the opportunity to engage in illegal  
19 behavior such as taking money from someone when you  
20 have responsibility to act as a fiduciary agent and 100  
21 people who don't have bipolar with that same thing and  
22 aggravation of the bipolar I think will cause much more  
23 temptation and bad judgment on the side of taking money  
24 than in the normal people. There is a higher

1 likelihood because one of the characteristics of  
2 bipolar is precisely the point of engaging in risky  
3 behavior, losing your life savings, giving away things  
4 that you wouldn't ordinarily give away, engaging in  
5 sexual behavior that one wouldn't otherwise engage in.  
6 There is a lot of examples that I have seen and read  
7 about in the literature of very bad judgments in the  
8 height -- at the height of a hypomanic or manic  
9 episode.

10 Q Do you have an opinion based upon a degree of  
11 reasonable psychiatric certainty to what extent these  
12 factors played into Mr. Picl doing this?

13 MR. EVANS: Judge, objection. I believe that's  
14 been asked and answered, that exact same question, Your  
15 Honor.

16 THE COURT: Overruled. Go ahead.

17 THE WITNESS: Do it again.

18 MR. TONER: Q Based upon a degree of  
19 psychiatric certainty, reasonable psychiatric  
20 certainty, do you have an opinion concerning these  
21 factors with regard to somebody in Mr. Picl's  
22 position with these factors known to you what  
23 percentage of people would have done the same thing  
24 given the opportunity?

1 MR. EVANS: Judge, respectfully, again, I object to  
2 the form of the question. It's these factors. If he's  
3 going to ask for the doctor's opinion, respectfully,  
4 Judge, I would ask that he ask it in the proper way,  
5 not just in these factors, so there is some basis for  
6 the doctor's so-called opinions.

7 MR. TONER: I'll rephrase the question.

8 THE COURT: Go ahead.

9 MR. TONER: Q The factors you have testified to  
10 include bipolar, correct?

11 A Yes.

12 Q The ADD, correct?

13 A Yes.

14 Q The OCD?

15 A Yes.

16 Q The alcoholism?

17 A Yes.

18 Q Okay. Any others that we -- and earlier  
19 talked about a mix of things. Those are the  
20 significant things, correct?

21 A Yes.

22 Q With regard to -- and it's your testimony that  
23 at the period of time that we are talking about, and  
24 that's roughly between the years 2000 to 2005, okay,

1 Mr. Picl was afflicted by those, correct?

2 A Yes.

3 Q And being either improperly or nonmedicated,  
4 correct?

5 A Yes.

6 Q Given that combination of factors, do you have  
7 an opinion based upon a reasonable degree of  
8 psychiatric certainty that a person with those  
9 conditions that we have just delineated, having the  
10 opportunity to steal this money, what percentage of  
11 people would do it?

12 A It's my opinion that certainly more than  
13 50 percent, but it would be impossible to say  
14 100 percent. So I would put it somewhere in between.  
15 A very high likelihood that there was a relationship  
16 between the symptom picture and the behavior.

17 Q Now, with regard to the psychiatric or medical  
18 history of Mr. Picl, there are other significant  
19 factors involving injuries that might come into play?

20 A Yes, there are.

21 Q What are they?

22 A Two head injuries. My understanding is that  
23 there was a head injury at age 16 and a head injury at  
24 age -- in 1989, both consequence of automobile

1 accidents. And the first one resulted in a week-long  
2 hospitalization, and my remembrance was the second one  
3 did, too. And when the brain is injured it becomes  
4 more susceptible to further injury with even less  
5 trauma because something's not to skew by the first  
6 injury and a person is more vulnerable given a  
7 particular injury to more damage.

8           And the last injury was 1989 and his behavior  
9 has been deteriorating after that. I'm not willing to  
10 say that I know because I don't have a brain spec scan.  
11 I don't have any kinds of neuropsychological testing  
12 that would tell me about with better detail about brain  
13 function, but at least I have to harbor a suspicion,  
14 have an index of suspicion that the deterioration could  
15 have been contributed to by the head injuries or simply  
16 the natural progression of untreated bipolar, ADD and  
17 OCD.

18           Q     Now, we had heard testimony earlier from  
19 different people concerning Mr. Picl's performance in  
20 the courtroom being at least adequate, if not above  
21 average. Does that cause you to question your opinion  
22 that you have given here in any way?

23           A     No.

24           Q     Why not?

1 A Yes.

2 Q Now, were you provided with Dr. Valez's  
3 report?

4 A Yes.

5 Q Were you provided with Dr. Lee's report?

6 A Yes.

7 Q Were you provided with the factual information  
8 which forms the basis of this crime?

9 A I had no written document concerning grand  
10 jury investigation or indictment and so forth.

11 Q As you sit here today, do you have any  
12 documentation concerning this crime?

13 A No.

14 Q Do you have any information that you received  
15 from anyone concerning this crime?

16 A Yes.

17 Q From whom?

18 A You, and Mr. Toner.

19 Q From who?

20 A You. You told me that there was \$300,000.

21 Q I think I just did that a couple minutes ago.

22 A Yeah.

23 Q Any other information before you wrote your  
24 report concerning this crime?

1 A Mr. Toner gave me information.

2 Q And did Mr. Toner go into the details of the  
3 extent and period of time that this crime occurred  
4 over?

5 A Not in precise dates.

6 Q Did he tell you the individual dates that the  
7 defendant went and took the money of Alice Varga?

8 A No.

9 Q Did he tell you the manner in which his client  
10 took the money of Alice Varga? In other words, how he  
11 obtained --

12 A Not completely. I have some idea.

13 Q Now, you have told us today that the defendant  
14 has a number of -- how can I use the term --  
15 impressions you have of him or diagnoses?

16 A Opinions.

17 Q Opinions?

18 A My opinions.

19 Q Your opinions you referred on numerous  
20 occasions, including this morning you referred to the  
21 DSM manual?

22 A Yes.

23 Q What is the DSM manual you have in front of  
24 you, doctor?

1           A     This is the current edition of the American  
2 psychiatrics -- American Psychiatric Associations  
3 Diagnostic Nomenclature that is giving a criteria for  
4 making any of the mental disorder diagnoses.

5           Q     Mental disorders?

6           A     Right.

7           Q     And in that book one such as yourself, a  
8 psychiatrist or a psychologist, can go in and find out  
9 information as you were reading to us this morning  
10 concerning certain diagnoses?

11          A     Yes.

12          Q     And as you read to us this morning at great  
13 length you read the section concerning, I believe,  
14 bipolar disorders?

15          A     Yes.

16          Q     And, specifically, it's your opinion and per  
17 your report also that the defendant has what is defined  
18 in the DSM as bipolar II; is that correct, doctor?

19          A     Partially because whether it's I or II isn't  
20 relevant for my opinions about his behavior.

21          Q     In your report --

22          A     I said II.

23          Q     II, correct?

24          A     Correct.



1 Q And bipolar II --

2 A Also, in my report I raised this issue whether  
3 it's I or II wasn't very important. So I mentioned I  
4 in there, but not in my diagnostic list.

5 Q Doctor, you also explained the defendant also  
6 meets the criteria for the DSM condition of obsessive  
7 compulsive disorder?

8 A Yes.

9 Q And also alcoholism?

10 A In remission, yes.

11 Q Which means that it's not actively -- he's not  
12 actively drinking right now today, correct?

13 A Correct.

14 Q And you also have come up with a new diagnosis  
15 not found by Dr. Lee of attention deficit disorder; is  
16 that correct, doctor?

17 A Yes. And Dr. --

18 Q You also --

19 A -- Valez found OCD.

20 Q I'm talking about ADD.

21 A Oh, I thought you said OCD.

22 Q My mistake. Did you find the defendant to  
23 have a condition of ADD?

24 A Yes.

1 Q And that's a new impression that you had that  
2 was not found by Dr. Lee, correct?

3 A Not until recently --

4 Q And --

5 A -- when he started treating him.

6 Q Dr. Lee told us this morning the defendant  
7 actually came into him and told him that he had ADD and  
8 that he might like some medication. Are you aware of  
9 that?

10 A Yes.

11 Q Now, in your report, sir, you talk about the  
12 defendant's intelligence, correct?

13 A Yes.

14 Q He's quite intelligent, isn't he?

15 A Yes.

16 Q He has an IQ about 145 to 147 per the testing  
17 he was given by, I think, Dr. Valez?

18 A It's in that range, my understanding.

19 Q You found him also to be a very intelligent  
20 individual?

21 A Yes. I mean, I didn't do any testing for IQ.

22 Q Also, sir, in your report you also found that  
23 he is a collector of things, correct?

24 A Yes.

1 Q That's not unreasonable, is it, to check  
2 things?

3 A It depends on the extent of the collection.

4 Q Those pictures that you looked at, they are  
5 also consistent, are they not, with say a college  
6 student living in a certain smaller room that he or she  
7 might need?

8 A I haven't seen the rooms of college students  
9 since I lived in college, but I never saw the rooms  
10 like that.

11 Q How about a person who was gone through two  
12 divorces, has moved from a house to an apartment and  
13 now an apartment here in Peoria. Are those pictures  
14 consistent with someone who's had all of his life  
15 belongings around him where he lives?

16 A I don't even understand the question.

17 Q The items that are shown in the pictures, they  
18 are just as consistent, doctor, as an individual 54  
19 years old who's gone through two divorces who has all  
20 of his personal items with him and he's living in a  
21 small apartment; isn't that true?

22 A No. I respectfully strongly disagree with  
23 you.

24 Q There's something about that picture that

1 leads you to form a psychological diagnosis based on  
2 those pictures, correct, doctor?

3 A No.

4 Q Those --

5 A Wait. I have to explain.

6 Q I'm not asking you to explain, doctor. Thank  
7 you.

8 The pictures themselves show a series of  
9 plastic drawers in which numerous items are placed  
10 individually in those drawers; is that a correct  
11 statement?

12 A That's part of what they show.

13 Q They show magazines on the floor?

14 A Yes.

15 Q They show clothes on the bed?

16 A Yes.

17 Q They show other personal items of the  
18 defendant presumably?

19 A Presumably.

20 Q At one time you talked about risky behavior  
21 that the defendant exhibited. Do you recall that,  
22 doctor?

23 A Yes.

24 Q Many people engage in risky behavior, do they

1 not?

2 A What do you mean by "many"?

3 Q Well, more than one.

4 A Some people engage in risky behaviors. In the  
5 normal population?

6 Q Sure.

7 A Probably --

8 Q You used an example of trial lawyers.

9 A Yeah.

10 Q People who speculate in commodities are among  
11 individuals who engage in risky behavior, correct?

12 A Yes.

13 Q You put that in your report, right?

14 A Right.

15 Q Nothing unusual about engaging in risky  
16 behavior, is there, in the normal population?

17 A It depends on the degree --

18 Q Now --

19 A -- and consequences.

20 Q Now, in your interview of the defendant and  
21 his sisters, I believe his sister Mary told you that  
22 she worked in his office for six years in the 1980's,  
23 his law office, correct, sir?

24 A Yes.

1 Q And she gave you information concerning how  
2 the defendant handled his office?

3 A Yes.

4 Q Have you talked to or interviewed his  
5 secretary who worked with him for I think it was  
6 approximately 14 years?

7 A No.

8 Q When you saw the defendant he was fully  
9 oriented to time, place, person, and location, was he  
10 not?

11 A Yes.

12 Q He was very friendly?

13 A Yes.

14 Q Loquacious?

15 A Indeed.

16 Q Good talker?

17 A I beg pardon?

18 Q He could talk well?

19 A His speech was clear, if that's what you mean.

20 Q That's what I meant.

21 A Okay.

22 Q Dr. Lee in your review of the records in this  
23 case did not necessarily agree with the obsessive  
24 compulsiveness diagnosis of Dr. Valez and thought that

1 it had been over emphasized; is that correct?

2 A That was Dr. Lee's opinion, yes.

3 Q The defendant's diagnosis by his treating  
4 doctor, at least when he showed up in March of 2005 at  
5 Dr. Lee's door, his diagnosis then was changed from  
6 dysthymic disorder to bipolar II disorder based on your  
7 review of the records?

8 A Yes.

9 Q That was also concurrent with the time that  
10 the defendant was arrested in this case. Are you aware  
11 of that?

12 A Yes.

13 Q That's certainly a life-changing experience  
14 for anyone; is that correct, doctor?

15 A Indeed.

16 Q Now, in your report, and specifically on page  
17 seven, doctor, take a moment and look at your report.  
18 You reference questions four, questions five, questions  
19 seven, and I'm asking you, if you would, to look what  
20 questions are being referred to there.

21 A The questions in Dr. Lee's letter. The  
22 questions that he numbered and was responding to.

23 Q So those references in your report are  
24 referring to Dr. Lee's report?

1 A Yes. See, it was -- this is not a report from  
2 Dr. Lee that I read. It was a letter.

3 Q I understand. As you told us today, the  
4 defendant's judgment was not impaired at the time of  
5 this crime to the extent that he lacked the ability to  
6 appreciate his criminality, correct?

7 A That's my opinion.

8 Q But you know at the time that you interviewed  
9 the defendant that this crime that he committed against  
10 this 85-year-old woman occurred while he was  
11 representing her as her attorney?

12 A Yes.

13 Q You were aware the defendant has practiced law  
14 in this courtroom and adjacent areas for 28 years,  
15 doctor?

16 A Yes.

17 Q Are you aware that the public defender of  
18 Peoria County testified that he was probably one of the  
19 finest trial lawyers he's ever seen?

20 A I didn't know that.

21 Q Would it change your opinion?

22 A No.

23 Q You are aware, doctor, that the defendant also  
24 didn't bother to pay any income tax in the mid '90s?



1 A I was --

2 Q Are you aware of that?

3 A Yes.

4 Q And for which he had to obtain loans from his  
5 family? Are you aware of that, doctor?

6 A Yes.

7 Q Now, you are aware, doctor, in your interview  
8 of the defendant that he went through a divorce in, I  
9 believe, 1999?

10 A From '99 to 2001.

11 Q He suffered great turmoil from the breakup of  
12 his family. Are you aware of that, doctor?

13 A Yes.

14 Q He entered into a relationship after the first  
15 marriage with a woman and had a very stormy  
16 relationship. Are you aware of that?

17 A Yes.

18 Q They got married. Are you aware of that?

19 A Yes.

20 Q And then they subsequently got divorced. Are  
21 you aware of that, doctor?

22 A Yes.

23 Q All these marital problems certainly caused  
24 stresses in the defendant's life, correct?

1 A Yes.

2 Q I mean, anybody that would go through that  
3 would have some stress in their life?

4 A They are stressors, yes.

5 Q You indicate that on the personal assessment  
6 inventory that the defendant may not have answered in a  
7 completely forthright manner. Do you recall making  
8 that statement, doctor?

9 A Page?

10 Q Twelve. My question is was that your  
11 assessment or was that Dr. Valez?

12 A That was Dr. Valez's...

13 Q Fair enough. You indicated that the  
14 defendant -- I think you used the term of art a  
15 disordered brain. Do you recall using that term?

16 A Page?

17 Q It's in your testimony, doctor.

18 A You mean today?

19 Q Today.

20 A I may have used it, yes.

21 Q Is that a -- is that a psychiatric term of art  
22 or a clinical term?

23 A It's a euphuism for abnormal.

24 Q Is that found -- disorder brain syndrome found

1 in the DSM manual in front of you?

2 A No.

3 Q Doesn't exist in the manual, does it?

4 A Right. These are mental disorders, meaning  
5 this is something wrong with the brain.

6 Q Now, you also based on your evaluation of the  
7 defendant doubt the existence of any pathologic  
8 gambling in the defendant's case; is that correct,  
9 doctor?

10 A I stated that.

11 Q You also indicate in your response on page 14  
12 that you considered malingering in the defendant's  
13 case, but the consistency of accounts by observers over  
14 time spoke strongly against that, correct?

15 A Yes.

16 Q In other words, you thought perhaps he was  
17 being less than truthful with you when he talked with  
18 you?

19 A I must do that all the time for what I do.

20 Q Did you give him a psychological test of  
21 malingering?

22 A No.

23 Q There is one available, is there not?

24 A There are multiple ones.

1 Q Did you give him any of those?

2 A No.

3 Q Doctor, all bipolar individuals don't steal  
4 money, do they?

5 A No.

6 Q All OCD individuals who have that diagnosis  
7 don't steal money, do they?

8 A No.

9 Q Alcoholics don't all steal money, do they?

10 A No.

11 Q Persons with ADD don't all steal money, do  
12 they?

13 A No.

14 Q And I think you gave a question to counsel  
15 when he asked you about all those diagnoses you found  
16 in the defendant's case that in the population of 100  
17 people what percentage to a reasonable degree of  
18 scientific certainty would steal money, and do you  
19 recall your answer being 50 to 100 percent?

20 A No.

21 Q What is your answer?

22 A I said it's better than 50 and certainly not  
23 100 percent.

24 Q Is that based on any scientific study?

1 A It's based on my clinical experience.

2 Q Is it based on any of the readings that you  
3 have done relating to those particular diagnoses and  
4 how they cause someone to take money or take items that  
5 are not theirs?

6 A I have not seen research on that.

7 Q You haven't seen any such research, have you,  
8 doctor?

9 A I just said that.

10 Q You told us that an alcoholic can make a  
11 choice not to drink, correct?

12 A Yes. Clearly, Mr. Picl didn't.

13 Q Let me take you through a couple dates early  
14 in this crime, doctor. As you have told us, you did  
15 not receive specific information about the crime,  
16 correct, sir?

17 A Correct.

18 Q If I were to tell you on January 13th, 2003,  
19 the defendant redeemed a CD of Mrs. Varga of 33,000, --  
20 \$33,184 at the Associated Bank and received a cashier's  
21 check, was that something that he chose to do or  
22 something these diagnoses made him do?

23 A I got distracted in your question because -- I  
24 don't remember the date you said.

1 Q January 13th, 2003, sir.

2 A He cashed a cashier's check for \$33,000.

3 Q Right. Of Alice Varga, his client.

4 A Yes.

5 THE COURT: CD.

6 THE WITNESS: And your question is?

7 MR. EVANS: Q Was that something he did  
8 willingly? Was that a choice he made?

9 A I'm not sure exactly what you are asking me.

10 Q Well, was there something making him do that?  
11 Voices?

12 A No voices.

13 Q Some irresistible impulse to make him go to  
14 the bank and cash that?

15 A His mental disorder was permitting him to make  
16 a bad judgment.

17 Q How about if I were to tell you that the  
18 defendant received a check three days later at Commerce  
19 Bank in the amount of \$20,000, again, funds of Alice  
20 Varga payable to himself, would you know at that time  
21 on January 16th if he was acting under any type of  
22 compulsion or irresistible impulse?

23 A Given that my opinion in it that his judgment  
24 about ethical moral behavior was distorted by his

1 disorder, then he was making a choice that he thought  
2 was appropriate based on what he had to deal with.

3 Q I'm not asking you about his judgment. I'm  
4 asking you about his choice to take Alice Varga's money  
5 and \$20,000 have a check payable to himself.

6 A Are you asking me if he --

7 Q That transaction, that appearance at the  
8 teller's window, saying give me a check for \$20,000  
9 payable to myself, was that a conscious choice he made?

10 A Are you asking me if that was a completely  
11 free-will choice?

12 Q A choice that he made..

13 A In the same way that a person who commits  
14 suicide has to choose to raise the gun to their head  
15 when they are by themselves. It's a choice.

16 Q Thank you.

17 A But the distortion of their thinking creates a  
18 difference in the appropriateness of the judgment.

19 Q Well, are you telling us today -- let me  
20 finish up, doctor, on that same date -- actually, the  
21 next day, he took a check of \$17,500, again of  
22 Mrs. Varga's funds to the Par-A-Dice Casino and ran it  
23 through his Par-A-Dice cage account. Was that a  
24 conscious choice on his part?

1 A I don't have any different response than the  
2 two previous questions you have asked me of a similar  
3 nature.

4 Q Is it your testimony, doctor, that everything  
5 the defendant did was set in the dial a long time ago  
6 when he was a young child?

7 A No.

8 Q Is it your testimony that the actions of  
9 stealing approximately \$278,000 from Mrs. Varga was an  
10 unconscious action on his part?

11 A No.

12 Q And there are many alcoholics who don't steal,  
13 correct?

14 A Yes.

15 Q Doctor, have you been paid for your services  
16 in rendering your opinions today?

17 A Yes.

18 Q And how much have you been paid, sir?

19 A \$250 an hour.

20 Q \$250 an hour. So what is your total bill to  
21 date, sir?

22 A I haven't computed it because my charge for  
23 testimony is over and above. Last time I computed it  
24 it was about \$4,300.



1 Q 4,300, correct, sir?

2 A Prior to --

3 Q Is that including today's testimony?

4 A Prior to coming.

5 Q If we added your time today, approximately  
6 what's your total bill going to be, sir?

7 A It might be in the range of 5500.

8 Q \$5,500?

9 A Yes.

10 Q Doctor, if you would open up your DSM that you  
11 have there in front of you, please. Do you consider  
12 this to be an authoritative text, do you not, sir?

13 A On diagnoses.

14 Q On diagnoses. In the introduction of the use  
15 of DSM IV in the forensic setting, do you see that,  
16 doctor?

17 A What page?

18 Q I have 23.

19 A How far down from the beginning of the  
20 introduction is it?

21 Q See the section, use of DSM and forensic  
22 settings? Let me do this. Rather than have you sit  
23 and try to find it, let me read something from the DSM.  
24 Even when diminished control over one's behavior is a

1 feature of the disorder, having the diagnosis in itself  
2 does not demonstrate that a particular individual is or  
3 was unable to control his or her behavior at a  
4 particular time. Do you agree with that comment, sir?

5 A I have a section here, but I --

6 Q I'm asking if you agree with that comment I  
7 just read to you.

8 A This is the most updated version, and I  
9 haven't read this particular setting yet.

10 Q Just listen to what I'm reading, doctor. Put  
11 away the DSM, please.

12 A You asked me to look at it.

13 Q Apparently, you can't find it.

14 THE COURT: Hold on. I think he's changing his  
15 mind. Go ahead.

16 Q I'm going to read the item to you.

17 THE COURT: Maybe you can read along, but go ahead.

18 MR. EVANS: Q Even when diminished control over  
19 one's behavior is a feature of the disorder, having  
20 the diagnoses in itself does not demonstrate that a  
21 particular individual is or was unable to control  
22 his or her behavior at a particular time.

23 A Yes.

24 Q Do you agree with that?

1 A Yes.

2 MR. EVANS: Thank you. No further questions, sir.

3 Thank you.

4 THE COURT: Mr. Toner?

5 REDIRECT EXAMINATION

6 BY MR. TONER:

7 Q Starting there first, doctor, you've testified  
8 about control and choice and in this regard Mr. Picl,  
9 correct?

10 A Yes.

11 Q Okay. And with regard to the statement that  
12 counsel just read, how is it that you would expand on  
13 that part to support your conclusion?

14 A Well, the last statement was a broad statement  
15 essentially saying anybody with a -- any particular  
16 diagnosis. Just having the diagnosis doesn't bear on a  
17 particular behavior. And that's true. Just because  
18 people have a diagnosis doesn't mean any particular  
19 behavior would come from carrying the diagnosis in the  
20 people that carry it.

21 Q So when Mr. Evans asked you, for example, the  
22 same questions just because a person is bipolar doesn't  
23 mean he's going to steal?

24 A Right.

1 Q Just because a person has ADD doesn't mean  
2 he's going to steal, just because a person is an  
3 alcoholic doesn't mean he's going to steal, just  
4 because a person has OCD doesn't mean they are going to  
5 steal, that's what that criteria or that's what that  
6 statement, broad, general statement is saying, correct?

7 A That was my understanding.

8 Q And what in effect have you been saying that's  
9 different than that in this particular case?

10 A I have been talking about the degree of mental  
11 disorder and its distortion of Mr. Picl's judgment  
12 because we know that distortion of judgment is a  
13 symptom of bipolar plus the combinations of the other  
14 difficulties.

15 Q So you are looking at factors in addition just  
16 to the broad labels here, correct?

17 A Yes.

18 Q And you found those factors?

19 A Yes.

20 Q And that's to a reasonable degree of  
21 psychiatric certainty, correct?

22 A Yes.

23 Q Now, with regard to -- you had talked about  
24 the situation whereby a person chooses to pick a gun up

1 and pick a gun up and pull the trigger in suicide, and  
2 that is a choice, correct?

3 A Yes.

4 Q But would you agree from a medical prospective  
5 that that choice involves a distortion of judgment?

6 A Yes.

7 Q And is that type of distortion similar --  
8 maybe not the exact, but the same type of distortion as  
9 exhibited here?

10 A Yes.

11 Q Now, with regard to your comments with counsel  
12 concerning malingering, you said that that was  
13 something that you always had to be vigilant about?

14 A Yes.

15 Q Is there anything that presented itself with  
16 Mr. Picl or his sisters or that would cause you to be  
17 any more vigilant or any more aroused at your  
18 suspicions with him than anyone else?

19 A There wasn't anything that raised any  
20 suspicion in what I heard, and the consistency of  
21 reports, cross observers supported a conclusion that  
22 that was not a factor. That doesn't preclude it 100  
23 percent, but to a reasonable degree of medical  
24 psychiatric certainty, I don't think so.

1 Q With regard to your opinion concerning  
2 pathological gambling?

3 A Yes.

4 Q And you don't find that, correct?

5 A Well, I wanted to explain that.

6 Q Why don't you.

7 A There are parts of DSM that are cleaner and  
8 clearer than others and there's constant revisions of  
9 this, and pathologic gambling is one of them. In the  
10 criteria for pathologic gambling it names ten  
11 persistent and recurrent maladaptive gambling  
12 behaviors. I won't bother to read them. Mr. Picl  
13 meets a lot of these except those are the A criteria.  
14 The B criteria, the gambling behavior is not better  
15 accounted for by a manic episode.

16 So that confounds -- he meets many of the A  
17 criteria, but the fact that he has bipolar disorder and  
18 I think has had some manic episodes muddies the water  
19 for me to agree fully with the diagnosis of this and I  
20 don't think it makes any difference whether we call it  
21 pathologic gambling or we understand the high level of  
22 preoccupation in indulgence and practice to devise a  
23 perfect method to win money which was much more  
24 grandiose and obsessive than it was anything else, but

1 if you listen -- if you read some of these criteria,  
2 some of them have to do with ADD, some of them have to  
3 do with OCD. And as a matter of fact, pathologic  
4 gambling, increased rates of mood disorder, attention  
5 deficit, hyperactivity disorder, substance abuse or  
6 dependence and other impulse control disorders and  
7 antisocial, narcissistic and borderline personality  
8 disorders have been reported in individuals with  
9 pathologic gambling.

10 So it's simply a symptom of something, and if  
11 you want to call it an entity unto itself, it doesn't  
12 add anything. They have those other disorders.

13 Q So whether you pick it up on one or the other,  
14 it's there? Is that what you are saying?

15 A Yes.

16 Q With regard to the stressors that we have  
17 talked about, again, is it your opinion that these  
18 external stressors, be they marital or otherwise, are  
19 not going to cause depression?

20 A To the extent that a person might have a brain  
21 not vulnerable to depression they would not cause a  
22 depression.

23 Q So, in other words, a person is either going  
24 to be predisposed to have that or they are not?

1 A Yes.

2 Q You talked about risky behavior, and your  
3 testimony -- your answer was that depended upon the  
4 degree and the consequences --

5 A Yes.

6 Q -- in your answers?

7 A Yes.

8 Q Would you expand on that? How and why? How  
9 does it depend upon them and why?

10 A The consequences are things that people weigh  
11 as they decide to do certain things, and some people  
12 don't consider playing a slot machine risky behavior  
13 because they are putting nickels in or quarters. They  
14 are not putting \$100,000. The judgment that occurs in  
15 the brain for how much could I lose versus how much  
16 could I gain, it's that balance that lets a person do  
17 anything.

18 So the higher the risk, the more judgment  
19 people use, and there's a lot of research on  
20 risk-taking behaviors in the social psychological  
21 literature and the higher the risk, the less likely  
22 people are to do something. So you have to measure  
23 risk taking as a continuum of behavior rather than  
24 something as risky or not risky. It's risky for me to



1 drive my car down the street. Everybody understands  
2 that it's better to fly a mile than it is to drive a  
3 mile, but I am willing to take that risk because I  
4 think it's low. I wouldn't do that in Baghdad. So the  
5 brain computes decisions about risk and makes  
6 judgments.

7 Q And how -- you mentioned the combination of  
8 factors that you have described and the alcoholism, the  
9 ADD, the OCD as well as the bipolar contribute to  
10 impairment of that function; is that correct?

11 A Yes.

12 Q And at the time that Mr. Picl was doing this,  
13 do you have an opinion that that was affecting his  
14 judgment?

15 A Yes.

16 Q Now, you've mentioned the pictures that you  
17 took there -- that you saw there. You said that those  
18 were significant as to what they depicted because of  
19 how they appeared, correct?

20 A Yes.

21 Q And why -- what was the significance in  
22 your --

23 A The significance was the extraordinary degree  
24 of clutter. I have had occasion to examine evidence

1 from people in legal cases where there's been  
2 accumulation of materials and it's a matter of degree.  
3 Some people have a little clutter from time to time,  
4 but that's out there at the end of the percentile in  
5 terms of looking at those pictures and seeing them  
6 comparing to other kinds of pictures I have seen.

7 I was in correspondence with an expert on  
8 hoarding at Smith College who was treating a woman with  
9 hoarding behaviors and I saw pictures of what her  
10 premises looked like. It looks very similar and these  
11 are people who meet the diagnosis of hoarding or the  
12 subdiagnosis category of hoarding of OCD.

13 Q With regard finally to the documentation that  
14 Mr. Evans talked about concerning the dates, the  
15 amounts and the manner of taking this money?

16 A Yes.

17 Q If you knew all the particulars of that, would  
18 that in any way change your opinion about his -- when I  
19 say his, I'm talking about Mr. Picl's poor judgment,  
20 concerning risk taking behaviors and judgment in his  
21 actions?

22 A No. It doesn't surprise me at all. There  
23 were multiple occasions. It's all one package to me.

24 Q Now, finally with regard to the brain scan

1 questions.

2 A Yes.

3 Q You talked about the transmitters, et cetera?

4 A Yes.

5 Q Now, you in your capacity as a physician as  
6 well as a psychiatrist have studied the workings of the  
7 brain, correct?

8 A As best I could.

9 Q Would you expect Mr. Picl's brain at least  
10 from the biological prospective to be working -- I  
11 mean -- strike that.

12 A human brain has certain types of behaviors  
13 and characteristics, correct?

14 MR. EVANS: Judge, respectfully, I would object. I  
15 think now Mr. Toner is testifying.

16 THE COURT: Sustained.

17 MR. TONER: Q I don't -- let me ask you this.  
18 Do you think that there would be anything to be  
19 gained from -- in addition to what you haven't  
20 obtained here to that would change your testimony?

21 A No.

22 Q Nothing --

23 THE COURT: You are talking about the PET scan?

24 MR. TONER: The brain spec scan, yes.

1 A No.

2 MR. TONER: Nothing further.

3 THE COURT: Mr. Evans.

4 RE CROSS-EXAMINATION

5 BY MR. EVANS: .

6 Q Doctor, the fact is in the defendant's case he  
7 didn't pick up that gun and shoot himself. He stole  
8 \$278,000 from an 85-year-old woman, correct, doctor?

9 A Yes. Well --

10 MR. EVANS: Thank you.

11 THE COURT: Hold on. Is that it? Mr. Evans.

12 MR. EVANS: I'm sorry, Judge, yes.

13 THE COURT: Mr. Toner.

14 REDIRECT EXAMINATION

15 BY MR. TONER:

16 Q Doctor, with regard to that particular type of  
17 behavior you drew the concept, do you have any  
18 similarities between picking up that gun and doing what  
19 Mr. Picl did here?

20 A No. I don't draw much distinction. Judgment  
21 has been distorted and people are engaging in behaviors  
22 they would not under other circumstances do.

23 MR. TONER: Nothing further.

24 THE COURT: Mr. Evans.

1 MR. EVANS: Excuse me, Judge. No further  
2 questions, Judge. Thank you.

3 THE COURT: You can step down. Thank you.

4 (Witness excused.)

5 THE COURT: Why don't we take a five to ten minute  
6 break.

7 Go off the record.

8 (Recess taken.)

9 THE COURT: Back on the record. Mr. Toner, are you  
10 ready to proceed?

11 MR. TONER: We are. Call Jane Valez to the stand.

12 THE COURT: Ma'am, please step forward and raise  
13 your right hand.

14 (Thereupon the witness was duly sworn.)

15 JANE VALEZ, M.D.

16 called as a witness on behalf of the Defendant, after  
17 having been first duly sworn, was examined and  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TONER:

21 Q Please state your name.

22 A Dr. Jane Valez.

23 Q And your employment?

24 A I'm a licensed clinical psychologist in

1 Peoria.

2 Q And you are licensed by the State of Illinois?

3 A State of Illinois, yes.

4 Q How long have you been so licensed?

5 A Since 1995.

6 Q And what's the nature of your practice?

7 A I'm a licensed clinical psychologist and most  
8 of my business is in forensics regarding courts, court  
9 issues.

10 Q Is it a variety of different court issues?

11 A Right.

12 Q Have you ever testified as an expert here in  
13 court before?

14 A Yes, I have.

15 Q Approximately how many occasions, if you know,  
16 in Peoria County?

17 A In Peoria County, maybe 30 times.

18 Q Other counties around Peoria?

19 A Yes.

20 Q Federal court?

21 A Yes.

22 Q And you testified that you do work or  
23 evaluations, a lot of them for court work, correct?

24 A Yes.

1 Q Is that on a variety of issues?

2 A Variety of forensic issues, yes.

3 Q Such as?

4 A Fitness to stand trial, insanity defense, sex  
5 offenders, DCFS cases, disability cases.

6 MR. TONER: Judge, at this time I would offer the  
7 witness as an expert subject to counsel's right to  
8 cross-examine.

9 THE COURT: Mr. Evans.

10 MR. EVANS: Briefly, Judge.

11 CROSS-EXAMINATION

12 BY MR. EVANS:

13 Q Ms. Valez, you always testify for the defense  
14 in Peoria County, don't you?

15 A I believe so, yes.

16 Q In your evaluation that the Court has on the  
17 defendant, Frank Picl, you are a board-certified  
18 forensic psychologist?

19 A Yes.

20 Q Is that a test that you sat for?

21 A No. This is just an organization I belong to  
22 with a group of other forensic specialists. We have --

23 Q It's like -- I'm sorry. I didn't mean to cut  
24 you off.

1 A We have yearly conferences around the United  
2 States and continuing education, and it's generally  
3 made up of others that specialize in the field of  
4 forensics in one manner or another.

5 Q It's like being a member in our profession of  
6 the American Bar Association or the Illinois State Bar  
7 Association?

8 A It's not exactly like that because, for  
9 instance, I am a member of the American Psychological  
10 Association.

11 Q Let me ask this. Did you take a test to get  
12 that?

13 A No, I did not. There was no test required at  
14 the time.

15 Q You just paid a fee and you got the  
16 certification, correct?

17 A It was more than just a fee.

18 Q You had a certain number of clinical  
19 evaluations?

20 A Certain number of forensic cases. I can't  
21 remember the entire application process, but there was  
22 no exam.

23 Q Not like a doctor who sits for a board  
24 certification in a subspecialty such as neurology or



1 neurosurgery, correct?

2 A That's correct.

3 MR. EVANS: I have no further questions.

4 THE COURT: Court will recognize Dr. Valez as an  
5 expert in the field.

6 MR. TONER: Thank you.

7 DIRECT EXAMINATION (Cont'd)

8 BY MR. TONER:

9 Q Doctor, I want to ask you first did you  
10 receive a call from me concerning this case  
11 approximately the end of March, early April of last  
12 year?

13 A Yes, I did.

14 Q At that time, did you meet with an  
15 investigator from my office and myself up at an  
16 apartment on Moss Avenue?

17 A Yes, I did.

18 Q And I'm going to ask you to look at Group  
19 Exhibit No. 1, if you would, please.

20 A Yes.

21 Q Do you recognize those?

22 A Yes, I do.

23 Q Do you recognize those as the apartment you  
24 looked at the week toward the end of March or the first

1 part of April of '05?

2 A Yes, I do.

3 Q And you understood that to be Mr. Picl's  
4 apartment, correct?

5 A Yes.

6 Q Did those pictures truly and accurately depict  
7 how that apartment appeared as of the time you saw  
8 them?

9 A Actually, the pictures -- and I'm not saying  
10 this because you asked me to, but they don't even do it  
11 justice as what I saw in person was --

12 Q Were you --

13 A Yes.

14 Q What's depicted in there, that's the way it  
15 looked that day?

16 A Yes.

17 Q As you saw it all laid out, it looked --

18 A Worse.

19 Q Thank you.

20 Later on, did you have an occasion to  
21 interview Mr. Picl?

22 A Yes, I did. On two occasions.

23 Q And when were these?

24 A September 12th, 2005, and February 12th, 2006.

1 Q Between those two interviews, approximately  
2 how much time did you spend during this interview  
3 process?

4 A Oh, probably eight hours.

5 Q And was that time -- did that include both  
6 paper and pencil test as well as interview?

7 A I believe that it was at least a six-hour  
8 interview. I would say altogether it was more time  
9 than eight. Probably 11, 12 altogether. I'm not  
10 counting the paper and pencil part.

11 Q And so that would be in addition to the  
12 interview, the paper and pencil test?

13 A Yes.

14 Q What type of paper and pencil test did you  
15 give Mr. Picl?

16 A He took a variety of personality tests  
17 including the Millon Clinical Multiaxial Inventory or  
18 MCMI, the MMPI II which is the Minnesota Multiphasic  
19 Personality Inventory, Second Edition. He took the  
20 another personality assessment inventory -- or two  
21 others actually, the OMNI and the PAI. I also  
22 administered a verbal IQ test and a brief academic  
23 screening which really was unnecessary, but I decided  
24 do it anyway.

1 Q The results of your testing, what were -- what  
2 did they indicate to you on the results of the  
3 different tests?

4 A Well, there were a number of pathological  
5 elevations including those for bipolar disorder. There  
6 was elevations on the depression scales. There was  
7 elevations on obsessive compulsive disorder scales and  
8 substance abuse.

9 Q Now, with regard to those tests, it's my  
10 understanding, am I correct, that you used those in  
11 conjunction with an interview to reach a diagnosis?

12 A Yes.

13 Q And after reviewing those or in conjunction  
14 with those with regard to the index for indices or  
15 indices for bipolar, substance abuse, OCD, what were --  
16 did they -- were the testing results confirmed?

17 A Yes, they were.

18 Q And to a reasonable degree of psychological  
19 certainty, do you believe that what -- strike that.

20 To a reasonable degree of psychological  
21 certainty, do you have an opinion as to the  
22 psychological infirmities or illness that Mr. Picl  
23 suffered from?

24 A Yes. I believe to a reasonable degree of

1 psychological certainty that he was suffering from  
2 enough different combinations of illnesses that he was  
3 unable to function and think clearly and rationally.

4 Q Now, with regard to those illnesses, and we  
5 are talking about those illnesses, you tested him  
6 September of '05 and the early part of '06, correct?

7 A The testing occurred in September and there  
8 was a follow-up interview in February.

9 Q But you based your opinion on the assessment  
10 of both days, correct, the findings of both times?

11 A Well, yes. I wanted to do a follow-up to see  
12 if there was any change.

13 Q That's part of my question. With regard to  
14 these types of diagnoses, are they of a long-standing  
15 duration? How long would you have expected him to have  
16 been inflicted by those?

17 A Many years. Most of his adult life I would  
18 imagine. Now, of course, under stress symptoms can be  
19 exacerbated, become worse. Of course, substance abuse  
20 can affect them. Depending on medication, psychiatric  
21 medications can help, you know, reduce some of the  
22 symptoms, but never cause the condition to go away.

23 Q So your opinion would be then that he's been  
24 affected by these a good part of his adult life?

1 A Yes.

2 MR. TONER: I don't have any further questions at  
3 this time of the witness, Judge.

4 THE COURT: Mr. Evans.

5 MR. EVANS: Thank you, Judge.

6 CROSS-EXAMINATION (cont'd.)

7 BY MR. EVANS:

8 Q Ma'am, when you saw the defendant's  
9 apartment -- at least you were told that it was his  
10 apartment, correct?

11 A Yes.

12 Q The pictures that you have identified in I  
13 think it's Group Exhibit No. 1, ma'am?

14 A Yes.

15 Q Did the defendant know you were coming over?

16 A I don't know.

17 Q You saw the defendant in September '05 and  
18 February '06?

19 A Yes.

20 Q And did you see him alone?

21 A Yes.

22 Q No one was with him then?

23 A No.

24 Q Aside -- your opinions are based, as you have

1 told us, partly on how the defendant performed,  
2 Mr. Picl, on his numerous psychological tests that you  
3 gave him, correct?

4 A Yes.

5 Q And I assume the rest of your opinion is based  
6 on your interview, your clinical interview by Mr. Picl?

7 A Yes.

8 Q And that's separate and apart from these  
9 actual tests themselves, correct?

10 A Yes.

11 Q And you found the defendant to be highly  
12 intelligent, did you not?

13 A Yes.

14 Q As a matter of fact, I think you said his IQ  
15 was about 146 or 145?

16 A I can't remember. It was in superior range.

17 Q He graduated seventh in his class from Peoria  
18 Central High School?

19 A Yes.

20 Q And that he also ranked high in his  
21 undergraduate class rank at the University of Illinois,  
22 correct, ma'am?

23 A Yes.

24 Q And he told you at the time when you

1 interviewed him that he tests well, correct, page five  
2 of your report?

3 A He's talking about academic testing, yes.

4 Q Now, when you saw Mr. Picl he told you that he  
5 had been working as an assistant public defender, did  
6 he not?

7 A Yes.

8 Q He told you that he had gone through a divorce  
9 from his first wife?

10 A Yes.

11 Q And did he also tell you that that caused  
12 quite a bit of stress in his life, the breakup of his  
13 family?

14 A Yes.

15 Q And did he also tell you that at least at the  
16 time of your interview in September of 2005 -- strike  
17 that. In your interview of February of '06 that his  
18 second wife he was divorced from her now?

19 A I can't recall the details.

20 Q Page two, your third paragraph, ma'am. He  
21 told you he and his second wife are now divorced?

22 A Page two, third paragraph?

23 Q Yes, ma'am. During the second interview with  
24 Mr. Picl, comma?



1 A I'm sorry. I can't find an exact sentence,  
2 but I take your word for it.

3 Q Thank you. The defendant told you -- Mr. Picl  
4 did in both these interviews that he had drank for a  
5 number of years?

6 A I see where you are. Yes.

7 Q He told you that everyone in his family had  
8 some form of a mental problem?

9 A Just about.

10 Q Now, you found that the defendant, Mr. Picl  
11 appeared to be suffering at the time you saw him from a  
12 symptomatic of unresolved midlife crisis issues,  
13 correct, doctor?

14 A I did mention that in my report.

15 Q You mentioned it because you found that to be  
16 present in the defendant's case based on your --

17 A It's a possible.

18 Q -- clinical evaluation of him, correct,  
19 doctor?

20 A It's a theory.

21 Q In Mr. Picl's case, it's more than a theory;  
22 it says he appeared to be symptomatic of midlife crisis  
23 issues?

24 A It's one point. It's not the most important

1 conclusion in my report.

2 Q I'll get to that, doctor. That does appear in  
3 your report, correct, ma'am?

4 A Yes.

5 Q He told you that, that he felt somewhat  
6 unfulfilled and disillusioned in his profession?

7 A Yes.

8 Q He told you from time to time he thought about  
9 perhaps leaving the legal profession?

10 A Yes.

11 Q It's not unusual for a professional, be it  
12 medicine, law, or other business occupation to be  
13 unhappy with their job at any particular time perhaps?

14 A I wouldn't think so.

15 Q He told you that he could not believe that his  
16 first divorce was happening, correct? In other words,  
17 that was quite a traumatic stressful event in his life  
18 back in 1999? He told you that, too, didn't he,  
19 doctor?

20 A Yes.

21 Q He told you that after that divorce that he  
22 moved in with a friend in the Twin Towers apartment for  
23 about five months?

24 A I don't remember -- oh, there. Yes.

1 Q Thereafter, he moved into an apartment which I  
2 believe is the one shown in Group Exhibit No. 1?

3 A The one -- okay.

4 Q Is that correct, he moved out of the Twin  
5 Towers he told you and he moved to a --

6 A I guess. I don't recall the details.

7 Q Well, page four, second paragraph.

8 A Okay.

9 Q He then moved -- soon moved into an apartment  
10 on Moss Avenue where he remains. He told you that,  
11 doctor?

12 A Yes.

13 Q He told you he quit drinking for eight months,  
14 but then he began drinking due to the stress of a  
15 murder trial, correct?

16 A Yes.

17 Q He told you he was practicing -- still able to  
18 practice law and appear in court on a daily basis? He  
19 told you that, didn't he, doctor?

20 A Yes.

21 Q Now, when you talked with Mr. Picl, he told  
22 you that he had been looking around for ways to  
23 supplement his income and that one of the ways he had  
24 come up with was gambling, correct, page six, paragraph

1 three, ma'am?

2 A I read over this, but I can't remember every  
3 detail.

4 Q I understand.

5 A Yes.

6 Q And Mr. Picl told you that gambling was  
7 somewhat similar to stock and commodities trading?

8 A Yes.

9 Q And he told you that he had become a power of  
10 attorney of the victim in this case following an  
11 accident case he handled for her in Tazewell County?

12 A Yes.

13 Q He said that he had used some funds. Was that  
14 his actual words or were those your words, he had used  
15 some funds from her trust account to pay off some  
16 medical bills?

17 A Let's see. Was that --

18 Q Page six, paragraph five, bottom of page  
19 four -- I'm sorry -- bottom of paragraph four. He had  
20 used some funds from her trust account to pay off  
21 some --

22 A I don't have it in quotes. So I don't know if  
23 those were his exact words or just my summary of what  
24 he explained since it's not in quotes. I cannot say

1 they were his exact words.

2 Q Now, did the defendant tell you how many times  
3 he withdrew money from the account of Alice Varga?

4 A I don't know the exact amount, no.

5 Q Do you know how many times he went to the  
6 various banks in the Peoria area to withdraw money out  
7 of her account?

8 A I assume it was quite a number of times, but I  
9 don't know how many.

10 Q Do you know over what period of time his  
11 transactions relating to Mrs. Varga's account took  
12 place, ma'am?

13 A Well, he reports he began using the victim's  
14 money in 2001 or 2002 and then he was arrested in 2005.  
15 So I imagine during that time period.

16 Q By the way, did Mr. Picl tell you how much  
17 money he took from the victim in this case?

18 A I actually remember discussing it and he  
19 didn't know exactly. It was significant, but he was  
20 unable to state exactly how much at that time.

21 Q Did he give you an approximate amount, ma'am?

22 A I can't remember. I know it was discussed. I  
23 don't know if it's in my report, but it's significant,  
24 six figures.

1 Q Six figures. Page 16 of your report, first  
2 paragraph, about a third of the way down there, doctor.

3 A Okay.

4 Q Mr. Picl reports that he owes \$400,000?

5 A Yes.

6 Q Was that his words, \$400,000?

7 A I think he said -- it was in the ballpark  
8 around that range, yes. That must have been a number  
9 he gave me at one point.

10 Q Now, the defendant also when he talked with  
11 you at either one of these two visits, I don't know  
12 which one it was, he told you that he had received a  
13 check from the proceeds of the sale of her home in the  
14 amount of I believe it was \$78,000. Page six, doctor.

15 A Yes. I remember seeing 78,000.

16 Q Okay. He told you he should have put the  
17 victim's money into an account, but he didn't, correct?

18 A Correct.

19 Q And I think he told you at that time that he  
20 had no volitional control over my actions at that time.  
21 That's in quotes.

22 A Yes.

23 Q That's his own words, correct?

24 A Yes.

1 Q Did you question him on the basis for his  
2 statement that he had no volitional control over taking  
3 this woman's money?

4 A Well, the whole point we were talking about  
5 was the alcoholism, gambling, and mental illness.

6 Q Did you talk with him about what he meant when  
7 he used the terms that he had no volitional control  
8 over my actions at that time? Did you question on that  
9 statement?

10 A No, not on that statement directly. It was  
11 assumed.

12 Q You just assumed what he told you was correct?

13 A I was just interviewing him. So I just wrote  
14 down what he said.

15 Q That's a self-serving statement, would you not  
16 agree with me, doctor?

17 A Could be.

18 Q I had no control over what I did?

19 A That's what he told me.

20 Q Did you go through the transactions relating  
21 to the theft of monies from Alice Varga in detail?

22 A Not in detail. I saw some records, but that  
23 wasn't my purpose. That's not my job.

24 Q That's not your job. The defendant, Mr. Picl,

1 entered treatment only after he was arrested in this  
2 case, correct, ma'am?

3 A I don't recall if he was ever in treatment  
4 before that. I don't -- I know he did enter after his  
5 arrest.

6 Q You -- you are aware that Dr. Lee, Sohee Lee,  
7 a psychiatrist had treated the defendant for at least a  
8 period of time prior to when you first saw Mr. Picl in  
9 2005; you know that, don't you?

10 A Yes.

11 Q The defendant also told you I believe in at  
12 least one of your interviews that he had not filed  
13 income taxes in the mid 1990's, correct, doctor?

14 A Correct.

15 Q And that he had had to ask for his family for  
16 money to pay off those debts; you were aware of that,  
17 ma'am?

18 A What -- yes.

19 Q The defendant told you, did he not, doctor,  
20 that he considered the money of Mrs. Alice Varga to be  
21 his money in a way?

22 A Yes.

23 Q And that he had used some of it to pay her  
24 bills?



1 A Yes.

2 Q Did he ever tell you if he paid back any of  
3 that money?

4 A He said that he had intended to, but I don't  
5 know that he paid any back.

6 Q You also based on your examination in talking  
7 with Mr. Picl determined that he had no evidence of  
8 thought disorders, correct?

9 A When we talk about thought disorders we are  
10 talking about hallucinations, delusions, things like  
11 that, that's correct.

12 Q Exactly. You found none of that to be present  
13 in Mr. Picl's case?

14 A Correct.

15 Q No delusions, hallucinations or suicidal  
16 ideation, correct?

17 A No current suicidal ideation.

18 Q Did you use the term "current" in your report  
19 based on the third paragraph?

20 A In the mental status section?

21 Q Yes.

22 A Mental status section is the current mental  
23 status of the individual.

24 Q When you wrote the report, the date of this

1 report, you were talking about no suicidal  
2 identification at that time, right, doctor?

3 A Right.

4 Q That was 3/20/06, the date of your report,  
5 ma'am. The recent --

6 A That was -- it was written prior to the  
7 signature.

8 Q And you reviewed it for accuracy?

9 A Yes.

10 Q Any clerical errors and you signed it and  
11 dated it March 20th, '06?

12 A That's correct.

13 Q You gave the defendant, Frank Picl, a number  
14 of so-called psychological tests, correct, ma'am?

15 A Yes.

16 Q You didn't give him a malingering test, did  
17 you?

18 A There are scales on the test to assess for  
19 malingering, lying, faking bad, faking good, et cetera?

20 Q There are malingering tests independent from  
21 those questions built into the different tests you gave  
22 him, correct, doctor?

23 A There are other malingering tests?

24 Q Right.

1 A Yes.

2 Q And you gave him none of those tests, did you?

3 A They don't relate to the tests I gave him. We  
4 have built in scales for that.

5 Q And you relied on your own ability to  
6 determine if Mr. Picl was being completely honest or  
7 not, correct, doctor?

8 A No, I did not. I relied upon the tests --

9 Q The tests themselves?

10 A Data. The lie scale, fake index.

11 Q Your assessment of personality functions which  
12 Mr. Toner alluded to, you found many things. I won't  
13 go through them in detail. Just a couple of questions.  
14 You found Mr. Picl to often be irritable, impatient and  
15 easily annoyed, correct?

16 A That is what the test results revealed, yes.

17 Q That's not unusual; many people exhibit that  
18 characteristic, right, doctor?

19 A Not to a pathological point on a personality  
20 test.

21 Q He tends to call attention to himself with his  
22 appearance and behavior?

23 A Yes.

24 Q Another finding, he criticizes, demeans, and

1 offends others?

2 A That's what the personality test showed.

3 Q He lacks drive?

4 A Yes.

5 Q Perseverance?

6 A Yes.

7 Q And at times he's irresponsible?

8 A Yes.

9 Q We talked about his IQ in the superior range?

10 A Yes.

11 Q And the personality inventory, the PAI test,

12 am I correct that certain of the indicators fell

13 outside of the normal range suggesting that Mr. Picl

14 may not have answered in a completely forthright

15 manner?

16 A What page are we on there?

17 Q Eleven, third paragraph, ma'am. Third

18 sentence, third paragraph.

19 A Yes. On that test.

20 Q And you found that based on that test?

21 A Yes.

22 Q Correct?

23 A That's true.

24 Q You indicated his use of alcohol had problems

1 in his life concerning his interpersonal relationships?

2 A Yes.

3 Q Difficulties on the job?

4 A Yes.

5 Q And possible health complications?

6 A Yes.

7 Q And are you aware of the defendant's  
8 reputation as a trial lawyer here in the Peoria County  
9 area?

10 A Well, I have not worked with him -- I never  
11 worked with him. I know he was a trial lawyer, but I  
12 don't really know further than that.

13 Q During the time period that we are talking  
14 about, from 2000 to 2005, do you know the manner in  
15 which he handled the representation of his clients in  
16 court?

17 A No, I don't.

18 Q Your diagnoses of Mr. Picl, diagnostic  
19 impressions as you define them, are based on the DSM;  
20 is that correct?

21 A Yes.

22 Q And you find DSM to be authoritative in your  
23 field, doctor?

24 A Yes.

1 Q With regard to your findings, would you agree  
2 that the diagnoses that you found in the defendant's  
3 case in and of themselves didn't cause the defendant to  
4 steal this woman's money? Could you agree with that  
5 statement?

6 A That's a difficult question to answer. That  
7 would need some elaboration.

8 Q Well, the fact that he was an alcoholic, did  
9 that cause him to take this woman's money?

10 A Well, no.

11 Q The fact that he had bipolar II disorder, did  
12 that cause him to take this woman's money?

13 A No.

14 Q The fact that he has an obsessive compulsive  
15 apparently messy apartment, did this cause him to take  
16 her money?

17 A No.

18 Q How about the fact that you found him to have  
19 a narcissistic personality disorder, did it cause him  
20 to take the money?

21 A No.

22 Q The fact that he had gambled, did that cause  
23 him to take this woman's money?

24 A No.

1 Q Now, you use the term mental illness I  
2 think -- and I'm just about done, doctor. That's a  
3 term of art, is it not, in your profession?

4 A A term of what?

5 Q Art.

6 A Art?

7 Q Yeah. I mean, illness in medicine is illness  
8 as such as osteoporosis or brain cancer, correct?  
9 Those are other illnesses?

10 A I guess.

11 Q So when you use the term illnesses, is that  
12 something from the DSM?

13 A Mental disorders is the actual --

14 Q That's what I was going to ask you. Would you  
15 agree with the statement in the DSM that in most  
16 situations, doctor, the clinical diagnosis of a DSM IV  
17 mental disorder is not sufficient to establish the  
18 existence for legal purposes of a mental disorder,  
19 mental disability, mental disease or mental defect?  
20 Would you agree with that?

21 A You are now using legal terms.

22 Q No. I'm using the terms in the use of a DSM  
23 IV, in a forensic setting from the authoritative text  
24 you told us of the DSM. Would you agree with that

1 statement?

2 A Could you read it to me again?

3 Q Sure. In most situations the clinical  
4 diagnosis of a DSM IV, mental disorder is not  
5 sufficient to establish the existence for legal  
6 purposes of a mental disorder or mental disability, a  
7 mental disease or mental defect?

8 A It says in most... That's -- mental defect is a  
9 legal term. Mental disorder is a psychological term.  
10 So I suppose you could say in most cases, but --

11 Q Let me ask you about Frank's case. These  
12 diagnoses, are they mental diseases, mental illness,  
13 mental defects or mental disorders?

14 A Mental disorders.

15 Q Disorders of personality?

16 A Well, they are all mental disorders.

17 Q Right. Alcoholism which you found present in  
18 the defendant's family, you indicated that the  
19 defendant, at least in your opinion, he also has that  
20 diagnosis that you made, correct, doctor?

21 A Yes.

22 Q And you indicated that he may have little  
23 control over that predisposition he has for addictive  
24 actions on his part, correct? I'm reading page 19.



1 A Well, people that -- there is a gene for  
2 alcoholism we have discovered. So the only cure is  
3 abstinence.

4 Q So in other words, if you don't take that  
5 first drink, I think they talk about in AA, you are not  
6 going to get drunk, correct?

7 A Correct.

8 MR. EVANS: Thank you, doctor. That's all I have.  
9 Thank you, Judge.

10 THE COURT: Mr. Toner.

11 REDIRECT EXAMINATION

12 BY MR. TONER:

13 Q Couple of follow-up questions, if I may,  
14 doctor.

15 You indicated in response to thought  
16 disorders, correct, that -- you mentioned those thought  
17 disorders?

18 A Yes.

19 Q Thought disorders is different than an  
20 impairment in judgment?

21 A Thought disorders are generally used for  
22 schizophrenia, psychosis, that's generally what we  
23 mean.

24 Q You mentioned, I think, four tests you gave

1 Mr. Picl, correct?

2 A Yes.

3 Q And one of the four tests there was a psych --  
4 an elevated trigger to wonder whether or not he'd been  
5 forthright on the PAI test, correct?

6 A Well, the -- yet at the same time there was no  
7 indication that he had -- well, yeah. There was  
8 something about that in the validity scale.

9 Q But with regards to the other three tests  
10 there was no indication that there was any attempt?

11 A No, there was none.

12 Q And, in fact, in the same paragraph on -- how  
13 many tests -- strike that.

14 Mr. Evans has asked you about a messy  
15 apartment and a midlife crisis. Those are not criteria  
16 found or disorders mentioned in the DSM, are they?

17 A No.

18 Q The recognized ones that you have mentioned  
19 are, however, found in the DSM, correct?

20 A Correct.

21 Q Now, you indicate in response to counsel's  
22 question that the alcohol, the OCD, the bipolar did not  
23 cause the stealing, correct?

24 A Correct.

1 Q You are talking about something causing it.  
2 You would be talking about insanity, correct?

3 A Well, as we know, you know, mental illnesses  
4 together cause people to make poor judgments and have  
5 problems in functioning in multiple areas, but for an  
6 actual cause --

7 Q But with regard to the impairment of judgment  
8 as he -- even as Mr. Picl was acting here, do you  
9 believe that these afflictions that you have found to a  
10 reasonable degree of psychological certainty had an  
11 adverse impact and caused his judgment to be impaired  
12 in doing what he was doing?

13 A Definitely.

14 THE COURT: Mr. Evans.

15 RECROSS-EXAMINATION

16 BY MR. EVANS:

17 Q Doctor, Mr. Picl suffers from no thought  
18 disorders whatsoever, does he? There's no delusions  
19 present, correct, no hallucinations present?

20 A He could have been mildly delusional during a  
21 manic episode, but as far as --

22 Q Did you find that to be the case, doctor?

23 A When I talked to him, no, he was not  
24 delusional or hallucinating.

1 MR. EVANS: That's all I have. Thank you.

2 THE COURT: Mr. Toner.

3 MR. TONER: Can I have one second, Judge.

4 REDIRECT EXAMINATION

5 BY MR. TONER:

6 Q The indication, doctor, that there was no  
7 evidence that thought disorder was in the section  
8 incaptioned mental status, correct?

9 A Correct.

10 Q And so if I understood your earlier testimony,  
11 that would be limited to that time that you were  
12 talking to him, correct?

13 A Yes.

14 Q And that does not rule out the possibility  
15 that at other such times he may have in a manic phase  
16 been under a delusion?

17 A That is correct.

18 MR. TONER: Nothing further.

19 RECROSS-EXAMINATION

20 BY MR. EVANS:

21 Q Doctor, you found no evidence that even at  
22 some other time there may have been a delusion, did  
23 you?

24 A Well, yes because there was elevations on the

1 bipolar manic scale.

2 Q Well, are you aware that his treating  
3 psychiatrist has indicated that he had no thought  
4 processes affected, only the mood disorders?

5 A I disagree with the psychiatrist in that area.

6 Q You disagree with Sohee Lee?

7 A Yes.

8 Q It's your feeling that you would -- in other  
9 words, you are testifying differently with regard to  
10 the defendant's diagnosis?

11 A I had some information that Dr. Lee did not  
12 have.

13 Q And you have told us that the defendant does  
14 suffer, though, as a mental defect, correct, to use the  
15 term properly?

16 A I said disorder.

17 Q Mental disorder?

18 A Yes.

19 Q That he has bipolar II is your diagnosis,  
20 correct?

21 A Yes.

22 MR. EVANS: Thank you.

23 THE COURT: Mr. Toner.

24

1 REDIRECT EXAMINATION

2 BY MR. TONER:

3 Q Very briefly. In response to Mr. Evans'  
4 question you indicated that you had a disagreement with  
5 regard to Dr. Lee relating to a particular area?

6 A Relating to obsessive compulsive disorder  
7 and -- well, I do believe that Dr. Lee diagnosed him  
8 with bipolar II disorder as well. So I agree with  
9 that.

10 Q With regard to -- you mentioned though the  
11 elevation scale on the manic episodes?

12 A Yes.

13 Q You had something there that I believe you  
14 indicated might show that at some point that may have  
15 been there?

16 A Well, there were still elevations on the  
17 depressive and on the manic scale as well.

18 MR. TONER: Nothing further. Thank you.

19 MR. EVANS: No further questions.

20 THE COURT: You can step down. Thank you.

21 (Witness excused.)

22 MR. TONER: Judge, at this time, I would offer the  
23 Group Exhibit No. 1, the pictures, as evidence subject  
24 to counsel's objection.

1 THE COURT: Any objection?

2 MR. EVANS: I have no objection, Judge.

3 THE COURT: Group Exhibit 1 is admitted without  
4 objection.

5 (Defendant's Group Exhibit No. 1 was  
6 admitted into evidence.)

7 MR. TONER: Judge, we have no other witnesses for  
8 today. We have the one for tomorrow is all.

9 THE COURT: What time did you tell this witness?

10 MR. TONER: I was going to check on that. I  
11 believe I told him 9:00.

12 THE COURT: Why don't we just plan on 9:15 and  
13 we'll go from there. Anything you want to add or  
14 subtract, Mr. Evans?

15 MR. EVANS: No, Your Honor.

16 THE COURT: Let's break for today and we'll  
17 reconvene at 9:15. Once again, I think we are in this  
18 Courtroom 213.

19 (Which were all the proceedings had on  
20 said day in said cause.)

21

22

23

24

IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
PEORIA COUNTY, ILLINOIS

REPORTER'S CERTIFICATION

I, ROBIN L. ROBERTS, CSR, RPR, an Official Court Reporter in the Tenth Judicial Circuit of the State of Illinois, do hereby certify that I reported in machine shorthand the foregoing proceedings had before the HONORABLE STEPHEN A. KOURI, in the above-entitled cause, and that I thereafter caused the same to be transcribed into typewritten form which I now certify to be a true and accurate transcription of same.

Dated this 6th of April, 2010.

Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317



1 IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
2 PEORIA COUNTY, ILLINOIS

3 THE PEOPLE OF THE )  
4 STATE OF ILLINOIS, )  
5 )  
6 Plaintiffs, )  
7 )  
8 v. ) Case No. 2005-CF-275  
9 )  
10 FRANK M. PICL, )  
11 )  
12 Defendant. )

13 SENTENCING HEARING

14 REPORT OF PROCEEDINGS of the hearing had before  
15 the HONORABLE STEPHEN A. KOURI, Judge of said  
16 Court, on the 27th of September, 2006.

17 APPEARANCES:

18 MR. KEVIN W. LYONS  
19 State's Attorney of Peoria County, by  
20 MR. LARRY EVANS  
21 Assistant State's Attorney  
22 REPRESENTING THE PLAINTIFF;

23 MR. HUGH TONER  
24 Attorney at Law  
REPRESENTING THE DEFENDANT.

REPORTED BY: Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317

Exhibit 22-8

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I N D E X

DEFENDANT'S WITNESSES

BOB GILROY

Direct Examination by Mr. Toner 7

Cross-Examination by Mr. Evans 12

1 THE COURT: Mr. Toner, are you ready to go or you  
2 need a few minutes?

3 MR. TONER: Judge, if I may, I'm waiting for  
4 Mr. Gilroy. I have called. I'm expecting him at 9:00.  
5 There was no answer at TASC when I called about ten  
6 minutes ago. If I could have a few minutes.

7 THE COURT: No problem. Let's plan on 9:45 and see  
8 if he's here.

9 MR. TONER: Thank you.

10 (Recess taken.)

11 THE COURT: Let's go on the record. State of  
12 Illinois versus Frank Picl, Case No. 05-CF-275.  
13 Parties are present with their attorneys. And we are  
14 discussing some letters that have been tendered by the  
15 defense for me to consider.

16 Mr. Evans, are you objecting to all of them  
17 or --

18 MR. EVANS: I haven't even seen the other ones,  
19 Judge.

20 THE COURT: Take a moment, look at those. And did  
21 you need to make another phone call?

22 MR. TONER: I'm going to go out and do that.

23 THE COURT: We'll reconvene in about five or ten  
24 minutes. And Mr. Evans can look at the letters.

1 (Recess taken.)

2 THE COURT: Back on the record. Mr. Toner,  
3 anything new to report?

4 MR. TONER: Judge, the only report I would have is  
5 that Mr. Gilroy left the jail at 9:38. Apparently, he  
6 is on his way.

7 THE COURT: Let's talk about these letters.  
8 Mr. Evans, any objection?

9 MR. EVANS: Judge, I would have no objection to any  
10 of the letters other than the one letter written by  
11 Mr. Hoehne, the letter that he was given to defense  
12 counsel. The information in that letter is -- there's  
13 no foundation. It leaves the impression with anyone  
14 who reads it that there is \$278,000 available to Alice  
15 Varga's estate.

16 THE COURT: I understand that this is an assignment  
17 of a life insurance policy.

18 MR. EVANS: It's a term life insurance policy,  
19 Judge, that expires at age 75. So unless the defendant  
20 were to die within the next 21 years it will have no  
21 value whatsoever, Judge.

22 THE COURT: I understand -- of course, I don't see  
23 Mr. Hoehne here.

24 MR. EVANS: Right.

1 THE COURT: But --

2 MR. EVANS: Judge, I can represent I have talked  
3 with Mr. Hoehne. So that's how I'm aware of the  
4 assignment and the type of life insurance policy it is.  
5 And what one -- last week at least there was this  
6 ongoing discussion about a possible assignment.  
7 Apparently, this evidence shows an assignment, but I  
8 guess my objection, Judge, is that as long as I  
9 wouldn't be foreclosed from arguing those very facts,  
10 I'm representing to the Court that it's only of any  
11 value should the defendant die.

12 THE COURT: Well --

13 MR. EVANS: There is no cash surrender --

14 THE COURT: I understand. I don't view it as  
15 hollow, but I understand the limitations of it.

16 MR. EVANS: Okay, Judge.

17 MR. TONER: And I would with regard to the fact  
18 that it is a term policy, et cetera, I have no  
19 disagreement with those facts. That's exactly  
20 accurate, Judge.

21 THE COURT: Okay. All right. Well, I guess we are  
22 still at a standstill until Mr. X shows up to testify.

23 MR. TONER: Apparently, so. I do, again,  
24 apologize.

1 THE COURT: I'm not upset with anybody, but, you  
2 know, at some point, I'm not saying we are anywhere  
3 near it, but at some point, we may just say we are  
4 moving on. So I'll be back in my chambers back there  
5 if somebody wants to call me when we are ready to go.

6 MR. EVANS: Judge, may we approach the bench?

7 THE COURT: Yeah.

8 (Whereupon proceedings were had at the  
9 bench out of the hearing of the court  
10 reporter.)

11 (Recess taken.)

12 THE COURT: Let's go back on the record. Mr.  
13 Toner, ready to proceed?

14 MR. TONER: We are, Your Honor.

15 We call Dr. Gilroy.

16 THE COURT: Sir, please raise your right hand for  
17 the clerk.

18 (Thereupon the witness was duly sworn.)

19 THE COURT: Have a seat. Go ahead.  
20  
21  
22  
23  
24

1 BOB GILROY  
2 called as a witness on behalf of the Defendant, after  
3 having been first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TONER:

7 Q Please state your name and spell your last  
8 name for the court reporter.

9 A My name is Bob Gilroy, G-I-L-R-O-Y.

10 Q Your occupation or profession?

11 A I work for TASC, Treatment Alternatives for  
12 Safe Communities. I'm a case manager.

13 Q Prior -- how long have you worked for TASC?

14 A I have been at TASC three and a half years.

15 Q Prior to that, what was your occupation?

16 A I have worked in the addictions field. I was  
17 a clinical corporate clinician for the Illinois  
18 Institute for Addiction Recovery. I was -- that's at  
19 Proctor for five years. I worked a year and a half to  
20 help develop the intensive outpatient program for  
21 adolescent at White Oaks. Prior to that, I was at  
22 Pekin Hospital's Lifeway Adolescent Chemical Dependency  
23 Program for 11 years where I was a program coordinator.

24 Q How long have you been involved in the

1 addiction recovery management area?

2 A Since 1985.

3 Q So little bit more than 20 years now?

4 A Yes.

5 Q What type of education or background have you  
6 had in that field?

7 A Primarily, as far as college only have an  
8 associate's. I work certified through IAODAPCA, and  
9 I'm a CRADC which is Certified Reciprocal Alcohol and  
10 Drug Counselor, and also I'm certified as a MISA,  
11 Mentally Ill Substance Abuse, work with those clients.  
12 I've also been in the field, worked with compulsive  
13 gamblers for approximately four years. I also did  
14 training around the state with compulsive gambling.

15 MR. TONER: At this time, I tender the witness as  
16 an expert in the area of addiction behavior and subject  
17 to Mr. Evan's right to cross-examine.

18 THE COURT: Mr. Evans?

19 MR. EVANS: I would object to addiction behavior.  
20 I think that requires a psychological and medical  
21 background, but certainly I would accept him as an  
22 expert in the field of recovery management and his work  
23 with addicts, Judge.

24 THE COURT: Any response to that, Mr. Toner?



1 MR. TONER: That would be fine for this purpose,  
2 Judge.

3 THE COURT: I'll -- with that limitation that  
4 Mr. Evans recited, I'll accept the witness as an  
5 expert.

6 MR. TONER: Thank you.

7 MR. EVANS: Thank you.

8 MR. TONER: Q Mr. Gilroy, do you know Frank  
9 Picl?

10 A Yes, I do.

11 Q Can you tell the Judge, please, how it is you  
12 met him and how is it you know him?

13 A Mr. Picl was referred to TASC by his attorney  
14 Mr. Toner. I assessed, evaluated Mr. Picl on  
15 December 7th, 2005.

16 Q What were the results of that assessment?

17 A At that time, he -- we felt or I felt that he  
18 met TASC acceptability criteria. He had verification  
19 of completion of primary inpatient as well as the  
20 continuing care program, and at that time we felt that  
21 we would do office monitoring with him.

22 Q So he's TASC appropriate or TASC eligible for  
23 your standards?

24 A Exactly.

1 Q What type of -- when you say office  
2 monitoring, can you advise the judge what that consists  
3 of?

4 A What we would do, would continue to see him on  
5 a monthly basis. When I saw him, that's what we called  
6 service plan activities between 30 minutes and an hour  
7 each time. Also required him to attend a minimum of  
8 two to three recovery meetings a week. Also encouraged  
9 him to access any type of mental health counseling at  
10 that time.

11 Q And do you monitor compliance with regard to  
12 those things that you have mentioned?

13 A Yes.

14 Q And with regard to the AA follow-up, to the  
15 best of your knowledge, has he been compliant with  
16 that?

17 A Yes, he has through the whole time, the tenure  
18 that I have seen him. I have seen him approximately, I  
19 believe, nine times.

20 Q And that's since last December?

21 A Uh-huh.

22 Q With regard to the mental health issues  
23 follow-up, compliant there as well?

24 A Yes. My understanding he has been seeing

1 someone at Antioch Group.

2 Q For the counseling issue?

3 A Exactly.

4 Q Can you based upon your assessment of him give  
5 an indication -- you found him acceptable last  
6 December. Do you still feel that way now?

7 A Yes. He's still been in compliance with TASC.  
8 There's been no reason for us to give him jeopardies or  
9 to terminate him unsuccessfully.

10 Q Does that happen occasionally?

11 A Pardon?

12 Q Does it occasionally happen when you would  
13 terminate somebody unsuccessfully during even just the  
14 office monitoring period?

15 A Exactly. If a client would not show up for a  
16 set appointment, failure to call, no shows, continued  
17 to be involved in addictive behaviors, drinking or  
18 whatever, using drugs, that's pretty obvious, and so  
19 that's noncompliance.

20 Q None of those situations occurred with him?

21 A No.

22 MR. TONER: I don't have any further questions.

23 THE COURT: Mr. Evans.

24 MR. EVANS: Thank you.

1 CROSS-EXAMINATION

2 BY MR. EVANS:

3 Q Sir, Mr. Picl came to you only after he was  
4 arrested, correct?

5 A Correct.

6 Q And you were working with TASC -- you only  
7 deal with those individuals who come to you after they  
8 have been arrested, correct?

9 A Correct. It takes a referral from the legal  
10 system.

11 Q In this case, it was his own attorney who  
12 brought Mr. Picl into your office?

13 A Correct.

14 Q Not -- you say that the defendant met TASC  
15 acceptability. That acceptability is set out in a  
16 statutory guidelines in terms of what makes a person  
17 acceptable or nonacceptable; is that correct, sir?

18 A Correct.

19 Q And at least with regard to those items such  
20 as lack of a crime of violence, prior residential  
21 burglaries, things like that that are set out in the  
22 statute, he didn't have any of those disqualifying  
23 factors, did he, sir?

24 A Correct.

1 Q And he was acceptable because of the fact that  
2 he in your opinion and based on what he told you and  
3 I'm sure -- did you talk with him for a period of time,  
4 sir?

5 A Yes.

6 Q You found him to be you said alcohol  
7 dependent?

8 A Correct. That was the diagnostic impression.

9 Q Generally referred to as alcoholism, sir?

10 A Sure.

11 Q And he was acceptable because he has continued  
12 to show up in your office along with attendance at  
13 numerous AA meetings that we learned about today,  
14 correct?

15 A Correct.

16 Q You don't know anything about the particular  
17 facts of this case, do you, sir?

18 A Not necessarily. Only what Mr. Picl may have  
19 reported to me which is very minimal.

20 Q Did he tell you how much money he took from  
21 this woman?

22 A Yes.

23 Q How much?

24 A I believe it was 240,000 or 250,000.

1 Q Did he tell you over what period of time he  
2 took this money?

3 A No.

4 Q But regardless of the facts of the particular  
5 crime, you determined him to be acceptable based on  
6 your criteria, sir; is that right?

7 A Right.

8 MR. EVANS: Thank you.

9 THE COURT: Mr. Toner?

10 MR. TONER: Nothing on that. Thank you very much.

11 THE COURT: You can step down. Thank you.

12 (Witness excused.)

13 MR. TONER: That would conclude our evidence, Your  
14 Honor.

15 THE COURT: Parties need a few minutes or are you  
16 ready to make argument?

17 MR. EVANS: Judge, I would be ready to argue. If I  
18 could just move the podium a bit so I could talk?

19 THE COURT: Okay.

20 MR. EVANS: May I proceed, Your Honor?

21 THE COURT: Yes, you may.

22 MR. EVANS: Your Honor, as we have sat here and  
23 listened, to the evidence with regard to what is  
24 certainly a difficult decision for the Court, the State

1 is certainly aware of that. I would point out to Your  
2 Honor how close, how very close the defendant, Frank  
3 Picl, came to getting away with this. We would not be  
4 here today perhaps if it hadn't been for Mr. Paul  
5 Kelly, if it hadn't been for the executive director of  
6 Independence Village approaching Kevin Lyons and  
7 telling him that there were some payment problems. As  
8 Mr. Kelly told you, Alice Varga, 85-year-old woman, a  
9 widow, was living at Independence Village. She became  
10 a widow, as the Court realizes from the presentence  
11 letters of her family, in 1982. She was a woman who  
12 was receiving \$1,378 per month as I indicated to the  
13 Court at the time of the original plea.

14 The victim, Mrs. Varga, had, however,  
15 substantial assets. She had assets remaining since her  
16 husband died in 1982. And I assume they accumulated to  
17 some point over the period of years. At the time when  
18 the defendant was acting as her lawyer in a position of  
19 trust, he took that money. He wrote checks. He went  
20 to the bank -- and I'll talk about that in a little  
21 further detail, but I want to point out to the Court,  
22 we have heard a lot about the defendant, and I always  
23 have difficulty and I think the Court has been aware of  
24 it, referring to the defendant as the defendant, as we

1 all know him as Frank, Frank Picl. Today, he's the  
2 defendant. And it didn't have to come to this, Judge.

3 When Paul Kelly approached Mr. Lyons, an  
4 investigation began. Because of just some  
5 irregularity, some NSF, some checks that weren't paid  
6 in a timely manner. That's what triggered this. The  
7 defendant did not go to Mr. Penn, his immediate  
8 supervisor, and say, look, I have done some bad things.  
9 He didn't go to another member of the bar. He didn't  
10 turn himself in. He was caught. He was caught.

11 And this 85-year-old woman from that point on  
12 when she was told what Frank did went downhill. Her  
13 nice apartment, her nice location at Independence  
14 Village that she thought she would spend the rest of  
15 her days at didn't come to happen. She stayed for a  
16 period of time. Her spirit was broken. She'd given up  
17 on life and she eventually was transferred to Bellwood  
18 Nursing Home in Peoria County and died a few months  
19 after the defendant was arrested.

20 We have heard many witnesses, and certainly  
21 the witnesses that have come forward, they did that for  
22 their own reasons. They are well-meaning people. They  
23 are well-intentioned. The Reverend, other individuals  
24 that know Frank, numerous people and in the community,



1 both legal and nonlegal knew Frank Picl, the defendant.  
2 They came here, they talked on his behalf. His  
3 immediate supervisor, Tim Penn, came here, talked with  
4 us, told us what he told us about Frank, one of the  
5 best trial lawyers I have seen, one of the best.

6           Against all of those witnesses, Judge,  
7 against -- if this case were to be decided by this  
8 Court on the number of witnesses the defense is allowed  
9 by the statute to put on versus the number of witnesses  
10 that the State is permitted to put on, it would be an  
11 easy call for the Court. We would just say, well, they  
12 had over 15 witnesses, the State just had Paul Kelly  
13 and a couple of the sisters-in-law, so the Court can  
14 sentence based on that, but, as we know, Your Honor,  
15 that's not how it works.

16           One witness for the State, two letters. Alice  
17 Varga's sisters-in-law and myself, Judge, against all  
18 those people well-intentioned who came up and told of  
19 the defendant's recovery from alcoholism, and there's  
20 no question, there's no question, the defendant is and  
21 was an alcoholic. He has other disorders, also, which  
22 I'll touch upon, but I would ask the Court not to focus  
23 just on these issues of the defendant and these  
24 well-intentioned persons who came up and they did break

1 their anonymity, and certainly I respect them for that  
2 and for their loyalty. They showed Frank a lot more  
3 loyalty and respect than he showed his client, but  
4 addictive individuals and sometimes individuals in AA,  
5 they are very self-focused. They are concerned about  
6 their own recovery, as they should be, as I think these  
7 witnesses talked about, but this case is not about  
8 alcoholism. This case is about an 85-year-old woman  
9 who had her life savings taken, not by a robber, but by  
10 her own lawyer. This case is not about just Frank Picl  
11 and how this has impacted his family or his life.  
12 That's what the focus has been on for these number of  
13 days is Frank, Frank, Frank, poor Frank.

14           When we look at the defendant's life, superior  
15 intellect, the upper ranges of superior. I think it  
16 was 145 to 146 IQ. They are numbers. The defendant  
17 was, as I referred to him, a good talker. The good  
18 doctor told me I must have meant some other word, that  
19 he was able to -- that he was eloquent or words to that  
20 effect. His friends testified to how the defendant was  
21 able to talk, he was able to be gregarious, he was able  
22 to do all those things when he was with people. He was  
23 able to stand in front of juries in this courthouse and  
24 make strong persuasive arguments. He represented his

1 clients well.

2 He has a wonderful family. It's been  
3 difficulty, certainly, I know for the defendant to sit  
4 in court with his daughters, his sisters sitting behind  
5 him. It should never happen. It should never have  
6 come to this, but it did. He went to law school. He  
7 was in the upper ranges of his undergraduate class. He  
8 graduated in 1977 from law school. Here is a man who  
9 had everything, Judge, intellect, ability, personality  
10 and the ability to handle clients' problems. He had it  
11 all.

12 We have heard he was sloppy at times at work,  
13 that his areas of work were not the neatest as his  
14 secretary -- former secretary told us. A lot of us  
15 handle businesses, legal practice. You could go into  
16 anyone's courtroom in the legal profession or in the  
17 professional community and there are different styles.  
18 There are some people who keep their papers perfectly  
19 neat. There are some that are sloppy. There are some  
20 that are disorganized. There are some that  
21 procrastinate. Some of us like to get some things done  
22 early. Some of us like to get things done under a time  
23 constraint. Whatever worked. And in the defendant's  
24 case, I submit that is not evidence of, oh, he has OCD,

1 obsessive compulsive disorder. He was perhaps just not  
2 a real neat office organizer. There's many of us like  
3 that, but it isn't just about Frank.

4 And I keep drawing the Court's attention as we  
5 sat and listened to all of these well-intentioned  
6 witnesses, it was easy at times when I was thinking of  
7 what they were saying to be distracted that it is all  
8 about Frank, it is all about poor Frank. It is all  
9 about the poor hand that Frank was dealt in life, and,  
10 Your Honor, it is my position that is not the case.

11 Does he have problems? Yes. Depression. At  
12 times he's depressed. At times, his treating  
13 psychiatrist, not the hired experts, but the treating  
14 psychiatrist, Dr. Lee, told us he has a form of  
15 depression. It is a mood disorder, not a thought  
16 disorder. He explained the difference, a mood  
17 disorder, bipolar I, with swings in moods. Sometimes  
18 he feels good. Sometimes he doesn't feel good. Well,  
19 who amongst us in the courtroom don't have good days,  
20 don't have bad days, don't feel high, don't feel down.  
21 That's life. That's not intrinsically unique to Frank  
22 or alcoholics or persons with a diagnoses of bipolar I.  
23 That is life. You deal with it. This argument that  
24 his life was completely out of control, he couldn't

1 control anything he did, Judge, I submit respectfully  
2 is absolutely untrue, incorrect, because the people who  
3 know him best, the people who saw Frank work and  
4 practice knew that he was in control. Was he out of  
5 control with his drinking? Perhaps. Should he have  
6 not picked up that next drink or that third drink or  
7 that fifth drink at Whitey's? Probably, but that's an  
8 excuse, Judge. That's just an excuse.

9           The defendant liked to gamble, and you heard  
10 both sides. One of the hired experts, no, I don't  
11 think that's gambling, no, or I don't think that's  
12 pathological gambling. Dr. Lee said, well, yes, he  
13 gambled. Did any one of these cause his actions? No.  
14 We used the terms from the experts mental illness, and  
15 I confronted every witness on that very statement  
16 because in society it's easy to think that every  
17 problem that one may have related to the mind to the  
18 way our moods are is an illness like cancer, like colon  
19 cancer, like heart disease. It's not. The DSM that I  
20 read out of talks about mental disorders, not mental  
21 illness, not mental defects, none of these terms of  
22 arts that Dr. Grant and the Dr. Valez talked about.

23           So yes, the defendant has depression, he's an  
24 alcoholic, his form of depression is bipolar II -- I'm

1 sorry -- I think I may have said one before. He  
2 gambled, and at least according to Dr. Valez, he has  
3 OCD because he's got a messy bedroom. No medical  
4 tests, no brain scans. So these phrases that the  
5 doctors use, Dr. Grant of a brain disorder, brain  
6 disease -- the disordered brain was my favorite --  
7 doesn't exist in Frank's case. They were terms of art.  
8 They are not even recognized by the Statistical Manual  
9 of Mental Disorders, the DSM IV.

10           When Dr. Lee was asked by Frank's own attorney  
11 how these affected his actions and I guess it was in  
12 relation to the crime, I don't know to what degree it  
13 affected Frank as Mr. Toner continually re re  
14 redirected. He said that, well, it may have  
15 contributed to some degree, some degree. I'm sure it  
16 did. I'm sure it did contribute to some degree, but as  
17 they also testified on my cross-examination, Judge,  
18 this is not a case of a person -- for instance, a  
19 person hearing voices, a person who stabs the person  
20 over across the room because he sees that person as a  
21 green monster talking in a foreign language to him. He  
22 specifically ruled out any delusions, any  
23 hallucinations in Frank's case. No irresistible  
24 impulse. Something made me do this. That evidence

1 doesn't exist, Judge.

2 I want to touch on Dr. Grant, the nontreating  
3 psychiatrist. He testified quite a bit. He somewhat  
4 reminded me of the chemistry professor who you asked  
5 what the composition of oxygen is and gives you a  
6 dissertation on the history of the world, but once he  
7 was questioned on specific areas, none of these  
8 individual common disorders that Frank has which are  
9 not unusual in the world caused him to systematically  
10 loot and steal over the course of time that Frank did  
11 from Alice Varga. Much of his opinions, I  
12 respectfully, suggest were somewhat speculative and  
13 based on speculation.

14 At one point, he says, I can't explain how it  
15 happens. He had some opinions with no backup and  
16 scientific testing or anything, any actual formal  
17 studies. It was just his somewhat convoluted opinions,  
18 but he did, I think, at one point say that there was a  
19 degree of distortion of his judgment. I think that's  
20 the best he testified for the defense. A degree of  
21 distortion of his judgment which was, in effect, I  
22 guess at the time that the defendant committed his  
23 crime.

24 He talked a lot about the defendant's risky

1 behavior as if that's something unusual and he used an  
2 interesting example of a trial lawyer. Apparently,  
3 those of us who practice in trial courts engage in  
4 risky behavior. That's not unusual. Iron workers,  
5 pilots, sky drivers, NASCAR drivers also engage in  
6 risky behaviors, but those things by themselves are not  
7 something that causes someone to take the money or the  
8 property of someone else.

9 Dr. Valez I won't spend much time on. When  
10 she could recall what she actually had written in her  
11 report, her comment was that none of these items,  
12 again, that the defendant has caused his actions,  
13 stealing. She admitted that all those persons that may  
14 have that, they don't commit crimes, Judge. And she  
15 also said that there was poor judgment. His judgement  
16 was disturbed.

17 Well, Judge, if that is enough in our society  
18 to allow a person's crime or even his sentence to be  
19 mitigated, as I'm sure is going to be asked for by the  
20 defense that he shouldn't be sent to the penitentiary  
21 because of his disorders, that is true about every  
22 single person who commits a crime. That would be true  
23 about the purse snatcher. He showed bad judgement.  
24 The teenager who brings the gun into our school and



1 shoots at people. That's poor judgment. That's lousy  
2 judgment. The person who's in a bar fight and stabs  
3 someone. That's poor judgment. That's disturbed  
4 judgment, but that's what the evidence has been, but at  
5 best, the defendant's judgment was not what it should  
6 be.

7           And the other thing, Judge, and I ask the  
8 Court to consider this, also, this isn't just about  
9 Frank. The defendant has presented witnesses that were  
10 supposed to, I guess, show that it's the defendant who  
11 is the victim here. It's the I-am-the-victim approach.  
12 Forget Mrs. Varga. I am the true victim. I've got  
13 these things. I've got depression, I've got  
14 alcoholism. What else was I going to do? It runs in  
15 my family.

16           No, Judge. It's different because he still  
17 had choices. A person born with a hole between the  
18 chambers of their heart, that person doesn't have any  
19 choices. Born with a cleft palate, that person doesn't  
20 have any choices. Hypertension, heart disease, those  
21 are different. Simply having poor judgment, be it from  
22 whatever disorder the defendant was claiming is not an  
23 excuse for his actions, nor is it a mitigating factor.  
24 They are simply that, excuses.

1           Was his judgment operating the way it should?  
2 Absolutely not. Absolutely not, but Frank had a  
3 special responsibility far beyond an ordinary citizen,  
4 Judge. He had a special responsibility to honor the  
5 trust and faith that Alice Varga put in him. And who  
6 speaks for Alice? Well, I would just read a portion of  
7 one of the letters sent by Joanna Cunningham. I have  
8 touched on some of this, Judge.

9           THE COURT: That's one of the letters I have?

10          MR. EVANS: Yes, Judge.

11          THE COURT: Can you wait a minute?

12          MR. EVANS: It's attached to the original PSI, Your  
13 Honor.

14                 Judge, it was Ms. Cunningham, sister-in-law of  
15 Alice Varga who indicated that her brother, Frank, died  
16 in 1982. And she explained how she became suspicious  
17 of the defendant's actions and she even had contacted  
18 Senior Strength -- or had been told to call Senior  
19 Strength by the Agency for Aging, and she said that,  
20 quote, "I felt like the guilty one." She was  
21 questioning or had concerns about Frank's activity  
22 because Frank insulated Alice Varga. And why is that  
23 important? He insulated her, kept her from her own  
24 family.

1           Why did he do that? He did it because he knew  
2 there was nobody to help Alice Varga. He had this  
3 80-some-year-old woman all by herself totally dependent  
4 on him, and what did he do, Judge? He betrayed that  
5 trust.

6           As we have learned from Ms. Cunningham, and it  
7 was told to the Court at the time the defendant pled,  
8 Alice's house was sold. When Joanna asked her  
9 sister-in-law what happened to the money from the sale  
10 of the house, she said Frank hadn't received it yet.  
11 Frank had received it yet, and he had taken it. He had  
12 taken the proceeds of the house of his client. Even  
13 the money that Alice thought she would have available  
14 to her for a prepaid funeral when she died didn't  
15 exist, Judge. Did not exist.

16           When Alice was told she had no money and Frank  
17 Picl had emptied her account and cashed her CD's, she  
18 fell apart. She cried all the time. Alice died  
19 penniless at the Bellwood Nursing Home all because she  
20 put her trust in Frank Picl. She would say that if you  
21 can't trust your lawyer, who can you trust? Indeed,  
22 Judge.

23           And June Hartman in her letter, Judge, said  
24 that Alice after she had found out what Frank had done

1 to her, she, Alice, felt guilty for what her attorney  
2 had done. She gave up, her will to live was gone. And  
3 I feel her attorney, Frank Picl brought about the  
4 premature death.

5 Now, Judge, I handle many homicide cases, as  
6 does defense counsel, unfortunately, in Peoria County  
7 and I have yet to see a coroner's report or medical  
8 examiner report saying that this individual, this  
9 elderly individual died of a broken heart or that this  
10 elderly person who put her complete faith in her  
11 attorney died because her spirit was broken, but I  
12 suggest to you respectively that when the defendant  
13 took that money, set in actions consequences which led  
14 to the two investigators from my office and Paul Kelly  
15 to go into her room at Independence Village, her life  
16 was over, her spirit was broken. Her will to live left  
17 her. And it didn't have to happen, Judge. It did not  
18 have to happen. This lady was guilty of nothing other  
19 than trusting the defendant, trusting her lawyer. The  
20 defendant's actions were purposeful, they were repeated  
21 over and over. They were for self-gain, and they were  
22 under the guise of being her lawyer.

23 The facts that have been given to the Court at  
24 the time the defendant pled guilty was that there

1 was -- as far as our office was able to determine based  
2 on our investigation for which the defendant has pled  
3 guilty is \$278,000 -- \$278,200. Now, there was some  
4 reference by one of the comments made --

5 THE COURT: Tell me that figure one more time.

6 MR. EVANS: \$278,200, Judge.

7 There was some reference based on a statement  
8 of the defendant that he owed \$400,000 in restitution.  
9 So perhaps there is additional monies that were taken  
10 that the State has not shown to the Court to exist.

11 Be that as it may, Judge, the people are  
12 asking the Court to consider that number of \$278,200,  
13 the factual basis, and the dates of the individual  
14 transactions which were read into the record at the  
15 original plea by the defendant, Judge.

16 Your Honor, I want to briefly go through the  
17 factors in aggravation, and then I'll be finished.  
18 This Court is aware certainly that there are certain  
19 factors both in aggravation and mitigation which Your  
20 Honor can consider when you pass sentence on the  
21 defendant. It is the People's position certainly that  
22 in this case of all cases, any sentence and certainly  
23 the Court has available to them on the probationary  
24 side a sentence of probation up to and including 48

1 months. However, it's the People's position that  
2 probation would certainly deprecate the seriousness of  
3 this offense which I'll touch on in a moment.

4 With regard to those factors, Your Honor, the  
5 defendant's conduct did cause serious harm to  
6 85-year-old Alice Varga. The defendant by his duties  
7 of office or, in his case, his position as her attorney  
8 he was obliged to prevent this particular offense --  
9 and I'm reading from 730 ILCS 5/5-5-3.2, Your Honor.  
10 Not only is that a statutory aggravating factor, I  
11 would point out to the Court that in this defendant's  
12 familiar role as an attorney he would have had an  
13 obligation had some other lawyer performed this crime  
14 and he became aware of it to report it to the  
15 authorities or to the Attorney's Registration of  
16 Disciplinary Commission. That is an ethical obligation  
17 that we have as members of the bar, but it was the  
18 defendant himself who used his position as her lawyer  
19 to steal from her.

20 THE COURT: What subsection is that again?

21 MR. EVANS: Subsection 4, Your Honor.

22 With regard to Subsection 6, Your Honor, the  
23 defendant utilized his professional representation and  
24 position in the community to commit the offense. The

1 reason Mrs. Varga came to Frank originally related to a  
2 traffic accident in 1997. He then performed legal work  
3 for her. He then performed work over the course of a  
4 number of years until he took all of her money.

5 With regard to number 8, Judge, I would  
6 explain to the Court the People's position with regard  
7 to the extended terms provision. Under  
8 5/5-5-3.2(b)(4)(ii), this Court has available to it an  
9 extended term provision under that subparagraph which  
10 may be considered by the Court. It's not mandatory. I  
11 want to represent that to the Court, but the Court may  
12 consider that. And if the Court does consider that,  
13 then the range of possible incarceration is not 4 to  
14 15. It becomes 4 to 30. So I would ask the Court to  
15 consider that in terms of imposing or at least having  
16 available to this Court an extended range. Or,  
17 alternatively, under Subparagraph A that subparagraph  
18 says that if the defendant, which he did in this case,  
19 commits the offense against a person 60 years of age or  
20 older or such person's property, and that's the same as  
21 with regard to the extended term.

22 So it's the People's position, Your Honor,  
23 that the defendant's particular crime was against a  
24 60-year-old individual which the evidence bears out and

1 the reason the People are asking the Court to consider  
2 the imposition of an extended term is because the  
3 legislature, Your Honor, has put in that special  
4 provision. This provision has been addressed and it  
5 has been affirmed by the Illinois Supreme Court as a  
6 proper legislative intent and mandate and that this is  
7 a sentencing range not just from 4 to 15 but from 4 to  
8 30. Certainly whatever sentence the Court would impose  
9 has available to Your Honor is up to 4 years probation,  
10 4 to 15 years or 15 to 30. So it would be a range of 4  
11 to 30 years or the 48 months probation, Judge. So I  
12 wanted to make that clear about those alternative  
13 sentencing options available to the Court.

14 The other reason, Your Honor -- and I'm just  
15 about finished.

16 THE COURT: That's all right.

17 MR. EVANS: That the People would ask for a  
18 penitentiary sentence, and I'm not asking for a  
19 penitentiary sentence on behalf of the People, Your  
20 Honor, of a minimum. I'm sure that would be an  
21 alternative argument that counsel will make. This  
22 Court, I respectfully suggest, based on the statutory  
23 criteria, based on the facts in this case should  
24 sentence the defendant to the Illinois Department of



1 Corrections for a substantial period of time, Judge, a  
2 substantial number of years in the Illinois Department  
3 of Corrections. Lawyers who have an obligation to a  
4 client need to be told or any lawyer that still may be  
5 handling clients' funds, estates, this behavior will  
6 not be tolerated.

7           The elderly, those in our society that have  
8 special afflictions, the weak who come to a lawyer  
9 asking for our help, our special expertise should know  
10 that lawyer is going to act properly. A message should  
11 be sent that those People will be protected. All of  
12 these things we have heard about the defendant, his  
13 need for medication, his counseling, are all available  
14 in the Illinois Department of Corrections, Judge. The  
15 taking money from your own client who is all alone, 85  
16 years old, every single penny, if that's not enough,  
17 Judge, for this Court to send the defendant to the  
18 penitentiary, I don't know what is, Judge, and on  
19 behalf of the people, Your Honor, I would respectfully  
20 ask this Court to sentence the defendant accordingly.  
21 Thank you.

22           THE COURT: Mr. Toner?

23           MR. TONER: May it please the Court, counsel.

24           I suppose the first comment that I would

1 direct is to the rhetorical question of why we are  
2 here. Lest there be no question about it. The reason  
3 that we are here is because of the egregious, illegal  
4 and wrongful act of Frank for which he does and has  
5 always accepted responsibility for. The victim in this  
6 case, as counsel has pointed out numerous times, is  
7 Alice Varga, not Frank, the fact that has never been  
8 questioned by Frank. And, finally, Your Honor we are  
9 here to seek an appropriate and just sentence.

10           The next thing I would like to talk about,  
11 Judge, are excuses, explanations and truths. Almost 40  
12 years ago I was a member of the Boy's Club up in  
13 Chicago, and many of the coaches, probably better than  
14 half of them, were police officers. And I remember one  
15 in particular who called a friend of mine lawyer. When  
16 somebody said, well, why are you calling him lawyer, he  
17 says, ah, the kid always has a story. He always has an  
18 excuse. He's always got an explanation. And as I was  
19 preparing for this hearing, I thought about the fact  
20 that to a certain extent that sometimes can be correct.

21           In this case, Judge, I would submit that it is  
22 not with regard to excuses. An excuse has never been  
23 offered by us. An excuse is the type of thing I would  
24 submit that would tend to indicate that there was a

1 reason that he, Frank, is not guilty for this. An  
2 affirmative defense such as insanity, that has never  
3 been raised. That is not being raised now. The  
4 position of Frank has been unwavering. He has to the  
5 Court, his family, all the counselors that we have  
6 heard from, the members of AA, accepted responsibility  
7 for what he did.

8           With regard to explanations concerning this  
9 conduct, Judge, I would like to expound on that a  
10 little bit and indicate to you that I am unable to give  
11 an explanation for what happened. And I'll tell you  
12 why. Although occasionally as an attorney I can cobble  
13 together something to make sense perhaps of certain  
14 actions that a client has taken, in this case, after  
15 preparing for it for the entire time that has developed  
16 since Frank was arrested, I honestly don't know why he  
17 did this. And I think the reason because -- that I  
18 don't know, excuse me, is because Frank is unsure  
19 himself.

20           Because of that, I have reached the conclusion  
21 that I would not want to guess because if I guessed  
22 wrong and the Court didn't like my explanation, Frank  
23 would have to suffer the consequences. More  
24 importantly, I would submit to the Court respectfully

1 that I don't believe Frank knows why what happened here  
2 did. However, the particular details of that are not  
3 as important because of the truth that all these facts  
4 and circumstances were feeding on each other. All the  
5 things that we heard about were stoking the fire of the  
6 engine of this locomotive that Frank was the engineer.  
7 He's responsible. He's indicated to the Court that he  
8 accepts that responsibility.

9           With regard to the truth, Your Honor, I would  
10 respectfully suggest this: The truth as in this  
11 circumstance is not always complete. Sometimes we are  
12 left in a situation where we simply don't know. The  
13 truth, as we've learned, is not always flattering. And  
14 to a certain extent, something that is present here and  
15 I will explain the context in which I say this, one  
16 thing we know about the truth is that it has set Frank  
17 free, and I'm not talking about what may occur here  
18 when the Court passes sentence, but rather what I'm  
19 thinking of and speaking of are the inner demons and  
20 the bonds that have plagued him throughout his entire  
21 life because the truth as Frank has acknowledged and I  
22 believe will acknowledge during his statement of  
23 allocution are as follows: He is an alcoholic. He is  
24 a gambling addict, and he's mentally ill. And I would

1 suggest respectfully those being the truths, that is  
2 what permitted him to start down this long journey of  
3 recovery.

4 With regard to that journey of recovery, one  
5 of the cornerstones of recovery is the truth. We  
6 learned from the different witnesses that there are  
7 choices that everybody makes. There are consequences  
8 that we have to learn -- or accept, excuse me, after  
9 making a choice. And to be untruthful, whether you  
10 call it a delusion, as one of the witnesses called it,  
11 or as Frank has referred to it time and time again or  
12 other, a simple lie, a simple truth is incompatible  
13 with recovery.

14 The final thing that I wish to discuss before  
15 the Court is an appropriate and just sentence.  
16 However, before I move into that, I will ask the Court  
17 to look at the truths that have come out here, I  
18 believe. And I would simply say this: That the facts  
19 as they exist in front of the Court is that the  
20 conditions that Frank suffers from according to  
21 certainly Dr. Grant, certainly Dr. Lee, are medical  
22 conditions. I would respectfully disagree with  
23 counsel's analogy that they are different than  
24 hypertension because in effect that is a medical

1 condition. Both of these conditions can be treated.  
2 Frank's condition is being treated now.

3 An appropriate and just sentence as the Court  
4 and counsel have acknowledged, the Court has a wide  
5 range of options. Pursuant to law, I think the first  
6 place to approach is Section 5/5-6.1 where, if I may,  
7 the Court in paragraph A --

8 THE COURT: Tell me that section again.

9 MR. TONER: 5/5-6-1, sentences of probation and  
10 conditional discharge.

11 THE COURT: Okay.

12 MR. TONER: With the same legislature that mandated  
13 and authorized the imposition of the possibility of  
14 extended terms which I would acknowledge is correct and  
15 I would also acknowledge that certainly the Court has  
16 the option of an extended term, but they say except  
17 where specifically prohibited by other provisions of  
18 this code the Court shall impose a sentence of  
19 probation or conditional discharge upon the offender  
20 unless having regard to the nature and circumstances of  
21 the offense and the history, character, and condition  
22 of the offender, the Court is of the opinion that,  
23 number one, imprisonment or periodic imprisonment is  
24 necessary for the protection of the public, and I would

1 respectfully suggest that that's not the case here.  
2 And the paragraph by which the State referred to, and  
3 that's paragraph number two in that same section, the  
4 probation or conditional discharge would deprecate the  
5 seriousness of the offender's conduct and would be  
6 inconsistent with the ends of justice.

7           Your Honor, perhaps it was an oversight on  
8 counsel's part, but counsel when he read that provision  
9 talked about the first half alone. I would  
10 respectfully indicate to the Court that paragraph  
11 number two is written in its entirety in the  
12 conjunctive, and both those elements need be found  
13 before probation would be inappropriate in this  
14 particular case.

15           With regard to inconsistency with the ends of  
16 justice, I was attempting to do some research to see if  
17 that and how that has been interpreted, and, quite  
18 frankly, I was unable to find anything that was  
19 guiding. I would suggest to the Court that the ends of  
20 justice really would talk about two particular things.  
21 They would either talk about the ends of justice with  
22 regard to a particular person that is being sentenced  
23 or the ends of justice with regard to society in  
24 general. In either one of those cases, Your Honor, I

1 would respectfully suggest that there would be nothing  
2 inconsistent with those ends to give an appropriate  
3 condition of probation to Frank.

4 I'll explain as follows: The ends of justice  
5 with regard to Frank personally, you look at the things  
6 that he's done in the last 18 months. He's accepted  
7 his responsibility. He's moved forward to try to make  
8 sure that these factors don't occur again. He's been  
9 compliant. He's indicated a willingness to make  
10 restitution, and, more importantly, he's indicated a  
11 willingness to make amends to the best of his ability.

12 With regard to the ends of justice as they  
13 would relate to society, I would remind the Court of  
14 the story of the lamp and why we don't put it under a  
15 bushel. I would suggest to the Court respectfully that  
16 Frank Picl as testified by many of the witnesses as  
17 mentioned by counsel is a brilliant man -- flawed, but  
18 brilliant. Frank Picl is a person who I have admired  
19 as an attorney in Peoria for over 20 years. He is far  
20 more brilliant than I am, and I would suggest to the  
21 Court respectfully that I think that it would be  
22 inconsistent with the ends of justice to put that light  
23 underneath a barrel. There are so many areas in  
24 society where his time as well as his many talents



1 could be put to use. It's inconceivable. I think that  
2 some of the people who have testified have given the  
3 Court an inkling of how he has impacted their lives.  
4 He's a very, very charismatic person. He enjoys  
5 helping people. In addition to the recovery that was  
6 mentioned, Your Honor, I could go on, but I would  
7 simply say, there are adult literacy programs at Common  
8 Place, at Friendship House, at the Y. There are GED  
9 programs, and I will just stop there and indicate that  
10 those are some of the simple things that I can think of  
11 that would put his talents to good use and that use  
12 would be far better than just occupying a prison cell.

13 Another alternative that the Court would  
14 have -- would be touched on by paragraph number three  
15 where they mention a split sentence. And when you talk  
16 about a combination of imprisonment with concurrent or  
17 consecutive probation, given the fact that there are  
18 six counts here, the Court could very well take  
19 Mr. Picl to TASC. The Court could say, okay, with  
20 regard to Count 6, I'm going to sentence you to a term  
21 of imprisonment in the Department of Corrections for  
22 three years, four years, five years, and I am going to  
23 make that run along with probation in either count  
24 number four or five -- and the importance of that I'll

1 get to in a minute. And I would respectfully disagree  
2 because true enough with regard to the general  
3 probation statutes, on a Class I felony, the extended  
4 possible range of probation is four years.

5 However, Mr. Gilroy's testified to the fact  
6 that Frank does meet the criteria for TASC. And in  
7 that situation, he is eligible for a probationary  
8 period of up to five years. Now, the benefit of doing  
9 something like that is he would be able to get a  
10 Department of Corrections sentence which would be more  
11 than the 180 days which would normally be allowed by  
12 statute in conjunction with a probationary period.

13 He would get out and he would have to tow the  
14 line, and if he followed up that probation the Court  
15 would have the same option on a petition to revoke  
16 probation of up to 30 years again.

17 I would suggest to the Court --

18 THE COURT: Explain to me when you said he would  
19 get days beyond 180 days.

20 MR. TONER: Pardon me?

21 THE COURT: He would get time beyond 180.

22 MR. TONER: Sure.

23 THE COURT: What time? What's that formula?

24 MR. TONER: I'm sorry?

1 THE COURT: What is that formula? Is it just  
2 whatever time I say?

3 MR. TONER: Yes, because what -- maybe I'll make  
4 myself a little bit more clear. As a condition of  
5 probation, the most he can get is 180 days. If he were  
6 sentenced to probation on one count and on the other  
7 count he got the Department of Corrections time you  
8 could give him whatever he would be eligible on that  
9 count. So he in effect -- the most you can get on 180  
10 days, assuming he got the day for day is 90.

11 THE COURT: I understand.

12 MR. TONER: Judge, I would briefly talk about the  
13 factors in aggravation and mitigation, and if the Court  
14 were to be considering a prison sentence, I would point  
15 out the following: With regard to the factors in  
16 aggravation, the position of trust and the 60 years  
17 old, true enough while they do appear, and Mrs. Varga  
18 was over 60 years old, Mr. Picl did hold a position of  
19 trust, the fact is in conjunction with the various  
20 offenses, those factors are taken into consideration  
21 with the different counts in one or more of the counts.

22 With regard to the factors in mitigation, I  
23 would respectfully suggest this: That -- and this is  
24 at 5/5-3.1, number one, the defendant's criminal

1 conduct neither caused nor threatened serious physical  
2 harm. And there's no doubt that what Frank did, as  
3 reprehensible as it was, obviously had a dramatic and  
4 traumatic effect on Mrs. Varga, but the statute  
5 nonetheless is written in conjunction with physical  
6 harm.

7 Number two is applicable.

8 Number six is applicable in the sense that the  
9 defendant has indicated a willingness to compensate and  
10 pay restitution. I would point out for the Court that  
11 the assignment of bond in this case has been  
12 transferred by Mr. Picl and that there were some  
13 payments made to the state's attorney's office prior to  
14 Mrs. Varga's death.

15 THE COURT: How much was the bond?

16 MR. TONER: The bond was 10,000, was it not?

17 THE COURT: That has been assigned?

18 MR. TONER: That was assigned and already been  
19 used. That's already been --

20 MR. EVANS: That was for the living expenses she no  
21 longer had, Judge.

22 THE COURT: It's already been released and --

23 MR. EVANS: It's already been spent.

24 MR. TONER: Yeah. And that's --

1 THE COURT: All right.

2 MR. TONER: That the defendant has no history of  
3 prior delinquency or criminal activity or has led a  
4 law-abiding life for a substantial period of time. And  
5 with the exception of the traffic tickets that are  
6 mentioned in the presentence report, I would suggest  
7 that is appropriate here.

8 And I would also take issue with the poor  
9 judgment that is shown -- or that was argued by  
10 Mr. Evans concerning the factors here that he's no  
11 different than somebody who stabbed somebody in a bar  
12 or does a purse snatching. Generally speaking, the  
13 differences between the illustrations that counsel  
14 pointed out, as I recall them, are as follows: He  
15 wasn't hearing voices as far as shooting somebody over  
16 there that appeared to be a green person talking in a  
17 foreign language. I think the doctors were clear that  
18 a person can have the thought processes as far as  
19 auditory, visual hallucinations don't always apply to a  
20 person suffering from a mental disease.

21 With regard to the other illustrations of  
22 different types of criminal activity, I would suggest  
23 respectfully that while Mr. Picl stands here today,  
24 there are very seldom standing before a court a

1 54-and-a-half-year-old man who has nothing but traffic  
2 offenses on his record who is as well-educated as he  
3 was, made the contributions to society and this system  
4 that we all serve in as capably and for as long as he  
5 has.

6 Continuing on the list, we get to point number  
7 eight, that the defendant's criminal conduct was a  
8 result -- was the result of circumstances unlikely to  
9 recur. And the evidence that the Court has heard over  
10 the last two and a half days now, I would respectfully  
11 suggest would support that proposition. Whatever they  
12 were, however, this was being driven, these problems  
13 have been and are being addressed and are unlikely to  
14 reoccur again.

15 I think the fact that the past 18 months by  
16 way of Bob Gilroy and Dr. Lee have indicated that  
17 Frank's particularly likely to comply with the terms of  
18 a period of probation. Not only in medicine, but in  
19 law you will find that past performance is sometimes a  
20 good predictor of what someone may do in the future.  
21 He's had to tow the line here. He's been compliant in  
22 every way he was instructed to do. He's been compliant  
23 in taking medications, staying in touch with Dr. Lee,  
24 going to AA, completing the gambling program,

1 completing the alcohol program, doing the follow-up,  
2 going to the counseling. That's an indication I would  
3 respectfully suggest that would demonstrate that he  
4 would likely complete a period of probation.

5 And, finally, that the imprisonment of the  
6 defendant would endanger his or her medical condition.  
7 And, true enough, the State points out that he could  
8 get medical treatment in prison. I would suggest  
9 respectfully that it's not going to be of the kind that  
10 we have been talking about receiving here. Mr. Picl  
11 has an opportunity to avail himself to that. I would  
12 suggest respectfully that this is a long and arduous  
13 process that he has begun and he's undertaken, and I  
14 would respectfully ask the Court to not do anything  
15 that would perhaps jeopardize the progress that's been  
16 made so far.

17 In conclusion, Your Honor, I would thank all  
18 those who helped me in what truly has been the most  
19 difficult case I have ever had in my life. And I would  
20 particularly like to thank you Mike Risinger, who  
21 helped me initially, Laura Otten, my family and Frank's  
22 family. And I would finally respectfully conclude with  
23 a thought from a book that I read recently by Richard  
24 Rohr entitled Hope against Darkness, where in speaking

1 in terms of the world that I think the message is  
2 appropriate for this setting he indicates, quote, the  
3 search for a so-called purity is over. Now the only  
4 issue is honesty and humility. We call it by the hard  
5 word repentance.

6 Judge, I would respectfully suggest that the  
7 man standing before you today is truly repentant. The  
8 evidence that you have heard over the last couple days  
9 would indicate that Frank has begun his journey down  
10 the road to recovery with the help, the love, and  
11 support of family and friends. I pray that he will be  
12 successful. I simply and finally respect that your  
13 justice be tempered with mercy. Thank you very much.

14 THE COURT: Thank you. Mr. Toner, it's been my  
15 most difficult case, too. So you are not alone in that  
16 regard. And I'm sure that it has been difficult for  
17 the state's attorney's office because the way this is  
18 set up -- our system is set up is Mr. Picl is a lawyer  
19 and the state's attorney's office is filled with  
20 lawyers and we have to police our own, and I'm sure  
21 this has not been a walk in the park for the state's  
22 attorney's office either. And it's a tragedy. I'm  
23 going to ask some very -- it's a tragedy for everyone  
24 involved, for the defendant, for the victims, for



1 lawyers, anyone with a law license.

2 I'm going to ask some questions of both sides  
3 here. You shouldn't infer anything from the questions  
4 about where I'm at. The questions are meant to be  
5 somewhat difficult on each side because there is a wide  
6 range here -- and I'm going to start with you,  
7 Mr. Evans. There is a wide range. I mean, you say  
8 it's 4 to 30, that probation is an option. That's  
9 really 0 to 30 that I'm dealing with. And I don't  
10 think I have unlimited discretion in that range, do I?  
11 I have to look at some factors, don't I?

12 MR. EVANS: Yes, Your Honor. Your Honor is  
13 correct. Your options are the probation up to 48  
14 months and then also a sentence of penitentiary up to  
15 and including 30 years. There's no question that the  
16 Court can fashion whatever sentence that you feel based  
17 on your understanding of what you have heard today is  
18 proper for the defendant.

19 However, I would respectfully suggest that the  
20 criteria that's set out in the statute, both with  
21 regard to possible mitigation and aggravation factors  
22 are something that the Court should follow in terms of  
23 its sentencing options. One of the comments that  
24 counsel did make, to partially answer your question,

1 with regard to probation it said that an individual can  
2 get probation unless having regard to the nature and  
3 circumstances of the offense and to the history,  
4 character, and condition of the offender.

5 Well, as I pointed out to the Court, it's the  
6 People's position that defendant should not get  
7 probation and I laid out all of the factors of this  
8 particular act.

9 THE COURT: Why do you think he shouldn't? Because  
10 of the number, because 278?

11 MR. EVANS: Judge, because of the fact that all of  
12 the aggravating factors that I have read that come out  
13 of 5/5-5-3.2, Judge.

14 THE COURT: The position of trust?

15 MR. EVANS: Position of trust, conduct of the  
16 defendant caused serious harm to the victim. He was  
17 obliged to prevent the particular offense. He utilized  
18 his professional reputation and position in the  
19 community to commit the offense or to afford him an  
20 easier means of commission. He stood in a particular  
21 position in our community. And, lastly, the sentence  
22 is necessary to deter others, along with the fact that  
23 he committed the offense against a person 60 years of  
24 age or older or such person's property.

1           Those are statutory factors that I'm asking on  
2 behalf of the People for the Court to consider. And  
3 that's why based on these factors -- it isn't that  
4 there's just one factor.

5           THE COURT: Well, when you talk about the  
6 seriousness of the offense.

7           MR. EVANS: Yes, sir.

8           THE COURT: I'm coming back to the number. Is it  
9 because it's 278,000 instead of 2,700?

10          MR. EVANS: No, Judge. It would be the same if he  
11 took any of her money. If it was \$5, would I be asking  
12 for the penitentiary? No, to be honest with you, but  
13 this is where he took all her money. This is a woman  
14 who had all of her money taken, Judge. It wasn't  
15 278,000 of \$2 million. It was every penny she had.

16          THE COURT: You know, the state legislature has  
17 said that when it's theft, probation is an option until  
18 it hits 500,000.

19          MR. EVANS: That's correct, Judge. Under 16-1,  
20 that's about absolutely true.

21          THE COURT: When you say, well, if he took 5,000 or  
22 whatever figure you said, some smaller figure, I  
23 wouldn't be in here asking for penitentiary time,  
24 roughly where is that line? 100,000? When the statute

1 says half a million dollars is when probation is no  
2 longer an option?

3 MR. EVANS: Judge, the fact that under that  
4 particular subparagraph you pointed out, Judge, that it  
5 takes away the discretion of the Court to impose  
6 probation doesn't mean that in this particular case  
7 with these egregious circumstances with this type of  
8 theft of an 85-year-old woman all of her money being  
9 taken that the Court should not impose a penitentiary  
10 sentence. In fact, the legislature said that you can  
11 impose not only a penitentiary sentence up to and  
12 including 15 years, but because of her age, up to 30  
13 years.

14 THE COURT: You know, you haven't really said to me  
15 where that number is, and I'm not asking you where you  
16 think that number is. You can volunteer it to me if  
17 you like, but you haven't already. So I'm not going to  
18 ask you, but what I am going to ask you is this: If  
19 Mr. Picl had gotten drunk, as he did so many times, got  
20 in his car, ran over somebody, a father of a daughter,  
21 the most I can give him is 14 years, am I right?

22 MR. EVANS: Correct, Judge.

23 THE COURT: But if he steals \$278,000, I can give  
24 him 30 years?

1 MR. EVANS: Yes, sir.

2 THE COURT: While he's impaired?

3 MR. EVANS: Yes, sir. If I could just respond to  
4 that briefly.

5 THE COURT: Yes.

6 MR. EVANS: The distinction I would also argue,  
7 Judge, that's one impairment. Just one, one mistake.  
8 Too much to drink on a particular night.

9 THE COURT: No. He can be drunk every day and one  
10 day he gets in his car -- or maybe every day he gets in  
11 his car, but of those days he runs over somebody. We  
12 all know we have so many DUIs down there that people  
13 get in their car drunk, get caught, but they haven't  
14 run over anybody.

15 MR. EVANS: True, Judge.

16 THE COURT: So it's not one mistake. It's the same  
17 number of mistakes that he did here, he just didn't run  
18 over anybody. He stole 280,000.

19 MR. EVANS: But, Judge, I don't mean to interrupt.  
20 He didn't go to the bank on the day of impairment. He  
21 went on a daily basis or at least a weekly basis  
22 beginning in January of '03. It was systematic, it was  
23 every day of the -- every week at least and he withdrew  
24 every single penny of this woman, and I respectfully

1 suggest that's a distinction in terms of the character.  
2 of his actions under his so-called impairment as  
3 opposed to the person who at that particular instance  
4 under the influence has a tragic accident.

5 THE COURT: The hypothetical I gave you -- and I  
6 know it's probably a little bit unfair because each  
7 case is different is -- we had that case, didn't we?

8 MR. EVANS: Yes, sir.

9 THE COURT: And the state's attorney's office  
10 capped it at 12 years, didn't they, what they were  
11 asking for?

12 MR. EVANS: I believe you are correct, Judge,  
13 right.

14 THE COURT: And my question to you is, point blank,  
15 do you think we are in the extended range here in terms  
16 of what sentence should be imposed, the 15 to 30?

17 MR. EVANS: Judge, I don't -- when I argue  
18 sentencing I don't ask the Court for a particular  
19 number of years. I respect the Court's power to  
20 fashion whatever remedy. I do request incarceration.  
21 Since the Court is asking me a direct question, I would  
22 answer based on this particular case if the Court is to  
23 sentence the defendant to the penitentiary I would ask  
24 the Court to impose a sentence in the range of 15

1 years. I'm not going to stand here with the types of  
2 cases that we have to prosecute in Peoria County and  
3 ask you for a maximum sentence or even a 20-year  
4 sentence against this defendant.

5 THE COURT: I'm just trying to put it in context.

6 Mr. Toner?

7 MR. TONER: Yes, sir.

8 THE COURT: The flip side of that question is this:  
9 State legislature says that if this felony is committed  
10 against somebody 60 years or older I should consider  
11 extended-term sentencing.

12 MR. TONER: That's correct, Judge.

13 THE COURT: Which is 15 to 30.

14 MR. TONER: That's correct.

15 THE COURT: This woman was in her 80's. How can I  
16 not start in that range?

17 MR. TONER: May I respectfully reply to that,  
18 Judge?

19 THE COURT: Yes.

20 MR. TONER: With regard to the factors in  
21 mitigation and aggravation --

22 THE COURT: Don't you have to move a mountain for  
23 me to get out of that range? Go ahead and finish now,  
24 but that's --

1 MR. TONER: Well, if I may.

2 THE COURT: Show me that this is a mountain, go  
3 ahead, that you are moving.

4 MR. TONER: Judge, what I would respectfully  
5 suggest is that I don't have to move the mountain  
6 necessarily because you don't get into the factors in  
7 aggravation and mitigation and what type of a prison  
8 sentence you get until you have overcome the  
9 presumption of probation. Now, if the Court has  
10 indicated that because -- because if you read down --

11 THE COURT: Assume for purposes of this question  
12 that I have.

13 MR. TONER: Okay. That's fine, but you asked me  
14 why -- that would be the reason why initially.

15 Judge, one of the hardest things that I can do  
16 in fashioning a recommendation is to try to put  
17 together a Judge Posner type of approach of calculating  
18 where you go. I can tell you instances if the Court  
19 wished of cases that from right around here that would  
20 help illustrate where I think we are, but different  
21 cases -- in all different cases results and revolve  
22 around particular defendants, particular histories, and  
23 as the statute points out, the history, character, and  
24 other factors that involve the offense and the



1 offender. If the Court wished me to continue --

2 THE COURT: Please.

3 MR. TONER: Within the last year, I was involved in  
4 federal court with a woman who --

5 THE COURT: Well, I don't want to get bogged down  
6 in other cases.

7 MR. TONER: In federal court under the  
8 guidelines -- and nobody likes to go to federal  
9 court -- Mr. Picl's sentence would be in the  
10 neighborhood of 20 months.

11 I look at the things, the contributing  
12 factors, and I would suggest respectfully that all the  
13 things that you have heard about what he did, and this  
14 is one of the things where prosecutors and defense  
15 attorneys take issue is we are not I would suggest  
16 respectfully to look simply at a snapshot, but rather  
17 the entire picture for two reasons, because of the  
18 history, character of the offense and the offender,  
19 number one, and, number two, because of the broad range  
20 of sentencing discretion that the Court is given. I  
21 don't know if that efficiently answers the Court's  
22 question, but --

23 THE COURT: Okay. How much credit do you think  
24 should be given for these mitigating factors? Take it

1 all the way down to probation, I guess, as your  
2 thought.

3 MR. TONER: Judge, realistically, I would say this.  
4 That the Court has indicated that you are beyond  
5 probation.

6 THE COURT: I haven't indicated that.

7 MR. TONER: But, hypothetically, if that's the  
8 case, I would ask the Court to keep it under eight  
9 years because, as I understand it, that would allow  
10 Frank to participate in certain programs and it would  
11 affect his classification to get him into a minimum  
12 security facility which is all I think he needs.  
13 That's one issue that goes into it. I think that a  
14 sentence as I mentioned during my argument concerning  
15 giving him the Department of Corrections sentence in  
16 conjunction with a probationary sentence might serve  
17 both ends, giving him more than the 90 days that he can  
18 get in probation and yet still allowing him the  
19 opportunity to prove himself and to see if he's going  
20 to make good on the promises that he's suggested he's  
21 going to do here.

22 THE COURT: What am I to make of the numbers? Is  
23 it irrelevant that it's 278 instead of 2700 to me?  
24 Should it be?

1 MR. TONER: Judge, obviously the number has to  
2 factor into it. I think this that --

3 THE COURT: Seems to me like your primary thrust in  
4 what I have heard in the testimony was he was impaired  
5 through a variety of, you know, disorders and  
6 addictions and almost -- the way I took -- take the  
7 argument is I should not concern myself with the  
8 number.

9 MR. TONER: Judge, to concern yourself with the  
10 number I think obviously is appropriate. It's a  
11 significant amount of money, and it was taken under  
12 circumstances that are inexcusable, and that's why we  
13 offered no excuse. However, I think that there are  
14 numbers that have been drawn by the legislature,  
15 \$500,000 is where the Court's discretion is taken away  
16 from giving any type of a probationary sentence and  
17 between \$100,000, over \$100,000 is what makes this a  
18 Class I felony. So it's basically middle of the road.

19 THE COURT: All right. Let's -- is there -- oh,  
20 Mr. Evans, is there any final comments you want to  
21 make, and I'll ask you, Mr. Toner, the same thing and  
22 we'll take a little five-minute break and Mr. Picl can  
23 make a statement, if he would like, and I'll render a  
24 decision. So Mr. Evans, anything?

1 MR. EVANS: Just with regard to your questions.  
2 Important distinction in terms of taking away a court's  
3 discretion at the \$500,000 mark. That figure is  
4 applied to a ten-year-old boy who has his money taken,  
5 500,000 if he had a \$10 million trust, or a person 25  
6 years old who was a victim of a \$500,000 theft. That's  
7 when it's taken away. The circumstances in this case  
8 is that all the money was taken and the legislature has  
9 stepped in and said if you do this against someone over  
10 60, here is the range of sentencing out to 30 years. I  
11 don't think they intended that in cases just because of  
12 that lack of discretion that that cutoff time that a  
13 defendant should not be sentenced to the penitentiary  
14 in the appropriate circumstances. They felt so  
15 strongly about it they extended the Court's available  
16 sentencing range out to 30 years, Judge.

17 THE COURT: Mr. Toner, any final comments you need  
18 to make or want to make?

19 MR. TONER: Judge, I would simply point out that  
20 with all respect to counsel that in a certain way begs  
21 the question because we know what the range is and the  
22 Court has these appropriate facts and I would agree  
23 with counsel that the factors that the Court heard are  
24 what is going to drive where in that range of his -- as

1 the Court put it, from 0 to 30, that we are going to  
2 have.

3 THE COURT: Let's take a ten-minute break and then  
4 we'll come back and finish it.

5 (Recess taken.)

6 THE COURT: Let's go back on the record.

7 Would the defendant like to make a statement  
8 in allocution?

9 THE DEFENDANT: I would, Judge.

10 I have been admonished to stick to my remarks  
11 here and I will, but something occurred to me. I can't  
12 for the life of me figure out what the hell I did to my  
13 life in the last ten years and the lives of others  
14 around me, those closest to me, Alice, whom I loved and  
15 took care of and hurt at the same time. My family,  
16 people who cared about me. I just -- I have no answer.  
17 I have no explanation.

18 And it cut through my heart the last few days  
19 to listen to the people from my past who recounted the  
20 Frank that at one time did things, good things for  
21 people. I enjoyed that.

22 I loved the courtroom, but I always wanted the  
23 right answer at the end of a case. I represented 28  
24 years, thousands and thousands and thousands of guilty

1 clients, factually guilty clients. I knew it, they  
2 knew it, probably everybody knew it. It was -- there  
3 was a small part of me, not a part of the zealous  
4 advocate that I was duty bound to be in every case that  
5 every trial, hundreds and hundreds of trials I had  
6 where the result was guilty because the result -- the  
7 system had produced a result that matched the facts and  
8 was just. Those times when the result obtained  
9 oftentimes because of my persuasive powers and my  
10 charisma and my agile mind in the courtroom. God, I  
11 wish I could trade all that crap for some of the stuff  
12 I have done, but the times that the verdict suggested  
13 that justice was not done, for a few years that was --  
14 oh, that was powerful ego food. For a young lawyer  
15 that was -- boy, I was on top of the world, but after a  
16 while, it became more important to me that the right  
17 result come out.

18 I over the last not just 18 months, not  
19 just -- it will be 19 months tomorrow since I had my  
20 last drink, God willing I will never drink again. It's  
21 a day-to-day proposition. You reset your clock every  
22 day at midnight. Years ago, my life started going off  
23 the track. There were so many times when I just  
24 thought, what's going on? This isn't right.

1           With Alice, I honestly believed I could  
2 somehow through gambling for Christsake get her money  
3 back to her and that until that time I would simply pay  
4 all of her bills myself.

5           That -- you know, the essence of addiction, as  
6 was mentioned by a witness or two, is delusion. We lie  
7 to ourselves and we believe our lies to keep our life  
8 going, completely uncognizant many times of the fact  
9 that our life is -- we are going to hell in a hand  
10 basket and we are hurting everybody. It's like your  
11 field of vision narrows down to a point where it's a  
12 struggle just to get through every day.

13           Starting at 10 or 15 years ago I -- I don't  
14 know what happened. I began to not do my work in the  
15 office. I have always been undisciplined. For years,  
16 I thought the answer was simply as I was told forever  
17 as a child by my dad, God bless him, that, by God, you  
18 need discipline, you need more discipline, as if I  
19 could go out in the garage and get something out of a  
20 sack or something. Yeah, that begs the question. I  
21 have always needed discipline, but it grew into  
22 something more than that. I mean, it got to the point  
23 where I couldn't move anything forward.

24           The struggle was with Jeff Shuck's case, the

1 biggest piece of civil litigation I ever involved  
2 myself in. That thing took years, years longer than it  
3 should have because not only was I learning what I was  
4 supposed to be doing as I went along, but it just --  
5 despite the fact that potentially there was a lot of  
6 money to be made in the case, I couldn't -- there were  
7 many times I couldn't work on it.

8           And that's what happened on a lot of my cases.  
9 I couldn't send out bills. I represented the UAW in  
10 their 1994, '95 struggle. I handled 50 trials for  
11 them. I think 49 of them were not guilty. I never  
12 sent them a bill until after my first wife left me.  
13 Simply couldn't -- she said, Frank, you are going down  
14 for some reason and you are pulling us with you. I  
15 have got to save the family. I don't know what's wrong  
16 with you. I didn't know what was wrong with me either.  
17 Find another lawyer who doesn't want to make money for  
18 crying out loud when it's already been earned and is  
19 sitting there. I don't know. I don't -- I don't know  
20 what the hell happened.

21           At any rate, I looked for the answer in all  
22 the right places in a tavern, and, you know, they say  
23 alcohol is a perfect cleaning fluid. It cleans you of  
24 your respect, your self-respect, your self-esteem and



1 cleans you of your material possessions, your  
2 relationships. It cleans you of everything, your  
3 health and finally it takes your life. And that's the  
4 goal I have learned and in all the other treatments I  
5 have gone through the last 18 months, which I  
6 dedicated, right or wrong, I dedicated to my recovery,  
7 I -- you learn that addictions want your life.

8           And, you know, the last five years after I  
9 have lost my wife and my family, none of which was  
10 enough to get me to stop drinking, to seek some help  
11 other than a bottom of a bottle for my problems, I was  
12 ashamed of my inabilities to be like other lawyers,  
13 to -- I just couldn't figure it out. I admired other  
14 sole practitioners who while they didn't have, you  
15 know -- they didn't bloom and blossom in a courtroom,  
16 they could do their work. They could make money. They  
17 could send out bills, they could pay their taxes, they  
18 could file their returns. You know, the money that I  
19 didn't bill the UAW for years, that was more than  
20 enough to pay my taxes. And I'd -- there were years I  
21 had the returns and all the information ready to go and  
22 I couldn't do it. I don't know what that was.

23           The briefs that I got in trouble for not  
24 filing. It's a simple business to write an appellate

1 brief. You know the issues if you handled the trial.  
2 You know where to find the law. The Seventh Circuit  
3 back in the '80s took me off a federal case because I  
4 couldn't file the brief. They referred me to the ARDC.  
5 I straightened up my file. I went to Chicago. The  
6 ARDC said, well, you don't appear to have horns and a  
7 point on your tail, so, you know, we'll watch you for  
8 three years and then we'll assume you have healed or  
9 whatever. You know, whatever was going on was an  
10 anomaly. For three years I didn't do any appellate  
11 work, I can assure you, but then even in the late '90s  
12 I got involved at a friend's request in the appeal to  
13 the Third District of a divorce case. Two separate  
14 justices, one died, another took his place. They took  
15 to calling me home, imploring me. They knew me. I  
16 knew them. I knew them for years when they were  
17 lawyers. Imploring me to simply file something. One  
18 said just file a sandwich. We don't care. Just get  
19 something up here. Indicative of where my life was  
20 headed at the time, and this was when I was supposedly  
21 practicing law at home.

22 Shirley and I closed my office down here  
23 because I couldn't stand to enter it. I couldn't look  
24 at all of the undone work, and worse I couldn't sit

1 down and tend to any of it. So I went to the tavern.  
2 I would either be in court safe from what was going on  
3 outside the courtroom or in a tavern. I don't know  
4 what I was safe from there, but rarely did anybody find  
5 me.

6 I could no more work at home in my den than I  
7 could in an office. And, yet, I continued to try  
8 cases. You know, I'm sure there are going to be people  
9 puzzled at how I could come to these courtrooms and go  
10 through cases and argue to juries and do a good job. I  
11 mean, I was always proud of what I was able to do in a  
12 courtroom.

13 I knew in the last five years, particularly  
14 after my divorce, which devastated me -- you know, I  
15 used to do a lot of divorce work, and I could never  
16 understand how many people just go about their lives  
17 after a divorce. I was married to a woman I dearly  
18 loved. We had wonderful daughters. We still do. I  
19 simply couldn't stop drinking. I tried, but as we  
20 learn in recovery, until you want it for yourself,  
21 wanting it for a wife, wanting it to save a job,  
22 wanting it to hang on to a relationship, that doesn't  
23 get it. You don't want it for yourself. I lost  
24 that -- I gave that marriage away. I was married to

1 her for 26 years and I just gave it away. And Alice  
2 used to tell me, Frank, God darn it, why don't you get  
3 your wife back, ask her to come back to you, I'm sure  
4 she will. She didn't believe in divorce.

5 God bless her. I mean, there is a long time  
6 when I considered her my only decent friend. She'd ask  
7 me -- she had me go get a cheap -- the very cheapest  
8 beer on the market, Blatz Light because she didn't want  
9 to spend an extra penny for the two cans of beer she  
10 drank a night, and I would sit and drink beer with her  
11 and -- and I loved that woman.

12 And when I started taking her money, I just --  
13 you know, I was already dying inside. That period of  
14 time I just didn't care. You know, at the end, I just  
15 didn't expect to wake up some morning because I  
16 couldn't -- I mean, I -- it had been so long since I  
17 had made a right decision that I didn't -- I was  
18 hopeless. I was just waiting to die.

19 When Kevin's investigators came down to the  
20 courthouse March 14, I think it was, of 2005 and  
21 arrested me, what a relief. I wanted to go to prison  
22 right then and there. There has been -- there have  
23 been so many days in the -- there hasn't been a single  
24 day since I have been finally brought to heal where I

1 haven't said to myself you should be locked up forever  
2 for this. It's -- it was so inconsistent with the way  
3 of life that for a long time I was able to follow.

4 I haven't always been a bad man and, you know,  
5 I just -- I remember the day, the very day in my office  
6 ten years ago maybe I decided to become a gambler or  
7 I'd investigated, two years of intense study obsessive,  
8 you'd say, buying books, practicing on the computer,  
9 wasting time, night after night. My then wife would  
10 say, what are you doing up? What's going on here? And  
11 I would say, well, I'm learning to lose. That was one  
12 of my justifications for learning to gamble, teaching  
13 myself to gamble. I figured if I could learn to lose,  
14 then that would act as a control. So when I did lose,  
15 I would be able to withstand it and go on. What a lie.  
16 What a fantasy. I instead of making the hard decision  
17 that afternoon in my office -- and I told myself -- I'd  
18 never been on a riverboat. It was still in Peoria. I  
19 remember saying, you know, you got to do something.  
20 You got to supplement your income. Your kids some day  
21 are going to college. You are unable to make money out  
22 of this. I remember friends of mine saying, why don't  
23 you work at what's in this office? You would make all  
24 the money you need and more. And I don't know. I have

1 no answer for that.

2 Do I think I'm lazy? No. There have been  
3 times when my industry has taken my own breath away.  
4 But I have never been able to consistently harness any  
5 of that. My life just went wild. It was out of  
6 control. That afternoon I said to myself with no basis  
7 in fact other than I wanted to believe it, well, there  
8 must be people who can successfully make a living  
9 gambling otherwise this whole industry is a multi  
10 billion dollar industry is just a scam on the unwitting  
11 American public.

12 Well, you know what, I don't know. I don't  
13 know where I pulled that assumption from, but, quite  
14 obviously, from what I have seen both in myself and in  
15 others, that's what it is. Entertainment. You know  
16 what?

17 At any rate, I decided instead of doing the  
18 right thing then and saying you know what Frank, you  
19 are a failure as a lawyer. You can't for whatever  
20 reason make this go, go to work for somebody else, go  
21 to work for somebody else. Either it was my pride -- I  
22 mean, all of my time was at my disposal. If I wasn't  
23 at court, I had all the time in the world to drink, and  
24 I did. It wasn't just daily drinking. It was four to

1 six to eight to ten hours of drinking. And you know  
2 what, I think everybody knew it, which is neither here  
3 nor there, but I never -- you know, I didn't screw up  
4 in court. I tried to -- I thought I prided myself on  
5 that. I regarded these courtrooms as sacrosanct. And  
6 I didn't want to step over that line because I'd seen  
7 lawyers when I started the practice, some very good  
8 trial lawyers who just ruined themselves and eventually  
9 I would watch them get handcuffed and led out of  
10 courtrooms and then they died from their disease.

11 So I didn't want to go that far, but I clung  
12 to this fantasy that I could be a gambler, not  
13 recognizing that doing anything successfully, gambling,  
14 practicing law, anything else requires structure and  
15 balance and, yeah, you got to discipline yourself if  
16 you are doing it alone. If you work for somebody else,  
17 they do it for you. While I would come to court and a  
18 judge would say, you know what, all you guys are out of  
19 options we are picking a jury. I had no choice. At  
20 that point, let's go. And as a defense attorney in a  
21 courtroom, all I'm required to do in almost every case  
22 is react.

23 And you know what, yeah, I have a quick mind,  
24 big deal. I've wished a million times over my life

1 that I hadn't been blessed, if you want to call it  
2 that, with a quick mind. I mean, I would sit there and  
3 I would study the work the other side was doing which  
4 is what the State has to do and I would look for their  
5 mistakes. You know, like laying in the weeds. You  
6 know, I would pick apart their work product, bundle it  
7 all and try to hoodwink 12 unsuspecting citizens.  
8 After a while I didn't feel very good about that.  
9 Because I wasn't -- I knew my duty as a zealous  
10 advocate was to -- and I knew that I paid lip service  
11 to the notion that you have to have zealous advocates  
12 on both sides to obtain a just result in an adversarial  
13 system.

14 But I began cringing on Friday afternoons.  
15 That's when we did our sentences. Particularly with  
16 the cases when my clients were addicts or alcoholics,  
17 and there were so many of them. There were so many of  
18 them. And I would make arguments on their behalf and I  
19 would question them and I thought, you know, I'm going  
20 to be there some day. I just had a premonition. I'd  
21 dismiss it. I'd run from the hearing to the bar and  
22 away we would go. And that would settle everything.

23 I'm so proud of Jerry Lindsey. You know, I  
24 mean, he's an inspiration to me. The last hearing, he



1 said, I'm tired. And I said, Judge, try probation.  
2 He's gone to prison any number of times, and it took.  
3 And, Jerry, I -- you're great.

4 At any rate, Alice had so much money. She had  
5 no idea how much money she had, and she didn't want to  
6 know. She just said pay my bills, write me checks,  
7 come talk to me and, you know, take care of my  
8 business. And she was such a nice woman. I mean, such  
9 a good friend. I remember one Saturday I bought a  
10 chain with a pulley on it and she wanted me to repair  
11 her chain link fence in the back of her yard. So I  
12 spent my Saturday in the hot sun fixing her fence for  
13 her. I didn't know any lawyers who did stuff like  
14 that, and, you know what, yeah, I got too close to her.  
15 There was no one else. And, you know, she'd yell at me  
16 if I'd show up five minutes late for an appointment at  
17 her house. Picl, you are late again. It was nice.  
18 She was just a nice, nice woman. And, you know, I  
19 victimized her. I preyed upon her. She had no idea  
20 what was going on. She trusted me to handle her money,  
21 and for a long time I did. She was in her accident and  
22 that's when I became her power of attorney. And later  
23 on in this sorry story I remember occasionally day  
24 dreaming about justifications, oh, that power of

1 attorney gives me the power to do anything I want to  
2 and -- good or bad, and that was a lie. It was all a  
3 lie. Everything about my life became a lie, and I had  
4 to keep them going. I couldn't -- I don't know.

5           And when the whole house of cards fell down on  
6 top of me, the first time in my life I said, you know,  
7 I can't -- I can't think my way or talk my way out of  
8 this. This is -- I mean, this is -- that was a moment  
9 of surrender. I finally said you are an alcoholic, and  
10 I knew that wasn't the complete story. I mean, I  
11 have -- I hate to say it for years I have up until the  
12 last year and a half, and this has been one of the few  
13 blessings of this whole -- there have been some silver  
14 linings -- I have reestablished contact with my whole  
15 family. For years I have avoided them, and I think  
16 they have always known it, because they have problems,  
17 and mental problems, some of them. I guess I wanted to  
18 deny that I was a part of them, and I felt terrible  
19 about that. I don't know.

20           You know, there was so much guilt in me that  
21 started building with my divorce. This nonsense about  
22 gambling, this avoiding reality, and that's what --  
23 that's -- I have learned that's -- I mean, I know a lot  
24 about addictions. I mean, I realized when I woke --

1 you know, when I woke up after the first night in jail  
2 in the spring of 2005, I thought, you know, I bet  
3 everybody you know expects you to bond out and just go  
4 back drinking and just say, well, I'll take my loss.  
5 That thought never occurred to me. I -- I guess what I  
6 thought was this. I figured that there had to be --  
7 there had to be some sort of answer that -- I couldn't  
8 just write off the rest of my life, but I knew I  
9 couldn't continue living the way I'd been living.

10 That -- later that summer after I went through  
11 the treatment programs I did a lot of walking. I  
12 walked up to four or five hours a day out on the Rock  
13 Island Trail. It calmed me down and it allowed me time  
14 to think. I remember towards the end of that summer I  
15 was bothered -- I'm getting to that. I'm sorry. Okay.  
16 All right.

17 At any rate, just let me finish that.

18 People had asked me why aren't you concerned  
19 about going to prison? And the thought occurred to me,  
20 I have been in prison. I have been -- I have been in a  
21 prison in my mind and locking me up -- I mean, I didn't  
22 consider that as a -- I have spent 18 months, as I say,  
23 every day and I turn my thoughts to it just saying, you  
24 know, you deserve it. You did a horrible thing. Lots

1 of horrible things, and I did. You know, I stood at  
2 this very podium 25 years ago, saved a man's life in  
3 front of a jury in this very box and because of my  
4 argument they didn't give him the dealt penalty. They  
5 let him live. I may see him before long. And it's  
6 hard to even get my mind around that concept. I did  
7 some good in this courtroom. And I'll address -- I'll  
8 turn to my remarks. I'm sorry.

9 We have heard a lot of testimony since Monday  
10 about me. Larry's right, good and bad. And Larry is  
11 also right, we are here primarily because of Alice and  
12 the harm I did to her. You know, once a case I  
13 defended was sent back by the Appellate court because I  
14 refused despite my client's insistence to ask for  
15 probation. I'm not saying anything to the Court about  
16 what's appropriate here, but, at any rate, Alice Varga  
17 was a wonderful little woman who I came to treasure  
18 over the years as I cared for her. My pain and my  
19 shame for what I did to her, taking advantage of her,  
20 preying upon her, violating her trust will never fade.  
21 I apologize with every ounce of my being to her and to  
22 her heirs, and I understand they don't want to accept  
23 my apologies. I understand that completely.

24 I'll make full restitution -- or I'll make

1 restitution in full if I live long enough. If not  
2 before I die, then upon my death. I mean, I have done  
3 what I could with the assignment, and there are a lot  
4 of days where, you know what, I wouldn't mind dying in  
5 a few days and at least we'd make one day, we'd cross  
6 off one day.

7 I apologize to the citizens of Peoria County  
8 and to my former profession. I was honored to serve in  
9 these courtrooms which I loved and I was honored to be  
10 a member for a while of the legal profession whose  
11 purpose is to serve others and which I disgraced.

12 I apologize to my family for the pain I have  
13 caused them over the years and, finally, of my horrible  
14 actions leading to these charges all of which are true.  
15 I only hope that I can return even a small portion of  
16 the love and support you have shown me during my life  
17 even when I was blind to it.

18 I thank those who showed their concern and  
19 support by their presence and testimony in this hearing  
20 and with their letters. My shame has not allowed me to  
21 read any of them. Some day I will when I can better  
22 reconcile the good and bad inside of me.

23 I thank the doctors who provided me with some  
24 explanation for my behavior. My frustration without

1 the answers they have given me would be intolerable. I  
2 can't stop living because of what I have done.

3 And I thank my attorneys whose dedications,  
4 steadfast effort and support impressed me beyond  
5 measure even while I fell undeserving of it. As  
6 clients go, I'm sure I was a challenge. I'm sorry.

7 I thank Kevin Lyons, Larry Evans and the many  
8 fine prosecutors I have known and worked with over the  
9 years in our justice system. You fight the good fight.  
10 I truly regret having my name on one of your files.

11 The purpose of the last 18 plus months of my  
12 life since my last drink on February 28, '05 was to try  
13 to discover what went wrong with me. It was not to try  
14 to shift blame in any way or to diminish my culpability  
15 for victimizing Alice and that's not been the goal of  
16 the proceeding. The evidence we presented here was  
17 intended to simply educate, to try to explain how this  
18 could have happened. I take full responsibility for  
19 what I did to Alice. What I have learned in the last  
20 18 months of treatment, recovery, and reflection is  
21 this:

22 I am now and always will be an alcoholic. I  
23 am now and always will be a gambling addict. I am now  
24 and always will be mentally ill.

1           Finally, I accept all of these things as true.  
2 I have denied them for so long. It's not important how  
3 this came to be. There are no fingers to point, no  
4 blame to be laid anywhere other than at my feet for my  
5 terrible misdeeds which victimized Alice Varga. I have  
6 the debt that can never be repaid to Alcoholics  
7 Anonymous which have shown me that I can live yet a  
8 happy and productive life despite my addictions.

9           Few people except those who have benefitted  
10 from its fellowship and plan for living can know how  
11 many truly desperate lives AA saves. I thank my fellow  
12 MRM alumni, finest and strongest group of men I could  
13 ever hope to meet. They are truly one of the silver  
14 linings of my recovery.

15           I said good-bye last night to my father who's  
16 dwindling rapidly due to dementia. I realized finally  
17 as I looked at his aged and worried face how terror  
18 filled Alice must have been upon being informed that I  
19 had betrayed her trust and stolen her security. I told  
20 my father that he'd been a good father to me to which  
21 he replied, not good enough.

22           How wrong he was. I do not believe two more  
23 caring, loving and concerned people exist on this earth  
24 than my parents and my actions cannot in any way be

1 attributed to the quality of my upbringing. My parents  
2 have been and simply are the best. Thank you for your  
3 love.

4 My three daughters and I went for one last  
5 walk at the trail last night at twilight. It was  
6 beautiful out in the country, quite and serene, and we  
7 met by happenstance an acquaintance and his wife who  
8 recently lost a young son in a tragic accident  
9 involving drunken driving. I can only imagine the pain  
10 they must feel. It reminded me that living life means  
11 experiencing both its joys and its sorrows not hiding  
12 from them in addictions. My girls are without question  
13 the best in my life. I love them. Thank you for  
14 believing in me despite what I have done and become.

15 I accept without complaint whatever punishment  
16 the Court imposes just and deserved, and I pledge to  
17 return some day to society and make my amends by  
18 grateful and humble service to those I can help in my  
19 experiences and my new understanding of how life must  
20 be lived, with honesty to oneself and others. It's  
21 okay to say I failed. It's okay to say I can't do it  
22 perfectly. And it's okay to say I need help.

23 And I never understood that, and I intend to  
24 live with some degree of happiness and peace one day at



1 a time. Thank you, and, Alice, wherever you are, I'm  
2 so sorry. Thank you.

3 THE COURT: Thank you. Mr. Toner and Mr. Evans,  
4 Mr. Toner, if you would step up, this is the letter  
5 from one of the daughters, I made a copy of them, but I  
6 think the original ought to stay with you.

7 MR. TONER: Thank you very much.

8 THE COURT: Let me start off by saying that I want  
9 to thank the attorneys involved with this proceeding in  
10 the last three days. It's a difficult case, as I have  
11 said. And it's helpful to the Court to have two very  
12 quality -- two attorneys with the highest quality  
13 representing their respective sides. It helps the  
14 Court immensely to formulate a result that hopefully is  
15 correct.

16 I want to thank also the people that stepped  
17 forward. There were -- I quit counting after about 60  
18 letters. I have read all of them, some of them several  
19 times, and then there were a number of witnesses, I  
20 think about 20.

21 I want to -- in that regard in talking about  
22 the letters, I want to first say to the Varga family  
23 that there were but two letters, for lack of a better  
24 way of saying it, for your side, but I want you to know

1 even though most of my remarks from here on out are  
2 going to be about Mr. Picl, the defendant, and things  
3 that were said about him and so forth, I want you to  
4 know that those two letters are paramount to me. That  
5 this isn't about who submitted the most letters. It's  
6 about what was said and what was done. So I want you  
7 to know that those two letters and what was in those  
8 letters is paramount to me.

9           Next, I want to look to Mr. Picl's daughters.  
10 I'm going to refer to my experience of two years up in  
11 misdemeanor court where you sit and the defendant  
12 stands right there, eyeball to eyeball with I counted  
13 about 7,000 different defendants over two years. Now,  
14 that doesn't make me an expert on anything, but it's a  
15 perspective I think that very few people have had to  
16 look eyeball to eyeball with 7,000 different  
17 defendants. And I used to think lots of them in  
18 misdemeanor court are young adults, probably 17 to 23,  
19 24, and on those rare occasions when I would have a  
20 parent show up with their child, with their young  
21 adult, I would pretty much send them on their way  
22 because I knew chances are that child was not going to  
23 be back, that I had help because it was a rare occasion  
24 when the parent showed up. It never occurred to me

1 that the situation would be reversed. And I want you  
2 to know that the fact that you sat here for three days  
3 and submitted the letter that you submitted, one of you  
4 submitted -- there was another one earlier -- had a  
5 great impact on me and moved me. And, in fact, one of  
6 the comments in the letter I got today that basically  
7 was a letter from one of you to your father of years  
8 ago where you said you won't let me and your family  
9 help you, I want you to know that you helped him the  
10 last three days with me.

11 Now, having said that and told you the story I  
12 told you about misdemeanor court, if this was a  
13 misdemeanor, Mr. Picl would be going home and I would  
14 send him home three times over because you three sat  
15 here, but this is not a misdemeanor and Mr. Picl, I  
16 think he knows what's coming. I think he understands  
17 that, and I cannot do my job and send him home.

18 What we are here for today is that -- and I  
19 understand both sides here. I understand both sides  
20 that were argued. I understand the interest of the  
21 Varga's and what their perspective of what justice is  
22 or should be in this case, and I understand, I think,  
23 what the interest of the defendant is in this case and  
24 what their perspective of perhaps justice is in this

1 case. And those are not -- they don't overlap, as I  
2 see it, but I have to take those two perspectives and  
3 the perspective or interests of the public and try to  
4 meld that all together and come up with something that  
5 I think holds the defendant accountable for his  
6 actions.

7 Stated another way, a price must be paid for  
8 the conduct. I don't think that Frank Picl,  
9 although -- well, one more reference to the misdemeanor  
10 court experience. Every once in a while when you look  
11 into somebody's eyes you actually see evil. Now, some  
12 people would say I'm nuts, but you do. Several people  
13 were up there through bonding court or whatever that  
14 had committed murder. And every once in a while you  
15 look in their eyes and you saw evil. When I look into  
16 Frank Picl's eyes, I don't see evil. If I did, he'd be  
17 looking at 30 years for this crime, but I do not --  
18 never have I thought in these proceedings as I look in  
19 his eyes, and I look a lot, did I ever see evil, but I  
20 do -- I have seen demons. And, in fact, that was  
21 referred to several times in some of the letters that  
22 were written. Mr. Picl does have demons, and for  
23 whatever reason, it resulted in unlawful conduct and  
24 those demons do not, whatever disorder, whatever

1 addiction, they don't excuse the conduct. They may  
2 diminish somewhat in my mind the price that has to be  
3 paid, but a price nonetheless has to be paid, and I'll  
4 tell you why.

5 I don't think Mr. Picl is necessarily going to  
6 commit another crime. In fact, I don't think so at  
7 all. I don't think that that's going to happen. I  
8 think eventually some day he will be out in public, and  
9 I just don't think he is going to return to unlawful  
10 conduct, but it's important in my judgment that there  
11 be a deterrent, and somebody in one of the letters  
12 said, well, you know, people that are addicts don't  
13 really think of deterrents. They don't really think of  
14 what they are doing. So, judge, if you sentence  
15 Mr. Picl to the DOC, you know, that's not going to stop  
16 somebody else who's got an addiction or disorder from  
17 doing something. Well, I look at deterrent a little  
18 more generally than that. It isn't necessarily that  
19 I'm trying to deter this exact crime from happening  
20 again. Although certainly I don't want to ever see it  
21 again, but for anybody out there in public, they must  
22 know whether they are law abiding or not law abiding,  
23 the public must know that there will be a price that is  
24 paid for the wrongful conduct and that price has to be

1 paid in this case.

2           So I don't believe that short of the insurance  
3 policy, life insurance policy being assigned, I don't  
4 believe that there's a strong likelihood that  
5 restitution is going to be made. Realistically, he  
6 owes the estate over 270-some-thousand dollars  
7 theoretically with interest. He hasn't paid his taxes  
8 since 2000. Lord knows what that obligation is. It  
9 wasn't significant to me, but Mr. Evans made the point  
10 about, well, maybe it's 400,000. Well, I just assume  
11 when Mr. Picl at some point said 400,000 to somebody  
12 that that included the IRS obligation, but in any  
13 event, it's clear that he owes hundreds of thousands of  
14 dollars and the likelihood other than his life  
15 insurance policy, proceeds from that, the likelihood of  
16 the Varga estate being paid through restitution, which  
17 I am going to order, is not very great and -- any time  
18 in the foreseeable future. So the suggestion that has  
19 been made about probation and restitution which was  
20 made repeatedly in the letters to me isn't a price at  
21 all. It's a hollow price.

22           So given the crime which I place a great deal  
23 of significance on the number, 278, \$278,000, that's --  
24 that represented the victim's life savings, took away

1 her choice to go on the riverboat and gamble it. We  
2 all know that she wasn't going to do that, but it was  
3 her choice to make what happened to that money, and she  
4 wasn't able to make it. Her age is a significant  
5 factor to me.

6 I understand that I do have a wide latitude of  
7 discretion here, but in looking at the statute, the  
8 fact that she was in her 80's and not in her 60's puts  
9 me at the beginning before I deal with mitigation  
10 factors, but had there been no mitigation factor, I  
11 would be in the extended term range simply because of  
12 her age and the amount and the breach of trust.

13 I am going to allow -- I am going to factor in  
14 a credit for various mitigation factors, one of which  
15 is the defendant has no prior record. Beyond that, I  
16 think he has done -- you know, lots of people have no  
17 prior record, but that doesn't make them, you know, a  
18 strong positive influence in their world of influence.  
19 I was moved by the testimony of the mother of the  
20 paraplegic which symbolized to me what I surmised  
21 anyway that there was a lot of good out there that  
22 Mr. Picl did. One of the things that people  
23 overlook -- and I was proud of my profession. I  
24 indicated earlier that we have to the way the system is

1 set up, all of us with law licenses basically police  
2 our own. And I was proud that it is my profession that  
3 prosecuted Mr. Picl. I was proud that at least 25  
4 lawyers stepped up and did what lawyers did. They  
5 wrote letters on behalf of somebody who needed a -- a  
6 defendant who needed support.

7           And I was moved by the content of a good deal  
8 of those letters and one of the letters talked --  
9 several of the letters talked about their own personal  
10 experience with alcohol and one of the little unspoken  
11 hidden secrets of lawyers is I have to believe -- I  
12 don't have a study, I have to believe that we have a  
13 higher percentage of alcoholics than a good number of  
14 professions, and that says something about the  
15 profession. And one of the attorneys, I won't  
16 embarrass him by saying who, talked about what it is to  
17 be a public defender and how public constantly asks you  
18 how can you do what you do, you represent guilty  
19 people? And if you lose, it's always your fault and if  
20 you win, it was never because of what you did; it was  
21 an act of God and you shouldn't have -- and he  
22 shouldn't have been charged in the first place. But  
23 public defenders do a tremendous service to the public,  
24 and Mr. Picl did that. They don't get paid a whole lot



1 of money. I'm sure that in the thousands of cases that  
2 he handled many people were found innocent that were  
3 innocent and might not have been found innocent with a  
4 lesser attorney.

5 So I think this notion of mitigation that he  
6 hasn't had any prior criminal activity, has led a law  
7 abiding life for a substantial period of time, I'm  
8 rolling into that also what good he did with the law  
9 license, even though he is permanently forfeited that  
10 right to continue with that law license because of the  
11 egregious violation of his -- of the trust.

12 On balance when I factor all the items of  
13 mitigation -- and, Mr. Picl, why don't you please rise.  
14 I believe in this case that the appropriate period of  
15 time is a sentence in the Department of Corrections for  
16 10 years, day for day will apply. You'll get credit  
17 for any time served. Mr. Toner, I made reference to  
18 some -- if it was eight years minimal -- minimum  
19 security prison or something, and to the extent that my  
20 opinion matters, which it probably doesn't, to the  
21 Department of Corrections, that would be my  
22 recommendation even though it is a ten-year sentence.

23 Having said that -- and you can be seated, if  
24 you want -- I want to read your appeal rights, as you

1 know. You have a right to appeal the judgement and  
2 sentence entered as a result of your plea of guilty --  
3 of your plea of guilty and the sentence that has been  
4 entered. However, before taking an appeal you must  
5 file in this court within 30 days of today's date a  
6 motion to withdraw your plea of guilty and vacate  
7 judgment and sentence or a motion to reconsider the  
8 sentence. Both motions must be in writing and set  
9 forth with particularity of any claim of error or any  
10 claim of error not so stated would be waived for  
11 purposes of appeal. If the motion to withdraw your  
12 guilty plea is allowed, the judgment and sentence will  
13 be set aside and the case will be set for trial. If  
14 the motion to reconsider is allowed, the sentence may  
15 be modified. Any charges dismissed by the State as a  
16 part of the plea agreement may also be reinstated and  
17 set for trial. If either motion is denied you must  
18 then file a motion -- or, I'm sorry -- a notice of  
19 appeal within 30 days of the date of the denial or  
20 direct the clerk to do so on your behalf. If you are  
21 indigent, a free lawyer and free transcript will be  
22 given to you for purposes of the above proceedings and  
23 your appeal. Are there any questions? That sentence  
24 is imposed on each count to run concurrent. Are there

1 any questions?

2 MR. TONER: May we approach, Judge?

3 (Whereupon proceedings were had at the  
4 bench out of the hearing of the court  
5 reporter.)

6 THE COURT: Let me modify something ever so  
7 slightly. What count is that?

8 MR. EVANS: Six.

9 THE COURT: Six is a Class II felony. So the  
10 sentence that will be imposed on that count is a  
11 five-year sentence.

12 MR. TONER: Judge, additionally, we would request  
13 that the letters to the DOC reflect that Mr. Picl be  
14 allowed to go to a facility to participate and continue  
15 with his treatment for addiction?

16 THE COURT: Mr. Evans, any response to that?

17 MR. EVANS: Judge, certainly the People would have  
18 no objection to the recommendation of such by the  
19 Court.

20 MR. TONER: And, finally, the Court had made a  
21 motion as far as the recommendation of a minimum  
22 security. We also ask that include to the extent  
23 possible a facility as close to Peoria as he could for  
24 the reasons that are stated in the --

1 THE COURT: That can be noted in the record both as  
2 to minimum security and closeness as possible. Again,  
3 that's up to the discretion of the Department of  
4 Corrections.

5 MR. TONER: Thank you, Judge.

6 THE DEFENDANT: Thank you, Judge.

7 THE COURT: You are welcome. With that, we'll go  
8 off the record.

9 MR. EVANS: Judge, I do have a motion on the record  
10 I would like to make if I may on behalf of the People,  
11 Your Honor. I would respectfully move that the  
12 defendant's present bail in light of the sentence of  
13 the Court be revoked and that a mittimus issue and  
14 execute without delay and that the defendant be taken  
15 into custody.

16 THE COURT: That's allowed.

17 Anything else?

18 MR. EVANS: No, sir.

19 THE COURT: Let's go off the record.

20 (Which was all the evidence offered and  
21 received and all other proceedings had  
22 in the Sentencing Hearing of the above  
23 cause.)  
24

IN THE TENTH JUDICIAL CIRCUIT OF THE STATE OF ILLINOIS  
PEORIA COUNTY, ILLINOIS

REPORTER'S CERTIFICATION

I, ROBIN L. ROBERTS, CSR, RPR, an Official Court Reporter in the Tenth Judicial Circuit of the State of Illinois, do hereby certify that I reported in machine shorthand the foregoing proceedings had before the HONORABLE STEPHEN A. KOURI, in the above-entitled cause, and that I thereafter caused the same to be transcribed into typewritten form which I now certify to be a true and accurate transcription of same.

Dated this 6th of April, 2010.

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Robin L. Roberts, CSR, RPR  
Official Court Reporter  
License No. 084-004317