

R

I, Daneen A. Milam, do hereby declare the following to be true and correct, under penalty of perjury:

1. My name is Daneen A. Milam, I am over 21 years of age and competent in all respects to make this declaration. I hold a Ph.D. in Educational Psychology from Texas A&M University. I am a licensed Psychologist and certified as a Health Service Provider in the State of Texas. My license number is 2-2661. I am board certified (a Diplomate) in clinical neuropsychological. by the American Board of Professional Neuropsychology. I practice clinical Neuropsychology in San Antonio, Texas where I have been the director of an assessment center for more than sixteen years. I have served on the editorial board of Archives of Clinical Neuropsychology, for five years. Much of my present clinical practice is in the area of forensic Neuropsychology and I have conducted more than 20 examinations of criminal defendants. I have testified in excess of seventy five (75) times as an expert witness in the state courts of Texas for the Texas Department of Family and Protective Services, Child Protective Services, and fourteen (14) times as an expert witness in state murder trials.
2. I have been retained as an expert in neuropsychology by Mr. James M. Leitner, Attorney at Law, to assist in the representation of Mr. William D. Irwan. My qualifications to serve as an expert in this field are enumerated in my curriculum vitae appended to this declaration as Exhibit 1.
3. My analysis of this case involved two parts. First I reviewed the records and other testimonial information to assess what William's trial team could have known about the need for a neuropsychological evaluation of William before the trial. After I performed a neuropsychological evaluation of William, I reviewed most of the testimony from the trial in The State of Texas vs. William Darin Irwan. Specifically, I have reviewed the testimony of Dwayne Wolf, Roger Wedgeworth, Maurita Howarth, Randy Schield, Kathy Masters, William Holder, Michael Masters, Jacqueline Barrett, Anthony Rossi, Pete Schroedter, Marcel Dionn, William Watson, Kathryn Long, Tamara Llamas, Shanna Stryjet, Daniel Rinehart, Connie Summers, Darlene Hughes, and Mary Lou Brady, I have reviewed the Mitigation testimony of Mavis Irwan, Karen Johnson, Chenille Ingram, and Betty Rody. I have reviewed the testimony of jail personnel, including Carolyn Sawyers, Ernest Hill, James Segura, and Devon Ivy. I also reviewed the expert witness testimony of Dr. Karen Gollaher. Although sparse, I have reviewed school and prison records.
4. There are multiple, overlapping indicators in this background information that would have led a Neuropsychologist or similar specialist to suspect that William may suffer from organic brain damage and/or Bipolar

Disorder. William has been admitted to psychiatric hospitals twice. His first admittance was at the age of 13 and his second admittance was after the birth of his Down's Syndrome son. During his first hospitalization, William was given Depakote, a drug commonly used with Bipolar patients. During his second hospitalization, William was prescribed Lithium, which represents the gold standard for Bipolar Disorder. Bipolar disorder is a mood disorder and at his trial, there were numerous individual's who discussed his rage attacks. During these episodes his family and friends discussed his behavior to be totally out of character. He was said to have a "good William" and a "bad William." During the trial mental health professionals were allowed to diagnose William without current interviews, standardized testing or a review of his current functioning. He was diagnosed with inflammatory labels, based upon opinion only, and without serious challenge. At no point was William assessed for Bipolar Disorder, yet his history of hospitalizations should have been a signal to anyone evaluating his records that this was an issue requiring further investigation.

5. William has stated that he had learning disabilities and could not read until he was an adult. School was a struggle and he dropped out of high school after completing the tenth grade. William's father died just a week before the trial began and he was described from the stand as a good man who worked hard to provide a home for his family. After the trial, relatives provided statements that William's father was abusive, slapped his sister hard in the face for superficial reasons, stomped on his mother's toes and hit her in the face. He also raped his mother while she was sleeping in the bed with one of her sons. None of this information was provided to the jury at the mitigation stage of the trial. Clearly, William was never properly evaluated and diagnosed as a child and the treatment interventions he received may thus have been ineffective. Had William been evaluated prior to his capital murder trial and had a psychiatric professional been provided with the full information above, I believe that any reasonably competent psychiatric professional would have recognized the need to require William to undergo a complete neuropsychological evaluation and trial counsel should have known that William would need a through evaluation before trial.
6. I first conducted a clinical interview with William. Secondly, I performed a mental status exam to check his orientation to time, place, person and to ensure that he was both willing and able to complete the evaluation. I spent approximately 10 hours over two days conducting formal neuropsychological testing along with a formal assessment of intellectual potential and memory skills. William was given portions of the Halstead-Reitan Neuropsychological Battery for Adults and several psychological and neuropsychological tests such as: Reynolds Intellectual Assessment

Scales, Wide Range Achievement Test-3, Weschler Memory Scale-III Abbreviated, Comprehensive Trail Making Test, Verbal fluency, Purdue Pegboard, Bender, and Draw-A-Person. I also used projective measures such as: Minnesota Multiphasic Personality Inventory (MMPI-2), Sentence Completion and The Millon Clinical Multiaxial Inventory-3. These tests are all accepted and recognized as reliable within the neuropsychological community. William was found to be making a good faith effort and not malingering.

7. While many of William's measures were within normal limits, certain key aspects of William's neuropsychological examination were in a range generally considered to reflect organic impairment of the brain. He exhibits, across most instruments, an inability to inhibit impulsive responses and disturbances of muscular control resulting from deficits in the central nervous system called constructional dysphasia. He exhibited verbal attentional deficits, impulsivity, organizational deficits and the partial loss of the ability to perform coordinated acts. The results tend to indicate frontal and temporal lobe dysfunction that is exhibited in poor planning and organization skills which have a significant impact on a person's ability to benefit from feedback and alter behavior.
8. Comparing across the records reviewed and his neuropsychological evaluation, these performance patterns establish that, from a young age, William consistently displayed distractibility, and impulsive behavior, often to the extent that he appeared moody, goofy, and immature. Due to his mood disturbance he had a reduced ability to perceive the consequences of his actions and this neurological difference has been diagnosed by some mental health professionals as oppositional behavior.
9. Comparing across his structured and unstructured personality measures, William exhibited a state of cognitive disarray that indicates his lack of organizational skills were not purposeful or neglectful on his part. He exhibited a clear pattern of Bipolar characteristics that included hyperactivity, immaturity, poor problem solving and poor regulation of thoughts, feelings, and abilities.
10. Bipolar Disorder is a medical problem that is not the result of lack of will power. It is a biological and chemical malfunction. The effects of William's inherited disorder were no doubt aggravated by the abusive home environment that went unacknowledged by his family. The "don't see, don't tell" house rules made stable rule setting impossible. Children

who suffer from a Bipolar disorder require intensive limit setting and a stable environment. The impact of positive structure on William is most clearly demonstrated by his good behavior in the Polunski unit at Livingston, Texas.

11. William was very distractible and was seen as both a hyperactive child and a hyperactive adult. While Bipolar children and adults are distractible, the primary problem is poor mood regulation. The appropriate medication for Bipolar adults is a mood regulator. William did not have insurance and self medicated using stimulants. Stimulants make a mood disorder worse. In addition, life stressors, difficult relationships, and disruption of sleep cycles bring on symptoms and impact the course of a bipolar episode. Considering the fact that William had been hospitalized twice with this disorder and was exhibiting a significant number of symptoms associated with bipolar disorder, it is difficult to understand why his treatment team did not consider this diagnosis. It is also difficult to understand why this issue was not raised in cross examination of his prior providers who were making undocumented diagnosis under oath.
12. William had an unfortunate combination of physical anomalies that so often lead to poor regulation of behavior dating back to childhood. Early on, his anomalies were exhibited as learning disabilities. As he grew older, his anomalies were reflected in a poor understanding of social cues. His ability to see that specific choices lead to specific consequences were impaired and he was younger in brain development than his peers. William was described as "silly" "goofy" and a follower. He described himself as the class clown. Between his brain defects and his mood disorder, William was incapable of assessing and responding to a rapidly changing situation. His poor ability to think and plan (a frontal lobe function) make him particularly unsuited to predict the outcome of his behavior on a day to day basis. When combined with a bipolar nature, his responses are also unpredictable. Neither of these conditions were a choice made by William.
13. I understand the mitigation factors presented to the jury on behalf of William were as follows:

His stepmother stated William was a good son and good father.

His sister stated he acted appropriately with girls and was a hard worker and good man.

Chenille Ingram, sister of Tamara Llamas, who testified against William, noted he was popular in the neighborhood.

His aunt stated he was a good boy who went with his grand parents to their eye examinations.

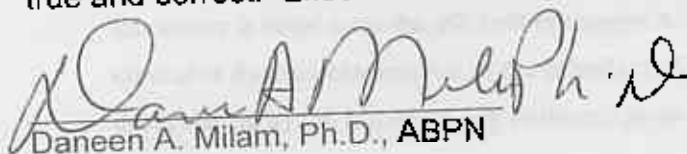
Dr. Karen Gollaher, an expert witness, who testified about the characteristics of sex offenders.

Four deputies at the jail who testified that William had no bad deeds during his year of incarceration while awaiting trial.

It is my opinion that the forgoing list of mitigating factors do not accurately capture the neuropsychological impairments under which William suffers.

14. Additionally, the jury did not have available for consideration the fact that Bipolar disorder is amenable to medical treatment. William's intellectual potential is well within normal limits and would serve as a protective factor that would enable him to learn, adjust, and improve in a prison setting, as indeed he has.
15. Without a thorough evaluation and differential diagnosis, the presentation of the defense case at the punishment phase of William's trial was inadequate, and failed to inform the jury of many important and relevant aspects of his psychological functioning. Without access to this information, the jury would not be able to make a fair and balanced assessment of his personal moral culpability.

I, Daneen A. Milam, declare under penalty of perjury that the forgoing is true and correct. Executed this 12th day of September, 2005


Daneen A. Milam, Ph.D., ABPN

NO. 864928

THE STATE OF TEXAS

v.

WILLIAM D. IRVAN

§
§
§
§
§

AFFIDAVIT IN SUPPORT OF WRIT OF HABEAS CORPUS

I. Identity and background of affiant

My name is Floyd L. Jennings, J.D., Ph.D.. I am a psychologist licensed by the State of Texas, License No. 20965. I am also an attorney, SBN 796823. I received the Ph.D. degree in clinical psychology from The University of Texas, Southwestern Medical School at Dallas, in 1972 and the Juris Doctor degree from The University of Houston in 1996. I have examined over 1000 defendants in criminal cases to determine competency and/or sanity and have offered testimony in numerous cases. I am the author of several publications and was on the adjunct faculty of The University of Texas School of Medicine for over twenty years.

II. Nature and limitations of this review

The subsequent opinion addresses the reasonableness and likelihood of the opinions offered by Dr. Milam, including, but not limited to, whether persons who have a bipolar disorder can and do self-medicate through the use of illegal drugs, and concurrently, sometimes engage in criminal acts of the most heinous type. My opinion in this matter is based upon the affidavit of Daneen A. Milam, Ph.D. and is not based upon a clinical or forensic examination of the defendant, William D. Irvan, review of the original data obtained by Dr. Milam, or any testimony given in this case.

III. Review of Dr. Milam's statement

The primary issue in Dr. Milam's examination is whether the defendant had a bipolar disorder and whether, in fact, such a disorder could reasonably, and plausibly,

Affidavit by Floyd L. Jennings, J.D., Ph.D. page#1

have contributed to self-medication through use of illegal drugs, loss of control, and violent acts, even rageful acts, toward women in particular, acts which are to be viewed differently than the rational, deliberate, acts of a purposeful and criminal mind. Dr. Milam further concludes that this is information which should have been considered as mitigating by any jury.

Dr. Milam points out that the defendant had two psychiatric hospitalizations and on both occasions he was regarded as bipolar and treated with mood stabilizing agents, Depakote and/or lithium carbonate. She further points out that he had a history of learning problems and psychological trauma. Most powerful was her description of the results of neuropsychological appraisal which demonstrates impulsivity, inability to impose deliberate and reasonable controls on otherwise improper acts which leads to poor regulation of behavior.

Dr. Milam further points out developmental anomalies in the defendant leading to disorganized behavior, inability to assess and respond properly to social circumstances -- and for that matter, stress.

Critical to the development of the criminal act in this case is the fact that the defendant was described as being on no psychotropic medication, having received no recent treatment prior to the events leading to his arrest.

IV. Opinion

It is my opinion that Dr. Milam's extended evaluation (ten hours) and her considered opinion, has enormous plausibility and weight. Any jury considering the sentence given to defendant should have the opportunity to consider the impact of a severe and persistent mental illness such as a bipolar disorder on the criminal act (it is undisputed that this diagnosis is a severe and persistent mental illness). All the more such evidence should be presented in a capital case where the death penalty is a possibility, inasmuch as such a condition is highly likely to have mitigating effect. Antisocial behavior, however heinous, arising out of a disordered mind, deserves not the

same penalty as the same behavior executed with self control and deliberate intent. And an untreated bipolar disorder in an impulse ridden and poorly-self-regulated person, would be but a criminal act waiting to occur.

Floyd L. Jennings
Floyd L. Jennings, J.D., Ph.D.

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Floyd L. Jennings, J.D., Ph.D., who, after being duly sworn by me did say on oath as follows:

"I am over the age of eighteen, have not been convicted of a felony and am competent to make this affidavit as a psychologist licensed by the State of Texas. I have personally prepared the foregoing statement regarding William D. Irvan. I am aware of the facts stated therein and said facts are true and correct to the best of my knowledge and belief."

Floyd L. Jennings
Floyd L. Jennings, J.D., Ph.D.

SUBSCRIBED TO AND SWORN BEFORE ME BY Floyd L. Jennings, J.D., Ph.D.
this 11th day of October 2002, A.D. to certify which witness my hand and seal of office.

Edith E. Halvorson
Notary Public in and for the State of Texas

