Solo, Small Firm and General Practice Division

ABA 2013 Annual Meeting

August 8 – 11, 2013

Historic Trial: The Twinkie Defense — The Trial of Dan White for the Murders of Harvey Milk and George Moscone

Friday, August 9, 2013
2:00 p.m. – 5:00 p.m.
# THE TWINKIE DEFENSE

### The Trial of Dan White for the Murders of Harvey Milk and George Moscone

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Trial materials courtesy of Professor Douglas Linder, University of Missouri Law School, Famous Trials website: [http://law2.umkc.edu/faculty/projects/ftrials/milk/milkhome.html](http://law2.umkc.edu/faculty/projects/ftrials/milk/milkhome.html)
AIM FOR YOUR NEXT BIG CASE …
THREE SIMPLE SECRETS TO HELP YOU WIN
By David Weinberg, Esquire  888.436.2849  weinbergd@jurygroup.com

You’ve got a big case coming up. It may be mediation, an arbitration, an administrative proceeding or a trial. Your client’s future rests in the balance. Your client is counting on you. How you decide to present the case will make the difference between winning and losing.

There are mountains of discovery, complicated fact patterns, confusing technical issues. Evidence is piled in your conference room – hundreds of pages of emails, correspondence, manuals, training videos, expert videos, video re-enactments, deposition transcripts, affidavits, photographs, spreadsheets, blueprints, diagrams, contracts and amendments – the list goes on. How do you boil all this down into a powerful format that will win the day for your client?

What if I could share three secrets that could make the difference between winning and losing? For nearly twenty years, I’ve built a special practice called JuryGroup – working behind the scenes with litigators on both sides of the bar. My colleagues and I join their trial teams to help construct case strategies that resonate with many different audiences in many different forums. Our time is frequently included in monthly billings.

These three winning secrets are drawn from a wide range of relevant disciplines: trial advocacy, behavioral science, journalism, marketing, literature and theater. The three secrets are surprisingly simple and powerful. They are (1) Define your AUDIENCE, (2) Design your IMAGE (3) Deliver your MESSAGE. When JuryGroup joins your litigation team we help you apply them successfully.
Litigation is a communications contest. The side that best connects with the audience generally wins. To devise a successful litigation strategy, you must accurately define your audience – determining what they believe, what they value, what they fear – and what impact their attitudes will have upon your case. Your audience extends beyond the finder of fact – jury, judge, mediator and arbitrator – to all the interested parties – clients, colleagues, witnesses, opposing attorneys, the news media and the public.

JuryGroup helps define your audience in a number of ways. First, we apply behavioral science to predict audience reaction and analyze the complex blend of factors that lead to those reactions – occupation, education, age, gender, family status, racial/ethnic background and other critical indicators. Next, we help you design graphic images and deliver a message that resonates with the values and concerns of those who will be deciding your case. We clarify your litigation strategy by presenting crucial aspects of your case to mock juries. Then, we conduct focus groups for in-depth interaction with individuals representative of the potential jury pool and interview community residents to determine prevailing local attitudes.

JuryGroup evaluates the potential pool of jurors – profiling the characteristics of jurors most likely to favor or oppose your arguments. During jury selection, we develop questions designed to reveal hidden bias. As you conduct voir dire, we carefully observe potential jurors, helping you identify clues to their real feelings. We continue careful observation of all audience members throughout the proceedings, watching for behavioral clues to how they are responding to your case.
Secret Two: Design Your IMAGE

People today communicate with electronic images, exchanging them on computers and mobile phones. Lawyers in popular movies and TV shows use the latest presentation technologies to argue their cases. Viewers now expect the same when they enter real-life courtrooms. JuryGroup helps litigators make the most of presentation technology in negotiation, mediation, arbitration and trial. In jurisdictions around the country, these presentations have been admitted to support opening and closing statements and witness examinations.

Compelling graphics enhance the client’s story, forming a backdrop so the litigator can make a stronger personal connection with the audience. The best presentations are designed especially for each case, tailored to the litigator, the audience and the case at hand. Exhibits are sequenced in seamless, smooth progression, highlighting the most relevant aspects of evidence. Litigators no longer have to fumble with clumsy poster boards and precarious stacks of exhibits. Documents, photos, diagrams, videos, charts, graphs and summaries can easily be displayed, compared and magnified. Colors and design are used to link related evidence, making complex information easier to understand and remember.

We help design litigation presentations that aren’t distracting, incorporating themes lead viewers to focus on content rather than technology. Computer presentations maintain interest and involvement in the evidence, often reducing the time it takes to put forward the best case. JuryGroup will help you choose the three themes that most effectively deliver your message.
Secret Three: Deliver Your MESSAGE

There is a compelling message at the heart of every case. Most litigation teams spend inordinate amounts of time and effort hoping to get the message out in the open, support it with fact and argument, and communicate it in a way that reaches decision makers. Then they wait, worry and wonder if they got it right. It’s my job to minimize the guesswork and guide you through this entire process.

The heart of every successful argument ever made is a successful theme. What are the three most important arguments we have to win in this case? JuryGroup helps you discover the three most crucial themes of your case. Themes help organize the narrative so that it parallels principles of law. Effective themes capture the essence of each issue in a simple phrase -- maybe only a word or two. These phrases are signposts – reminders which offer a simple framework for understanding the case. It’s our role to help litigators use themes to organize every aspect of a proceeding – including opening, closing and witness examination. The narrative of the case should link every piece of evidence to at least one theme. These themes are then reinforced with graphic presentations.

See How These 3 Secrets Can Work for You With Our Free One Hour Consultation

Do you have a mediation, arbitration, hearing or trial coming up? Are you afraid that you will not pull the case together in time? Are you concerned that you do not know your client’s real story? Have you found your strategic message – the story and moral of your case? Is your case organized with compelling themes that quickly capture the key issues? Have you reinforced your message with convincing contemporary graphics? Have you used these secrets of the successful twenty-first century litigator to create a winning case?

There is still time to win your case.

For a limited time, we are offering a free one-hour consultation to attorneys interested in presenting a winning case. Due to the demands of our client schedule, the number of hours for free consultations our limited. Please don’t wait until a week before trial, arbitration, or mediation to call. Creating a winning case strategy starts now.

Mention this brochure when you call and you will receive a free demo collection of winning presentations from our previous assignments which will provide you with a wealth of information for organizing your own case. Call or write me at 214-941-5100 or weinbergd@jurygroup.com.
## Chronology of Milk Moscone Murder Case

Professor Douglas Linder,  
University of Missouri Law School  
Used with permission.

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<td>May 22, 1930</td>
<td>Harvey Milk is born on Long Island, New York.</td>
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<td>September 2, 1946</td>
<td>Dan White is born in Los Angeles County.</td>
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<td>November 3, 1977</td>
<td>Dan White (on his first attempt) and Harvey Milk (on his third attempt) are both elected to the San Francisco Board of Supervisors as Democrats, although White is socially conservative and Milk, a leading figure in San Francisco's gay community, quite the opposite. White joins the Board after working both as a police officer and a firefighter in San Francisco.</td>
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<td>November 1, 1977</td>
<td>In the weeks following their election to the Board, Dan White and Harvey Milk appear together on a number of local talk shows. They praise each other, and Milk tells friends that he thinks he will be able to work with the conservative White.</td>
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<tr>
<td>November 18, 1977</td>
<td>Fearing a possible assassination, Harvey Milk tape records his &quot;political will.&quot; Milk says, &quot;If a bullet should enter my brain, let that bullet destroy every closet door.&quot;</td>
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<tr>
<td>January 9, 1978</td>
<td>At his first board meeting as a newly-elected supervisor, Milk proposes a comprehensive ban on discrimination against gays in San Francisco. At the same meeting, Diane Feinstein is elected president of the Board on a 6 to 5 vote (Milk voted against Feinstein and for a minority candidate.) The 6-5 vote generally reflects a conservative/liberal split on the Board.</td>
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<td>April 1, 1978</td>
<td>Dan White and Harvey Milk clash over a facility for juvenile offenders proposed for White's district. White strongly opposes the facility, while Milk supports it.</td>
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<td>May 21, 1978</td>
<td>On the day before Milk's last birthday, he dresses in a clown costume and runs up to cable cars, shaking the hands of random tourists and declaring, &quot;Hey, I'm a supervisor. I pass laws. I run this city.&quot; He later attends a series of political events, still dressed in his clown costume.</td>
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<td>June 25, 1978</td>
<td>San Francisco's Gay Freedom Day Parade is attended by a crowd estimated in size from 350,00 to 375,000. At City Hall, Milk delivers a speech attacking the proposed Briggs Initiative (which would make it unconstitutional in California to extend civil rights protections based on sexual orientation), which he says will &quot;constitutionalize bigotry.&quot;</td>
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<tr>
<td>Summer 1978</td>
<td>Dan White falls into a depressed state. Symptoms of his depression include insomnia, giving up his exercise schedule, and eating a less healthy diet. (The latter symptom gave rise to the press's later description of White's diminished capacity defense as &quot;the twinkie defense. There actually was no evidence presented that White actually ate a twinkie.)</td>
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<td>November 7, 1978</td>
<td>On election night, the Briggs Initiative is easily defeated (2 to 1 against) and gays celebrate in San Francisco.</td>
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November 10, 1978  
Dan White announces that he will resign his post as supervisor, thus allowing the mayor to appoint a new supervisor who could shift the 6-5 balance of power to the board's liberals. Milk is ecstatic at the news of White's resignation.

November 18, 1978  
Dan White says he has reconsidered his decision and asks to withdraw his resignation from the Board of Supervisors. Mayor Moscone at first says, "A man has a right to change his mind," but later has second thoughts about reappointing White after being pressured by Harvey Milk.

November 26, 1978  
On Sunday night, Dan White learns from a KCBS reporter that Mayor Moscone had decided not to reappoint him as supervisor.

November 27, 1978  
After a sleepless night, Dan White enters City Hall through a lower story window and heads upstairs to the office of Mayor George Moscone. White shoots and kills Moscone, then heads for Milk's office, where he kills him. Milk dies at 10:55 A.M. White surrenders to police. White is charged with two counts of murder and held without bail.

January 8, 1979  
Harry Britt, Jr., another gay activist, is appointed by Diane Feinstein to fill the seat left open by Milk's death.

January 1, 1979  
The preliminary hearing is held in the Dan White case.

May 1, 1979  
The trial of Dan White opens.

May 11, 1979  
The defense rests in the Dan White trial.

May 14, 1979  
Summations begin in the Dan White trial.

May 21, 1979  
After 36 hours of deliberation, the jury announces its verdict in the Dan White trial, finding White not guilty on the murder counts, but guilty on two counts of voluntary manslaughter. Following the verdict, a protest erupts in S.F.'s Castro district, with the crowd chanting, "Avenge Harvey Milk!" Later, rioters throw stones through the windows of City Hall.

July 3, 1979  
Dan White is sentenced to seven years and eight months in prison.

January 7, 1984  
After serving five years of a seven-year sentence, Dan White is paroled from Soledad State Prison. (While in Soledad, White told homicide inspector Frank Falzon that on the day of the shootings, he had intended to kill four people, including Supervisor Carol Silver and California State Assembly member Willie Brown.)

October 21, 1985  
Dan White commits suicide by carbon monoxide poisoning in the garage of his San Francisco home.
DIMINISHED CAPACITY

"DIMINISHED CAPACITY," AS OPPOSED TO "NOT GUILTY BY REASON OF INSANITY"

DIFFERENT RESULT

A "diminished capacity" plea differs in important ways from "not guilty by reason of insanity." "Reason of insanity" is an affirmative defense to crimes. That is, a successful plea of insanity will, in most states, result in a verdict of "not guilty" and commission of the defendant to a mental institution. "Diminished capacity," on the other hand, merely results in the defendant being convicted of a lesser offense.

The basis for this is found in the American criminal law system. Most crimes in the United States are defined in a way that implicitly distinguishes an actus reus -- a guilty act -- from a mens rea -- or guilty mental state. For example, the New York Penal Code defines second-degree murder as causing the death of a person (guilty act) with the intent to cause the death of a person (mental state). N.Y. Penal § 125.25(1) By contrast, second-degree manslaughter is defined as causing the death of a person (guilty act) recklessly (mental state). N.Y. Penal 125.15(1).

The diminished capacity plea is based in the belief that certain people, because of mental impairment or disease, are simply incapable of reaching the mental state required to commit a particular crime. In the example of murder and manslaughter, a diminished capacity defense contends that a certain defendant is incapable of intending to cause a death, and therefore must have at most caused such a death recklessly. Thus, a successful plea of diminished capacity in a murder trial would likely result in the charge being reduced to manslaughter.

A SPOTTED HISTORY

California allowed a plea of diminished capacity beginning in the 1950s. But the plea came under intense scrutiny during as the so-called "Twinkie defense," in the 1979 case California v. White. Dan White, a former city supervisor, shot and killed the mayor of San Francisco, George Moscone, and another city supervisor, Harvey Milk. The crime displayed a high degree of premeditation: White packed extra bullets, climbed through a City Hall window to avoid metal detectors, and shot the two men nine times.

White's attorneys argued diminished capacity. They claimed that a diet of only junk food had created a chemical imbalance in White's brain (the "Twinkie defense"), and that he was depressed over his loss of his city supervisor position. Therefore, he was unable to premeditate murder, one of the requirements for first-degree murder.
The jury convicted White of voluntary manslaughter -- the least serious charge for homicide. This caused an uproar against the diminished capacity plea in California, and in 1982, voters overwhelmingly approved a proposition to eliminate the defense.

THE FEDERAL RULE OF DIMINISHED CAPACITY -- SENTENCING

In a federal case the rules of evidence, procedure and sentencing are set at the federal level. The rules of procedure are the Federal Rules of Criminal Procedure, the rules of evidence are the Federal Rules of Evidence, and the sentencing rules are the United States Sentencing Guidelines (USSG).

The USSG sets minimum sentencing for certain federal crimes, and also sets the guidelines by which judges may stray from these minimums. The USSG states that a federal court may depart downward from the minimum sentence on the basis of diminished capacity if the offense was nonviolent. U.S.S.G. § 5K2.13. See also United States v. Cook, 53 F.3d 1029 (9th Cir. 1994).

U.S.S.G. § 5K2.0 allows departure from the sentencing minimums for "extraordinary mental condition." Unlike 5K2.13, this section does not explicitly limit the departure to non-violent crimes. However, it was not until very recently that the Court of Appeals for the Ninth Circuit explicitly recognized that 5K2.0 creates a "diminished capacity" argument for violent crimes.

In United States v. Green (9th Cir. Sept. 8, 1997), the Ninth Circuit ruled that the trial court had the discretion to depart downward in sentencing based on diminished capacity in the case of the defendant, a man who pled guilty to two counts of bank robbery.

A successful plea of diminished capacity would not earn a "not guilty" verdict, but merely a reduced sentence, under the federal sentencing guidelines.

See also:

• Another definition of diminished capacity (from dictionary.law.com)
• diminishedcapacity.com

DEFINITION FROM NOLO’S PLAIN-ENGLISH LAW DICTIONARY

An impaired mental condition, caused by disease, trauma, or intoxication but short of insanity, that can reduce the criminal responsibility of a defendant. Not all states allow defendants to offer this plea in response to criminal charges.

Definition provided by Nolo’s Plain-English Law Dictionary.

August 19, 2010, 5:14 pm
THE PEOPLE'S OPENING STATEMENT
by Thomas F. Norman

Your Honor, members of the jury, and you are the jury now, counsel for the defense: Ladies and gentlemen, I am Thomas F. Norman, and I am the Assistant District Attorney, and I appear here as trial representative of Joseph Freitas, Jr., District Attorney, seated next to me now.

Members of the jury, you have heard the information which is on file here read to you. I'm sure that you generally know what this case is about. The statements that I make at this particular time to you are, as his Honor indicated, not evidence. They are simply an outline briefly of what I expect that the evidence of this case is going to show, which will support these charges. George R. Moscone was the duly-elected Mayor of San Francisco. Harvey Milk was the duly elected Supervisor of District 5 of San Francisco.

The defendant in this case, Mr. Daniel James White, had been the duly-elected Supervisor of District 8 of San Francisco, until for personal reasons of his own, he tendered his resignation in writing to the Mayor on or about November the 10th, 1978, which was approximately 17 days before this tragedy occurred. Subsequent to tendering his resignation he had feelings that he wanted to withdraw that resignation, and that he wanted his job back. There being a vacancy on the Board of Supervisors, in District Number 8, the Mayor had the right to appoint a Supervisor to fill that particular vacancy. Numerous applications were made to Mayor George Moscone. George Moscone entertained these applications, considered them, which he had a right and duty to do. At one point it appears that George Moscone had a discussion or some discussions with Mr. Daniel White relative to Mr. White obtaining George Moscone's appointment to District Number 8, wherein he would, in other words, assume his job back, from which he had resigned on November the 10th. George Moscone, it appears, had told the accused that he would give him his job back or, in other words, appoint him back to the board if it appeared that there was substantial support in District Number 8 for that appointment.

Material was received by the Mayor in that regard, and in the meantime, Mr. Daniel James White, had resorted to the courts in an effort to withdraw his written resignation. It appears that those efforts were not met with much success. As it became close to November the 27th, which was a Monday, and on which day, at 11:30 o'clock a.m. the Mayor was scheduled to make a public announcement of his appointment to fill the supervisorship or supervisorial seat of District Number 8, it became a matter of somewhat common knowledge that the Mayor was not going to appoint Daniel White, but that he was, rather, going to appoint someone else.
Over that weekend, immediately preceding Monday, November 27th, and particularly it was either on Saturday or on Sunday, news had reached the press, particularly a radio reporter from station KCBS, whose name is Barbara Taylor, that the Mayor was, in fact, going to appoint somebody other than Daniel James White, and that he was going to make this announcement on Monday morning, November 27th, at 11:30 o'clock a.m. Barbara Taylor called the defendant at his home sometime between 10:00 and 11:00 o'clock p.m. on Sunday night, the 26th of November. She informed him that she had received certain information from a reliable source that Mr. Daniel James White was not going to be appointed, and she wanted to know if she could interview him on tape in that connection. Mr. White had nothing to say about this, and he hung up the telephone. The next morning Mr. White determined to pay a visit to George Moscone, the then Mayor of San Francisco, at his office.

Mr. White called his legislative assistant, Miss Apcar, asked her if she would pick him up, which she did. Mr. White, before leaving his home, armed himself with a .38 Smith and Wesson revolver, which is commonly called a Chiefs Special. It's a five-shot revolver with a two-inch barrel. The gun was loaded when he took it, put it in a holster, strapped it in his belt.

Now, this weapon, members of the jury, is a five-shot revolver. It has a cylinder in which there are five holes bored, or chambers, for five loaded cartridges. In addition to the gun being loaded, Mr. White took ten extra loaded cartridges, put them in his pocket before leaving his home with Miss Apcar, who was his aide, and who drove him to the City Hall. When he was driven to the City Hall, he got out of the vehicle, which Miss Apcar had driven him in, and he appeared, at the McAllister Street entrance to the City Hall.

Now, ladies and gentlemen, the City Hall has a basement, a main floor, a second floor, a third floor and fourth floor. He appeared at the basement level, and that door was locked at that time, for some security purposes. However, this was after 10:00 o'clock in the morning, before 11:00 o'clock in the morning, and it was Monday morning, of a usual, regular business day at City Hall. Instead of going around to the front door on Polk Street, or another main door on Van Ness Avenue, Mr. White remained outside the door at the basement level on the McAllister Street side for a few minutes, and then he entered the building through the window of an engineer's office.

Now, this is not a regular way to enter the building. After entering the building he went into a little laboratory room where his presence was observed by a member of the staff at City Hall. He identified himself, telling that person that he was Supervisor White, and then he just went on into the building.
He went up to the first floor and into the second floor. The Mayor's office is on the second floor, on the east side of City Hall. He presented himself near the main door. However, there was a young woman who worked for the Mayor's budget office, who was going up to get some mail. She was going to use her key to one of the private offices, or one of the private entrances, rather, to the Mayor's office.

Mr. White identified himself to this woman, asked if he could come in the way she was going in, and she said, "Well, yes;' she recognized him. He then presented himself at the desk of the woman whose name is Cyr Copertini. Cyr Copertini was the Mayor's appointment secretary for persons wanting to see the Mayor, and necessarily, in most instances, they had to see her.

Mr. White did not have an appointment at that time to see the Mayor; however, that was not necessarily an unusual circumstance because members of the Board of Supervisors occasionally would visit the Mayor unannounced. He appeared at Cyr Copertini's desk, which is in the Mayor's outer office, within the general complex of offices which were assigned to the Mayor. They had some small talk, and he said he wanted to see the Mayor, and the time was now just a couple of minutes to 11:00 o'clock in the morning.

The Mayor had some other appointments at 11:00 o'clock, which were otherwise scheduled. The mayor, close to 11:00 o'clock, notified Cyr Copertini that he would now see Mr. White. Cyr Copertini had announced Mr. White's presence to the Mayor. Mr. White went in to see the Mayor, went in to the Mayor's main office. There were some loud voices that were heard, and then they went into a back or private office, almost like a lounge.

They sat down. The Mayor poured Mr. White a drink, poured himself a drink, neither of which was ever consumed, through the intercession of other events which immediately followed. A discussion took place between the Mayor and between Mr. White. It appears that they had each been sitting down during the discussion. Mr. White drew out his .38 special revolver and he fired two shots into the Mayor's body. After the Mayor fell to the floor, disabled, then he discharged two more .38 special rounds into the Mayor's head, on the right side, about the area of the right ear, at very close range, which were not unlike coup de grace shots.

Mr. White then reloaded his pistol with some of the rounds that were in his pocket, and he left the Mayor's office, which was located down at the east end of the building, and entered the main hallway. There is a hallway that—there are numerous hallways in the City Hall, but there is a hallway generally between the Mayor's office and the chambers of the Board of Supervisors. The hallway runs from an easterly-westerly direction. There are
two stairways which will permit yon to leave the building, either to go downstairs or to go upstairs.

He went down this hallway in a rather fast gait, as will be described to you, from the Mayor's office, in the east side of the building, to the chambers of the Board of Supervisors, which is located at Room 237, on the west side of the building. Now, Mr. White and Mr. Harvey Milk were each Supervisors from different districts. They were politically dissimilar to each other, having substantially different views, and it was felt by the defendant that Mr. Harvey Milk, a Supervisor of District 5, had acted somehow taken some active part in trying to prevent the Mayor from appointing Mr. Daniel White back to his seat on the Board of Supervisors from which he had resigned approximately two-and-a half weeks or seventeen days previously. Mr. White traveled on foot at a rather rapid gait down the hallway which separated the Mayor's office from the chambers of the Board of Supervisors. He let himself in to Room 237, which is a large office containing a lot of smaller offices, where the various members of the Board of Supervisors have their private offices, and where their staff aides work in these offices with the Supervisors assisting them in legislative and governmental functions in the City and County of San Francisco ....

The gentlemen, that is, Mr. Harvey Milk, and the defendant, were acquainted with each other; both had been on the Board of Supervisors. The defendant put his head into Harvey Milk's office, where Mr. Milk was at that time sitting with his volunteer legislative aide, and he inquired of Harvey Milk, "Say, Harvey, can I see you a moment: and the reply from Harvey Milk was, "Well, sure."

The defendant then led the way across the hall to his that is, Mr. Daniel White's then vacated office in the chambers of the Board of Supervisors. The two of them went into the office. The door was shut and Harvey Milk was heard to cry out or exclaim, "Oh, no," or words similar to that, which then was followed by a series of shots. Harvey Milk was shot three times in the body with that same .38 Smith and Wesson Chief Special revolver, five shot. He took three shots to the body and when he fell to the floor, he was shot twice in the back of the head.

The door opened to the office that Mr. Daniel White had occupied prior to his resignation on November 10th, on the Board of Supervisors. Mr. White stepped out. At one point he cried out to his legislative aide, Miss Apcar, "Give me the keys." He left the building of the City Hall, where he called his wife a short while later, and he surrendered himself within approximately an hour or so at the Northern Station of the San Francisco Police Department, and the Northern Station is located all in the same general vicinity, located at .841 Ellis Street, between Polk and Van Ness Avenue.
Members of the jury, that briefly is what I expect the evidence in this case will show, which I expect, at the conclusion of this case, will support the charges of murder in the first degree and the special circumstances which have been alleged here.

Thank you very much.
GOOD MORNING. LADIES AND GENTLEMEN, THE PROSECUTOR, MR. NORMAN, HAS QUITE SKILLFULLY OUTLINED CERTAIN OF THE FACTS THAT WILL COME HERE DURING THIS TRIAL, THOSE FACTS THAT HE BELIEVES WILL BE SUPPORTIVE OF HIS THEORY OF FIRST-DEGREE MURDER. IT'S THE USUAL PURPOSE OF AN OPENING STATEMENT TO OUTLINE THOSE FACTS THAT WILL BE PRESENTED AT TRIAL, SO THAT AS THE TESTIMONY COMES IN, AND VARIOUS PIECES OF EVIDENCE COME IN, THERE WILL BE SOME THREAD FOR THE JURORS TO FOLLOW, AS SOMETIMES THE EVIDENCE IS SOMEWHAT DISJOINTED AND OUT OF ORDER.

AS I SAID, MR. NORMAN HAS OUTLINED ONLY SOME OF THE FACTS THAT I BELIEVE WILL BE PRESENTED HERE, AND I THINK FOR A PROPER UNDERSTANDING OF WHAT DID HAPPEN ON NOVEMBER 27TH, IT WILL BE NECESSARY FOR ALL OF THE FACTS, ALL THE TRUTH, TO BE PRESENTED HERE, AND RATHER THAN PUTTING OUT SOME OF THE FACTS THAT I BELIEVE WILL SUPPORT SOME THEORY OF THE DEFENSE, I INTEND TO PRESENT ALL THE FACTS, INCLUDING SOME OF THE BACKGROUND MATERIAL THAT WILL SHOW, NOT SO MUCH WHAT HAPPENED ON NOVEMBER 27TH, BUT RATHER, WHY THOSE TRAGEDIES OCCURRED ON NOVEMBER 27TH.

I BELIEVE THAT IT'S IMPORTANT FOR TWO REASONS: ONE, THAT THE PEOPLE OF THE CITY AND COUNTY OF SAN FRANCISCO DESERVE TO KNOW ALL THE FACTS; SECOND, PERHAPS MORE IMPORTANTLY, FOR A CLEARER UNDERSTANDING OF WHAT DID OCCUR ON NOVEMBER 27TH. IT'S NECESSARY THAT YOU, AS JURORS, IN ORDER TO JUDGE WHAT HAPPENED ON THAT DATE, KNOW ALL THE FACTS.

THE EVIDENCE WILL SHOW, AND IT'S NOT DISPUTED, THAT DAN WHITE DID, INDEED, SHOOT AND KILL GEORGE MOSCONEN, AND I THINK THE EVIDENCE IS EQUALLY CLEAR THAT DAN WHITE DID SHOOT AND KILL HARVEY MILK. THOSE TRAGEDIES OF NOVEMBER 27TH, 1978, WERE SUPPORTED BY THE EVIDENCE, AND THERE IS NO QUESTION THAT DID OCCUR.

IN FACT, UPON TURNING HIMSELF IN AT THE NORTHERN POLICE STATION, AS MR. NORMAN INDICATED, DANIEL WHITE GAVE A STATEMENT TO THAT EFFECT. THE TRIAL, THEN, YOU MIGHT ASK, WHY IS IT NECESSARY TO HAVE A TRIAL, AND THE ANSWER TO THAT SIMPLY IS, AS INDICATED PREVIOUSLY, NOT SO MUCH AS TO WHAT OCCURRED ON THE 27TH, BUT THE FACTS AS TO WHY THAT OCCURRED, AND I THINK THAT WHEN ALL THE FACTS ARE OUR CHARGE OF FIRST DEGREE MURDER SIMPLY WILL NOT BE SUPPORTED HERE, AND IT'S SIMPLY NOT WHAT HAPPENED.

THE ISSUE IN THIS TRIAL IS PROPERLY TO UNDERSTAND WHY THAT HAPPENED, AND IT WILL BE NECESSARY THAT WE GO BACK FROM NOVEMBER 27TH, AND IT'S VERY DIFFICULT TO CONDENSE A MAN'S LIFE, A MAN OF 33 YEARS OF AGE, WHICH DANIEL WHITE IS, IN A FEW SHORT WEEKS THAT WE WILL SPEND HERE TOGETHER, BUT I THINK IT'S NECESSARY THAT WE DO THAT. MUCH OF DAN WHITE PRIOR TO NOVEMBER 27TH IS KNOWN TO YOU THROUGH THE PRESS, THROUGH THE NEWS MEDIA, AND IT WILL CERTAINLY BECOME KNOWN HERE.

HE WAS A NATIVE OF SAN FRANCISCO. HE WENT TO SCHOOL HERE, WENT THROUGH HIGH SCHOOL HERE. HE WAS A NOTED ATHLETE IN HIGH SCHOOL. HE WAS AN ARMY VETERAN WHO SERVED IN VIETNAM, AND WAS HONORABLY DISCHARGED FROM THE ARMY. HE BECAME A POLICEMAN THEREAFTER, AND
after a brief hiatus developed, again returned to the police force in San Francisco, and later transferred to the fire department. He was married in December of 1976, and he fathered the child in July 1978. Dan White was a good policeman and Dan White was a good fireman.

In filet, he was decorated for having saved a woman and her child in a very dangerous fire, but the complete picture of Dan White perhaps was not known until sometime after these tragedies on November 27th occurred.

Good people, fine people, with fine backgrounds, simply don't kill people in cold blood, it just doesn't happen, and obviously some part of them has not been presented thus far. The part that perhaps went unrecognized, and certainly went unrecognized until it was too late, was the fact that Daniel White was suffering from a mental illness. He had been suffering from a mental illness since the time of early manhood, and it's a disease like any other disease, perhaps not easily diagnosable as a broken leg or arm, but far more devastating to the person, and the disease that Daniel White was suffering from is called "depression," sometimes referred to as "manic depression," and sometimes simply as "depression." It's not a feeling that perhaps you and I have experienced wherein one is depressed over certain turns of events or disheartened by something that has happened, but this is a chemical change that occurs within the man's body, and it's diagnosable and substantiated as a disease.

The doctors, of course, will corroborate in great detail, and doctors will be called here to testify in regards to the symptoms of depression, and basically they entail radical changes to the diet, compulsive difficulty in sleeping, low energy, withdrawal from duties, withdrawal from job, and withdrawal from others, and sometimes bizarre behavior, and these depressive episodes occurred with some frequency in Daniel White's life, but went unrecognized, and as I have indicated, he was never treated for this disease, and there are several reasons why it went unrecognized. Most of those reasons have to do with his character and personality.

Dan White, as I think will be developed here, was the type of man that was not a complainer. He didn't complain about physical injuries, didn't complain about a disease he didn't know he had. He had an attitude that he developed through his life, perhaps because of his father, a man that he had admired the most in his life, that if you weren't succeeding, weren't coping as to some respect or aspect of your life, then you simply had to try harder, had to dig in and try a little harder to succeed, and then you would succeed.

I don't think Daniel White was particularly insightful as to what was his underlying problem. The evidence will show that the family recognized that there was something very wrong with Dan through his adult life. They noticed his episodes, when he became very depressed, withdrawn, infused to shave, stayed in bed for long hours, and they didn't see this as symptoms of the disease, mental disease, which are not easily ascertainable, but they saw it more as: That is Dan, that is his personality, he's moody, but this was something far greater than mood, by a chemical change that was occurring in the man.
There are going to be a number of people testifying in regard to Dan White's character in this trial, and like or dislike it, Dan White, I think is going to be supported by the evidence; that is, that Dan White was an idealistic young man, a working class young man. He was deeply endowed with and believed very strongly in the traditional American values, family and home. I think that he could be classified as almost rigidly moral, but above all that, he was an honest man, and he was fair, perhaps too fair for politics in San Francisco.

He trusted people. He believed people when they said something. He believed that a man's word, essentially, was his bond, and with respect to being fair, I'm going to jump ahead a bit and indicate that the evidence will show that Dan White came from a vastly different life style than Harvey Milk.

Harvey Milk was a homosexual leader and politician, and Dan White, though they were from vastly different life styles, sought to befriend Harvey Milk after being a member of the Board of Supervisors, and tried to be tolerant and protective of the issues that his constituency felt were important, and those issues were the traditional values of family and home.

He spent his entire life dedicated to serving people, serving the people of San Francisco. As I mentioned, he volunteered for the army, was a policeman, a fireman, and he was a good fireman and a good policeman, and basically his concern for people helped him to run for the Board of Supervisors. You have to understand at this point, and the evidence will show, that normally in a city-wide election, it is very difficult for a man of Dan White's background to be elected to any position, and when we have the change and went to the district supervisorial elections, that allowed a man of Dan White's background, a working class man, with no political prowess, with no connections, to be elected to the Board of Supervisors, and his tactic was simply to go into his district, knock on doors, introduce himself, explain what he believed in, and ask for votes, and that technique in District 8 was quite successful. District 8 is a working class district, made up of persons in blue collar working areas.

The irony is that the young man was so much promised in seek-difficulty coping with procedural aspects of legislation, some difficulty with understanding that in politics one does not always vote on one's conscience, rather one votes, on occasion, because it's expediently and politically sound, and it's a process of compromise, basically.

The situation on the Board of Supervisors continued to worsen, and as he went into the job he would have periodic depressed episodes of short duration.

Then, in the summer of 1978, he went into one of these depressive episodes which was triggered by the chemical change as to his underlying mental illness, and the symptoms of this disease were again sleeplessness, change of health, change of diet. Dan White had always been health conscious, and tried to keep himself physically well and in shape, but in turn the symptoms of sleeplessness and various changes that were going on and the
stressful factors aggravated the underlying mental illness, and so it was a never ending and cyclical spiral of stress.

I believe all that stress and the underlying mental illness culminated in his resignation that he turned in on November the 10th, 1978. In that resignation, he cited financial difficulties would require that he give up his job, but that was a very thinly veiled excuse. That resignation actually said that Dan White, as Supervisor, simply was not coping with the job as a Supervisor because of all the stress applied to him both through the job, through politics in San Francisco, through his financial condition, and all his personal problems, together with the underlying mental illness, and he simply was not coping.

The impulsive nature of this resignation simply came in without consulting any aides or supporters or constituents, and he simply came in, drew up a letter of resignation, and turned it in to the Mayor on November the 10th. I think he was desperate at that time, and the evidence will show he was desperately trying to, but simply was not coping, and something was wrong with him.

Some days after November the 10th, pressure was brought to bear on Dan White from aides and others to go back to the job that he had worked so hard for, and there was a one-way course that those persons could appeal to Dan White, and that was to appeal to his sense of honor: Basically, Dan, you are letting the fire department down, letting the police department down. There was a settlement pending with the police officers' association which was important to the police department, and it was brought home to him.

He was basically the voice for the police department and the voice for the fire department, and he was the voice for all of those working people out in District 8. He was the voice for all his constituents, and the voice for the family, and for all the people and the workers in District 8, and the fact was that he gave up his job, and basically let down all those people that had helped him get elected. It worked - it worked, that type of pressure, because Dan White cannot resist that type of prodding, and he resorted to a lawsuit, and asked the Mayor before that time for his job back.

You may or may not recall, but upon asking for the job back, and this was about November the 18th, a week after the resignation, the Mayor said that though they were political opposites, certainly Dan White was a good man, and District 8 was well off with Dan White. He actually, physically, gave the letter of resignation back, saying in no uncertain terms, that as far as he was concerned, Mr. White, you are Supervisor for District 8. We have political differences, but you are basically a good man, and you worked for the job, and I'm not going to take you to fault.

The letter was returned to Dan White. In the alternative the Mayor said at that time that if, in fact, the resignation had that force and effect, and that there was any legal problem about it, he would simply reappoint Dan White. Thereafter, in several public statements, there were broadcasts to the news media, the people of the City and County of San Francisco, the response to giving back the appointed - giving back the job to Dan White
changed a bit, and it became: Dan White, you will receive the job back but there has been some clamor against you in your district.

Accordingly, there will have to be some support shown for you, but we will indeed give the job back to you, and from that the public statement changed to: Dan White, there is a lot of sentiment against you. I believe there is no support in District 8, and unless you can show some broad base support, the job will not be given to you, and finally, within a few days of the 18th, the public statement coming from the Mayor's office were simply: that it's undecided. We have no commitment to you with regard to giving the job back, but you will be notified prior to the time that any decision is made.

During that whole period of time Dan White was at home. He had had the one meeting with the Mayor on November 18th, wherein he had asked for the job. It was evident from various public statements coming from the Mayor's office that there were political pressures brought to bear, and somewhere in part of that pressure was Harvey Milk.

He was against the reappointment of Dan White. Basically, it was a political decision. It was evident there was a liberal wing on the Board of Supervisors, and there was a smaller conservative wing, and Dan White was a conservative politician for San Francisco, and that it would not be political for the reappointment of Dan White, which would cut against it, and he was not the man to go along with the Mayor's office policies, and did not come from the Mayor's office on the Board of Supervisors.

By the 26th of November, Dan White, who was still in this depressive episode begun in late summer of that same year, was not sleeping at all. There were some critical factors that came to play. His wife Mary Anne had left on that weekend, the weekend immediately preceding the 17th, and didn't return until the late evening of the 26th. On the 26th, and for several nights before that time, he had only disturbed sleep, and on the 26th he slept not at all at night. At about 10:30 on the evening of the 26th he did receive a telephone call from Barbara Taylor of KCBS, with the news that she had reliable sources of information, and those reliable sources were basically from Mel Wax, who told Barbara Taylor that Dan White would not be reappointed, and they didn't tell Dan White he wouldn't be reappointed, but they told Barbara Taylor, and she called Dan White on the evening of the 26th, at about 10:30, and said, "Mr. White "not these words, but basically: You will not be reappointed. Can I have your reaction, and Dan White's reaction simply was, I don't know that to be true. I haven't been told that. The Mayor's office promised that I would be told. I don't know that.

He did hang up the phone.

Later that evening, he spent his time sitting on the couch, and basically not sleeping at all.

The following morning, early, he received a telephone call from Denise Apcar, his aide, former aide, while he was on the Board of Supervisors. Denise Apcar told Dan White that there were supporters at City Hall in an effort to show support to the Mayor's office, and in one day they had gathered 1100 signatures in District 8, and those signatures were on
petitions that supported Dan White for reappointment. Denise told Dan that the Mayor had seen these supporters, was unwilling to accept the petitions, the 1100 signatures in support of Dan White.

Dan said that he didn't want to come down to City Hall on that morning, and as fate would simply take its course, after two more telephone calls to Dan White, he returned the call to Denise and said, fine, he would come down to City Hall if she could come down and pick him up, and the reason for that is that Dan White had only one car, and his wife had taken it to work. Denise agreed to do that, and on the ride back to City Hall, Dan White indicated to Denise he was going to go to City Hall simply to confront the Mayor as to whether or not he was going to be reappointed, because he hadn't actually heard officially at that late date, and he had no intention at that time to harm anyone, much less kill the Mayor or kill Harvey Milk.

As he went to the City Hall he took a .38 caliber revolver with him, and that was not particularly unusual for Dan White. Dan White was an ex-policeman, and as a policeman one is required to carry, off-duty, a gun, and as an ex-policeman-well, I think it's common practice, and evidence will be shown that guns are carried, and indeed with the City Hall officials the evidence will demonstrate that many officials in City Hall carry guns, including Mayor Dianne Feinstein, Peter Tamaras, John Barbagelata, and Al Nelder. And additionally, the background and the evidence will show that on November 27th there was a vastly different atmosphere, in addition to the usual threats to public officials from various groups, the White Panthers, New World Liberation Front, and other terrorist organizations, and there was the atmosphere created by the Jonestown People's Temple tragedy which had occurred a few days before November 27th, and at that time there were rumors that there were hit lists that had been placed on public officials, and that there were assassination squads that were going to murder people in San Francisco, and in hindsight, of course we can all realize that fact did not happen, but at the time there were 900 bodies laying in Guiana to indicate that, indeed, people were bent on murder, of course, as to the People's Temple, and I think it will be shown that that was tied more to the liberal elements of San Francisco politics and not so much as to the conservative elements.

As a consequence thereof, it would be important to understand that there were threats directed toward persons like Dan White and other members of the Board. Denise Apcar, after she had picked him up, drove him to City Hall, and he asked her to drive him to the main entrance on Polk Street. Upon approaching the doors on Polk Street he observed a metal detection machine, and it's a violation of the law to carry a firearm without a permit, though that firearm may very well be registered to someone. Knowing that he did not know the man that was on the metal detection machine, he simply went around to the McAllister Street well, where he expected to meet his aide, Denise Apcar, who had gone to park the car in the well, where Supervisors are allowed to park.
Unknown to Dan, however, Denise had gone, from dropping him off at the front door, to get gasoline to put in her car, as Dan indicated he would like to borrow the car after talking to the Mayor, to go tell his wife how the interview had gone. Dan went to the McAllister Street well and did not find Denise Apcar there. He waited for several moments, but knowing that it was imminent the talk to the Mayor, he stepped through a window at the Department of Public Works, which doesn't require any physical prowess, and you can step through those windows, and the evidence will show also that it is not uncommon for people to enter and exit there. They are very large windows, and are large, wide sills, and it's quite easy to step into the building through those windows. Dan White did that, and the man on the inside of the Public Works Department, William Melia, asked him who he was, and Dan properly identified himself, saying he was Supervisor Dan White, going for an appointment with the Mayor.

I think it's significant at this point also because the fact that he crawled through the window appears to be important and it's significant to explain that all the supervisors have keys to the door in the McAllister Street well, and indeed, on the morning of the 27th, Denise had the key to the McAllister Street well door. Denise Apcar had driven Dan White down to City Hall. As he stepped through the window, identified himself, traveled up to the second floor, where he saw Mildred Tango, a woman going to collect mail, and in this woman's office, there are several doors into the Mayor's quarters, and he walked in behind Mrs. Tango, identified himself again as Dan White, and asked if he couldn't come in that way. She said he could, as that was appropriate for Supervisors, and Supervisors oftentimes went through the door other than the door through 200.

He then approached the desk of Cyr Copertini, the appointments secretary, and properly identified himself, and asked to see the Mayor. She went in to talk to the Mayor, and the Mayor indicated he didn't want to talk to Dan White, but if he could have a minute or two to think about it, he would talk to him.

After a few minutes, the Mayor summoned Dan White into the office. Mr. Norman pointed out that raised voices were heard, and it appeared to be a rather emotional confrontation. Moments thereafter, shots rang out in the Mayor's office, and Dan White, as it was quite apparent at that point, had cracked as to his underlying mental illness and stress factors due to the fact that he hadn't been notified, and the sudden emotional surge that he had in the Mayor's office was simply too much for him, and he cracked. He shot the Mayor, reloaded his gun, the five-shot revolver, and basically on instinct, because of his police training, and was about to leave the building at that point, and he looked down the hall, and as he came out into the outer corridor he saw somebody that he believed to be an aide to Harvey Milk.

He went down to the supervisors' area to talk to Harvey Milk. He entered the supervisors' area and asked Mr. Milk to step across the hall, and at that point, in the same state of rage, emotional upheaval, with the stress and mental illness having cracked this man, ninety seconds from the time he shot the Mayor, shot and killed Harvey Milk.
From there I think the evidence will demonstrate he ran down to the aide's office, screamed at his aide Denise Apcar to give him the key to her car. Again, this key was available to Dan White, if this had been a planned, premeditated, deliberate killing. Denise gave him that key, and he left, went to a church, called his wife, went in to St. Mary's Cathedral, prayed, and his wife got there, and he told her, the best he could, what he remembered as to what he had done, and then they walked together to the Northern Police Station, where he turned himself in and made a statement as to what best he could recall had occurred.

Given those facts, I believe that the theory of the people as to first degree simply is not supported.

The judge, at the conclusion of the evidence, will instruct you on the law that applies to those facts, basically, after you have had that instruction, and you apply the law to those facts, I believe you will agree that mental illness and stress and the emotion of that moment simply broke this man, and this was not a deliberate, premeditated killing.

Thank you.
Testimony of Dr. Boyd G. Stevens

DIRECT EXAMINATION by Mr. Norman:

Q Doctor, briefly, would you describe to the members of this jury what the function and the duties of the Coroner are?

A The Coroner, Counsel, is obligated by law to investigate into uncertain types of deaths. These deaths are those that are sudden, unexpected, and he's required to determine the cause, circumstances and manner. This is a combination of investigation at the scene, through studies such as the autopsy, analysis of various tissues through microscopic or other methods. Laboratory analysis including toxicology and other aspects, Counsel, to aid in the mitigation of those three factors:

Q Do you recall what the nature of the call was initially brought you to City Hall?

A The initial call, Counsel, was a shooting, and that this the area of the Mayor's Office.

Q Doctor, would you describe just exactly, with as particularity as you can, what you observed about the body, dressed, where it was laying, including the injuries which were observable by you at that time?

A Yes, Counsel. The body of the Mayor was located on the floor towards the east end of the room. It was in front of a couch, which was on the south side of the room, and somewhat in front of a chair on the northeast side of the room. It was lying on the floor on its left side. There was blood about the head as well as a small amount of blood around two injuries on the right side of the shirt. The individual was dressed in a white shirt with long sleeves, a tie, pants, socks and shoes.

Q And did you approach the body? Did you in any way make any cursory or preliminary examination? . . .

A Well, Counsel, even though I had been told that the Mayor was dead before my arrival, I immediately checked him upon entering the room for signs of life. Finding none, I quickly could see in a very rapid observation, areas of injuries about his body in evidence of those injuries. I then moved back from the body looking for any other evidence and awaiting contact with the photographer, who temporarily left that area, to insure what scene photographs had been taken and what evidence had been collected.
Q Handing you now People's No.6. Do you recognize that photograph, Doctor?

A Yes, Counsel. People's 6 for identification is a photograph that I. directed taken. It's taken of the Mayor after I removed gauze from around his head wounds to show injuries about his right ear.

Q While at the City Hall, and after having viewed the body of George Moscone, and made the observations you have told us are described in photos 2 through and including 7, did you go somewhere else, or were you directed to go somewhere else?

A Yes, Counsel. I was directed to go to another portion of City Hall.

Q. And where was that, please, Dr. Stephens?

A. This was the Supervisor's (White's) office located adjacent to the Supervisors Chamber on the west side of the complex.

Q Did you see anything in that office that's marked DW?

A Yes, Counsel. The body of a man was in that office.

Q Who was that person?

A Harvey Milk.

Q Taking, firstly, exhibit No. 18. Would you describe that to us and what it shows and it's significance?

A This photograph 18, Counsel, for identification, is one that I directed be taken. It shows specifically the head portion and upper torso of the Supervisor. It shows blood splattered about the wall, and shows a portion of a bullet that was observed by me when I examined the body.

Q Now, looking at No. 19, Doctor?

A No. 19 is a photograph that I directed be taken. It shows specifically a bullet lying against the floor and wall just above where the Supervisor's head had been lying. It's a picture that was directed to be taken after the body was moved.
Q Did you form any opinion as to what kind of a bullet that was that you saw which is shown in People's No. 19?

A It's a semi-jacketed bullet, Counsel. And my belief is that it's consistent with a .38 caliber.

Q How far was that bullet from the body of Supervisor Harvey Milk?

A It's very close to the head, Counsel. The criminalist would have diagrammed and done the measurements. It's approximately a foot, foot and a half away from the head.

Q Showing you Exhibit No. 20 now. Will you describe that to us and tell us what its significance is?

A People's 20, Counsel is a different view that I directed taken. It shows three things: Position of the Supervisor's head, portions of high velocity spatters on the wall, and the position of the bullet against the wall.

Q When you arrived at the scene, Doctor, was Supervisor Harvey Milk dead?

A He was, Counsel.

Q Did you check the body for any life signs?

A I did.

Q Was there a large quantity of blood about the head of Supervisor Harvey Milk as you testified there was about George Moscone's head?

A There was about the same amount of blood, Counsel. What we would describe as a moderate amount.

Q Now, Doctor, did you autopsy each of the bodies of George R. Moscone and Supervisor Harvey Milk respectively?

A Yes, Counsel, I did.

Q Whose body did you autopsy first?

A As I recall, Supervisor Milk was autopsied first.
Q Yes. Would you tell us what that shows and its significance to this case?

A. People's 30 for identification, Counsel, is a photograph of the left lower chest of the Supervisor. It shows the through and through gunshot wound across the front of the lower chest. It shows the wound nearest the bottom and right of the photograph with the abrasion collar. It shows the exit wound towards the left side. It also shows a gunshot wound of entry into the inside of the left elbow, and within that left elbow the bullet was recovered. These photographs, Counsel, People's 29 for identification, and People's 30, show the course of one bullet through the arm, across the chest and into the elbow of the Supervisor.

Q Would you hold that up for us please, Doctor?

A Yes, Counsel. I am holding People's 30 for identification showing the entrance wound near the lower left-hand corner of the photograph. The bullet coursing under the tissue coming out the curved surface of the chest and re-entering the left elbow.

Q Doctor, from the photograph that you have here, well, more particularly, from your autopsy examination, how would the late Supervisor Harvey Milk have been holding his arm when that bullet wound was received?

A In order for this wound to be received, Counsel, the left arm has to be in close to the body with the palm up. The right arm has to be in relatively close to the body with the palm turned away from the body and the thumb in towards the body.

Q Now, taking our next exhibit, which would be 32. What does that show, Doctor?

A People's 32 for identification, Counsel, does include portions of the wound that I have just described, but it most significantly shows two additional areas of wounding. The first of these is in the lower left back, which is a bullet wound near the midline. It also shows a shaven area of hair in the back of the right head, and shows two gunshot wounds entering into the back of the right head.

Q Now, these two wounds to the back of the head, were they wounds of entry in your opinion?

A The wounds in the back of the head are both wounds of entry, Counsel.
Q Do you have another photograph there, particularly the next one in order, which is a closer view of the wounds to the back of the head?

A Yes, Counsel. People's 34 for identification is a closer view showing the back of the head of this Supervisor and the two wounds in that region.

Q How many bullets did you remove from the body of Harvey Milk?

A I recovered four bullets from the body of Mr. Milk.

Q Doctor, were you able to form an opinion with any reasonable medical certainty, based upon your education, training, your skill, your experience, and the instant autopsy performed upon the last remains of Supervisor Harvey Milk, as to what the medical cause of death of Harvey Milk was? . . .

A Yes, the cause of death is the multiple gunshot wounds, and most specifically, gunshot wounds involving the head, particularly the bullet that passes through the base of the brain, into the area called the brain stem.
This wound, specifically, is one that would cause instant or nearly instant death.
The second wound in the head passes through the back, lower portions of the brain area, and very likely would have produced death.
The other injuries to the Supervisor are serious injuries, and one penetrates the abdomen, and may or may not cause death, and most typically, would not in this area.
So, counsel, the cause of death is the multiple effects of the many gunshot wounds.

Q Dr. Stephens, based upon your experience, and having visited scenes, and your experience in forensic pathology, do you have any opinion, or were you able to form any opinion as to when the bullet wounds to Harvey Milk's body were delivered in point of time with respect to each other, that is, if there were any before the others, that you could tell, with any specificity? , . .

A Counsel, there are three gunshot wounds in the body of the Supervisor, two into the head.
The ones into the body, in the front, pass along the, essentially parallel lines, that is, similar directions.
One of these enters from the very back of the Supervisor, along the spinal area, does not injure the spinal cord itself, nor does it enter into the lung.
These three wounds, I believe, were received by the Supervisor initially. I cannot tell where the exact sequence of the wounding was, except to suggest that the two wounds travel in somewhat parallel pathways, or were probably received close together in time.
The wounds to the head, in my opinion, Counsel, are received by the Supervisor when he is on the floor. The support for this opinion is the fact that there is high velocity blood splatters about the wall, front and side, and the fact that one bullet is trapped underneath the form junction box in a line with the head, where it would have exited the body from the left side, and the angles of those bullets, Counsel, both suggest to me that they were received when he was on the floor and already incapacitated by previous wounds.

I believe, in addition, the wounding sequence is very rapid, a matter of seconds.

Q Now, Doctor, with respect to Harvey Milk's wounds, how many times was he shot all together?

A Supervisor Milk, Counsel, was shot five times.

Q Doctor, you performed an autopsy examination upon the last remains of Mayor George R. Moscone?

A Yes, Counsel.

Q Well, Doctor, there were two wounds to the side of the head, aren't there, in that vicinity? . . .

A On this particular photo, People's 11, Counsel, there is a groove or furrow, if you would, across the ear lobe, on the right side. This is where one of the bullets passes through the lobe of the ear, enters into the ear canal opening, going into the area of the skull.

Q Where is the second bullet wound?

A The second bullet hole, Counsel, is included just behind this ear. . .

Q Now, Doctor, in this particular case, does this stippling or tattooing pattern, as seen here and shown in the photos depicting the right side of the late George Moscone's face, indicate to you anything with respect to where the muzzle of the weapon was when it was discharged into the side of Mr. Moscone's head?

A Yes, it does, Counsel.

Q Doctor, in this particular case, had you acquainted yourself or learned what type, specifically, of a weapon it was which made the bullet wounds?
A I was told and shown a .38 caliber Chief special with a two inch barrel; this is a five shot revolver.

Q Would you tell his Honor and the members of the jury in what connection and what manner you had occasion to test-fire such a weapon and what the object of the test-firing was?

A Certainly, Counsel. In answering the question, that is frequently posed for a medical examiner as to whether a person shot themself or was shot by another individual, and frequently it's important to test-fire the weapon to make a determination as to whether or not the markings seen on body and whether the smoke or tattooing by virtue of the size of pattern produced could have been produced by that individual, and to do this, we test-fire the weapon with the same ammunition against paper or cloth targets in order to duplicate that spread of powder. By duplicating the spread of powder, we can estimate the distance the muzzle was from the gun, and therefore using the patient's arm length to make an opinion as to whether or not they could have shot themselves or could not have shot themselves, and this is one of many different ways that we approach tattooing in its use of forensic pathology as a common basis for test-firing a weapon, and this is something the office would do routinely.

Q Dr. Stephens, based upon your experience and background in forensic pathology, and having observed wounds wherein tattooing was present, and considering this particular type of weapon, could you form any opinion with any reasonable certainty as to the estimate of distance that the muzzle of that gun was from the right side of George Moscone's head when it was discharged? . . .

A. In my opinion and experience, Counsel, is that the larger tattoo pattern on the side of the Mayor's head is compatible with a firing distance of about one foot, and could be a little more, a little less than that.

The smaller tattoo pattern within the larger tattoo pattern is consistent with firing distance of a little less than that, and the actual determination would rely upon a test-firing of the weapon and seeing the same with the same ammunition.

Q Doctor, based upon your visit to the scene in the Mayor's office, where you found Mayor Moscone's body, and you looked at it, and other observations made by you in connection with the autopsy, were you able to form any opinion as to the sequence of the wounds occasioned to George Moscone's body? . . .
A Yes, Counsel, in examining the patient at the scene, as well as at autopsy, my opinion is that the gunshot wounds along the right side of the body, that is, arm and chest, were received prior to the gunshot wound of the head. This is based upon the fact that only one of the gunshot wounds of his head shows any form of tattooing and that spread of tattooing does not show a well defined margin.

In other words, these wounds are fired far enough away that one does not burn powder to one, and carries only a small amount widely disbursed; however, the angles of those two bullets through the body are somewhat varied. One goes very slightly downward, from the back to the front, very slightly. The other goes from the back to the front, down. The wound of the head, however, surrounded by the significant amount of tattooing, with a well-defined radius follow relative similar paths of flight.

The condition of the body, the position of it, the closeness of those wounds, leads me to the opinion that these two wounds were received-the last were received when the Mayor was already on the floor incapacitated.

Q With respect to the two wounds to the head, that you just described, did you form any opinion as to whether, from all the circumstances observed by you, that they were rather close to each other in point of time?

A Yes, Counsel, I believe they are fired or received very close to each other in point of time.

Q How many bullet wounds all together did the body of George Moscone receive?

A Four.

Q And Doctor, based upon your autopsy, and again your education, your skill, training, experience, were you able to form any opinion with reasonable medical certainty as to what the medical cause of death of the late George Moscone was? . . .

A The cause of death is multiple gunshot wounds. Two of these wounds, specifically, could cause the Mayor's death rapidly. One of these in the lower right chest passes through the liver and produces extensive injury to that organ, and also produces other damage. With our trauma system, he might have survived that wound. The two wounds in the head passed through the brain stem; both of these wounds, in my opinion, would be compatible with instant death.
So, it's a matter as to which of the wounds produced actual death, we considered it to be a multiple effect.

MR. NORMAN: Thank you, Doctor.

You may cross-examine.

MR. SCHMIDT: I have no questions of Dr. Stephens.
Testimony of Inspector Frank J. Falzon
(detective who interviewed White after killings)

DIRECT EXAMINATION by Mr. Norman:

Q Had you ever been previously acquainted with the accused in this case?

A Yes, sir, I was.

Q Was there anything initially said between you and the accused? . . .

A I recall opening the door and seeing Dan White, and stating, "Why, Why?"

He just shook his head.

His eyes were glassy, and he never gave any response. . . .

Q Was anybody else in the room with him?

A No, sir, he was alone.

Q What time was this, Inspector Falzon?

A It was approximately a quarter to 12:00, 10 to 12:00. It was nearing the noon hour.

Q Inspector Falzon, did you then interview Mr. Daniel White in connection with the occurrences, to wit: the shootings at City Hall?

A I did, sir, yes.

Q And in what manner was that interview conducted, without stating the content of it?

A A tape-recorded statement was taken in the presence of Inspector Erdelatz, also of the Homicide Detail, and myself.

Q Did you and Inspector Erdelatz each participate in the interview?

A Yes, sir, we did.

Q Prior to, and immediately prior to taking any statement or posing certain questions to the accused, did you advise the accused of any constitutional rights that he had?

A I did, sir....
Q Inspector Falzon, before taking any statement from him, and including the statement itself, did you promise him anything?

A No, sir, I did not.

Q Did you offer any leniency?

A No, sir.

Q Did you in any way threaten him?

A No, sir.

Q Do you recall if anything he said was said freely and voluntarily?

A It was.

Q Inspector Falzon, I am now handing you what has been marked People's 54, which you handed to me... Does the cassette, which is People's Number 54, contain everything that was said by you and was said by Inspector Erdelatz and was said by Mr. Daniel White during that interview?

A Yes, sir, it does.

Q Has it in any way been changed, erased, altered or added to?

A No, sir... .

[An audio recording was played:]

"Today's date is Monday, November 27th, 1978. The time is presently 12:05. We're inside the Homicide Detail, room 454, at the, Hall of Justice. Present is Inspector Edward Erdelatz, Inspector Frank Falzon and for the record, sir, your full name?

"A Daniel James White.

"Q Now, Dan, before I go any further I have to advise you of the Miranda rights. Number 1 you have the right to remain silent. Number 2 Anything you say can and will be used against you in a court of law. Three- You have the right to talk to a lawyer and have him present with you while you are being questioned. 4. If you can-not afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one. Do you understand each of these rights I have explained to you?

“A I do.
"Q And having these rights in mind, do you wish to ah. . .tell us about the incident involving Mayor George Moscone and Supervisor Harvey Milk at this time?

"A I do.

"Q Would you, normally in a situation like this ah. . .we ask questions, I'm aware of your past history as a police officer and also as a San Francisco fireman. I would prefer, I'll let you do it in a nar-rative form as to what happened this morning if you can lead up to the events of the shooting and then backtrack as to why these events took place.

"A Well, it's just that I've been under an awful lot of pressure lately, financial pressure, because of my job situation, family pressure because of ah. . .not being able to have the time with my family. It's just that I wanted to serve the people of San Francisco well an I did that. Then when the pressures got too great, I decided to leave. After I left, my family and friends offered their support and said whatever it would take to allow me to go back in to office-well they would be willing to make that effort. So since I felt the responsibility for the people that elected me I went to Mayor Moscone and told him that my situation had changed because of the support of family and friends and I'd like to be, retain my seat, to be appointed to my seat. Initially he told me that he felt that I was an elected repre-sen-tative of District 8, that I was doing an outstanding job, people of District 8 were lucky to have me, and that if it came to a legal ruling that he would appoint me, reappoint me, because of the type of per-son I was. So with that in mind I tried to set my personal affairs in order, preparing to take my seat. And then it came out that Supervisor Milk and some others were working against me to get my seat back on the board. I learned of this I was in the City Attorney's of-fice, when Supervisor Milk called, stating that he, he was of that mind. He didn't speak to me, he spoke to the City Attorney but I was in the office and I heard the conversation and that he was going to try to prevent me from taking my seat again. I went back to the Mayor and he told me that he had had some comments made to him that he felt that some of the people in District 8 didn't want me to, to serve, and I told him that these were people that had op-posed me in my election, had traumatized my family by taking me, taking, pressing charges against me at the District Attorney's office twice on false charges. They put a lot of pressure on me and my family.

"Q Can you relate these pressures you've been under, Dan, at this time? Can you explain it to the Inspector Erdelatz and myself?

"A Well, it's just that some of these people have charged me with taking money from big corporations and not recording it but I never did that. I never took money from anybody
but the papers print it. Like, my constituents believe it. They, they asked me about it. These people that are irresponsible and bring these charges. Two months later the District Attorney said they're unfounded but no one hears about it, that the charges are false. But my family suffers and I suffer for it, phone cans we get.

"Q These meetings that you were having with the Mayor, were they an occurring last week or, or were they going into the weekend, this past weekend?

"A No, I, I hadn't spoke to the Mayor since last Saturday. This would be Saturday a week ago and he told me that I would have to show some support from the people of District 8 if I was going to be reappointed. I could see the game that was being played, they were going to use me as a scapegoat, whether I was a good supervisor or not, was not the point. This was a political opportunity and they were going to degrade me and my family and the job that I had tried to do an, an more or less hang me out to dry. And I saw more and more evidence of this during the week when papers reported that ah...someone else was going to be reappointed. I couldn't get through to the Mayor. The Mayor never called me. He told me he was going to call me before he made any decision, he never did that. An it was only on my, my own initiative when I went down today to speak with him. I was troubled, the pressure, my family again, my, my son's out to a babysitter. My wife's got to work, long hours, 50 and 60 hours, never see my family.

"Q Dan can you tell Inspector Erdelatz and myself, what was your plan this morning? What did you have in mind?

"A I didn't have any, any devised plan or anything, it's, I was leaving the house to talk, to see the Mayor and I went downstairs, to, to make a phone can and I had my gun down there.

"Q Is this your police service revolver, Dan?

"A This is the gun I had when I was a policeman. It's in my room an ah...I don't know, I just put it on. I, I don't know why I put it on, it's just...

"Q Where is this gun now, Dan?

"A I turned it in to Officer ah...Paul Chignell who I turned myself in to at Northern Station. I, I. . . . . . .

"Q You turned yourself in, I wasn't aware of that.
"A I turned myself in at Northern Station to Officer Paul Chignell who, who I could trust and I, I know would do things properly. An then, an then I, I went to the, to the Mayor's office.

"Q You went directly from your residence to the Mayor's office this morning?

"A Yes, my, my aide picked me up but she didn't have any idea ah. . .you know that I had a gun on me or, you know, I just was going to the Mayor to, to see if he was going to reappoint me and if not, the reasons why. And I went in to see him an, an he told me he wasn't going to reappoint me and he, and he wasn't going to, intending to tell me about it. He had some, he told me he had a press conference scheduled and he was going to announce it at the press conference. Didn't even have the courtesy to call me or tell me that I wasn't go-ing to be reappointed. Then ah. . .I got kind of fuzzy and then just my head didn't feel right and I, then he said, Let's go into the, the back room an, an have a drink and talk about it. An ah. . . .

"Q Was this before any threats on your part, Dan?

"A I, I never made any threats.

"Q There were no threats at all?

"A I, I. . . .oh no.

"Q When were you, how, what was the conversation, can you explain to inspector Erdelatz and myself the conversation that ex-isted between the two of you at this time?

"A It was pretty much just, you know, I asked, was I going to be reappointed. He said, no I am not, no you're not. And I said, why. He said, he said well I've had people in your district say they don't want you and I, I reiterated that I told him before that these were people that had brought false charges against me and had been dog-ging me since I've been in office and that he had been in politics and he understood that there are going to be people that dislike you, you, not everybody as a 100% supporter but I told him that oh, you know, an overwhelming majority of the people in my district wanted me as their supervisor and I told him how a person told me last night that they had on their own gone out with neighbors and gathered over a thousand signatures in one day, my constituents, to keep me in of-fice. He knew that and he told me, it's a political decision and that's the end of it, and that's it.

"Q Is this when you were having a drink in the back room?
"A No, no, it's before I went to the back room and then he could obviously see, see I was obviously distraught and upset and then he said, let's go in the back room and and, an have a drink an I, I'm not even a drinker, you know I don't, once in a while, but I'm not even a drinker. But I just kinda stumbled in the back, went, went, went in the back room and he sat down and he was all, he was talk-ing and nothing was getting through to me. It was just like a roaring in my ears an, and then em. . . . .it just came to me, you know, he...

"Q You couldn't hear what he was saying Dan?

"A Just small talk that, you know it just wasn't registering. What I was going to do now, you know, and how this would affect my family you know an, an just, just all the time knowing he's going to go out an, an lie to the press an, an tell 'em, you know, that I, I wasn't a good supervisor and that people didn't want me an then that was it. Then I, I just shot him, that was it, it was over.

"Q Was he, was he using the telephone at the time or going to use the phone?

"A No.

"Q Not any time. . . .

"A I, I don't even know if there's a phone in that back room.

"Q What happened after you left there, Dan?

"A Well, I, I left his office by one of the back doors an, an I started, I was going to go down the stairs and then I saw Harvey Milk's aide across the hall at the Supervisors an then it struck me about what Harvey had tried to do an I said, well I'll go talk to him. I said, you know, at least maybe he'll be honest with me, you know, because he didn't know I had, I had heard his conversation and he was all smiles and stuff and I went in and, like I say, I, I was still upset an ah. . . .then I said, I wanted to talk to him an, an, an just try to explain to him, you know, I, I didn't agree with him on a lot of things but I was always honest, you know, and here they were devious and then he started kind of smirking cause he knew, he knew that I wasn't going to be reappointed. And ah, . . . .it just didn't make any impres-sion on him. I started to say you know how hard I worked for it and what it meant to me and my family an then my reputation as, as a hard worker, good honest person and he just kind of smirked at me as if to say, too bad an then an then I just got all flushed an, an hot an I shot him.
"Q How long a conversation did you have with Mr. Milk?

"A It wasn't very long, I, I, he was in his office when I came in to the supervisors' area and I said, Harvey can I talk to you? He got up or he was standing up, I can't remember an he, and he walked into the room and I shut my door and he and I were in there, then. . . .

"Q This occurred inside your room, Dan?

"A Yeah, in my office, yeah.

"Q And when you left there where did you go?

"A Well let's see. When I left there I went into my aide's room and I, an I took her keys to her car, an, an I ran out and went in the back to where her car is parked in, in the well and I took her car and I drove over to the, where did I drive to? I didn't even know what I was doing in I. . . .

"Q Did you go back home?

"A No, no, no I drove to the, the Doggie Diner on, on Van Ness and I called my wife and she, she didn't know, she. . . .

"Q Did you tell her Dan?

"A I called up, I didn't tell her on the phone. I just said she was work. . . .see, she was working, son's at a babysitter, shit. I just told her to meet me at the cathedral.

"Q Did she meet you?

"A Yeah. She. . . .

"Q St. Mary's?

"A She took a cab, yeah. She didn't know. She had knew I'd been upset and I wasn't even talking to her at home because I just couldn't explain how I felt and she had no, nothing to blame about it, she was, she always has been great to me but it was, I couldn't tell anybody I didn't, there was just, just the pressure hitting at me an just my head's all
flushed and expected that my skull's going to crack. Then when she came to the church I, I told her and she kind of slumped an just she, she couldn't say anything.

"Q How is she now do you, do you know is she, do you know where she is?

"A I don't know now. She, she came to Northern Station with me. She asked me not to do anything about myself, you know that she, she loved me an she'd stick by me and not to hurt myself an then we just walked to Northern Station and went an talked to Officer Chignell and that's it.

"Q Is there anything else you'd like to add at this time?

"A Just that I've always been honest and worked hard, never cheated anybody or, you know, I'm not a crook or anything an I wanted to do a good job, I'm trying to do a good job an I saw this city as it's going, kind of downhill an I was always just a lonely vote on the board and try to be honest an, an I just couldn't take it any more an that's it.

"Q Inspector Erdelatz?

[Inspector Erdelatz]: Q Dan, when you went to Northern Station, what did you tell Officer Chignell?

"A I didn't say anything, the police obviously knew. They all knew and I know most of them, I've worked with most of them, and sh. . . .they just, you know, checked me out, frisked me and I had the gun and took out my wallet and everything, an ah. . . .that's it, I told them I, I, I wasn't going to say anything.

"Q Dan, right now are you under a doctor's care?

"A No.

"Q Are you under any medication at all?

"A No.

"Q Have you. . . have you carried a gun with you in the past, Dan, since you've been ah. . . .a Supervisor say?

"A I have, because there were some threats on my life you know from people that I dealt with before the board. I never told my wife about it, I never told anybody cause it, you
know, that's something you don't want to hurt anybody else, you know, bring anybody else but . . .

"Q When is the last time you had your gun with you prior to today?

"A I guess it was a few months ago. I, I was afraid of some of the threats that were made and I had a committee hearing coming up where some of these people were going to appear and I, and I know they had a history of violence an I, I just wanted to make sure protect myself you know this, this city isn't safe you know and there's a lot of people running around an well I don't have to tell you fellows, you guys know that.

"Q When you left the Mayor's office, Dan, you proceeded you say to Harvey Milk's office?

"A I, I didn't even know if he was there. Like I said, I, I saw his aide come out of the door and I said, well I'm going to go over and talk to Harvey and kind of explain to him you know, he, I worked hard for that job and we disagreed on things but hell, I never was devious and I never lied, just tried to do my best.

"Q To your knowledge was anybody aware of the fact that the shooting had occurred in the Mayor's office?

"A I, I have no idea. I don't even know.

"Q Was there anybody running about at that time or was any excitement?

"A There wasn't anybody in the hall ah. . .across the hall, like I say, was his aide an, an I, and then I passed two people in the hall that were walking an, an by the Mayor's office, and they didn't seem excited or anything.

"Q How long did you converse with Supervisor Milk prior to the shooting?

"A Oh it's, maybe a minute or so, a minute and a half maybe. I, I don't know, it was a short time.

"Q Was there anybody else present at that time?

"A No, no I wanted to talk to Harvey and see, make him understand but he kind of smirked at me, he knew I wasn't getting the job back,
"Q And this, when Inspector Falzon asked you about what had transpired when, when you were with the Mayor, you mentioned that there was a roaring in your ears, is that right?

"A Yeah, it's just like my head was going to burst, you know, I just. . .

"Q Had that ever happened to you in the past, Dan?

"A Yeah, it had, it had when I was under this pressure at home an at night I couldn't sleep. I didn't sleep last night. I wasn't even with my wife in bed, I was on the couch cause I didn't want to bother her. I couldn't sleep, I never even slept. It's just, I don't know I, it felt like my head was going to burst.

"Q When you left your home this morning Dan, and was it your intention to confront the Mayor, Supervisor Milk or anyone else with that gun?

"A No, I, I, what I wanted to do was just, talk to him, you know, I, I ah, I didn't even know if I was going to be reappointed or not be reappointed. Like I say, they didn't contact me, they didn't tell me ah. . .I just was going down there to talk to him, you know, an ah. . .why do we do things, you know, why did I, it, I don't know, No, I, I just wanted to talk to him that's all an at least have him be honest with me an tell me why he was doing it, not because I was a bad Supervisor or anything but, you know, I never killed anybody before, I never shot anybody. . .

"Q What did. . .

"A . .I didn't even, I didn't even know if I wanted to kill him. I just shot him, I don't know.

"Q What type of gun is that you were carrying, Dan?

"A It's a 38, a 2 inch 38.

"Q And do you know how many shots you fired?

"A Uh. . .no I don't, I don't. I, out of instinct when I, I reload-ed the gun ah. . .you know, it's just the training I guess I had, you know.

"Q Where did you reload?
"A I reloaded in my office when, when I was I couldn't out in the hall.

"Q When you say you reloaded, are you speaking of following the shooting in the Mayor's office?

"A Yeah.

"Q What or where were you carrying that gun when you left your house this morning?

"A I was carrying it in the holster on my hip, you know...ah...ah...under my vest.

"Q And how many bullets did you have with you?

"A I, I, I don't know, I ah...the gun was loaded an, an I had some ah...extra shots you know, I just, I, cause, I keep the gun with, with a box of shells and I just grabbed some.

"Q Are you referring to some loose... . . .

"A Yeah. . . .

"Q . . . . . . . .bullets?

"A Yeah, yes.

"Q Inspector Falzon?

[Inspector Falzon]: Q No, questions. Is there anything you'd like to add Dan before we close this statement?

"A Well it's just that, I never really intended to hurt anybody. It's just this past several months, it got to the point I couldn't take it and I never wanted the job for ego or you know, perpetuate myself or anything like that. I was just trying to do a good job for the city.

"Q Inspector Erdelatz and I ah...appreciate your cooperation and the truthfulness in your statement. At this time, we'll close this statement, it's now 12:30 in the afternoon. Thank you."  

[End of Tape]

DIRECT EXAMINATION (Resumed):
Q Inspector, did you at some time proceed to the home of the defendant in this case, subsequent to his arrest?

A I did, sir. . . .

Q Did you have a search warrant with you at that time?
A This was pursuant to a search warrant, yes, sir, drawn up by your office. . .

Q Would you tell the members of the jury what you found in the home, and where they were located?

A Downstairs, it's a two-story home, but downstairs in the basement area there was a room I had described as a den or a study.

Inside that room there was a closet, approximately three feet square, and on the upper shelf there was a box of Remington rounds. . .

Q What are the contents?
A The contents are .38 special live rounds, semi-jacketed, hollow-point 95 grain ammunition.

It's a box of, I believe, 50 rounds, with 10 missing.

**CROSS-EXAMINATION by Mr. Schmidt:**

Q Inspector Falzon, you have been with the police department for 15 years, and the Homicide Division eight years?

A That is correct, sir.

Q Inspector Falzon, are you trained regarding to reloading of a firearm in a stress situation, a situation of danger?

A Yes, sir. Periodically, we are required to respond to the San Francisco Police range and continue this training. It begins when you enter the Police Academy, initially.

Q Pursuant to that training, did they teach you anything regarding keeping a firearm loaded?
Q What did they teach you in that regard, sir?

A Basically, the training at the police range consists of stress situations, how to respond, how to react instantly, in order to save your own life. This would be timed situations, wherein you fire your revolver, you then unload your revolver, reload and fire again, and this is timed, as I stated previously, and we do it under the duration sometime of a minute, then thirty seconds, I believe thirty seconds is the shortest time to load and unload six rounds.

Q That is part of every policeman's training is it not?

A Yes, sir, it is.

Q Inspector Falzon, you mentioned that you had known Dan White in the past, prior to November 27th, 1978?

A Yes, sir, quite well.

Q About how long have you known him?

A According to Dan, it goes way back to the days we attended St. Elizabeth's Grammar School together, but we went to different high schools.

Q You knew him fairly well then, that is fair?

A As well as I know anybody, I believed.

Q Can you tell me, when you saw him first on November 27th, 1978, how did he appear physically to you?

A Destroyed. This was not the Dan White that I had known, not at all.

Q "Destroyed" in what respect? What did you notice particularly about his appearance or--

A Totally unlike Dan White, the man I knew prior to Monday, the 27th of November, 1978, who was a man among men. He was a, what I described as a hustler, a fellow that
did not know how to stop. He had tremendous drive, ambition. That day I saw a shattered individual, both mentally and physically in appearance, who appeared to me to be shattered.

Q Knowing, with regard to the shootings of Mayor Moscone and Harvey Milk, knowing Dan White as you did, is he the type of man that could have premeditatedly and deliberately shot those people?

MR. NORMAN: Objection as calling for an opinion and conclusion.

THE COURT: Sustained.

Q Knowing him as you do, have you ever seen anything in his past that would lead you to believe he was capable of cold-bloodedly shooting somebody?

MR. NORMAN: Same objection.

THE COURT: Sustained....

Q Inspector Falzon, again, you mentioned that you were quite familiar with Dan White; can you tell me something about the man's character, as to the man that you knew prior to the prior to November 27th, 1978?

MR. NORMAN: Objection as being irrelevant and vague.

THE COURT: Overruled.

A The Dan White that I knew prior to Monday, November 27, 1978, was a man who seemed to excel in pressure situations, and it seemed that the greater the pressure the more enjoyment Dan had, exceeding at what he was trying to do. Examples would be in his sports life, that I can relate to, and for the first time in the history of the State of California there was a law enforcement softball tournament held in 1971. The San Francisco Police Department entered that softball tournament along with other major departments, Los Angeles included, and Dan White was not only named on the Allstar Team at the end of the tournament, but named the most valuable player. He was just outstanding under pressure situations, when men would be on base and that clutch hit was needed. At the end of the tournament, a dinner was held, the umpires were invited, and one individual had umpired baseball games for over 30 years, made the comment that Dan White was the best ball player he had ever seen participate in any tournament in South Lake Tahoe.
Another example of Dan White's attitude toward pressure was that when he decided to run for the District 8 Supervisor's seat, and I still can vividly remember the morning he walked in to the Homicide Detail and sat down to-next to my desk, where I was seated with my then partner, Inspector Jack Cleary, announced he was going to run for City Supervisor, and requested my assistance in that we both were raised in the same neighborhood, Portola District, both grew up with basically the same people, had established the same friends, attended the same schools.

I told Dan that my job would not allow active participation in politics because of the long hours that Homicide inspectors have to put in, but I would give him a list of people to contact, and my part-ner, then, Jack Cleary, made the comment, "Dan, you got to be crazy for running for politics. You don't stand a chance." His remark to Jack Cleary and myself was, "Jack, this is Dan, Dan White, you know, if you put your mind to something you can do it, you can do it, if you try hard." I said, "How are you going to do it, Dan? Nobody heard of Dan White. How are you going to go out there, win this election?" He said, "I'm going to do it the way the people want it to be done, knock on their doors, go inside, shake their hands, get to know them on a first name basis, let them know what Dan White stands for. I'm totally against the high crime rate in San Francisco." He said, "These are the things that people want to hear," and he said, "Dan White is going to represent them. There will be a voice in City Hall, you watch, I'll make it." So, I promised him to keep in touch with me, and I would give him all the support I could over the telephone, with names, addresses, and friends from the Portola District, that I knew, and I did that, and he did what he said he was going to do, he ran, won the election.

Q Given these things that you mentioned about Dan White was there anything in his character that you knew of him, prior to those tragedies of the 27th of November, that would have led you to believe that he would ever kill somebody cold bloodedly? . . .

A I'm aware-I'm hesitating only because there was something I saw in Dan's personality that didn't become that relevant to me un-til I was assigned this case. He had a tendency to run, occasionally, from situations, and I just attributed it to his own righteousness, his own high degree, that he put upon himself, over pressure situations, that he needed to get away. I saw this flaw, and I asked him about it, and his response was that his ultimate goal was to purchase a boat, just travel around the world, get away from everybody, and yet the Dan White that I was talking to was trying to be involved with people, constantly being a fireman, being a policeman, being a Supervisor. He wanted to be helpful to people, and yet he wanted to run away from them. That did not make sense to me.
Today, this is the only flaw in Dan White's character that I can cite up here, and testify about. Otherwise, to me, Dan White was an exemplary individual, a man that I was proud to know and be associated with.

Q Do you think he cracked? Do you think there was something wrong with him on November 27th?

MR. NORMAN: Objection as calling for an opinion and spec-ulation.

THE COURT: Sustained.

Q I have nothing further. Inspector, I have one last question. Did you ever see him act out of revenge as to the whole time you have known him?

A The only time Dan White could have acted out in revenge is when he took the opposite procedure in hurting him-self, by quitting the San Francisco Police Department.

MR. SCHMIDT: Nothing further.

REDIRECT EXAMINATION by Mr. Norman:

Q Was the Dan White that you knew, and you have testified about, and whom you know now, a person who could express the emotion of anger?

A I have never seen it except for one other time prior to today's date in court. I had only seen Dan White express anger once, and it was only verbally.

Q Have you heard any reports about him in regard to the active expression or acting out of anger?

A No, sir.

Q Now, Inspector, I think you have expressed complete surprise at what happened here regarding this tragedy of November the 27th. You have worked with this case and have been assigned to this case since its inception. Is that right?

A Yes, sir, that's correct.
Q Do you feel that Dan White felt that he was being dealt with less than fairly, perhaps treacherously, by the late George Moscone?

A Yes, sir, I do believe that was Dan White's thinking.

Q Do you feel that he also felt that the late Supervisor Harvey Milk was somehow acting to thwart or to prevent his appointment to the Board of Supervisors by the late George Moscone?

A Yes, sir. And the investigation proved that to be true.

Q Do you feel, Inspector that he was able to express the emotion of anger in connection with those beliefs which you have just expressed and ascribed to him?

A My investigation disclosed in fact express that anger.

Q Inspector Falzon, while you've expressed some shock at these tragedies, would you subscribe to the proposition that there's a first for everything?

A It's obvious in this case; yes, sir.

MR. NORMAN: Thank you.

REDCROSS-EXAMINATION by Mr. Schmidt:

Q Just very briefly. Inspector Falzon, it was no secret that you had been friends with Dan White, isn't that correct?

A That is correct; sir.

Q And if you didn't have the ability to be objective about this case, there were people that had authority to have you removed, isn't that correct?

A Most definitely. The investigation was handled no differently than any other case I've ever worked on.

Q You haven't done Dan White any favors in this case, have you?

A None whatsoever.

MR. SCHMIDT: I have nothing further.
Testimony of William Melia

DIRECT EXAMINATION by Mr. Norman:

Q Now, Mr. Melia, inviting your attention to November the 27th last year, a Monday, sometime in the morning, were you in your office of Room 62 at City Hall?
A Yes, I was.
Q On that particular day did you have occasion sometime in the morning, after 9:00 o'clock, to see a person who later became known to you, or whom you recognized, as Mr. Daniel White?
A Yes, sir, I did.
Q Tell the members of the jury what time this was, to the best of your recollection?
A At approximately 10:30 I noticed a white male passing my window in a light tan suit on the McAllister Street ramp. A few minutes later I noticed what I believed to be the same person passing by this window again.
Q What did the person appear to be doing?
A Pacing.
Q Now, did you see, or did you become aware of any other circumstance which involved this particular same person whom you initially had observed?
A At approximately 10:30 I heard the window in the adjoining laboratory being opened. There were only two people in our office at that time. I heard someone jump to the floor and then running through the adjoining room. I looked up and caught a glance of a man in a suit running past the doorway of my office into the City Hall hallway.
Q What did you do?
A I got up from my desk and called after him, "Hey, wait a second."
Q Did that person wait or stop?
A Yes, they did… he came back in from the hallway back into-back into the laboratory, back into my office. . .
Q Do you see that person here in this courtroom today?
A It's Dan White.
Q Was there some discussion had between you and Mr. Dan White?
A Well, as I said before, I called after him and said, "Hey, wait a second." He came back in and said to me, "I had to get in. My aide was supposed to come down and let me in the side door, but never showed up." I had taken exception to the way he had entered our office, and I replied, "And you are?" And he replied, "I’m Dan White, the City Supervisor."
He said, "Say I’ve got to go," and with that he turned and he ran out of the office.

CROSS-EXAMINATION by Mr. Schmidt:
Q Have you seen City Hall personnel entering through that door?
A Yes, I have.
Q All right. Specifically, have you seen Supervisors enter through that door?
A Quite common. This is their parking area.
Q Those persons generally have keys to that door, is that correct?
A Yes, they do.
Q Did he explain to you that he was waiting for his aide who hadn't shown up?
A Yes, he had.
Q Do you think that you saw him pacing out there about five minutes? Would that be fair?
A Approximately.
Q Had you ever seen anyone else enter or exit through that window or those windows along that side?
A. Yes, I had.
Q In fact, that's fairly common, is it not?
A It was common for individuals that worked in our office to do that.
Q It was a window that you could step through with some ease. It was large enough, is that correct?
A Yes.
Q Were you alarmed when you learned that a Supervisor crawled or walked through that window?
A Yes, I was.
Q All right. Once you saw that it was Dan White, he did identify himself, did he not?
A Yes, he did.
Q And that was after you had called to him?
A Right. I called for him to wait.
Q He did wait. In fact, he returned to your office?
A He returned to my office.
Q And at that point he identified himself as Dan White?
A Yes, he did.
Q That window prior to November 27th, 1978 was unlocked and generally kept open for ventilation, is that fair?
A That's accurate, right.
Q You mentioned that he appeared to be in somewhat of a hurry. Did he say he had an appointment with anyone? Was going to see anyone in particular?
A The last words that he said was, "Hey, I got to go."
Q I have nothing further. Thank you.
Testimony of Denise Apcar
(White's administrative assistant)


DIRECT EXAMINATION by Mr. Schmidt:

Q During the time that you worked with the then Supervisor John Barbagelata, were you aware of any threats made to him or members of the Board?

A Most definitely, there were threats, and there were threats to Supervisor Barbagelata frequently, it was general knowledge around City Hall that threats were a commonplace, and violent situations occurred frequently.

Q Was there anything in particular with regard to Mr. Barbagelata?

A Yes, he had a candy box bomb delivered to his home one time, he had bullet holes through his business office, and had a bodyguard when I first met him, because he was in public a lot, was campaign-ing, and generally he received quite a number of threats.

Q Had you ever heard or known that Supervisors in the City Hall at that time were carrying guns, keeping guns at City Hall?

A Yes, it was general knowledge that Supervisors had guns, and I never saw one, but I assumed they carried them. . . .

Q What was your position with Mr. White?

A I was his Administrative Assistant. . . .

Q Would you then say you were a close friend or ally of Mr. White's?

A Yes, I was. . . .

Q Did he take the job seriously?

A He took the job very seriously, wanted to do the best job he could. He wanted to have a staff that would agree with him; that they would work hard, they would do the absolute best they could do.

Q Did he, in fact, work at the job fairly hard?
A He worked harder than I did. In the beginning he came in at 7:00 o'clock in the morning, and he would stay well into the evening when there were meetings, and put in a lot of time.

Q Now Harvey Milk, the late Harvey Milk, was also elected in that same election year; is that correct?

A Correct. . . .

Q How did Daniel White and Harvey Milk get along, generally?

A They got along very well. As a matter of fact, they were good friends in the beginning, and they liked each other personally very much.

Q How about politically, did they have differences there?

A Yes, they had political differences, definitely.

Q At that time, also, George Moscone was the Mayor of this city; how did Dan White and George Moscone get along?

A They shared common interests in athletics, which always gave them something to talk about. They were personal—they were friends in a casual way, and there was absolutely no animosity between them.

Q How about politics, were they generally the same in politics?

A No, they were not, and that was evident quite early, they were not. . . .

Q Who was his (White's) constituency, basically, what district did he come from?

A He came from the Eighth District, which is a middle-class, hard-working, blue-collar, white-collar mix, racial mix. They never really had a voice at City Hall before, and after the district elections, Dan White was definitely a voice for them.

Q This was the first election after we had district elections; is that correct?

A That is correct.
Q Now, you mentioned that he was hard-working initially, when first met him, when you worked with him on the Board. Did there come a time when that seemed to change a bit?

A Yes. I think it started as early as March...1978.

Q What did you notice about the changes in him?

A Well, he became frustrated with the job quite early. He was having difficulty at that time adjusting to the political process, as to ups and downs, give and take, and he became moody and with-drawn, and started to come much less, started to cancel meetings, just basically depressed a lot.

Q Did you notice anything about his health habits or diet that was irregular?

A Yes, he would ask me to buy him candy a lot during lunch breaks and board meetings and at recess, and he ate a lot of candy, and he would eat doughnuts, junk food, sugar drinks.

Q Was that unusual?

A It was very unusual. When I first met him he said he never wanted anything but milk, never drank, didn't smoke or drink coffee, and it was very unusual. He worked out a lot, was physically fit. He always ate very healthy foods.

Q Did he seem to, in your opinion, gain weight after you had known him?

A Yes, it was very slight at first. I didn't really notice, but I started to notice it in his face, which became puffy, and his pants would fit tighter.

Q Did he ever express to you any concern that he wasn't spend-ing any time with his child or family?

A Yes, he did. He was frustrated at that a lot. He didn't seem to didn't want his child to be with a baby sitter, and it was evident that his child had to be with a baby sitter because of the pressures of his job and his wife had to work.

Q Now, did there come a time later in 1978, when you noticed his mood alter again or change, or in any way become different?
A Yes, it just became worse. From March on it was much more difficult to get Dan to come to meetings, to want to do the typical day-to-day things that go on at the Board of Supervisors. He was withdrawn; he wasn't happy, and he wanted to do so much, and he couldn't do a hundred percent. He felt he had to do a hundred percent. Ninety per cent wasn't enough to him. So, he wanted to—he was so frustrated, just couldn't do everything, and he became very withdrawn and moody, and it ac-centuated in the summer, around July and August of '78. . . .

Q Did you ever notice the time during the late summer meetings that he did go to, that went well or poorly?

A There was one meeting in which he came off very, very well. . . . Afterwards he spoke to the-to this crowd of merchants, and this was a potential, antagonistic situation, and after the meeting I was euphoric. I thought he won them over. They were giving him a standing ovation. We got in to my car, and he looked so he looked pale, and he looked exhausted, as if he had been running 20 miles. He was didn't want to talk about it, didn't feel well, and he wanted me to go to a doughnut store, buy him doughnuts. He consumed about five doughnuts in a matter of seconds, and he looked very, very withdrawn. It just really shocked me. I didn't know what to think.

Q Now, some time after October, did it come to your attention that Dan White was going to resign, or did resign?

A I never knew he was going to until he did.

Q All right. How did that occur, the resignation?

A Well, he came to me in the afternoon, on Friday—it was a Friday, and it was on November 10th, and he said, "Denise, I'm going to resign," and he wanted me to help him write his letter, and I was upset and shocked and very hurt. . . .

Q After the resignation, did you meet with Ray Sloan and discuss the resignation itself, what possibly you could do about it?

A Yes, we met for breakfast after he had resigned, and we had our personal differences, but they were based on experiences with Dan White, but after he had resigned, there was just a sense of com-munity, you know, we got together and we talked about it, and we talked—we shared stories about Dan's behavior, which was peculiar to me, and peculiar to Ray Sloan, who worked with him at his business on Pier 39.
We discussed his behavior and his resignation, and he wanted to know how it came about, and the time wore on, and as we were talking, we realized that there were some definite problems with Dan that possibly needed a psychiatrist. . . .

Q Did there come a time when you and Ray met with Dan White?

A Well, it started out defensively. It was Dan against us, and we went back and forth, and we explained to him how we were feeling sorry for what had happened; that he wasn't going to represent the people that he wanted to represent; that he had so much support in his district, in which he had won by an overwhelming margin, and the fact that he had worked the hardest to get there. He was giving it all away for what seemed to be a temporary measure, financial, economic crunch, that seemed to be temporary. We wanted to make him realize that he had four more years of his term, that could be a very successful term, and we wanted to see if he knew that he had our support and that we would stay with him if he wanted it back.

Q Okay. How was he reacting to the suggestions, or what was his general demeanor?

A Well, at first, he was quite defensive, felt that he didn't owe anybody anything, he felt that he had done the best job he could, he couldn't survive, and we felt that, as I have said, that it was temporary; that he didn't realize that the burden that was on him right then was going to be relieved shortly. The business was just opening, and the economic pressures were going to be relieved, we were sure of it, and we just wanted to see if he was sure of what he had done. He was defensive with us.

Q Had he told you that he resigned because of his economic pressures?

A Yes, he had.

Q Did you feel that was an accurate reason for his having resigned?

A No, it wasn't an accurate reason. It was only part of a large number of reasons, one of which being he was very frustrated with the job. He was a very honest, hard-working Supervisor, and he wasn't perceived as an honest, hard-working Supervisor, and that was very frustrating for him, as well as for all of us.

Q Now, some time after your meeting with Dan White, and Ray, did he go and see the Mayor about getting the job back?
A After we discussed it with him, he changed his mind, much to our surprise. He just snapped, changed his mind, and he wanted to go see the Mayor, thought it was a great idea, and he mentioned to us then that his family had talked to him, they offered him financial support over the weekend, which I wasn't aware of, and so he went to see the Mayor at 8:00 o'clock that evening.

Q And did Dan ask the Mayor for his resignation or job back?

A Yes, he did. . . what the Mayor said was: That he is a good Supervisor, I have no problems with that man, and a man can change his mind, a man has the right to change his mind, and a good man like Dan White shouldn't be shoved out of the political process.

Q Now, did there come a time when that response changed or altered politically from the Mayor's office?

A Yes, it came in various forms.

Q Did there come a time when Dan White or you, as his aide, requested to go out and see if there was support in District 8 for him?

A Yes, at the end of that week, on Saturday, Dan met with Mayor. Moscone and it was a private meeting in his office around noon, on Saturday afternoon, and he said: I'm going to reappoint you. I want you to show support when I call a press conference. I just want to have letters on my desk, and I want to be able to prove that you are the Supervisor that they want out there.

Q So did you assist in obtaining a showing of the support in the District?

A Well, that afternoon Dan and I bought 1,000 envelopes, 1,000 stamps, and we hand-addressed every single one, well into the evening. We then organized a campaign of leaders in the community that had worked on this campaign, distributed these self-addressed and stamped envelopes. We figured that with a thousand delivered in the community and if we received fifty-if the Mayor received fifty per cent, then we were doing well, and there was a lot of support for that, and the people were enthusiastic.

Q Did the press people from the Mayor's office ever make a statement at that time as to the number of letters that were coming in, or anything such as that?

A Yes, they did, said that 30 letters had been received, and that was all.
Q Do you believe that there were-they were in excess of that?

A Well, I was well aware that there were over 300 letters. My tally alone was over 300.

Q Did there come a time when it appeared that Dan White was not going to get reappointed?

A I recall my feeling he wasn't going to get the appointment, was on Thanksgiving morning, I think November 23rd or 4th, and there was an article in the Chronicle that had a picture of a woman, and said that most probably she would be the new Supervisor, and that the Mayor's office was intending to appoint her, and at that point, I realized that that story was probably leaked to the press, and that was the truth.

Q Did you see him on the 26th of November, at any time?

A Yes, I did. . . .About 10:30 in the evening.

Q Did he mention to you anything about any telephone calls that he had received?

A Yes. As I walked in the door, he mentioned that he just received a call from Barbara Taylor, from KCBS Radio, she had a good source that told her that he wasn't going to get the appointment, and did he have a comment. He said-he told me that he said he didn't know of any such information, and he had no comment, and hung up.

Q It was apparent to you at that time, at least you suspected, he wasn't going to get reappointed; is that fair?

A Yes.

Q Did he appear to come to the same conclusion as you?

A No.

Q Did he talk to you about anything in that regard? Did he tell you why he still thought he might get-might be reappointed?

A Well, the Mayor had told him: I'm going to reappoint you, and Dan always felt that a person was going to be honest when they said something. He believed his word, and he believed it up until the end.
Q Now, on the 27th of November, did you have occasion to talk to Dan White in the morning?

A About 9:15, or so. I talked to him twice.

Q Describe for me those two times that you talked to him, and was this in person or was this as to telephone calls?

A I called him. The arrangement was that I was supposed to call him. The night before we made an arrangement to call him, and I was supposed to tell him what happened at the rally, in the morning. We had a rally of supporters convening on City Hall, kind of a last-ditch effort to show support. We felt that petitions were important, because we had the situation then where we had an official record of that.

Q Let me back up for a bit. I take it this rally wasn't spontaneous, you had put that together?

A Right. . . .When the press reported only 30 letters had come in, we realized something was going on. I realized something was going on, and I felt that it was imperative that we have an official record of how much support we could get. . . .

Q How many signatures did you get?

A I was very successful. We were very happy, and we gathered 1,100 signatures, approximately.

Q Now, you mentioned that you had talked to Dan White on two occasions, the first time was by predesgin; did you talk to him again on that morning?

A Yes.

Q What was that conversation about?

A The first time I called him I told him that-what happened at the rally, and what happened at the rally is that the Mayor refused to meet with the supporters, and he had seen the supporters in front of the City Hall, waiting for him to drive up, and he must have instructed his driver to avoid them, and so he went around the other side of the building and got in, and the car came back around the building, and I was watching this, I was there, and the car came back around the building, and the Mayor wasn't in the car.
So, the people were-in the rally, were kind of upset at that, de-cided to march up to his office with their posters and petitions, and there was TV cameras there, I believe, I remember that. . . .

Q What was his reaction on the telephone call?

A He had no strong reaction to it. He was-he wasn't upset. I was upset, but he wasn't upset. . . .

Q Did there come a time when he telephoned you back?

A Yes, after the second telephone call he phoned me back.

Q Did he ask you to come pick him up?

A Right.

Q Did you notice anything peculiar about him in the car, as you drove him to City Hall? . . .

A Well, he was-he looked very different to me, and he wouldn't look at me, and that was unusual. He was nervous, and he was agitated. He was very upset. He was very mad that the Mayor wasn't going to give him the courtesy of telling him first.

Q Did he tell you why he was going down to City Hall?

A He told me he wanted to talk to the Mayor, he wanted the Mayor to tell him to his face that he wasn't going to get the ap-pointment.

Q Did he also mention that he was going to talk to Harvey Milk?

A Yes, he did.

Q Was there any indication in the car that he was going to do anything violent that day?

A No.

Q When you got to-had he expressed some reason for going to talk to Harvey Milk?
A He was—he knew that Harvey Milk had been working against his appointment, and he was mad at that, and he wanted to talk to Harvey about it. He felt that, basically, they were friends, and he just wanted to confront him with that: Why are you working against me? What have I done to you, that sort of thing.

Q When you arrived at City Hall, where did you let Dan White off, out of your car?

A I let him off in front of City Hall, Polk Street side.

Q Did he mention that he wanted to use your car later that morning?

A Yes, he did. He mentioned that he wanted to go see his wife at Pier 39 after he talked to the Mayor and Harvey Milk. He wanted to borrow my car to get there.

Q Did you give him any keys on that morning?

A Yes, I gave him one key.

Q What was that key to?

A It was a key to Room 237 of City Hall.

Q And what is Room 237?

A It's a door that admits certain people into the back of the Supervisors' offices.

Q Did he at any time take your car—did he take your car key or ask for your car key at that time?

A No.

Q Did you have an extra car key you could give him?

A Yes. Yes, he did, and he knew that, too.

Q So it's clear, you gave him one key to 237, but he did not take the key to the side door, in the McAllister Street well, nor did he take the key to your car; is that correct?

A Correct.
Q And he knew those keys were available to him?

A Yes, the one key was his. I was just using it.

Q Which key was that?

A The key to the McAllister Street well.

Q Where did you go after you left him off?

A Well, I noticed that my gas tank was empty and I decided that I would get just a little bit of gas so that he wouldn't run out when he was using my car.

Q Did you go get that gas?

A I did.

Q When did you next see Dan White on that morning?

A I next saw him when he came in to get my car key. . . .

Q How did he appear to you at that time?

A Well, he looked terrible. He looked—he was running, and he was yelling, and just yelled, “Denise, give me the key.” . . .

Q Did you telephone his wife?

A I did. I was so shocked, so startled, I called her, warned her he was coming, that he looked like he was going to cry.

MR. SCHMIDT: Nothing further. Thank you.

CROSS-EXAMINATION by Mr. Norman:

Q Now, I think you told us here that you noticed some changes in him?

A Yes, I did.

Q When did you notice those changes to come about?
A I first noticed them around March. He started to become depressed and withdrawn about a lot of things. He never—we never talked about it. . . .

Q Well, how did this depression manifest itself, that you noticed, in March?

A I don't think there was any particular event that produced it. I think it was—he just started to become disillusioned with the process of City government. He just didn't feel that he was getting a good grasp. If he was getting a good grasp, he didn't care for it.

Q Did he ever say to you, or express himself, so as you heard, that he felt politics, particularly local government, as it obtains or obtained here in San Francisco, was corrupt, for example?

A No, he never said that.

Q Well, I think you said something about it, or used the word "disillusioned."

A I think he was disillusioned with the manner in which politicians conducted themselves....

Q You told us then that it was a few days thereafter (after White's resignation) that you and Mr. Ray Sloan had discussed Mr. White together? . . .

A Yes, that's true.

Q Is that when you said or you believed that he possibly needed the services or at least a consultation with the psychiatrist?

A Yes, we discussed that at one time. . . .

Q Well, was it discussed in the sense or in the flavor that: Well, he's crazy to do something like this, or was it something in more depth?

A I think it started out in that way. That we were so—that it was such an impulsive decision, and a lot of his actions just prior to that were strange.

Q We often say things, don't we, in referring to someone's conduct that may not be approved by ourselves: Well, he should see a psychiatrist. He's crazy. Was it in that flavor?
A No, it wasn't.

Q Did you at that time believe that Mr. White was somehow mentally ill?

A I don't know if I would characterize it-if I would have characterized it then as mentally ill. There were specific things that had gone on recently that were very, very peculiar, and I sensed that he wasn't acting with his full faculties.

Q Please explain to me what you regarded his full faculties to be?

A Well, I would—I would give an example in that when he resigned—a person who would resign would consult people involved first. They would discuss the legal ways of resigning. They would discuss it ahead of time so that there wouldn't be a vacancy in the position, and that would be an orderly manner in which to resign, and that would be someone who thought it out and was thinking properly. And in this case, he wasn't. . . .

Q Miss Apcar, May I ask you: Have you ever heard of persons resigning positions that they held?

A Elected people?

Q Any kind of position. Position of employment or a position of elective office even?

A Certainly.

Q Well, was this resignation tendered by Mr. White regarded by you as something unusual?

A It was regarded as highly unusual. . . .

Q Did you ever tell his wife you thought he needed a psychiatrist, to consult with professional help in that connection?

A No, I don't-I never-I don't recall ever telling his wife that he needed a psychiatrist, but I do recall telling his wife on many occasions that he was very depressed, and that what was wrong? And that I noticed he was acting peculiarly at work.

Q Miss Apcar, do you believe that he was depressed because he was somehow a little disappointed with the activities of his colleagues on the Board of Supervisors?
A That's fair, yes.

Q Do you feel that he felt some disappointment in not being able, to achieve perhaps as quickly as he would like some of his objectives on behalf of his constituents in District No. 8? . . .

A He never felt any disappointment that he hadn't tried his best to achieve them.

Q Do you feel that there was any disappointment felt by him and entertained by him that having not achieved certain objectives no matter how hard he tried?

A On occasion, yes.

Q Well, what was it that you felt caused or was the source of this feeling of being depressed that you've ascribed to Mr. White?

A I think it was general, general feeling, that the people that he worked with were not honest and didn't live by the same principles that he did, and that disappointed him.

Q Who were those persons whom he felt, with whom he worked were not honest?

A Just about everyone.

Q Well, let's take the late Mayor George R. Moscone. Would you include the late George R. Moscone within those persons whom Mr. White regarded as being dishonest?

A Yes, I would.

Q Well, what causes you to arrive at that conclusion, or to support that statement? . . .

A Well, the Mayor said, and I watched him say it, that "I'm going to reappoint you. You're a hard working man and you deserve the job. A man has a right to change his mind. And if it comes to a legal question as to whether I should appoint you, I will." He said that to Dan on two or three occasions, and I saw him, and the public saw it, and the press reported it, and it became to be a false statement in the end.

Q Did Mr. White entertain such feelings of dishonesty as he would ascribe to certain of his colleagues including Harvey Milk, the late Supervisor of District Five?
A On occasion, yes.

Q What supports your conclusion in that regard?

A Basically, it was vote trading situations where you'd lobby the fellow Supervisor for a vote, and Harvey was one that he would talk to about issues and concerns, and Harvey would say, “I'll give you my vote,” and he'd vote differently.

Q Well, how does that relate to his feelings that Harvey Milk was dishonest?

A Well, what I said was he didn't question the procedure of lobbying. But once a person said I'm going to vote a certain way, Dan believed that the person would then do that.

Q Did he ever tell you that Mr. Harvey Milk had expressed himself as going to prospectively vote a certain way and then when it came time to vote in fact voted another way?

A Harvey Milk and others, yes.

Q Would you say that he was shocked by this type of behavior?

A Yes.

Q Would you say that he was offended by this type of behavior?

A I-I think I would say that.

Q Now, some resort was had to a lawsuit by Mr. White in connection with his having tendered his resignation, isn't that correct?

A It was filed on a Friday, so it would be the Friday, November 24th. I'm guessing.

Q What was it that, if you know, brought about that initiation of that lawsuit, and what was its purpose?

A The lawsuit was brought about to expand the options for Dan to regain his seat back. The options being that lawyers had reviewed the City Attorney's opinion which expressed the legal technicalities of his resignation, and they found in that that he had resigned to the Clerk of the Board of Supervisors and his intent was to give his letter to the Clerk of the Board of Supervisors but in fact it was not his intent. He didn't know it was even
necessary, and when he resigned he gave it directly to the Mayor and never intended a copy to go to the Clerk....

Q Can I understand that, then, on or about November the 15th, give or take a day, that there was some belief entertained by you and Mr. White, or apprehension, that the Mayor would not appoint Mr. White as he had indicated in his press conference? . . .

A I would tell him daily what was going on at City Hall and casually talk to him and tell him that the letters weren't being tallied. It doesn't look like-it looks like they are changing their mind. I didn't know what's going on. There was a letter that the Mayor wrote to Dan White, as a matter of fact, that definitely expressed his opinion. He said, "I have no intention of-I didn't make a promise to you or to anyone," and that was directly contrary to what Mr. Moscone had said to Dan White himself. And that letter was issued immediately after he had personally met with him. . .

Q [By Mr. Nonnan] Miss Apcar, would you look at No. 57 now which has been admitted into evidence in this trial?

A (Reading):
"Dear Dan:
This is in response to your letter of November 20, 1978.
The last thing I want to do is deprive the citizens of District Eight of their necessary representation before our Board of Supervisors. As I told you this past Saturday in my office, however, I have received a great many communications from the residents of District Eight-some from your public opponents, others from your past supporters-which have urged me not to reappoint you to the Board of Supervisors. As I informed you this past Saturday, I am going to take an addi-tional week in which to review this situation, and to receive further communications on the subject from the citizens of District Eight, some of which may conceivably benefit you. But I must reiterate that I have not made a commitment of any kind to appoint you-or any other San Franciscan-to the position of Supervisor from District Eight. - Sincerely, George R. Moscone, Mayor."

Q When you read this to Mr. White over the telephone, was there then some discussion or some editorial of your thoughts about it? . . .

A I was shocked at the letter, especially the comments that said, "I must reiterate that I have not made a commitment of any kind to appoint you," and just two days ago I was
with Dan on Saturday when he came from the Mayor's Office and he said, "That the Mayor is going to reappoint me. I just have to show letters. I just have to get letters into his office." And Dan also said that the Mayor had told him to keep it-to keep it low, not to tell anybody. And then this letter was public and released to the press that day. And it was very shocking.

Q Did you somehow feel that, well, the Mayor had double crossed Mr. White?

A I wouldn't use those words. . . .

Q From your discussion with Mr. White over the telephone, in reading the content of this letter to him, the Xerox copy of which you had received and which you learned had become public, did he express himself in any way suggestive of disappointment or anything stronger?

A No, he didn't. He was calm about it. I, as I have said before, was mad. I was the one that always was mad, and he was calm. He said, "Gee, George told me to keep it quiet. There he goes writing a letter."

Q Now, you were angry or mad, to use your word, and all that he did was to express some surprise?

A That's correct. And I was surprised at his nonchalant attitude.

Q Did you tell him that he should do anything about this?

A No. . .

Q Bringing us around then to the next morning, which would be the morning of the 27th, you called him first; is that right?

A Yes, I did.

Q What was that conversation?

A That conversation was to relay to him what happened at the rally.

Q Specifically, which rally?
A The rally where the people who had gathered the petition and signatures, and they were to go and present those signatures to the Mayor as he came into the building.

Q They were waiting at City Hall?

A Right.

Q How many persons were there?

A About forty. . . .

Q Did you, in fact, see the Mayor--

A Yes, I did.

Q (Continuing:) - arrive in his automobile?

A It stopped at the intersection of McAllister and Polk, and that is where I saw him, to my left, as I was in front of the building. I looked to my left, saw him.

Q Then the vehicle just went on?

A Went forward, didn't turn as it usually did, towards the City Hall entrance, went straight.

Q Did you feel that the Mayor was trying to avoid you?

A Most definitely.

Q Did you ever make a statement to the effect that the Mayor "ditched us?"

A I did. . . .

Q When you made that telephone call then to Mr. Daniel White, did you tell him briefly, basically, what you--what your feelings were?

A Yes, I did.

Q What did you say to him?
A Well, from what I can recall, and I don't remember my exact words, but I told him that the Mayor circumvented the people, went right straight. That was the first time I had ever seen that happen. I had seen the Mayor enter City Hall where there were supporters in front of the building before, and he went-usually greeted the sup-porters, and walked in. I had seen that before. This time he didn't, and it angered me, and I told Mr. White that.

Q Did Mr. White say anything?

A Yes, he did, but he wasn't angry. He calmed me down.

Q What did you do after that conversation?

A I resumed my work. I opened the mail and I-I was aware that supporters had moved into the room, 200, the public area of the Mayor's office, and I knew they were there, and I knew they were trying to get to hand those petitions to the Mayor, and I was at my desk at the time when one of the constituents in the room came running down into my office, [and] said, "The secretary is saying he isn't in, and he is in. He has to be in." And I said, "What is the secretary saying?" This woman said, "The secretary is saying he hasn't been in the building yet," or, "He is not here," words to that effect, and so I didn't know what to do, but I-they were very tense, agitated, and so I walked with them towards Room 200. I don't know why I did that, but I thought I would walk with her, and I walked towards Room 200, and at that point I waited outside of the Mayor's office, and some of the people that were in, came out and were saying, "What do we do? You know, we have these petitions, and we should leave it with the secretary. Do you think it's okay?" I was trying to think as to what was best to do, when I noticed the side door to the Mayor's office open and I saw Harvey Milk exit the Mayor's private hallway there, in front.

Q What did you do then, after you saw Harvey Milk come out of the side door of the Mayor's office?

A I just noticed it. I didn't do anything. I kept talking to the people, and I-as I was talking, I saw him coming out. I saw him laughing, and I saw him being patted on the shoulder by someone in the door jamb area. I couldn't tell who it was, and I just told the people to go back inside, say you are going to wait here until someone comes, takes these petitions, and assures you the Mayor is going to see them before he makes his appointment, and they did, they went back in.

Q Did you believe at that time, Miss Apcar, that the Mayor was going to appoint someone other than Mr. Daniel White?
A Oh, yes. It was 10:00 o'clock in the morning, you know.

Q Were you aware that there was to be a scheduled press conference--

A Yes.

Q (Continuing):-concerning the public announcement in that regard, at 11:30?

A Yes, I did.

Q At that time, were your feelings such that you were angry?

A Definitely.

Q Did you call Mr. White on the telephone?

A Yes, I did.

Q Did you tell Mr. White what you had seen?

A Yes, I did.

Q Did you tell Mr. White that you had seen Harvey Milk come out of the side door of the Mayor's office after you had been informed the Mayor was not in?

A Yes, I did.

Q Did you indicate or tell Mr. White how you regarded this particular set of circumstances at this time?

A I don't think I expressed an opinion other than just general anger in the tone of my voice, as I was explaining what had happened.

Q Did you...feel that you had been doublecrossed?

A Personally, I didn't feel I had been doublecrossed, no.

Q Did you feel Mr. White had been doublecrossed?
A I couldn't exactly tell what had happened by seeing Mr. Milk in the hallway. I couldn't exactly-I didn't feel that.

Q Did you attribute anything to Mr. Milk's presence, as you observed it coming out of the Mayor's office, and you said he was smiling and laughing?

A The only thing I thought, when I saw Mr. Milk, come out of his office, the Mayor was, indeed, in his office, and that he was seeing other people.

Q You felt and believed that Mr. Milk had been acting to prevent the appointment of Daniel White to his vacated seat on the Board of Supervisors, as to District 8?

A Yes, I was very much aware of that.

Q Had you expressed that opinion to Mr. White?

A Yes.

Q Did Mr. White ever express that opinion also to you?

A He wasn't down at City Hall much during that week, and so I was basically the person that told him these things.

Q Now, you called him on the telephone?

A Correct.

Q You called him the first time. Now, the second time, that you talked to him, how did that come about? We are referring to November 27th, in the morning.

A Correct. The first time I called him was to inform him of the rally. The second time I called him, it was because the lawyers that had sought the temporary restraining order on Friday were unsure on Friday as to whether or not Mr. White should pretend to take his seat or attempt to take his seat on Monday, since he was claiming the resignation was invalid, and they weren't sure whether or not he should try to take his seat. I was to talk to the attorneys in the morning, and then inform Dan White what that decision was on their part.

Q What was the purpose of this restraining order, if you know?
A The purpose of the restraining order was to restrain the Mayor from making his appointment, because of this technicality, and the resignation.

Q The Superior Court of this City and County had not ruled upon that restraining order yet, had it?

A Well, I wasn't in the chambers. It was a closed door session on Friday, but I was told that he denied the temporary restraining order, but set a court date for a week from that Friday to hear the legal arguments.

Q On that second conversation, had between you and Mr. Daniel White on Monday morning, November 27th, did he ask you to come out and pick him up? . . .

A After I finished talking to him the second time he called me back.

Q What did he say?

A "Denise, come pick me up, I want to see the Mayor."

Q Do you know what time this was?

A Well, probably 10 after 10:00, or 10:15.

Q You went out to pick him up?

A I didn't immediately. I had to take some calls, but I did go out and pick him up, yes.

Q How did you announce your presence?

A I honked my horn. . . .

Q When he came out of the garage, do you recall whether he was dressed neatly or not?

A He was dressed very well, very neatly. . . .

Q When he got into your car, did he do anything that appeared unusual to you? . . .

A Well, the very first thing I noticed that was unusual was that he didn't look at me, and normally he would turn his body a little bit towards the driver, and look at me, and we would talk, you know, in a free-form way, but this time he didn't look at me at all. That
was one. He was squinting hard and he was very nervous. He was agitated. He was blowing a lot. He was rubbing his hands, and he was just very strange.

Q In what manner was he doing this blowing?

A Well, he was just blowing into his hands and rubbing them, like he was cold, like his hands were cold. . . .

Q Did he do it just about during the entire ride downtown?

A Yes, yes, pretty much.

Q Did you ever describe him as acting very hurt?

A Yes, he acted very hurt, yes. He was-looked like he was going to cry. He was doing everything he could to restrain his emotion.

Q Did you ever describe him as acting "all fired up? ". . .

A "All fired up," meant to me that he was really excited, ner-vous, more so than normal.

Q Did you ever say he was going to, "really lay it on the Mayor?"

A It's been brought to my attention I said that, yes.

Q Did he ever say to you in connection with the Mayor, "I want to see his face?"

A Yes, he did.

Q Did you ever say that he wanted the Mayor to tell him face to face that he wasn't going to appoint him?

A He said that in the context of a lot of things. He said, "I just want him to tell me-I want him to look at me, say, Dan, you are not going to get the job. I want him to tell me." He didn't want to hear about it through the press. He wanted the personal contact.

Q Did you ever describe him as blowing on his hands, rubbing them, and looking like he was all fired up to really lay it on the Mayor because he was going to go in there and tell him how he feels-wants to tell him, Mr. White, how he is not going to be appointed, face to face?
A I believe that is probably what I said.

Q Now, did you ever say, referring to Mr. White, that Mr. White really wanted some action?

A Well, I probably said that. I was very nervous.

Q Of course, when you made those statements, that was, Miss Ap-car, that was on November 27th, at about 40 minutes after noon time; isn't it?

A Yes, that's true. . . .

Q When you were driving Mr. White downtown to the City Hall, was there some discussion between you and Mr. White relative to a statement made by yourself, that goes like, "Anger had run pretty high all week towards the Mayor playing pool on us, dirty, you know?". . .

A Yes, I did.

Q What kind of anger was it that had run pretty high all week?

A I believe I was describing my anger. I was-I was flabbergasted at the actions that had taken place, and at the time I made those statements, I was in shock, and I spoke freely, and I'm sure I have never used those terms before.

**REDIRECT EXAMINATION by Mr. Schmidt:**

Q Miss Ap-car, in regards to this lawsuit, who first suggested the filing of that lawsuit, do you recall?

A I had a discussion with Mr. Peter Bagatelas of the law firm of Dobbs and Nelson when the City Attorney's opinion came out, I believe, and he suggested it.

Q All right. Did you take that suggestion to Dan White?

A Yes, I did.

Q What was his reaction to the filing of a lawsuit?
A He didn't want to go through with it at all.

Q Was there any particular reason?

A He felt strongly that he was going to get the job back; that the Mayor had told him, "I'm going to give you your job back."
Testimony of Dr. Martin Blinder
(defense psychiatrist)


DIRECT EXAMINATION by Mr. Schmidt:

Q Have you done any research or research projects in your field?

A Yes, I have.

Q Will you tell us briefly what those are?

A I have done work in the diagnoses of the hysterical personality, with the detoxification of alcoholics, the diagnoses and treatment of depressive disorders, and perhaps the most important bit of research that I have done was to help develop what is now the treatment of choice for the manic-depressive syndrome, which is Lithium carbonate, and at the time I began I was working on virtually an unknown experiment which has now become the best possible treatment for this disorder. . . .

Q Can you recite for us what you have published?

A Well, my writings have been more or less scholarly articles for such medical journals or psychiatric journals as the Archives of General Psychiatry, International Journal of Psychiatry, Journal of Psychiatry, American Journal of Psychotherapy.

I published my own journal, Family Therapy, to be printed in chapters of a number of psychiatric books, several tapes, seminars from McGraw-Hill.

I have written extensively legal publications, among them the Catholic University of Law Review Adjudicator, the Journal of California State Bar Journal, American Bar Association.

That is not an exhaustive list, but representative, I would say, of about four dozen scientific articles, and I also have a book of my own, Psychiatry in the Everyday Practice of Law, now in its fifth annual supplement....

Q How many court-appointment type cases have you undertaken?

A Hundreds. . . .

Q Are you usually called to testify for the prosecution or for the defense, or either?

A I would say, by now, it's pretty even. . . .
Q What do you teach at Hastings?

A I teach forensic psychiatry, I teach about the uses and abuses of psychiatry in the judicial system.

Q What do you see as the uses of psychiatry in the criminal field or courtroom?

A I think psychiatry is most useful in criminal courts in shedding some light on the motivations and stresses operant in certain kinds of criminal offenses, and may have some value in psychiatric principles, in helping to provide balanced juries, primarily, I think, to have some understanding as to how crimes come about, what drives the criminal mind.

Q You mentioned that there are uses and abuses of psychiatry; what would be the abusive form of psychiatry, in your opinion?

A Well, I think the Courts, at least some aspects of the courts, tend to place psychiatry in a position where it doesn't belong, where it becomes simply the sole arbiter between guilt and innocence, in certain kinds of crimes, whether or not a man is insane.

I think psychiatry has a lot to contribute to these judgments, but that these judgments are more than psychiatric judgments, and I do not think they should be equated.

I think it's also a tendency in stresses of the adversary system to polarize psychiatric testimony so that a psychiatrist finds himself trying to put labels on normal, stressful behavior, and everything becomes a mental illness, and I think that is an abuse.

And I think there is the problem in trying to directly equate psychiatric findings, psychiatric concepts with legal concepts, such as insanity or diminished capacity, and they are not equivalent.

I think psychiatry contributes something to an understanding of these, but it's misuse of psychiatry to try to equate them one on one.

Q Would you tell the jury, please, the psychiatric history that you obtained from that you felt was relevant to your conclusion?

A In '76, he married a school teacher, and was somewhat ambivalent, not about this woman, who is the best possible wife, but about assuming marital responsibilities, but again, there was family pressure, that this was expected of him, and whether he wanted to be a free agent or not, he was going to get married and do the proper thing.

A year later she became pregnant, and their son was born in July '77.

He named his son after his father, and was stunned to receive criticism—criticism from all family members for the presumptuousness of naming his son after their dad.
from all except Nancy, and as he puts it to me, "I couldn't believe it, but then again it was just like them."

He was never political, but in the summer of '77, Mr. White became increasingly aware of the difficulty in providing protection to citizens in the streets, and he felt that, granted, the police are doing a pretty good job of catching criminals after they hurt somebody, but what good does that do to the victim concerned, and there were some other issues, and he decided that he would get himself into City Hall, where he could do something about these problems.

He realized now that the system of electing Supervisors had changed, and that a mere five thousand votes put him into City Hall to do some good, and so though he had no political base, he decided to run for Supervisor, and due to his characteristics, didn't consult anybody, but announced to his wife that he had made a decision that he was going to run, and in his characteristic fashion, put everything he had into it, spent all the savings, went heavily into debt, relied heavily on personal contacts to make up for the lack of substantial funds, lack of political base.

He contacted on foot seven thousand homes, five thousand businesses, day-in and day-out, knocking on doors, and at the end of the campaign, confounded experts with a two-to-one victory margin.

Paradoxically, this victory served as a catalyst for the tragic events that occurred on November 27th, 1978.

Q Doctor, at this juncture, having reviewed the background material that you have thus far, did it become evident to you that there was an underlying mental illness of some sort in play here?

A I'm not so sure, Mr. Schmidt, that I would elevate it to the threshold of illness, but certainly there were a number of problems of an emotional sort pressing on Mr. White that were of great relevance here.

Q Explain for me what you feel you gleaned from the information that you reviewed, that would be relevant here to your conclusions that we will ultimately listen to here?

A All right, in a sense, Mr. White has been in conflict all his life. On the one hand, he wanted to be something of a free spirit and follow his feelings, but at the same time, was exquisitely sensitive to family and the middle-class pressures, obligations, that he prove that he can do the right thing, the social, acceptable thing, and do them well, and be a policeman, fireman, be a husband, be a father, and retrospectively, he might have been happier if he had just gone along and traveled around, took a part-time job here, part-time job there, but there was a conflict, to be a responsible citizen on the one hand and be free on the other.
The second feature of Mr. White's personality that I think ultimately will prove important is his lack of close friendship of a confidante or pal.

He had a lot of friends of sorts. Mr. White was always very pleasant, congenial, but never let friendships beyond a certain point, and you could never get close to him, never close enough where he would confide in you, that kind of thing, as to something that might be bothering him, and always kept his own counsel, as he put it to me:

"All my life I have been able to handle any problems by myself. If the going got tough, I just dig in harder," although he added, rather grimly, "I guess this time it didn't work. The harder I dug in, the deeper I got. I had been in stress before as a policeman and soldier, but never broke, but I guess this time things got too much for me."

Q In other words, the factor in there, the overall question of Mr. White's personality, mental status, is the fact that he has depression perhaps as many as a half a dozen per year?

A Is the fact that he's had depression, perhaps as many as half a dozen per year, each lasting four to five days often without any apparent trigger.

During these spells he'd become quite withdrawn, quite lethargic, He would retreat to his room. Wouldn't come to the door. Wouldn't answer the phone. Would call in sick. Wouldn't even sleep with his wife; would sleep on the couch outside.

And during these periods he found that he could not cope with people. He would avoid them because he'd find that when he was depressed, any confrontations would cause him to kind of become argumentative. He left people. He didn't know what he was thinking, which was out of character for him. Ordinarily, he was always polite.

There are two other features of these spells of particular interest. These depressive spells.

One, though he has had suicidal thoughts during these periods of despondency, he has never felt remotely homicidal, though he felt resentful and quarrelsome.

Second, whenever he felt things were not going right, he would abandon his usual program of exercise and good nutrition and start gorging himself on junk foods: Twinkies, Coca Cola. [Note: this reference to Twinkies inspires the description "Twinkie defense."]

Mr. White has always been something of an athlete priding himself of being physically fit. But when something would go wrong, he'd hit the high sugar stuff. He'd hit the chocolate, and the more he consumed, the worse he'd feel, and he'd respond to his ever going depression by consuming ever more junk food. The more junk food he consumed, the worse he'd feel. The worse he'd feel, the more he'd gorge himself, and so on, in a vicious circle.
Finally, after several days, he'd pull himself together, maybe start jogging a bit, feel better, stop eating this food, feel better yet, and then get back to his old diet and his old personality, which is generally pretty congenial.

Characteristic of Mr. White, he has never sought out treatment for these episodes.

Q Doctor, with that background, can you tell us some of the psychiatric history you took with regard to the events, the tragedies of November 27th, 1978?

A The fall of 1978 saw the culmination of several intense pressures being brought to bear upon Mr. White and which I feel played a significant role in the genesis of his lethal acts.

First, as you know, in the summer of ’77 he decided to run for public office, primarily, but not entirely, on the issue of his concern about street crime. The vulnerability of the patrolman in the streets and so on. He saw 150 homes a day, day in and day out, seven days a week. He won by a substantial margin. And then he had the joy of his victory taken from him when he was told that he had to give up his job as a fireman because of a potential conflict of interest.

This got him twice. First, other Supervisors had businesses that dealt with the City that the Board of Supervisors have to deal with, and they were required merely to abstain on the votes. Yet, he had to give up his job.

And, second, that was his principal source of income. I think a Supervisor gets about $10,000 a year. And so he had to take a tremendous cut in salary at the time when he was heavily in debt because of his campaign. This hardship was little helped by reports from the press that he really had a fat kitty, that he received all kinds of unreported corporate donations.

Adding to these financial pressures was the necessity of having to find another business. Mr. White decided to open a fast food shop. He had to go heavily into debt, take out a second mortgage on his house, borrow $20,000 to finance the opening of his fast food place.

Another source of continuing pressure on Mr. White, and this is somewhat subtle, is the fact he got married, and he had ambivalence about getting married. He was always extremely cautious when approaching apparently congenial members of the opposite sex. He never could get over his first big romance when he was 16 years of age. He has always been very query of situations where strong feelings are likely to emerge. And, of course, that included marital relationships. Always kept his feelings in check.

And though he feels he has an excellent marriage, even his wife has never been a confident. Even his wife has never really shared in his feelings. When he was really feeling crummy, he would just leave his wife alone and sleep on the couch. Still, he
always met his obligations. He felt he had a duty to his wife, he had a duty to his son, and there was that conflict between duty and his wish to be free and just kind of go about following his feelings.

His most profound and proximate stress, though, was attended to his position as San Francisco Supervisor. Mr. White found City Hall rife of corruption. With the possible exception of Dianne Feinstein and Harvey Milk, the Supervisors seemed to make their judgments, their votes, on the basis of what was good for them, rather than what was good for the City.

He would put in hours wrestling with an issue, working to discern its merits, and then when he would find out the merits of an issue and vote accordingly, he found his colleagues didn't give a damn about his merits, but simply how useful their vote would be.

Supervisor Molinari voted against a ball field tax exemption because he didn't get the right tickets.

Q Doctor, we decided not to mention any names with regard to specific Supervisors and that sort of thing.

MR. NORMAN: I thought it was very interesting.

Q [By Mr. Schmidt] Would you tell us, given the background that you have had, not so much dealing with psychiatric conclusions with regard to the various legal and forensic mental states but, basical-ly, all of these stress factors and any others that you are about to point out, how that fits in with the mental status and examination that you conducted?

A All right, as I say, these are the kinds of stresses that were impinging on Mr. White at the time of the homicide. He turned be-tween wanting to do a good job at City Hall, and yet, feeling that unless he played the game, that all the other Supervisors, who shall remain nameless, played that he's bound to be on the losing end of the votes. And this was a very frustrating thing for him to want to do a job for his constituents and find he was continually defeated. So, finally, he decided that since he couldn't play the game their way, his best bet was simply to quit. So he decided to resign. This deci-sion to resign was aided and abetted by the fact he was being stretched very thin. He was putting in 50 hours a week as Supervisor, 20 hours a week working at his fast food business. . . .

A His wife would be down at the shop and he'd be watching the kid. And his wife would come back home and he'd have to go down to the shop. So they would sort of meet in passing.

He was being portrayed in the press as anti-black and anti-gay, accusations which he gave me lots of data, and would suggest they were simply unfounded.
In addition to attacks by the press there was the threat of literal attacks on the Supervisors by people holding grudges, and he told me a number of Supervisors like himself carried a gun to scheduled meetings. Never any relief from these tensions.

He had no time to play softball. He had no time to jog. Even if he had the time, as he put it to me, "I didn't have the energy."

Lack of activity and all this junk food caused him to gain 20 pounds while he served on the Board.

It was on November 10th, 17 days before the homicides, that he resigned. He didn't tell the Mayor his principal reason, that it was a futile, frustrating experience serving on the Board because of what he perceived to be corruption of his colleagues. He simply addressed himself to the financial aspects, the hardship to his income of holding office. It was not his way to bad mouth people.

When he resigned he immediately felt a sense of relief. A tremendous burden had been lifted from his shoulders, but almost immediately thereafter felt very guilty and depressed that he had let all of his supporters down. He had let down all those people who had worked so hard to put him into office. That he let down the many people who voted for him.

So gradually, these individuals worked him over a little bit and persuaded him to stay on.

On November 14th he saw the Mayor again. Told him he had changed his mind, that he wanted his letter back, and the Mayor said he would. That he would reappoint him. That he gave the Mayor a fair shake, and the Mayor would give him one.

Nancy Bickel, Mr. White's sister, reported that Mr. White was high after this meeting and was very optimistic that he'd once again get his seat back. It didn't turn out that way, though. Apparently the Mayor changed his mind, and through his press agent told the press, "The only one who supports Dan White for reappointment is Dan White."

This was very upsetting to Mr. White. He turned to junk food again for solace. And Nancy Bickel reports that he had her bring him two packages of chocolate cupcakes, eight candy bars and a six-pack of coke. As he began to eat this food he would sit around apathetic and not at all interested in talking with Nancy about the family, which was out of character for Mr. White.

Soon, Mr. White was just sitting in front of the TV. Ordinarily he reads. But now, getting very depressed about the fact he would not be reappointed, he just sat there before the TV, binging on Twinkies. He couldn't sleep. He was tossing and turning on the couch in the living room so he wouldn't disturb his wife on the bed. Virtually no sexual contact at this time. He was dazed, confused, had crying spells, became increasingly ill, and wanted to be left alone.
Mrs. White reports to me that at this time the sexual contact which had been as often as three times a week came to a complete halt. Her husband couldn't sleep. Had no energy. Just wanted to be left alone. Told her, "Don't bother cooking any food for me. I will just munch on these potato chips."

Mr. White tells me he stopped shaving and refused to go out of the house to help aides to rally support to fight the Mayor's apparent perception that there was really no support for his reappointment.

Q Doctor, given these stress factors that you have outlined generally, that have come from family members and from Mr. Dan White dealing not so much with the mental states, or legal issues, can you give us some insight as to the results of your mental status examination? What you would conclude from this data?

A Well, it's important to understand, Mr. Schmidt, that the condition of Mr. White at the time that I saw him in the jail is quite different from the critical mental state which was as the days approached the fatal Monday Mr. White was caught in the tremendous bind.

On the one hand he couldn't muster the energy to deal effectively with the fact of his resignation and getting reappointed. On the other hand, he felt increasing obligations to make one last stand to somehow reach the Mayor, to get to the Mayor, to have it out with him in a verbal way to find out if he wouldn't indeed be reappointed and if not, why not.

He started to receive information that he was-he would not be reappointed from such unlikely sources as the news commentator who called him and said, "Have you any comment to make of the fact that the Mayor is not going to reappoint you?"

This phone call was very stressing to him. He couldn't sleep. Again, it got to be cupcakes, candy bars. He watched the sun come up Monday morning. He couldn't follow any decisions as to what he should do about this.

Finally, at 9:00 o'clock his aide, Denise, called and tried to stimulate his involvement in his own reappointment. He told her, "No." He thought about it again. He said, "Okay. I'll make one last try. I will go and see the Mayor. I have tried to reach him on the phone, but I've never really spoken to him face-to-face. Let me do that."

He decides to go down to City Hall. He shaves and puts on his suit. He sees his gun lying on the table. Ammunition. He simultaneously puts these in his pocket. He goes down to City Hall. Denise picks him up. She is trying to cheer him up. He's sort of half listening. He's feeling anxious about a variety of things, not knowing what the Mayor is going to do. He is worrying about the repercussion of Jonestown, the rumor of a hit squad down City Hall.

Denise reports to me that during this trip down to City Hall he's sitting in the car hyperventilating, breathing very fast, blowing on his hands, struggling to hold back,
agitated, and kept repeating to her, "I just want to talk. Have him tell me to my face why he won't reappoint me. Did he think I can't take it. I am a man. I can take it."

He goes down to City Hall. And I sense that time is short, so let me bridge this by saying that as I believe it has been testified to, he circumvents the metal detector, goes to the side window, waits in the Mayor's room for several minutes, gets an appointment with the Mayor.

The Mayor almost directly tells him, "I am not going to reappoint you." And Mr. White responds to this by feeling stunned. Revolving around in his head is the thought, "I'm not going to get the job back. People had counted on me. What am I going to do?" He tried to get the Mayor to share with him the basis for his not reappointing him.

He argued with the Mayor. "I'm honest, I work hard, I'm not aligned with any special interest groups, why would you not reappoint me?"

But the Mayor just repeated his previous statement, "I am not going to reappoint you, Dan." Several times more Mr. White asked the Mayor for his reasons and each time received none.

Finally, he fell silent. He was deflated, limp, lethargic. He kind of sat in his chair and let reality sink in. He tells me that, "I felt my face get kind of flushed. My head was pounding, my face was hot."

The Mayor put his arm around him and led him into a small adjacent room, saying, "Let's have a drink." He and Dan sat on a small couch while he poured them both an alcoholic beverage. He then asked, "What are you going to do now, Dan? Can you get back into the Fire Department?"

Mr. White was not inclined to engage at this point in any kind of personal discussion with the Mayor. He got up from the couch prepared to leave, feeling increasingly anxious, and he started to pace, and the Mayor asked him, "What about your family? Can your wife get her job back? What's going to happen to them now?"

Somehow this inquiry directed to his family struck a nerve. Mr. White felt totally helpless, directionless. The Mayor's voice started to fade out and Mr. White felt, "As if I were in a dream." Mr. White started to go out of the room, and then inexplicably turned around and like a reflex drew his revolver.

The Mayor started to rise out of his chair. Mr. White started shooting without a word. He had no idea how many shots he fired. The similar event occurred a few moments later in Supervisor Milk's office. He asked to speak with him. Mr. Milk came into Mr. White's office. Mr. White asked Mr. Milk, "Why is it you are trying to cheat me out of my job?"
At that point, it seemed to Mr. White that Mr. Milk was smirking at him indifferently.
As Mr. Milk appeared to move to the door, again reflexively, Mr. White pulled his revolver and shot Mr. Milk. He tells me that he was aware that he engaged in a lethal act, but tells me he gave no thought to his wrongfulness. As he put it to me, "I had no chance to even think about it."

He remembers being shocked by the sound of the gun going off the second time like a cannon. He remembers running out of the building, driving, I think, to church, making arrangements by phone to meet his wife, and then going from the church to the Police Department.

Q Doctor, you have mentioned this ingestion of sugar and sweets and that sort of thing. There are certain theories with regard to sugar and sweets and the ingestion thereof, and I'd like to just touch on that briefly with the Jury.

Does that have any significance, or could it possibly have any significance?

A Well, I think, Mr. Schmidt, there are probably three factors that are significant.

First, there is a substantial body of evidence that in susceptible individuals large quantities of what we call junk food, high sugar content food with lots of preservatives, can precipitate anti-social and even violent behavior.

There have been some studies, for example, where they have taken so-called career criminals and taken them off all their junk food and put them on milk and meat and potatoes, and their criminal records immediately evaporate.

There have been a lot of studies in which individuals who are susceptible to these noxious stimuli, when given these noxious stimuli will undergo complete change and engage in behavior which they normally would not. That's No.1.

No.2, I think that all the pressures impinging on Mr. White for months, increasing in intensity in the days prior to the shooting, made it very difficult for him to think very much about what he was about. I think he was operating largely in an unthinking emotional way. Physically exhausted. Feeling tremendous pressure to begin to do the right thing and, yet rapidly running out of the energy and the emotional needs available to do it.

I think he began to focus irrationally on being reappointed as the savior. That's the solution. If only I am reappointed, then all these pressures will be off of me. And I think, realistically, were he reappointed, he'd be right back where he was before.

But at least at the time that the Mayor and Supervisor Milk had been shot, he had come to see reappointment as his last salvation, and I think when the Mayor said, "No, you are not going to be reappointed," pulled the rug out from under him.
The third factor I think is that by the day of the shooting all of these pressures on him seemed to reside within, or be personified by Mayor Moscone and then Supervisor Milk. They seemed to represent in the flesh all the things that were impinging upon.

And I would suspect, that if it were not for that, and if it were not for all the tremendous pressures on him the weeks prior to the shooting, and perhaps if it were not for the ingestion of this aggravating factor, this junk food, with all three factors, did not impinge upon him at the same time, I would suspect that these homicides would not have taken place.

Q Now, Doctor, we haven't touched upon forensic terms and premeditation and deliberation, and those terms, and the thrust of your testimony is more toward the pressures and the stress that were on Mr. White at the time.

But just given that alone, do you feel that on November 27th, 1978 he had the capacity for premeditation and deliberation as you know it?

A I can't give you a definite yes or no to that question, Mr. Schmidt.

I feel that all of these pressures sufficiently discombobulated him that he didn't have his wits about him. And I think that these factors would play a substantial part in impairing his ability to premeditate.

Whether or not it would totally wipe it out, whether it would totally negate his ability to premeditate so he wouldn't have any capacity to do so, that judgment I think must depend not only on the psychiatric data I have presented which, I think, is very important, but on other kinds of testimony to which I am not likely to be party to.

Q Addressing the same question with regard to the concept of malice or malice aforethought. We haven't addressed that here, and that is not the thrust of your testimony. But can you give an opinion on that, whether or not he had the capacity to harbor malice or malice aforethought in that state of mind?

A Based on the information that I have, Mr. Schmidt, his capacity to harbor malice would be significantly affected by these three powerful pressures upon him.

But it's not for me to say how much weight you want to give that relative to other information that I am sure the Jury will have.

Q I understand. Lastly, Doctor, you have indicated in outlining the material that you went through briefly here, that there were certain provocative episodes with regard to the reappointment. Within your expertise, was that type of provocation the type of provocation that would arouse some passion in a person, not necessarily arouse some passion in the ordinary reasonable person, so that he would kill, but simply arouse that passion?
A Yes. I think that any man, even one not carrying all the special burdens that Mr. White carried, I think that any man, even one for whom reappointment did not hold that very special significance that it held for Mr. White, would be aroused to tremendous emotions and tremendous passion, emotion and passion which might serve to short circuit some of the mental processes necessary for premeditation, malice, intent and so on.

And certainly in the case of Mr. White, I think it's common sense that these pressures would have a profound effect upon him and indeed move him to an unaccustomed state of passion.

MR. SCHMIDT: I have nothing further. Thank you, sir.

CROSS-EXAMINATION by Mr. Norman:

Q Dr. Blinder, you had three interviews with the accused?

A Yes, sir.

Q Now, those interviews were April 17, 18 and 21st each respectively. How long were the interviews each?

A I don't remember. I would say I spent about six, seven hours altogether with the man.

Q When you saw him did you find, Doctor, that his memory was intact?

A Yes.

Q He seemed to know and understand the events which had occurred as they had been reported to you?

A Just about all of them except for the actual—there was some lack of detail around the actual shootings and understanding of the reason for the shootings.

But in every other way his memory was uncommonly good. . . .

Q Did you, Doctor, find that he had ever suffered from any previous mental illness that was reported?

A Well, he certainly never had been treated for a mental illness. There is much data to suggest a diagnosis of a manic depressive syndrome depressive type dating back to adolescence.

Q This data which would or could suggest this, was it such to you, Doctor, that you could say that he suffered from an articulable mental illness?

A I have to say I'm not sure. . . .
Q Did he seem to be straight forward with you when he was talking with you? That is, not holding back certain things?

A That's right. I felt he was absolutely candid.

Q Did he seem, Doctor Blinder, to express any remorse?

A Yes. He told me that he was particularly upset about the Moscone family. He remembered what it was like to lose his father, and that was, of all the terrible things that he did, that was perhaps the worst. Deprived this family of their winner and their father.

Q Did he tell you at any time that he felt sorry that George Moscone had lost his life as a result of his act?

A I don't think he said that specifically, no.

Q Doctor, in a psychiatric examination, particularly as it relates to a criminal case, that's a question that you are interested in, isn't it?

A Yes.

Q Did you ask that question?

A Yes, I asked him how he felt about what he had done, and he said he felt badly, particularly and then what I said before. . . .

Q -particular family. I take it, then, that he did not include George Moscone in that sorrow?

A Not that I can recall.

Q With respect to Harvey Milk, did you ask him if he felt sorry that Harvey Milk was dead and that he had caused it?

A No. I did not specifically ask that question.

Q Did he, if you recall, state to you that he felt sorry for Harvey Milk that he was dead as a result of his act?

A No....

Q Now, given that he felt this to be a frustrating experience, and he felt that the process of government was immoral did he have any attitudes respective of George Moscone and his honesty or dishonesty, other character flaws that may have existed?
A Yes. He felt—he seemed somehow to be separate from the Mayor. That most of his animosity as expressed to me about the venality of the politician was for the supervisors with the exception of Feinstein, Milk and, apparently, the Mayor.

His attitudes toward the Mayor was: George is an okay guy. George is doing a good job.

Q Did his attitude sometime change prior to November 27th regarding George Moscone?

A Not that I can discern. I really, you know, leaned a little bit on him for that. The closest thing that I can come to the negative change was Moscone's seeming to go back on his word about the issue of the reappointment. But there is really no history of animosity or venality in Mr. White's eyes on Mr. Moscone's part. . . .

Q Doctor, about this conflict between being more or less of a free spirit and on your own versus acting out a life role which is consistent with the, perhaps, expectations of responsible society. . . .don't all of us more or less experience that?

A Yes. Some more than others.

Q Isn't it something that's commonly shared by a great many people perhaps in daydreams, but that they'd like to be off doing something, well, other than the daily routine in which most of us have to live out?

A Yes. . . .

Q There was a time when George Moscone had made a public announcement, approximately four or five days following the tendering the resignation, that George Moscone had publically promised to appoint Mr. Daniel White to the Board of Supervisors.

Did Mr. White, in your opinion, regard that as a promise?

A Yes. . . .

Q Would the breaking of such a promise, Doctor, given his background again, be such as would bring about and instill anger. . . .

A Yes, I think it brought about anger. I think it brought about great puzzlement since, as you put it, Mr. White tends to see things in black and white, and a promise is a promise, and this seemed to be contradictory to something that the Mayor had told him to his face. So how can this be?

You know, how can you compromise A with Z? It's either A or Z.

I think, finally, it was a recapitulation of Mr. White's often feel-ing that he never had support. Even from his earliest childhood that he-you always have to scramble for it. That
it isn't generously forthcoming. That this—just when you have done well, you can be let down. You will be criticized. You are not going to be supported.

I think it all brought all of that home to him in a highly emotional way.

Q Now, were you favored with the circumstance that on or about the 24th day of November, that was a Friday preceding these killings, that a newspaper reporter for the Chronicle Newspaper had seen Mr. White at a time shortly following a court proceeding which involved the application for a restraining order against the Mayor, to prevent the Mayor from appointing anybody other than Daniel White?

Were you aware that there was some circumstance or occurrences that I have suggested right now?

A Yes, I know about the hearing. I don't know about the news reporter.

Q Well, if I told you that Mr. White was approached by this certain newspaper reporter, who is Mr. Maitland Zane of the Chronicle, and he was asked about the success, or likelihood of success of the restraining order which had been applied for in the Superior Court, and Mr. White replied to him, among other things, "Well, the gloves are off now," Doctor, would that statement ascribed to Mr. White have any significance to you in the context of the other circumstances which you know have occurred here?

A Well, I think the issue is joined. I think that I don't know exactly what was in Mr. White's mind at the time, but it would suggest to me, at least, that he was going to fight for what he believed to be right. He wanted to be reappointed, and that's the only right just thing....

Q On the next morning, which was November the 27th, he received a couple of telephone calls from his aide, whom you had interviewed. In your opinion, did you take into consideration what the aide had reported to Mr. White in those telephone calls? . . .

A Yes. . . .

Q If it were a fact that she had reported to him that the Mayor was observed on that particular morning of November 27th to a drive toward City Hall, and when he came close to where he usually parks his automobile, upon observing the placard carrying supporters of Daniel White then swerved away or, to use some words which were ascribed to her at one time, ditched us, and went somewhere else, do you think the report of that circumstance could have brought about or increased any anger which he may have had?

A I do.

Q And if it were a fact that it was also reported to Mr. White by his aide that the supporters who had a petition which had approx-imately 11 hundred signatures upon it, a
rather substantial number, had attempted to see the Mayor personally to deliver these petitions and were told that the Mayor was not in, when, in fact they knew that he was in, would that report having been given to Mr. White under all other circumstances have brought about or increased any anger which he may have had at that time?

A Yes.

Q With respect to Mr. Harvey Milk, I think you reported that Mr. White had told you that he, well, he did not dislike him. Did he report that he liked him?

A He admired him are the words used to me. He was a man, who, like Mr. White, stood up for what he believed in.

He represented the underdog of being gay. He was something of the odd man out, a position with which Mr. White could identify.

He went to bat for him on at least one occasion, securing him committee appointments. They had disagreements, too. But it seemed to me that Mr. Milk was one of the more reliable Supervisors in Mr. White's view.

Q Did Mr. White ever report to you in any of the three inter-views, or did you learn from any other source, if that's the case, that he, Mr. White, felt that Harvey Milk was working against him?

A Yes. Around the issue of reappointment? Yes. . . .

Q What did he tell you in that connection?

A Just that. That Milk was close to the Mayor, and that a lot of the opposition in City Hall that had materialized to his being reappointed came from Milk as well as from Mr. Moscone.

Q Doctor Blinder, was the circumstance that Mr. White believed in that Harvey Milk was working against his appointment by the Mayor one which could unexpectedly have brought about anger in Mr. White's mind toward Mr. Milk?

A Yes.

Q Given that circumstance, if it were a fact, that on November 27th Mr. White's aide in one of those telephone calls made to Mr. White, reported that Mr. Milk was seen coming out of the Mayor's office at about the same time when it had been reported to the sup-porters of Mr. White that the Mayor wasn't even in his office at that time, would that circumstance have contributed to any anger felt by Mr. White?

A I believe so. . . .
Q Doctor, did he tell you how often he carried a gun on his person previous to November the 27th?

A Yes.

Q What did he tell you in that regard?

A Fairly often for scheduled meetings he would carry a gun.

Q Did you review his statement which he gave to the police on November the 27th?

A Yes, I did.

Q Do you recall in that statement when he was asked when the last time was that he carried his gun prior to November 27th, that he said he guessed that it was a few months ago, meaning prior to the 27th?

A No, I do not remember that. But now that you read it to me, it does come back.

Q Doctor, there was not, as you understood it, any scheduled meeting of the Board of Supervisors for him to attend on November 27th, was there?

A No.

Q Now, he, as you understood it, is this correct, he took his .38 revolver with him?

A Yes.

Q He took extra cartridges also with him, didn't he?

A Yes, he did.

Q Did you ask him why he took extra cartridges with him that day?

A Well, not in so many words. Not knowing that much about firearms, I don't really know the difference between the right number and the extra number, if you get my drift.

Q All right. Doctor, if I told you that the weapon he took with him was a five-shot .38 special--

A Yes, I know that. I know that he had more bullets then the ones in the gun. . . .

Q And when you use up those five, well, you have to reload again if it becomes necessary.
A Right. But it never occurred to me, you see, to think there was anything unusual about taking more bullets along with you if you are carrying a loaded gun. Perhaps it is, but I didn't think in those terms.

Whenever I see a policeman he has a loaded gun and a whole bunch of bullets. So I never thought to ask him if he took any extra ones.

Q Doctor Blinder, when he left his home on the morning of November 27th, at that time did he have the capacity, in your opinion, to form the intent to kill George Moscone?

A Possibly.

Q He had the capacity at that time to form the intent to kill Harvey Milk, given all the other circumstances leading up to that time?

A Possibly.

I said early today, when we get to this question of intent as defined legally, we get into an area that certainly relies heavily on psychiatric data and state of mind, but on other factors as well to which I may not be party. But I think it is possible that he had the capacity at that point to form intent.

Q Well, Doctor, at that particular time did you feel that he had that capacity to reason out the following, perhaps it's an oversimplification, but: I am going to kill George Moscone for what he has done?

A Yes, I think it would be possible for him to think that.

Q Do you think that it was possible at that time, and that he had the capacity to reason: I am going to kill Harvey Milk for what he has done to me?

A Yes, I think possibly that he would have the capacity to exercise that particular logic. I don't think that he would. I think that's at war with the way Mr. White is put together. But the mere fact somebody wouldn't do something doesn't necessarily mean that he could not.

And, thus, I say to you, yes, it was possible that he could go through that reasoning process.

Q Doctor, when you say that you think that it's possibly at war with what he thought, it's difficult to know what he thought, or to look into a person's mind to know just what they are thinking at a particular juncture, isn't it?

A It's impossible to know. The best you can do is know how a person usually thinks, and then apply that information to a particular moment. . . .
Q About the gun and a hassle over that.

Doctor, is it possible that he could have reasoned that if he went through the door with the metal detector, the gun, which was his weapon of offense, might in all likelihood have been taken away from him?

A Yes, it's possible.

Q When he went up to the office of George Moscone and entered, then saw George Moscone and was told that he was not going to be appointed to the Board of Supervisors, do you feel, Doctor, that that was a matter of great disappointment to him?

A That's an understatement.

Q It was a matter of monumental disappointment to him, wasn't it?

A Yes. . . .

Q When he and the Mayor went into the room adjacent to the Mayor's office where the Mayor offered him a drink, then made some inquiry, according to him, about his plight of his family, Doctor, do you feel that at that time he was capable of knowing that if he pointed a gun at the Mayor and that if he discharged it that in all likelihood would kill the Mayor?

A Yes, and no. I think he certainly walked into that office in possession of that basic information. But knowing something is more than simply possessing a piece of information. You have to have it accessible. It has to be part of your awareness.

It has to be a meaningful comprehension of that.

Without that it's possible to know something and not know it. Just as you might meet somebody who you know very well. You know their name.

You said, "Hi, Sam," half a dozen times, but suddenly at that moment in that party you can't think of his name. How can you not know the name of somebody whose name you know?

And I think at this point there is a lot of data that suggests that that knowledge ceased to be relevant. It really wasn't a working kind of knowledge.

It's just as a student who has boned-up very carefully for an examination finds that under the moment of the exam and the emotion of that examination all that knowledge which he had so securely the night before has fled.

You know but you don't know.
Q Doctor, isn't it kind of basic that the point of a gun which is loaded at another human being, and the discharge of it, is likely to bring about death or in the very least great bodily injury?

A Yes, that's certainly basic. Just as basic as the name of a friend who for a moment you do not have access to because you are anxious, or you are preoccupied with something else. It is possible to lose your grip on basic information if you are sufficiently emotionally discombobulated.

Q What you are saying is it is possible then that he did not at that time know that it would be likely to kill George Moscone?

A That's right. I am saying it's possible that he did not know that in the sense that I'm sure he knew it ten or 15 minutes before that confrontation. . . .

Q On the other hand, is it equally possible, Dr. Blinder, that he did know that the pointing of that loaded gun at the body of George Moscone and the discharge of that gun would likely bring about death or, at least, great bodily injury to George Moscone?

A Certainly, I think it's possible.

Whether it is equally possible depends upon a number of things, of which I am asked only a few. And I present it to the best of my ability those psychiatric aspects.

But which was the most likely, I must defer to others on that score.

Q You would defer to the Jury?

A Yes. . . .I think that's the critical issue here, and I think my testimony will be useful in the resolution of that issue, but not controlling.

Q Doctor, you are aware that, are you not, that after George Moscone had been shot twice in the body and fell to the floor, that the Defendant discharged this same .38 special weapon into his head at close range, to be exact, not more than one foot on one shot and not more than 18 inches on the second shot?

A Yes.

Q Doctor, at that particular time, is that kind of behavior consistent with anger?

A Yes. . . .

Q Did he tell you where he went when he left George Moscone's office?

A Yes, he did.
He said he rushed down the hall. He had only one thought, getting out of the building.

For a moment he thought he saw Harvey Milk's aide. He didn't. But this misperception put Supervisor Milk on his mind. The next thing he knows, he's going through the door to the Supervisor's offices with Dianne Feinstein's aide. He sees Harvey Milk in his office.

He tells him, "Harvey, can I talk to you?" And joins Mr. Milk in his own office.

Q Doctor, would it in any way change your opinion with respect to the shooting of Harvey Milk if it were a fact that his aide testified that when she picked him up and or during the time that they rode to the City Hall he said he would see-his going to see Harvey Milk?

A No. I think it's entirely possible that he planned a meeting with Moscone and Milk.

What, though, occurred after he had shot the Mayor I think would have very little to do with whatever Mr. White might have intended on that ride to City Hall with Denise Apcar.

I think it likely-I think it reasonable that he intended to find out from the Mayor's lips why this was happening. I think it's entirely possible he was going to have a confrontation with Milk to confront his adversary instead of it always having been done to him when he's at his place.

But I think eventually it overtook him.

I think he lost control. And we have a considerable discrepancy between what he may have had in his mind as he rode to City Hall and what actually occurred.

Q Did he tell you where he reloaded his weapon?

A No.

Q You had acquainted yourself with his statement given the police on November the 27th, shortly after the shootings occurred, hadn't you?

A Yes.

Q Do you recall his having been asked in the statement: "Where did you reload?"

A Yes.

Q And his response being: "I reloaded in my office when--when I was-I couldn't out in the hall?"

A Yes.
Q Would you understand that to be that he reloaded his weapon in his vacated office of the Board of Supervisors?

A Yes.

Q Well, Doctor, would you presume he went in to his office first, reloaded his gun before he spoke to Harvey Milk?

A Yes.

Q Doctor, when he asked Harvey Milk in the office: Why are you working against me--

A Yes.

Q (Continuing:)-would that indicate to you, Doctor that he was very concerned that Mr. Milk had been working against him?

A Yes.

Q Doctor, is it likely that he was angry at Mr. Milk at that time?

A Yes.

Q When asked Mr. Milk: Why are you trying to cheat me out of my job, do you think that he genuinely believed that Mr. Milk was trying to cheat him out of his job?

A Yes.

Q And that certainly would have brought about anger?

A Sure.

Q Doctor, do you feel that the anger brought about was sufficient to bring him in to action to the extent that he would want to hurt or visit some injury upon Mr. Milk?

A Not consciously.

Obviously, if he had ample opportunity to do that, why go through this dialogue, why go through this discussion, if you reached a point of homicidal decision-presumably I take the gun and shoot it, but this was not-was in his mind, he really wanted to have some understanding as to what was going on, but because of his mental state, he could not process this information in a constructive way with lethal consequences.

I could say the same thing of the incident with the Mayor.
You don't sit down and have a drink with a man that you intend to kill.

I don't think he went in there to kill the Mayor, but the event and the onset of emotion came over him for the reasons I expressed earlier this afternoon.

Q Doctor, he shot Harvey Milk three times in the body; is that your understanding?

A Yes, it is.

Q Then after Harvey Milk was disabled, fell to the floor, he shot him twice in the back of the head?

A Yes.

Q Are those acts, Doctor, that are consistent with anger?

A Yes, they are.

Q Are those acts consistent with the judgmental decision?

A Could you say what you mean by "judgmental decision?"

Q Could he say or reason to himself, no matter how brief it may be: Shall I do this, shoot him, or not shoot him?

A Okay, I think it's not inconsistent that there is no reason why the man could not go through that judgment process and arrive at a decision, to empty his gun.

I think it's more likely that the emptying of a gun and discharging of bullets had long passed the point of necessity, which reflects emotion, and passion rather than calm decision.

I think if I were sufficiently distressed by cutting off your cross-examination to dispose of you right now, I would aim a gun at your heart, and that would be the end of it.

If I sit there emptying all five bullets, I think I am no longer acting out of calm reason or judgment, but out of passion and a matter of reflex.

Q Doctor, I hope that my cross-examination hasn't been that pressing on you.

(Laughter in the courtroom.)

THE WITNESS: This is purely a hypothetical example.

MR. NORMAN: Q I think I understand.
In regard to the question as to whether he could premeditate and deliberate, I think you said that you could not give a definite "Yes" or definite "No?"

A That is correct.

Q Doctor, what do you understand deliberation and premeditation to mean? . . .

THE WITNESS: I remember the question. I was just going to say: In the interest of time, that a working definition that I have is the rationale of deliberating is weighing pros and cons, the considered judgment that precedes an act.

MR. NORMAN: Q That, of course, can ripen in a very short time with some people, can't it?

A Yes.

Q It's not really measured in any units of time, definitely, is it?

A That is my understanding.

That really goes to the quality of process rather than its duration.

Q Did you say that with respect to the ability to form that quality of thought, which is malice, in our law, that you couldn't say "Yes" or "No?"

A I couldn't give you a conclusionary response, but with malice, as to premeditation, the psychiatric information that I have goes towards great impairment of the mental processes, to weighing, to consider, and deliberation, and to weigh the requirement of law, and your relationship to that law, as is necessary in for the formation of malice....

Q Doctor, can we say that in your opinion it's possible that he could have premeditated and deliberated and formed malice?

A Anything is possible, Mr. Norman.

If you wish me to speculate, I would say, "Yes," it's possible.

I think, however, that at the time of these shootings there is much psychiatric data, at least, to indicate to me, significant impairment of the mental processes necessary for those words: Premeditation, formation of malice, to have a meaning.

Q Doctor, consistent with your statement initially and your-in your direct examination about the abuses of psychiatric testimony--

A Yes.
Q (Continuing:)—do you agree that it's better to leave that question of the ability to form malice and to deliberate, premeditate, to the jury?

A Wholeheartedly.

MR. NORMAN: Thank you very much, doctor.

REDIRECT EXAMINATION by Mr. Schmidt:

Q Doctor, with regard to the remorse issue, you testified, I believe, that when you asked him how he felt about this entire incident, the shootings, his response was that he felt very badly?

A Yes. . . .

Q That was an all-encompassing response, that he felt very badly?

A Yes.

Q Then he specifically responded to your question and said that he felt particularly bad also about the children of Mayor Moscone?

A Yes. . . .

Q Just so I can understand: With regard to premeditation, deliberation, malice, all these requisite intents, basically for that, you would have to, in laymen's terms, be, not have your wits about you; is that a fair statement?

A Yes.

Q And would you conclude at this time that these shootings, according to Dan White, had his wits about him?

A Probably not.

Q Would you categorize the shootings as deliberate and thought-out shootings, or would you characterize them more as a response to an emotional upheaval?

A Decidedly an emotional—I see these homicides far more reflexive than reflective.

They sprung from feelings, they sprung from motor impulses rather than from rational, conscious thought, and in fact, by any application of rational, conscious thought, these shootings don't make sense.
He wanted to see him reappointed, and with that thrust of anger in the Mayor's office, how could he possibly hope to be reappointed after he slew the man who might have reappointed him, and slew another associate.

So, logically, rationally, it makes no sense, and emotionally, perhaps, it makes some psychiatric sense.

Q With regard to the reloading, he did not specifically, as I recall your testimony, tell you about the reloading?

A He did not.

Q If I suggested to you any statement to the police, taken in context, after he said he reloaded in his office, and the next word was: Then, did you leave the Mayor's office at that time, and he said, "Yes," would that bring him the possibility that he had reloaded in the Mayor's office?

A Yes.

Q Would it be reasonable to you to assume that one could reload a firearm in the presence of another person without the other person becoming alarmed?

A No.

Q Now, you mentioned that you were fairly familiar with the events of the preceding week.

A Yes. . . .

Q And you indicated that those facts, as you know them, would at that time have evoked anger, rage, some emotion, at any rate?

A I do.

Q Is anger or rage, emotion, does that fog one's reasoning power?

A Yes. . . .

Q You mentioned also something about the People's Temple Hit Squad.

Did Dan White mention something about the People's Temple Hit Squad, and if so, - --

A That he had heard rumors that the Board of Supervisors were potential targets, and that was one of the things that flashed through his mind as he saw his gun and made a decision to take it with him on that fateful day.
Q Doctor, lastly, looking back now, we know that there were no hit squads operating in San Francisco after the second week, I believe, in November, when all the people died in Guyana?

A Yes.

Q Recalling that it would be reasonable to assume, given that there were 900 dead people in Guyana, the possibility that there might be hit squads from the People's Temple Church?

A I think that alone would make it possible. I think when you add to the fact that-I know certainly that certain Supervisors have been threatened over the years, it's a reasonable assumption, I think, that a man who is accustomed to carrying a gun, a policeman, would so consider that sufficient justification to take one along.

MR. SCHMIDT: Nothing further.

RECROSS-EXAMINATION by Mr. Norman:

Q Dr. Blinder, you had told counsel and the jury that rationally it didn't make any sense to kill Mr. Harvey Milk, given the circumstances that George Moscone being the person with the appointing power was now dead?

A Right. . .

Q Doctor, given that circumstance, isn't it possible that when Mr. White went to Mr. Milk's office, then went over to his own office, and asked him:

Why are you trying to cheat me out of my job, that he was feeling the emotion of revenge?

A . . . Yes, I think it's possible.

Q Can a person, Doctor, be angry and still premeditate?

A Yes.

Q Can he still deliberate?

A Yes.

Q Can he still form malice?

A Yes, he can.

MR. NORMAN: Thank you.
REDIRECT EXAMINATION by Mr. Schmidt:

Q But Doctor, anything is possible, and certainly one can be angry and still have the ability to premeditate?

A Yes.

Q Given all the information that you have, do you believe that this, in fact, was a premeditated slaying?

MR. NORMAN: Objection, as asking for impermissible opinion.

THE COURT: Sustained.

MR. SCHMIDT: Q Let me ask you this: With regard to anger, if anger is engendered, would that cause, that reasoning process required for deliberation to be thought?

MR. NORMAN: Objection, as being asked and answered.

THE COURT: Overruled.

A lot of questions have been asked and answered for the past two hours, and let's have the last one.

THE WITNESS: Yes, the point, though, is, Mr. Schmidt, whether or not that anger reaches a degree sufficient to cause a man to lose control, and if he is out of control, then the quality of his premeditation and everything else requiring rational thought is impaired as to fall below the threshold of his responsibility, and in my judgment, the feelings that were seething through this man at the time, anger included, feelings of lack of support, feelings that he had no place to go, that he had no options, that he was letting everybody down, all these things came to a head, that he had been wrestling with for months, to the point where he probably lost control, and once a man loses control, I don't know how you can talk in terms of premeditation.

MR. SCHMIDT: I have nothing further.
**Testimony of Dr. Roland Levy**
(prosecution psychiatrist)

**DIRECT EXAMINATION by Mr. Norman:**

Q Dr. Levy, what do these court appointments embrace that you receive?

A They embrace a variety of appointments. They have to do with determining an individual's competence to stand trial, and an individual's responsibility in relationship to certain type of criminal offenses. They also include working with Public Defenders and De-fense Attorneys around the area of diminished responsibility. They involve determining whether an individual is a narcotic addict or mentally disordered sex offender. Those are the major ones.

Q Doctor, in your career approximately how many court appointments would you estimate that you've received to make mental examinations and evaluations?

A I would estimate about 6,000.

Q Doctor, in addition to the court appointments that you have had, over your many years experience you've certainly had occasion to make mental examinations and evaluations, haven't you?

A Yes.

Q Doctor, could you in any way estimate how many persons you've seen in your career and made mental examinations and evaluations thereupon based upon your background and your education and your training and your skill and experience?

A Oh, it must be 50 thousand or more.

When I was in the service it would be something like 20 a day, and over the last ten years now the unit I'm on we admit between 30 and 50 people a month.

Q When you say the unit that you are on, are you referring to your connection with the Langely-Porter Neuropsychiatric Clinic?

A Yes.

Q Doctor, have you had occasion to testify in courts of law before this time and give your opinions with respect to persons' mental states and what your evaluations of the person's mental states may be?

A Yes, I have.
Q Doctor, could you venture an estimate how many times you have done that approximately?

A Probably 400 to 500 times. . . .

Q Given most cases, your appointment is by the Court; do you testify necessarily for one side or for the other?

A I would say over the years it probably would be about equal.

Q Doctor, have you testified in cases wherein I appeared as the prosecutor?
A Yes, I have.

Q Approximately how many times have you testified in that connection?

A Oh, maybe six or seven times. . . .

Q Would you estimate or do you have any estimate about how many times you have testified for the defense wherein I was the prosecutor?

A I would estimate over half the time.

Q Doctor, on or about the 27th day of November, last year, did you have occasion to be called upon by somebody to interview the defendant in this case, Mr. Daniel White? . . .

A Well, I was not in the office when the first calls came, which I believe were around noon time, and the calls were from the District Attorney's Office, yourself, and a couple of others from the office, and I was asked if I could come in and interview Mr. White. . . .

Q Tell the members of the jury what was explained to you?

A The purpose was to carry out a psychiatric assessment as close to the time of the arrest as possible, to get an assessment as to evidence of mental illness or lack of such, and to assess what might come up at a later time in terms of a psychiatric defense.

Q Doctor, psychiatric defenses are rather common in cases where the charge is murder?

A They are quite common.

Q Doctor, is there any opinion based upon your experience of many years, any value or any significant value of having a psychiatric examination or consultation of a subject near the time to the occurrence?

A It would. In my opinion, the closest you can get to the time of occurrence, the better you can make that particular assessment as to the mental status which existed at the time of the offense.
Q Doctor, would you elaborate upon that a little bit?

A Yes, as it's rare that I have had the chance to make an assessment that close to the time, and usually it's a matter of weeks, if not months later, and when you see a person early the tendency is for a secondary type of fabrication not to develop, and that you have a chance to see a more pure form of what the individual's status is.

When I have been unable to see an individual that closely to the time of the offense, then it requires having to talk or get information from other people about what they observed, and I think it's always better when you can have the observation firsthand, but most of the time it's necessary to rely on what other people tell you.

Q Doctor, oftentimes is it not a fact that some people tend to rationalize certain types of behavior, and as time goes by, the accuracy of that type of behavior tends to diminish, doesn't it?

A It's a normal state of events, yes.

Q Doctor, did you have occasion at some time on the 27th of November, to obtain some information, some of the background concerning the events having taken place earlier that day, at approximately 11:00 o'clock a.m.?

A Yes, I did.

Q Would you tell the members of the jury what materials that was which you were furnished?

A I was furnished with the audio tape that was made by Mr. White, and I also talked with you about the events.

Q Could you tell us approximately what time of the day on November 27th this was?

A We arrived up at the county jail around 7:00 p.m.

Q Where was it, and under what circumstances was it that you met Mr. White?

A When he was brought out into one of the interview rooms and met briefly with his attorneys, and then they came out, and I went in.

I was introduced to him, at which point they left, and the two of us then stayed in the room alone. I told him who I was, and who I was representing, the reason I was there, and asked him what his attorney had told him.
I then proceeded to read the Miranda rights warning that had been provided to me, and asked him if he understood and on the basis of understanding this, he wished to proceed and talk with me.

Q Doctor, when you had introduced yourself to him, you had this brief conversation, can you relate to us, the best you can recall, what the initial conversation consisted of, and embraced?

A The initial conversation consisted in my asking him or telling him that I wanted some kind of background of what had been going on over the several days preceding the incident, and we more or less Just arbitrarily chose the preceding Thursday as the point of starting.

Q That preceding Thursday would have been Thanksgiving Day?

A Yes.

Q At that time, initially, what were your impressions of Mr. White, that is, did he appear to be alert, did he appear to be oriented to time and place, what he was there for?

A Yes, he was completely oriented. His intellectual functions were quite intact.

Q Did you perceive anything that would suggest to you, initial-ly, that there was any mental disorder existing?

A No, there was nothing at all suggesting mental disorder.

Q Did he appear to maintain, for example, good eye contact?

A Yes, he did. . .

Q Was there anything, Doctor, for example, from a handshake, that you might gather, which is suggestive of any symptomatology of the subject?

A Yes, you could assess a level of anxiety, by an individual having a cold, clammy hand. You could determine severe depression or disability by a very weak handshake. Some individuals who tend to be aggressive and authoritarian try to break your hand. There are various things that might be gotten from a handshake.

Q In regards to the handshake there, was there anything that suggested to you any possibility at that time of depression?

A No.

Q Doctor, have you seen persons who are depressed before?
A Quite frequently.

Q It's a common occurrence, isn't it?

A Yes, it is.

Q Doctor, was there anything that suggested to you any anxiety?

A No, he didn't display any anxiety.

Q Would you tell the members of the jury how long that inter-view took all together?

A It was somewhat beyond two hours, I think less than two-and-a-half hours.

Q Would you please favor us, Dr. Levy, if you can, with the details of the interview had between you and Mr. Daniel White? . . .

A Well, as I said, we began with Thanksgiving Day, as to what had transpired, and he told me that on that particular day he had worked around the house and then he and his wife and his son had gone to the sister's home in South San Francisco for Thanksgiving dinner, and he was there from about 3:00 until 7:00 in the afternoon, and when they left, they went to Pacifica, where he visited his mother, and then he got home around 9:00 that night. He stated that he slept rather poorly that particular night.

The next morning he, which would be the Friday morning, he rose early, because his wife was leaving, and she left at 5:30 in the morning, and at which point he returned to bed and then got up again around 7:00 in the morning. He took his son to the babysitter and then he visited his attorney, and that was about 9:30 in the morning. He said that he was filing a restraining order to prevent the Mayor from appointing someone to the office that he had vacated, and that was the purpose of his consulting his attorney. He said that after meeting with the attorney, he and his administrative aide and another individual went out to lunch, around noontime, then they went back to the attorney's office shortly after 1:00 in the afternoon, and then they proceeded to City Hall, where they had a hearing in Judge Mayer's chamber. He said he was in the court from about 3:30 p.m. until about 5:00 p.m., and he reported the discussions that went on, how a technicality was being raised relating to the letter of resignation, the way it was submitted, and it was such that it should not have been considered legal, and in any way binding. He said the judge, however, made the ruling that his resignation was, indeed, binding, but that he also did set a court hearing, which would be held the following Friday, and it was his understanding that the City Attorney was then to notify the Mayor that he was not to fill the vacancy until the formal hearing occurred the following Friday. He said that after he left the courthouse, he went to the babysitter's house, where he had dinner, and then he and his son went home together. He got home around 9:00 p.m., put his son to bed a couple of hours later, watched television, then went to bed about 1:00 a.m.
He got up on Saturday at 5:00 a.m., fed his son, and then after doing some chores around the house, he took his son out for a walk, made some purchases at a grocery store, then he spent the rest of Saturday reading and watching football on television. He said that he got to bed about midnight, and again he slept quite poorly, and he said that the following day, Sunday, was pretty much the same on Saturday: that he got up with his son, around 5:00 a.m., then went back to bed, got up again around 7:30 a.m., again watched football, and did some cleaning up around the house. His wife arrived back home some time between 7:00 and 7:30 p.m. He said he didn't have much to say to her, and then about a half-hour or so later, he went out by himself, was gone about 45 minutes. He said that he purchased a couple of paperbacks, then went on home, arriving home about 9:00 p.m. He said that his wife was in bed, awake, reading; that he talked very briefly, and then he gave his son a bottle, and then around 11:00 p.m. he tried to sleep on the couch. He said that because of his difficulty with sleep over the period of time he was not sleeping with his wife, because he didn't want to keep her awake.

Then about 11:00 p.m. he received a telephone call from a television newswoman who said that she had learned that the Mayor was going to appoint someone else to the seat that he was expecting on the Board of Supervisors, and she wanted to get his reaction to this. He reported to me he did not sleep the rest of the night; that he was awake all Sunday night.

He got up at 5:00 a.m. to take care of his son. He said his wife attempted to help out, but he was very curt with her. Then after feeding the son, he went back to bed, around 6:00, but he said that he was feeling very bad, head was hurting, and he wasn't able to sleep any further. Then he got up at 7:00 o'clock and around 8:00 his wife left, taking the son to the babysitter.

He said that he had planned on just staying home all day, to see how things worked out, he had no plans to go out, but he began brooding about what was going on, and said that he felt he was being cheated, and because of this idea decided he was going to go downtown, see the Mayor, find out why this was being done to him.

He said that around 10:15 that morning, his aide arrived to drive him to City Hall. He had called earlier to arrange that, and that before he left the house, he obtained his service revolver, which he said was always kept loaded, also took additional shells with him. Now, he was then driven to one of the main entrances to City Hall, where he was let off, but instead of entering through the main entrance he walked around, he said, to the McAllister Street entrance. Initially he was going to wait there until his aide arrived, because she had a key that would open the door, and he did not, but she didn't arrive promptly. He assumed that she probably went to get some gas for the car. So, rather than waiting, he proceeded to enter through an open window, then proceeded up to the Mayor's office. At that point I asked him why he didn't simply enter through the main door. He said it was because of the metal detector, that he didn't want to be found in possession of the gun, and because that would have been very embarrassing to the policeman, if the gun was found.
He said then that he went up to the Mayor's office and talked with the Mayor's secretary. He got there around 10:40 a.m. and had about a ten to fifteen minute wait. At that point the Mayor invited him into his office. He said that he was told directly that he was not going to be re-appointed to his old position. He asked the reason, was told that a lot of people in his District did not want him as their Supervisor, and he said that he denied that, pointed out that the ones who were opposed to him did not represent the majority of the constituents, and was simply a very small minority working very hard against him. He told the Mayor that he simply didn't believe what the Mayor was saying, and he wanted him to be open, candid and honest. He said: There were only two of us present, and there is no reason why you can't be honest. He said that the Mayor persisted in telling him what he labeled as saying, "Lying, in not having support in his own district." He felt the Mayor saw he was getting quite upset, and so invited him into his back room to have a drink. He said at the time he was feeling somewhat in a fog, his head was hurting quite badly. He recalled the Mayor then asking him about his family, and what he was going to do now that he was no longer going to be a Super-visor, and his statement, which is a quote, is that "He kept saying things, but I couldn't make any sense out of it. He kept mentioning my family, but he didn't really care about them."

That is the quote.

He said then that he abruptly pulled out his gun and shot him, did not recall how many times he shot him, and he thought that he might have shot him even after he fell to the floor of the room. I asked him if he checked to see if the Mayor was alive or dead. He said he did not. He proceeded to leave the room, and said, as he was leaving through a back exit, he automatically emptied the shells from the gun and reloaded.

He told me at that point his plan was simply to exit from the City Hall, and as he was headed towards the stairway he said he passed some people, and somewhat to his surprise, there seemed to be no reaction to him. He kept on his way out, but then he saw Supervisor Milk's aide in the hall, and he said that at that point he recalled that Supervisor Milk was a-and again, in quotes, "the most devious Board member," close quote.

He said he believed that Supervisor Milk had been very active behind the scenes in his not getting reinstated, and then he told me about a conversation he had overheard on November 16th, when he was in the City Attorney's office, and he said that Supervisor Milk was on the telephone to the City Attorney, and that he was making certain statements to the effect that Mr. White was not to be re-appointed.

He said that he told Supervisor Milk that he wanted to talk with him, invited him into the office that he formerly had at City Hall, and after they were in the office he told him that he had heard reports that Milk was masterminding the deal, which is the way he expressed it.

Q In his words?
A That is the quote, "Masterminding the deal." He then asked him why he got involved, why he was blocking the reappointment, and he said that Supervisor Milk denied that he was involved, but that he had a "smirk or smile" on his face. He felt he wasn't getting any straight answers from him, and at that point he shot Supervisor Milk.

He stated that when he left that office he saw people running around. He asked his aide for the car keys, and then went to the car, and drove off, describing himself as being in somewhat of a dream or fog state.

He passed telephone booths at the Doggie Diner on Van Ness, stop-ped and called his wife, telling her to meet him at St. Mary's Cathedral. He then walked to the cathedral, where he prayed, and waited for his wife to arrive. He said that at the time it was hard for him to realize what he had done. When his wife arrived, he told her what had happened, and then the two of them walked to Northern Station, where he turned himself in, and he said that while he was walking the pressure in his head dissipated; that he was, at that point, feeling much better.

He decided to turn himself in, in this fashion, because he knew that the police would be very concerned about this type of offense, and he didn't want anything further to happen, any more shootings to occur, and so he set up his surrender to the police in this fashion.

I asked him later in the interview about his having the gun with him. He said that he had carried it on previous occasions, particularly when he had served on a committee that had some negative dealings with the White Panther group, and he had received some threats on that occasion. He said he did not carry the gun with him at all times, and when I asked him why he had it with him on this particular occasion, he was unable to come up with a reason.

I asked him if he had thought at all that there was any possibility he might carry out a homicide. He said that he didn't plan on murdering anyone; that his reason to go down to City Hall was to confront the Mayor, hopefully get some honest, straight answers from him.

I then asked him about any previous psychiatric problems. He denied any psychiatric history, any assessment by a psychiatrist or psychologist or mental health personnel. He also reported that he hadn't seen any type of physician for a long time, but he did admit to being quite upset because of the financial, family problems that had been going on since he became Supervisor, and had to give up his position with the fire department.

I then asked him to provide for me his past history, not that I expected anything, complete, in the amount of time, but to get some idea as to what things he would bring out, and also to assess his mental status as he is talking about it, and what a person tells you and how he tells it to you gives you information about the mental status.

So, he did cover his background. . . .
Q Doctor, during the course of this interview, among the things asked him, did you ask him whether he had any feelings about George Moscone, particularly with respect to the death of George Moscone? . . .

A I asked him how he felt about what had happened, not specifically as to whether he had any particular remorse about the actions themselves.

Q Did it appear to you, Doctor, that he had any remorse for the death of George Moscone?

A No. That was not at all obvious at the time I saw him.

Q Did it appear to you that he had any remorse for the death of Harvey Milk?

A No, not at that time.

Q At any time did he express any remorse or any concern about these occurrences?

A Yes, he did.

Q Will you explain that to us, please?

A He showed—the only change he really showed in his affect or mood during the interview was when he would make reference to his immediate family. At that point, he appeared close to tears, although he never actually cried during the interview, but he was obviously visibly upset with the consequences that it was having for his wife and his son.

Q During the entire interview, did he appear to be cooperative?

A Yes, I thought he was very cooperative.

Q Did you get the impression, Doctor, of his overall intelligence?

A Yes.

Q How would you regard that?

A I would regard it as bright-normal, certainly it was at least normal, very likely above.

Q Was his memory seemingly intact with the events which had occurred earlier?

A He appeared to have no problems with memory.

Q Would that include past and recent memory?

A Yes, it would.
Q Did you get any impression about his cognitive functions?

A Yes, I noticed no impairment of any of his cognitive, intellectual functions.

Q What do psychiatrists mean when they talk about cognitive intellectual functions?

A They are referring to the individual ability to deal with various types of intellectual ability, which would be the ability to talk in a logical fashion, to think in a logical way, to be able to deal with the language, with various types of reasonings, with the ability to perform on certain types of tasks, such as arithmetical tests, things of that sort.

Q Did it appear that his thought process was logical, orderly?

A Yes, his thinking was quite logical and orderly.

Q Did you, Doctor, get any impression about his personality or what sort of personality grouping he fell into? . . .

A He appeared to be a rather rigid sort of individual, that I would classify under the obsessive personality type. . . .You have the obsessive type individual who tends to be very orderly, meticulous, compulsive about time, sticking to one task at a time, wanting things to be orderly. They have a highly overdeveloped sense of responsibility and duty....

Q Doctor, up to that point, was there anything to suggest to you that the defendant was suffering from any mental disorder on the day of November 27th?

A There was nothing, in my interview, which would suggest to me there was any mental disorder.

Q Doctor, are you familiar with the term "depression?"

A Yes.

Q Doctor, what does depression mean to a psychiatrist?

A Depression means a number of things. Depression may be a symptom; it could be a normal reaction to a situation. It may be an abnormal reaction, in a form of neurosis, where the individual is developing depression out of some type of internal conflict, or it may be a psychotic state, of which there are three primary ones, where the individual has a gross departure from reality, contact, and when they suffer from a psychotic depression. . . .

Q Doctor, did you get the impression that the defendant was depressed at this time?
A I had the feeling that he was—there was some depression, but it was not depression that I would consider as a diagnosis.

Q Doctor, at the time you were talking to him and interviewing him, would you, given the background of the events of the day, expect that if he were susceptible to depression, he would be depressed at that time?

A I found him to be less depressed than I would have expected him to be.

Q Now, Doctor, can a person be depressed and not have mental illness?

A Oh, yes.

Q In your mental examination of the defendant, together with the facts, as you learned them to be, Doctor, was there anything in his background that you learned about, to suggest to you that he was suffering from any kind of mental illness, including depression, and I am not suggesting that that is mental illness?

A Well, my awareness of his background at that point was not complete, but from what I found out from him, I would not say there was any evidence of any type of pre-existing mental illness, including depression, and I noted nothing from my own examination which would indicate that he was showing any significant clinical depression at the time of the examination.

Q From what he had explained to you, and the material with which you have favored us with, would that in any way suggest any of the symptomatology of depression?

A Well, it appeared that he was showing depression and anxiety at least for a period of the time that we covered, but he was having difficulty with sleep; he was not performing at his usual level, but he certainly was depressed.

Q Doctor, would you call that kind of depression such as anything that you could label as slight, moderate, severe, psychotic?

A It was more than slight. I would say from what he described that it would be moderate.

Q Doctor Levy, now we are referring to the examination that you made pursuant to material furnished you that you had at hand and the interview. Did you make any evaluation with respect to the ingredients of the crime of murder, particularly as it orients itself to the doctrine of diminished capacity?

A Yes, that was something I covered. . . .

Q Well, now, Doctor, in this particular case, having the concept of malice in mind, Doctor, did you feel that the Defendant was precluded by anything including mental
disease or disorder, from whatever source, from forming that quality of thought which we
understand in our law as malice?

A Well, in terms of the capacity to form malice I found nothing that would indicate a lack
of such capacity.

Q Doctor, did you feel or did you see anything which suggested that he could not
premeditate, that is to plan ahead, to consider a course of action beforehand?

A I felt he had the capacity to premeditate.

Q With respect to deliberate. Do you feel that he was able to form or arrive at a course of
conduct weighing considerations?

A To that extent, I felt he had that capacity, yes... .

Q Did you review the transcripts of the proceedings wherein the testimonies for Dr. Jerry
Jones, Dr. Martin Blinder, Dr. George Solomon, Dr. Richard Delman and Dr. Donald
Lunde were given?

A Yes.

Q Doctor, having read those particular testimonies and con-sidered them, would those
testimonies given the facts that they used upon which to form and venture their opinions
change your mind from what you have testified to with respect to the Defendant's men-tal
examination, his mental status, competency, competency particular-ly with respect to his
ability to form the prerequisites of murder and murder in the first degree, including
premeditation and deliberation?

A No, I found nothing in them that would cause me to revise my opinion.

Q Doctor Levy, are you familiar with any studies and any prevail-ing scientific bodies of
thought relating to the ingestion of sugar, foods with preservatives such as what's
commonly known as junk foods and including, for example, chocolate cupcakes of
Twinkie variety, Coca-Cola, candy bars and potato chips, for example, as those relate to
being causative factors in influencing anti-social or sociopathic behavior?

A I am unaware of any prevailing psychiatric opinion that such factors are significant in
relationship to any type of mental illness.

And I am unaware of any publications in major journals which state that.

Q Doctor, have you had occasion to discuss this with any persons who have done any
studies in this regard?

A Yes, I have.
Q And is that part of your opinion that you've given here?

A Well, I was not aware of any such reports, so I contacted who I felt would know if such reports were documented.

Q And who would that be?

A That was Dr. Victor Roos.

Q Who is he?

A He is Director of one of the in-patient units in Langley-Porter, and prior to his coming to San Francisco was at the National Institute of Mental Health where he was doing research.

MR. SCHMIDT: Your Honor, if he's going to qualify another doctor, I think we ought to have the other doctor in perhaps.

THE COURT: All right. Sustained.

Q Well, Doctor, upon your understanding and what Dr. Roos has discussed with you, do you have some opinion with respect to that, whether such foods as I have generally outlined affect human behavior--

MR. SCHMIDT: Your Honor--

MR. NORMAN: -in an anti-social or sociopathic sense?

MR. SCHMIDT: This doctor can give his opinion. I don't think he should give other doctors' opinions.

THE COURT: All right. He said that he knows of no documentation. So I will sustain the question. If you have any experts you had better bring them in.

MR. NORMAN: Well, of course--

THE COURT: I sustained the objection. You can ask the next question.

MR. NORMAN: All right, Judge. I think that will be all.

CROSS-EXAMINATION by Mr. Schmidt:

Q . . .Specifically with regard to forensics or legal body of psychiatry, have you ever taught any courses in that regard? . . .
A I have taught the medical student course, the major medical student course on forensic issues for, I guess, about ten years now. . .

Q And, as I understand, your testimony, that psychiatric evaluation occurred on the evening of November 27th, about 7:00 o'clock?

A Yes, about 7:00 o'clock.

Q Would you say that Mr. White's emotional state at about 7:00 o'clock was approximately what it would have been about, say, noon?

A I can only say that it didn't seem much different than what I could ascertain from the tape.

Q From the tape you would ascertain that emotionally he was thoroughly well together and appeared to be intact with his affect?

A Yes.

Q Incidentally, we have had some testimony by you with regard to your feeling that an examination that takes place relatively close in time is more valid than one that takes place later in time. Is that accurate?

A Not necessarily more valid. But what it does is give you the information firsthand rather than secondhand.

So it could be more valid that way.

Q Would you agree, however, at the same time it doesn't provide you with a lot of information that might be gathered by the police and through other sources over a period of time?

A No, it certainly doesn't.

Q Would you describe Mr. White at the time that you saw him as in shock?

A No, he didn't appear to be in shock.

Q Would you use any adjective like shattered or destroyed?

A No, not at all. . .

Q What do you expect to be paid for the consultation on the 17th?

A I was-my fee would be $50 an hour for the time.
Q As I understand it, you saw Dan White just once?

A Yes. It was just the one interview.

Q That was about two hours?

A A little beyond two hours.

Q Now, you also sent me a bill, did you not, for professional services for testimony at preliminary hearing, is that correct?

A Yes, I did.

Q So judging from the fact that you intend to bill the District Attorney's Office and you also intend to bill me, that would be fair to say that it's common that psychiatrists are paid for their time?

A I would expect it, yes. . . .

Q Doctor, since the time of the examination you've gathered other materials, as I understand it?

A I have seen other materials, yes.

Q When did you first see the other material? I mean, you mentioned particularly the trial transcripts?

A Yesterday.

Q Now, the other contact that you had with my office was simply to send me a bill, is that correct?

A No. Well, preceding that was the matter of the subpoena and your requesting me to testify at the preliminary hearing.

Q That's correct. Did you ever contact me with regard to this action?

A No, I did not.

Q Did you ever make a request of me that you talk to Dan White on any other occasion?

A No.

Q Now, Doctor, would you feel that information obtained from witnesses such as his aide or people in the Mayor's office might be useful in getting a more complete picture with regard to his emotional state
just prior to the offenses?

A I think any information that could be obtained could be poten-tially useful.

Q In fact, that's a quotation from your report, "That I always feel that information obtained from witnesses such as an aide and people in the Mayor's office might prove useful in getting more complete pic-tures with regard to his emotional state just prior to the offense?"

A Yes.

Q And, in fact, you did not gather that information, did you?

A I didn't get it myself, no.

Q Did you ever talk to the aide?

A No. I talked to no one related to Mr. White.

Q You didn't talk to any of the family members?

A No, I did not.

Q You didn't talk to anyone that might have known him and known of his past history?

A No....

Q Now, during the interview-let me back up a bit.

You talked with Mr. Norman. He gave you underlying facts with regard to the shootings at City Hall?

A Yes.

Q Did he fully develop the facts with you at all?

A I doubt if he did. We didn't spend that much time together.

Q And at that time Mr. White was also represented by attorneys, or you believed that he was represented then by attorneys?

A Yes.

Q And they said it was permissible for you to talk to him?

A Yes.
I asked if it was permissible. And I also asked if they wanted to sit in during the interview.

Q All right. And they said-they declined to sit in, but they said it was permissible for you to talk to Mr. White. You mentioned that you thought he was being candid, and you thought he was being cooperative?

A Yes.

Q I would trust that you thought that he was being truthful in recounting-

A I had no reason not to believe what he was saying at that point.

Q Did you ever ask what Dan White's attorneys told him to say to you?

A He told me that they-that he was told to speak freely and answer any questions that I asked him. . . .

Q And you indicated you did not feel that he was being anything other than truthful. At least there was no indication that you picked up during the interview, is that fair?

A No. I thought he was quite truthful. In fact, I-I had wanted his attorney to sit in but they had declined to do so.

My feeling is that-ordinarily when I interview someone it's as a court appointment. It's very rare that I interview them at the re-quest of the prosecution, and I am concerned about that type of assess-ment because it's so easy for someone at that point to reveal things that might not be all that much in their best interest.

And on previous occasions where I have done this, I have had the attorney in there to advise his client when not to answer a ques-tion. . . .

Q And in his account of the actions, the shootings, he quite clear-ly stated that when he went to City Hall he did not intend to shoot anyone?

A That's what he told me, yes.

Q You had no reason to doubt that?

A I had no reason to believe it one way or the other. . .

Q Now, returning to this talk that you had with Dan White on November 27th, 1978. . . .you indicated that you concluded that he was in the same basic mental condition at the time you saw him as when he made the taped statement to the police?
A His mental condition substantially was the same, yes.

Q And I believe you stated that he was calm while he talked to you? Relatively calm?

A For the most part, yes.

Q He didn't appear to cry, although he may have been on the verge of crying a couple of times?

A Yes.

Q All right. He wasn't particularly upset?

A Not during the time I saw him.

Q Doctor, I asked you whether or not you felt that because you did your examination on the evening of November 27th, 1978, that you felt that that necessarily had more validity. In that regard, is it true that psychiatrists and psychologist routinely reconstruct mental states and capacity after the time that the incidents occurred?

A That's what they are called upon to do, yes.

Q That is, in fact, the usual way that that's done?

A Yes.

Q And when you do have an interview close to the time of these incidents, you do not have a lot of the background material that may or may not be important, is that fair?

A That's generally true, yes.

Q In fact, it surely is true in this case?

A Yes, I think background information is significant in this case.

Q Now, doctor, if I suggest to you that police and other witnesses have testified that upon observing Dan White shortly after the shootings he was shattered, shocked, appeared to be a broken or shattered man emotionally and physically, I think you would disagree with that; is that fair?

A No, I wouldn't disagree with that.

Q And yet you maintained he was calm and not upset at the time you saw him?

A By the time I saw him he was calm, yes.
Q I see. But I thought you also said that he was in the same state, mental condition, as he was at the time that the police officers had seen him?

A You mean when he was first seen?

No, what I am describing is the way I heard it on the tape.

Q Your explanation of that is that he was calm and not upset?

A He certainly was not as calm when I saw him, but I wouldn't describe him as distraught and shattered as he appeared on the tape. . . . I can only go by what I heard. I didn't see him.

Q I understand. So, would it be your suggestion now that he was not in the same mental state at the time he made the tape as when you saw him?

A No. I would say he was in essentially the same mental state, about his emotional reaction was certainly more pronounced on the tape than when I saw him.

Q Would you agree that emotions play some part in one's mental state?

A They are related. Emotions are not part of mental state, but they are certainly close.

Q Certainly they affect mental state?

A Each affects the other, yes.

Q If I suggested that there was testimony in this courtroom that men that knew him, police officers that knew Dan White, said that he was not the man that they had previously known when they saw him on November 27th, 1978, would you agree with that assessment?

A I would have no reason not to agree with it. . . .

Q Would the type of testimony, if it were true, that it had been testified that he appeared to be a shattered man emotionally, mentally, would that have any effect on your opinion at all? . . .

A No, I don't think it would.

Q Would you agree that there is a major mental illness known as manic-depression, depression, uni-polar depression or depression?

A Yes, there is.
Q Now, Doctor, would you also agree that the disease depression is different from being depressed, blue, moody, down?

A Yes, they are different.

Q So we can be clear, perhaps if we are talking about the feeling of depression within one's self, we could use sadness or any other adjective other than depression that you care to use, and with regard to depression, is the disease depression particularly common? . . .

A Manic-depressive illness is not all that uncommon.

On the service where I work, it accounts for, I would say, 20 percent of the admissions. . . .

Q Doctor, as I understand it, when you talked with Mr. White, you could find no indication that there was a mental illness?

A That's correct. . . .

Q What are the symptoms of the disease depression?

A Of manic-depressive depressed type?

Q Yes.

A It's generally manifested by feelings of worthlessness, inability to concentrate, loss of appetite, loss of weight, a sleep disorder that is usually one of early morning awakening, loss of interest in general activities, loss of sexual ability. . . . And also a number of physical complaints. Constipation frequently, abdominal pain, and in more serious cases actual delusions and hallucinations.

Q Doctor, you did recall, however, that Dan White told you of a thoroughly long-standing sleep disturbance?

A He told me about his disturbed sleep, yes. . . .

Q All right. In fact, he indicated that he had a chronic sleep disturbance for several weeks, isn't that correct?

A He didn't specify the time, but it had been going on for, I would say, at least a week, probably two weeks. . . .

Q And, in fact, your report states that he was having so much difficulty in recent weeks that he was not sleeping in bed with his wife because he did not want to disturb her?

A Yes, that's what I put in my report.
Q And so it would have been for some period of weeks then?

A Possibly, yes.

Q As a matter of fact, it came out just with that statement that he was not sleeping with his wife, correct?

A That's what he said, yes.

Q Would that indicate to you that, perhaps, further questions with regard to sex drive or sex interest might be in order for one looking for depression? As you indicated, that's another symptom.

A Yes, it could have been asked.

Q Did you ask it?

A Not that I recall.

Q Now, you mentioned that another symptom of depression would be weight gain or change in appetite. Would it also be weight loss, or, conversely, would it be weight gained or weight lost?

A Well, the weight loss is much more significant. There are a few more people who will gain weight when they are depressed.

Q If one gained 20 pounds in a year's time, would you say that that's an excessive weight gain?

A I would have to know what the individual weighed prior to that and whether the individual ended up being significantly fatter.

Q If I suggested to you that the DSM, Diagnostic and Statistical Manual Third Draft indicates that: For diagnostic criteria for a depressive episode, would include weight loss or increase of appetite or weight gain, and that a change of ten pounds in one year is indicative of that. Would you disagree with it?

A I can't agree or disagree with it. It's not officially adopted yet.

Q In fact, it will be adopted very soon, however, is that fair?

A It was supposed to have been adopted last July. It was put over till January, and I don't know when it will be adopted.

Q Whether or not it's official, do you disagree with that?
A Yes. I wouldn't take a ten-pound weight loss as being that significant all by itself. What happens in DSM Three they don't take anyone criteria. You have to combine them with others.

Q And you would equally say a 20-pound weight gain in one year was not significant?

A I would say it was something to note. But it would be hard to say what it might be significant of.

Q Doctor, with regard to that, as you indicated, because you had no background material, you didn't know what his weight was before?

A That's right. . . .

Q So you have had nothing to compare it to to determine whether or not there was a 20-pound weight gain within a year's period?

A That's right.

Q And this would be yet another example of not having background material, not being much assistance to you in making a final diagnosis. Would that be fair?

A In looking at it longitudinally, it would help, yes.

Q Now, Doctor, if one does not have a previous history of treatment for a mental illness, does that necessarily mean that one is not mentally ill?

A No, not at all. . . .

Q Did you inquire at all as to whether or not he had any of these certain symptoms we have been discussing?

A I didn't ask him if he had ever had such symptoms, no.

Q You base at least part of your conclusions at, or part of your conclusions with regard to no evidence of mental illness and, in fact he was not treated for mental illness, is that fair?

A No, not really. What I am saying is that at the time I examined him there was no evidence of mental illness.

Now, it's very possible, in fact, happens all the time, I see people with manic-depressive illness between episodes and there is no manifestation of illness. If it's not a chronic condition like other illnesses might be.
Q And if I suggested to you there was some testimony with regard to suicidal tendencies in Dan White's past, would that be significant with regard to the disease depression?

A It could be.

Q In fact, it's a recognized symptom, is it not?

A It's a symptom of depression. Whether it's a big D, small D, or whatever type of depression, it's a very common occurrence. . . .

Q You didn't ask him about whether or not he had recurring thoughts about suicide or if that was in his past at all, correct?

A No, that didn't come out.

Q I think it's clear, but it didn't come up. In other words, you did not ask a question that would prompt that response? . . .

A It wasn't anything I asked about. It wasn't anything volunteered.

Q The disease depression is different from the feeling of depression or, I think, we are going to use bad mood, or something?

A The feeling of depression can exist without the illness of manic-depressive illness.

Q If one had episodes of bad moods couldn't, perhaps, that be a symptom also of the disease depression?

A I suppose it could, yes.

Q In fact, it's a recognized symptom, is it not?

A Well, depending upon the depth. Everyone has personality variations in which mood can be up or down from day to day or from week to week. If it's more pronounced than that it's called cyclothymic personality, and when it's even more pronounced, then you start calling it manic-depressive illness.

Q Now, Doctor, I believe you suggested that Dan White was of the obsessive compulsive personality makeup?

A That's the way I saw him, yes.

Q Is that type of personality makeup more prone to the disease depression?
A manic-depressive illness. It's thought that people with that type of disorder when they get older are prone to develop what's called involutional melancholia, which is another kind of depression.

Q A diseased depression nonetheless?
A Yes.

Q Dr. Levy, are you acquainted with Dr. Lunde?
A I know him by name. I have never met him.

Q Would you agree that he's a qualified psychiatrist with fairly good credentials?
MR. NORMAN: Objection. Calling for his opinion and conclusion. This is a matter that, I'm sure, is outside the scope—
THE COURT: Overruled.

THE WITNESS: I assume he is.

Q Are you acquainted with any work that perhaps he has done, a number of books he has published, and articles he has published?
A I haven't read anything that he has written.

Q Let me ask it that way. Do you know whether or not he's one of the leading forensic psychiatrists in the state of California? . . .
THE WITNESS: No, I don't know that.

Q You don't know that. Are you acquainted with Dr. Solomon, George Solomon?
THE WITNESS: Yes, I know him.

Q In regard to the same line of questioning, would you agree that he is, or do you know whether or not he is one of the leading forensic psychiatrists in the State of California? . . .
THE WITNESS: As a matter of fact, I was unaware that he was in forensics.

Q [By Mr. Schmidt] You are not familiar with any of the work or publications that he may have published?
A No. I have not followed his career.
Q Are their opinions, Dr. Lunde and Dr. Solomon, worthy of note, or respect from you personally?

MR. NORMAN: Objection. Improper foundation. He says, he doesn't know anything about him.

THE COURT: Don't argue. Sustained.

Q Do you know them well enough to hazard your opinion on their qualifications to give opinions?

A No. I haven't- I haven't actually seen Dr. Solomon except casually for quite a long period of time. And I have never met Dr. Lunde that I am aware of.

Q Now, Dr. Levy, I believe you mentioned you read the testimony of the various doctors that testified including Dr. Jones and Dr. Delman and Dr. Lunde and Dr. Solomon and Dr. Blinder?

A Yes.

Q That testimony did not cause you to change any of your opinions, is that fair?

A That's fair, yes. . . .

Q Do you disagree, rather, with regard to their diagnosis of a mental illness suffered by Dan White?

A Well, they didn't all diagnose a mental illness, or they didn't all diagnose the same mental illness. I am not sure what you are referring to.

Q I think Dr. Lunde and Dr. Solomon and Dr. Jones and Dr. Delman all suggested that Dan White was suffering from a major mental illness, depression. Assuming that to be true, would you disagree with that diagnosis?

A Well, you mean to assume that it is true? Because that's not the way I recall reading it.

Q Well, assuming that that's-what do you recall reading? Perhaps we can start that way.

A Well, Dr. Lunde called it an obsessive compulsive personality with depression. I don't recall him giving an actual diagnosis. Dr. Jones called it manic-depressive illness. . . .

Q I realize you didn't have total recall, but Dr. Lunde testified the mental illness is depression of a fairly severe degree. Secondly, also gets a long standing duration of obsessive compulsive personality. But, as you suggested, there was a personality which included depression which does not appear to be his diagnosis. Would you agree?
A Depression is not a diagnosis. Severe depression is not a diagnosis.

Q Again, with Dr. Lunde, he states that:

[Reading]: "Mr. White, in fact, was suffering from very severe depression. He had classical symptoms that are described in the official diagnostic manuals for depression, and I would say both biological and physiological and mental symptoms, and of course, he has characteristics of compulsive personality, which happens to be kind of a bad combination in those sort of people, who are also prone to depression, because as they get older and more involved in the work of adult life, such people tend to become more vulnerable to depression than other people are."

Is that fair? Is that accurate?

A That's what he said. But if an individual was suffering from that severe depression at 11:00 o'clock, it should still be there at 7:00 o'clock.

Q Dr. Solomon, testified: [Reading]: "I think he was suffering from what in the new classification is called a uni-polar depression reaction, and that means he was subject to recurrent bouts of depression to a major degree."

Would that be accurate? . . .

A Well, I am assuming it's accurate to what he said.

Q I am asking you now: Do you disagree with that? . . .

A Yes, I do.

Q Now, I believe you did say, however, that Dan White was mod-erately depressed?

A Yes, he was.

Q And in using the term depressed were you referring simply to a bad mood, bad feeling, or were you referring to a mental illness?

A No. He was depressed, but it was not a diagnosable mental illness in the sense of uni-polar depression.

Q And he did have, just in the brief time that you interviewed him, several of those symptoms, did he not? Chronic sleep disturbance apart--

A As he reported, yes.

Q Apparent-well, as he reported. You suggested he was being truthful and candid, had you not?
A No. What I am saying, I could not observe it.

I am going on his report which I assume was truthful.

Q Dr. Jones, his opinion is that: [Reading]: "My opinion is that Mr. White suffers a major mood disturbance, and by major mood disturbance, elaborating for purposes of the Jury, that would be a depressive illness, a manic-depressive illness, depressed type." Do you disagree with that also?

A I disagree with its cause, as I recall, he said he was not psychotic. And major mental illness is psychosis.

Q You disagree that the DSM manual has various degrees of mental illness, and, I believe, they are indicated by moderate, marked severe and psychotic. Are you familiar with that?

A I am not familiar with that designation.

Q What do you think the grades are, or degrees, for mental illness?

A For mental illness?

MR. NORMAN: Wait a minute. Are we talking about depression?

Q Mental illness generally, and as put forth in the diagnostic manual. I mean, do they use those terms? You are not familiar with those terms?

A Those terms are used but they are not considered necessary as part of the diagnosis. The breakdown is psychotic, neurotic and personality disorder. And then assorted other types. If you wish to diagnose degree you can add a further digit to the diagnosis. But it isn't a requirement. And it's either psychosis or not psychosis. And then you get to degree.

Q So if one were moderately depressed he would be psychosis or psychotic, but to a lesser degree. Is that what your testimony is, sir?

A No, not at all. Either he has a psychotic disorder or he does not have a psychotic disorder. Then you can have a degree of illness under that category. But not because you have a severe depression you automatically become psychotic.

Q If you have a severe depression, is it nonetheless a mental illness, using depression as manic-depression, depressive type, or uni-polar depression?

A Well, manic-depressive is mental illness regardless of the degree.
Q And from your testimony then, I would glean they would have to be psychosis?

A It is a psychosis by definition.

Q And you characteristically in psychosis would involve hallucination and delusions, is that correct?

A At times, it might, but it may not. It's simply that you cannot have a manic-depressive illness and not have a psychosis.

Q Now, turning to the morning of November 27th which is, of course, the time that we are going to have to deal with here. What would be your estimate of the degree of depression Mr. White was laboring under?

A In choosing between mild, moderate and severe, I would call it moderate.

Q If the other doctors suggested that it was severe, then your statement would be just-in difference to theirs would be just a matter of degree, is that accurate?

A In that term, it would seem to be, yes.

Q Now, Doctor, assuming that a patient came to you, anyone came to you, this is a hypothetical situation, and he suggested that he had suicidal thoughts, weight increase, change in diet, sleep difficulty, loss of energy, loss of interest in usual pleasures, decrease in sex drive, and indecisiveness, would you then suggest that that person was mentally ill?

A It would seem to me he was having symptoms which would suggest he was having mental illness, yes.

Q And that mental illness would be depression?

A It's one possibility, yes.

Q And that depression would not necessarily involve hallucinations and delusions?

A Not unless it was severe.

Q Severe or psychotic?

A Well, a manic-depressive does not have to have hallucinations and delusions, but when they are severely depressed or severely manic they will have hallucinations and delusions.
Q Now, adding to that: If your patient was a man of ordinary good character and he had inexplicably killed two persons, would you assume he was mentally ill?

A I would have to know much more about that than just that statement.

Q Precisely. You would have to know whether or not he had suicidal thoughts, weight increase, changes in appetite, sleep difficulty, and have a complete history, isn't that correct?

A If it was inexplicable, I would have to know why it was inexplicable.

Q Now, Doctor, in taking the case history of Dan White, I believe you said you arbitrarily started with Thursday, which would have been Thanksgiving Day?

A As I recall, yes.

Q Would it be significant at all if there was testimony that Dan White had not gone out of the house the Tuesday and Wednesday before Thanksgiving? . . .

A No. I would have included that information.

Q But, in fact, you didn't. You started on Thursday, so you didn't have that?

A That's right. We didn't go back any further.

Q If, in fact, had you gone back further than that, just two days, and learned that he hadn't gone out of the house for the entire period and still had sleep disturbance, would that cause you to look further into that?

A It might, yes.

Q Doctor, I believe in your testimony this morning you said that after this telephone call Dan White began brooding about the situation. And this was the telephone call of November 26th?

A That was his report.

Q Did he use the word brooding?

A What he said was he was thinking over the fact that he was being cheated.

Q So you used the word "brooding?"

A Yes.
Q Now, Doctor, from your testimony that you gave this morn-ing, I would glean that you believed that on the morning of the 27th, without further telephone calls he decided to go down to City Hall. Is that fair?

A That was the way it was reported to me, yes.

Q If I suggested to you that Denise Apcar had called Dan White on the phone on November 27th on at least two occasions, perhaps three, and reported the goings on at City Hall, and that he still in-dicated he was going to stay home, and later called Denise back and said come and get me, would that be significant to you at all?

A No. I would assume that it was something that he hadn't remembered at the time. That's the reason he didn't tell me.

Q Couldn't it also, perhaps, indicate that there were outside influences or pressures exerted on him on the morning of the 27th to go to City Hall?

A It might.

Q He indicated, in fact, on the evening of the 26th he had no desire or, certainly, did not contemplate going to City Hall on the 27th, is that fair?

A That's what he said, yes.

Q And, Doctor, with regard to remorse, or lack thereof, you testified this morning that at the time you had your interview with Dan White, remorse was not obvious at that time?

A That's right.

Q In other words, he didn't specifically say he was sorry for having killed George Moscone and having killed Harvey Milk?

A That's right.

Q Let me ask you this: Did you ever ask him specifically?

A As I recall, I don't believe I asked him specifically.

Q If I suggested to you that there has been testimony from three doctors that in fact Dan White is terribly guilt ridden and full of remorse, would that change your opinion in any way?

A No. It was something I expected would eventually happen.

Q Doctor, are there any tests that would show guilt or shame or remorse?
Yes, I think tests would show it.

Q Are you familiar with W.A.I.S or Wexler Adult Intelligence Scale?

A Yes.

Q And the Minnesota Multi-Phasic Personality Index?

A Yes.

Q And the Rorschach test?

A Yes.

Q Using these administered by a psychiatrist or a psychologist, would that possibly indicate guilt, shame or remorse?

A Well, some of them could, yes.

Q If I suggested to you that a qualified Doctor of Psychology had administered those tests and came to a different conclusion with regard to the point of remorse, would that change your opinion in any way?

A Well, no. As I said, I anticipated that sometime after I saw him that he would begin to feel remorseful.

Q So, perhaps, his remorse was repressed, would that be fair, at the time that he talked to you?

A I don't think he had had sufficient time to really think about the whole event and put it into context with how it was going to affect him, how it was going to affect everyone else concerned with him or not.

Q Now, Doctor, you would agree that the tests I have outlined are fairly standard tools for psychiatrists and psychologists?

A It's a fairly standard test pattern.

Q Did you perform any other test or any other subjective tests on Dan White?

A No.

Q Doctor, I think you also testified this morning that you were unaware of any prevailing attitudes or opinions in psychiatry with regard to the ingestion of sugar, or that type of food, is that fair?
A Yes. . .

Q In fact, that could be considered to be a minority position, if you will? There are some connections, however vague, between ingestion of sugar and food and violent behavior?

A Anyone is entitled to write a paper on anything they wish.

Q All right. In fact, Doctor, because you perhaps are unaware of any prevailing attitudes does not necessarily make it untrue, is that fair?

A No, I wouldn't say that it's untrue. It just simply hasn't been demonstrated.

Q To satisfaction in your mind?

A To my mind and the majority.

Q Nonetheless, it is a viewpoint that has at least surfaced?

A I'm sure there are people who believe in it wholeheartedly.

Q Would you agree that there has been research in that area?

A There has been.

Q There has been much research and publications in that area?

A Publications, yes.

Q And, of course, you have no training or experience with regard to that particular facet of the field?

A I have never gone into that in any extent at all.

Q Over and above a causal relationship, if in fact it may exist, or may not exist, just over and above that, would you, suggest that a radical change in diet would be a symptom of perhaps depression?

A It could be a symptom of a number of things, and I would imagine depression would be one of those.

Q And do you think a radical change in diet perhaps would be indicated if one were normally health conscious and ate healthy well-balanced meals and then as erratically start to eat donuts and cup-cakes and that sort of thing?

A It could be. It's not typical of the sort of thing you see with people that are depressed.
People who are depressed lose their appetite, and it isn't a matter of switching from one type of food to another, so much as it is just not eating.

Q Well, I think we've gone through that, and you have said it also could be a weight gain, at least sometimes, although it's less frequent, is that fair?

A There are some people who react to most stresses by eating, and in people like that the tendency would be to eat more when they get depressed.

Q So that does occur, correct?

A Yes, but it isn't 'specific for depression.

Q No. But, nonetheless, it's a symptom, or a possible symptom?

A It's a possible one, yes.

Q So with regard to depression, just generally, you can attach some significance to diet and the change of the diet?

A You mean the effect of the diet or the fact of diet?

Q The fact. It's just a change of diet?

A The fact of change would indicate something is going on that's different.

Q Now, Doctor, you testified to certain forensic conclusions, and you did write a report which was provided to me?

A Yes.

Q Well, regardless of the back-dating, or whatever, when did you come to your conclusions, your forensic conclusions?

A I'd say the conclusions would have been on November 27th. Q And that was after a two-hour talk with Dan White?

A Yes.

Q Doctor, would it be fair to say that you made some snap decisions?

A I don't believe I did.

Q Did you consult any text or materials?

The diagnostic and statistic manual?
Did you consult that with regard to anything that you saw?
A No.
Q Did you consult with any other doctors?
A No.
Q Did you review any of the witnesses' statements
A At that point?
Q At that point.
Well, that's when you made your conclusions, is it not?
A That's right.
Q Did you consult any of the material that was available to you save and except for the tape of Dan White on the same date?
A No. That was all that was made available to me at the time.
Q And yet you feel that your forensic conclusions were not snap decisions?
A No. I was basing it upon what I had available.
Q Since that time a wealth of material has become available, transcripts of statements of witnesses, correct?
A That's correct.
Q Have you reviewed those?
A No. I reviewed the medical reports. The transcripts of the doctors.
Q What medical reports did you review?
A I reviewed the transcripts of the testimony of the doctors that you called.
Q You mean the testimony in the trial here?
A In the trial, yes.
Q So you reviewed that last night?
A Yes.

Q And that was provided to you by Mr. Norman?

A That's correct.

Q You didn't talk to any witnesses, did you?

A No, I did not.

Q Now, I don't mean to be facetious, but this is a fairly impor-tant case, is that fair?

A I would certainly think so, yes.

Q And it is a customary tool that one would seem to gather in-formation from people that perhaps knew him in the past, his aides, things such as that, before making a forensic conclusion?

A I have to point out, this is an unusual situation, as I mentioned. This is the only time in my whole career that I have examined the individual for the District Attorney in a case like this. I have testified in this way in other cases and it's been based strictly upon the reports of the other psychiatrists, and my opinion related to that.

Q I understand, Doctor.

A If he had refused to talk to me, I might still be here testifying in this fashion based upon my review of those reports.

Q Yes. But in the report itself, Doctor, you made a conclusion on November 27th, regardless of when you wrote your report.

In the report itself it says, in fact I will read this: [Reading]: "In this regard if you have any questions please get in touch with me. I am sure there are aspects of this Defendant's life that were not touched upon in this interview. And should those seem significant areas, I would be happy to talk with him further."

You didn't talk with him further?

A No. I was not requested to.

Q I see. And you didn't request to talk to him further?

A No. I was not going to do a complete assessment.

Q Well, in fact, you didn't do a complete assessment. Is that fair?
A I would say that it's not as complete as I would have done if it had been another type of appointment.

Q Well, this was an important case, was it not?

A Yes, it was.

Q And yet you didn't do the complete assessment?

A I was not asked to do a complete assessment.

Q You go on. [Reading]: "I also feel that information obtained from witnesses such as his aide, people at the Mayor's office, might prove useful in getting a more complete picture with regard to his emotional state just prior to the events."

Is that correct?

A Yes.

Q You didn't gather any of that type of material prior to the time you made your actual forensic conclusion, is that fair?

A These conclusions are based on what I had at the time.

Q Did I understand your forensic conclusions then to go to the time that you saw him as opposed to the time of the crime?

A I could only truly assess him from the time that I saw him. A mental status examination can only be at the time you see the individual.

Q You saw him some eight hours after the time of the crimes, is that fair?

A Approximately, yes.

Q All right. So your mental status examination would be directed to the eight hours later?

A And what an individual might be like several hours earlier depending upon how he appeared at that point, yes.

Q You made that decision on the night of the 27th also, is that fair?

A Yes....

Q I believe you indicated that you are not competent to give an opinion on the actual state of mind; you can just simply talk about possible capacity; is that fair?
A Well, in terms of what a psychiatrist is asked to do, yes, in terms of capacity, rather than actual states of mind. . . .

Q Now, you concluded on that evening, that he was probably able to premeditate, and you based that upon what he indicated here in the statement, and the discussions with Dan White?

A Yes.

Q Yet, Doctor, you go on to say: [Reading:] "I could not obtain any direct information from the defendant which would make me firmly believe that premeditation was involved."

A He did not give me information to the effect that he did premeditate.

Q In fact, a large part of your conclusions are based upon simply talking to him, listening to a tape, talking to Tom Norman for a few minutes; isn't that correct, Doctor?

A It was an assessment of the mental state during the interview.

Q Which was all of eight hours after the crime?

A All of eight hours after the crime.

Q You also suggest, Doctor, that your opinion is based, at least in part, upon the fact that he took the gun to City Hall, and the fact that he had a peculiar mode of entry into City Hall; is that fair?

A What I am saying is that those would be suggestive of premeditation, wouldn't pertain to the capacity.

Q Well, if those are suggestive of premeditation, Doctor-if I suggested to you there were explanations for both of those, that have been testified to here in court, would that change your opinion at all with regard to premeditation?

A It would not well, I am not sure what you are referring to. The capacity to premeditate would not be changed. Any information that might pertain to what he actually did or what he actually thought could influence me whether he did, indeed, premeditate.

Q Well, you didn't conclude that he-that he did, indeed, pre-meditate; isn't that fair?

A I was unable to conclude either way. It isn't really my business to do so, anyway.
Q Doctor, you-Doctor, he told you, I believe, in reciting the events of November 27th, Dan White indicated that he went through the window because he realized there was going to be an embarrassing situation at the front door; is that correct?

A There could be an embarrassing situation, yes.

Q He also told you why he took the gun, did he not?

A No, he didn't really say why he took the gun.

Q In your report you say: "The defendant stated that he had carried his gun on previous occasions, especially around the time that he served on a committee which denied certain requests of the White Panthers. He received some threats at that time. He did not, however, carry the gun all the time and he was unable to give any explanation as to why he had the gun with him on the day of the offenses."

He did indicate to you, however, in the past he had taken it when he was feeling threatened; is that accurate?

A Yes.

Q Now, Doctor, we don't need your expertise for this, but approximately a week before these tragedies, we had an occurrence called "Jonestown," which was directly connected with the People's Temple out here; do you recall that?

A Yes.

Q Do you think that there might possibly be some security precautions indicated at City Hall with regards to People's Temple and possible further violence?

A Possibly the security at City Hall was stepped up as a result of that, but I don't know for sure.

Q Now, in fact, there were rumors of hit squads, and that sort of thing, were there not?

A There were such reports, yes.

Q Now, in May of 1979, looking back, we know that didn't happen, but at that time, there were 900 bodies laying out there in Guyana, and would it seem that it might be possible that on November 27th they were threatening persons out there; isn't that fair?

A It was possible, yes.

Q Now, premeditation, Doctor, means, to you, I believe, you testified simply as "planning?"
A Planning, to consider prior, beforehand.

Q And would crawling through a window indicate there was premeditation?

A It could, it couldn't.

I don't know whether it does or not.

Q Well, Doctor, you based, at least part of your conclusion that there was premeditation on the fact that he possessed a gun, and means of entering City Hall, which you thought were certainly suggestive of premeditation?

A Yes, suggestive.

Q Now, if I suggested to you there were—there was testimony in this courtroom that the key to the side door to City Hall was in his aide's possession, and he knew that, and in fact, the key to the car also, and if you were planning a get-away, and these keys were available to him, and he knew that, and he didn't take either one from his aide, prior to the time he entered City Hall, could that suggest against premeditation?

A It could.

Q And if that were so, would that cause you to change your opinion in any way with regards to premeditation?

A Not with regards to the capacity to premeditate.

Q Additionally, if one were planning these killings, is it logical that he would identify himself or conceal his identity?

A There are so many variations in types of antisocial criminal behavior that I hesitate to give an opinion.

Q Now, Doctor, you suggested in your report that there was some impairment of Dan White's ability to premeditate; is that a fair statement?

A To premeditate?

Q Yes.

A I don't believe I said that.
Q I believe you said "Mental capacity was somewhat impaired?"

A Yes.

Q And that was due to what you termed "emotional disturbance;" is that fair?
A That he was in a turmoil.

Q Now, was he in a turmoil at the time you saw him or was the turmoil at the time the crimes were committed?

A From the way it's described, I would see him as being in a turmoil at the time it was committed, and to a much lesser extent when I saw him.

Q I see.

What kind of turmoil would that have been, Doctor?

A As I say, it was a state of frustration, anger, rage, betrayal, all sorts of emotions, which would have negative connotations to them.

Q Frustration, anger and rage?

A And a feeling that he had been let down.

Q Now, Doctor, given that emotional turmoil, I believe you have indicated you think that was probably true, and if it were true, that Dan White were suffering from a mental illness of perhaps ten years' duration, would that, in your opinion, increase the degree of impairment of his capacity? . . .

A Not necessarily, no, depends on the type of mental illness.

Q Well, depression.

A No, if he were severely depressed, like a manic-depressive, I would not expect this type of activity.

Q Well, Doctor, I mean, you wouldn't expect this type of activity from someone of good character either, would you?

A More so than from someone that was suffering from a psychotic depression.

Q So I can glean from that that it is more probable that people with good character are prone to this type of act?

A To this type of act, yes.

Q Doctor, what are the elements for first-degree murder?

A First-degree is murder that is willful, deliberate, premeditated and with malice.
Q Does the concept of deliberation come into it at all?

A Yes, it does.

Q In fact, it's defined by the term "deliberation," also, is it not?

A Yes.

Q What was—what does the term "deliberation" mean to you?

A To me, what it means is an individual who is giving considera-tion to his activities and arrives at the result through careful, thorough weighing of the pros and cons of the act, of the proposed course of action, and reflection on consequences of the behavior.

Q And thusly, it would be a weighing of the pros and cons, mature, meaningful reflection' upon the act; is that fair?

A That is part of the definition.

Q That differentiates it from premeditation; it's simply planning ahead; is that fair?

A Yes.

Q Now, I took particular note, Doctor, that you not once in this report addressed the issue of deliberation; in fact, the word is not even mentioned; is that fair?

A I don't believe it's mentioned.

Q Yet that would be information for a conclusion that we would need here; is that fair?

A It's one, yes.

Q Now, you testified that you thought you did a fairly adequate job or adequate enough in this case; is that fair?

A For the purpose of the report.

Q The purpose of the report was to determine whether or not this was some sort of diminished capacity defense?

A Yes.

Q Diminished capacity relates directly to deliberation, does it not, the ability to and capacity to deliberate?

A That is one of the factors.
Q You didn't address that issue at all, did you?

A I didn't include it in the report.

Q I see.

Now, would it be fair to say that mental illness, depression, might have an effect on the capacity to deliberate?

A Yes.

Q You didn't address the issue of deliberation, and yet you found no reason to conclude that he didn't deliberate or premeditate, as you put it, in your report, and you found no reason to indicate he did not?

A I didn't put "deliberation" in there, as to whether he did or didn't, or whether he had the capacity to do so.

Q In fact, you have indicated in your forensic opinion that he had the capacity to premeditate largely because there was no reason to conclude to the contrary; in other words, it's an absence of information; is that fair?

A That's right.

The assumption is that people have these capacities, unless you can demonstrate some reason why it should be impaired.

Q Mental illness, if it were true, would be a reason, would it not?

A It could be a reason, yes.

Q Emotional turmoil could be a reason?

A It could be.

Q In fact, you have indicated that he, at least, was in emotional turmoil at the time of the crimes; is that fair?

A Yes, he was.

Q Now, by suggesting-you also had the term "probably able to premeditate." Would there be some issue in your mind as to the issue of pre-meditation; is that fair?

A Yes.
Q We use the "reasonable doubt standard," here, do we not?

A Yes.

Q In fact, I believe you even said that his ability or capacity to premeditate, in your report, was not all that clearcut?

A No, his ability to premeditate seemed to be adequate, but whether or not he had premeditated, no.

Q All right, and let me frame another question with regard to the issue of premeditation. You did indicate that, in fact, from the information you had, that this area was not all that clearcut?

A Well, you asked about his capacity to premeditate, whether that could be affected somewhat by his emotional state, any reason it could be, but I didn't locate anything to make me think that it was.

Q You go on to say: In fact in that area, it was not all that clear-cut; is that fair?

A No, I don't see that section.

Q Well, I think I may be belaboring the point, but it starts at line 12, page 168, and you are talking-you say: "I felt this area was not all that clearcut."

A There, we were talking about actual premeditation, because we are going into the behavior that he manifested.

Q So, on that occasion were you hazarding an opinion as to actual premeditation, as to capacity?

A Yes.

Q You testified here that you are incompetent to do just that?

MR. NORMAN: Objection. That misstates the evidence. He never testified he was incompetent to do anything.

THE COURT: He said that it was not his area or province to determine that.

Q Now, Doctor, with regard to malice, as you understand the law, there is a distinction between malice and intent to kill; is that fair?

A Yes.
Q Can you tell me your understanding of the term "malice," or "malice aforethought?"

A Well, if you view malice as involved in an activity where there is a high risk of someone suffering death, an act carried out for a base-antisocial motive, with a wanton disregard for human life, and with an awareness of the duty not to act, a duty by law.

Q And again, referring to the preliminary hearing, at page 166, on line 25, the question was asked: "As you used the term, 'malice,' what is your understanding of that term?" And your answer is: "Well, the definition that I use in terms of his behavior was--would be pertaining to expressed malice, which is a manifestation of intentional and unlawful killing."

A Yes.

Q Now, Doctor, if there were simply a manifestation of intentional and unlawful killing, with nothing more, that would be no more than voluntary manslaughter; is that fair?

A Yes.

Q Now, Doctor, did you say that Dan White was in an aroused emotional state?

A Yes, he was.

Q And certainly an aroused, emotional state would interfere with his capacity to harbor malice or premeditate or deliberate; is that fair?

A In his case, I can't answer all as one thing; I would have to say: No.

Q Let's take them individually. As to premeditation and deliberation, it would interfere with that ability, would it not? . . .

THE WITNESS: As I viewed it in his case, it did not interfere with premeditation, and there is the possibility that it interfered with deliberation. I do not think it interfered with the ability to act with malice.

Q Are you talking about what actually happened, or his capacity?

A Capacity.

Q And those are your ultimate conclusions, based on what you testified here?

A Yes.

Q Now, is a dream-like fog or dream-like state consistent with a strong emotional disturbance?
A Yes, it is.

Q And, in fact, Dan White, in his interview with you, told you that he was in a dream-like state, or fog-like state; is that fair?

A Substantially, yes.

Q Now, with regard to that, would that be consistent with high wrought emotion?

A Yes.

Q Is there some physiological reason, perhaps, for that dream-like fog or state that you are aware of? . . .

A It's a sympathetic nervous system discharge which creates elevated blood pressure, increased pulse.

Q In fact, doctor, would you say that this never would have happened, and by "this," I mean these two killings, if Dan White were not upset, depressed and angry?

A I don't see him as the sort of person who would simply carry out an act like this unless he felt himself quite justified.

Q Well, Doctor, referring to your statement in the preliminary examination, page 164, and I am starting at line 17, you stated in response to a similar question that he was under a state of upset; that he was feeling depressed, angry and if it weren't for feelings, those things-none of this would have happened?

A Yes.

Q That is as to personality, but with regard to character traits, would you define him to be a moral person, truthful person?

A Yes, I would say: truthful, moral, honest, industrious, hard--working.

Q Would it be fair to say that acting out of malice or with malice, it would be out of character for him?

A He would have to be quite angry to act with malice, yes.

Q In other words, he would have to have an aroused heat of passion?

A He would have to be quite angry.

Q "Heat of passion," is a legal term, of course, and if it produces any killing, then that is voluntary manslaughter?
A It's one of the considerations, yes.

MR. SCHMIDT: No further questions.

**REDIRECT EXAMINATION by Mr. Norman:**

Q Dr. Levy, while at the time you had rendered your opinion as of the 27th, or formed your opinion as of the 27th of November, in the evening time, you have told us that you went over some material which is, as a matter of fact, has been identified to in this court, those being the testimonies of Dr. Jones, Dr. Blinder, Dr. Solomon, Dr. Delman and Dr. Lunde, each respectively, and in reviewing that material, as to those persons just named, did you consider the background which they had and which they testified to in this court, concerning the defendant, upon which, or at least, part of which was the basis of their respective opinions?

A Yes, they all did put in a considerable amount of time in talking with the defendant and talking with family members and other people associated with the case.

Q Well, Doctor, again, have you considered that material which they considered, about which they gave testimony in that connection, in your opinion here, which you have said was not changed from your initial opinion of November 27th?

A Yes, my opinion today is based upon their testimony, plus my own assessment.

Q I take it that your opinions have not changed in that regard?

A That is right.

Q Doctor, do you feel, given that you have an opinion that the defendant was in some sort of turmoil at the time of the killings, that that turmoil, in view of all the facts and the circumstances, and his activities, was sufficient in magnitude to prevent or preclude pre-meditation or deliberation or malice?

A No, I don't think it would prevent or preclude it at all.

Q Dr. Levy, that-the defendant shot George Moscone twice in the head after disabling him with two body shots, and that he shot Harvey Milk twice in the head, similarly, after disabling him with some three body shots, does that have any significance to you, Doctor, in regard to his frame of mind or his attitude toward either or both George Moscone and Harvey Milk?

A To me, it suggests the extent of his anger.

Q Would you say that it's an extension of his anger?
A It could be viewed that way.

Q You have said and testified here that he felt angry, he felt betrayed, do you feel that humiliation was any other emotion which was entertained by Mr. White?

A Yes, I think that is a very strong emotion with him.

Q Asked about his character, you said something about his killing in justification or feeling justified; in this case, Doctor, do you feel that he felt that he was justified?

A At the time I saw him it seemed that he did feel that it was justified.

MR. NORMAN: Thank you, Doctor Levy.

RECROSS-EXAMINATION by Mr. Schmidt:

Q This is going to be very brief. Is there anywhere in your report, the report that was drafted some time after November 27th, but dated November 27th, did you say that he felt he was justified?

A I don't think it's in there, no.

MR. SCHMIDT: I don't think it's either.

Thank you.
Judge Walter Calcagno’s
Instructions to the Jury

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence we come to that part of the trial where you are instructed on the applicable law.

Whether a defendant is to be found guilty or not guilty depends upon both the facts and the law .... You must accept and follow the rules of law as I state them to you. As jurors you must not be influenced by pity for a defendant or by prejudice against him. You must not be swayed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling.

1. Evidence consists of testimony of witnesses, writings, material objects, or anything presented to the senses and offered to prove the existence or non-existence of a fact.

Evidence is either direct or circumstantial.

Direct evidence is evidence that directly proves a fact, without the necessity of an inference, and which by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct evidence and circumstantial evidence.

Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

2. The mental state with which an act is done may be shown by the circumstances surrounding the commission of the act. But you may not find the defendant guilty of the offenses ... unless the proved circumstances not only are consistent with the theory that he had the required mental state but cannot be reconciled with any other rational conclusions.

Also, if the evidence as to such mental state is susceptible of two reasonable interpretations, one of which points to the existence of the mental state and the other to the absence of the mental state, it is your duty to adopt that interpretation which points to the absence of the mental state. If, on the other hand, one interpretation of the evidence as to such mental state appears to you to be reasonable and the other interpretation to be
unreasonable, it would be your duty to accept the reasonable interpretation and to reject the unreasonable.

3. Every person who testifies under oath or affirmation is a witness. You are the sole judges of the believability of a witness and the weight to be given to his testimony. In determining the believability of a witness you may consider anything that has a tendency in reason to prove or disprove the truthfulness of his testimony, including but not limited to any of the following:
The extent of his opportunity and ability to see or hear or otherwise become aware of; to remember or to communicate any matter about which he testifies;
The character and quality of his testimony;
The demeanor of the witness while testifying and the manner in which he testifies;
His character for honesty or truthfulness or their opposites;
The existence or nonexistence of a bias, interest, or other motive;
A statement previously made by him that is consistent or inconsistent with his testimony;
Evidence of the existence or nonexistence of any fact testified to by him;
His attitude toward the action in which he testifies or toward the giving of testimony;

4. Evidence of the character of a witness for honesty or veracity may be considered in determining his credibility. Also, in judging the credibility of any statements of the defendant which have been admitted into evidence, you may consider any evidence regarding his reputation for honesty or veracity.

5. Evidence has been received which may tend to show the good character of the defendant- for those traits ordinarily involved in the commission of a crime, such as that charged in this case. Good character for the traits involved in the commission of the crimes charged may be sufficient by itself to raise a reasonable doubt as to the guilt of a defendant. It may be reasoned that a person of good character as to such traits would not be likely to commit the crimes of which the defendant is charged.

6. It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. You must not draw any inference from the fact that he does not testify. Further, you must neither discuss this matter not permit it to enter into your deliberations in any way.

7. A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Duly qualified experts may give their opinions on questions
in controversy at a trial. To assist you in deciding such questions, you may consider the opinion with the reasons given for it, if any, by the expert who gives the opinion. You may also consider the qualifications and credibility of the expert. In resolving any conflict that may exist in the testimony of expert witnesses, you should weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and credibility of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based. You are not bound to accept an expert opinion as conclusive, but should give it the weight to which you find it to be entitled. You may disregard any such opinion if you find it to be unreasonable.

8. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to a verdict of not guilty. This presumption places upon the State the burden of proving him guilty beyond a reasonable doubt.

9. In the crimes charged in Counts One and Two of the Information, murder, or in any of the lesser included offenses for which you will be given verdict forms, there must exist a union or joint operation of act or conduct and a certain mental state in the mind of the perpetrator, and unless such mental state exists, the crime to which it relates is not committed. In the crime of murder of the first degree the necessary concurrent mental states are: malice aforethought, premeditation and deliberation. In the crime of murder of the second degree, the necessary mental state is malice aforethought. In the crime of voluntary manslaughter, the necessary mental state is intent to kill. Involuntary manslaughter is an unlawful killing without malice aforethought and without intent to kill.

10. Defendant is charged in Counts One and Two of the information with the commission of the crime of murder, a violation of Section 187 of the Penal Code. The crime of murder is the unlawful killing of a human being with malice aforethought. In order to prove the commission of the crime of murder each of the following elements must be proved:

1. That a human being was killed.
2. That the killing was unlawful, and
3. That the killing was done with malice aforethought.

11. Malice may be either express or implied.
Malice is express when there is manifested an intent unlawfully to kill a human being. Malice is implied when the killing results from an act involving a high degree of probability that it will result in death, which act is done for a base, antisocial purpose and with a wanton disregard for human life by which is meant an awareness of a duty imposed by law not to commit such acts followed by the commission of the forbidden act despite that awareness or when the killing is a direct causal result of the perpetration or the attempt to perpetrate a felony inherently dangerous to human life. The mental state constituting malice aforethought does not necessarily require any ill will or hatred of the person killed. Aforethought does not imply deliberation or lapse of considerable time; it only means that the required mental state must precede rather than follow the act.

12. All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with express malice aforethought is murder of the first degree. The word willful as used in this instruction means intentional. The word deliberate means formed or arrived at or determined upon as a result of careful thought and weighing of considerations' for an against the proposed course of action. The term deliberate further means that the act must have been the result of careful thought and weighing of consideration carried on coolly and steadily. In this regard, deliberate means the weighing of facts and arguments with a view to a choice or decision, careful in considering the consequences of a step, unhurried, characterized by reflection; dispassionate, and in no way rash. Deliberation means careful consideration and examination of the reasons both for and against a choice or measure, said weighing of the reasons for and against a choice or measure being done in a cool, careful, reflective and organized way. The word premeditated means considered beforehand, to think on and revolve in the mind beforehand, to contrive and design previously. If you find that the killing was preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was the result of deliberation and premeditation, so that it must have been formed upon pre-existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation, it is murder of the first degree. The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances. The true test is not the duration of time, but rather the extent of reflection. Although a cold, calculated judgment and decision may be arrived at in a short period of time, a mere unconsidered and rash impulse, even though it included an intent to kill, is not such deliberation and premeditation as will fix an unlawful killing as murder of the first degree.
To constitute a deliberate and premeditated killing the slayer must weigh and consider the question of killing and the reasons for and against such a choice, and, having in mind the consequences to himself, the victim and all others concerned, he decides to, and does kill.

13. Murder of the second degree is the unlawful killing of a human being with malice aforethought when there is manifested an intention unlawfully to kill a human being but the evidence is insufficient to establish deliberation and premeditation.

14. The crime of voluntary manslaughter is the unlawful killing of a human being without malice aforethought when there is an intent to kill. There is no malice aforethought if the killing occurred upon a sudden quarrel or heat of passion.
In order to prove the commission of the crime of voluntary manslaughter, each of the following elements must be proved:
(1) That a human being was killed,
(2) That the killing was unlawful, and
(3) That the killing was done with the intent to kill.

15. Voluntary manslaughter is the intentional and unlawful killing of a human being without malice aforethought.
There is no malice aforethought if the killing occurred upon a sudden quarrel or heat of passion or if the evidence shows that due to diminished capacity caused by mental illness, mental defect, or intoxication, the defendant did not have the capacity to form the mental state constituting malice aforethought, even though the killing was intentional, voluntary, deliberate, premeditated, and unprovoked.

16. To reduce an intentional felonious homicide from the offense of murder to manslaughter upon the ground of sudden quarrel or heat of passion, the provocation must be of such character and degree as naturally would excite and arouse such passion, and the assailant must act under the smart of that sudden quarrel or heat of passion. The heat of passion which will reduce a homicide to manslaughter must be such that a passion as naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A defendant is not permitted to set up his own standard of conduct and to justify or excuse himself because his passions were aroused, unless the circumstances in which he was placed and the facts that confronted him were such as also would have aroused the passions of the ordinarily reasonable man faced with the same situation. However, in determining whether a person in the same circumstances would be aroused to a heat of passion, you may consider such circumstances as the defendant's physical, mental, and emotional state at the time.
The question to be answered is whether or not, at the time of the killing, the reason of accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from such passion rather than from judgment.

In determining whether defendant had diminished mental capacity, if there was evidence that defendant's act was a product of an irresistible impulse, you must consider whether or not such irresistible impulse, if any, was due to mental illness, mental disease, extreme stress, emotional disturbance, or any other cause, so as to render defendant incapable of forming the mental states essential to murder or voluntary manslaughter.

Irresistible impulse, within the meaning of this instruction, means an inability, due to mental illness, mental disease, extreme stress, emotional disturbance, or other cause, to conform one's conduct to the requirements of the law. If you have a reasonable doubt, whether defendant was able for such reasons to control of his conduct, you have a duty to resolve that doubt in favor of defendant.

17. Neither the emotion of fear, of itself, nor the emotion for revenge, of itself, nor the emotion induced by and accompanying or following an intent to commit a felony, of itself, nor any or all of these emotional states, in and of themselves, constitutes the heat of passion referred to in the law of manslaughter which I have stated to you. Any or all of such specific emotions may be involved in a heat of passion that causes judgment to give way to impulse and rashness, but also anyone or more of them may exist in the mind of a person who acts deliberately and from choice following his own reasoning howsoever good or bad it may be.

18. To establish that a killing is murder and not manslaughter, the burden is on the State to prove beyond a reasonable doubt each of the elements of murder and that the act which caused the death was not done in the heat of passion or upon a sudden quarrel.

19. If you are convinced beyond a reasonable doubt that the crime of murder has been committed by a defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give defendant the benefit of that doubt and return a verdict fixing the murder as of the second degree.

20. If you are satisfied beyond a reasonable doubt that the killing was unlawful, but you have a reasonable doubt whether the crime is murder or manslaughter, you must give the defendant the benefit of such doubt and find it to be manslaughter rather than murder.

21. If you find from the evidence that at the time the alleged crime was committed, the defendant had substantially reduced mental capacity, whether caused by mental illness, mental defect, intoxication, or any other cause, you must consider what effect, if any, this
diminished capacity had on the defendant's ability to form any of the specific mental states that are essential elements of murder and voluntary manslaughter.

Thus, if you find that the defendant's mental capacity was diminished to the extent that you have a reasonable doubt whether he did, maturely and meaningfully, premeditate, deliberate, and reflect upon the gravity of his contemplated act, or form an intent to kill, you cannot find him guilty of a willful, deliberate and premeditated murder of the first degree.

Also, if you find that the defendant's mental capacity was diminished to the extent that you have a reasonable doubt whether he was able to form the mental states constituting either express or implied malice aforethought, you cannot find him guilty of murder of either the first or second degree.

22. In determining if defendant had diminished mental capacity, if there was evidence that defendant's act was the product of an irresistible impulse, you must consider whether or not such irresistible impulse, if any, was due to mental illness, mental disease or mental defect so as to render defendant incapable of forming the mental states essential to murder or voluntary manslaughter.

23. If you find the defendant in this case guilty of murder of the first degree, you must then determine if the murder was committed under one or more of the following special circumstances:

(1) It is alleged that the defendant, Daniel James White, in this proceeding has been charged with more than one offense of murder.

(2) It is alleged that George R. Moscone was an elected official of the government of the City and County of San Francisco, State of California, and the killing as was alleged in Count I was personally carried out in retaliation for and to prevent the performance of the official duties of the said George R. Moscone.

(3) It is alleged that Harvey Milk was an elected local official of the government of the City and County of San Francisco, State of California, and the killing as was alleged in Count II was personally carried out in retaliation for and to prevent the performance of the official duties of the said Harvey Milk. A special circumstance must be proved beyond a reasonable doubt. If you have a reasonable doubt as to whether a special circumstance is true, it is your duty to find that it is not true.

24. To find that the special circumstance, referred to in these instructions as murder of a public official, is true, each of the following facts must be proved:

(1) That the persons killed were publically elected officials.

(2) That the public official was intentionally killed in retaliation for or to prevent the performance of his official duties.
25. You are not permitted to find the special circumstances charged in this case to be true based on circumstantial evidence unless the proved facts are not only (1) consistent with the theory that the special circumstances are true, but (2) cannot be reconciled with any other rational conclusion. Each fact which is essential to complete a set of facts necessary to establish the truth of the special circumstances must be proved beyond a reasonable doubt.

Also, if the circumstantial evidence is susceptible of two reasonable interpretations, one of which points to the truth of the special circumstances and the other to their untruth, it is your duty to adopt the interpretation which points to their untruth, and reject the interpretation which points to their truth. If, on the other hand, one interpretation of such evidence appears to you to be reasonable and the other interpretation to be unreasonable, it would be your duty to accept the reasonable interpretation and to reject the unreasonable.

26. In your deliberations the subject of penalty or punishment is not to be discussed or considered by you. That is a matter which must not in any way affect your verdict or affect your finding as to the special circumstances charged in this case....

27. You shall now retire and select one of your number to act as foreperson, who will preside over your deliberations. In order to reach a verdict, all twelve jurors must agree to the decision and to any finding you have been instructed to include in your verdict. As soon as all of you have agreed upon a verdict, you shall have it dated and signed by your foreman and then shall return with it to this courtroom.
THE JURORS’ RETROSPECTIVE

While the jury agreed it would not comment publicly on the secret deliberations that lead to the voluntary manslaughter conviction or give interviews, the violent events that followed the verdict prodded the foreman of the White jury to break his vow of silence. He was quoted as saying that, while it was clear to everyone that the case was “an unlawful killing of one human being by another,” there remained a reasonable doubt. “No one could come up with any evidence that indicated premeditation.” He further stated that the key issue in determining the degree of murder or manslaughter for the jury turned on the legal definition of malice.7 One juror stated to a reporter that “the defense raised legal issues in the jurors’ minds about all the big issues—White’s gun, his climb through a City Hall window before the killings, his reloading the gun between the killings. . . . There’s a phrase. It’s very catchy—‘beyond a reasonable doubt.’ They had to be that certain to convict the defendant and the evidence wasn’t there to make that leap beyond that doubt.” Another juror stated bluntly that the prosecutor “didn’t do his homework. We did not feel the prosecution completely made it clear beyond a reasonable doubt that Dan White deliberated, that there was premeditation or malice aforethought.”

A fourth juror echoed the same theme in stating that, while he was initially one of four jurors who cast his first ballot for second-degree murder, he finally couldn’t find the evidence for second degree murder and eventually voted with the others for voluntary manslaughter. He stated:

“That’s what I was looking for—that someone would say something bad about Dan White. . . . I was looking for a little premeditation that he didn’t do it all on the spur of the moment, but I couldn’t find it in the evidence. . . . White was lily white. He was asked (by a psychiatrist) why he
The Trial of Dan White

wouldn't punch Moscone. He said no, Moscone was an older man and he couldn't think of punching anyone in the nose. Those things were stressed by the witness who said White had a bad temper. . .Why couldn't they (prosecution) come up with better witnesses? Why didn't they say something more? Why didn't they make a better selection of the jury? All the weaknesses—why did he go in the window? All the questions of doubt—Where did he refill his pistol—why didn't the prosecution pursue them more?"^^8

It is apparent from a survey of the juror's impressions, such as we have them, that the prosecution failed with this jury to establish a compelling case for either first or second degree murder using the instructions given by the judge in the case. With the jurors criticism or rationalizations in mind, the reader is invited to carefully read and assess the evidence in the case and come to his or her own conclusion in this controversial case.
related directly to a precipitating life experience and therefore is distinguishable from *Psychotic depressive reaction* and *Depressive neurosis*. (This category is not equivalent to the DSM-I heading “Affective reactions,” which included “Psychotic depressive reaction.”)

**296.0 Involutional melancholia**

This is a disorder occurring in the involutional period and characterized by worry, anxiety, agitation, and severe insomnia. Feelings of guilt and somatic preoccupations are frequently present and may be of delusional proportions. This disorder is distinguishable from *Manic-depressive illness* (q.v.) by the absence of previous episodes; it is distinguished from *Schizophrenia* (q.v.) in that impaired reality testing is due to a disorder of mood; and it is distinguished from *Psychotic depressive reaction* (q.v.) in that the depression is not due to some life experience. Opinion is divided as to whether this psychosis can be distinguished from the other affective disorders. It is, therefore, recommended that involutional patients not be given this diagnosis unless all other affective disorders have been ruled out. (In DSM-I this disorder was included under “Disorders due to disturbances of metabolism, growth, nutrition or endocrine function.”)

**Manic-depressive illnesses (Manic-depressive psychoses)**

These disorders are marked by severe mood swings and a tendency to remission and recurrence. Patients may be given this diagnosis in the absence of a previous history of affective psychosis if there is no obvious precipitating event. This disorder is divided into three major subtypes: manic type, depressed type, and circular type.

**296.1 Manic-depressive illness, manic type ((Manic-depressive psychosis, manic type))**

This disorder consists exclusively of manic episodes. These episodes are characterized by excessive elation, irritability, talkativeness, flight of ideas, and accelerated speech and motor activity. Brief periods of depression sometimes occur, but they are never true depressive episodes.

**296.2 Manic-depressive illness, depressed type ((Manic-depressive psychosis, depressed type))**

This disorder consists exclusively of depressive episodes. These episodes are characterized by severely depressed mood and by mental and motor retardation progressing occasionally to stupor. Uneasiness, apprehension, perplexity and agitation may also be present.
The People v. Daniel James White
117 Cal. App. 3d 270 (March 25, 1981)
Court of Appeal of California, First Appellate District, Division Two

March 25, 1981

CALIFORNIA OFFICIAL REPORTS SUMMARY

Defendant, a former member of the Board of Supervisors of the City and County of San Francisco, charged with murder, was convicted after a jury trial of two counts of the lesser included offense of voluntary manslaughter (Pen. Code, § 192, subd. (1)) with use of a firearm (Pen. Code, §§ 12022, subd. (a) and 12022.5) in connection with the shooting deaths of a member of the board of supervisors and the city's mayor. The evidence tended to show that defendant, frustrated by the intended refusal of the mayor to reappoint him to the board of supervisors after he sought to retract his resignation, and believing a certain supervisor in particular to have opposed his reappointment, armed himself with a revolver and entered the city hall through a basement window in order to avoid metal detectors at the regular entrances. Proceeding first to the mayor's office, and being admitted by the mayor's appointment secretary, he shot the mayor four times, twice in the body and twice in the head, the shots to the head being apparently delivered from a distance of one foot after the mayor was lying on the floor, incapacitated by the body wounds. Reloading the revolver, defendant then proceeded across the building to the office of his second victim, whom he shot five times, three times in the body and twice in the back of the head, again apparently delivering the head wounds after the victim was prone and incapacitated. After surrendering to the police later the same day, defendant made a statement citing the financial and political pressures he had been under, stating that he had gone to city hall on the day of the killings simply to ask the mayor about the prospects for his reappointment, and claiming that upon being told he would not be reappointed he got "fuzzy," heard "a roaring in his ears," and "just shot him." Defendant's statement to the police went on to assert that he had then reloaded his gun "out of instinct," proceeded to the office of his second victim again simply to talk, but that he "got all flushed" and began shooting when the second victim "smirked" at him. At trial, defendant presented a diminished capacity defense, calling several psychiatric witnesses who testified that at the time of the killings he lacked the capacity to deliberate, premeditate, harbor malice, or to form intent. Following the jury verdict, the trial judge sentenced defendant to a total term of seven and two-thirds years in state prison. On count one, (the killing of the mayor), defendant was given the upper term of four years, pursuant to the then applicable provisions of Pen. Code, § 193 and § 1170, subd. (b), and also a two-year firearm use enhancement pursuant to Pen. Code, § 12022.5 and § 1170.1, subd. (c). On count two, (the killing of the supervisor), defendant was given a consecutive sentence of one-year pursuant to Pen. Code, § 1170.1, subd. (a), and an eight-month firearm use enhancement, pursuant to Pen. Code, § 12022.5. (Superior Court of the City and County of San Francisco, No. 98663, Walter F. Calcagno, Judge.)

On defendant's appeal on the basis of alleged sentencing errors, the Court of Appeal affirmed. Preliminarily, the court held that defendant's sentencing arguments claiming
that the trial court's stated reasons for its sentencing choices were inadequate, and therefore resembling a challenge to the sufficiency of evidence, were not waived on appeal by the failure of defendant to have made corresponding objections at the time of the sentencing hearing. Proceeding, accordingly, to the merits of defendant's appeal, the court first rejected defendant's argument that the trial court failed to consider mitigating circumstances contained in the probation report, holding that a trial court is not required to indicate its reasons for rejecting a mitigating factor, and that, on the record before it, it was necessary to presume that the trial court did consider the mitigating circumstances but concluded that they were outweighed by other facts. In relation to the challenged validity of the bases indicated by the trial court for its imposition of the upper terms of imprisonment, the court held that no such valid basis was in fact provided by two of the factors cited by the trial court: that defendant might be a danger to himself if he were to be released from prison in a relatively short time, and that defendant was responsible for two deaths. And the court also held that the vagueness of the expression "of maximum violence," used by the trial court to describe the crimes and in justification of the imposition of the upper terms, made it difficult to determine the court's reasoning and to evaluate the validity of that factor as a basis for the court's sentencing choice. But the court held that the error, if any, was harmless, since the record amply supported the sentences imposed by the trial court, and it was not therefore reasonably probable that a remand for resentencing would produce a different result. The court held that the factors revealed by the record which warranted and virtually mandated imposition of the aggravated term of imprisonment for each of the two counts of voluntary manslaughter included; the firing of four and five shots respectively into the bodies of the first and second victims, two of which shots in each case were administered to the head in the manner of a coup de grace after the victim was lying incapacitated on the floor, such conduct clearly meeting the sentencing criteria set forth in Cal. Rules of Court, rules 421(a)(1), and 421(a)(3); the fact that there was evidence that the crimes were carried out with planning indicating premeditation (Cal. Rules of Court, rule 421(a)(8)); and the fact that defendant took advantage of a position of trust or confidence to gain access to the victims and to carry out the crimes (Cal. Rules of Court, rule 421(a)(12)). Finally, the court held that the two killings were not part of one indivisible transaction for which only one gun use enhancement could be imposed, since, notwithstanding the fact that defendant apparently possessed a similar motive for killing both victims, his desire for vengeance had two separate and distinct individuals as its object and it was necessary for him to reload his gun and move some distance before locating and killing his second victim. (Opinion by Rouse, Acting P. J., with Miller and Smith, JJ., concurring.)

JUDGES: Opinion by Rouse, Acting P. J., with Miller and Smith, JJ., concurring.

**OPINION by Judge Rouse**

Defendant, Daniel James White, appeals from a judgment and sentence imposed following his conviction by a jury of two counts of voluntary manslaughter, in violation of section 192, subdivision 1, of the Penal Code; also, he was found to have been armed with and used a firearm in the commission of both offenses, in violation of sections 12022, subdivision (a), and 12022.5.

On November 10, 1978, defendant resigned from his position as a supervisor for the City and County of San Francisco. Several days later, he asked to be reinstated. Mayor George Moscone was responsible for filling the vacancies on the board. Initially, he assured defendant he would be reappointed. Later, the mayor wrote defendant, informing him that he had made no commitment of any kind to reappoint him. Supervisor Harvey Milk opposed defendant's reappointment.

The mayor scheduled a press conference on Monday, November 27, at 11:30 a.m., to announce the new supervisor. On Sunday, November 26, sometime between 10 and 11 p.m., a reporter telephoned defendant and informed him that he was not going to be reinstated. At approximately 10 a.m. on the following morning, defendant telephoned his aide and asked for a ride to city hall. The aide picked up defendant at his home and delivered him to the front entrance to city hall on Polk Street. Instead of entering the building at the regular entrance, where he would be required to pass through a metal detector, defendant went to the McAllister Street side of city hall and entered the building through a basement window. Defendant went up to the mayor's office on the second floor and asked the appointment secretary if he could see the mayor. Defendant was admitted to the mayor's office at 10:40 a.m. After a few minutes, the appointment secretary heard defendant's raised voice in the mayor's office and a series of dull thuds. The mayor's deputy then saw defendant running down the corridor, outside of the mayor's office. The deputy entered the mayor's private sitting room and found the mayor's body. An autopsy revealed that the mayor had been shot four times: twice in the body and twice in the head. The wounds to the head were delivered after the mayor was lying on the floor, incapacitated by the body wounds, and were fired from a distance of one foot from the head. The slugs were from semijacketed .38 caliber bullets.

Shortly before 11 a.m., defendant ran down a corridor from the east side of city hall where the mayor's office is located and used his key to enter a door leading to the supervisors' offices on the west side of the building. Defendant entered Supervisor Harvey Milk's office and, in a normal tone of voice, asked to speak with Supervisor Milk. Defendant and Milk went across the hall to defendant's office. Approximately 15 seconds later, shots were heard in defendant's office. Defendant left his office and rushed down the corridor. Supervisor Milk's body was found in defendant's office. An autopsy revealed that Supervisor Milk had been shot five times: three times in the body and twice in the back of the head. The head wounds were delivered while Supervisor Milk was on the floor, incapacitated by the body wounds. The slugs were from semijacketed .38 caliber bullets.
Sometime after 11 a.m., defendant ran into his aide's office and yelled to her to give him her car key. After receiving the key, he ran out. Later, defendant called his wife and asked her to meet him at a cathedral. After meeting, they walked together to a police station where defendant surrendered himself to the police. The police removed a .38 caliber Smith and Wesson Chief Special revolver from a holster on defendant's right hip. The shots that killed Mayor Moscone and Supervisor Milk were fired from defendant's gun.

Shortly after his arrest, having been advised of his Miranda rights, defendant gave a statement to the police. He stated that he had been under pressure financially, politically, and at home. He had resigned from the board of supervisors to relieve some of the pressure. However, because of family support, he changed his mind and asked to be reappointed. Initially, he was assured by the mayor that he would be reappointed. Later, he discovered that Supervisor Milk was working against his reappointment and that he was being used as a political "scapegoat."

Defendant stated that, since he never heard from the mayor personally, he went to city hall on November 27 to ask the mayor about the reappointment. Before leaving home, he armed himself with a revolver. When he met the mayor and was told that he would not be reappointed, he got "fuzzy" and there was "a roaring in his ears." He thought about the effect his not being reappointed would have on his family and about how the mayor was going to lie to everybody about him not being a good supervisor, so he "just shot him." "[Out] of instinct" he then reloaded his gun with extra shells from his pocket before leaving the mayor's office. Defendant stated that he then left the mayor's office and saw Supervisor Milk's aide in the corridor. He thought how Supervisor Milk had worked against him and decided he would "go talk to him." When they met, Supervisor Milk "smirked" at him. He "got all flushed" and shot Milk.

At the trial, defendant presented a diminished capacity defense.

It was the opinion of Dr. Jerry Jones, a psychiatrist, that defendant was suffering from severe depression; that he had the capacity to premeditate, to intend to kill, and to know that he should not act in a base and antisocial manner; however, he lacked the capacity to deliberate.

As a result of his examination, Dr. Martin Blinder, a psychiatrist, concluded that defendant was suffering from depression and intense pressure and that the pressure that he was suffering circumvented the mental processes necessary for premeditation, malice and intent.

Dr. George Solomon, a psychiatrist, found that defendant was suffering from recurrent bouts of unipolar depression (i.e., subject to recurrent bouts of depression to a major degree). He concluded that defendant lacked the mental capacity to meaningfully premeditate and deliberate; that he was in a disassociated state of mind and blocked out all awareness of his duty not to kill.
Dr. Donald Lunde, a psychiatrist, concluded that defendant was suffering from severe depression and that on November 27 he did not premeditate or deliberate, nor was he capable of mature, meaningful reflection.

Dr. Richard Delman, a psychologist, performed three psychological tests on defendant and, on the basis of such testing, concluded that defendant's ability to deliberate and premeditate was impaired; that on the day of the shooting he lacked the capacity to weigh considerations and rationally decide on a course of action; also, that defendant lacked the capacity to harbor malice and to appreciate his duty not to do wrong.

In response to such evidence, the district attorney offered testimony of Dr. Roland Levy, a psychiatrist, who, at the time of his examination of defendant on the evening of the shooting, found him to be moderately depressed but lacking any sign of clinical depression. He concluded that defendant had the capacity to deliberate and premeditate. Dr. Levy had reviewed the opinions of the defense psychiatrists and had found nothing to cause him to revise his opinion.

The balance of evidence offered by the defense consisted of testimony by friends, acquaintances and relatives. In substance, that evidence tended to show defendant as a man who enjoyed an honorable reputation in the community, but a person given to moods of frustration and deep depression. Defendant did not testify.

The jury found defendant guilty of two counts of voluntary manslaughter, a lesser included offense of the crime of murder. The jury also found, as true, charges that, in the commission of the two offenses, defendant was armed with and used a firearm.

The trial judge sentenced defendant to a total term of seven and two-thirds years in state prison. On count one (the killing of Mayor George Moscone), defendant was given the upper term of four years, 2 pursuant to sections 193 and 1170, subdivision (b); also, a two-year firearm use enhancement, pursuant to sections 12022.5 and 1170.1, subdivision (c). On count two (the killing of Supervisor Harvey Milk), defendant was given a consecutive sentence of one year, pursuant to section 1170.1, subdivision (a), and an eight-month firearm use enhancement, pursuant to section 12022.5.

In this appeal, defendant contends that the trial court improperly relied upon a single fact, namely, his use of a firearm, as the sole basis for imposing the upper term of imprisonment on count one and imposing firearm use enhancements on both counts one and two. He points out that, under such circumstances, the dual use of a single fact is prohibited. He argues, also, that the reasons given by the trial judge for his sentencing choice are insufficient to justify the imposition of the upper, or aggravated, term of imprisonment under the prescribed sentencing rules. (Cal. Rules of Court, rule 421.) Finally, he claims that the trial judge failed to consider certain mitigating circumstances when selecting the upper term for count one.
In his response, the Attorney General asserts that defendant has no right to complain of this alleged error on appeal because he failed to bring it to the trial court's attention at the sentencing hearing. He argues that defendant's silence in the trial court deprived the court and the prosecutor of the opportunity to cure the alleged sentencing defect and to specify reasons other than the use of a firearm for the imposition of the upper term on count one. He has cited no authority in support of his contention that such a sentencing error may be waived.

In reply to the Attorney General's assertion, defendant has directed our attention to People v. Ramos (1980) 106 Cal.App.3d 591, 598, footnote 1 [165 Cal.Rptr. 179], where a similar waiver argument was rejected. The Ramos court stated that it was aware of no authority that waiver principles applied to a sentencing hearing. The court was also of the opinion that, insofar as the defendant's sentencing arguments resembled a challenge to the sufficiency of the evidence and questioned "the validity of certain aggravating factors," such arguments could not be barred on appeal by any waiver theory.

Here, the trial judge stated reasons for his sentencing choice, but defendant argues that those reasons were inadequate. Thus, the situation is similar to that which existed in People v. Ramos, supra. For that reason, we will apply the Ramos holding, in this instance, and direct our attention to the merits of defendant's appeal. The record reveals that the probation report listed three circumstances in aggravation and three circumstances in mitigation. The aggravating circumstances included (1) the crime involved great violence and great bodily harm; (2) defendant was armed with and used a weapon; and (3) the crime involved multiple victims. The circumstances in mitigation included (1) defendant had no prior record; (2) defendant was suffering from a mental or physical condition that significantly reduced his culpability for the crime; and (3) defendant voluntarily acknowledged wrongdoing prior to arrest.

At the sentencing hearing, the trial judge gave the following reasons for his choice of the upper term of imprisonment for count one: he stated that he considered that the crimes involved were of "maximum violence" and involved two deaths; also, he expressed the opinion that an upper term of four years for the crime of voluntary manslaughter was an inadequate punishment for that offense. The judge further stated that an additional reason for imposing an upper term was furnished by defendant's expert witnesses who had stated that, in the event of an early release from prison, defendant might be a danger to himself. The judge believed that, since defendant was a member of society, the aggravated sentence would serve to protect him, and thus society. The judge then gave his reasons for imposing consecutive sentences on counts one and two, stating that there were two separate crimes, two separate acts, and two separate victims.

Defendant's contention that the trial court failed to consider the circumstances in mitigation is without merit. A trial court is not required to indicate its reasons for rejecting a mitigating factor. ( People v. Davis (1980) 103 Cal.App.3d 270, 281 [163 Cal.Rptr. 22].) It is also the rule that, unless the record affirmatively reflects otherwise, the trial court will be deemed to have considered the relevant criteria, such as mitigating circumstances, enumerated in the sentencing rules. ( People v. Jackson (1980) 103
Cal.App.3d 635, 639 [163 Cal.Rptr. 115].) Hence, on the record before us, it must be presumed that the trial court did consider the mitigating circumstances listed in the probation report, but concluded that they were outweighed by the other facts which the trial court relied upon in selecting the upper term of imprisonment.

Of course, we must disregard the trial judge's statement that he felt that an upper term of four years was too light a punishment for the crime of voluntary manslaughter since, as he pointed out, "that was the decision of the Legislature."

The remaining reasons which the trial judge gave for the imposition of the upper term consisted of the "maximum violence" involved in the commission of the crime, the fact that defendant was responsible for two deaths, and the fact that defendant might be a danger to himself if he obtained an early release from prison.

The fact that defendant might be a danger to himself if he were released from prison in a relatively short period of time furnishes no valid basis for the imposition of the upper term of imprisonment. Neither does the fact that defendant was responsible for two deaths. ( People v. Lawson (1980) 107 Cal.App.3d 748 [165 Cal.Rptr. 764]; Cal. Rules of Court, rule 421.)

The Attorney General suggests that the trial court's reference to maximum violence could well have been intended as an allusion to the callous and vicious manner in which defendant used his gun, i.e., that defendant shot George Moscone four times, and that the final two shots were to the victim's head and were fired at extremely close range, under circumstances which suggested that the victim was already on the floor, incapacitated.

Defendant points out that most killings which are accomplished by the use of a firearm involve maximum violence. He claims, therefore, that such a broad characterization of the conduct involved in this case does not provide sufficient reason for selecting the upper, in preference to the middle or lower, term of imprisonment as a sentencing choice.

We agree that the vagueness of such terminology, in this instance, makes it somewhat difficult for us to determine the trial judge's reasoning. However, since the record amply supports the sentences imposed by the trial court, it is not reasonably probable that a remand for resentencing would produce a different result. Thus the error, if any, is harmless. ( People v. Watson (1956) 46 Cal.2d 818 [299 P.2d 243]; People v. Dozier (1979) 90 Cal.App.3d 174, 179 [153 Cal.Rptr. 53].)

It could be argued that the evidence in this case would have fully supported a conviction for the crimes of murder of the first degree. However, we must assume that the jury accepted the defense evidence regarding defendant's state of mind at the time of the killings and, on that basis, found him guilty of the lesser crimes of voluntary manslaughter. Although he expressed dissatisfaction with the somewhat minimal term of imprisonment fixed by the Legislature for such a serious crime, the trial judge, nevertheless, was bound to impose a sentence within the limits prescribed by law; but there was no restriction on his right, and obligation, to consider the circumstances
surrounding the execution-style killing of each of the victims in setting the terms of imprisonment.

Factors warranting the imposition of the aggravated term of imprisonment for each of the crimes committed were present. Those include:

(1) The firing of four shots into the body of the first victim (Moscone), two of which were administered to the head from a distance of one foot, in the manner of a coup de grace, while the victim lay helpless on the floor. Such conduct clearly meets the criteria set forth in California Rules of Court, rule 421(a)(1), (3).
(2) The firing of five shots into the body of the second victim (Milk), two of those shots fired into the back of the head, again, delivered in the manner of a coup de grace and after the victim was lying on the floor, incapacitated from the first three rounds. Obviously, each victim was, under such circumstances, "particularly vulnerable" within the meaning of rule 421(a)(3).
(3) The planning with which the crimes were carried out, indicating premeditation, prior to the actual events, this within the contemplation of rule 421(a)(8).
(4) The fact that defendant took advantage of a position of trust or confidence to commit the crimes, i.e., his position as a former supervisor and his relationship, in that capacity, to Supervisor Milk and Mayor Moscone. (Rule 421(a)(12).)

Rule 410 of those same Rules of Court provides that the general objectives of sentencing include, among others, protecting society and punishing the defendant. That rule also directs the sentencing judge to be guided by statutory statements of policy, criteria in the rules, and the facts and circumstances of the case. As has been pointed out, the facts and circumstances of this case virtually mandate the imposition of the maximum penalty allowed by law.

Defendant also contends that the trial court erred in imposing gun use enhancements, pursuant to section 12022.5, on the sentences imposed on both count one and count two. He argues that the two killings were part of one indivisible transaction having but a single objective, and that, under the reasoning of In re Culbreth (1976) 17 Cal.3d 330, 333-335 [130 Cal.Rptr. 719, 551 P.2d 23], only one gun use enhancement was proper.

Culbreth involved a situation where the defendant shot and killed three relatives "in a matter of seconds, all part of a single melee." (P. 335.) The Culbreth court characterized the killing as "a single frenetic act of violence which, unfortunately, resulted in multiple victims." (P. 334.)

In the recent case of People v. Blessing (1979) 94 Cal.App.3d 835 [155 Cal.Rptr. 780], the defendant, who was driving a stolen car, attempted to avoid a traffic jam by executing an illegal driving maneuver. When a police officer approached the defendant to issue a traffic citation, the defendant shot the officer and fled on foot. Within minutes thereafter, the defendant flagged down another car, compelled the driver to exit the car at gunpoint, and then drove the car from the scene. (Pp. 839-840.) As a result of this course of conduct, the defendant was convicted and sentenced for assault with a deadly weapon.
upon a police officer and robbery, and both sentences were enhanced for firearm use pursuant to section 12022.5. On appeal, the defendant contended that under the Culbrett reasoning, only one such enhancement was proper. The appellate court concluded that, while it might well be true that the defendant's fundamental intent or objective was to avoid detection and arrest for stealing the car he was driving and for other offenses which he had recently committed, this fact did not prohibit firearm use enhancements for both sentences. (P. 840.) The court reasoned that to accept such a broad, overriding intent and objective as precluding punishment for what would otherwise be clearly separate offenses would defeat the purpose of section 654, which requires that a defendant's punishment be commensurate with his culpability, and would reward the defendant who had the greater criminal ambition with a lesser punishment.

The Blessing reasoning is controlling here. It is unfortunately true that defendant possessed a similar motive for killing both victims, apparently motivated by a desire for revenge because of his belief that each had opposed his reappointment to the board of supervisors. However, the fact remains that his desire for vengeance had two separate and distinct individuals as its object and that it was necessary for him to reload his gun after the first killing and travel from the east side of city hall to the west side of that building before locating and killing his second victim. Under these circumstances, we cannot accept defendant's arguments that the two killings were part of one indivisible transaction for which only one gun use enhancement could be imposed.

Finally, defendant claims that he is entitled to good time/work time credit for time spent in presentence custody. In People v. Sage (1980) 26 Cal.3d 498 [165 Cal.Rptr. 280, 611 P.2d 874], the California Supreme Court ruled that a defendant is entitled to conduct credits for credits earned during the period he was detained in the county jail prior to his commitment to prison. Accordingly the Department of Corrections is directed to compute any conduct credits administratively.

The judgment is affirmed.
Criminal Justice—Initiative Statutes and Constitutional Amendment

Arguments in Favor of Proposition 8

It is time for the people to take decisive action against violent crime. For too long our courts and the professional politicians in Sacramento have demonstrated more concern with the rights of criminals than with the rights of innocent victims. This trend must be reversed. By voting "yes" on the Victims' Bill of Rights you will restore balance to the rules governing the use of evidence against criminals, you will limit the ability of violent criminals to hide behind the insanity defense, and you will give us a tool to stop extremely dangerous offenders from being released on bail to commit more violent crimes. Your action is as vital and necessary today as it was in 1978 when I urged Californians to take property taxes into their own hands and pass Proposition 13. If you believe as I do that the first responsibility of our criminal justice system is to protect the innocent, then I urge you to vote "yes" on Proposition 8.

MIKE CURB
Lieutenant Governor

Crime has increased to an absolutely intolerable level. While criminals murder, rape, rob and steal, victims must install new locks, bolts, bars and alarm systems in their homes and businesses. Many buy tear gas and guns for self-protection. FREE PEOPLE SHOULD NOT HAVE TO LIVE IN FEAR.

Yet, higher courts of this state have created additional rights for the criminally accused and placed more restrictions on law enforcement officers. This proposition will override some of the adverse decisions by our higher courts, THIS MEASURE CREATES RIGHTS FOR THE VICTIMS OF VIOLENT CRIMES. It enacts new laws that those of us in law enforcement have sought from the Legislature without success.

While there are more people going to state prison than there were three years ago, only 5.5 percent of those persons arrested for felonies are sent to state prison. Of those convicted of felonies, one-third go to state prison and the remaining two-thirds are back in the community in a relatively short period of time.

THERE IS ABSOLUTELY NO QUESTION THAT THE PASSAGE OF THIS PROPOSITION WILL RESULT IN MORE CRIMINAL CONVICTIONS, MORE CRIMINALS BEING SENTENCED TO STATE PRISON, AND MORE PROTECTION FOR THE LAW-ABIDING CITIZENRY.

IF YOU'VE FAVOR INCREASED PUBLIC SAFETY, VOTE YES ON PROPOSITION 8.

GEORGE DEUKMEIJAN
Attorney General

Why is it that the Legislature doesn't start getting serious about a problem until we, the people, go out and qualify an initiative? Four years ago it was Proposition 13, which I coauthored, to cut skyrocketing property taxes.

A year later we had to go to the initiative process to place a lid on government spending. That effort, the Gann Spending Limitation Initiative, was carried with a landslide 75 percent of the vote. Today it is the forgotten victims of violent crime that the Legislature has so callously ignored. Again, it is up to the people to bring about reasonable and meaningful reform.

Your "YES" vote on Proposition 8 will restore victims' rights and help bring violent crime under control.

PAUL GANN
Propponent, Victims' Bill of Rights

Rebuttal to Argument in Favor of Proposition 8

WHY DON'T THE POLITICIANS SUPPORTING PROPOSITION 8 TELL YOU WHAT IT REALLY DOES? Look closely at their arguments. They are simply political slogans and anticleme propaganda.

Every responsible citizen opposes crime, but we should also be very HESITANT to make RADICAL changes in our Constitution.

Yet Proposition 8 does just that . . . it needlessly reduces your personal liberties . . . and clearly harms true efforts to fight crime.

CONSIDER THESE EFFECTS OF PROPOSITION 8:

Takes away everyone's right to bail. (Compare Proposition 4, which targets only violent felons.)

Allows strip searches of minor traffic offenders.

Condemns use of wiretapping and seizure of your telephone and credit records without a warrant.

Permits spying on you in a public restroom.

Either Proposition 8 takes away your rights, or it is unconstitutional . . . in which case valid criminal convictions will be thrown out.

The other reason they say nothing specific is that MUCH OF PROPOSITION 8 IS ALREADY LAW. These 1ws:

Send mentally disordered sex offenders to prison.

Eliminate the diminished capacity defense.

Provide life sentences for habitual criminals.

Guarantee victim input.

Place controls on plea bargaining.

Restrict bail for violent felons (Proposition 4).

Proposition 8 will undermine these new laws by imposing its confusing language on top of clear, well-thought-out reforms.

Proposition 8 is the kind of abuse of the initiative process by political candidates which should be condemned. If you care about your privacy . . . and especially if you care about effective, responsible law enforcement . . . VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. RODEN
District Attorney, Santa Barbara County

TERRY GOGGIN
Member of the Assembly, 66th District
Chairman, Committee on Criminal Justice

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Criminal Justice—Initiative Statutes and Constitutional Amendment

Argument Against Proposition 8

You're afraid of crime—and you have the right to be.
If Proposition 8 would end crime, we would be the first to urge you to vote for it.
But Proposition 8 is a hoax . . . . there is no other way to describe it.
Some ambitious politicians may think this ill-conceived measure helps them. It will certainly help keep an army of appellate lawyers fully employed throughout the states.
But it will not reduce crime, help victims, or get dangerous criminals off the streets.
As professionals, charged with the responsibility of controlling crime and prosecuting criminals . . . we ask YOU to PLEASE VOTE NO on PROPOSITION 8.
Proposition 8 is so badly written it mangles nearly every aspect of the criminal justice system it touches.
READ the PROBLEMS it will cause:

UNCONSTITUTIONAL INITIATIVE TAKES CONVICTED KILLERS OFF DEATH ROW
Even some of Proposition 8's supporters agree it may be unconstitutional. But unconstitutional laws cause sentences to be overturned. Thirty convicted killers were recently taken off death row because of one unconstitutional line in the 1978 Death Penalty Initiative.

CONVICTING PEOPLE LIKE THE "FREEWAY KILLER" NEARLY IMPOSSIBLE
Proposition 8 seeks to stop plea bargaining. Its wording, however, would take away law enforcers' ability to negotiate with criminals to get them to testify against each other . . . . This is how the "Freeway Killer" was convicted. It is how law enforcement fights organized crime and gang violence.

FREES DEFENSE LAWYERS TO SMEAR POLICE WHO TESTIFY IN COURT
Under current law, a defense lawyer cannot attack the character of a police witness. If Proposition 8 passes he could.

REQUIRES MILLIONS OF DOLLARS IN NEW COURT PROCEDURES—BUT NO MONEY TO PAY FOR THEM
Look at the cost of Proposition 8 at the top of this measure. Why is it so expensive?
A major share is for extra court hearings and elaborate new red tape in every criminal case—most of which are misdemeanors. This will require more courts, judges, clerks, and probation officers.
Proposition 8 does not provide one cent to pay for these things.

COURTS IN CHARGE OF PUBLIC SCHOOLS
Nobody knows what the so-called "safe schools" section means. The likely result of this provision is constant court battles over compliance. This will do no good lead to judges running some of our schools. It also could give children the constitutional right to refuse to attend school.

VICTIM RESTITUTION—A MEANINGLESS PROMISE
What good is a right to restitution when so many victims are harmed by criminals who can't pay? (Ever been hit by an uninsured motorist?) Besides, victims already have the right to collect from criminals who can pay.

PROPOSITION 8—A POLITICAL PLOY
As professionals, we know our criminal justice system needs careful written, tough, constitutional laws and procedures.
Proposition 8 is none of these. It makes it harder to convict criminals, will lead to endless appeals, and will create chaos in the legal system.
It may be good politics, but it is bad law.
PLEASE, VOTE NO ON PROPOSITION 8.

RICHARD L. GILBERT
District Attorney, Yolo County

STANLEY M. RODEN
District Attorney, Santa Barbara County

TERRY GOGGIN
Member of the Assembly, 68th District
Chairman, Committee on Criminal Justice

Rebuttal to Argument Against Proposition 8

LAW ENFORCEMENT SUPPORTS PROPOSITION 8
Proposition 8 has been endorsed by more than 250 police chiefs, sheriffs and district attorneys. It has the support of more than 30,000 rank-and-file police officers.
Senior Assistant Attorney General George Nicholson, a chief architect of the Victims' Bill of Rights and a former murder prosecutor, has called Proposition 8 "the most effective anticrime program ever proposed to help the forgotten victims of crime."

ANTICRIME LEGISLATIVE LEADERS SUPPORT PROPOSITION 8
Proposition 8 coauthor Assemblywoman Carol Hallett says, "A generation of victims have been ignored by our Legislature, thanks to the Assembly Criminal Justice Committee. Proposition 8 takes the handcuffs off the police and puts them on the criminals, where they belong."

THE PEOPLE SUPPORT PROPOSITION 8
Throughout California, hundreds of thousands of your fellow citizens carried and signed petitions to place this vital initiative on the ballot. Many of these people have lost family members or are themselves victims of crime.
But they are not only victims of crime, they are victims of our criminal justice system—the liberal reformers, lenient judges and behavior modification do-gooders who release hardened criminals again and again to victimize the innocent.
It's time to restore justice to the system.
VOTE YES FOR VICTIMS' RIGHTS.
VOTE YES ON PROPOSITION 8

PAUL GANN
Proponent, Victims' Bill of Rights

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California Penal Code Section 25

25. (a) The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged.

(b) In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.

(c) Notwithstanding the foregoing, evidence of diminished capacity or of a mental disorder may be considered by the court only at the time of sentencing or other disposition or commitment.

(d) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.
Vincent Chang

Vincent Chang is a partner in the Litigation & Dispute Resolution Group of Wollmuth, Maher & Deutsch in Manhattan. Mr. Chang specializes in complex litigation in such areas as securities, insurance, bankruptcy, subprime mortgage securitizations, hedge funds, real estate, reinsurance, auction rate securities, bondholder litigation, investment banking, and antitrust. During his career, Mr. Chang has worked on litigations in at least 20 states and has worked on a number of matters where the amount in controversy was nine figures or more. Mr. Chang was an associate and then counsel at Davis Polk & Wardwell from 1989-2002. Mr. Chang is a graduate of Harvard College, magna cum laude, and Harvard Law School, cum laude. Mr. Chang has been listed as a “Super Lawyer” in business litigation in New York, a designation limited to 5% of the lawyers in a given state.

Mr. Chang is a Past President of the Asian American Bar Association of New York (AABANY) and serves on the Executive Committee of the New York County Lawyers Association (NYCLA) and on the Boards of Directors of Legal Services NYC, NYCLA, the Network of Bar Leaders, the NYCLA Foundation, and the Asian American Law Fund of New York. Mr. Chang also serves on the Nominating Committee and the House of Delegates of the New York State Bar Association (NYSBA). Mr. Chang is one of NYCLA’s representatives to the Judiciary Committee of the New York City Bar Association. Mr. Chang has served as Vice Chairman of two committees of the Antitrust Section of the American Bar Association. Mr. Chang is a Co-Chair of the Litigation Committee of the National Asian Pacific American Bar Association (NAPABA) and Vice Chair of the New York County Lawyers Federal Courts Committee.

WOLLMUTH, MAHER & DEUTSCH
500 Fifth Avenue
New York, NY 10110
Tel: (212) 382-3300 Fax: (212) 382-0050
VChang@wmd-law.com
Dr. Darlene Shelton

Dr. Darlene Shelton is president of JuryGroup, a Connecticut consulting group that helps trial lawyers sharpen their message, connect with their audience and communicate with vision. She is an authority on cross-cultural psychology, body language and micro behaviors. Dr. Shelton advises on jury selection and behavior and recommends crucial themes, words and images that maximize communications with fact finders, whatever their background. She speaks frequently before the American Bar Association about psychological profiling. She is a licensed clinical psychologist in Connecticut and Kentucky. She has served on the research faculties of the University of Miami School of Medicine and Yale Medical School. She has been a consultant on racial/ethnic issues for federal, state and municipal governments. Dr. Shelton is a member of the American Psychological Association Society for the Psychological Study of Ethnic Minority Issues and the Media Psychology Division. She recently chaired the Ethnic Diversity Task Force of the Connecticut Psychological Association. Dr. Shelton has been honored by the White House for her work with disadvantaged communities and is cited in multiple volumes of Marquis’ Who’s Who.
GARRICK LEW

Garrick Lew was a founding name Partner at the law firm of Minami, Lew and Tamaki [www.minamitamaki.com] since its formation in 1974 until 2006 when he separated from the firm to establish his own practice. He specializes in criminal defense with extensive federal and state criminal defense trial experience with a focus on business-related prosecutions before the federal courts and complex white-collar matters. Mr. Lew was born in Oakland and received his undergraduate education at the University of California at Berkeley, graduating in three years with Honors in 1971 with a degree in Criminology. He attended law school at the University of California’s Boalt Hall of Law, receiving his Juris Doctor in 1974. In his 37 years of criminal defense practice, Mr. Lew has defended clients charged with crimes involving multi-million dollar allegations of tax, bankruptcy, bank and wire fraud, embezzlement, money laundering, illegal structuring of monetary transactions, environmental law violations, sex offenses and drug offenses. He has extensive experience with respect to state and federal asset forfeitures, U.S. Customs violations, Department of Commerce Export Controls, Health Care fraud and prosecutions for intellectual property infringement. Mr. Lew also handles professional licensing on a select basis.

Mr. Lew holds or has held the following professional association officer positions and memberships:

- Criminal Justice College of Advocacy, University of California, Hastings College of Law (Lecturer, 1985-1990)
- San Francisco Bar Association (Judiciary Committee, 1989-1990)
- State Bar of California (Executive Committee, 1983-1987, Treasurer, Co-Chair, and Chair)
- California Attorneys for Criminal Justice (Board of Governors 1978-1988)
- Criminal Trial Lawyers Association of Northern California (President)
- American Bar Association (Criminal Law Section Member)
- Federal Bar Association (Member)
- National Association of Criminal Defense Lawyers (Life Member)
- Asian American Bar Association (Member)

Mr. Lew holds an AV rating, the highest rating for attorney competence and ethics, by the Martindale-Hubbell Law Directory, a national compilation of attorneys. In 2004 and 2006-2011, Law & Politics magazine selected Mr. Lew as one of Northern California’s "Superlawyers" in the area of White Collar criminal defense. AVENUE magazine identified Mr. Lew as one of the 500 most influential Asian Americans in 1998. He is a contributing author to "California Criminal Law Procedure and Practice", published by the California Continuing Education of the Bar [CEB] and co-founded the Asian Law Caucus, Inc., a leading non-profit civil rights organization.

1000 Brannan Street - Suite 488 - San Francisco, CA 94103
www.garrickslew.com
Attorney David Weinberg is an authority in the use of communications themes and multimedia technologies for litigation, mediation, and arbitration. As chief executive officer of JuryGroup, he helps law firms and businesses to sharpen their message, connect with their audience and communicate with vision. Mr. Weinberg has often appeared on network television to demonstrate the forensic reconstruction of news events. He consulted on the Simpson/Goldman murders, the bombing of the Oklahoma City Federal building, the search for Gianni Versace killer Andrew Cunanan, the Menendez killings and the Federal confrontation in Waco, Texas with David Koresh and the Branch Davidians. He has participated in forensic investigations into the deaths of the outlaw Jesse James, FBI director J. Edgar Hoover, the explorer Meriwether Lewis, and CIA scientist Frank Olsen.

Mr. Weinberg is the editor of Computer Animation in the Courtroom: A Primer, a multimedia publication of the American Bar Association. He speaks to bar associations throughout North America. For the last fifteen years, he has chaired the ABA’s annual historic trial program. Mr. Weinberg is former chairman of the Committee on the Use of Technologically Sophisticated Evidence for the American Bar Association’s Lawyer’s Conference, and former technology chair for the ABA Section of General Practice, Small Firm and Solo Practitioners. Mr. Weinberg holds a BA from the University of Illinois at Chicago and a JD from DePaul University School of Law. He is licensed to practice in the State of Illinois and the U.S. District Court for the Northern District of Illinois.