

1 her as to all these matters.

2           What we're objecting to is the ordinary, customary  
3 visit by the jail doctor to determine if she needs to go to  
4 Central State. We feel like in a case such as this equal  
5 protection, due process, fundamental fairness require that  
6 she be accorded in a case like this that has some very  
7 unusual elements regarding mental state of mind and other  
8 things pertinent to that that she be afforded a standard of  
9 psychiatric care above just ordinarily what's done in the  
10 jail.

11           We don't believe that a thirty minute visit by a  
12 jail doctor can determine if she needs to be examined  
13 psychiatrically for matters that are way beyond the purview  
14 of competence to stand trial and insanity at the time of the  
15 commission of the alleged offense.

16           We're talking in terms of state of mind. We're  
17 talking in terms of criminal intent. We're talking in terms  
18 of a highly specialized and very unusual defense; that being  
19 the battered-wife syndrome. And we feel like that any  
20 psychiatrist that renders aid to the court, which is the duty  
21 of an expert witness to render aid and assistance to the  
22 court and to the jury, must be familiar with the  
23 characteristics of that syndrome.

24           There are available in Memphis we understand, and  
25 are trying to determine more fully that right now,

1 psychiatrists that specialize in that. There is a Women's  
2 Resource Center I understand that has resources available  
3 perhaps without any great costs to the state that would have  
4 experts that could examine her in regard to this particular  
5 aspect of the case.

6 So I'm not just asking for a boilerplate motion of  
7 have the jail psychiatrist look at her and determine she  
8 needs to go to Central State. We're talking not only about  
9 competence at the present time, insanity at the time of the  
10 commission of the offense under the Model ALI code.

11 We're talking also about matters that go to  
12 criminal intent, the formation of criminal intent, matters  
13 that go to state of mind, culpability, and matters that go to  
14 mitigation in view of a conviction of first degree murder.

15 We feel like that honestly because--and I'm not  
16 trying to sing the sad song--but Mr. Porterfield got the  
17 auspices of the public defender's office by getting the first  
18 appointment. They take the position and have for years that  
19 once they're appointed on one defendant that they're not  
20 appointed on the other.

21 Now, that means--

22 THE COURT: What kind of argument are you making  
23 now?

24 MR. EMMONS: Making the argument we're cut short  
25

1 on some things that we don't have as two private lawyers.

2 THE COURT: I don't see how.

3 MR. EMMONS: Well, we don't have investigators.  
4 We don't have staffs. We don't have full-time employees.  
5 And we feel like to subject our client to a defense that is  
6 this technical and it is centered and rooted and grounded so  
7 strongly--

8 THE COURT: What have you asked for that you've  
9 been denied that the public defender has access to?

10 MR. EMMONS: I'm just saying their resource is  
11 greater, Your Honor. Nothing.

12 THE COURT: What have you asked for that you've  
13 been denied?

14 MR. EMMONS: Nothing yet, but if I ask for a  
15 monthly salary like they get, I think the court would  
16 probably deny me that. I mean they are on monthly payrolls.  
17 They are--Mr. Jones is a full-time employee of the public  
18 defender--

19 THE COURT: I am in favor of doing away with the  
20 public defender's office and appointing lawyers case by case  
21 and maintaining the staff and research and the investigating  
22 office, so.....

23 MR. EMMONS: I'm not complaining about what the  
24 court's done, not at all.

25 THE COURT: Well, I think you are. You're

1 complaining now that you don't get a monthly salary.

2 MR. EMMONS: I don't believe the court has control  
3 over that. I was just--

4 THE COURT: Have you asked for a monthly salary?

5 MR. EMMONS: No, sir. I--

6 THE COURT: My question was what have you asked  
7 for that you've been denied?

8 MR. EMMONS: Well, I hadn't asked for it. I  
9 hadn't asked for it because I thought the court didn't have  
10 the authority. The court might and I might do that.

11 THE COURT: Okay. Do it.

12 MR. EMMONS: Sir?

13 THE COURT: Do it.

14 MR. EMMONS: Okay, sir.

15 THE COURT: Denied.

16 MR. EMMONS: Yes, sir.

17 Bascially, what I'm saying is that the typical  
18 psychiatric examination is not what we're asking for. We  
19 don't have the funds to hire it. The only think I can  
20 compare it to, Your Honor, this--I know it's an unusual  
21 motion.

22 But I've got a case right now in another court  
23 where a defendant who has not got a lot of money but has  
24 enough to pay a lawyer and to pay for psychiatric  
25 examination. And he is right now under the care of a

1 speciality type psychiatrist, fine East Memphis office, who  
2 can look into his own particular needs and help him and  
3 assist him in preparation for trial.

4 There are so many things that occur in psychiatry  
5 now and in criminal cases. For instance, Mr. Marty has  
6 reminded me of the numerous cases--not numerous cases, been  
7 two or three cases tried, and I think Your Honor tried one on  
8 a Gary Cone, I believe was the name of the defendant where  
9 the Vietnam syndrome was raised as the defense--

10 THE COURT: No, I think that was Judge Beasley.

11 MR. EMMONS: Judge Beasley. All right.

12 And I believe at that time they were able to get  
13 psychiatrists from Veterans Administration Hospitals who had  
14 experience in that particular area of psychiatry. And we're  
15 asking for a similar thing.

16 To my knowledge, there hasn't been a classic or a  
17 true battered-wife syndrome case tried in Shelby County.  
18 There might have been some somewhat like that. There have  
19 been only a few of them tried in the United States. We  
20 believe and honestly state to the court that we believe this  
21 case has a meritorious defense in the battered-wife syndrome.

22 That's why I say in my motion for continuance and  
23 refer back to this motion for mental exam that there are  
24 numerous things we're going to have to do to get ready for  
25 this case that are out of the ordinary if we're to be

1 effective as attorneys and counsel for the defendant.

2 This is just a place to start, Your Honor. I  
3 believe that to say if she needs psychiatric examination or  
4 mental examination let the jail doctor look at her and maybe  
5 send her to Central State would be tantamount to saying that  
6 a person with an advanced neuropsychotic condition should be  
7 seen by a general practitioner.

8 That's not to cast dispersions on the state  
9 doctors at all. But it's just saying that we're talking here  
10 about sophisticated psychiatric situations and conditions  
11 that an indigent defendant simply has no access to, and to  
12 me, that just boggles the mind as far as fundamental due  
13 process is concerned.

14 And that I've asked for psychiatrists to testify  
15 that basically what I've stated here I think would make it a  
16 much stronger motion, but I can't privately hire  
17 psychiatrists to do that. I'd like to ask this motion be  
18 reset untill the 18th of October also--

19 THE COURT: No, sir.

20 MR. EMMONS: --and give me--

21 THE COURT: No. We're not going to reset motions  
22 now. That one motion.

23 MR. EMMONS: Yes, sir. But I can't--

24 THE COURT: You've had--you've been knowing  
25 about this for months now. You-all be ready. If you're not

1 ready, you're not ready.

2 MR. EMMONS: But I'm saying I can't present this  
3 motion, Your Honor, without an expert who I can't hire. How  
4 can I properly present this motion?

5 It's just like the death-qualified-jury motion.  
6 How can I present that motion--how can I present proof to  
7 that motion without sociologists? Can't do it. And yet this  
8 is an indigent defendant and if the court will not give me  
9 money to hire sociologists, I can't present the  
10 death-qualified-jury argument.

11 And if the court won't give me money for  
12 psychiatrists, I can't bring any experts up here to give  
13 assistance to the court to show what I mean by this defense  
14 and how there are various fields of expertise within  
15 psychiatry, and the battered-wife syndrome is a  
16 sub-speciality all of its own. And for the court to  
17 understand this and the jury to understand, it will require  
18 expert assistance that we can't provide for.

19 THE COURT: State.

20 MR. STROTHER: Your Honor, I don't know exactly  
21 where we ever draw the line. You know, you talk about  
22 indigent defendants and equal representation. Well, how  
23 equal does it have to be?

24 Perhaps, if any defendant had enough money to go  
25 out as the governor of Louisiana does and hire Mr. Neal and

1 bring in a courtroom full of experts and go the world over,  
2 well, I don't think anything requires that. I think--Or that  
3 in the indigent defendant field that we are required to bring  
4 in that kind of proof.

5 I think if there was some factual basis in this  
6 record for the necessity of this type of examination that  
7 perhaps Mr. Emmons might have--might have a valid point, but  
8 there is not one scintilla of evidence before this court to  
9 show or to indicate the need for this type of examination.  
10 And in the absence of any evidence that such examination is  
11 needed, I don't think the court has any choice but to deny  
12 the motion at this time.

13 I don't know that the court has the money to pay  
14 one. I know I don't. And I don't know where the court would  
15 get the funds if it chose to so order without going to the  
16 Supreme Court and asking for an allocation for those funds.  
17 And I certainly don't think the Supreme Court is going to do  
18 that on the record that we have here, and that's the record  
19 that the court is called upon to act on.

20 It's totally silent. There is no proof. No  
21 witness has been brought in here to say, Oh, I knew Mrs.  
22 Owens and, yeah, this guy used to batter her, or she told me  
23 about it and I saw her injuries. There's no proof before the  
24 court, so there is no basis whatsoever for this motion.

25 THE COURT: Mr. Owens--Mr. Emmons.



1 MR. MARTY: One moment, Your Honor.

2 MR. EMMONS: Could we have just a moment to  
3 confer, Your Honor?

4 THE COURT: Yes, sir.

5 (Pause)

6 MR. MARTY: Judge, could counsel and I approach  
7 the bench on the record? I want to make a statement to the  
8 court on the record out of the earshot of the rest of the  
9 courtroom, with the attorney general too.

10 THE COURT: What about your client?

11 MR. MARTY: She knows what I'm going to tell the  
12 court.

13 THE COURT: State, any objection?

14 MR. STROTHER: No, I--I guess it's simply a matter  
15 where he wants to approach the bench. I don't have any  
16 objection to approaching the bench.

17 THE COURT: All right. You may approach the  
18 bench.

19 MR. STROTHER: I want to hasten to add that in  
20 these motions, just as anything else for the record,  
21 counsel's statements are not evidence.

22 THE COURT: Well, the court don't have to be  
23 reminded as to that.

24 (Whereupon, a bench conference was  
25

1 held on the record and the following  
2 proceedings were had:)

3  
4 MR. MARTY: Judge, we just simply want to state  
5 that during the course of our investigation with Mrs. Owens,  
6 we have determined and learned from her that the deceased  
7 engaged in certain sexual perversions, to wit, sodomy,  
8 fellatio, to the point where she was required to throw up, to  
9 the point where she was--her rectum was torn, and that  
10 her--his--

11 THE COURT: You got medical proof?

12 MR. MARTY: We have her proof, Your Honor.

13 THE COURT: Do you have medical proof?

14 MR. MARTY: No.

15 THE COURT: Did she seek medical services?

16 MR. MARTY: No, she did not.

17 MR. EMMONS: Judge, we don't mind putting her on,  
18 but we want a ruling from the court that any  
19 cross-examination by the State would be related only to the  
20 matters that are inquired into by--in support of the motion.  
21 Maybe that's what we want to--clear.

22 I'm saying the point is--I've got another theory,  
23 Judge, and I hate to sensationalize this trial before it  
24 becomes necessary because once--this is all going to come out  
25 like a little Peyton place, and horrible things and terrible

1 allegations that obviously are going to be made at trial, and  
2 we feel like by then that we can have more proof available.

3 A lot of this, Judge, are things that we just  
4 learned about within the last week. You know if the paper--  
5 It's some very rather horrible allegations and some other  
6 things that went--

7 THE COURT: Does that go to insanity?

8 MR. EMMONS: It goes, Your Honor, to the intent  
9 and--

10 THE COURT: Well, that might go to intent, might  
11 go to state of mind, and all that, but is she competent to  
12 stand trial? Does she understand the nature of the charges  
13 pending against her, and can she effectively communicate with  
14 her counsel and defend herself--in her defense.

15 Now that is what the court is called upon to rule  
16 upon.

17 MR. EMMONS: Well, I don't see any great problem  
18 with competency. I don't see any problem with that, even  
19 though out of an abundance of caution we raise that issue  
20 too. But I think the issue is not competence to stand trial  
21 but rather state of mind at the time these offenses occurred  
22 and would have to do with insanity at the time of the  
23 commission of the crime, though it's not purely an insanity  
24 defense. It relates to state of mind. It relates to--

25 THE COURT: Well state of mind--

1 MR. STROTHER: (Simultaneously) That's a  
2 factual--

3 THE COURT: If you're talking about competency to  
4 stand trial or insanity at the time of the--If you're telling  
5 me that insanity at the time, I'll order an examination right  
6 now.

7 MR. EMMONS: Well, I'm telling you, Judge, that  
8 under this strange type of situation--

9 THE COURT: Well, that's all proof--that's all a  
10 matter of proof though.

11 MR. EMMONS: But that's what we need a  
12 psychiatrist for, Judge. I mean to testify--

13 MR. STROTHER: (Simultaneously) Won't be able to  
14 give you proof.

15 MR. EMMONS: --to testify--In other words, if we  
16 have truly a battered-wife-syndrome case here, then how can  
17 we tell whether that rises to the degree of insanity required  
18 by the law to present an insanity defense without medical  
19 proof?

20 MR. STROTHER: Well, let's find out first that  
21 you've got that and hear some evidence that you have that.

22 MR. EMMONS: I cannot object to the--maybe the  
23 first step being the routine procedure--

24 THE COURT: There's got to be some basis on which  
25 I order an examination.

1 MR. MARTY: Judge, we're prepared to put her on--

2 MR. EMMONS: Judge, we come in court all the time  
3 on people and say, Your Honor, I've talked to him and I think  
4 there is an insanity defense or something--

5 THE COURT: Well, do you think there's an insanity  
6 defense?

7 MR. EMMONS: It's hard for me to know, Judge,  
8 because this is--I've never encountered this before. I don't  
9 know if a battered-wife-syndrome can cause a person to be  
10 under the--to have a mental disease or defect to the extent  
11 that you cannot appreciate the wrongfulness--

12 THE COURT: Isn't that a question for you to  
13 school yourself on as counsel?

14 MR. EMMONS: I don't think it's for me. I think a  
15 psychiatrist is going to have to make that determination.

16 In other words, I can tell you there's enough  
17 evidence--

18 THE COURT: I said to school yourself on. The  
19 only thing I know is to either get into the books or talk to  
20 psychiatrists, one or the other.

21 MR. EMMONS: Well, I think I can say, based on  
22 what I know already, that I believe there is enough evidence  
23 of insanity that we ought to ask for the court to have her  
24 examined.

25 THE COURT: Send to Bolivar State right now--I

1 mean Central State and have her examined. If you're telling  
2 me that she is--that you have a competency question

3 MR. STROTHER: Have to-----

4 COURT REPORTER: I cannot hear Mr. Strother.

5 THE COURT: Well, we'll have her sent for an  
6 examination and see whether or not she is going to be  
7 competent to stand trial and then whether or not there's any  
8 evidence to substantiate an insanity at the time of the  
9 offense, and that can be done right here. Just like any  
10 other defendant.

11 MR. MARTY: That's fine.

12 THE COURT: Just like any other defendant.

13 MR. MARTY: That's fine, Your Honor.

14 MR. EMMONS: Well, then our motion still--

15 THE COURT: And if it comes back that the report  
16 is that she is competent to stand trial and understands and  
17 can communicate--the nature of the charges and gravity of the  
18 offense and can communicate with her attorneys and assist and  
19 aid in the defense and there is no evidence to support a  
20 Graham ruling case, whether it's her or anyone else, the  
21 court is bound by that, isn't it?

22 MR. EMMONS: I think so. That's what basically I  
23 was trying to say, that our motion is asking one step beyond  
24 that. That even if--I don't--

25 THE COURT: Well, I'm not going to--I'm not going

1 to start spending taxpayers' money when there is no basis in  
2 fact to spend it.

3 MR. EMMONS: I understand that. But this might  
4 give us the basis in fact to ask for it later. I mean if  
5 there truly is this syndrome present and if it truly relates  
6 to the Graham definition of insanity--

7 THE COURT: If you're telling me that she is--she  
8 needs to be examined for competency?

9 MR. EMMONS: Not as to competency, but I think  
10 they'll want to make that determination too. But as to  
11 whether or not she was under the Graham definition mentally  
12 culpable, the traditional insanity defense.

13 MR. CHALLEN: We can do that in one week. You can  
14 have somebody down here, don't have to send her away. The  
15 preliminary examination--

16 THE COURT: It would be right here.

17 MR. EMMONS: Well, then if they--After the  
18 preliminary examination, if they feel like there is cause to  
19 further evaluate her, then it would--

20 THE COURT: That's another matter.

21 MR. EMMONS: Then at that time, though, if there  
22 is evidence developed that that state doctor could testify to  
23 about this syndrome that he is not competent to evaluate,  
24 then we could--

25 THE COURT: I know but you're just saying--you

1 tell me front blush that he's not competent. You don't know  
2 whether he is or not.

3 MR. EMMONS: That's probably right, Judge. That's  
4 probably--You're probably correct. I'm just assuming from  
5 what I--

6 MR. STROTHER: He can also probably tell you  
7 whether he thinks there is any basis for any further  
8 examination.

9 THE COURT: If that's it, Wayne, number one,  
10 you've got to have some sort of reason for me to examine--to  
11 order an examination. And number two, based upon that  
12 examination, we'll go from there. But I'm not going to order  
13 this to be done on the flat statement that nobody is  
14 qualified--state is not qualified to do this.

15 MR. EMMONS: Our dilemma is, Judge, that we don't  
16 really think that she's incompetent right now. We can confer  
17 with her and she talks. But we don't know, based on this  
18 battered-wife-syndrome, how that related to her culpability  
19 insanity wise, if that rises to a true insanity defense. I  
20 really in all honesty and talking it out here at the bench  
21 can't say I would object to the court ordering her examined  
22 by the state doctors; though I would want to reserve her  
23 right maybe to come--

24 Q At this point, that's the only thing I can do,  
25 Wayne.



1 MR. MARTY: Well, that's a step anyway because we  
2 do feel, based on the information we've been told--

3 MR. EMMONS: Within the last five or six days.

4 MR. MARTY: --that is a distinct possibility.

5 THE COURT: If she is incompetent to stand trial  
6 or was insane at the time of the commission of the  
7 offense--alleged commission of the offense, that has to be  
8 determined by way of an examination. You just can't flat....

9 MR. EMMONS: Neither one of us suspected this in  
10 our first several visits with her. It's only been within the  
11 last week that we found out about all of this perversion and  
12 all this other stuff. We got it from her plus--

13 MR. STROTHER: We knew about it two months ago.

14 MR. EMMONS: Knew about what two months ago?

15 MR. STROTHER: That she was going to try this gig.

16 COURT REPORTER: I cannot hear Mr. Strother.

17 MR. STROTHER: Oh, her sister told us this is what  
18 she was going to try.

19 MR. EMMONS: Well, I wish they had told us that  
20 along with where lieutenant-what's-his-name was.

21 THE COURT: Right at this time I'm going to deny  
22 your motion. I'll give you--On this, I'm going to deny this  
23 motion, but I'll enter an order for a mental examination to  
24 determine the two things, competency and the mental state at  
25 the time of the offense.