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REPORT OF THE COMMITTEE TO REVIEW THE CONRAD JEFFREY MATTER

VOLUME II

FACTUAL ANALYSIS

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I. 1974 MURDER

A. Introduction

This report is based upon an investigation commissioned by Chief Justice Robert N. Wilentz of the New Jersey Supreme Court which was initiated after the kidnapping, sexual assault and murder of 7-year old D.G. in May 1993. Conrad Jeffrey, on parole at the time of the girl's murder, was arrested and charged with the crime. The young girl's murder, allegedly committed by a recently released parolee with a lengthy record, raised serious questions regarding possible systemic deficiencies within the New Jersey criminal justice system.

Volume III of this report addresses the specific deficiencies identified by the Committee's investigation as well as proposed solutions to these problems. This volume of the Committee's report presents a detailed factual analysis of Jeffrey's criminal history beginning with his arrest and confession to the stabbing murder of a woman in 1974 for which he was never tried.

The Committee investigated the circumstances of the 1974 murder for two primary reasons. First, the absence of information regarding the homicide and the notation that the indictment was dismissed on Jeffrey's criminal history records have been identified as an issue which may have affected Jeffrey's later plea negotiations, sentencings and paroles. The Committee, in its review of the 1974 case, then

identified a second issue that required investigation: whether the court received all relevant information available concerning Jeffrey's competence during his eight years of institutionalization and prior to the dismissal of the 1974 homicide indictment. As the Committee delved into the details of the case, it found information that indicated that all evidence relevant to Jeffrey's competence to stand trial was not presented to the court and found that circumstances surrounding the handling of the 1974 homicide identified the existence of serious deficiencies in New Jersey's criminal statutes, procedures, and practices.

B. Details Surrounding 1974 Homicide

On September 24, 1974 the Newark Police were notified of the discovery of the nude body of a woman lying in the backyard of a house. The police discovered that the woman, Alberta Dorsey, appeared to have multiple stab wounds and had been thrown out of the third floor window of the dwelling. The house was owned by Robert and Helen Miller who told police that their nephew, Conrad Jeffrey, occupied the room from which the body appeared to have been thrown. With the Millers' consent, the police searched Jeffrey's room and found blood stains and evidence of washed blood. Splashes of blood were found on the head of the bed, the wall and posters behind the bed, the floor, the radiator, window glass, closet, and bedroom doors. Police also located a crawl space just outside of Jeffrey's room that, when opened, was found to contain a bloody pillow and articles of a woman's clothing

including a torn and cut bra, mutilated panties, as well as bloodstained and wrinkled neckties. Also discovered was a bloodstained mattress that had been moved from Jeffrey's room and was replaced with a mattress from another bedroom.[1]

1. Cause of Death

The autopsy of Dorsey revealed that she had been stabbed with a pair of scissors 34 times. The cause of death was listed as multiple stab wounds of the head, neck, torso and perforation of the aorta, liver and lungs as well as massive hemorrhage. Dorsey also had multiple bruises and her left nipple was almost severed. The coroner determined that the stabbing occurred between 10:00 p.m. and midnight on September 23, 1974.[2]

2. Police Seek Jeffrey for Questioning

Police sought Jeffrey, who was not at home during their initial investigation, to speak with him about the homicide. The Millers notified the police that they received a phone call from French's Hospital in New York City that Jeffrey was a patient there. The Millers asked the police to contact the hospital to ascertain why Jeffrey was there and when he could be released. The detectives were told by the hospital that Jeffrey was being treated for an overdose of alcohol and cough medicine, but that his treatment was complete and Jeffrey was free to leave the

hospital. The detectives were then asked by Miller and Delores Katz (Jeffrey's mother) to go to New York to pick Jeffrey up at the hospital and return him to Newark. Detectives notified Katz that Jeffrey was a prime suspect in the Dorsey homicide. Police reports note that Katz stated that she was aware of this fact and was concerned for her son's safety, but was also concerned that Jeffrey might harm someone else.[3]

On September 24, 1974 the police picked Jeffrey up at the hospital in New York. During the trip back to Newark, police did not question Jeffrey about Dorsey's murder. On Wednesday, September 25, 1974, at 12:25 a.m., Jeffrey signed a preamble waiving his rights and made a statement to police at 1:15 a.m. At that time, Jeffrey waived his right to an attorney and confessed that he had murdered Dorsey.[4]

3. Jeffrey Confesses to Dorsey's Murder

Jeffrey began his statement by telling the detectives that he spoke with his aunt, Helen Miller, fifteen minutes prior to beginning his statement. Jeffrey said, "I told her I was okay down here and that I was in Police Headquarters and that I killed that girl."[5]

Jeffrey then told detectives that he had met Dorsey on the street and brought her to the Miller residence. In an effort to conceal Dorsey from his aunt and uncle, Jeffrey took Dorsey to his bedroom via the fire escape, exited his bedroom from the fire escape, and then re-entered the home alone through the front door. Jeffrey said that he wanted his aunt to know that he was in the house, but did not want her to know that he had a woman in his bedroom. Jeffrey told police that Dorsey took off her clothes while in the room and that a fight ensued between them. He said that Dorsey struck him, that he hit her back, and that Dorsey came toward him with a pair of scissors. Jeffrey told detectives that he grabbed the scissors from her and stabbed her. He stated that Dorsey fell on his bed, where he stabbed her again, and that he then threw her out of his window. Jeffrey then explained that he accessed a crawl space in the hallway outside of his room with a chair and that he put all of the items that had blood on them in the space. He also said he had switched the bloody mattress from his bedroom with a mattress from another room in the house. Jeffrey told police that he then took the scissors that he used to stab Dorsey to a tavern and hid them in the bar's bathroom. Jeffrey concluded his statement by stating, "I'm sorry for what I did and I know it was wrong." After Jeffrey completed his confession he was arrested and charged with Dorsey's murder.[6]

4. Police Locate the Murder Weapon

Acting on the information that Jeffrey provided during his confession regarding the location of the murder weapon, the police went to the bar where Jeffrey stated that he hid the scissors and located the weapon exactly where Jeffrey told police that it could be found.[7]

C. Jeffrey's Competence

Jeffrey was arraigned in Newark Municipal Court on September 27, 1974 and was indicted on November 12, 1974.[8] The assistant public defender assigned to represent Jeffrey notified the court that he was having difficulty communicating with his client and requested that Jeffrey be examined by a psychiatrist. From Jeffrey's initial psychiatric evaluation on October 9, 1974 to his release from TPH on January 17, 1983 he had a total of eight competency hearings and was seen by numerous psychiatrists and counselors.

Each of Jeffrey's competency hearings was analyzed by the Committee and will be discussed below. Where deficiencies have been discovered by the Committee they will be set forth at the conclusion of each hearing's analysis. Although each hearing is discussed individually, several themes may be gleaned from the Committee's analysis of Jeffrey's competency hearings and lengthy institutionalization:

Lowell was hired by the public defender's office and Dr. Stanley Kern examined Jeffrey for the prosecution. Jeffrey was represented by assistant public defender Charles Lorber and the assistant prosecutor was Stuart Klepesch. Presiding over the hearing was the Honorable James T. Owens, J.S.C.

a. Dr. Lowell's Psychiatric Evaluations & Testimony

(1) Psychiatric Evaluations

Dr. Lowell examined Jeffrey for the public defender on October 9 and October 12, 1974. Lowell had been made aware prior to his examination of Jeffrey of the difficulty that the public defender had been having communicating with his client. Lowell spent approximately 1 ½ hours with Jeffrey during each of these examinations. On the basis of these two evaluations, Lowell diagnosed Jeffrey as psychotic, suffering from schizophrenia of the chronic undifferentiated type. The examinations conducted by Lowell consisted of his observation of Jeffrey, the taking of his psychiatric history as provided by Jeffrey, observation of his manner, personal presentation, speech and behavior as well as his emotional and intellectual responses to questions.[9]

Lowell wrote in his report that although he had not received the report of the prosecutor's expert, Dr. Kern, he was aware that Kern agreed with his finding that

Jeffrey was not competent to stand trial. Lowell continued by writing that Kern "also concurs in the serious illness of the defendant and the need for hospitalization and study and treatment."[10]

Lowell noted that Jeffrey was cooperative and eager to participate in the evaluations that he conducted of Jeffrey. He wrote that Jeffrey was particularly receptive to their second meeting:

> [H]e regarded me by then as a potential source of medical help, a potential rescuer from emotional pain and suffering, from physical disturbances such as severe intractable headaches and unexplainable, spontaneous nosebleeds, and from an inner perplexity. He seemed almost not at all concerned with the homicide case against him nor with what my role would be in that.[11]

The doctor wrote that he could understand why Jeffrey's attorney had had a difficult time communicating with the defendant:

> [H]e manifested a strange, deep intenseness, speaking in a measured, hyperintense, flat, considered, seemingly sincere (to me) manner. His speech, though essentially logical and coherent with respect to internal consistency, manifested a difficult to articulate but very clear thinking disorder, I think obvious to all . . .[12]

Lowell also wrote that he believed Jeffrey was suffering from a long existing mental disease which he had since childhood. Lowell's report presented a detailed summary of Jeffrey's background as provided to him by the defendant:

> Mr. Jeffrey relates a disturbed childhood and family situation. He relates numerous instances of blackouts, with his awakening or coming to awareness in strange and at times humiliating situations. He reports evidences of marked personality problems, lifelong, with isolation, loner-ism, one bizarre suicide attempt, lifelong suicidal ideation, a longing for psychiatric help, a pathetic attempt to understand and treat himself by reading psychiatric books.[13]

(2) Lowell's Testimony at 12/18/74 Hearing

At the initial competency hearing, the doctor reiterated the length of time that he spent with Jeffrey and the method and substance of his examinations. Lowell recounted that he found the defendant's ability to calculate responses deficient and described the history of prior blackouts and other related difficulties described to him by Jeffrey. The doctor testified:

> Primarily, throughout the examination Mr. Jeffrey's focus really wasn't related to his being in jail or his having committed a crime. It was on his own concern with his mental state since childhood. And he seemed to view me as someone who might be able to get him help, to get him into a hospital, to get him to understand many of the strange experiences that he had throughout his life.[14]

Because Lowell relied in part in his testimony, written evaluation, and diagnosis, on the history provided to him by Jeffrey, the assistant prosecutor asked the court if the background information obtained by the doctor could be made a part of the record. Klepesch stated, "I think, for the record, Your Honor, we should have that history, the history that he obtained from Mr. Jeffrey. I don't think that the record

reveals that."[15] In response to the prosecutor's request, the judge questioned Lowell regarding the dates and length of his examinations of Jeffrey and deemed that information sufficient. However, other than the doctor's testimony, the history to which the doctor referred at the hearing was never made a part of the record.[16]

Klepesch questioned how Jeffrey could recall specific events that occurred during his past, but was unable to recall the crime with which he was charged or his previous visits from his attorney. Lowell stated that Jeffrey had "a much more marked disturbance in what is called recent memory than there is in his remote memory."[17] In response to the prosecutor's questions regarding Jeffrey's memory, the public defender asked Lowell during his re-direct examination of the doctor whether or not he thought that Jeffrey might be feigning his illness and inability to communicate with counsel. Lowell responded by stating that in his opinion he thought "that there is virtually no likelihood" that Jeffrey was feigning mental illness.[18] Lowell based this assertion on a number of factors, including:

> The complex nature of his thinking disorder [his] psychotic [manner] and mein (sic) and the history proffered by him which is so consistent with known mental disorder, I feel, would be beyond feigning and especially beyond feigning by him.[19]

Lowell testified that his recommendation would be to have Jeffrey remanded to a psychiatric hospital for further testing and evaluation to determine whether Jeffrey had neurological problems in addition to a psychiatric illness. Lowell also stated, however, that there did exist a possibility that with proper treatment and

diagnosis that Jeffrey's condition may improve sufficiently to enable him to stand trial. The doctor told the court:

> [I] think, there is a strong possibility and some probability with these studies and with treatment either with medications for that or anti-psychotic drugs to deal with the schizophrenic process, there might at some future time be an improvement in his capacity to comprehend what is going on about him and he might be able to stand trial. He might never regain recollection of what happened at the time of the crime; but my understanding is that is not a reason, you know, to be determined incompetent to stand trial.[20]

b. Dr. Kern's Psychiatric Evaluation & Testimony

(1) Psychiatric Evaluation

The prosecutor's office retained Dr. Stanley Kern to perform its evaluation of Jeffrey's competence. Although Dr. Kern reached essentially the same diagnosis as Dr. Lowell, his meeting with Jeffrey presented a sharp contrast to that of Dr. Lowell. While Jeffrey provided Lowell with considerable information concerning his past , Dr. Kern wrote in his report that, "[h]is thinking processes are so disturbed that a clear, coherent history cannot be obtained."[21]

Dr. Kern met with Jeffrey on November 24, 1974 for approximately one hour in a jail holding cell. Kern diagnosed Jeffrey with schizophrenia, chronic undifferentiated type and concluded that the defendant was unable to confer with his

attorney or assist in the preparation of his defense. The doctor recommended hospitalization and psychiatric treatment.[22]

(2) Kern's Testimony at 12/18/74 Hearing

Dr. Kern told the court that he met with Jeffrey at the Essex County Jail for approximately three quarters of an hour to an hour. He stated that his examination of Jeffrey was rather limited because of Jeffrey's mental state and his inability to communicate. The doctor concluded that because he was unable to have a coherent interview with Jeffrey, that he did not believe that the defendant was capable of comprehending the charges against him. Kern stated that he "did get some background history from him as sparse as it was." Unlike the lengthy history provided by Jeffrey to Lowell, he only provided to Kern his date of birth, high school name, and stated that he "never had friends." Kern did believe, however, that with proper treatment Jeffrey may be able to confer with counsel and assist in the preparation of his defense at a later date.[23]

D. Outcome of Initial Competency Hearing

The outcome of this hearing was inevitable given the concurrence of both the prosecution and defense experts regarding Jeffrey's condition. Judge Owens found that Jeffrey was mentally incapacitated and unable to confer with his attorney or assist in the preparation of his defense. Judge Owens ruled that Jeffrey was insane pursuant to N.J.S.A. 2A:163-2 and ordered him into safe custody at the New Jersey State Hospital in Trenton.[24] Jeffrey was to remain at the hospital pending further order of the court.[25]

E. Deficiencies Identified Relating to December 1974 Hearing

1. Relevant Information Available but not Presented to the Experts or Court

Both Lowell and Kern were given an opportunity by the Committee to review the records that were relevant to their involvement in Jeffrey's 1974 homicide prosecution. Both of these doctors stated in their interviews with the Committee that there were documents in the Committee's records which would have been available at the time that they were involved in Jeffrey's case, but they do not recall being made available to them prior to their initial evaluations. Both doctors stated that this information may have had an effect on their evaluations and testimony at the time

that they wrote their initial reports and testified at the December 18, 1974 competency hearing.

2. Dr. Lowell May Not Have Reviewed All Available Information

Lowell stated in his recent interview that his review of his written report indicates to him that he may not have been in possession of all the relevant information that existed about Jeffrey at the time that he conducted his examinations, such as the police report and confession relating to the 1974 homicide:

> I do know in looking at the report -- I'm surprised because almost without exception there is a form that I use to say who called me, etc..., and prior to my examination I reviewed the following documents and then I list them. Now I noticed that's not in this report. So, I have a strong feeling that I may not have gotten anything at all. And I went down there on that basis and maybe I had a discussion with Mr. Lorber. I have no way of knowing what I had gotten. I'm pretty sure if I had gotten anything that it would have been listed.[26]

Lowell stated during his interview that the reason he would have proceeded to conduct his examination of Jeffrey without the police report and confession was due to the fact that he was meeting with Jeffrey for the limited purpose of determining his competence to stand trial. He said that if his purpose in examining Jeffrey had been to make a judgement concerning his exculpability he, "certainly wouldn't have proceeded. It would have been an insufficient study."[27]

Lowell said that these additional documents regarding the 1974 homicide may not have altered his final diagnosis, but may have changed his interpretation of the information that he presented to the court. Lowell stated:

> My evaluation may have stayed the same, but I would have been less flat-footedly certain and powerful in the rendering of [it to] the court and things of that sort.[28]

Lowell was also told by the Committee's investigator during his interview that there was no indication that the history that Jeffrey provided to him regarding blackouts and similar symptoms of mental disturbances was ever verified. Lowell told the Committee that had he learned that the history provided to him by Jeffrey had not been corroborated, his testimony in court regarding his diagnosis would have been less conclusive. Although Lowell said that his diagnosis, based on his clinical evaluation of Jeffrey may have stayed the same, his testimony would have been different:

> [I]n retrospect now, ... I would have said, this man looks like he's schizophrenic, but he may not be. This may be a drug reaction, where you get the same kind of mental function fractionated, ... or malingering rather than thinking it was schizophrenia.[29]

The Committee does not speculate as to whether, had Lowell been less firm in his testimony, the outcome of this first hearing would have been the same -- Jeffrey found incompetent to stand trial and ordered sent to the Trenton Psychiatric Hospital. However, had Lowell possessed all available information regarding Jeffrey when he evaluated him in preparation for the December 1974 hearing, there are

indications that it may have altered the content of his report, testimony, and the interpretation by others of his initial conclusions.

3. Information Available But Not Provided to Dr. Kern

Kern's primary concern regarding information that was available at the time of his initial evaluation of Jeffrey, but not made available to him prior to his testimony, arose from his review of Dr. Lowell's psychiatric evaluation of Jeffrey. The report that Lowell wrote in connection with his examination of Jeffrey was only made available to Kern recently by the Committee and was not provided to him prior to the December 18, 1974 competency hearing and the preparation of his own report to the court. Kern was unable to elicit much in the way of a history from Jeffrey, but told the Committee that he was startled when he read Lowell's report at the amount of detail the defendant provided to the defense psychiatrist.[30]

Kern did not know that Jeffrey had told Lowell about an extensive history of symptoms of mental illness, blackouts and hallucinations which represented a stark contrast from his interview with Jeffrey where virtually no details were provided. Kern found this difference significant. He told the Committee that he thought that it may have been a result of an attempt on Jeffrey's part to manipulate the information that he was willing to provide to each doctor. Kern stated that such a sharp contrast in the amount of history provided might be based on Jeffrey's belief that the defense

psychiatrist (Lowell) would be more helpful to him in court, whereas the state's psychiatrist (Kern) would be less likely to want to assist Jeffrey in his psychiatric defense. Kern also related to the Committee that had Jeffrey provided him with the same background information that he gave to Lowell, he would have asked the prosecutor for Jeffrey's prior medical records and psychiatric evaluations to review in preparation of his report. No information concerning the contrast between the information obtained during Lowell and Kern's examination of Jeffrey was elicited during this hearing.[31]

Kern also told the Committee's investigator that he was not provided with a copy of Jeffrey's detailed confession to the Dorsey murder prior to conducting his evaluation. Kern felt that it was particularly relevant that the confession indicated that Jeffrey tried to hide evidence of a crime and that he also fled the scene of the crime. The reports, not in Kern's possession at the time of the initial competence hearing, may have had an affect on Kern's diagnosis of Jeffrey. Kern indicated that he would like to have had this information prior to writing his report and giving testimony at the initial hearing.[32]

Even if Kern's ultimate diagnosis of Jeffrey did not change based on his possession of these reports, the sharp contrast in the interviews that Kern and Lowell conducted of Jeffrey, if presented to the court for its review, may have raised the level of scrutiny that was employed in evaluating Jeffrey's competence.

4. Relevant Information Available but not Provided to the Court or Experts

The Committee's review of the record indicates that relevant information regarding Jeffrey's history, particularly regarding his assertions of prior psychiatric episodes, blackouts and hallucinations, existed at the time of this first competency hearing, but was not presented to the court or doctors for their evaluation.

Jeffrey was on parole at the time that he was arrested and charged with Dorsey's murder. Jeffrey's parole officer at that time, James Priff, visited Jeffrey after his arrest for the homicide and questioned the information that the defendant provided concerning blackouts and amnesia regarding the events surrounding Dorsey's murder. According to Priff, Jeffrey recounted, apparently without any difficulty communicating, his version of the events surrounding Dorsey's murder and his subsequent arrest. Jeffrey told Priff that he was arrested in Newark for homicide. He told the parole officer that he suffered from blackouts and only remembers meeting Dorsey in his neighborhood. He told Priff, "I don't remember anything after that." After Priff met with Jeffrey and heard his account of the incident with Dorsey, he wrote the following in two of his reports:

> The subject has no record of blackouts other than an incident in June of this year in which he could not recall anything that happened as a result of a beating. The subject is a manipulative individual who in this officer's opinion is trying to find the best way out of the present situation ... The subject is a manipulative individual and there is no support in the record for him to claim a history of blackouts.[33]

Priff worked with Jeffrey from May 1972 until after his arrest for the Dorsey homicide in September 1974. Priff stated that when Jeffrey was paroled from Annandale in May 1972 he was placed on "intense" supervision status which required Priff to see Jeffrey four times each month. Priff saw Jeffrey two times each month at the parole office and also visited Jeffrey at home twice each month. As a result of the extensive contact required by the parole status, Priff also maintained frequent contact with Jeffrey's relatives. Given the intensity of Priff's contact with Jeffrey, the Committee found it necessary to investigate the strong concerns about the veracity of Jeffrey's assertions of amnesia and blackouts raised by the parole officer in the reports that he wrote after Jeffrey's 1974 arrest.[34] When interviewed in October 1994, Priff detailed a vivid recollection of Jeffrey:

> To be honest with you, he was one of the very few, I think one of the only ones that actually got to me. He got the best of me. I put a lot of time and effort into him and it got to the point where I just couldn't do any more for him ... [I]t wasn't working out ... He always had an answer when you started questioning him and it was never the answer that you wanted to hear. It was never the truth as far as I was concerned.[35]

Priff explained that Jeffrey's grandfather, great aunt and uncle, with whom he lived, were unable to control Jeffrey within the home and said that Jeffrey had been stealing from the family members. As a result, the family was eager to have Jeffrey removed from the home or, in the alternative, wished to receive welfare for their efforts and expenses incurred in housing Jeffrey. The family asked Priff if he could help them remove Jeffrey from the home by having him either arrested or committed

to a mental institution. Priff explained to the investigators during his October 1994 interview and previously chronicled in his 1974 supervision reports of Jeffrey that there were no grounds for either arresting or committing Jeffrey at that time. Priff explained that in order to be responsive to the family's concerns, he set up an appointment for Jeffrey to see a psychiatrist; however, Jeffrey did not keep the appointment.[36]

In addition, Priff had no knowledge of Jeffrey's claimed assertions to Dr. Lowell after his arrest of a history of psychiatric episodes, blackouts, and hallucinations. Priff's only knowledge of an incident similar to what Jeffrey asserted to Dr. Lowell was in June 1974, prior to the Dorsey homicide, when the defendant suffered a blackout as a result of a beating.[37] Moreover, given the family's desire to have Jeffrey removed from the home, Priff felt confident that had such a history existed, the family would have provided him with this information to bolster their efforts to have Jeffrey removed from the home.[38]

Priff stated that he at no time ever had any difficulty communicating with Jeffrey.[39] Priff was also asked about his recollection concerning his meeting with Jeffrey at the jail after his arrest for the Dorsey homicide. Priff stated that he questioned the veracity of Jeffrey's assertion of amnesia surrounding the events of the crime:

> Priff: He tried to act like he was ... still in a state of confusion or dazed ... I personally didn't buy it ... It

seemed like he was acting ... Just the way he acted -- just wasn't -- to me it wasn't convincing.

Investigator: So you thought he was lying?

Priff: Yeah, I think he knew -- I think he knew what he did, I think he knew exactly what had happened. Part of his plan to control it a little, put a different spin on it.[40]

Priff stated that he was never contacted by anyone regarding his parole supervision of Jeffrey for 28 months immediately prior to the Dorsey homicide. Although Priff's concerns were noted in his parole supervision reports, which were reviewed by his supervisor, he did not personally, nor is he aware of anyone from the parole office bringing his concerns to the attention of the prosecutor.[41] Priff stated that in his experience as a parole officer it was not a "normal practice" to have parole supervision reports sent to the prosecutors handling cases concerning parolees.[42]

Had Priff's knowledge regarding Jeffrey's past or his concerns regarding Jeffrey's amnesia ever been presented to the mental health experts or court for its consideration, it is certainly possible that it may have intensified the level of investigation that was conducted regarding Jeffrey's asserted past and his competence to stand trial. The record, however, does not reflect that any of the information in Priff's possession was ever investigated in connection with Jeffrey's prosecution nor was it presented to the doctors or court for their consideration. The Committee's investigation found that at that time, such interaction between parole officers and prosecutors was not common.

In addition, the Committee learned that Jeffrey had an earlier psychiatric evaluation performed while serving time in the Youth Correctional Institution at Annandale for a robbery conviction. The report does not appear to have been reviewed by the court or doctors the time of this first competency hearing. While at the facility in 1971, a psychological evaluation of Jeffrey was conducted. The clinical psychologist, James Smith, Ph.D., wrote in his report that Jeffrey was a "good con man or psychopath." The doctor continued by writing:

> His verbal skills allow him to talk a very good game. He himself says that he is very versatile and can get along with anyone by acting in such a way as to please them. He told me that the languages he uses with the inmates is different than the language he uses with someone like me. With them, he speaks the way he learned in the ghetto while with someone like me, he uses a more sophisticated vocabulary. In fact, he does this quite well. Other inmates often try to use large words and simply look foolish; but he does it quite naturally and correctly.
>
> His statements suggest that he manipulates other people by acting like them so that they will trust him and listen to what he says.[43]

The reports of Jeffrey's parole officer and the psychologist who evaluated him while he was at Annandale suggest that there was additional significant information regarding Jeffrey that may have influenced the court or the experts in their opinions had this information been submitted for their review. While this information is conflicting at times as to Jeffrey's competence to stand trial, it was clearly relevant for the psychiatrists' and court's consideration and may have increased the level of scrutiny that was employed by the experts and court in their investigation and evaluation of Jeffrey.

5. Information Obtained From Jeffrey and Relied Upon by Experts And Attorneys Was Never Verified

The lack of documented verification concerning Jeffrey's background was an issue that surfaced throughout the Committee's review of Jeffrey's criminal history. The record reflects a virtual absence of verification of any of the information that Jeffrey provided about himself throughout his years at TPH as well as during his involvement with the criminal justice system after his eventual release from the hospital in 1983.

The Committee's review of the record indicated that during this initial hearing, Dr. Lowell presumed that the background information supplied to him by Jeffrey was accurate and did not attempt to verify any of this data. As Jeffrey's stay at TPH lengthened, and his reviews by the court continued, each individual involved in Jeffrey's case assumed that other persons involved in his legal or psychiatric care had previously verified the information that the defendant provided about his past. Moreover, the Committee attempted to verify some of the history provided by Jeffrey and was unable to corroborate his claims of prior psychiatric hospitalization in New York.[44]

Jeffrey's medical records include references, provided by Jeffrey and recorded by his doctors, to his receiving treatment, prior to the 1974 homicide, at psychiatric hospitals in New York State. In fact, his medical records indicate that he told his

doctors that he received such treatment specifically at the Central Islip Psychiatric Center in New York. The record does not indicate that any of the physicians involved in Jeffrey's treatment ever sought to obtain his medical records for any of the hospitalizations mentioned by Jeffrey. Although it is not clear to what extent Jeffrey's assertions of prior illness and hospitalization may have influenced those doctors who evaluated him after the 1974 homicide, the record does reflect that Jeffrey's doctors frequently referenced his prior history in their medical reports, written evaluations, and testimony.[45]

The Committee attempted to verify Jeffrey's asserted history of prior hospitalizations for mental illness by asking the New York Department of Human Services to search its records of all New York hospitals and psychiatric facilities from 1965 to the present. The Department utilized all of the aliases and social security numbers listed in Jeffrey's police records in its search for evidence of his prior hospitalizations and treatment. The Department of Human Services was unable to locate any record of Jeffrey ever having been a patient at any time, in any of its facilities, under any of Jeffrey's known aliases or social security numbers. The Committee notes, however, that upon Jeffrey's arrest for the 1974 homicide, police reports indicate that detectives escorted Jeffrey from French's Hospital in New York City where he was being treated for a drug overdose. The Department of Human Services record check also did not disclose this hospitalization. In order to corroborate the results of the Department of Human Services records search, the Committee

asked the Central Islip Psychiatric Center to perform an independent search of its own records. The Central Islip Psychiatric Center was also unable to locate any records or information to substantiate Jeffrey's claim that he had once been a patient there.[46] Although it is possible that Jeffrey may have been hospitalized at some time prior to the 1974 homicide, his medical records from 1975 until 1983 do not indicate that any attempt to verify this information was made.

Although no one involved in the handling of the 1974 homicide ever sought to verify the history of mental illness and treatment asserted by Jeffrey, TPH did attempt to obtain medical records relating to lymph node surgery that Jeffrey stated he underwent at Martland Medical Center prior to his admission to TPH. Martland Medical Center responded by notifying TPH that they were unable to locate any information that Jeffrey had ever received such treatment or been a patient at their facility.[47]

F. Jeffrey's Admission to the Trenton Psychiatric Hospital

1. Initial Admission and Evaluation

On January 10, 1975, approximately three weeks after Judge Owens found Jeffrey incompetent to stand trial and ordered that he be sent to TPH, Jeffrey was transferred from the Essex County Jail to the hospital. Jeffrey's admission staff notes

from the hospital correctly indicated that he had been sent to the institution under court order due to a charge of murder. The report also indicated that Jeffrey was somewhat uncooperative during his admission to the hospital and did not provide TPH staff with proper data of his personal identification. This initial report also noted that Jeffrey provided a history of prior hospitalizations:

> He said that he has been hospitalized in a Maryland [h]ospital and other hospitals although he could not remember the names ... He asserted that he was seen by many physicians who told the [j]udge that he (the patient) was mentally sick and he further added that he is sick in his head and he is not smart at all and elaborated that he was sent to this place ... In vague terms he spoke about having fainting spells while in the streets and even in the hospital now and then.[48]

The doctor who authored the admission staff notes cited above, Julio del Castillo, concluded his report by noting that Jeffrey did not show any symptoms of gross psychotic manifestations. Dr. Castillo also wrote that Jeffrey was to be watched quite closely and was to receive extensive psychological testing by Dr. Gordon, a clinical psychologist. Skull x-rays and an electroencephalogram were ordered, but he was to receive no medication and remain under close psychiatric observation. Dr. Castillo, at the time he wrote this evaluation, deferred making a diagnosis of Jeffrey's condition.[49]

Within 10 days of his being admitted to TPH, Jeffrey's medical records indicated that his treatment team questioned whether he was truly ill or was feigning

mental illness. The Team Meeting Notes, signed by Dr. Gordon, from January 20, 1975 stated:

> Mr. Jeffrey has been in the building for approximately a week. He is sentenced for a charge of [m]urder. He has always appeared to be lethargic and somewhat confused, however, it is the feeling of the Team that he is really manipulating and is trying to create a defense of insanity.[50]

On that same date, Dr. Castillo wrote a diagnostic note indicating that he was "inclined to think that this patient is psychotic, but up to the present time, no clear cut delusions or hallucinations can be elicited."[51]

Due to the difficulty that his treatment team had in diagnosing Jeffrey, his medical records indicate that the treatment team looked to Dr. Gordon's evaluation and testing of Jeffrey to establish a diagnosis and treatment plan for their patient.[52]

2. Psychological Evaluation Conducted by Dr. Gordon

Jeffrey was examined by Dr. Gordon, a Principal Clinical Psychologist at TPH, on two occasions after Jeffrey's referral from the admission staff. The examinations occurred on January 21 and January 27, 1975, the results of which were summarized by Dr. Gordon in a written report.

Gordon wrote that Jeffrey was so confused that he had a difficult time eliciting an adequate history. The background information discussed Jeffrey's family history

and his history of drug use. This section of Gordon's report also stated that Jeffrey told the doctor that he suffered from epileptic seizures and had such a seizure while at the Essex County Jail before his admission to TPH. There is no indication that Gordon, or any member of the treatment team, sought to verify whether or not the Essex County Jail had any record of Jeffrey having such a seizure while in custody.[53]

Gordon's report described Jeffrey as "quite manneristic and bizarre" and noted that the test protocol suggested psychosis. The doctor wrote that Jeffrey appeared to be "confused, perplexed and quite agitated when seen during both of the testing sessions." Moreover, Gordon noted several statements that Jeffrey frequently made during his meetings with him; "Don't they know how bright the lights are;" "Have you ever been across the world ... I believe I was not meant to lead a long life."

Gordon, over the course of his two examinations of Jeffrey, also administered the following tests:

- Rorschach Inkblot Test
- Thematic Apperception Test
- Bender Visual Motor Gestalt Test
- Projective Human Figure Drawings

Additionally, Gordon wrote that he reviewed the report of James Smith, the Clinical Psychologist who evaluated Jeffrey at the Annandale Youth Correctional Facility, and made special note of Smith's observations that Jeffrey "is a good con-

man or psychopath with verbal skills (which) allow him to talk a very good game." Gordon also noted the concurring psychiatric reports of Lowell and Kern who agreed that Jeffrey was schizophrenic at the time they conducted their evaluations.[54]

3. Dr. Gordon's Diagnosis

Gordon concluded in his analysis of Jeffrey's condition that his test results, Jeffrey's history of prior illness, and the clinical interview conducted indicates a "clinical impression of [s]chizophrenia, [c]hronic [u]ndifferentiated [t]ype." The doctor also wrote that "[t]he question of manipulation was considered heavily. It was felt that the patient would have a very difficult time manipulating all of the tests presented. Furthermore, his mannerisms, verbalizations and tests productions indicates a severe emotional aberration ...."[55]

a. Dr. Gordon's Analysis of Jeffrey's Competence To Stand Trial

Dr. Gordon, the Principal Clinical Psychologist who evaluated Jeffrey for his first treatment team at TPH, spoke with the Committee about his diagnosis and the treatment team's suspicions that Jeffrey may have been attempting to feign incompetence in order to avoid prosecution. Gordon noted that although it was common for treatment teams to consider the question of whether or not a patient was

manipulating, the issue of whether Jeffrey was simulating psychosis was more heavily considered and discussed in Jeffrey's case than with most patients.[56]

Gordon stated that if presented with the same information today, he would make the same diagnosis. He also asserted that he felt confident in the results of the evaluation that he conducted in 1975:

> But going back eighteen years, and based on what I wrote here, I felt relatively, I felt sure in my own mind that he was in fact, suffering from a major emotional aberration, that there was something really wrong with him [and] that [he] was in need of treatment.[57]

Gordon indicated that his ultimate conclusion, that Jeffrey was truly ill, was carefully considered:

> This was not a decision that was easily made. I mean, there was a lot of time and effort and observation and discussion on this case before a final conclusion was made ... I mean the manipulation, the question of manipulation is very subjective. I mean, what we're doing is trying to put together pieces of a puzzle.[58]

Gordon was asked during his interview about any attempts to verify the information that Jeffrey provided about his background:

> Even at the point when we had him in 1975, a lot of times material wasn't passed along, so that what you would do would be that you would start again with a history and that history would be obtained from the patient. And you took that as gospel.[59]

Gordon also told the Committee's investigator that it was his belief that Jeffrey's history had already been verified by the time he evaluated him. He stated that perhaps the reason the information provided by Jeffrey was not verified by TPH was also due to an assumption on the hospital's part that this information had previously been corroborated by Dr. Lowell, who made references in his diagnosis and report on the veracity of Jeffrey's history. Gordon indicated that his ultimate diagnosis, that Jeffrey was incompetent, was the result of a cumulative gathering of information.[60]

Although Jeffrey's treatment team evaluated the possibility that Jeffrey may have been simulating psychosis, the record does not reflect that the court was ever presented with <u>any</u> information that Jeffrey's physicians ever questioned whether or not he was truly incompetent. Because the purpose of Jeffrey's hospitalization was to have his competence restored in order to stand trial for the Dorsey homicide, any evidence questioning the legitimacy of his condition should have been investigated by the prosecutor, and provided to the court for its review.

After Jeffrey's initial admission to TPH subsequent to his first competency hearing on December 18, 1974, he was not again evaluated by the Court until October 21, 1977 -- almost three years after his initial evaluation.

G. October 21, 1977 Competency Hearing

The second of Jeffrey's competency hearings was held on October 21, 1977, once again before the Honorable James T. Owens, J.S.C. Charles Lorber continued his representation of Jeffrey, and assistant prosecutor Howard Wiener replaced Stuart Klepesch for the State. Also new to the case were the experts who evaluated Jeffrey's psychiatric condition prior to this hearing. The prosecutor's expert was Dr. Steven S. Simring, and the psychiatrist testifying for the defense was Dr. Seymour Kuvin.

This proceeding is particularly significant because evidence of Jeffrey's competence continually rose to the surface during the hearing, but was overshadowed by other issues. Dr. Kuvin's testimony at one point indicated that Jeffrey understood the nature of the charges against him as well as the components of a trial and its potential penalties. The court, however, did not permit a more substantial development of this evidence relevant to Jeffrey's competence.

The period of time preceding this hearing is also significant because it demonstrates a marked change in Jeffrey's condition. One of Jeffrey's doctors indicated in a progress note on April 20, 1977 that there had been no changes in Jeffrey's physical and mental condition. However, after altering Jeffrey's medication,

a significant improvement was noted and, as of September 23, 1977, his treatment team regarded him as being in a partial state of remission.[61]

1. Dr. Kuvin's Psychiatric Evaluation & Testimony

a. Psychiatric Evaluation

Dr. Kuvin examined Jeffrey for the public defender on September 23, 1977 in an interview room at the maximum security Vroom Building where Jeffrey had been held since his transfer to TPH in January 1975. He examined Jeffrey for approximately one hour and reviewed his hospital records after his meeting with the patient. Kuvin wrote that he examined the prior reports of Drs. Lowell and Kern. He also noted that he obtained a history from Jeffrey where he again recounted a history of "many prior hospitalizations." However, Kuvin wrote that Jeffrey did not recall how many hospitals he had been in or exactly where the facilities were located.[62]

The doctor continued by stating that Jeffrey was "well oriented as to time, place, and person, and suffers no memory deficits for either recent or remote events." Kuvin noted that Jeffrey tended to ramble, but thought that he answered questions directly, relevantly, and was of the belief that Jeffrey's thought disorder was in "good control."[63]

Kuvin diagnosed Jeffrey as suffering from schizophrenia, chronic undifferentiated type in fair remission. He wrote that Jeffrey required some degree of ongoing therapy, but thought that treatment would be most effective if Jeffrey was transferred from the hospital's maximum security unit to a less restrictive civil unit. The record indicated that Kuvin also seemed to be under the impression that there had already been a resolution of the charges against Jeffrey and concluded his written report by noting a suggested schedule of steps to be taken to ensure that "Mr. Jeffrey can make an adaptation to noninstitutional life with the least amount of stress." Dr. Kuvin's written report offered no opinion on Jeffrey's competence to stand trial.[64]

b. Kuvin's Testimony at October 21, 1977 Competency Hearing

Kuvin testified that he found Jeffrey sincere, but noted that he seemed to be unexpressive and flat. Just as Jeffrey had given the public defender's first expert, Dr. Lowell, a detailed history of prior mental illness, so too did Kuvin testify to Jeffrey having such a past:

> He was able to give a lucid historical background although at times he tended to ramble and become quite circumstantial.
>
> The history disclosed that he attended eleventh grade at Weequahic High School; that he was single; that he's had itinerant, unskilled work; that he's had many prior hospitalizations for mental illness.[65]

Kuvin was asked by the public defender whether or not he had verified the history upon which he was relying. Kuvin responded by stating that, "the [TPH] hospital records and report[s] that I mentioned tended to confirm the historical data."[66]

Kuvin stated that Jeffrey's memory was intact and that the only event that Jeffrey seemed to have problems recalling was the Dorsey homicide. Kuvin explained that it was his opinion that Jeffrey was unable to remember the homicide because it occurred during a "psychotic episode." Kuvin further testified:

> Now, one is not able to recall much during a psychotic episode just as he was not able to recall his hospitalizations, exactly where he was hospitalized and when because they, too, presumably were during psychotic intervals.[67]

Although it would seem, by the very nature of Jeffrey's last hearing, that the purpose of this proceeding would focus on whether Jeffrey's condition had improved sufficiently so that he could stand trial, the public defender established that Dr. Kuvin's examination was only with regard to Jeffrey's transfer to a less restrictive unit of the hospital:

> Lorber: The focus of your examination at my request was with regard to a possible transfer from the Vroom Building as opposed to [intent] at the time of the offense or competency to stand trial. Is that correct?
>
> Kuvin: Yes. The focus was to his consciousness to self or others, yes, sir.[68]

Kuvin concluded his testimony on direct examination by stating that in his opinion, Jeffrey had received the maximum benefit from his stay at the Vroom Building and should be transferred to a less secure unit where he would receive more appropriate treatment and could be prepared gradually for release back into the community. Kuvin's last statement on direct examination was that Jeffrey "was suffering from schizophrenia, chronic, undifferentiated type, in remission at the time I examined him."[69]

On cross-examination, Kuvin again stated that it was his opinion that Jeffrey was in fair remission, was not hallucinating or delusional, but thought that he still had disturbances in his thought processes.[70] Kuvin was asked by assistant prosecutor Wiener whether he restricted his evaluation of Jeffrey to the issue of dangerousness and whether the doctor could issue an opinion with regard to competence to stand trial. The doctor stated:

> Kuvin: The first question you posed to me: Did I restrict it exclusively to dangerousness[?] Competency has to do with -- I think I cannot exclude competency. I think I can make a statement now as to competency to stand trial because at the time of this examination I did pose questions to him as to does he know what the roles of the various people in the courtroom are; does he know what a trial is. He indicated that he knew what a trial procedure was and if he knew that he was accused of a crime, and his role in this trial procedure, and so on.
>
> However, at the time I examined him there was apparently some confusion as to his

status. I was under the impression at the time I examined him that he had already been found not culpable and that -- in that he was found not guilty by reason of his insanity at a hearing.

. . .

I'd rather defer an opinion as to competency.

Weiner: Well, you did ask about the roles of the various people involved?

Kuvin: He knows a trial procedure ---

Weiner: He does know?

Kuvin: Yes. He knows what a trial procedure is -- is about. He knows the functions of the various persons in the courtroom scene. He knows if someone has committed a crime that he can, as he put it, do time, so he has some cognizance of the possible dispositions or penalties.

Weiner: Did you ask him, specifically, whether he knew what a Judge is and the function of a Judge?

Kuvin: Yes, sir.

. . .

His response, as I recall, was that a Judge listens and decides whether you are guilty or not. In many instances this is so, and this is not without -- without the realm of reason.

Weiner: Did you ask him what a lawyer does?

Kuvin: Yes, sir.

. . .

His response was: "He speaks for you." I said: "What about the Prosecutor?["] [sic]

"He's against you."

. . .

Weiner: Did you ask him whether or not, understanding what the offense is, that he either is or was charged with?

Kuvin: I did.

. . .

Of course, that was part of the historical -- and he as fuzzy about it but he alleged that he was charged with murder, with killing somebody.[71]

Immediately following the above cited exchange between the prosecutor and Dr. Kuvin, Judge Owens interrupted Mr. Wiener and cut off his questioning regarding Jeffrey's competence to stand trial -- despite the fact that Kuvin's testimony appeared to demonstrate that Jeffrey may have indeed possessed the necessary mental capacity to be tried. This ended Wiener's cross-examination of the defense expert. Judge Owens stated:

> I think on that particular point the doctor has already indicated [that] he is not in a position now to give an opinion on the question of competency so we can proceed with this hearing.[72]

At this point, the prosecutor was precluded by Judge Owens from asking further questions of Dr. Kuvin. On his re-direct examination of Dr. Kuvin, the public defender concentrated his questions on Jeffrey's amnesia regarding the homicide

rather than Jeffrey's ability to understand a trial procedure or its components. Dr. Kuvin was asked by the public defender:

> Lorber: Is there any way that Mr. Jeffries can confer with me in the defense of himself and intelligently and lucidly explain to me at this time what happened when he was arrested; what happened on the day of the incident, and -- well, let me stop the question at that point.
>
> Is there any way he can do that now?
>
> Kuvin: No, sir.[73]

2. Dr. Simring's Psychiatric Evaluation & Testimony

a. Psychiatric Evaluation

Simring also examined Jeffrey at the Vroom Building; however, his evaluation was conducted on October 13, 1977, several weeks after Kuvin's examination for the defense. In addition to reviewing documents from the prosecutor's office, Simring also reviewed the 1974 psychiatric evaluations of Drs. Lowell and Kern, police and incident reports surrounding the Dorsey homicide, a transcript of Jeffrey's first competency hearing, as well as Jeffrey's TPH records.[74] Simring noted in his written report the significance of Jeffrey's confession, obtained one day after Dorsey's murder:

> It is significant that the patient's 3½ page confession is direct, logical, and quite coherent. He readily recalls all of the details of

> the crime. He even states that 'I'm sorry for what I did and I know it was wrong,' and 'my aunt said I would have to pray to God for forgiveness.'[75]

Simring noted his review of the psychiatric evaluations previously prepared by Dr. Lowell and Dr. Kern prior to Jeffrey's first competency hearing, their concurrence that Jeffrey was mentally ill, and Jeffrey's inability to recall any details of the crime during his examinations by these doctors. Simring also wrote that he reviewed the treatment team's September 23, 1977 meeting notes that concluded that Jeffrey was in a partial state of remission.[76]

Simring described Jeffrey as "friendly and cooperative" during his examination. The doctor wrote that Jeffrey:

> [R]emembered that he had been told that he was charged with homicide, although he insisted that he did not remember [ki]lling anyone (sic). He reported to me that he had suffered with auditory hallucinations for a long period of time.[77]

Simring's written description of Jeffrey's history also included references to prior psychiatric treatment, "[t]he patient has also had several prior psychiatric hospitalizations in New York and New Jersey." However, no specific details regarding such treatment were included in the doctor's report.[78]

Simring concluded his report by diagnosing Jeffrey as suffering from chronic undifferentiated schizophrenia. Simring's conclusions regarding Jeffrey's condition

differed from Dr. Kuvin's in several respects. First, unlike Dr. Kuvin's concurrence with the treatment team's assessment that Jeffrey was in a state of remission, Simring did not reach such a conclusion. Rather, he determined that Jeffrey was not in remission and remained incompetent to stand trial. Second, despite the hospital reports and Kuvin's examination that indicated that Jeffrey's condition had improved, Simring wrote: "this patient's capacity to stand trial does not seem to have improved over the last three years."[79] Simring did, however, agree with Kuvin in recommending that Jeffrey be transferred to a less restrictive unit of the hospital for further treatment.[80]

b. Simring's Testimony

Simring explained on direct examination the nature of his examination and the documents that he reviewed in preparation for his meeting with Jeffrey. Simring also testified that Jeffrey gave him an uncorroborated history:

> [H]e gave me a history. He gave me a fairly lucid history surrounding his early life, and although I haven't verified it with outside sources except in terms of references in the hospital chart, he was able to tell me that he grew up in a rather disturbed childhood.
>
> . . .
>
> He is suffering from chronic undifferentiated schizophrenia. He's suffered from this illness for a long time and has been hospitalized for it before.[81]

Simring's testimony mirrored the text of his written report regarding his conclusion that Jeffrey continued to lack competence to stand trial. When asked about Jeffrey's sanity at the time of the commission of the crime, the doctor stated that it was difficult for him to make such a determination due to Jeffrey's amnesia surrounding the incident. However, just as he noted the significance of Jeffrey's initial confession in his written report, he also testified to the juxtaposition of this confession with Jeffrey's subsequent amnesia. Simring told the Court:

> On the other hand, we have one piece -- at least I was delivered one piece of evidence, which is the patient's own words the day after the crime, namely, his confession, and if these are, indeed, his own words on the day after the crime he was able to speak in these words logically, coherently and relevant about the crime so that although Dr. Lowell only a couple of weeks after that said he [Jeffrey] remembered no details of the crime, and that is certainly entirely possible, at least on the day after the crime he could tell why he did it, how it came about, how he committed the murder, what he did with the murder weapon, where he hid the murder weapon, which was, indeed, sound; that he had remorse and guilt for what he did, which he expressed to his aunt, and so forth, and therefore, this confession if -- you know -- one would take this, again at face value, is not a confession and it is difficult, again, to examine a confession. It's just a piece of paper. It is not a psychiatric examination. <u>These are not the words of someone who is insane. At least at the time he made the confession there is nothing insane about the confession</u>.[82]

Dr. Simring concluded his testimony on direct examination by stating that he agreed that Jeffrey should be transferred to a less restrictive part of the psychiatric hospital and that the treatment he would receive there could possibly, in the future, improve his level of competence to permit Jeffrey to stand trial.[83]

The cross-examination of Dr. Simring was unremarkable in light of the fact that Simring, although the prosecutor's expert, espoused the theory of the defense -- that Jeffrey remained incompetent to stand trial and should be transferred to a less restrictive unit of the hospital for further treatment. Although one of Jeffrey's treatment team physicians, Dr. Elizondo, was in the court room, neither attorney nor the Judge felt that it was necessary for him to testify.[84]

Judge Owens concluded the hearing by stating that he was ready to sign an order that would transfer Jeffrey to the locked section of the civil portion of the Trenton Psychiatric Hospital. No decision was rendered regarding Jeffrey's competence to stand trial for the murder of Alberta Dorsey.[85]

3. Deficiencies Identified by the Committee

There were several deficiencies that the Committee identified regarding this hearing. This proceeding, more than most of Jeffrey's hearings, demonstrated evidence of his competence rising to the surface, yet this information was not the focus of the hearing. In addition, there was an incorrect assumption by the defense expert that Jeffrey had already been adjudicated not guilty by reason of insanity, and once again, reliance by the court, prosecutor, and experts on Jeffrey's uncorroborated history of prior illness. Coupled with these inadequacies was too heavy a reliance on

expert testimony rather than a thorough investigation and adjudication of the facts available.

a. Erroneous Information Regarding Jeffrey's Legal Status

One of the failings of the October 21, 1977 hearing stems from an incorrect characterization of Jeffrey's legal status. This was Jeffrey's first hearing since he was found incompetent to stand trial in January 1975. This proceeding was scheduled when a "Notice of Krol Review Hearing" was generated by the Superior Court of New Jersey, Criminal Law Division in Essex County.[86] Presumably, the purpose of this proceeding should have been to ascertain whether Jeffrey's mental condition had improved sufficiently to render him competent to stand trial for Dorsey's murder. Instead, the focus of the hearing was solely on the quality of Jeffrey's treatment and where to appropriately house him for his continued care. One reason that the court may have addressed Jeffrey's treatment rather than his competence might be attributable to the mistaken classification of Jeffrey's case as a Krol matter.

Although at the time of this hearing there had not yet been a disposition of the homicide charge pending against Jeffrey, the record reflects that the notices and documents generated by the court referencing this proceeding incorrectly refer to it as a "Krol Hearing."

In addition to all of the notices of this proceeding and its scheduling referencing it as a "Krol" matter, the Judge's very first remarks at the start of this proceeding were, "[t]his is a Krol hearing."[87] The references, however, to State v. Krol in Jeffrey's case may have been misleading.[88] Krol applies to individuals who have been acquitted of the charges pending against them or against whom charges have been dismissed by reason of a defendant's insanity ("NGRI"). In Jeffrey's case, no such determination regarding his guilt or innocence had been made.

Notwithstanding the fact that there was relevant evidence available regarding Jeffrey's ability to stand trial on the murder indictment, the record reflects that Judge Owens confined this second hearing strictly to the issue of where to appropriately house and treat Jeffrey. Because Judge Owens is deceased, we will never know with certainty whether he characterized this as a Krol matter because he was under the mistaken impression that Jeffrey had previously been found not guilty by reason of insanity, or whether the court made erroneous references to Krol because tangential issues similar to those occurring in Krol matters were present in Jeffrey's case. With either scenario, it is clear that no provisions were made for the adjudication of the competence issues that were surfacing at the proceeding.

b. Defense Expert's Belief That Jeffrey Had Already Been Found Not Guilty by Reason of Insanity

It is clear from the testimony of Dr. Kuvin that he did not have a clear understanding of Jeffrey's legal status.[89] Despite his erroneous belief that Jeffrey had previously been found not guilty by reason of insanity, Kuvin's evaluation produced compelling evidence of Jeffrey's competence. Kuvin's examination indicated that Jeffrey understood the charges against him, the potential penalties involved, and the roles of the individuals involved in a trial proceeding.[90]

When interviewed by one of the Committee's investigators, Dr. Kuvin confirmed that he was not aware when he examined Jeffrey and testified at the October 21, 1977 hearing that the murder charge against Jeffrey was still pending. Kuvin explained that the letter he received asking him to examine Jeffrey and to testify referenced Jeffrey as a "Krol" patient -- indicating to Kuvin that the charges against Jeffrey had already been dismissed.[91]

Kuvin also explained to the Committee's investigator that in addition to his belief that Jeffrey had already been adjudicated NGRI, he was also of the conviction that Jeffrey, at the time he examined him, possessed the mental capacity necessary to stand trial. The doctor, however, was not asked to evaluate Jeffrey's competence or testify regarding that issue:

Kuvin:	At the time I saw him, I think he probably was competent to stand trial. At the time I saw him.
Investigator:	But you weren't asked to testify to that?
Kuvin:	No. But at this point, at this point, the time I examined him, I do think he knew what had transpired.
Investigator:	And as far as competency at least he was competent to go to court to have that --
Kuvin:	At this point, yes.[92]

c. Expert's Belief That Erroneously Referring To Jeffrey As A Krol Patient May Have Incorrectly Influenced Experts' Evaluations

Dr. Sadoff, a forensic psychiatrist and attorney for more than thirty years, reviewed Jeffrey's medical and legal records for the Committee. Sadoff has combined his law and medical degrees into a practice specializing in forensic psychiatry. Dr. Sadoff is currently in private practice; however, he was previously the Clinical Director of a Pennsylvania state maximum security forensic diagnostic hospital where he evaluated prisoners for competence and criminal responsibility. In addition to his private practice, Sadoff is currently a Clinical Professor of Psychiatry at the University of Pennsylvania where he heads the Forensic Psychiatry Clinic and the Center for Studies in Social and Legal Psychiatry.

Sadoff told the Committee that it is possible that the experts who evaluated Jeffrey may have been influenced in their diagnoses by an erroneous belief that Jeffrey was a "Krol" patient and had therefore been previously found not guilty of the homicide due to serious mental illness.[93] Sadoff explained:

> The only other thing was that there seemed to be some confusion calling it a 'Krol' [sic] case when in fact it was not and that might have contributed to the thinking of some of the doctors because if a person is a Krol [sic], if one looks at things contextually, then they say, 'Well, if he was a Krol [sic], then he must have been insane and therefore seriously mentally ill.' That is not always the case, but it does tend to influence people's thinking. If they knew he was just incompetent[,] never been tried for it[,] and that he had been seen as seriously mentally ill and not competent, that might have given a different picture represented on the issue for the psychiatrist ... Psychiatrists can be influenced[,] by the way[,] as well as anyone. So if you call somebody 'schizophreni[c]' or if you call them 'psychopath' that means something just as if you call him 'Krol' [sic] like you call him 'Jackson.'[94]

Sadoff's concern regarding the possible confusion that could result in incorrectly referring to Jeffrey as a Krol patient is evident in Kuvin's testimony concerning Jeffrey. In Kuvin's case, his erroneous belief that Jeffrey was a Krol patient creates even stronger evidence of the possibility that Jeffrey may have been mentally fit to stand trial. Because Kuvin was of the belief at the time he conducted his evaluation of Jeffrey that the defendant had previously been found to be seriously mentally ill, it is even more compelling that the defense's own expert nevertheless concluded that Jeffrey was competent to stand trial.

d. Missed Opportunities To Evaluate Jeffrey's Competence

At the time of the October 1977 hearing, there appeared to be little recognition of the possibility that there was a change in Jeffrey's condition which may have rendered him competent to stand trial. The disparity between the testimony of the defense and prosecution's experts concerning Jeffrey's ability to stand trial was not resolved at that time. In addition to the testimony of the defense expert, who indicated that Jeffrey may have been mentally capable to stand trial, a review of Jeffrey's most recent evaluation at TPH would have demonstrated that Dr. Simring was the only doctor involved in this proceeding who was not of the conviction that Jeffrey was in a state of remission. The record clearly reflects that Jeffrey's TPH treatment team agreed with Kuvin's diagnosis and concluded that Jeffrey's condition had greatly improved since May 1977. Despite these conflicting opinions, the prosecutor did not question the conclusions of his expert, Dr. Simring, and did not appear to conduct further investigation into the issue of Jeffrey's competence to stand trial even after the defense expert indicated during cross-examination at the hearing that Jeffrey may have been competent.[95] One of the Committee's investigators spoke with the prosecutor who handled this hearing regarding his recollection of the proceeding.

(1) Wiener's Committee Interview

When interviewed by the Committee, former Assistant Prosecutor Wiener was asked if he recalled the testimony of defense psychiatrist Kuvin that indicated that Jeffrey may have indeed been competent to stand trial and whether he had any similar concerns regarding Jeffrey's competence. Wiener stated that it was his belief that Jeffrey was incompetent to stand trial at the time of this hearing. Wiener said that he based his opinion of Jeffrey's incompetence on the fact that the defendant had been held at TPH for three years and was found to be ill by its doctors, and because his own expert, Dr. Simring, for whom he had great respect, had reached the same conclusion. Wiener told the Committee, however, that when Kuvin began providing him with responses on cross-examination that were contrary to his conviction that Jeffrey was incompetent, he continued to question Kuvin to see where the testimony would lead until he was precluded from pursuing this line of questioning further by the judge.[96]

(2) Treatment Team Physician Present At Hearing Not Asked to Testify

One member of Jeffrey's treatment team, Dr. Elizondo, accompanied Jeffrey to this hearing and also received a subpoena to testify at the proceeding.[97] Although Dr. Elizondo was the only doctor in the courtroom who had continual contact with Jeffrey as a member of his treatment team, he was not called to the stand. Because

the hearing concentrated on Jeffrey's treatment rather than his competence to stand trial, Elizondo's testimony may not have changed the outcome of the proceeding. Elizondo indicated in his report that he was also focused on Jeffrey's transfer to a different section of the hospital.[98] However, Elizondo, like the defense expert Dr. Kuvin, was of the belief that Jeffrey was in a state of remission. Had Dr. Elizondo been called to the stand, it would have resulted in two doctors (Kuvin and Elizondo) testifying that Jeffrey was in remission, and only one testifying that his condition was unchanged (Simring).

Thus, the conflicting medical reports and testimony of the experts involved in this proceeding indicate that there did exist sufficient evidence to warrant the initiation by the prosecutor or court of a proceeding to determine Jeffrey's competence to stand trial. No such proceeding, however, was scheduled as a result of the October 21, 1977 proceeding.[99]

e. Dr. Simring's Recent Statements Regarding Jeffrey's History

In addition to the former prosecutor and defense expert's assertions that they relied on the purported accuracy of Jeffrey's prior history, Dr. Simring's reliance on this data may be the most significant.[100]

Dr. Simring told the Committee that had he been presented with evidence that Jeffrey's history had not been verified when he first met with him, it may not have changed his ultimate diagnosis; however, he explained that this information may have raised his level of suspicion regarding Jeffrey:

> [T]here's no single factor that makes it or breaks it. What would be most significant to me is if he told me that he had a long history of psychiatric illness and the Prosecutor could demonstrate that he did not have a -- any history of psychiatric illness, what it would suggest to me is that Mr. Jeffrey was being deliberately untruthful.[101]

Thus, Simring, like the other experts who assumed the veracity of Jeffrey's history, indicated to the Committee that if he knew that verification of such data was not possible, it may have effected his original diagnosis. Because Simring was the only expert who was of the belief that Jeffrey was not in remission at the time of this hearing, any change in his opinion and testimony regarding Jeffrey's competence may have been significant.

This proceeding resulted in Judge Owens signing an order transferring Jeffrey from the Vroom Building of TPH to the civil wing of the hospital. Jeffrey's next review by the court was scheduled to take place six months from the date of the October 21, 1977 hearing.

H. Jeffrey's Subsequent Competency Hearings

1. April 14, 1978 Hearing

Jeffrey's next review by the court was scheduled to take place before Judge Owens on April 14, 1978. Charles Lorber and Howard Wiener continued in their respective roles as public defender and prosecutor. Once again all references in the court's documents referred to the proceeding as a Krol hearing. However, due to the gravity of the psychological report issued by Dr. Zenon Gill, the physician at TPH who had assumed primary responsibility for Jeffrey's care since his transfer to a less restrictive unit, no hearing was in fact held on this date.[102] Instead, the parties stipulated to Gill's report and agreed to Jeffrey's continued confinement at TPH with another review scheduled to take place in six months. No expert, other than Dr. Gill, provided the court with an opinion regarding Jeffrey's condition.[103]

a. Significance of Gill's Involvement in Jeffrey's Treatment

Dr. Gill's involvement in Jeffrey's treatment represents a turning point in his period of confinement at TPH. When Gill became involved in Jeffrey's case, the diversity of opinions previously received by the court from defense and prosecution experts ceased for the majority of Jeffrey's hearings. Dr. Gill became the sole

physician providing psychiatric information about Jeffrey to the attorneys and court.

The reports and testimony that Gill provided portrayed Jeffrey as being seriously mentally ill, out of touch with reality, and afraid to leave the hospital. In contrast, however, Jeffrey's hospital records during the same period of time illustrate that other staff members characterized Jeffrey quite differently -- social, pleasant, aloof and paranoid, manipulative, demonstrating inappropriate behavior, and eloping frequently. As the record later demonstrated, Gill may have filtered out the evidence that was in conflict with his opinion of Jeffrey and did not provide the court with a complete picture of Jeffrey's condition.

In addition, one of the Committee's experts, Dr. Rotov, found that Gill's reports and diagnoses of Jeffrey, which the court presumed to be credible, may have been tainted due to the nature of the relationship that developed between the defendant and Dr. Gill.

b. Gill's April 5, 1978 Report

The report upon which the court and attorneys stipulated, thereby eliminating a hearing, was issued by Dr. Gill on April 5, 1978. Dr. Gill assumed primary responsibility for Jeffrey's treatment in February 1978, shortly after the defendant's

transfer to the less restrictive hospital unit. This report presented the court with a sharp contrast to the prior treatment team's assessment of Jeffrey.[104]

Although Jeffrey's last treatment team found him in a state of partial remission, Dr. Gill's report indicated that Jeffrey was "psychotic," "delusional," and "hallucinating in the auditory field." Gill also noted that Jeffrey would not let anyone else be present during their meetings. Finally, Gill's report changed Jeffrey's original diagnosis from chronic, undifferentiated schizophrenia to paranoid schizophrenia.[105]

c. Problems With The Court's April 1978 Evaluation of Jeffrey

In addition to the persistent references to the scheduled proceeding being a Krol matter, the Court's evaluation was completely non-adversarial. No one questioned the sharp disparity between Gill's findings of Jeffrey's declining mental condition and those of his prior treatment team (and previous defense expert) who witnessed substantial improvement only six months earlier.

d. Gill's Relationship with Jeffrey May Have Tainted His Ability to Evaluate Jeffrey Objectively

Dr. Michail Rotov, a Psychiatric Consultant with the New Jersey Division of Mental Health and Hospitals, was recommended to the Committee as an expert who might be able to assist in its understanding of the psychiatric issues involved in the

Committee's investigation. Dr. Rotov is licensed in four states and is Board Certified in psychiatry. He served for six years as the Director of Psychiatric Education at both Ancora and Trenton Psychiatric Hospitals and was the Director of the Division of Mental Health and Hospitals for seven years. In addition, Dr. Rotov served as the Chief Psychiatrist for the New Jersey Division of Mental Health and Hospitals for eleven years and has published an extensive number of scientific articles.

After his review of Jeffrey's court and hospital records, Dr. Michail Rotov told the Committee that his analysis of Gill's treatment of Jeffrey suggested to him that Dr. Gill may have lost his sense of objectivity in his work with the defendant. Rotov explained that he found Gill's relationship with Jeffrey troubling because the doctor appeared to project onto Jeffrey a "desire to be rescued from his mental illness." Rotov continued his explanation by telling the Committee that Gill's reports and notes indicate that the doctor acquiesced to Jeffrey's desire not to be examined by any therapist other than Gill.[106] Rotov explained that, in his opinion, Gill's interaction with Jeffrey became "contaminated," and represented a "departure from objectivity."[107]

2. November 17, 1978 Hearing

This was the last of Jeffrey's hearings over which Judge Owens presided. Charles Lorber continued his representation of Jeffrey, however, there was a new

assistant prosecutor assigned to the case, Joseph Scatura. Scatura's expert witness was Dr. Kern.[108] Dr. Gill also gave testimony to the court regarding Jeffrey's condition. Both Gill and Kern testified that Jeffrey's mental condition precluded him from assisting in his own defense and standing trial for Dorsey's murder.[109] Due to the concurrence in testimony by both doctors, Jeffrey's continued confinement at TPH was ordered by the court. This hearing differed from the prior proceeding in that the focus of the hearing appeared to be more squarely focused on Jeffrey's competence to stand trial. Judge Owens continued to characterize the proceeding as a "Krol hearing"; his conclusory remarks, however, did focus on Jeffrey's competence to stand trial:

> Well, I think it is clear from the testimony of both Dr. Kern and Dr. Gill that Connie Jeffrey requires prolonged further psychiatric treatment, that at the present time he has no appreciation of the crime for which he is charged, that of a homicide, and that both doctors feel that mentally he would be unable to confer with an attorney with respect to the defense of [t]his matter. So that being so, I will direct his return to the institution and I will sign an order accordingly.[110]

After Judge Owens reached the conclusion that Jeffrey remained incompetent, the public defender asked the court to rule on an application that he had made in 1975 for dismissal of the indictment based on the likelihood that Jeffrey would never regain his competence to stand trial. Assistant Prosecutor Scatura successfully urged the court not to grant the public defender's request. Scatura argued:

> First of all, clearly the dismissal of any indictment not in the course of a trial is a very drastic step. I noted that Dr. Gill indicated that in the last year there ha[d] been some

> improvement on the part of the patient ... This is not a hopeless case. The possibility still remains that at some time in the future this individual may possibly be competent to stand trial. And as long as that possibility remains, the indictment should not be dismissed.[111]

It is significant that just prior to this proceeding a pattern of abuse of hospital privileges by Jeffrey began to emerge. Although the abuses prior to this hearing were not as numerous as they were to become, they were not presented to the court for its consideration.

a. Jeffrey's Pattern of Abuse Of Grounds Privileges Begins to Emerge

The pattern of Jeffrey's inappropriate behavior in the hospital began to emerge shortly before the November 17, 1978 hearing. Jeffrey's hospital records indicate that only 10 days prior to this proceeding there were numerous complaints from various portions of the hospital that Jeffrey was wandering to units of the facility that were off-limits to him. He was warned that if such behavior persisted, he would be in danger of having his grounds privileges revoked.[112]

Jeffrey's next court proceeding was scheduled to take place in June of 1979; however, a considerable amount of time would pass until Jeffrey's case was in fact reviewed by the court. The next hearing did not actually occur until almost two years later, on October 17, 1980.[113]

3. October 17, 1980 Proceeding

The October 17, 1980 hearing was the first over which the Honorable David S. Baime, J.S.C. presided. Dr. Gill was the only doctor testifying as an expert at this hearing. Kenneth Kayser was the assistant prosecutor and Edward Peranio was the attorney for Jeffrey. The hearing was non-adversarial, brief and concluded just as all of Jeffrey's previous reviews ended, with his continued confinement at TPH.[114]

The principal weakness at this hearing derives from the sole reliance by the court and attorneys on Dr. Gill's testimony. This total dependance on Dr. Gill was unfortunate, because it is at this hearing in particular that the "filtering process" engaged in by Dr. Gill in his characterization of Jeffrey's condition is truly evident. Neither the attorneys nor court questioned the testimony that Gill presented, even when his conclusions differed from those of other TPH staff treating Jeffrey, and were at times even in conflict with reports and notes that Gill himself had previously authored.

a. Information the Court Did Receive from Dr. Gill

Subsequent to Jeffrey's last court hearing in November 1978, Dr. Gill presented two psychiatric evaluations to the court. The first was submitted in anticipation of a hearing in June 1979 which was later postponed, and the second was submitted one week before the October 1980 proceeding.[115]

Both reports state that Jeffrey had not shown any improvement in his mental condition. Both reports also stressed Jeffrey's desire to remain hospitalized due to his fear of non-institutional life.[116] In the June 1979 report Gill wrote:

> He feels [more] comfortable in the hospital environment because he has established friendly relationships with other patients and employees. He feels happy and more secure. He is frightened to go out on the streets because 'People out on the street are against me and are talking unfavorably about me.'[117]

The doctor also noted that at the time he authored the June 1979 report that Jeffrey was enjoying full grounds privileges. The June report did not detail what, if any, supervision was placed on Jeffrey outside the confines of the hospital when he had such privileges.[118]

Gill's second report, authored on October 8, 1980 was quite similar to his previous summary of Jeffrey's condition. The doctor noted that Jeffrey "prefers [sic] to remain in the hospital on a closed ward because he feels well protected." Gill also indicated that the defendant had some level of cognizance regarding the court proceedings that were occurring in his case when he wrote that Jeffrey "doesn't appreciate going to the Court and having a Court hearing. He is convinced that [the] Court is not friendly to him and is just trying to hurt him." Gill only briefly noted that Jeffrey's grounds privileges were suspended on one occasion and also asserted that Jeffrey did not exhibit violent behavior.[119] The doctor wrote:

> A few months ago this patient was enjoying ground privileges, but he was harassing [sic] female employees by telephone calls, therefore ground privileges were canceled. His adjustment on the

ward is good, he never exhibits any violent behavior, he prefers [sic] to remain in the hospital on a closed ward because he feels well protected.[120]

Contrary to the above cited reports, which appear to be the only information about Jeffrey upon which the court and assistant prosecutor relied, there was relevant information available that Gill did not present in his reports or testimony.

b. Gill's Filtering of Relevant Information

In contrast to Gill's portrayal of Jeffrey as a non-violent patient seeking refuge at the hospital due to his "fear" of the outside world, Jeffrey's records during this same period of time indicate that the hospital had a difficult time keeping Jeffrey within the confines of the hospital. His TPH file reflects that Jeffrey absconded frequently, appeared to be under the influence of drugs and/or alcohol on a regular basis, was manipulative, and had in fact exhibited behavior so violent on one occasion that he was transferred back to the maximum security unit of the hospital.[121]

The following incidents occurred after Jeffrey's November 17, 1978 hearing, but before the October 1980 proceeding before Judge Baime. Although this information was noted in Jeffrey's hospital records, none of these episodes were presented to the court for its consideration:

- Jeffrey failed to return from grounds privileges on several occasions and the police were notified that he was missing.[122]

- On January 13, 1979 Jeffrey left the confines of the hospital with a visitor and was missing for two hours.[123]

- Jeffrey attacked another patient on July 22, 1979.[124]

- Chart indicates TPH transferred Jeffrey back to the maximum security Vroom unit of the hospital on July 23, 1979.[125]

- Grounds privileges were canceled by Dr. Gill in January 1980, frequent drug screenings were conducted.[126]

- Jeffrey is transferred to the medium security unit of TPH on February 7, 1980.[127]

- Jeffrey is seen alone in downtown Trenton on February 13, 1980.[128]

- Treatment team notes from February 28, 1980 state that Jeffrey "remains manipulative, unreliable, anxious to have cough syrup in [his] possession (addiction to cough syrup suspected)."[129]

- Treatment team also noted reports that female employees have been receiving harassing telephone calls from Jeffrey. He continued to have grounds privileges with supervision, although Gill's report to the court stated that Jeffrey's grounds privileges were withdrawn after Jeffrey made the harassing telephone calls.[130]

- Treatment team denies Jeffrey a grounds pass on March 5, 1980 due to the prior incident where he was seen alone in downtown Trenton and due to his drug use.[131]

- Jeffrey was given grounds privileges on March 22, 1980 with supervision.[132]

- Jeffrey was found intoxicated on March 23, 1980.[133]

- Due to continued substance abuse by Jeffrey at the hospital in June of 1980, his grounds privileges were again revoked.[134]

- Jeffrey eloped on July 5, 1980. The police and Jeffrey's family were notified. TPH notes indicate he returned to the

hospital sometime later the same day. 2 vial bottles were found in his room upon his return.[135]

- Treatment team notes in August 1980 indicate Jeffrey will only speak with Gill, and characterized Jeffrey as "hostile, suspicious and guarded."[136]

- On October 10, 1980 Jeffrey stole a key to the hospital and asked a visitor to assist him in his escape. Police were notified and the hospital considered transferring Jeffrey to a more secure unit, but did not.[137]

- On October 15, 1980 Jeffrey entered a nurse's office, grabbed a chart out of her hands and threw her papers on the floor. Jeffrey was suspected to be under the influence and a drug screening was ordered.[138]

Had a psychiatrist other than Gill reviewed Jeffrey's hospital records or independently evaluated him prior to this proceeding, the court and prosecutor may have received information and conclusions regarding Jeffrey's prognosis that differed from those of Dr. Gill. At the very least, had the court known of Jeffrey's incidents of inappropriate behavior, the court may have had an opportunity to order that Jeffrey be housed in a more secure hospital setting.

Two of the Committee's psychiatric experts independently identified Jeffrey's abuse of grounds privileges as a serious issue that was virtually ignored by the Trenton Psychiatric Hospital. Dr. Sadoff stated, "I have a note in here that I criticized the treatment team for not dealing with Jeffrey's behavior and I cited his elopements, stealing sprees, drug use...." Sadoff continued his analysis by explaining that Jeffrey's abusive behavior was evidence of his psychopathy:

> My feeling about it is that if you are evaluating somebody, the basis of their statement how sick they are, that's one thing. You also have to look at behavior.
>
> . . .
>
> [P]rosecutors look at behavior. Defense attorneys look at craziness or mental illness. You can infer a lot of mental state from behavior and here is all this behavior -- stealing, drug use, his elopements. That's all psychopathic rather than psychotic behavior ... They didn't focus on the Dorsey murder. I felt that there were times when Jeffrey appeared to be in remission. Doctors could have attempted to deal with the underlying reason for his confinement.[139]

Like Dr. Sadoff, Dr. Rotov was extremely critical of TPH's response to Jeffrey's behavior. Rotov stated that Jeffrey had "numerous incidents with ominous overtones from the years 1980, '81, '82 and '83 which are indicative of the fact that his lethality continued unabated."[140] Rotov also told the Committee that TPH did not respond appropriately to Jeffrey's abuses:

> I mean, it indicates failure of therapy on all fronts actually. And one aspect, the lethality is not even being addressed ... No sensible priorities in treatment were established with the result that the causes and circumstances of dangerous behavior were not clarified, and the therapy remained unfocused and generic. His record reflects a multitude of interventions, none of which specifically related to his central problem, his murderous impulses.[141]

Thus, it is certainly possible that additional expert testimony at the October 17, 1980 hearing may have provided valuable information to the court and prosecutor regarding Jeffrey's condition. Jeffrey's hospital records alone contained a substantial amount of information regarding Jeffrey's destructive behavior that was never

presented to the court by Dr. Gill, even though two of the incidents (stolen key/escape attempt, altercation with nurse) took place less than a week before Jeffrey's hearing.

c. Prosecutor And Judge's Belief That Additional Expert Testimony Was Unnecessary

Both Prosecutor Kayser and Judge Baime were asked by the Committee whether or not they had considered the necessity of retaining expert testimony other than that of Dr. Gill for the October 17, 1980 proceeding. Both responded by explaining that they considered additional expert testimony unnecessary at that time.

The October 17, 1980 proceeding was the first involvement that Kenneth Kayser had in handling Jeffrey's prosecution. Kayser told the Committee that he received a one-page letter in his mail box asking him to handle the hearing, but did not believe at that time that he was assigned to handle the entire file. Kayser stated, "It was an old case that existed long before I came to the prosecutor's office, and the only thing I was supposed to do was handle the Krol [sic] hearing." In addition, Kayser recalled that because there was no question in his mind or the defense attorney's that the defendant was incompetent due to the history of the case, he "wouldn't have spent a great deal of time going over details of reports."[142]

Kayser explained in his interview that given the history of Jeffrey's past hearings and his confinement at TPH, he did not think that it was necessary to seek an expert opinion other than that of Dr. Gill for the October 1980 proceeding. Kayser stated:

> This was a situation where Gill came in on at least three occasions and I assume there were probably reports from earlier times that he had come in and the prognosis was always the same--this guy is incompetent, he's going to continue to be incompetent for a long time ... [T]hat's the way the testimony had gone before and that's the way the latest report was.[143]

Likewise, Judge Baime recently explained that he too did not believe that additional expert testimony was necessary to supplement Gill's opinion of Jeffrey due to the prosecutor's conclusion that supplemental expert opinion was not required. Baime explained:

> I was very fortunate in having Ken Kayser [sic] who was the Prosecutor assigned to my Court. I had great respect for Mr. Kayser [sic]. I still do.
>
> The fact that Mr. Kayser [sic] agreed with the assessment offered by the Defense surely had an impact on my decision.[144]

Because the October 1980 proceeding was completely non-adversarial and excluded any other expert testimony or even a vigorous cross-examination of Dr. Gill, the court did not receive an accurate representation of Jeffrey's condition. It is not clear what effect the information regarding Jeffrey's abusive behavior and elopements would have had on the court; however, Judge Baime should have had the opportunity to consider this information prior to rendering his decision. As will be seen in later

proceedings, when Judge Baime was made aware of some of Jeffrey's disturbing behavior, the Judge precluded Jeffrey from receiving grounds privileges without permission of the court. Had the court been made aware of Jeffrey's behavior at the October 1980 hearing, it is likely that Judge Baime would have imposed similar restraints on Jeffrey's liberty. Jeffrey's next court evaluation took place seven months later on May 8, 1981.[145]

4. May 8, 1981 Hearing

The May 8, 1981 hearing was in almost all respects identical to Jeffrey's prior proceeding. Once again Judge Baime presided, Kenneth Kayser appeared for the State and Edward Peranio continued to represent Jeffrey for the Public Defender's Office. This proceeding, like the one before it, was completely non-adversarial with both the court, State and public defender relying exclusively on Dr. Gill's evaluation and testimony. At this point in time, the court and prosecutor had relied exclusively on Dr. Gill's opinion and testimony for 2½ years -- since November 1978.

Although Dr. Gill's March 31, 1981 report did not describe Jeffrey's abuse of grounds privileges in detail, Gill did write that Jeffrey had "been granted ground[s] privileges, but because he abused them they were revoked. Patient engaged while on ground[s] privileges in taking street drugs, he was also drinking and left the hospital grounds without permission."[146]

The abuses that Gill alluded to in the above-cited report had become much more severe than those that occurred prior to his last proceeding. Jeffrey tried to escape on several occasions and was frequently found to be under the influence of drugs. The following are several of the most serious incidents that occurred, but were not specifically made known to the court at the May 1981 hearing:

- On 11/7/80 Jeffrey refused a nurse's request to turn the volume of his radio down. Jeffrey became angry and told the nurse that he was a murderer and would kill her. He also threatened to kill other staff members, supervisors and grounds police.[147]

- On 11/10/80 Jeffrey forcibly took another patient to a locked part of the hospital where he attempted to sexually assault the patient. Jeffrey beat the patient and was suspected of having stolen hospital keys.[148]

- On 2/13/81 Jeffrey was seen again in downtown Trenton. Police were sent to find him. He was returned almost three hours later. Jeffrey appeared to be on drugs and attempted to manipulate his drug test by giving the nurse an old urine sample.[149]

During his testimony, Gill characterized Jeffrey's prognosis as "very, very guarded" and told the court that he had "serious doubts [that] he will ever be able to stand trial."[150] As a result of Gill's testimony, Judge Baime again raised the issue of dismissing the indictment against Jeffrey. Baime stated:

> Under the Code of Criminal Justice, my responsibility is to dismiss an indictment if it is not reasonably foreseeable the defendant will regain his competency. The indictment in this case was returned on November 12, 1974. The killing took place on September 24, 1974. I think we are getting to a point where a motion to dismiss the indictment based upon the incompetency of the defendant might well be considered meritorious.[151]

The proceeding concluded with Assistant Deputy Public Defender Peranio stating that he would file a motion to dismiss the indictment subsequent to the conclusion of the proceeding. Jeffrey's next hearing was scheduled to take place in six months.[152]

5. November 6, 1981 Hearing -- Indictment is Dismissed

The November 6, 1981 hearing is particularly significant for two reasons. First, although Dr. Gill is once again the only psychiatrist providing testimony to the court and prosecutor at this proceeding, he had not been Jeffrey's treating physician for several months prior to this hearing while Jeffrey was confined in the medium security unit. Second, based primarily on Gill's testimony and prognosis that Jeffrey would likely never become competent to stand trial, the court dismissed the murder indictment that had been pending against Jeffrey since 1974. The court, however, was not informed that the treatment team that had assumed responsibility for Jeffrey's daily care had a prognosis that differed significantly from Dr. Gill's. Without the knowledge that there existed opinions contrary to those of Gill regarding Jeffrey's condition, the indictment for the murder of Alberta Dorsey was dismissed with prejudice.

a. Gill's Written Report & Testimony on November 6, 1981

Dr. Gill's written evaluation for this proceeding was fairly similar to his past reports.[153] The report indicated that Jeffrey was transferred to another hospital unit several months earlier due to his poor behavior. However, Dr. Gill did not state in his report that he had not been responsible for Jeffrey's daily care since the defendant's transfer to a different hospital unit in August of 1981. Gill wrote that:

> On 8/16/81, this patient left the ward without permission and was apprehended by the police and returned to the ward. On his return it was noted he had hospital keys in his possession, this situation was considered serious as it could have endangered the other residents some of whom are psychotic, homicidal and suicidal. Mr. Jeffreys [sic] was unable to control his behavior and was for his own protection as well as others transferred to the Moderate Security Unit on 8/16/81.[154]

Gill concluded his report by noting that Jeffrey should continue to reside in the moderate security unit under close supervision. Gill also opined that Jeffrey "remains stubborn, uncooperative and suffers from serious psychotic, schizophrenic symptoms which is resistive to drug therapy, his prognosis is guarded."[155]

Likewise, Gill reiterated in his testimony at the hearing that Jeffrey was transferred to a more secure unit of the hospital in August of 1981. Gill also told the court that the likelihood that Jeffrey would become competent to stand trial at a later date was "very guarded, very poor."[156] In light of Dr. Gill's finding of Jeffrey's

continued incompetence, Judge Baime concluded the proceeding by dismissing the indictment:

> I find that the Defendant lacks the requisite fitness to be tried with regard to the indictment presently pending against him. I further find that the Defendant has not regained [the] fitness necessary to proceed. And that there is no reasonable likelihood that he will. **Therefore, the indictment will be dismissed against him**. I further conclude that the commitment [sic] constitutes a danger to himself and others; and, therefore, present levels of restraint should be continued. I believe the next periodic review proceeding is in six months.[157]

Jeffrey's hospital records indicate that when he returned to the hospital from this hearing he was very much aware of what had transpired in court. His file notes that he was "in good spirits," and that Jeffrey stated to a nurse that he was in a good mood because, "[t]hey dropped my original charge."[158]

b. Misconception By Court & Prosecutor that Gill Continued to be Jeffrey's Treating Physician

Judge Baime's interview with a Committee investigator indicated that at the time that he dismissed the indictment, he was of the belief that Dr. Gill continued to be Jeffrey's primary treating psychiatrist. Judge Baime was startled to learn during his interview with one of the Committee's investigators that Dr. Gill had not been Jeffrey's physician for at least three months and was in fact in a different hospital unit. Baime explained:

> I can tell you this, that the Court played no part in subpoenaing the witnesses or requesting their presence. I always assumed that the expert appearing before me was the treating psychiatrist.
>
> . . .
>
> I don't know why Dr. Blechman [sic] did not appear before me at the hearing in November ... I am frankly shocked to -- to learn that he was the treating physician at the time Dr. Gill testified.[159]

Likewise, prosecutor Kayser explained to the Committee's investigator that he too was of the belief that Gill remained Jeffrey's primary physician when he testified at the November 1981 hearing:

> I believe Gill was the treating physician, but I'm not absolutely certain. It seems to me that in some cases when the treating physician wasn't available, for some reason, they would send somebody else. I do think that the person they sent had to have examined him within a certain period of time otherwise he wasn't competent to testify.[160]

Jeffrey's TPH records clearly reflect that a different physician, namely Dr. Blechman, had assumed daily responsibility for Jeffrey's care since his transfer to the medium security unit in August 1981. The record does not reflect that either the prosecutor or court was aware, prior to this hearing, that there had been a staffing change of Jeffrey's doctors. Even without having conducted a thorough assessment of Jeffrey's situation prior to the proceeding, Dr. Gill did provide one piece of testimony that could have alerted those present at the November 1981 hearing to the fact that Gill was no longer treating Jeffrey on a regular basis.

During his direct examination of Gill, Kayser asked the doctor if there had been any change in Jeffrey's condition since the last court hearing. In the course of responding to Kayser's question, Gill discussed Jeffrey's transfer to the different hospital unit and indicated in his response that other doctors had become responsible for Jeffrey's care. Gill responded:

> And I review[ed] all the reports and nurses' notes and doctor reports, it seems to [me] his adjustment in [the] close[d] Ward -- this is on the third floor -- [he's] doing much better and much [more] successfully than we were able to perform.[161]

Notwithstanding the doctor's response, no further questions were asked of Gill regarding who was responsible for Jeffrey's treatment on a daily basis.

c. New Treatment Team's Analysis of Jeffrey's Condition

When Jeffrey was transferred out of Gill's unit, Dr. Blechman became the head of Jeffrey's new treatment team.[162] The Committee's investigation has revealed that upon taking charge of Jeffrey's care, Blechman's team had found Jeffrey in a complete state of remission and had serious questions as to whether or not Jeffrey had ever been psychotic.

(1) Two Members of Jeffrey's Final Treatment Team Question The Basis For Jeffrey's Institutionalization

Susan Fox was on staff at TPH as a clinical psychologist when Jeffrey was a patient at the hospital. Ms. Fox was on the last treatment team that evaluated Jeffrey prior to his release from the hospital in 1983. Fox told the Committee that she remembered Jeffrey well and had a vivid recollection of him independent of the documents that she reviewed prior to her interview with the Committee. Fox stated:

> [I] remember Connie Jeffrey quite well as a quiet, very neat, controlled man, large.
>
> We always had a sense of contained potential aggressiveness. And it was the impression of most of us based on our experience with him that he was sane. And there was some real question about whether he had ever been psychotic.
>
> . . .
>
> [I] concluded that since I had seen no symptoms of psychosis, neither delusionings, nor hallucinations, nor fuzziness of thinking, nor secondary less impressive bizarre symptoms related to thought processes. That I assumed that this was a man who had used the system to avoid more -- potentially more severe punishment.[163]

Also treating Jeffrey just prior to his release from TPH was Dr. Jean Keltz. Although Dr. Keltz did believe that Jeffrey had at one time been incompetent, she also stated that it was her recollection that the treatment team regularly discussed the possibility that Jeffrey was feigning. Keltz told the Committee:

> I remember that we all thought he was very strange ... And that we had numerous discussions about whether he was mentally ill or not. And whether he was just a con artist.
>
> . . .
>
> [W]e were always questioning it ... [A] lot of people felt he had not been at all sick at any point.
>
> I think that was mainly the question. We all agreed that he was at least in remission, but some people I think felt that he had not been schizophrenic.[164]

Both Fox and Keltz were quite definitive in their statements to the Committee regarding their treatment team's frequent discussions regarding the possibility of Jeffrey malingering. However, the medical records that were provided to the Committee do not entirely support their assertions. Although the records clearly reflect that the treatment team believed that Jeffrey was in a state of complete remission, showing no signs of overt psychosis, the frequent discussions that Fox and Keltz recounted regarding malingering are not noted in Jeffrey's medical records. With regard to this lack of documentation, Dr. Fox told the Committee that she believed notes were missing from Jeffrey's medical records, "And, unfortunately, I am fully convinced that there are a lot of notes missing from August to November."[165] Fox continued by explaining:

> There are requirements for a newly admitted patient to a hospital. So no matter what unit they went on there would have been a lot of notes.
>
> . . .

> We had a very intensely involved unit. And these were very dangerous patients, so we did document significantly more than other units in the hospital.
>
> . . .
>
> Because it [was] a unit that did a lot of documenting. We had to, for a variety of reasons, including because it was often used in court.[166]

6. Court was not Presented with Evidence of Jeffrey's Competence Prior to the Dismissal of the Indictment

The written record was replete with data that was never made available to the court prior to the dismissal of the indictment that was different from what Gill presented to the court. Although it was clear that Blechman's Treatment Team found Jeffrey in a complete state of remission, the court did not receive any evidence that questioned Gill's assessment of Jeffrey. The Committee wanted to know the significance of the dramatic disparity between Gill's assessment of Jeffrey and the Blechman Treatment Team's evaluation. In order to assist the Committee in this analysis, it asked independent psychiatric experts to review Jeffrey's entire criminal and psychiatric history.

Although the purpose of the experts' evaluations were to gain an independent assessment of Jeffrey's condition when Gill and Blechman had such divergent diagnoses, the Committee permitted its experts to review documentation which would not have originally been available at that time. This additional documentation included

TPH reports generated after the November 1981 hearing, as well as court transcripts, arrest and parole reports for crimes committed by Jeffrey after his ultimate release from TPH.

The findings of its experts caused the Committee to question whether the assessment of Jeffrey that Gill presented to the court had been correct, and whether further investigation at that time would have revealed that Jeffrey was competent to stand trial prior to the dismissal of the indictment. First, both experts found that there were additional avenues of investigation that could have been conducted to more accurately assess Jeffrey's competence -- additional diagnostic tests conducted by TPH as well as verification of Jeffrey's background information. Second, both experts found evidence in the written record that Jeffrey showed symptoms of antisocial behavior. This finding would be consistent with the Blechman Team's evaluation that Jeffrey showed evidence of psychopathy rather than psychosis. Last, one of the experts suggested to the Committee his theory of a possible diagnosis of Jeffrey's condition that provides a possible explanation for his pattern of behavior throughout his institutionalization.

a. Dr. Michail Rotov's Analysis of Jeffrey's Competence

The analysis of Dr. Michail Rotov, one of the Committee's forensic psychiatric experts, lent support to the diagnosis of the Blechman Team's findings concerning

Jeffrey's competence.[167] In his review of Jeffrey's records, Rotov told the Committee that he was surprised that TPH did not more closely scrutinize the possibility that Jeffrey may have been competent as evidence accumulated during Jeffrey's hospitalization. Rotov stated:

> The medical record does not reflect any effort to investigate the possibility of intentional simulation of psychosis. Considering the patient's rational account to the police about [the] 1974 murder, followed within two weeks by alleged loss of memory and emergence of psychotic like behavior at the same time.
>
> . . .
>
> Then full recovery from psychotic symptoms following the withdrawal of court supervision. Such apparently goal oriented evolution of the disease process merited serious exploration.[168]

Rotov told the Committee that had the issue of Jeffrey's competence been more fully addressed immediately upon Jeffrey's admission to TPH it may have resulted in a diagnosis completely different than that of schizophrenia with which he was labeled throughout his commitment. Rotov told the Committee:

> The issue of malingering has been looming in the background of this case from the beginning. Eventually, the cumulative effects of the opinion of academic consultants, the gravity and the verisimilitude of the exhibited symptoms and their chronic course sealed the official diagnosis of schizophrenia. Today we have at our [sic] disposal for analysis, a whole decade following Mr. Jeffrey's release in 1983.
>
> And the fact is that during this time, while in constant trouble, with the law, he apparently, and I say apparently, never reproduced any of the overt schizophrenic symptoms. This must cast a serious doubt on the original diagnosis.[169]

Rotov's analysis and review of Jeffrey's records indicates that there existed other possible diagnoses for the behavior exhibited by Jeffrey. It was significant to Rotov that Jeffrey's "schizophrenic" behavior was only observed in mental health settings. The fact that these symptoms were apparently not visible or documented when Jeffrey was in jail, working with his parole officer, or noted in the statements Jeffrey's family members made to the hospital and his parole officer, also required further inquiry according to Rotov.[170]

b. Dr. Rotov's Analysis of Jeffrey's Diagnosis

Rotov explained that in his opinion, Jeffrey may have been suffering from a combination of problems; that Jeffrey's claim of hallucinations and delusions may have been fabricated and that these fabricated symptoms in combination with some form of mental illness may have contributed to the diagnosis of schizophrenia that he received.[171]

The doctor explained that although he had not examined Jeffrey, his review of Jeffrey's medical records from TPH and a review of his criminal activity after his release from that institution indicate that Jeffrey has a personality disorder with secondary mood disturbance and drug addiction. Dr. Rotov's analysis suggests the possibility of Jeffrey exhibiting a combination of Ganser Syndrome and malingering.[172]

The doctor told the Committee that Ganser Syndrome is described in prisoners who tried to avoid punishment by exhibiting symptoms that they thought represented psychosis. In Ganser Syndrome the patient becomes so immersed in the psychosis that he is unable to control it, according to Rotov. This syndrome differs from malingering -- where a patient's actions are more calculated and controlled.[173] Rotov told the Committee that there were more specific tests that TPH could have conducted in order to more fully resolve this issue. However, the record does not indicate that these tests were performed on Jeffrey.[174]

c. Dr. Sadoff's Analysis

In addition to the analysis of Dr. Rotov, Dr. Robert Sadoff also reviewed Jeffrey's records for the Committee. Like Dr. Rotov, Sadoff stated that his review of the record indicated to him that Jeffrey was suffering from a personality disorder. Sadoff told the Committee that although he had not met with Jeffrey, the records and history indicated that Jeffrey suffered from both an antisocial personality disorder and schizophrenia.[175]

Sadoff found it particularly significant that Jeffrey described a long history of mental illness that does not appear to have ever been corroborated. The lack of corroboration of Jeffrey's psychiatric history and Jeffrey's claims that he suffered blackouts was significant to Sadoff. Sadoff told the Committee that someone should

have tried to verify the history provided by Jeffrey -- the prosecutor or the doctors who performed Jeffrey's psychiatric evaluations prior to his first competency hearing should have taken steps to certify that this information was credible. Sadoff told the Committee that he always asks the lawyers for whom he testifies as an expert for medical records to support assertions of prior blackouts, psychiatric illness and treatment. He was surprised that there is no indication in the record that anyone asked for such information in Jeffrey's case.[176] Sadoff stated that if an expert does not receive such corroboration:

> [T]hen you are left with the person's word. And if he is a good con man, he's going to be able to convince you that he has a serious mental illness. If he is conning about that, is he also giving you symptoms that he has learned to give to have you then diagnose him as being mentally ill.
>
> . . .
>
> So [the blackouts] is something else that should have been explored; and if the data were available to the doctors, they would have said, 'he says he had blackouts, but there is no evidence for it in Annandale [sic] or any place else.'[177]

The Committee found that the analyses of Rotov and Sadoff add further credibility to the findings of the Blechman Treatment Team. These experts further underscore the fact that all evidence concerning Jeffrey's competence was not fully explored, investigated, or presented to the court for its review. It became abundantly clear, particularly when a Committee investigator interviewed Judge Baime, that the court would have viewed the contradictory evidence regarding Jeffrey's condition as

highly relevant to its decision making. It was not until his interview with a Committee investigator that Judge Baime learned about the extent of the information pointing to Jeffrey's possible competence and the fact that Gill was not Jeffrey's treating physician when he last testified about Jeffrey's condition. Baime indicated that had he been presented with this evidence, the indictment against Jeffrey may not have been dismissed at that time.

(1) Indictment May Not Have Been Dismissed If All Relevant Evidence Was Presented To The Court

Judge Baime explained that he would not have dismissed the indictment at the November 1981 proceeding if he had learned that Gill was no longer Jeffrey's primary physician and that additional information existed regarding the defendant's condition:

> There's no question that I would have taken a different course. I tend to think I would not have attributed much credibility to Dr. Blechman's [sic] opinion in light of the history of the patient. But it certainly would have given me cause to delay making any decision ... regarding the dismissal of the indictment. [T]here's no question in my mind whatsoever that I would not have dismissed that indictment had I been apprised of, number one, the change in assignments and, number two, in Dr. Blechman's [sic] [opinion].
>
> That point should be emphasized. Had I been aware that Dr. Gill was not the treating psychiatrist at the time of the hearing, I would not have accepted [his] testimony either. I would have requested that the individual most responsible for the care of the patient testify.[178]

Baime stated that although he would have been skeptical of the new treatment team's assessment that Jeffrey had made remarkable progress in light of his prior prognoses, he would have conducted additional proceedings with regard to Jeffrey's "fitness to proceed in the future."[179] The Judge also explained that he had never considered the possibility that Jeffrey might be a malingerer because he never received any information that Jeffrey was suspected of feigning his illness:

> I was absolutely convinced by virtue of the reports that had been presented to me and my observations of the demeanor of Mr. Jeffrey that he was severely mentally ill and a danger.[180]

It is unclear under what authority Judge Baime scheduled a subsequent hearing to review Jeffrey's condition after the indictment was dismissed; nonetheless, Jeffrey was reviewed again by the court on October 22, 1982.

7. October 22, 1982 Hearing

It was not until this proceeding, eleven months after the indictment had been dismissed, that Judge Baime was presented with evidence that other psychiatrists were of the opinion that Jeffrey's condition was dramatically different than what had been previously portrayed by Dr. Gill. However, because this hearing was the first at which the Judge learned of the Blechman Team's assessment of Jeffrey's condition, which was wholly different than what Gill had presented to the court for years, the Judge dismissed the information as not credible.[181]

The primary issue addressed by Judge Baime at this proceeding was what, if any, supervisory responsibility the court could retain with regard to Jeffrey's continued treatment and confinement in the absence of an indictment. The court also questioned how to interpret the psychiatric reports of Dr. Blechman's Treatment Team that characterized Jeffrey in complete remission in light of his legal status as a civil committee.

The public defender representing Jeffrey, Paula Chaffin, argued that Jeffrey should be dealt with just as any other civil committee would be handled, thereby precluding the participation of the criminal court or prosecutor's office. The Deputy Attorney General, Miriam Brody, however, argued that the prosecutor should be given notice of and the opportunity to participate in any periodic reviews or discharge plans affecting Jeffrey. Judge Baime concluded the proceeding by stating that he had no authority to continue to supervise Jeffrey's case, expressed anger at the conflicting opinions that he received from TPH, and reaffirmed his November 1981 dismissal of the indictment.

a. Blechman Treatment Team Finds Jeffrey in a Complete State of Remission

Dr. Blechman's June 16, 1982 psychiatric evaluation of Jeffrey was completely different than the reports that Dr. Gill presented to Judge Baime only months earlier. Blechman wrote that Jeffrey had not had any hallucinations or

delusions of persecution for 10-12 months and further noted that Jeffrey showed no evidence of psychosis. Doctor Blechman diagnosed Jeffrey as having schizophrenia in complete remission and also noted that his patient's "[l]evel of intellect and fund of knowledge were superior."[182] Only three months later, Blechman wrote an almost identical assessment of Jeffrey's condition and reported to the court that Jeffrey showed no symptoms of a thought disorder, "he reaches goal ideas readily, without loose associations or tangentiality. He is well oriented in all spheres." Blechman continued by writing:

> Mr. Jeffrey readily admits to having been severely mentally ill in the past, and he states that his memory of events surrounding the alleged crime, his arrest and subsequent events is confused and uncertain.[183]

Blechman's report also noted his desire to increase Jeffrey's privileges and suggested that Jeffrey work towards obtaining a "paid hospital job" and also encouraged home visits. Blechman concluded by writing that a social worker would begin making discharge plans for Jeffrey "with the hope that Mr. Jeffrey's behavior would warrant release into the community."[184]

b. The Court's Response To Conflicting Prognoses

Judge Baime began the October 22, 1982 proceeding by recounting that Jeffrey's case had a "rather tortured history" and openly questioned whether the court

could assert any supervisory responsibility over Jeffrey given the lack of an indictment. Baime stated:

> Ordinarily I think you would all agree that the Court's responsibility concludes when the indictment is dismissed. Here, however another doctor was assigned to the defendant and he indicated that the defendant had shown remarkable improvement. This came as somewhat a shock to me. ... I am absolutely certain at the outset that this defendant was not feigning illness in order to have the indictment dismissed. I doubt that the Prosecutor will argue that such was the case.[185]

Judge Baime asked the public defender how Jeffrey had made such a "remarkable recovery." To which public defender Chaffin responded:

> Chaffin: I don't know. I didn't know Mr. Jeffreys [sic] before. I can only say and I know it's a cliche but psychiatry is not an exact science ....
>
> Baime: No doubt psychiatry is an inexact science. It seems to be more inexact at the Trenton Psychiatric Hospital, however, than other institutions. I wonder what the responsibility of the Court is in a situation such as this. This defendant has exhibited dangerous traits in the past, not merely pertaining to an offense but his history of institutionalization has disclosed violent behavior. And in one instance an escape. Under circumstances here, one wonders how the Court can reasonably rely upon the judgments of doctors who have been wrong so often in the past.[186]

Recently, Judge Baime explained that the "transcript of the final proceeding in which Dr. Blechman's [sic] report [was] shown to me ... doesn't fully disclose my anger, I don't think."[187] Baime continued:

> I was absolutely livid. I was deeply concerned, I think I said it on the record, but maybe not. I was deeply concerned that Dr. Blechman's [sic] evaluation was wrong. I felt very strongly at the time of that hearing and before that Mr. Jeffrey was a -- a danger at least to others and even perhaps to himself.
>
> So [when] I received that report I thought Dr. Blechman [sic] was wrong. 100 percent wrong. But there was very little I could do about it at that time.
>
> . . .
>
> [B]ased on my experience with Mr. Jeffrey both in court and the psychiatric reports I had received previously, I was absolutely convinced that Dr. Blechman [sic] was wrong.[188]

In addition, Judge Baime discussed with the Committee's investigator whether or not he had considered reinstating the indictment that had been dismissed in light of Dr. Blechman's assessment that Jeffrey's condition had significantly improved:

> And perhaps in light of ... Dr. Blechman's [sic] belief that Mr. Jeffrey was not mentally ill, that issue should have been scrutinized. It wasn't for a variety of reasons.
>
> I can't speak for the Prosecutor. I imagine that he just did not attribute any degree of credibility to Dr. Blechman's [sic] report.
>
> Had the issue been presented to me I probably would have re-instated the indictment because of the ground upon which I dismissed the indictment. That is, no reasonable probability of -- of regaining competency.[189]

In addition, Judge Baime stated in his interview that he had not previously been presented with any evidence at the time that Jeffrey's treatment team suspected that he may have been competent, but that such information would have altered the

course he took. Baime explained that had he received information that Jeffrey's "remarkable" improvement after the dismissal of the indictment was possibly due to Jeffrey feigning incompetence, he would have reinstated the indictment. Baime asserted:

> I never construed that report as indicating that Mr. Jeffrey had feigned his mental illness. Had that issue been presented and had there been evidence that he was a malingerer and had manipulated his way out of the criminal justice system, I think I would have been diabolical enough if ... nothing else then to somehow find a basis for reinstating the indictment.[190]

Judge Baime expressed concern at the hearing that without judicial supervision, Jeffrey might be released into the community based on only a doctor's decision. Baime's final words at the proceeding criticized the situation that Jeffrey's case presented and indicated that the Judge believed that legislative reform was necessary to better address situations where indictments are dismissed due to incompetence to stand trial:

> [T]he distinction has been made by the legislature between those found not guilty by reason of insanity and the individuals who have been found competent to stand trial and [whose] indictment or indictments have been dismissed. The wisdom of the policy enunciated by the legislature is not an issue for the Court to view or determine. I would be less than cand[id] were I not to state that the difficulty of this case emanates [sic] not from the legislative judgment but from what I perceive to be rather severe problems with respect to the [physicians] and social workers in Trenton Psychiatric Hospital. ... I can only state that I feel this is a potentially dangerous situation.
>
> . . .

> I will reaffirm my position dismissing the indictment. The committee will be committed to Trenton Psychiatric Hospital as a civil committee.
>
> . . .
>
> [T]he right of the public to be safeguarded will depend upon judgments of psychiatrists at the hospital.

Judge Baime explained that it was his belief that the conclusion of the October 22, 1982 hearing would result in Jeffrey being "a patient in Trenton Psychiatric Hospital under full restraints ... I considered him to be involuntarily committed."[191] Unbeknownst to Judge Baime, after the October 1982 hearing concluded, Jeffrey remained at the hospital for less than three months before being released into the community.[192]

8. Jeffrey's Release From TPH

After the indictment was dismissed, Jeffrey's status became that of an involuntary civil committee. As such, the hospital could hold Jeffrey as long as he was found to be <u>both</u> mentally ill and a danger to himself or others.[193] There was no dispute among the doctors that were treating Jeffrey that he was dangerous. However, given the TPH doctors' assessment that Jeffrey displayed no symptoms of mental illness, the hospital could not legally confine Jeffrey because he did not meet both of the criteria for involuntary civil commitment. Unable to hold him against his will, Jeffrey's doctors convinced their patient to continue his hospitalization by

becoming a voluntary patient.[194] As such, Jeffrey would remain a patient only until he decided to sign himself out of the hospital by providing 72 hours notice of his intent to leave TPH, which he in fact did in January 1983.

a. Hospital Plans For Jeffrey's Release

Despite the fact that the court believed that Jeffrey would remain within the confines of the TPH for a considerable period of time following the dismissal of the indictment, TPH began making arrangements for Jeffrey's discharge only 5 days after the October 22, 1982 hearing.[195] Jeffrey became a voluntary committee on November 23, 1982, one month after his last court date.[196]

Jeffrey's TPH records clearly reflect the frustration of Jeffrey's treatment team regarding Jeffrey's legal status. Jeffrey's illegal drug use appeared to increase significantly during the last weeks of his stay at TPH and Jeffrey signed several 72-hour release notices which he later withdrew.[197]

On January 12, 1983, Jeffrey's treatment team documented that Jeffrey denied his drug use and showed no evidence of psychosis, but was possibly showing evidence of psychopathy. The team's notes described Jeffrey's behavior as similar to what was reported in 1971 by the psychologist who evaluated Jeffrey at Annandale who found him "manipulative" and able to "talk a good game."[198] On

the same day, the team wrote that they consulted the hospital's legal advisor for advice as to how to handle Jeffrey's situation -- a voluntary patient who was dangerous, but not mentally ill. The notes indicated that the legal advice obtained by Blechman's Team indicated that they could not take any action to keep Jeffrey at TPH unless they found him legally committable -- a danger to himself or others and mentally ill:

> She advised us that, if not committable, we had no choice but to allow [his] discharge, but that we were obliged to make psychiatric and drug abuse ... referrals. ... I informed her that we had planned to do so.[199]

Likewise, the discharge summary that Dr. Blechman wrote on January 28, 1983, only 11 days after Jeffrey's discharge, indicated that the Treatment Team did not believe that they could have prevented their patient's discharge. Blechman wrote:

> We all agreed that the patient was not committable [sic], that he was not psychotic, and that since he was a voluntary patient with a 72 [h]our A.M.A. Notice to [L]eave we had no choice but to allow his discharge.
>
> . . .
>
> Condition on Discharge: Patient showed absolutely no evidence of psychosis at time of discharge.[200]

Susan Fox reiterated Blechman's concerns when she told the Committee's investigator that the Treatment Team was quite frustrated with Jeffrey's legal status

and their inability to control his release from the hospital because he was a voluntary patient. Fox explained:

> With Connie Jeffrey, I think most of us felt that he was potentially quite dangerous. But we had the sense, at least, that we could not keep him, because he didn't have that legal status.
>
> . . .
>
> And then the issue of commitment based on mental illness. We were of the opinion that mental illness meant psychosis. That is you could not take care of yourself in some sense. ... [W]ith that in mind, again, we would have had some difficulty proving certainly psychosis.[201]

Because the Treatment Team did not feel that they could legally keep Jeffrey institutionalized, Jeffrey was released from TPH on January 17, 1983, 72 hours after signing a notice that he wished to leave the hospital. Although he was arrested many times after his 1983 release, no one ever learned about his eight year institutionalization at TPH because he subsequently asserted that he had never been hospitalized or had any history of mental illness. Until his arrest for the May 1993 homicide of D.G., there is no indication that he ever had any difficulty communicating with his attorneys, nor was ever required by any court to undergo any form of psychiatric testing or evaluation.[202]

II. INVESTIGATION AND PROSECUTION OF JEFFREY FOR CRIMES COMMITTED SUBSEQUENT TO JEFFREY'S TPH RELEASE

Like the repetitive pattern of deficiencies that emerged throughout Jeffrey's eight years of institutionalization and competency hearings, the Committee has identified a number of recurring problems related to Jeffrey's prosecutions for crimes committed after his release from the Trenton Psychiatric Hospital.

Throughout this section of the report, each deficiency is specifically addressed as it relates to each of Jeffrey's prosecutions. The problems identified may be broadly categorized as follows:

- **Heavy Reliance On Jeffrey's Assertions**

  Information obtained from Jeffrey, and relied upon, was never verified. The Committee has discovered a troubling contrast between Jeffrey's TPH and post-TPH years.

  While at TPH, Jeffrey continually asserted that he had a long history of psychiatric illness and treatment. This information does not appear to have been verified and was consistently relied upon by attorneys, courts and psychiatrists.

After Jeffrey was released from TPH, he repeatedly denied that he had any history of psychiatric illness, treatment or hospitalization. Again, no one within the criminal justice system questioned Jeffrey's assertions or ever deduced that he had been, by court order, institutionalized at a state psychiatric hospital for eight years.

Thus, what Jeffrey said about himself determined the course of his care and treatment within the system.

- <u>Superficial Understanding Of Jeffrey's Complete Criminal History</u>

At every step in Jeffrey's criminal history there was only a superficial understanding of Jeffrey's true criminal past. The pre-sentence investigations and written reports conducted for each of Jeffrey's prosecutions were in some way flawed or inaccurate. Again, there was a heavy reliance on Jeffrey's assertions about his past as opposed to an investigation into his past history. The defective pre-sentence reports were relied upon by sentencing judges, the Bureau of Parole, and mental health professionals who took for granted that the information they received concerning Jeffrey was accurate and complete.

- **Plea Negotiation And Sentencing Decisions Made Without Benefit Of All Relevant Information**

  There was both an underappreciation and an underexamination of all relevant facts concerning Jeffrey's criminal history, including his assaults on children, in Jeffrey's plea negotiations and sentencings. The Committee is not challenging the plea negotiation and sentencing decisions that were made, but rather, that these decisions were made with incomplete or inaccurate information regarding Jeffrey's criminal background. The absence of reliable background information precluded those individuals charged with the responsibility of negotiating pleas or imposing sentences from making these decisions with an understanding as to how each plea and sentence fit into Jeffrey's overall pattern of criminal activity.

- **Parole Officers' Lack of Information**

  There was a systemic breakdown in the flow of information to the parole officers responsible for Jeffrey's supervision. They did not learn that he had been arrested twice in April 1993 while on parole. One of the arrests was an indictable offense that could

have resulted in the revocation of Jeffrey's parole prior to the May 1993 murder of D.G.

A. March 9, 1985 Assault Against 12-Year Old Boy

The record reflects that after Jeffrey's release from TPH he was not again arrested until July 25, 1984. At that time, Jeffrey was arrested for shoplifting and continued to commit similar offenses until March 9, 1985.[203] On that date, Jeffrey committed his first documented offense against a child.

The police report of this incident indicated that the assault began in the bathroom of the Light House Temple Church in Newark. The church also served as a shelter, and Conrad Jeffrey had been living at the facility since March 5, 1985. The victim, a 12-year old boy, told police that as he exited the bathroom, he was accosted by Jeffrey:

> When I finished I went out the door into the hallway and this guy grabbed me ... He put his hand over my mouth and pulled me up the stairs to where his room and bedroom was. He pushed me on the bed and opened my string and unbuttoned my pants and tried to pull them down. He said, 'if you yell or scream I will strangle you.' I broke loose from him and ran downstairs ... Then I told my friends to walk me home and told my mother and she called the police.[204]

Jeffrey's account of the incident varied significantly from that of the boy. Jeffrey explained that he was playing basketball at the shelter and took his watch and

ring off and placed them on the side of the basketball court. Jeffrey said that when he finished playing ball, his jewelry was missing and that he confronted a group of people near the basketball court regarding the whereabouts of his jewelry. Jeffrey told police that the victim and another individual left the area quickly, as if they were "guilty" of taking his property. Jeffrey denied attempting to sexually assault the boy and stated that when he saw the 12-year old boy again several hours later, he merely attempted to search the boy's pockets in order to locate his missing property.[205]

Jeffrey was identified as the individual who assaulted the boy at the shelter. After Jeffrey was named as a suspect in the boy's assault, the police attempted to locate Jeffrey at the shelter. When the police arrived at the facility, however, they were notified by the shelter's caretaker that Jeffrey had been asked to leave the day of the boy's assault because he had been "acting strange all day."[206] Jeffrey was not arrested for this assault until March 27, 1985 when he was spotted in a welfare office.[207] Jeffrey was held at the county jail; however, the victim and his mother failed to return to positively identify Jeffrey as the man who assaulted him at the shelter. As a result, the caretaker of the shelter assisted the police in visually identifying Jeffrey as a suspect.[208] Jeffrey was indicted on November 6, 1985 and was charged with:

- Second Degree Kidnapping for the purpose of Aggravated Sexual Assault
- Second Degree Aggravated Sexual Assault
- Third Degree Terroristic Threats

- Fourth Degree Endangering the Welfare of Child[209]

1. Jeffrey Accepts Plea Agreement

On March 11, 1986 Jeffrey retracted his former plea of not guilty and entered into a plea agreement which was accepted by the Honorable Judge Harry Hazelwood.[210] Jeffrey was represented by Public Defender Fred Brooks. Under the agreement, Jeffrey pled guilty to one count of Second Degree Kidnapping for the purpose of First Degree Robbery. Assistant Prosecutor Scott Conchar agreed to dismiss the other counts pending against Jeffrey. Although the prosecutor reserved the right to speak at sentencing, he agreed not to make any recommendation with regard to the sentence imposed. Jeffrey's sentencing hearing was scheduled for April 18, 1986.[211]

The prosecutor who handled the plea negotiation explained to the Committee's investigators that because this case involved a crime against a child, the plea agreement was first approved by the Child Abuse Unit.[212] In addition, the record reflects that the victim was reluctant to testify and further assist the authorities in Jeffrey's prosecution, thereby making a plea agreement more preferable than attempting to obtain a conviction at trial. The Committee has discovered no information that questions the prosecutor's decision to offer a plea agreement in this case rather than trying Jeffrey on the original counts of the indictment.[213]

The proceeding concluded with Judge Hazelwood accepting the plea agreement as proposed. In addition, Jeffrey's attorney also explained to the court that he did not make an application for bail because his client had no funds and he believed the prosecutor would strenuously object to releasing Jeffrey on his own recognizance.[214]

2. Pre-sentence Report

The PSI that was prepared prior to Jeffrey's sentencing hearing was written by Gerald Katz, a senior probation officer, and was reviewed by Paul Lackey, Katz's supervisor at that time. Both men worked for the Essex County Probation Department. The report appears to have been prepared on April 9, 1986, nine days before Jeffrey was to be sentenced.[215] The document provided a written description of the offense, the victim's statement and Jeffrey's account of the incident.[216]

The first section of the report that addressed Jeffrey's prior record noted under the "Juvenile Court History" heading that Jeffrey had no juvenile record. The subsequent section of the report, covering Jeffrey's post-juvenile record, indicated that Jeffrey's adult court history was unavailable. Katz wrote:

> This officer regretfully informs the court that a detailed arrest sheet although sent for on two separate occasions has not been received back to this investigating officer. It is indicated in the Bureau of I.D. Records that the subject has a total of 11 separate

> offenses as an adult and on 6/23/71 for [an] offense of robbery and larceny before the Honorable Judge Scalera he received a custodial sentence to the Youth Reception and Correction Center at Yardville.
>
> . . .
>
> Detailed information pertaining to the arrests along with the court and Judge could not be furnished at this time simply because a detailed sheet has not been obtained as yet. If it will be received for sentencing date it will be incorporated in this report.[217]

Under a subsequent section of the report titled "Mental Health," the document noted that Jeffrey reported to Katz that he had never had a psychiatric evaluation conducted and had never been hospitalized for any reason. Katz also wrote that Jeffrey "appear[ed] to be of average intelligence and mentally stable."[218]

3. Jeffrey's Sentencing Hearing

Jeffrey's sentencing hearing took place on April 18, 1986. Public Defender Brooks continued to represent Jeffrey, and the prosecutor who appeared at this hearing was Richard Healey. Before he was sentenced, Jeffrey made the following statement to the court:

> I would just like to say, Judge Hazelwood that my indiscretion, I'm sorry for what I did. I know you hear a lot in your position, but that's basically all I can say. It was an indiscretion, it was a spur of the moment thing. I shouldn't have done it. I thought over it many times since then. I could have thought of other ways of finding out if this was the individual who had my

property, but what's done is done and I basically -- that's it Judge.[219]

Judge Hazelwood explained at the hearing that he based his sentencing decision on the total circumstances of the incident. The Judge appears to have given credence to Jeffrey's account of the incident that he was of the belief that the victim had stolen property from him, "and that in reaction thereto you attempted to recover your property and [took] him to a certain place in order to complete your search of his person."[220]

Under the plea agreement, Jeffrey was exposed to a maximum of 10 years in jail and a $100,000 fine. Moreover, Judge Hazelwood could also have provided that Jeffrey serve five years of the sentence without any parole eligibility.[221] The Judge, however, sentenced Jeffrey to 5 years, and gave him credit for the 406 days that he had already been in jail awaiting trial. Although the Judge stated that he believed that a custodial sentence was necessary, he did not impose any period of parole ineligibility for Jeffrey. The hearing concluded with the prosecutor dismissing the remaining counts of the indictment pursuant to the terms of the plea agreement.[222]

4. Inadequacy of Jeffrey's Pre-Sentence Report

The pre-sentence report upon which the court relied in sentencing Jeffrey in this matter lacked any detailed information regarding Jeffrey's criminal or psychiatric

history. Most glaringly absent was any information regarding the 1974 homicide and Jeffrey's treatment at the Trenton Psychiatric Hospital. It is difficult to ascertain whether or not the sentence imposed on Jeffrey for this incident would have differed had Judge Hazelwood received an accurate account of Jeffrey's past record. Certainly, Jeffrey's record of past crimes, had it been obtained, would have cast doubt on the veracity of Jeffrey's own statements regarding his history which excluded any mention of the Dorsey homicide or his eight-year residency at TPH.

It is possible that Judge Hazelwood could have been influenced in his sentencing of Jeffrey had he received information about the brutal nature of the 1974 homicide coupled with Jeffrey's behavior while a patient at TPH. It was well settled in New Jersey for more than ten years prior to this 1986 sentencing decision, that Judge Hazelwood could have considered Jeffrey's entire juvenile and adult criminal history in rendering his sentence -- including his arrest for the Dorsey homicide and his lengthy stay at TPH.[223] Despite the fact that New Jersey case law permits judges to consider prior arrests when sentencing a defendant, the probation officers who prepared Jeffrey's pre-sentence report stated in their recent interviews that although information regarding the homicide should have been included in their report, it was irrelevant to Jeffrey's sentencing, since the case had been dismissed. They also stated that prevailing Probation Department policy at that time favored speedy sentencings for individuals who had been incarcerated, regardless of whether the prisoner's complete criminal history had been obtained. As a result of this "policy,"

they stated that it would have been extremely uncommon for Jeffrey's sentencing to have been delayed due to the absence of his complete criminal history.[224]

5. Deficiencies in Sentencing for March 9, 1985 Assault of 12-Year Old Boy

The prosecutor who handled the plea told the Committee's investigators that although he may have had information in his files regarding the 1974 homicide, he would not have shown this information to Judge Hazelwood unless the Judge requested it specifically.[225] Conchar stated that in his opinion, judges relied on the pre-sentence reports supplied to them which were supposed to contain this background information.[226]

Gerald Katz, the probation officer who prepared Jeffrey's 1986 PSI, told one of the Committee's investigators that at the time he prepared Jeffrey's PSI for this sentencing, it was not unusual for the detail sheets containing information about a defendant's arrests and convictions to be absent prior to a sentencing.[227] Katz also explained that he had no reason to recommend that Jeffrey's sentencing be delayed until his detailed history arrived because the other individuals involved in this matter believed that the information in their possession was sufficient:

> But just to reaffirm what I just said, evidently, the information as far as the prior record was sufficient not only for the Judge to sentence Mr. Jeffreys, but [for] the prosecutor and defense counsel.[228]

Although he did not seek to delay the sentencing, had he received information regarding the 1974 homicide, Katz stated that he would have included that information in the PSI:

> Yes, I would have documented that even though it was a dismissal, or for whatever reasons that he was not sentenced on that [charge]. Because of the severity of the case, it would have been documented in the pre-sentence investigation. Evidently, it was not in the prior record that was received by myself.
>
> . . .
>
> Because it was the type of heinous crime that it was, I would have mentioned it at a pre-sentence investigation.[229]

Katz also stated that although the psychiatric history asserted by Jeffrey and recounted in his PSI could have been verified, he chose not to test its accuracy because Jeffrey did not exhibit any unusual behavior that placed his psychiatric condition in question.[230]

Paul Lackey, who was Katz's supervisor and approved the PSI in question, was also interviewed by the Committee's investigators. Lackey explained that the detailed information absent from Jeffrey's PSI was difficult to obtain because it was sent from New Jersey State Police Headquarters in West Trenton by regular mail.[231]

Lackey, like Katz, also asserted that it would have been unlikely that Jeffrey's sentencing would have been delayed for lack of his criminal history; especially given the length of time Jeffrey had been in custody:

> Mr. Jeffreys was in custody, had been in custody for over four hundred days. With custody cases [we] were then under a mandate not to delay the sentencing of those cases.
>
> And I don't remember this PSI, specifically, but I'm sure that's why I signed off on it. Because we would not have delayed the sentencing simply because we were unable to obtain the sheet for someone who had spent such a long amount of time in jail, and was still in jail.
>
> . . .
>
> [I]t was a policy at that time to kind of do these custody cases within ten working days, if at all possible.[232]

Lackey continued by indicating that there may have been repercussions for probation officers who attempted to delay the sentencing of an incarcerated defendant such as Jeffrey:

> And believe me, if a probation officer was to interfere in a sentencing of a man in custody at that time, that was not a happy circumstance. There were things going on then that would have told you not to do that.[233]

Lackey also supported Katz's decision not to independently verify the information that Jeffrey provided about his background. Lackey said that such verification would have been difficult because, "the system was kind of collapsing

under the numbers ... [t]remendous number of people in the jail, tremendous back log. You know, kind of a rush to judgment, almost."[234]

During his interview, Lackey stated that, in his opinion, judges typically only considered past convictions for purposes of rendering sentencing decisions. He stated that Jeffrey's record as presented, absent the missing information concerning the 1974 homicide, included only two indictable offenses. Lackey said that such a record in Essex County would have favored Jeffrey receiving a more lenient sentence because he would not have appeared to be a "bad actor" in comparison with other criminals.[235]

Lackey further explained that even if Jeffrey's background information had been available, it wouldn't have been uncommon for Jeffrey's dismissed homicide to have been excluded from his PSI because of the belief that it would not have had any relevance on Jeffrey's sentencing:

> I have seen homicides that were not recorded. I've seen them quite a number of times.
>
> . . .
>
> Krol [sic] I've seen not recorded for the simple reason that the man may never have gone to jail. He might have gone directly to a psychiatric facility.
>
> . . .
>
> I'm not willing to make the concession that at that time, in fact, we knew that he was ever arrested for a homicide, because Mr. Katz doesn't indicate that here.

. . .

> [U]nfortunately, homicides in prior records and dismissed homicides are fairly common.
>
> . . .
>
> And, of course, for purposes of sentencing, they're irrelevant.[236]

Lackey concluded his interview by explaining that although he was of the opinion that Mr. Katz should have included information about the homicide in the PSI had he received Jeffrey's record of prior offenses, he was firm in stating that his department would not have investigated the incident further:

> [I]f it was also known that the case had been dismissed, regardless of the circumstances of that dismissal, it would have been, you know, completely irrelevant to us.
>
> . . .
>
> We certainly would not have pursued it and tried to find out what had happened. We wouldn't have done that at all.[237]

The record clearly reflects that Judge Hazelwood sentenced Jeffrey in connection with this matter without the benefit of an accurate criminal history, which, if known, would have revealed discrepancies regarding information that Jeffrey provided during the presentence investigation. Because Judge Hazelwood is deceased, the Committee cannot ascertain how the Judge would have factored in the dismissed homicide or Jeffrey's institutionalization into his sentencing decision. The

result of this five-year sentence coupled with his jail credits resulted in Jeffrey remaining in jail for only five months before he was paroled on September 16, 1986.

6. Jeffrey's September 1986 Parole

Within days of being sentenced by Judge Hazelwood, Jeffrey was transferred from the county jail to the Mid-State Correction Facility to serve his sentence.[238] Shortly after his arrival at the prison, Jeffrey began making inquiries as to the date of his first parole eligibility. Jeffrey was told that assuming he received the maximum number of credits available to him for good behavior and work that he performed while in prison, his earliest possible parole date would be August 16, 1986.[239]

A number of reports were prepared in anticipation of Jeffrey's scheduled August 1986 Parole Board hearing.[240] In addition to evaluations on his housing, prison work record and participation in prison activities, one of the reports that was prepared was a psychological report of Jeffrey. Although only one page in length, the psychiatric report appears to be the most detailed evaluation in Jeffrey's Parole Board records. The psychiatric report is dated June 26, 1986 and was prepared by Kenneth Chatzinoff, a consulting psychologist for Mid-State.[241]

In the one-page report, Chatzinoff recounted the details of the crime for which Jeffrey was serving time and noted that Jeffrey "denied any intent to assault, rob or

have any sexual encounter with the 12 year old boy." Chatzinoff also appeared to have been unaware of Jeffrey's stay at TPH or the 1974 homicide:

> Conrad has a history of 11 separate offenses, most of which were fairly minor. He has been incarcerated on one occasion in the State system. That being a seven year indeterminate sentence for robbery in 1971.[242]

The report also noted that Jeffrey gave Chatzinoff "the appearance of being somewhat slick and manipulative." Chatzinoff's clinical assessment of Jeffrey was that he was "mildly sociopathic and hedonistic" and that Jeffrey "lacks organization and direction." The doctor also concluded that Jeffrey did not appear to be violent, have any signs of serious emotional problems and was motivated to improve himself in the future.[243]

The psychologist also wrote that Jeffrey had a "fair" prognosis for future community adjustment and should be supervised closely during periods of unemployment.[244] The reports in Jeffrey's Parole Board file were all primarily positive and supported the premise that Jeffrey should be granted parole. As a result, the Parole Board approved Jeffrey's parole at the August hearing. His parole became effective on September 16, 1986. Because Jeffrey provided information that he had a history of substance abuse, the conditions of Jeffrey's parole included random urine monitoring and outpatient alcohol counseling.[245]

7. Deficiencies Related to Jeffrey's 1986 Parole

The Committee's investigation revealed that the flawed pre-sentence report that Judge Hazelwood initially relied upon when sentencing Jeffrey also followed him to Mid-State. Although the PSI explicitly stated that it was not written with the benefit of Jeffrey's complete criminal history, it does not appear that any of the individuals who subsequently relied on the report attempted to supplement it with Jeffrey's complete record. This same inadequate PSI influenced the report of psychologist Chatzinoff and is the only source of information regarding Jeffrey's criminal history contained in the Parole Board's 1986 file on Jeffrey's parole.[246]

a. Psychological Report

Of all the reports in Jeffrey's 1986 parole board file, the psychological report is the most detailed and lengthy.[247] Chatzinoff told the Committee's investigators that the psychological evaluations that are conducted prior to an inmate's Parole Board hearing are performed by consulting psychologists who conduct such evaluations after regular working hours on an overtime basis. The psychologist spends approximately 20 minutes interviewing each inmate. Chatzinoff stated that the purpose of the psychiatric evaluations is to obtain a "general view of how the person is functioning ... at the time of the report. ... I am trying to give the parole board some information that might be helpful to them in terms of how I see this

inmate's chances in comparison to other inmates's chances." The doctor explained that given the limited nature of his examinations he relies on information that he finds in the inmate's files.[248]

Chatzinoff told the Committee's investigator that he relied on the PSI in Jeffrey's file in order to obtain background information relevant to Jeffrey's criminal record.[249] During his interview he reviewed the PSI that he had used when evaluating Jeffrey in 1986:

> This one doesn't have the ... list of offenses he's been down on.
>
> . . .
>
> This is a problem.
>
> . . .
>
> And it's certainly likely I got the -- got that information from that part of the pre-sentence report.[250]

Chatzinoff did not indicate that he attempted to supplement Jeffrey's missing criminal history from any additional source.[251]

The doctor was also asked why his report gave credence to Jeffrey's account of the incident involving the 12-year old boy. Chatzinoff indicated that he inferred from the plea agreement and the nature of the sentence that Jeffrey received that his version of events must have had merit:

> Well, he was given a very brief sentence for the kind of arrest, the kind of allegations that were made.
>
> . . .
>
> Based on the plea bargain. That, you know, if a person were actually kidnapping someone and, you know, a very, very dangerous crime without any mitigating factors.
>
> . . .
>
> So I did not, necessarily, give the official statement the kind of weight I might have given it if a guy had had a much longer sentence ... But I didn't just dismiss his version as being totally ... out to lunch. ... because of the fact that his record at the time ... as I knew it ... was not lengthy.[252]

Chatzinoff's reliance on the pre-sentence report was additionally evident when he wrote in his evaluation that Jeffrey had committed "only one crime that was really serious," referring to his 1971 incarceration at Yardville. Chatzinoff explained in his interview that in addition to giving Jeffrey's version of events credence due to the nature of his plea agreement, he also believed that at that time, Jeffrey's story was plausible:

> [A] kid could have stolen his watch. It could actually -- is plausible to me. At least, you know, at least at that time it was plausible.
>
> Knowing what I do now, maybe not. But, you know, at that time it was actually plausible. And he could have engaged in overly violent activities toward this kid. An attempt to kind of express his revenge toward this kid for stealing his watch.[253]

Chatzinoff's reliance on the inadequate pre-sentence report coupled with his 20-minute meeting with the prisoner led him to conclude that Jeffrey was "non violent" and permitted him to deduce that Jeffrey "appeared to be somewhat motivated to improve himself in the future."[254]

The number of individuals who relied on the flawed characterization of Jeffrey's history continued to grow after Chatzinoff concluded his evaluation of Jeffrey. In addition to Chatzinoff's dependance on the document for his psychiatric evaluation and report, the Parole Board also relied on the PSI in making its decision to parole Jeffrey in September 1986.[255]

b. Parole Board's File

In an effort to aid the Committee in its review of Jeffrey's history, the New Jersey State Parole Board supplied a copy of all of its files concerning Jeffrey to the Committee. In the section of its file covering the September 1986 parole, the only information included regarding Jeffrey's criminal history is the same flawed PSI that excludes any specific information regarding Jeffrey's criminal history, the Dorsey homicide, or his years at the Trenton Psychiatric Hospital.[256]

Robert Egles, the Executive Director of the New Jersey State Parole Board, stated that Jeffrey's prior history of institutionalization at TPH would have been

relevant to his 1986 parole had this information been made known to the Parole Board members responsible for his parole. Egles explained that the Parole Board members rely on the PSIs in the inmates' files when assessing their criminal backgrounds. Egles stated that it is common practice for Parole Board members to postpone making parole decisions in cases where an extensive psychiatric history is revealed in the PSI until an extensive psychiatric examination is conducted of the inmate. According to Egles, the psychological evaluation and testing that is conducted on such individuals is very comprehensive and is heavily factored into the parole decision for these inmates.[257]

The Committee did not discover any additional relevant information in its interviews with the Parole Board members who handled Jeffrey's 1986 parole regarding its decision to grant Jeffrey's September 1986 parole. Jeffrey's criminal activity continued after he was paroled and he was subsequently arrested on November 14, 1986.

B. November 1986 Theft of Motor Vehicle and Assault of Police Officer

Jeffrey was granted parole only 5 months after being sent to Mid-State; however, his freedom was short lived. On November 14, 1986, two months after he was paroled, Jeffrey stole a car, attempted to elude police, and fought with three police officers during the course of his arrest, injuring two of the officers.[258]

The police report describing Jeffrey's November 1986 arrest indicates that Jeffrey stole a 1973 Cadillac while its occupant was speaking with a police officer who was parked behind the vehicle. The officer pursued Jeffrey as soon as he drove away in the car. The police report noted that Jeffrey not only tried to flee the scene, but also attempted to ram the stolen vehicle into the police car several times. In one such attempt, Jeffrey was actually able to turn the stolen car around and crashed into the police car head-on. The police officer who was involved in the accident injured her left knee in the crash. Jeffrey fled from the scene and the injured officer continued her attempt to apprehend Jeffrey. At that time, two additional police officers arrived and assisted the injured officer in subduing Jeffrey. The police report indicates that he resisted arrest and assaulted the officers at the scene. Eventually, Jeffrey was arrested, but not before a second police officer had been injured. The officers indicated that they smelled a strong odor of alcohol on Jeffrey's breath at the time of his arrest. The police report indicates that Jeffrey told the police, "I stole the car, that's all I did. I did not kill anyone." He further stated that he stole the car due to his depression over not having a job, and also told police that he resisted arrest and tried to flee the scene because he was on parole at the time of the incident.[259]

After his arrest, Jeffrey was held at the Bergen County Jail. The Hackensack Municipal Court referred the case to the prosecutor on November 25, 1986. Bail for Jeffrey was set at $25,000 with no 10% minimum available.[260] Jeffrey's criminal record, as provided to the Bergen County Prosecutor's Office, indicated that Jeffrey

had a total of 12 past arrests, including the 1974 homicide. However, the disposition of the homicide was not provided on the rap sheet.[261]

Jeffrey was indicted on January 8, 1987 and was charged with:

- Unlawful Entry Of A Vehicle With Intent To Commit An Offense
- Theft Of Movable Property
- Three Counts of Assault On Police Officers
- Resisting Arrest With Force[262]

1. Plea Negotiation

Jeffrey originally pled not guilty to the charges against him; however, pursuant to plea negotiations, he retracted that plea on April 27, 1987 before the Honorable Judge Edward Van Tassel.[263] Jeffrey was represented by public defender Neal Frank, and the assistant prosecutor was Denise Coyle. Jeffrey agreed to plead guilty to count one of the indictment charging him with burglary of a motor vehicle and count three, aggravated assault on a police officer. The State dismissed the remaining counts of the indictment and recommended a five-year maximum sentence. Judge Van Tassel explained to Jeffrey at the hearing that the maximum term that could be imposed was a total of ten years for both offenses, a $15,000 fine and five years in prison without parole eligibility. Judge Van Tassel accepted the plea agreement and scheduled Jeffrey's sentencing hearing for June 15, 1987.[264]

2. Pre-Sentence Report

The June 5, 1987 PSI that was prepared in anticipation of Jeffrey's sentencing was much more detailed than the PSI that was relied upon for Jeffrey's sentencing for the March 9, 1985 assault against the 12-year old boy. The June 1987 PSI contained a summary of the offense as detailed by the Bergen County Prosecutor's Office, Jeffrey's statement, and noted that the injured police officer had been notified of her right to provide a statement. Moreover, this PSI included a detailed list of Jeffrey's prior offenses. Among the offenses listed, it was noted that Jeffrey had been arrested for homicide in 1974 and that the indictment was subsequently dismissed in 1981.[265] The report also indicated that Jeffrey was paroled shortly before he was arrested for the crime at issue. Like the prior PSI, however, this report also noted that Jeffrey denied any history of mental illness.[266]

3. Sentencing Hearing

Jeffrey was sentenced before Judge Van Tassel on June 5, 1987. Jeffrey's attorney, Public Defender Neal Frank, attempted to convince the court not to sentence Jeffrey to a significant prison term. Jeffrey also made a statement on his own behalf:

> [T]o mirror some of the things Mr. Frank has said, the crime in and of itself did not make any sense. Many a night I laid in the jail and wondered why I did it because of the scourge of alcohol. ... the fact that I took the car that had a police car running behind it, marked police car, indicates that it was not the best of judgment

> and that I was impeded in my thinking that night because I had alcohol earlier in the day.
>
> . . .
>
> I am sorry for the minor injury that I understand the police woman incurred in apprehending me ... I just hope that whatever happens I'll be a better man for it.[267]

The prosecutor, Donald Barone, pointed out to the court that Jeffrey had an extensive criminal record prior to his November 1986 arrest and should have received the harshest sentence available under the plea agreement. Barone argued:

> I disagree with the assessment of this defendant that we've heard from Mr. Frank. He has what I would term an extensive prior record.
>
> . . .
>
> I submit that coming to grips with his alcohol problem while he's on the street creates a dangerous situation for society and that if he's going to come to grips with his problem it is better for all concerned that this takes place within the confines of the State prison system so as to not have police officers ... struck by him again nor having him engage in high speed chases in which people could have been eventually killed in them.[268]

In sentencing Jeffrey, Judge Van Tassel told those present that in his opinion Jeffrey probably would not have stolen a vehicle parked directly in front of a police car if he had not been under the influence of alcohol. The Judge, however, also noted the serious outcome of the incident which resulted in his assault of the police officers. The Judge reasoned that "the aggravating and mitigating circumstances in this case,

they pretty well are balanced out," and sentenced Jeffrey to four years, to run concurrently, for each of the two offenses. Jeffrey also received credit for 204 days of jail time served while he was awaiting sentencing.[269]

It should be noted that no one involved in this proceeding appeared to have any knowledge that Jeffrey had been institutionalized at TPH for eight years. In view of the presumptive sentences imposed and the concurrent terms allowed on the two counts, which represented independent criminal acts, the Committee believes that the sentence would have been significantly greater if the court had all information concerning Jeffrey's background.

4. Jeffrey's Parole Status

This section of the Committee's report addresses the parole issues that emerged surrounding Jeffrey's November 1986 arrest for stealing the car and assaulting the police officers. Even though he was in custody after his arrest, Jeffrey's 1986 parole was still in effect. Although the record reflects that the Bureau of Parole was concerned about preventing Jeffrey's release into the community prior to the conclusion of his prosecution for his November 1986 arrest, they also subsequently erred in calculating Jeffrey's parole eligibility date. This miscalculation could have resulted in his premature release from prison almost a year earlier than he

was actually eligible for parole. Fortunately, however, Jeffrey's true eligibility date was ultimately relied upon and he was not released in error.

a. Conditions of Jeffrey's September 1986 Parole

When Jeffrey had been granted parole in September 1986 there were a number of conditions with which he had to comply. Several of the conditions of Jeffrey's parole were that he not violate any laws, or abuse alcohol, and that he report any arrest to his parole officer. Prior to Jeffrey's November 1986 arrest, the record reflects that for two months after his release from prison he was reporting regularly to the parole office and was complying with the conditions of his parole. His November 1986 arrest directly affected his parole status. In order to address the implications of his arrest, the Bureau of Parole issued several special reports discussing the impact that Jeffrey's November 1986 arrest would have on his September 1986 parole.[270]

b. Special Reports

In December 1986, one month after Jeffrey's arrest for auto theft and his assault of a police officer, the Bureau of Parole issued a special report regarding the effect of this arrest on Jeffrey's parole. In this report, it was noted that a decision concerning Jeffrey's parole violation was deferred until further court developments

occurred. This deferral was made due to the Bureau of Parole's belief that there was no likelihood that Jeffrey could satisfy the bail requirements imposed and return to the community prior to the disposition of his prosecution for the November 1986 arrest.[271]

A second special report was issued by the Bureau of Parole in May 1987, after Jeffrey had accepted the plea agreement, but before he was sentenced. This report documented the terms of the plea agreement and noted that as a result of this offense, Jeffrey had violated the provisions of his September 1986 parole in three ways: alcohol use, failure to report his arrest to his parole officer and his conviction.[272]

Despite the fact that Jeffrey was in jail, his September 1986 parole had not formally been revoked. This second special report further noted that the decision to hold a probable cause hearing to revoke Jeffrey's parole would be deferred until he was sentenced for the November 1986 arrest. In fact, on June 17, 1987, two weeks after Jeffrey was sentenced by Judge Van Tassel, a parole warrant was issued and executed. Several days later, the State Parole Board issued a "Declaration of Delinquency" and informed Jeffrey that there existed probable cause that he had violated the terms of his parole and that his actions may have constituted a sufficient basis for the Parole Board to revoke his parole. Jeffrey's parole revocation hearing was scheduled for August 28, 1987.[273]

c. Investigation Prior to Parole Revocation Hearing

Prior to Jeffrey's parole revocation hearing, the Department of Corrections conducted a "pre-parole" investigation of Jeffrey for the Parole Board.[274] Part of this investigation included a psychological evaluation that was performed by Bruce Blumenthal, a staff psychologist. The one-page, handwritten evaluation, acknowledged that Jeffrey had a long arrest record, prior problems with alcohol and little insight into his problems. Moreover, Blumenthal concluded his report by noting that Jeffrey's prognosis for successful parole was poor.[275]

In his interview with the Committee's investigators, Mr. Blumenthal stated that an evaluation of "poor" is the lowest grade that he can give to an inmate, indicating that:

> The prognosis that I gave him was poor which is something that I give ... in a small percentage of cases. ... the terms we use range from good to poor with several points in between. Poor being the absolute lowest qualitative statement I could ... give as a ... prognostic statement. I'd say that would put him in the ... bottom five percent of the people I see.
>
> So he -- certainly impressed me as someone, you know, not to be [paroled].[276]

In addition, Mr. Blumenthal stated in his Committee interview that he was surprised to learn that Jeffrey had an extensive history of institutionalization prior to the 1987 examination that he conducted. Because he had already given Jeffrey the

lowest marks possible, knowledge of his eight-year residency at TPH would not have changed Blumenthal's overall evaluation. However, Blumenthal indicated that this information would have been relevant:

> It was something I had not known or suspected before.
>
> . . .
>
> I couldn't have given him a lower prognostic statement. But it would have been, you know, certainly enlightening to know what had gone on with him 13 years previously.[277]

d. Parole Revocation Hearing

Jeffrey's parole revocation hearing was held at the Bergen County Jail on August 28, 1987. Jeffrey attended the hearing *pro se* and admitted that he violated the conditions of his parole. Jeffrey provided no extenuating or mitigating circumstances for his actions. The result of the hearing was that Jeffrey's parole was revoked due to his November 14, 1986 theft of a motor vehicle and assault of a police officer. The consequence of this revocation was that the remainder of his sentence from his prior conviction for his assault of the 12-year old boy was set to run consecutively with the sentence imposed by Judge Van Tassel in June 1987.[278]

After the Parole Board made its decision, Jeffrey was notified that his September 1986 parole had been revoked and that in addition to his most recent sentence, he would have to serve a term of 14 months before becoming eligible for

parole. Jeffrey was also informed that his first future parole eligibility date ("PED") would be December 14, 1988 -- 18 months after he was sentenced by Judge Van Tassel.[279]

e. Jeffrey's September 1988 Preliminary Parole Board Hearing

After Jeffrey was sentenced in June 1987, he was sent to Jones Farm to serve his sentence for the November 1986 offense as well as the additional term for his parole violation.[280] It appears that Jeffrey's actual parole eligibility date, when he arrived at Jones Farm, was October 14, 1988. As a result, a September 1988 Parole Board Hearing was scheduled to consider whether Jeffrey would be paroled at that time. In anticipation of that proceeding, a number of pre-parole reports were prepared.[281]

One such report, a pre-parole psychological evaluation, was prepared by a clinical psychologist at Jones Farm on July 11, 1988.[282] The report noted that Jeffrey had a prior criminal history, but did not include any detailed information concerning his past crimes. Similar to the historically inaccurate accounts of Jeffrey's criminal history, this report also indicated that Jeffrey's detailed criminal history was unavailable. The doctor did not state why the information could not be included in the report. In addition, the report represented that Jeffrey denied any history of

psychiatric problems, but noted that he did admit that he had a problem with alcohol.[283]

Contrary to the psychological report written by Bruce Blumenthal less than a year earlier for the Parole Board that characterized Jeffrey as a poor candidate for parole, this psychological evaluation was rather positive.[284] The doctor wrote that Jeffrey showed no evidence of gross psychopathology and further stated:

> [A]n insightful, mature individual who has made some bad decisions in the past. Impulse-control difficulties when under the influence. Takes responsibility for actions, seems sincere. Intellectual functioning at least average.[285]

This psychological evaluation recommended that if paroled, Jeffrey should be required to receive drug and alcohol counseling, urine monitoring, vocational and job placement assistance and responsible parole supervision. The report concluded by noting that Jeffrey appeared to be a "suitable candidate for the furlough and community release programs ... [i]nitial expectations for compliance with stipulations is good; long-term expectations is fair."[286]

The other reports that were prepared in anticipation of Jeffrey's September 1988 parole board hearing were unremarkable.[287] It was also noted in these documents that Jeffrey would be unable to reside with his mother, were he to be paroled, due to his poor relationship with his stepfather. The documents did indicate, however, that Jeffrey's mother would assist him financially once released from prison.[288]

An initial parole hearing was held on September 23, 1988. The handwritten report of this proceeding briefly summarized Jeffrey's criminal history,[289] the fact that he violated his previous parole and also references a substance abuse problem. The report recommended that Jeffrey's case be referred to a Parole Board panel for a decision regarding whether to grant parole.[290]

A Department of Corrections inter-office memorandum from parole officer John Marsh written shortly after the initial September hearing recommended that Jeffrey be placed in an intensive treatment program rather than be paroled:

> This office anticipates a difficult time in securing a Placement for the above-listed subject, as many of the services we utilize do not accept offenders of a violent crime.
>
> In view of the subject's extensive criminal history, consisting of 12 assaultive offenses which expands over 17 years, we recommend that subject be considered for the I.S.S.P. Program.[291]

f. Parole Board Denies Jeffrey's Parole

The Parole Board appears to have given credence to Parole Officer Marsh's unfavorable recommendation concerning Jeffrey's parole. On October 12, 1988 the New Jersey State Parole Board denied Jeffrey's parole. The Parole Board notified Jeffrey that it reached its decision due to his:

> extensive prior crim[inal] record as noted by your 8 prior convictions. The Board also notes that prior periods of

[incarceration] have not deterred your crim[inal] activity as noted by your new conviction while on parole.

The Board urges you to remain charge free and to maximize your prog[ress] part[icularly] in the area of alcohol counseling.[292]

Jeffrey was also notified that as a result of the denial of parole, he would have to serve a future eligibility term of one year.[293]

g. Jeffrey Transferred to Community Residential Alcohol Program

Shortly after his parole was denied, Jeffrey completed an application requesting that he be transferred from Jones Farm to a facility offering a residential alcohol treatment program. Jeffrey's transfer to the program was approved by the Parole Board and he was scheduled to be transferred to Maryville where he would participate in a Mutual Agreement Program ("MAP"). Jeffrey's transfer to the 90-day inpatient alcohol treatment program was effective December 7, 1988. He was notified that he would be eligible to be released on parole in March 1989 if he successfully completed "a residential alcohol treatment program and is not subject to further reduction."[294]

h. MAP Application

As previously seen in the section of this report detailing Jeffrey's psychiatric history as well as the preparation of his PSI reports, Jeffrey's interaction with his MAP counselor represents yet another example of an individual relying primarily on Jeffrey's assertions concerning his past without seeking verification of the information provided.

Jeffrey's acceptance into the MAP program was based on an application that was completed by an administrative assistant for the program, Yolanda Muse. Jeffrey's application is dated November 18, 1988 and included background information concerning Jeffrey's personal, criminal and substance abuse histories. Muse recommended to the Parole Board, based on her meeting with Jeffrey and the background information that he provided, that he be accepted into the program.[295]

Muse explained to the Committee's investigators that in addition to her reliance on information supplied to her by the inmate, she also reviewed the prisoner's PSI reports. The Committee investigators that met with Muse brought to her attention factual discrepancies that existed between information in Jeffrey's PSI reports and information supplied to her by Jeffrey during her evaluation of him.[296] Muse acknowledged the discrepancies in data identified by the investigators during her interview, but stated that she was unable to determine why they existed and whether

this information would have in any way affected her decision to recommend to the Parole Board Jeffrey's participation in the MAP program.[297]

i. Jeffrey is Paroled from MAP

Jeffrey was paroled from Maryville after his completion of the inpatient alcohol treatment program on March 7, 1989.[298] Although the Committee does not have detailed records chronicling Jeffrey's treatment at Maryville, according to Muse, he would not have been released on parole if he had not successfully completed the program. In addition to successful completion of the program, other conditions of Jeffrey's parole included payment of a $280 penalty, random urine monitoring and outpatient alcohol counseling. Also, at the first sign of any alcohol use, Jeffrey's parole officer was directed to immediately issue a warrant to revoke Jeffrey's parole. Jeffrey's parole was scheduled to expire on September 21, 1989.[299]

For the first few weeks of his parole after leaving Maryville, Jeffrey appeared to be complying with its conditions. He was living in a boarding house in Hackensack, provided pay stubs to his parole officer indicating that he had obtained work in a warehouse and he was reporting as required to the parole office. However, on April 15, 1989, little more than a month after he was paroled, Jeffrey committed his first in a series of crimes for which he was arrested.[300]

On April 15, 1989 Jeffrey was arrested by the Hackensack Police Department for simple assault and impersonating a police officer. The Committee has little documentation concerning this arrest; however, Jeffrey admitted the assault and told police, "I had the handcuffs from a former job as a Security Guard in Newark." Jeffrey's stepfather bailed him out of jail and Jeffrey indicated that he was "high on alcohol" at the time of the offense. The second arrest occurred on May 1, 1989. Jeffrey was arrested by the Hackensack Police in a department store where he assaulted his mother. Jeffrey again admitted to the assault, said it was a result of alcohol and was taken to the Bergen County Jail.[301]

For Jeffrey's April 15, 1989 arrest he was sentenced to 30 days on each of his two charges as well as a $30.00 fine. Jeffrey received a 45-day sentence and a $30.00 fine for his May 1, 1989 assault of his mother.[302]

(1) Arrests Have No Effect On Jeffrey's Parole

Jeffrey was in jail serving his sentences for his April and May 1989 crimes when the Parole Board reviewed the effect that these arrests might have on Jeffrey's March 1989 parole. Although the Bureau of Parole could have taken steps to revoke Jeffrey's parole due to his alcohol use and these two arrests, the decision was made not to revoke Jeffrey's parole.[303] Jeffrey was scheduled to be released from jail on September 15, 1989. Jeffrey's parole was set to expire several days later on

September 21, 1989. While still in jail, Parole Officer John Marsh visited Jeffrey and instructed him to report to the parole office as soon as he was released.[304]

The record reflects that Jeffrey was discharged from the Bergen County Jail on August 25, 1989, earlier than had previously been scheduled. There is no indication that Jeffrey reported to the parole office, as he had been instructed, until September 27, 1989, one week after the expiration of his parole. At that time, Jeffrey reported to the parole office, provided his parole officer with his new address and reported that he had been living in a shelter upon his release from jail. The parole termination report that was prepared concerning Jeffrey noted that his adjustment had been "marginal" and that he still owed the majority of his monetary penalty.[305]

C. March 10, 1990 Assault of 14-year Old Girl

Jeffrey committed his second documented assault against a child on March 10, 1990.[306] The police report indicates that Jeffrey approached a 14-year old girl with a knife and told her that if she screamed, he would stab her. The victim told Jeffrey that she was only fourteen years old, was menstruating and asked him not to harm her. Jeffrey initially released her, but as she started to walk away, he grabbed her again, pressed the knife against her face and covered the girl's eyes. The girl asked Jeffrey if he was going to rape her and she reported that he said "no." Jeffrey forced the girl to walk with him and at that time Jeffrey and the girl ran into the victim's

aunt. The aunt saw that the girl was crying and asked her where she was going. Jeffrey told the aunt that the girl was "with him" and at that point, the aunt pulled the victim away from Jeffrey. After Jeffrey fled, the aunt took the victim to the police station to report the incident. In addition, the aunt told police that she recognized her niece's assailant as someone she had seen before in the neighborhood, but stated that she did not know his name. The aunt identified Jeffrey from a book of 47 photographs and stated that she was "absolutely" certain, without any doubt, that Jeffrey was the man who assaulted her niece.[307]

A complaint was filed against Jeffrey for unlawful restraint of a 14-year old and exposing her to risk of serious bodily injury. A warrant was issued for Jeffrey's arrest and bail was fixed at $50,000 with no 10% minimum. Jeffrey was arrested on March 21, 1990 and was placed in the Bergen County Jail in lieu of bail. The criminal history that was provided to the police listed several of Jeffrey's prior arrests for which no dispositions of the offenses were noted. The arrests for which no dispositions were detailed included the 1974 homicide, two weapons charges, one charge of disturbing the peace and one charge of obstructing a police officer.[308]

As a result of the March 10, 1990 assault of the 14-year old girl, Jeffrey was indicted and was charged with:

- Second degree attempted assault with a deadly weapon
- Second degree attempted aggravated sexual assault

- One count each of third and fourth degree unlawful possession of a knife
- Third degree terroristic threats
- Third degree unlawful restraint[309]

1. Plea Negotiation

On September 5, 1990 Jeffrey accepted a plea agreement and pursuant to its terms pled guilty to criminal restraint and third degree unlawful possession of a knife. Under the terms of the plea, the prosecutor stated that the State would dismiss the second degree aggravated sexual assault, assault with a deadly weapon and third degree terroristic threat charges. Moreover, the plea precluded the court at sentencing from imposing a mandatory minimum sentence before Jeffrey would be eligible for parole. The sentencing hearing was scheduled to take place in October 1990 before Judge Kuechenmeister.[310]

2. Inaccuracy of Pre-Sentence Report

The pre-sentence report which the court received prior to Jeffrey's sentencing hearing was prepared by Probation Officer Ruth Spiegel and was signed by Supervisor Robert Treacy. The PSI report provided the court with an inaccurate account of Jeffrey's criminal history. The report noted the dismissed 1974 homicide, but did not contain any additional information concerning the incident. The report also

mischaracterized Jeffrey's March 1985 assault against the 12-year old boy as criminal restraint, when, in fact, Jeffrey was convicted of second degree kidnapping for the purpose of first degree robbery. Moreover, the list of Jeffrey's prior arrests clearly indicated a ten-year gap in criminal activity, representing Jeffrey's institutionalization at TPH, for which no information was provided.[311]

This PSI also contained background information, provided by Jeffrey, that had never before been present in any of Jeffrey's previous PSI's or hospital records. In particular, Jeffrey said that he had three brothers, Carl, Kenny and Kirt whom he claims were killed in a 1983 fire in Newark.[312] In addition, although Jeffrey previously stated that he had no children, he told the probation officer who prepared this PSI that he had an eight-year old son, also named Conrad, who lived in Atlantic City. It is possible that this information is correct; however, Jeffrey's son would have been born while he was still a patient at TPH. Moreover, although all of Jeffrey's other PSI's indicated that he was a high school graduate, this document stated that he left school in order to obtain a job to support his mother and never received a diploma or G.E.D. This same document also stated that Jeffrey worked for a car dealership in the Bronx in 1988, although Jeffrey was in prison during this period of time. Other inaccuracies include statements that Jeffrey had not participated in any form of inpatient alcohol treatment programs for ten years, when he in fact had been released from a 90-day MAP program at Maryville in March 1989. The PSI also

represented that Jeffrey asserted that he had never received any type of psychiatric or psychological counseling.[313]

Once again this PSI demonstrates a total reliance on the veracity of Jeffrey's assertions. Even if any of Jeffrey's statements were accurate, a quick comparison of the information that he provided in October 1990 with his prior PSI's or periods of incarceration would have alerted the individual preparing the document that the information previously provided was in conflict with Jeffrey's present statements.

3. Sentencing Hearing: Judge Rejects Plea

Jeffrey's sentencing hearing took place before the Honorable Judge Kuechenmeister on October 12, 1990. James W. Donohue was the assistant prosecutor and Wakeley S. Paul was the assistant deputy public defender representing Jeffrey. At the proceeding, Jeffrey made the following statement:

> Well, Judge Kuechenmeister, I would just like to say that I've had time to reflect on the situation and in my estimation the whole problem is alcoholism on my part. I'm not using that to mitigate the circumstances. But I don't think I would be standing here if it wasn't for me being inebriated on the night in question of the incident.
>
> It didn't make any sense.
>
> I'm glad that no one was hurt.
>
> And it was very reckless on my part and there's no excuse.

> But I stand before you [as] a man who is remorseful of the situation.[314]

Judge Kuechenmeister refused to accept the plea negotiation that had previously been agreed to in the case because the prosecutor had waived the ability of the court, under the terms of the plea, to impose a mandatory minimum sentence. As a result, the plea was renegotiated at the sentencing hearing with the same terms, except that the Judge could impose a period of parole ineligibility for Jeffrey. The Judge sentenced Jeffrey to five years with a two-and-a-half year minimum before being eligible for parole. Jeffrey also received credit for the 214 days that he had been in jail prior to his sentencing. Judge Kuechenmeister stated:

> The Defendant has a record of thirteen prior arrests, at least nine convictions.
>
> The Defendant has a very poor work record.
>
> He got a very good plea bargain in this case.
>
> Originally he was charged with holding a knife to a woman's face, with his hands around her mouth.
>
> So he got a real break there. I think that's sufficient.
>
> There certainly is the likelihood of further criminal activity and incarceration is needed as a deterrent.[315]

Judge Kuechenmeister, who is now retired, spoke with one of the Committee's investigators and was asked how he may have conducted the sentencing hearing differently had he possessed information regarding Jeffrey's institutionalization and the circumstances surrounding the dismissed homicide indictment.[316]

Kuechenmeister explained that had he possessed this information he would have ordered a psychological evaluation of Jeffrey, sua sponte, in order to ensure that Jeffrey was capable of proceeding. He also said that the information would also have been relevant to the plea negotiation and sentence.[317]

Kuechenmeister also stated that he believed that the plea negotiation in its final form, providing a period of parole ineligibility, was a good one. The Judge explained that there was very weak evidence to support the sexual assault charges because the physical contact that Jeffrey had with the victim was not sexual in nature and the weapon was only a small pen knife that Jeffrey wore on a chain around his neck. Kuechenmeister thought that given the evidence in the case it would have been difficult for a jury to convict Jeffrey and that, if convicted, an appellate court could easily have reversed the conviction for lack of evidence as to intent.[318]

a. Inadequate Information In PSI May Have Affected Sentencing

Although Judge Kuechenmeister said that information concerning the 1974 homicide would not have altered his acceptance of the plea negotiation in this matter, he did state that information concerning Jeffrey's 1985 assault against the 12-year old boy would have had an effect. The pre-sentence report noted that Jeffrey had been convicted of criminal restraint when in fact he was convicted of second degree kidnapping for the purpose of first degree robbery. Also, had the PSI noted that the

original charges in the 1985 matter involved a sexual assault on a child, the Judge stated that he would have refused the plea in the 1990 matter and would have made the defendant either go to trial or plead to the charges.[319]

Regarding the ten-year gap in Jeffrey's criminal activity during the period of his institutionalization, Judge Kuechenmeister stated that the issue was either overlooked or it was assumed that Jeffrey had no arrests during that period of time. Kuechenmeister also stated that he had no reason to question the assertion on Jeffrey's PSI that the defendant did not have a history of psychiatric illness or treatment. The Judge noted that Jeffrey was unusually articulate at his sentencing as compared to other defendants and presented a reasonable plea on his behalf.[320]

After sentencing, Jeffrey was transferred from the Bergen County Jail to Garden State Correctional Facility and was then assigned to the Mid-State Correctional Facility to serve his sentence.[321] The State Parole Board notified Jeffrey that his earliest parole eligibility date was September 19, 1992 due to the 2½ year mandatory minimum to which he was sentenced. Jeffrey's first Parole Board hearing was scheduled for March of 1992.[322]

4. Pre-parole Investigations

As in Jeffrey's past Parole Board hearings, a number of reports were prepared in anticipation of a review of Jeffrey's case. Like before, most of these reports consisted of a sentence or two and provided little information. The lengthiest report was a psychological evaluation prepared by psychologist John D. Hall, Jr. M.Ed. In this evaluation, Hall noted that Jeffrey showed no signs of any gross psychopathy, had a "sociopathic personality," and had a "severe substance abuse problem with both drugs and alcohol." The report also stated that Jeffrey had never benefitted from any substance abuse program. However, it is unclear if Hall had any knowledge that Jeffrey had previously been paroled to a MAP program. Hall rated Jeffrey's prognosis for a successful parole adjustment to be "fair to good."[323]

The 14-year old girl whom Jeffrey was convicted of assaulting also was notified by the Parole Board that she could submit a victim input letter. The Parole Board files provided to the Committee contain a letter from the victim's mother urging that Jeffrey not be paroled and further stating that this crime negatively affected her daughter's life. Moreover, the file also contained a summary from a Victim Input Hearing that was conducted on February 3, 1992. A summary report prepared by a senior hearing officer who attended the victim input hearing suggested that the Parole Board consider a number of specific factors before granting parole: ascertain Jeffrey's remorse, the extent of his substance abuse treatment, an explanation for his lengthy

criminal history and tell Jeffrey that if released he should have no contact with the victim or her family.[324]

a. May 5, 1992 Denial of Parole

(1) Initial Case Assessment

Jeffrey was interviewed by hearing officer Herman Green on March 30, 1992. At this initial hearing, Green prepared a Case Assessment Form regarding Jeffrey. The report provided a summary of Jeffrey's criminal history and noted that he had received favorable reports regarding his participation in prison programs. Green concluded his report with the following narrative:

> Subject has an extensive prior record. He has had the benefit of several paroles. Subject does not have an alcohol or drug problem. Report[s] fair to good. Due to prior record, nature of present offense and prior trials on community supervision, he is referred to panel for hearing. It is this HO's opinion that this offense was more domestic than anything else.[325]

Green told Committee investigators that he obtained Jeffrey's criminal history from Jeffrey's PSI and that he relied on the accuracy of that information. Like Judge Kuechenmeister at the sentencing hearing, Green was unaware that Jeffrey's 1985 incarceration was due to a kidnapping conviction. The offense was noted only as "criminal restraint" on the PSI. In addition, Green had no information concerning the

circumstances of the dismissed 1974 homicide, nor did he have any knowledge of Jeffrey's institutionalization at TPH.[326]

Green told investigators that he only learned of Jeffrey's treatment at TPH through recent newspaper accounts and that this information would have been quite important to him when he conducted the initial hearing in March 1992. Green stated:

> The way I would have handled the case would have been much different.
>
> . . .
>
> [I]n this case if there was a notation somewhere in the record that this man had served x number of years and had been involved in a homicide and the only reason that he was not taken to trial was because of his mental capacity or mental condition, then I would have conducted the hearing in a much different light. Because no one gave me any indication that this man was a mental case. And he, when he sat down and talked -- If I remember correctly, seemed to be a very plausible individual. And the psychological backed up what I thought at that time.[327]

b. Green's Belief That Jeffrey Was Attempting To Use The System

Green was questioned by Committee investigators regarding the assertion in his report that Jeffrey did not have an alcohol or drug problem. During his interview, Green expressed his conviction that Jeffrey was trying to assert a problem with substance abuse in order to receive more favorable treatment. Green explained:

> There are other places in the record that indicates that he had served time and all like this in an alcohol program. But it was my

> firm belief at that time that [he was] shucking and jiving. He was shamming the system. And that was my belief at that time. That's why I wrote it that way. That it was my belief he doesn't have a problem with alcohol. But he was using these things to get over on the system. If you go to behavior modification, if you go to the drug program it looks good on a parole report. And that's what I was talking about.
>
> . . .
>
> This man has worked the system to the hilt.[328]

Green's report was made available to Parole Board members George Bush and Andrew Consovoy who then had the responsibility of determining whether or not to grant Jeffrey's parole. Jeffrey's parole was denied.

5. Parole Board's May 1992 Denial of Parole

Jeffrey was notified on May 5, 1992 that his parole was denied. Parole Board members Bush and Consovoy wrote in their notice of decision:

> [T]he panel has determined a substantial likelihood exists that you would commit a new crime if released on parole at this time. Therefore, parole has been denied and the Panel has established a future eligibility term of ELEVEN (11) months in your case.
>
> . . .
>
> Upon review of your case the Panel is concerned by your extensive prior criminal record as indicated by your 9 convictions as an adult. Also of concern is that prior periods of incarceration and community supervision have not deterred your criminal activities.[329]

Jeffrey was urged by the Panel to take advantage of institutional programs and to remain charge-free prior to his next hearing. Jeffrey was notified that his next parole eligibility date was in June 1993.[330]

a. Parole Board Members Acknowledge That They May Have Handled Jeffrey's Case Differently Had They Known About Jeffrey's Treatment At TPH

Notwithstanding the fact that Jeffrey was denied parole in May 1992, both of the Parole Board members who presided over Jeffrey's 1992 hearing told the Committee's investigators, in separate interviews, that knowledge of Jeffrey's prior institutionalization would have caused them to handle Jeffrey's case differently. Parole Board member Andrew Consovoy explained that even though the 1974 homicide was dismissed, Jeffrey's subsequent institutionalization would have been relevant and he would have wanted Jeffrey to have an extensive psychological work-up conducted prior to his Parole Board hearing:

> I mean, one option the board has at any time is to refer someone for an in depth psychological. And that, I think -- I mean, I can't go backwards and say automatically, but I think that would have been extremely important to say there's just something else here that maybe we ought to take a further look at.[331]

Likewise, Parole Board member George Bush (now retired) explained in his August 11, 1993 interview that he too may have recommended that Jeffrey receive in-depth psychological testing had he known of his treatment at TPH:

> [I]f we had known that he had that type of crime and the way he had been committed, psychiatric reason, at the very least we probably would have asked for an evaluation over to ADTC before we made any determination.
>
> Because we find that the ADTC evaluation[s] are much more in depth. And what is essentially a somewhat cursory review on the part of the institutional psychologist because they get 40 a day. They can't do the type of evaluation, nor do they probably have the experience to do that.
>
> So that would be number one. We may very well have given him a longer hit.[332]

Thus, both Parole Board panel members stated that an accurate account of Jeffrey's psychiatric history on the PSI may have influenced their handling of Jeffrey's case. Had they possessed this information, there would have been a stronger possibility that they would have sent Jeffrey for a more in-depth psychological evaluation, or lengthened Jeffrey's future eligibility term.

b. Jeffrey Is Given A Shorter Future Eligibility Term Than Is Statutorily Mandated

When Jeffrey's parole was denied in May 1992, the Parole Board members notified Jeffrey that he would have to serve a future eligibility term of 11 months before he could again be considered for parole. However, the New Jersey State Parole Board Eligibility Determination form that memorialized the denial of Jeffrey's parole noted that the New Jersey Administrative Code ("N.J.A.C.") sets forth a 17-

month future eligibility term for a denial such as Jeffrey's.[333] Although the N.J.A.C. does provide Parole Board members with the authority to deviate from the statutory minimums imposed by the Code, it requires that the reasons for any such deviation be documented. In Jeffrey's case, he was given a future eligibility term that was six months shorter than what was required by the Code; however, no reason for this deviation was detailed in Parole Board documents. The Committee's investigators questioned both Parole Board members concerning the shortened future eligibility term.

Parole Board member Consovoy was asked if he could explain why Jeffrey received only an additional 11-month term. Consovoy explained:

> [T]he 17 months is the presumptive. The board can, at its own discretion with some hopeful reason indicate or decide to go up or down nine months. It's weighing, you know, the aggravating and mitigating factors.
>
> In this case, we chose to come down to 11 months which was near the bottom of the range.[334]

Consovoy also told his interviewers that a number of other issues factored into the panel's decision to reduce Jeffrey's term. These factors included his institutional adjustment, the psychological exam, the nature of his sentence and his participation in prison programs. Moreover, the Committee learned from many of those involved in Jeffrey's parole that a key factor in the determination of parole issues, including

Jeffrey's, is the philosophy that it is better for most inmates to be paroled rather than serve their entire prison term ("max out").[335]

c. Philosophy not to Have Prisoners Max Out was a Factor

Both Parole Board members indicated that there exists a pervasive philosophy that it is better for inmates to be paroled before the expiration of their prison terms, so that parole officers may maintain some level of supervision over inmates after they are released into the community. Bush indicated that one of the reasons he may have wanted Jeffrey's eligibility term reduced to 11-months rather than the 17-month statutory term was to prevent Jeffrey from maxing out. Bush stated:

> The basis for doing the 11 month[s] rather than ... 17 months? 'Cause it could [have] went up nine, which would have obviously maxed him.
>
> I can't say why we said 11 months and not 12 months or 13 months. I really can't.
>
> It may very well have been that we did want to see him out on parole for...several months. It may very well have been ... the reason why we didn't do the 17.[336]

Consovoy reiterated that reducing Jeffrey's eligibility term by six months preserved the ability of the Parole Board to grant Jeffrey parole at a second hearing and therefore exert some level of supervision over him after his release from prison. He explained:

> [I]t's a judgment call, in that sometimes you would like -- there's always a debate as to what's better in most cases, not all cases. In some cases whether an inmate has one more chance at parole to perhaps get out with three or four months left and be supervised as a way of reintegrating into the community. As opposed to someone who's just given three dollars and out you go.
>
> . . .
>
> It doesn't mean he's gonna get parole, as opposed to giving him the ... higher hit which would have really reduced or eliminated that.[337]

Bush was asked why the specific reasons for the deviation from the statutorily required 17-month future eligibility term were not documented in Jeffrey's Parole Board Determination Form as required by the N.J.A.C. Bush responded by explaining that in his opinion the parole panel complied with the requirement when it noted in its report that Jeffrey had not incurred any infractions while in prison. Bush stated that noting the lack of any infractions could be construed as the required documented justification for the decision to reduce Jeffrey's eligibility term.[338]

6. Jeffrey Is Granted Parole At February 1993 Parole Board Hearing

It is this last Parole Board hearing, in February 1993, that ultimately led to Jeffrey's release from prison and his subsequent March 1993 parole. Had Jeffrey not been granted parole at this last hearing, he would have remained in prison until at least September 1993.[339] The Committee has ascertained that Jeffrey was granted parole at this hearing for two primary reasons. First, as previously discussed, there

exists a widespread philosophy among those individuals involved in the parole process that it is better to parole an inmate prior to the expiration of their prison term in order to provide some level of supervision over the inmate upon his release. Second, Parole Board members are of the belief that current New Jersey Statutes afford them little discretion to deny any inmate parole at a second hearing.

a. Pre-Parole Reports

After Jeffrey received the additional 11-month eligibility term when he was denied parole in May 1992, he was notified that his next parole hearing would be in February 1993. Again, a number of reports and interviews were conducted in anticipation of this hearing, the two most notable being his psychological evaluation and case assessment.[340]

(1) Psychological Examination

The same psychologist who examined Jeffrey prior to his last Parole Board hearing again evaluated Jeffrey for the Parole Board. Psychologist John D. Hall, Jr., M.Ed met with Jeffrey on November 4, 1992. Hall's second report was almost identical to the first evaluation that he prepared nine months earlier. In both reports, Hall described Jeffrey as a sociopathic personality with a substance abuse problem. Hall also noted in the second evaluation that, "Mr. Jeffrey appears to be trying to

mend his ways. He has participated in programs and has real goals for the future. He may be [more] prepared now to meet society than he has at any time previously." The primary difference between both of Hall's reports concerns the doctor's prognosis for Jeffrey's parole adjustment. The first report said that Jeffrey's prognosis was "fair to good"; however, Hall's subsequent report stated that Jeffrey's prognosis was "guarded" despite the fact that he seemed to be recommending that Jeffrey be paroled. Hall also did not note why his assessment of Jeffrey differed from his initial evaluation of him months earlier.[341]

(2) Case Assessment

Jeffrey's Case Assessment Form prior to his second hearing was prepared by Parole Board Hearing Officer Charles Jantz. Jantz told investigators that his written report was meant to indicate to Parole Board members that he had digested information concerning Jeffrey and believed him at that time to be a good risk for parole. Jantz wrote in his case assessment:

> Given ... 2nd elig[ibility] and what I feel is his ability to do better, I feel ok w[ith] recomm[endation]. He states he has [the] best intentions to do the right thing. 36 y[ea]rs old. 3 yrs in on 5. Good list ... charge free -- He's been no angel in the past -- has been on parole before -- running out of chances.[342]

Jantz was questioned by the Committee's investigators regarding the significance of Jeffrey's criminal history on his decision to recommend that Jeffrey be

granted parole at his second hearing. Jantz explained that the history was important and noted that he relied heavily on the accuracy of the inmate's PSI concerning this information. He acknowledged that he did not realize that Jeffrey's 1985 conviction was for kidnapping due to the inaccuracy of the PSI and also had no knowledge that Jeffrey had an extensive history of psychiatric treatment. Jantz stated that this information would have been significant to him and that he "would have been a lot less inclined to recommend that the man get a parole date without being seen by the Panel again in person."[343]

b. Jeffrey Is Granted Parole

On the basis of only written reports and without another hearing, Parole Board member George Bush, who had previously denied Jeffrey's parole, granted him parole to be effective no earlier than March 25, 1993. Special conditions of Jeffrey's parole included random urine monitoring, attendance at Narcotics Anonymous three times a week, a twelve-month period of intensive supervision and no contact with the victim.[344]

Like the other Parole Board members who were interviewed by the Committee, Bush reiterated that it is the feeling of many individuals within the parole system that it is better to retain some form of supervision over an inmate who is released from prison than to have that individual "max" out:

> Well, generally speaking, you ... try not to max somebody. Because under normal circumstances you would want somebody out there under parole supervision. And that may have been more of a factor in the second hearing.
>
> You want to reintegrate 'em into society, if he's got a drug problem or an alcohol problem you would want to get him into programs while he's on parole. You would want that supervision. That's why I believe that the preponderance of parole is much, much greater than denials.[345]

Bush was the only Parole Board member who participated in the decision to grant Jeffrey's parole for his second eligibility. Bush stated that in addition to Jantz's recommendation in favor of parole, the psychological evaluation[346] and the philosophy against seeing prisoners leave prison without parole supervision, that he believed that the New Jersey Statutes influenced his decision to parole Jeffrey.[347] Specifically, Bush stated:

> Well, basically, the code is and the statute read that the inmate is presumed to be paroled at a second hearing. If, in fact, between the first hearing and the second hearing there is no new information that has been developed.
>
> Basically, that information would -- would consist of institutional infractions.[348]

Bush explained that he felt compelled to grant his parole because Jeffrey had not committed any new infractions during the period of time between the denial of his first parole and his second hearing. Bush told investigators that because of this provision in the statute he did not feel that he could have denied Jeffrey's parole:

> But when we got it, when I got it on my desk, recommended by a hearing officer on a second hearing, I don't think I had any other alternative but to give him a date. He was only gonna be out there four months.[349]

He explained that as a Parole Board member he felt restricted by the statute and wished that legislative changes could be made so that the Parole Board could exercise more discretion in its decision to grant or deny parole at a second hearing when an inmate has committed no new infractions.[350]

7. Jeffrey Leaves Prison

Conrad Jeffrey left the Mid-State Correctional Facility on March 25, 1993 and visited the parole office in Clifton the afternoon of his release. At that time he was interviewed by Parole Officer Janine Mooney who prepared all of the required paperwork concerning Jeffrey's parole.[351]

a. Error In Paperwork Concerning Jeffrey's Case

Because Jeffrey was convicted of a crime against a minor, the Bureau of Parole Administrative Manual requires that his parole officer notify the New Jersey Division of Youth and Family Services ("DYFS") about his parole and have his pre-parole plan approved by DYFS. In Jeffrey's case, DYFS was never notified of his pre-parole plan or release.

When Parole Officer Mooney met with Jeffrey on the day that he was released from prison, she indicated in her report that Jeffrey was "not a DYFS case."[352] Mooney told Committee investigators that it was her belief when she met with Jeffrey that his pre-parole plan would not be subject to the DYFS notification requirement. She was unaware that Jeffrey's last conviction involved a crime against a 14-year old girl. She stated that she usually receives such information from the inmate's prison, but did not recall seeing this information in Jeffrey's case:

> Well, DYFS interest normally comes from the institution. And it's something I would have seen in the pre-parole package. I apparently did not see it in the pre-parole package.[353]

Parole Officer Mooney's contact with Jeffrey was limited only to the first day of his parole. Mooney told Jeffrey that he was next required to report to the parole office on April 8, 1993. After Mooney's first visit with Jeffrey, she left to go on maternity leave and Jeffrey's case was picked up by Parole Officers Miller and Ravner.

D. April 3, 1993 Arrest

Unbeknownst to the Parole Officers who were charged with the responsibility of monitoring Jeffrey, he was arrested on April 3, 1993, only nine days after he was released from prison. At that time, he was arrested by New Jersey Transit Police in Newark for terroristic threats.[354]

Jeffrey's April 3, 1993 arrest for terroristic threats at Newark's Penn Station represented a missed opportunity for the criminal justice system to incarcerate Jeffrey in April 1993, prior to the murder of D.G. in May 1993. The Committee's investigation has revealed that this felony arrest was downgraded to a misdemeanor and that Jeffrey was released on a summons before a positive identification of Jeffrey had ever been made.

The arrest report indicated that on April 3, 1993 at 9:00 p.m. Jeffrey approached a man at Newark's Penn Station and threatened to "put a fucking bullet into his head." Due to the commotion that was caused, two New Jersey Transit police officers approached Jeffrey who then began to flee. After a brief chase, Jeffrey was arrested.[355]

Upon his arrest, Jeffrey used the alias "Albert Davis." At that time he was fingerprinted and the New Jersey Transit police report indicated that they conducted an NCIC record check. This record check determined that Albert Davis, a.k.a. Jeffrey, had no record. At that time, Jeffrey was released by the transit police on a summons.[356]

The complaint for this arrest was then forwarded to the Essex County Prosecutor's Office Screening Unit where it was reviewed on April 6, 1993. The complaint was reviewed by Richard Williams, the Director of Pre-Complaint Screening

for the Essex County Prosecutor's Office. In an interview with a Committee investigator, Williams stated that he did not recall this case specifically, but stated that there were certain steps he is positive that he would have taken when reviewing this matter.[357]

Williams said that he believes he made the decision to downgrade the indictable terroristic threats charge to a misdemeanor disorderly persons offense due to a number of factors. First, the facts of the case as represented by the arresting officer, coupled with the fact that no weapon was recovered (although the police pursued Jeffrey immediately after he allegedly threatened the victim), indicated that a harassment charge may have been more appropriate. Second, Williams viewed the fact that the police decided to release Jeffrey on a summons, rather than holding him in jail, as significant. Third, the NCIC search done by the New Jersey Transit Police indicated that Jeffrey, a.k.a. Davis, had no prior record. Given the facts presented to him at the time, Williams believes that downgrading the charge to a verbal threat/harassment charge was appropriate.[358]

Williams stated that his decision to downgrade the terroristic threats charge would have been the same even if he had known Jeffrey's true identity and had seen his rap sheet. However, Williams explained that if Jeffrey's rap sheet indicated that he was on parole at the time of the offense, or that he had any history of psychiatric problems, he may not have downgraded the original charge.[359]

Harold Mynett, Deputy First Assistant Prosecutor in Essex County and Williams' supervisor, was present during Williams' interview. Mynett stated that it was not until after the D.G. homicide that his office learned of Jeffrey's true identity. Once the charge was downgraded, it was transferred to the municipal court who then had jurisdiction over the matter. The Essex County Prosecutor's office maintained no further records or files concerning Jeffrey's April 3, 1993 arrest and had no information concerning when or if Jeffrey's fingerprints were returned from the state police with his true identity.[360]

1. Jeffrey Continues to Report to His Parole Officer

Despite the terroristic threats arrest, Jeffrey reported to the Parole Office on April 8, 1993 as he had previously been instructed by Mooney. At that visit he was asked whether he had any arrests to report and he denied that he had been arrested. His next contact with the parole office was by phone on April 13, 1993. At that time, Jeffrey was advised that he should next come to see his parole officer on April 21, 1993.[361]

Jeffrey did report to the parole office on April 21, 1993. However, once again, it was unknown to his parole officer that Jeffrey had again been arrested. Records reflect that on April 15, 1993 Jeffrey was arrested for shoplifting by the Passaic Police Department.[362]

On May 5, 1993 Jeffrey visited his parole officer as had been previously scheduled. At that time, he reported that his address had not changed, that he was still looking for work and that he had not been arrested since his last contact with his parole officer. On the evening of May 5, 1993, the same day that Jeffrey visited the parole office, he was arrested by the Passaic Police Department for the murder and sexual assault of 7-year old D.G..[363]

2. Parole Officers Had no Knowledge of Jeffrey's Two Arrests

Parole Officer William Miller was the last parole officer to meet with Jeffrey before his arrest for the May 5, 1993 murder. Miller stated that his May 5th visit with Jeffrey was the first time he had met with him. Miller told investigators that he had no knowledge of Jeffrey's two arrests while on parole, but that with any new case that he receives he checks with local police to verify that his parolees have not been arrested. However, he stated that because he had just received Jeffrey's case, he never had an opportunity to check with local police concerning Jeffrey prior to the D.G. homicide.[364]

Miller explained that the first time he learned of Jeffrey's arrests while on parole was after Jeffrey's arrest for the D.G. murder. Miller stated:

> [A]fter he was arrested for the murder of the girl, I found out about three previous arrests. And I believe all of them were under phony names.[365]

Miller stated that had he received information regarding any of these arrests that he would not have independently made a decision to revoke Jeffrey's parole. He said that he would have had to confer with a supervisor before such a decision could have been made.[366]

In addition to having no information concerning Jeffrey's two arrests while on parole, Miller stated that because he had just received Jeffrey's case prior to D.G.'s murder, he didn't have an opportunity to become fully apprised of Jeffrey's criminal history. Specifically, he didn't know that Jeffrey's last crime victim was a 14-year old girl and he similarly had no information concerning the dismissed homicide or Jeffrey's institutionalization. Nonetheless, Miller thinks that this information would have had little effect:

> Since you're talking about only a four day period that I have, including a weekend, there wasn't a whole lot more I could have done, even knowing that.
>
> I think if we had all of his background, not just that one offense, but all of it all the way back, I think that we might have been able to get him into ISSP and closer supervision. But even then I don't -- I'm not that sure it would be -- that the murder wouldn't have happened anyway.[367]

The Committee has determined that the identification of those inmates who are arrested while on parole is critical. In Jeffrey's case, none of the individuals responsible for his parole supervision received any information concerning his two arrests while on parole -- even though one of these arrests took place more than a month prior to the D.G. homicide. Moreover, neither the police officers who arrested

Jeffrey nor the prosecutor's office responsible for the disposition of these cases appeared to have any knowledge of Jeffrey's true identity and parole status prior to the publicity generated by the D.G. murder. As is addressed in detail in Volume III of this report, the Committee recommends a number of systemic changes to New Jersey's Records and Identification system which, if implemented, will drastically improve the availability, flow and accuracy of criminal history information.

3. Continuous Failure to Evaluate Jeffrey's Individual Crimes in the Context Of His Complete Criminal History

The Committee to Review the Conrad Jeffrey Matter has had the benefit of reviewing Jeffrey's complete criminal history from its genesis until his May 1993 arrest for the murder of D.G. Although there have been many individual problems identified by the Committee in connection with each of Jeffrey's crimes, this comprehensive analysis has brought to light a thread of continuity linking each of these problems together. The common element joining these deficiencies is a continuous failure to evaluate Jeffrey's individual crimes in the context of his overall criminal and psychiatric history and to accurately communicate this information to the individuals charged with making sentencing and parole decisions.

The extreme violence and brutality to which Jeffrey confessed in the 1974 Dorsey murder was never known or factored into any of the plea negotiation, sentencing, or parole decisions that were made. There was seemingly little, if any,

discussion regarding the continuous threat that an individual with Jeffrey's extremely violent background posed to society. Rather than evaluating Jeffrey's subsequent criminal behavior as it related to the 1974 homicide and his eight years of institutionalization, each of these crimes were considered as an individual event.

ENDNOTES

1. DN 434; DN 436-449; DN 564; DN 2615-2621.
2. DN 436-445.
3. DN 2619.
4. DN 2619-2620; DN 2664-2668.
5. DN 2620.
6. DN 2620; DN 2665-2668.
7. DN 2620.
8. DN 70, DN 74, DN 570.
9. DN 352; DN 2114-2116; DN 2178.
10. DN 2114.
11. DN 2114.
12. DN 2114-2115.
13. DN 2115.
14. DN 2165.
15. DN 2178.
16. DN 2178-2179.
17. DN 2176.
18. DN 2177-2178.
19. DN 2178.
20. DN 2168.
21. DN 558.
22. DN 558-559; DN 2180.

23. DN 2180-2181; DN 2183.

24. The New Jersey State Hospital in Trenton was later re-named the Trenton Psychiatric Hospital.

25. DN 2186-2187.

26. Certified Interview Statement of Lowell, August 1993, at pp. 1-2.

27. Id.

28. Id. at p. 58.

29. Id. at p. 26.

30. Certified Interview Statement of Kern, November 11, 1993, at p. 2.

31. Id. at pp. 2-4. As will be discussed later in this report, the record does not reflect that the history of psychiatric symptoms provided by Jeffrey was ever verified by any of the experts involved.

32. Id.

33. DN 2472-2475.

34. Certified Interview Statement of Priff, October 3, 1994, at pp. 3-4, 13.

35. Id. at pp. 6-7.

36. DN 2486-2487, 2490; Certified Interview Statement of Priff, October 3, 1994, at pp. 13-14, 42-43.

37. Priff noted Jeffrey's family's account of this beating and subsequent blackout in his 1974 Chronological Supervision Report of Jeffrey, but had no independent recollection of this episode during his October 1994 interview. Id. at p. 42.

38. Id. at pp. 19-20, 44; DN 2473.

39. Id. at pp. 24-25.

40. Id. at pp. 33-34.

41. Id. at pp. 33-34.

42. Id. at 34.

43. DN 2130.

44. Jeffrey first asserted a history of prior hospitalizations on the day of his admission to the Trenton Psychiatric Hospital in January 1975. The Committee has found no information indicating that this data was ever verified. DN 80.

45. DN 80-81; DN 83; DN 93; DN 100; DN 113; DN 352; DN 354; DN 357; DN 1091; DN 2115.

46. July 8, 1993 Letter from Central Islip Psychiatric Center; August 23, 1993 Letter from Clinical Information Services of New York Office of Mental Health.

47. DN 2029; DN 2412-2414.

48. DN 80.

49. Id.

50. DN 1140.

51. DN 1964.

52. DN 80.

53. DN 1825ae-1825af.

54. Id.

55. Id.

56. Certified Interview Statement of Gordon, November 8, 1993, at pp. 6-7.

57. Id. at p. 8.

58. Id. at pp. 7, 11.

59. Id. at p. 23.

60. Id. at pp. 9, 18, 24.

61. DN 93-94; DN 1864; DN 1868-1869; DN 1871; DN 2151.

62. DN 93.

63. Id.

64. DN 94.

65. DN 3221.

66. DN 3222.

67. DN 3221-3223.

68. DN 3223.

69. DN 3223-3226.

70. DN 3226-3227.

71. DN 3231-3233.

72. DN 3233.

73. DN 3235; Amnesia is a factor to be considered when evaluating competency, but it is not dispositive of the issue. In fact, the legal standards in effect at the time of this proceeding would not have found a defendant ipso facto incompetent to stand trial due to amnesia or mental illness. State v. Pacheco, 106 N.J. Super. 173 (1969). The New Jersey Superior Court borrowed its philosophy in Pacheco from the Pennsylvania Supreme Court. See, Commonwealth ex rel. Cummins v. Price, 421 Pa. 396, 218 A. 2d 758, 763 (1966), cert. denied sub nom. Cummins v. Price, 385 U.S. 869 (1966). See also, Aponte v. State for the proposition that a defendant's mental disease does not preclude his competency to stand trial. Aponte v. State, 30 N.J. 441, 452 (1959); See also, State v. Coleman, 46 N.J. 16 (1966).

74. DN 98; Dr. Simring's October 18, 1977 report does not specifically identify which documents were supplied to him by the prosecutor's office and reviewed prior to his October 13, 1977 evaluation of Jeffrey.

75. Id.

76. DN 99.

77. DN 100.

78. Id.

79. The TPH hospital records indicate that Jeffrey had made considerable improvement since his admission to the hospital. In fact, the Team Meeting Notes from September 23, 1977, (only 3 weeks prior to Simring's evaluation), note: "He has been on Loxitane since May of this year and, with this medication, his mental condition has improved considerably....This patient still shows many evidences of mental illness, he is flat in affect, still expresses

some paranoid ideation, at times he gets confused and mixed up, but has shown considerable improvement when compared with his condition at the time of his admission here. He can be regarded as in a partial state of remission." DN 113 (emphasis added).

80. DN 101-102.

81. DN 3059; DN 3061.

82. DN 3434 (emphasis added).

83. DN 3439.

84. DN 3450.

85. DN 105; DN 3450.

86. DN 91.

87. DN 3036.

88. See, State v. Krol, 68 N.J. 236, 344 A.2d 289 (1975). Krol held that due process and equal protection require that the standard for commitment of a person who has been acquitted, or against whom a charge has been dismissed, by reason of insanity be cast in terms of continuing mental illness and dangerousness to self or others, not in terms of continuing insanity alone, and that some trier of fact make a meaningful determination as to whether defendant is actually within that standard. Id. (emphasis added)

Footnote 6 of the opinion also states, "This holding does not affect those portions of N.J.S.A. 2A:163--2 which govern disposition of persons found incompetent to stand trial but not insane at the time of the crime...." Id. (emphasis added)

89. See pp. 37-38 of this report where Dr. Kuvin states; "However, at the time I examined him there was apparently some confusion as to his status. I was under the impression at the time I examined him that he had already been found not culpable and that -- in that he was found not guilty by reason of his insanity at a hearing...."

90. DN 3048-3049.

91. Certified Interview Statement of Kuvin, January 25, 1994, at pp. 6-8.

92. Id. at pp. 5-7.

93. Certified Interview Statement of Sadoff, December 1, 1993, at p. 64.

94. Id.

95. DN 113.

96. Certified Interview Statement of Wiener, December 31, 1993, at p. 4.

97. The subpoena received by Dr. Elizondo also identified the October 1977 proceeding as a Krol [sic] Hearing. DN 103-104.

98. The Committee attempted to locate Dr. Elizondo in order to speak with him regarding his recollection of Mr. Jeffrey. Unfortunately, the doctor's whereabouts is unknown.

99. DN 3403-3451.

100. For reliance on Jeffrey's asserted history see Certified Interview Statement of Kuvin at p. 12; Certified Interview Statement of Wiener at p. 6.

101. Certified Interview Statement of Simring, November 16, 1993, at p. 37.

102. The Committee made numerous unsuccessful attempts to locate Dr. Gill. In addition, neither TPH nor the New Jersey State Medical Boards had current information regarding the doctor's whereabouts.

103. DN 109-110.

104. DN 107; DN 113.

105. DN 107.

106. In October 1978 Gill wrote: "He (Jeffrey) trusts [the] examiner; he does not want to be moved to another ward. Even at present time patient is not well enough for psychotherapy. Each interview with the examiner has to be without witnesses." DN 112.

107. Certified Interview Statement of Rotov, August 10, 1993, at p. 41.

108. Dr. Kern was the State's expert for Jeffrey's first competence hearing in December 1974. At that time, Dr. Kern diagnosed Jeffrey as suffering from chronic, undifferentiated schizophrenia. As previously discussed, Kern agreed with the defense expert that Jeffrey was not competent to stand trial at that time. See pp. 12-13 of this report.

109. DN 3255.

110. DN 3255.

111. DN 3255-3257. A second notice of a Motion to Dismiss the indictment was filed by public defender William Graves on June 19, 1979; however, this motion was denied by Judge Baime on July 20, 1979 and the case was adjourned to a hearing at a later date. DN 71; DN 512.

112. DN 1858. It is worth noting that despite the violent crime with which Jeffrey was charged, he was not properly supervised during his transfer from TPH to the Court for this hearing. Judge Owens began the proceeding by stating:

> Now I understand that when the attendants delivered Mr. Connie Jeffreys to the Court this morning, they did not follow the usual practice by leaving him in the detention cell over at the jail until he was required for this hearing. And I understand that he has been roaming the courthouse with two or three others since his arrival here early this morning. DN 3239.

113. After Jeffrey's November 1978 hearing, he was scheduled for a subsequent hearing in June of 1979. The June hearing was adjourned to July 20, 1979; however, that proceeding was rescheduled for November 16, 1979. The next hearing was to have taken place on August 8, 1980, but was adjourned on that date to September 19, 1980. The September 1980 proceeding was also postponed until October 17, 1980 when the Court finally did review Jeffrey's case. DN 71; DN 121-122; DN 153; DN 156-157; DN 1182-1183.

114. DN 3259.

115. DN 389; DN 2147.

116. Id.

117. DN 389.

118. Id.

119. DN 2147.

120. Id. (emphasis added).

121. DN 1780.

122. DN 1857.

123. Id.

124. DN 2376.

125. DN 1780.

126. DN 1980; DN 2065-2066.

127. DN 1780.

128. DN 1825j.

129. DN 1825t.

130. Id.

131. DN 1825j.

132. DN 1980.

133. DN 1825s.

134. DN 1825p.

135. DN 1181; DN 2093; DN 2361.

136. DN 1825o.

137. DN 2081.

138. DN 1887; DN 1979.

139. Certified Interview Statement of Sadoff, December 1, 1993, at pp. 47-48.

140. Certified Interview Statement of Rotov, August 10, 1993, at pp. 5-6.

141. Id. at pp. 5, 9.

142. Certified Interview Statement of Kayser, August 23, 1993, at pp. 2, 5.

143. Id. at pp. 19-20.

144. Certified Interview Statement of Baime, August 31, 1993, at pp. 6-7.

145. A hearing was scheduled to take place on April 3, 1981; however it was postponed because counsel for Jeffrey was not present. On April 28, 1981 Judge Baime issued an order requiring Jeffrey's continued confinement at TPH and scheduling a subsequent hearing on May 8, 1981. Judge Baime, sua sponte, also raised the issue of dismissing the indictment against Jeffrey due

to his continued incompetence and stated that the issue would be addressed at Jeffrey's next hearing. DN 158; DN 160-162.

146. DN 366.

147. DN 1886; DN 2083-2084.

148. DN 1885; DN 2082.

149. DN 1879.

150. DN 3273-3274.

151. DN 3276.

152. DN 3276-3277.

153. The transcript for this hearing indicates that Gill only presented his report to the attorneys and Court on the day of the hearing thereby precluding any prior review of his evaluation. DN 3278-3281.

154. DN 1098.

155. DN 1099.

156. DN 3283-3284.

157. Id. at 3286 (emphasis added). After Judge Baime dismissed the indictment, he also denied a request that a social worker at TPH had made to obtain the court's permission to take Jeffrey on day trips outside the confines of the hospital. Jeffrey's records indicate that he would frequently "disappear" on hospital outings for extended periods of time. DN 1855.

158. DN 1848.

159. Certified Interview Statement of Baime, August 31, 1993, at p. 15.

160. Certified Interview Statement of Kayser, August 23, 1993, at p. 20.

161. DN 3283.

162. As previously stated, the Committee has learned that Dr. Blechman is deceased.

163. Certified Interview Statement of Fox, August 20, 1993, pp. 5-6, 8.

164. Uncertified Interview Statement of Keltz, October 22, 1993, at pp. 44, 47.

165. Certified Interview Statement of Fox, August 20, 1993, at p. 13.

166. Id. at pp. 13, 18. Fox also stated that the documents that she believes are missing from Jeffrey's records might also shed light on why Gill testified at the hearing rather than Dr. Blechman. Fox was perplexed that Blechman did not testify because he had been treating Jeffrey for several months prior to the proceeding. Id. at 19-20.

167. Rotov, of course, had the benefit of information about Jeffrey's behavior from 1974 through 1993.

168. Certified Interview Statement of Rotov, August 10, 1993, at pp. 9-10.

169. Id. at p. 20.

170. Id. at p. 20.

171. Id. at p. 24.

172. Id. at pp. 25-26.

173. Id. at p. 25.

174. Rotov told the Committee that a number of additional tests existed during Jeffrey's period of commitment at TPH that could have been performed to ascertain whether or not Jeffrey was truly ill. He stated that a sodium pentothal interview, psychoanalysis and hypnosis may have provided valuable information regarding the legitimacy of Jeffrey's condition. In addition, Rotov views as extremely important the observations of the non-professional staff members who interact more frequently with patients than the medical staff. Rotov believes that the observations of direct ward personnel are "invaluable" and stated that such indirect information sources may have provided valuable clues to Jeffrey's behavior, condition and diagnosis. Id. at pp. 33-34.

175. Certified Interview Statement of Sadoff, December 1, 1993, at pp. 4-5.

176. Id. at pp. 5, 17, 39.

177. Id. at pp. 17, 39.

178. Certified Interview Statement of Baime, August 31, 1993, at pp. 21-22.

179. Id. at p. 23.

180. Id. at pp. 31-32.

181. The transcript of this proceeding does not indicate whether or not Judge baime reviewed Jeffrey's entire hospital records or only the report submitted by Dr. Blechman's Treatment Team. DN 3378-3393.

182. DN 1102.

183. DN 1104.

184. Id.

185. DN 3379; DN 3382.

186. DN 3384-3385.

187. Certified Interview Statement of Baime, August 31, 1993, at p. 19.

188. Id. at p. 19.

189. Id. at 35.

190. Id. at p. 36. The order that Judge Baime signed dismissing the indictment appears to refer to subsection (c) of Rule 2C:4-6, which dismissed the indictment with prejudice. Judge Baime stated in his interview that the order should have referred to subsection (e) which would have dismissed the indictment without prejudice. Id. at p. 37; DN 500.

191. Certified Interview Statement of Baime at pp. 42, 46.

192. DN 1091. On November 15, 1982 Judge Baime signed the order discharging Jeffrey from the jurisdiction of the court and noting that neither the Essex County Court or County Prosecutor would have further jurisdiction to participate. Jeffrey was remanded to the civil commitment procedures in effect. DN 1202-1203.

193. N.J.S.A. 30:4-27 was in effect during this period of time but was subsequently repealed by L.1987, c. 116, §30, eff. June 7, 1989.

194. DN 1200-1201; DN 1776.

195. DN 1723; DN 1752.

196. DN 1201. An Order of Dismissal was signed on December 23, 1982 by Judge Paul Murphy of the Juvenile and Domestic Relations Court of Essex County officially changing Jeffrey's status from that of an involuntary patient to that of a voluntary committee. DN 560.

197. DN 1758; DN 2286.

198. DN 1760. P. 23 for discussion of Annandale evaluation.

199. DN 1761.

200. Blechman's discharge summary also indicated that Jeffrey continued to abuse drugs and also stated that Jeffrey was suspected in January 1983 of a "variety of mysterious happenings" on his hospital ward, including the theft of other patients' belongings. DN 1092.

201. Certified Interview Statement of Fox, August 20, 1993, at pp. 23-24.

202. DN 1665.

203. Jeffrey was sentenced to 60 days in the Essex County Penitentiary for the July 25, 1984 shoplifting charge. He was again arrested for shoplifting on September 3, 1984 and was sentenced to 6 months, with 5 months suspended and one year of probation. On January 10, 1985 Jeffrey was arrested on 5 charges of simple assault and was sentenced to 5 consecutive, 5-day sentences in the jail annex at Caldwell. DN 202; DN 473-474; DN 583-584; DN 2675; DN 2688; DN 2698.

204. The record indicated that after the boy's mother called police to file an initial complaint, it took more than a week until the boy's mother brought him to the police station to make a formal statement and register a complaint. DN 173; DN 179.

205. DN 3296-3299.

206. DN 177.

207. Jeffrey had also been arrested by the Newark Police Department on 3/12/85 and 3/19/85, both times for simple assault. DN 475; DN 584-585; DN 2676; DN 3113.

208. DN 177-178; DN 197.

209. DN 182; DN 195; DN 3090.

210. Judge Hazelwood is now deceased.

211. DN 189-191; DN 464; DN 3288; DN 3304.

212. The notes in the prosecutor's file indicate that a representative of the Child

Abuse Unit initialed the terms of the plea agreement that eliminated the two sexual assault charges. DN 3126.

213. DN 3131-3132; DN 3138; Certified Interview Statement of Conchar, August 23, 1993, at pp. 13, 15.

214. DN 3302-3303.

215. See DN 199-204 at 204.

216. DN 200-201.

217. DN 202. This section of the document contradicts Katz's prior writing where he noted that Jeffrey had no juvenile record.

218. DN 204.

219. DN 3307.

220. DN 3309-3310.

221. DN 3106.

222. DN 3309-3310.

223. See State v. Green, 62 N.J. 547, 571, 303 A. 2d 312 (1973); State v. Tanksley, 245 N.J. Super. 390, 585 A. 2d 973 (App. Div. 1991).

224. See Interview Transcripts of Katz and Lackey - specific citations to follow.

225. In fact, the Essex County Prosecutor's Office provided the Committee with its file related to this incident. The rap sheet included in the file does reference that Jeffrey had been arrested for homicide. The circumstances surrounding its dismissal, however, were not noted. DN 3070.

226. Certified Interview Statement of Conchar, August 23, 1993, at pp. 16-17.

227. Certified Interview Statement of Katz, August 19, 1993, at pp. 6-7.

228. Id. at p. 17.

229. Id. at pp. 9, 22.

230. Id. at p. 11.

231. Certified Interview Statement of Lackey, August 19, 1993, at p. 7.

232. Id. at pp. 8, 16 (emphasis added).

233. Id. at pp. 25-26.

234. Id. at p. 12.

235. Id. at p. 25.

236. Id. at p. 27 (emphasis added).

237. Id. at pp. 29-30.

238. DN 578-579. The Department of Corrections Face Sheet that was completed on May 2, 1986 upon Jeffrey's arrival at Mid-State noted that Jeffrey again stated that he had no psychiatric history. DN 766.

239. DN 829-831.

240. The victim was contacted and was told that he could provide a victim input statement to the Parole Board regarding the possibility of Jeffrey's parole. The record does not reflect that the victim provided any statement to the Parole Board. DN 172.

241. DN 827.

242. Id.

243. Id.

244. Although all of Jeffrey's prior records indicate that he only completed high school, Chatzinoff's report noted that Jeffrey had completed two years of college. Id.

245. DN 824; DN 848; DN 879-880. The record reflects that Jeffrey had been on a waiting list to attend Alcoholics Anonymous while incarcerated at Mid-State. DN 824.

246. DN 824; DN 848; DN 879-880.

247. The majority of the reports contain only one or two-sentence descriptions concerning Jeffrey. See DN 818; DN 820; DN 822; DN 824; DN 828.

248. Certified Interview Statement of Chatzinoff, August 13, 1994, pp. 56-58, 63, 65.

249. Chatzinoff told his interviewer that the PSI's that he sees on a daily basis vary significantly in their degree of quality and thoroughness. Id. at 85.

250. Id. at pp. 77, 85. Chatzinoff was responding to an investigator's question asking him how he ascertained, as he wrote his report, that Jeffrey had a total of eleven arrests as an adult.

251. Id.

252. Id. at pp. 80-81.

253. Id. at pp. 81-83.

254. DN 827.

255. DN 837; DN 1269.

256. DN 1245-1275.

257. Certified Interview Statement of Egles, July 8, 1994.

258. DN 232-234.

259. DN 232-236.

260. Hackensack Municipal Court documents indicate that Jeffrey's bail was set at $25,000 with no 10% minimum; however, Bureau of Parole records state that bail was set at $50,000 with no 10% minimum. DN 227; DN 951.

261. DN 226; DN 241-243.

262. DN 295-298. The Bureau of Parole issued a special report concerning Jeffrey on December 17, 1986. The report indicated that no decision would be rendered concerning Jeffrey's parole violations stemming from his November 1986 arrest until the prosecution of that offense was further developed. The report noted that "there is virtually no possibility of subject making bail and returning to community at this time." DN 951.

263. There is a handwritten note on a form entitled "PLEA BARGAIN" in the Bergen County Prosecutor's file that reads, "if no convictions - only arrests → 5 yr max otherwise no bargain. [D]rop resisting and theft." The initials "F.L" appear in the section of the form captioned "APPROVED." Although Jeffrey had prior convictions, the plea agreement does not appear to have been effected DN 313.

264. DN 3334-3340.

265. The PSI, however, does not contain any information concerning Jeffrey's whereabouts during the length of time between the 1974 arrest for the

homicide and the 1981 dismissal. There is no indication in any of the records surrounding this incident that the court or prosecutor had any knowledge concerning Jeffrey's institutionalization at TPH. DN 291; DN 3341.

266. DN 289-294.

267. DN 3345-3346.

268. DN 3346-3347.

269. DN 3347-3348.

270. DN 882-884; DN 952-953.

271. DN 917; DN 951.

272. DN 928-931.

273. DN 865; DN 892; DN 962; DN 977.

274. The record reflects some confusion regarding the focus of this investigation. It was erroneously called "pre-parole"; however, it appears that it was conducted in anticipation of Jeffrey's parole revocation hearing. DN 1212.

275. DN 1212.

276. Certified Interview Statement of Blumenthal, August 16, 1993, at p. 80.

277. Id. at p. 87.

278. DN 888-891.

279. The record reflects that Jeffrey's PED was continually recalculated and that the results of these calculations varied greatly. One calculation, prepared on September 21, 1987, erroneously placed Jeffrey's first PED as December 27, 1987 -- only 7 months after he was sentenced and a full year earlier than he was actually eligible for parole. Apparently, the September 21, 1987 calculation did not take into account the 14-month term for Jeffrey's parole violation. The record, however, does not indicate that the flawed calculation ultimately served as the actual basis for the timing of Jeffrey's parole eligibility hearings or release. A case assessment sheet in Jeffrey's parole file also erroneously noted that Jeffrey's PED was December 29, 1987. DN 799; DN 872; DN 895; DN 1208; DN 1291; DN 2757.

280. The record reflects that Jeffrey's first PED as calculated at Jones Farm was

May 1988. However, Bureau of Parole records reflect that in June 1988 Jeffrey's actual PED was October 14, 1988. DN 799; DN 872; DN 1291.

281. DN 875-878.

282. The name of the clinical psychologist is illegible on the document. DN 794.

283. DN 794.

284. There is no indication in the record as to whether or not the psychologists who prepared evaluations for the parole board routinely had available to them or reviewed prior psychological reports concerning inmates.

285. DN 794.

286. DN 794-795.

287. These other reports covered Jeffrey's involvement in special activities, his personal hygiene, education, prison work record and leisure activities. Most of these documents included little, if any, information. DN 837-845.

288. DN 837-845; DN 980.

289. The criminal history did not provide specific detail concerning any of Jeffrey's past crimes.

290. DN 875-876.

291. DN 902. I.S.S.P. refers to Intensive Supervision and Surveillance Program.

292. DN 1283.

293. Id.

294. DN 791; DN 802-804. The Parole Board document dated November 23, 1988 that details the terms of Jeffrey's transfer to the alcohol treatment program note that it superseded the Board's October 12, 1988 decision to deny Jeffrey's parole until he completed a future eligibility term of 12 months. DN 803.

295. Certified Interview Statement of Muse, August 17, 1993, at p. 99.

296. Specifically, the information that Jeffrey provided to Muse regarding his educational background and prior substance abuse treatment differed from that in his PSI. Moreover, Muse was unaware that Jeffrey had an extensive history

of psychiatric treatment at TPH. Her report indicated that Jeffrey denied ever being hospitalized. DN 1280; Certified Interview Statement of Muse at pp. 108-110.

297. Id. at p. 106.

298. Jeffrey's March 1989 parole from the MAP program appears to have released him into the community much sooner than had he not been placed in the program. When his parole was denied in October 1988, the parole board gave Jeffrey a future eligibility term of one year. Thus, the March 1989 parole from Maryville released him months earlier than he would have otherwise been eligible for parole consideration. DN 803; DN 1283.

299. DN 803; DN 998; Certified Interview Statement of Muse, August 17, 1993, at p. 112.

300. DN 994-995; DN 997-998.

301. DN 994-995.

302. DN 995.

303. Parole records indicate that Senior Parole Officer Ferraudo recommended that Jeffrey remain on parole after his arrests. The Bureau of Parole Special Report detailing the arrests and the decision not to revoke parole is signed by Parole Officer Marsh, Assistant District Supervisor Frederick Skelding and Charles Fowler, District Parole Supervisor. DN 994-999.

304. DN 993. Parole Officer Marsh was on vacation from August 30, 1989 until September 25, 1989. There is no indication in the record as to whether or not another officer was responsible for Jeffrey's case in his absence. Id.

305. DN 991; DN 993; DN 995; DN 999.

306. Jeffrey was also arrested by the Hackensack Police Department on November 28, 1989 on a charge of larceny. DN 476.

307. DN 261-262; DN 280-282.

308. DN 264; DN 278; DN 283-284.

309. DN 256-259.

310. DN 255.

311. DN 245-253.

312. All previous information concerning Jeffrey's family indicated that his father was deceased and that his immediate family consisted of only his mother and two sisters. DN 203; DN 293; DN 2515-2518.

313. DN 251-253.

314. DN 2748-2749.

315. DN 2747; DN 2749-2750.

316. The PSI that Kuechenmeister reviewed for Jeffrey's sentencing noted that the 1974 homicide was dismissed, but did not include any information concerning Jeffrey's lengthy institutionalization.

317. Certified Interview Statement of Kuechenmeister, November 23, 1993, at pp. 1-2.

318. Id. at pp. 2-3.

319. Id. at p. 3; see also DN 189; DN 464; DN 3288; DN 3304. As previously detailed, the plea bargain concerning the 1985 assault dropped the sexual assault charges and Jeffrey was convicted of second degree kidnapping for the purpose of first degree robbery. DN 189; DN 464; DN 3288; DN 3304.

320. Id. at pp. 3-4.

321. It should be noted that the Department of Corrections face sheet that was completed when Jeffrey arrived at Garden State erroneously indicated that he had no psychiatric history or kidnapping convictions. DN 651.

322. DN 714; DN 1011.

323. DN 653; DN 675-685.

324. DN 1033-1038.

325. DN 712-713 (emphasis added). Green stated in his interview that he characterized Jeffrey's assault as domestic because Jeffrey stated that he had a previous dispute with the girl's father and that his contact with the victim was related to that prior argument. Green said that he should have referred to the assault as a "neighborhood matter" rather than referring to it as a "domestic matter." Certified Interview Statement of Green at pp. 20-21.

326. DN 249; Certified Interview Statement of Green, August 17, 1993, at pp. 11-15.

327. Id. at pp. 14-15, 17.

328. Id. at pp. 18-20, 36.

329. DN 709; DN 711.

330. DN 710; DN 1006-1008.

331. Certified Interview Statement of Consovoy, August 11, 1993, at p. 17.

332. Uncertified Interview Statement of Bush, August 11, 1993, at p. 87. ADTC refers to the Adult Diagnostic and Treatment Center at Avenel.

333. The form noted that the presumptive term for possession of a dangerous weapon is seventeen months. DN 1005.

334. Certified Interview Statement of Consovoy, August 11, 1993, at p. 34.

335. Id.

336. Uncertified Interview Statement of Bush, August 11, 1993, at pp. 71-72.

337. Certified Interview Statement of Consovoy, August 11, 1993, at pp. 34-35.

338. Uncertified Interview Statement of Bush, August 11, 1993, at p. 73.

339. This calculation assumes Jeffrey earned the maximum number of work credits and received no additional infractions. DN 1042.

340. DN 1045-1072.

341. DN 652-653.

342. DN 1044.

343. Certified Interview Statement of Jantz, August 17, 1993, at pp. 51-57.

344. DN 704.

345. Uncertified Interview Statement of Bush, August 11, 1993, at p. 69.

346. Bush explained that he thought that Hall's psychological exam was favorable. He noted that although Hall wrote that Jeffrey's prognosis for parole was "guarded" that the psychologist wrote in a prior paragraph that Jeffrey "was cooperative and appears to be trying to mend his ways. His prognosis is better now than [sic] maybe perhaps at any other time." Id. at p. 84.

347. Bush is referring to N.J.S.A. 30:4-123.56c which states in pertinent part:

> An inmate shall be released on parole on the new parole eligibility date unless new information...indicates by a preponderance of the evidence that there is a substantial likelihood that the inmate will commit a crime under the laws of this State if released on parole at such time.... (emphasis added)

348. Id. at p. 78.

349. Id. at p. 90.

350. Id. at p. 79.

351. DN 722-725.

352. DN 722.

353. Uncertified Interview Statement of Mooney, August 23, 1993, at pp. 24-25.

354. DN 476; DN 585.

355. DN 3351-3358.

356. DN 3353.

357. Certified Interview Statement of Williams, October 13, 1994, at p. 6.

358. Id. at pp. 6-7.

359. Id. at pp. 7-8.

360. Id. at pp. 8-9.

361. DN 726.

362. DN 476; DN 585; DN 726.

363. DN 476; DN 728.

364. Certified Interview Statement of Miller, August 18, 1993, at pp. 82-83, 94-95.

365. Id. at p. 100. Committee records indicate that Jeffrey was arrested twice, not three times after his release. DN 476; DN 585; DN 3351-3358.

366. Id. at pp. 103-104.

367. Id. at pp. 177-118.