THE CASE OF COURTNEY SCHULHOFF: VIEW OVER THE OCEAN (ONE YEAR LATER)

I have written my first report entitled 'The case of Courtney Schulhoff: View over the ocean' in January and February 2007. Since that time I have posted many letters and e-mails to various Florida institutions, I found important contacts to Florida lawyers, I studied Florida law in greater detail. Moreover, the trial with Courtney's codefendant Mr. Morin was held in April 2007 and new facts are now known. I decided to collect all documents that a have prepared during the last year and to write this new report, to express my recent point of view in an integrated form.

Czech Republic, Brno, March 2008

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I. Basic information

The Seminole County Grand Jury issued first-degree premeditated murder indictments on March 2, 2004 against Courtney Christine Schulhoff, sixteen plus six weeks at the time of offense, and Michael Lawrence Morin, twenty at the time of offense, in the bludgeoning death Feb. 10, 2004 of Courtney's father, Steven Schulhoff. Courtney Schulhoff was indicted as an adult and she faced the murder charge in adult court. Her trial was held in Sanford, Seminole county, 26-27 September 2006 (case number 5920 04-CF-000595-B, judge Eaton, Jr., O. H., prosecutor Assistant State Attorney Jim Carter). Member of jury found her guilty in the first degree murder premeditated**,** in helping her boyfriend murder her father in February 2004. Courtney was convicted to life in prison without parole. She is serving the first year of her about sixty-year penalty in Lowell Correctional Institute in Ocala, Florida; her contact address is:

Schulhoff C. Courtney DC#154495
Lowell Correctional Institution
11120 NW Gainesville Road
OCALA, FLORIDA 34482-1479, USA

Courtney Schulhoff raises a shackled hand as she is sworn in to give her testimony in the trial of Michael Morin, Jr., at the Seminole courthouse in Sanford, April 24, 2007.

However, Courtney's case is not closed. The record on appeal was mailed to the 5th District Court of Appeal in Daytona Beach (see the website www.5dca.org > Online Dockets > Case N° 5D06-3914). The 5 DCA affirmed the conviction (thus denied Courtney's appeal) at the end of February 2008. Post-conviction procedures according to the Rule 3.850s and 3.987 of Florida Rules of Criminal Procedure will follow.

Thus, what is necessary now? ***It is necessary to find an enthusiastic, inventive and eager lawyer who will pro bono act as Courtney Schulhoff's defense attorney and will help her in post-conviction procedures*** (rehearing, next appeal etc.). I believe there are such lawyers in Florida.

Courtney Schulhoff's case was reported in detail in many articles published on various internet websites; the list of articles from Orlando Sentinel can be found at the website [3]; other references can be found in [1].

II. Transfer to adult court – was it necessary?

As one can find in several articles published at internet, it was known from Mr. Morin's interview at police shortly after the murder that Courtney was abused by her father [13], [23]:

> ALTAMONTE SPRINGS, UPDATED: 7:10 pm EST February 11, 2004. Investigators pieced together Wednesday what they believe happened inside Steven Schulhoff's Crane's Roost Village condominium before the man was murdered, Local 6 News reported. According to suspects Courtney Schulhoff, and Michael Morin, 20, *Schulhoff beat his daughter* after he found out she had been using his credit cards. That beating apparently prompted the girl and Morin to develop a murder plan, Local 6 News reporter Nancy Alvarez said. ... Police nabbed Morin at the movie theatre and the girl later turned herself in.
>
> "Morin said that Schulhoff seemed introverted and he felt *she had been psychologically damaged as the result of the abuse*," a police officer later wrote in a report. Investigators never found any proof of abuse."
>
> "They (police investigators) had told him it's understandable whenever a man defends his girlfriend by killing someone *who has abused her*."

The Seminole County Grand Jury issued first-degree premeditated murder indictments against Courtney Christine Schulhoff. The grand jury heard from four law enforcement witnesses and one lay witness before returning the indictment. Courtney Schulhoff was indicted as an adult and faced the murder charge in adult court.

Let's look in detail what is the task of the grand jury. The following text can be found in the Florida Grand Jury Handbook (published as part 30 of the Standard Jury Instructions):

> A grand jury does not try a case on the issue of guilt or innocence. The grand jury rarely hears both sides. Its function is simply to hear witnesses as to a charge of crime, by the State, and to determine whether the person, or persons, so charged should be brought to trial. --- Most of the work of the grand jury involves hearing witnesses and determining the sufficiency of evidence on the issue of whether that evidence, without regard to possible defenses, justifies indictment. Generally, the state attorney (or statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) will present and explain the charge to the grand jury and advise as to the witnesses who will be presented, either voluntarily or upon being summoned on the request of the state attorney (or statewide prosecutor) or the grand jury itself. The grand jury may call any witness it deems appropriate and necessary.

The task of grand jury is specified in Florida Grand Jury Instruction (published as part 31 of the Standard Jury Instructions):

> Your duty is only to ascertain whether there is "probable cause" a crime has been committed by the person so accused. If the evidence is sufficient to constitute "probable cause," then it is your duty to find what is known as a "true bill." If the grand jury does find a "true bill" and it is properly returned in open court, it then becomes the "indictment" on which the accused will be put to trial. "Probable cause," which must be shown to your satisfaction before you will be justified in returning a "true bill," is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that a particular person is guilty of a particular crime."

Thus, grand jury rarely hears both sides. The state attorney presents and explains the charge to the grand jury members – it depends on his subjective point of view what he presents and how he explains the charge. Members of jury could hear witnesses, but usually they hear witnesses advised by the state attorney. Maybe, this one-sided view is sufficient if only the 'probable cause' and the 'true bill' should be found. However, based on the grand jury verdict, a very significant decision is made: the decision on the transfer of a juvenile to the adult court. Is the one-sided view indeed sufficient for such decision? The principle *"Audiatur et altera pars"* is well known since the time of Ancient Roma.

Courtney didn't kill her father; according to testimony of several witnesses, she was only speaking with Mr. Morin about killing and she was only a bystander at the crime scene. Witnesses simply said, as it should be in testimony, what they could hear with their own ears and what they could see with their own eyes. Nobody of witnesses knew Courtney's family background, her mental conditions that are in detail analyzed in [1], nobody of witnesses was informed on abuse; these circumstances were of no interest for any of the authorities. Witnesses didn't know and didn't understand any others connections and circumstances.

It was known from Mr. Morin's interview at police shortly after the murder that Courtney was abused by her father. *Why the police reports were not presented to the members of grand jury?* Mr. Morin's information on abuse was in fact an important testimony for Courtney's benefit. Why this testimony was not presented?

Grand jury is not the trial jury and detailed investigation of the offense is the task of the trial. Grand jury should only to find the probable cause, not the full investigation of the offense. Probable cause means the presented offense and lesser included offense (for instance, murder in the first degree and manslaughter as the lesser included offense). From this point of view, it is difficult to say that the grand jury verdict was erroneous. Nevertheless, it is possible to notice that grand jury had no information on the mental, physical and sexual abuse. Thus, the verdict of grand jury was based on incomplete information. The verdict could have been different if the complete information was given to members of grand jury. The juvenile (Courtney) was not the killer; she was only a bystander at the crime scene. '*To develop a plan of murder*' is significantly different from '*to speak about killing after being abused*' – this difference was simply passed. It seems that the members of the grand jury should have been much more careful in formulating their conclusion.

Grand jury should give only the 'probable cause' and to find the 'true bill'. Nevertheless, the grand jury deliberation was too much reduced and significant features of the offense passed up; the mental, physical and sexual abuse, assault and incest were not considered because the state attorney didn't informed about these important facts. Although four witnesses testified that they had heard to speak Courtney and Mr. Morin about killing, it was necessary *to consider their testimony in context with other known facts*, with police records and to interpret their testimony in this context, not culled out of context as it was done.

It is clear that *without* knowledge of the surrounding facts and circumstances the 'probable cause' was found to be 'developing of the plan of murder premeditated'. However, *with* knowledge of these facts the 'probable cause' might have been: if a girl being raped by her father says something like 'the violator should be killed' – only the person who is not able to use his/her brain is able to conclude 'she plotted the murder premeditated'.

Florida Statute defines the rules of the transfer to the adult court in Chap. 985.556: Waiver of juvenile court jurisdiction, hearing, In Paragraph (4) Waiver hearing one can read:

> 4(c) The court shall conduct a hearing on all transfer request motions for the purpose of determining whether a child should be transferred. *In making its determination, the court shall consider*:
>
> 1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
> 2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
> 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
> 4. The probable cause as found in the report, affidavit, or complaint.
> 5. The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
> 6. The sophistication and maturity of the child.
> 7. The record and previous history of the child, including:
>   a. Previous contacts with the department, the Department of Corrections, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, other law enforcement agencies, and courts;
>   b. Prior periods of probation;
>   c. Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and
>   d. Prior commitments to institutions.
> 8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if the child is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the court.
>
> 4(e) Any decision to transfer a child for criminal prosecution must be in writing and include consideration of, and findings of fact with respect to, *all criteria in paragraph* (c). ---

After careful reading of *all* criteria of the paragraph 4(c) we can conclude: *The circumstances of the alleged offense that should be considered in making determination on transfer to adult court according to Florida Statute (see above) were in fact not correctly and responsibly considered and appreciated; especially items 1, 2, 4, 6, 7, 8. It is serious error because in compliance with (4e) "Any decision to transfer a child ... must ... include consideration of, and findings of fact with respect to, all criteria in paragraph (c).*

Let's repeat the statements of the last paragraph in other words: *The seriousness of Courtney's offense was not correctly appreciated although the necessary information was at disposal (especially those on abuse); the possibility of Courtney's correction was strongly underestimated. It is at least questionable whether the seriousness of her offense to the community was as high that transfer to adult court was necessary.*

III. Courtney Schulhoff's trial in Sanford, September 26-27, 2006: some comments

Courtney was only charged with the first degree murder premeditated before the trial, nothing else. It was the task of the trial to prove this accusation – and *it was possible to disprove* the accusation in the trial – by the explanation of all details of Courtney's life before the offense.

Divorce of parents, stress at home, persistent problems with father, beating, lack of understanding or emotional support, father's girlfriend, selling of the house where Courtney lived earlier and moving to a new area, arresting because stealing some father's checks (to upgrade his daughter by beating and arresting? – very strange method of upbringing; it's well known that such methods are often the triggers of mental problems – in the Amnesty International report [8] we can find several examples that arresting of children or even only a stay in some mental health institution can act as trigger of next mental problems that result in killing and 'life without parole').

Courtney was investigated by psychologist in preparation of her trial; this is quotation from her letter*:*

> *"It is true that hardly anything is known regarding my family such as my upbringing, childhood, my suicide attempts, teenage years and sexual abuse from my father at the age of fifteen. These aspects of my life were simply disregarded. Brushed aside: Why? I am not entirely sure."*

She spent some time in one of the mental and behavioral centers in Winter Park; it is sure that a medical report exists. She attended the high school in Orlando; her lack of concern for school and life in general, it is at least indirect or circumstantial evidence of heavy family problems. It is known that Courtney was more childlike and more naïve girl at her fourteen, fifteen and sixteen. Two days before the offense: state of shock, anxiety and fear to be again in jail because of using father's credit card for purchasing new clothes (in detail in part 5 of my 'View over the ocean'[1]):

> Steve Schulhoff had gone to the police before his death seeking information about how to rein in his unruly daughter, who had already been arrested once for stealing checks from him. He told an officer that she was using his credit card without permission and had let Morin sneak into the house at night for sex. Two days later, Steve Schulhoff was dead. [13]

Her father was going to the police and seeking information about how to rein his daughter – it is very strange method of upbringing; police is a repressive authority, not an upbringing one – it indicates the inability and incompetence of Courtney's father to bring up his daughter and maybe also other features of his character (he let her arrested some months ago [13] and she was very afraid to be again in jail). Simply speaking, some children are not able to suffer hard upbringing of this type. It is one of the fundamental tasks of parents to find appropriate methods of children upbringing: to put children in jail, to have a girlfriend and related problems with money, abuse, assault etc. are wrong and dangerous methods. As I have said, Courtney was in a state of shock, anxiety and fear to be again in jail. It is clear that this event was the exciting and proximate cause of the killing – but it was only 'the last drop of water into a full glass', the actual and indisputable reason was different – sexual abuse and rape and other persistent and long-term family problems that were not interesting for anybody, problems that culminated in a hopeless situation for her. – It is the brief summary of Courtney's childhood and at the same time the main stress triggers, maybe the origin of chronic stress or even depression. I refer to the parts 2, 3, 5 of my report [1] for further details. Moreover, an expert in psychology would be able to deduce some information about Courtney' mental state also from her photo that is published at an Internet website.

Is it possible to premeditate something in the state of shock, strong stress, fear, anxiety etc? Is *"consciously deciding"* possible in the state of shock, strong stress, fear, anxiety etc.? Is it possible to premeditate something in the state when the ability to solve complex problems, problems that require flexible thinking, problems that require selecting one of many possibilities is reduced because of stress and fear? Anybody who is able to use his/her brain to critical deliberation *must* say *no*; references to scientific papers can be found in my report 'View over the ocean' [1].

Courtney was investigated by psychologist in preparation of her trial – why not earlier? Why psychological investigation was not carried out before deciding on transfer to adult court? Previous

history of the child including '… *the former Department of Health and Rehabilitative Services…'* is requested by the Florida Statute, see above part II.

Quotation from Courtney's letters:

> *"In preparation for my trial, I told my lawyers that I wished to testify so that the judge and jury would have a clear and precise understanding of why my dad was killed. However, they advised me not to because the psychologist who spoke with me, they said, could be of no help to me. When I requested a new psychologist, they could not arrange it. Therefore, I was in a somewhat very helpless situation."*
>
> *"…But my question is, with no defense, which they obviously didn't take the time to investigate, how did they expect me to be found not guilty or given a lesser charge? This logic is confusing to me."*
>
> *"My trial attorneys said that if I testified at my trial, I might as well have plead guilty and not gon to trial. But my question is, why no defense, which they obviously didn't take the time to investigate, hoe did they expect me to be found not guilty or given a lesser charge? Their logic is confusing to me. I believed my testimony would have impacted the judge and jury …"*

It's very nice if defence attorney claims 'innocent, not guilty, weak evidence etc.' However, such statement must be supported by some arguments – and it wasn't. Moreover, if members of jury hear 'innocent', they usually accept the statement of the prosecutor (see [7] where the process of jurors' deliberation is clearly explained).

Although investigator didn't find any proof of abuse, it doesn't mean that there was no abuse; this problem is discussed below. If Courtney had claimed in the trial that she had been raped by her father, it would have been the task of the prosecutor to disprove her statement; if not it would have been assumed that she tells truth (first, because any reasonable doubt should be for the benefit of the defendant according the Standard Jury Instructions; second, because "*In dubiis reus est absolvendus*" reads the rule of Ancient Roma verified by two thousand years of history). Moreover, the suicide attempt, the therapy in the mental and behavioral center and other circumstances indicate that she was indeed the victim of abuse – all these circumstances could be verified; only the will to collect evidence is necessary. There was time enough before the trial, Courtney was arrested in February 2004, the trial was held in September 2006 – *why evidence was not collected*?

The explanation could evoke large discussion among jurors. According to testimony of some witness Courtney spoke about killing her father – and it was evaluated as premeditation. *But if a girl being raped says "I kill him", it is not premeditation, it is expression of her complicated mental state – only who is not able to use his/her brain can say ´premeditated murder´.* Please, consult any expert in psychology of young girls how their mental health is affected by assault, how they are embarrassed to speak about it, what kind of long-term or persistent problems could follow.

It is very strange and elusive that nothing of the family background, nothing on the suicide attempt, no medical reports, police reports on assault, no testimony for the benefit of Courtney, nothing of these facts was presented in the trial. All these facts are *"circumstances surrounding the killing"* that are required by the Standard Jury Instructions as important facts for jurors deliberation (see part VI A of this text). *It is strange that proof and evidence were not collected and prepared for the trial* and are collected only now for the post-conviction relief. It is even stranger if we know that penalty phase of Mr. Morin's trial was one month delayed only to enable the testimony of defense psychologist: [29]

> A judge today (May 14, 2007) delayed until next month the penalty phase of the baseball bat murder trial of Michael Lawrence Morin Jr. Jurors returned to court this afternoon, ready *to hear evidence about Morin's family life and psychological makeup, but a defense psychologist was unavailable*, so Circuit Judge O.H. Eaton Jr. reset the hearing for June 18. [29]

According to testimony of some witness Courtney spoke about killing her dad with Mr. Morin – and it was evaluated as premeditation; the testimony is discussed in part III of this report. Consider her specific situation, the *"surrounding circumstances"* as it should be according to the Standard Jury Instructions: sexual abuse by her dad and even rape and incest at the age of fifteen. Sexual abuse, assault, rape and even incest (remember: daughter – dad) are extraordinary serious malefactions in US law, thus Courtney was in fact *victim of a serious and significant criminal act* and everything what she did was under influence of this serious crime against her. Simply speaking, if a girl *being raped by her dad* says 'I kill him', *it is not premeditation* as the condition of *"consciously deciding"* is not satisfied. Please, consult any expert in psychology of young girls how their mental health is affected by assault, how they are embarrassed to speak about it and what kind of long-term or persistent problems follow.

Although *"circumstances surrounding the killing"* are required in the Standard Jury Instructions (it is obvious that only full and comprehensive circumstances are adequate), *only the prosecution part of circumstances was presented in the trial*; *members of jury could hear only the presentation of the state attorney and the testimony for the prosecution, nothing else. The question is why*? The result is that *the deliberation of jurors was based on incomplete information* – *it is very serious defect*.

The seriousness of the Courtney's offense to the community was zero; she was victim of assault and victim of very complicated family background; assault against his own daughter is much more serious to the community.

I refer here again to the passage from Courtney's letter cited above:

> *"It is true that hardly anything is known regarding my family such as my upbringing, childhood, my suicide attempts, teenage years and sexual abuse from my father at the age of fifteen."*

It implies that Courtney's curriculum vitae was indeed terrible:

[*divorce of parents → her father's girlfriend → stress at home → persistent problems with father → beating → physical, mental and sexual abuse → assault (incest) → depression → suicide attempt → killing → life without parole*].

Let me ask the following questions: Is this curriculum vitae reason for 'life without parole'? Isn't the whole justice system erroneous if it enables the 'life without parole' penalty under these circumstances? Isn't erroneous that 'life without parole' is obligatory even *for children that didn't kill anybody and their participation in killing was given only by their difficult living conditions or they were only by accident present in the crime scene*? Death penalty for children was possible up to 2005, now it is replaced by 'life without parole': if gallows, electric chair, gun, gas, needle and other inventions of modern era are not allowed, thus to remove the child that even didn't kill anybody from human society once for ever – to bury as living – what else 'life without parole' is? Isn't it too simplified and too primitive? Please, observe that I speak about *children that didn't kill anybody*!

Let's discuss in detail some events, testimonies or statements that were presented in the trial; see also parts 5, 6, 7, 8 of the report [1].

► In *recorded interviews* the day of the murder, the teenager insisted she told Morin not to harm her father, who forbade the couple from seeing each other, and even threatened to call police. She maintained that she returned from walking the dog and found Morin covered in blood and boasting that he had "solved" their problems. [11]

► Schulhoff said *Morin killed her father of his own accord* to avoid going back to jail and then threatened her into silence. Schulhoff said that Morin believed he would be able to remain free if her father was out of the picture. She told officers that *she talked her boyfriend out of killing her father* several times and was walking the dog when he attacked him. She said that when she returned to the apartment, he burst outside and said, "Problem solved!" "Then he told me that if I called the cops, that he was gonna kill me or find a way to kill me, because he knew bounty hunters or something like that. And I don't even know what a bounty hunter is," she told police. [13]

► 'I begged him not to, oh my God,' she told police, according to a transcript of her statement that was read to jurors. She told police she then left to walk the dog, and when she got home, her father was dead. [19]

► She said she talked Morin out of the slaying, but when they went to the apartment, Morin grew angry again. She left to walk the dog, she said, and when she returned 20 minutes later, her father was dead. Morin was arrested later that day. He had Steven Schulhoff's wallet, car keys and cell phone. Courtney, accompanied by her mother, surrendered the same day. [15]

Comment: It is very important that *these statements were never disproved* in the trial.

► But according to investigators, in two *unrecorded statements*, Schulhoff acknowledged full participation in the plot: "She told me at that time that she had helped plan the murder of her father, that she had, in fact, told Mr. Morin that her father was asleep in bed and ... that she would place a baseball bat near the door where he could get it," said Robert Fedi, who retired as head of the Altamonte Springs police department. Another investigator, James Egan, said Schulhoff described luring the family dog, a greyhound named Chase, out of her father's room with food so the pet would not get in the way of the assault. "She said the dog was very protective of her father,"

Egan said. He said she told him she stood outside her father's window listening to the "ping" of the aluminum Louisville Slugger hitting her father's skull. Both investigators said Schulhoff asked that the incriminating statements not be recorded, as other interviews in which she maintained her innocence had been. [11]

Comment: The unrecorded statements were refused later, in November 2007 when request for opening a new trial was heard. However, it was too late because members of the trial jury heard the unrecorded statements and it is sure that their verdict was affected by this unrecorded statements – the verdict could have been different without the unrecorded interview. There was only one possibility how to find the effect of unrecorded interview – to open a new trial with a new jury as t*he refusal of unrecorded interview is in fact equivalent to the presentation of new evidence* according to count 3) of Rule 3.600 of the Florida Rules of Criminal Procedure – however, new trial was denied.

The presentation of unrecorded statements was erroneous. Police investigators should know that only recorded interviews or signed written interviews are acceptable and can be presented in the trial; *not recorded or not signed documents are trashy*. *If investigators presented unrecorded documents, the judge should refuse them immediately in the trial*, it was his duty; instead of that he didn't take personal responsibility and he expected buck-passing what jurors will say.

►"Morin said that *Courtney begged him to kill her father*," according to a police report.
He (Morin) gave police this account: He and Schulhoff returned to her apartment at 2 a.m. after a movie double-feature. She told him they had to kill her father and then went into his bedroom to make sure he was asleep and remove the family dog.
"He said that when Courtney came back she told him she had placed a baseball bat outside her father's bedroom door," according to a detective's report. [13]

Comment: It is at least interesting that the unrecorded statement is very similar to the account that gave Mr. Morin in his first police interview after apprehension.

►On cross-examination, defense lawyer James Figgatt suggested it was suspicious that the "most damning things" came when the tapes were turned off "at the request of a 16-year-old."
Caudill and his co-counsel, Jim Figgatt, attacked the police statements as suspect. In all the interviews tape-recorded by police, the teenager insisted Morin acted alone, and the lawyers suggested it was unlikely that she had offered a full confession to the detectives when the tape recorders were turned off. "*I'm not suggesting they lied, but I'm suggesting they needed to put together a case that night*," Figgatt said. [14]

Comment: It seems that this is an apposite evaluation of the presented recorded and unrecorded statements.

►During closing arguments, defense attorneys said *there's no physical evidence tying the girl to the softball bat* that was used to kill Stephen Schulhoff, and the defense said when the girl supposedly admitted her involvement, detectives did not take any notes about it. "(They) *weren't going to be able to present you any evidence* that specifically connected, and I mean physical evidence, *that connected Courtney Schulhoff to that baseball bat* as it was used at the time of her father's death," Defense Attorney Tim Caudill said. "They weren't going to be able to do that and they didn't do that. *They presented no physical evidence in connection, no DNA, no fingerprints*." [9], [18]

►Defense attorneys called no witnesses and put on no evidence. During their closing argument, they told jurors that the state had failed to prove its case.
Prosecutors had no physical evidence tying her to the slaying.
The only connection that jurors heard about came from two former Altamonte Springs police officers, who testified that Courtney Schulhoff told them she had helped by getting a watchdog out of the house and placing the murder weapon, an aluminum baseball bat, at the ready just outside her father's bedroom door. The officers, Robert Fedi and James Egan, though, *did not have audio or video recordings of those statements, and neither one had kept notes from the interview*. [17]

Comment: The only connection of Courtney and the baseball bat came from unrecorded statement of police officers that was later refused and that is very similar to the Morin's first police account. There are no fingerprints, no DNA. As I said above, police investigators should know that only recorded interviews or signed written interviews are acceptable and can be presented in the trial; not recorded or not signed documents are trashy. If investigators presented unrecorded documents,

the judge should refuse them immediately. Did members of jury realize this fact? It's sure that they didn't. It even seems that they considered Courtney's recorded statements as lie and unrecorded statements as true.

►"Courtney had been complaining about her father, about how she hated him. There was actually discussion about killing her father," (Assistant Sate Attorney) Carter said. [9]

Comment: Courtney hatred of her father, it is true, but it *is not* evidence that she developed the plan of the murder; it is *not* discussion about killing, it is *not* evidence of any premeditation. 'To hate somebody' is something else than 'to kill somebody' – but prosecutor says in fact that it is the same – *it is not only erroneous, it is unfair and purposely misleading. Prosecutor's words are only a cheap and unfair spectacle for the jury* without any logic, nothing else. The only correct response of the judge should be "Shut up!" (to the prosecutor) and "Don't listen to him!" (to jurors) – but judge again didn't take personal responsibility and was silent. Why defense attorneys didn't object?

Moreover, where are *"the circumstances surrounding the killing"*? Not mentioned, of course. She hated her father – but *why*? She wasn't a 'hormonal teenager' that hates all superiors including parents; she was abused and raped by her father, she was victim of assault at her fifteen, her father brought her up by beating and putting in jail. However, because defense lawyers didn't mentioned the surrounding circumstances and because no defense testimony was presented (why?), members of jury had no information on the surroundings circumstances as it should be according to the Standard Jury Instructions; see part VI of this text.

►Jurors are also likely to hear testimony of friends who claim "Schulhoff's hatred of her father was well known. [13]

Comment: The statement and testimony is empty and misleading without considering the specific *"surrounding circumstances"*. Witnesses assumed that it was because Mr. Steve Schulhoff obstructed their love, that it was simply a 'hormonal love story' with tragic termination (journalist also accepted this point of view – it is very attractive for readers). Nobody of witnesses knew that Courtney was abused by her dad; nobody of witness knew her mental condition. Witnesses only knew that she hated her father and didn't know and didn't understand any others connections and circumstances. Witnesses simply said, as it should be in testimony, what they could hear with their own ears and what they could see with their own eyes. *Courtney hatred of her father, that's true, but why*? *Why nobody asked 'why'*? To be abused, to be victim of assault, it is strong and understandable reason of hate. And that's not all: upbringing by beating and by imprisonment is another reason for hate. Remember, what said the prosecutor in the trial:

►Steve Schulhoff had gone to the police before his death seeking information about how to rein in his unruly daughter, who had already been arrested once for stealing checks from him. [13]

Realize that 'to hate somebody' *is different* from 'to plot the murder'; 'to hate somebody' *is not* evidence that Courtney developed the plan of murder, it *is not* evidence of premeditation. Did members of jury realize this fact?

Members of jury or judges *must* consider *the testimony in relationship* with other *"surrounding circumstances of killing"* as it is required by the Standard Jury Instructions – just this approach is called deliberation. It is *great error* and unfortunately *frequent error* to consider the *testimony alone*, without connections with others events and circumstances, and to conclude that the testimony alone, without connections, represent an absolute and conclusive evidence of premeditation. It is true that information about Courtney's childhood, about her mental state, about abuse etc. were not presented by the defence lawyers in the trial (why?). Nobody of jurors was inquisitive; why? *It was duty of jurors to demand additional information* for their deliberation; this duty is given by the Standard Jury instruction: *"…you will then consider the circumstances surrounding the killing in deciding…"*; see part VI of this text. It seems that juror's deliberation was too facile and superficial.

► Prosecutors have said the motive was the pair's lust for money, freedom and each other. Steve Schulhoff had gone to the police before his death seeking information about how to rein in his unruly daughter, who had already been arrested once for stealing checks from him. He told an officer that she was using his credit card without permission and had let Morin sneak into the house at night for sex. Two days later, Steve Schulhoff was dead. [13]

Comment: It is too simplified and without any context, simply a love story with tragic end attractive to journalists, TV-court and jurors, nothing else; only an impressive story that could affect jurors (and it was prosecutor's aim). Nobody presented other surrounding circumstances in the trial (why?). Psychologist testified in Morin's trial, why not in Courtney's trial? Mr. Morin was adult at the time of offense; on the opposite, Courtney was juvenile (sixteen plus about six weeks) at that time and she was investigated by psychologist some months before the trial. Where are documents of this investigation? Why no documents were presented? Courtney explained all circumstances to her defense lawyers about four months before the trial; no sooner as she was embarrassed to talk about being raped by her dad. See also part 5 of [1] for further discussion of this passage.

It was known from Morin's interview at police shortly after the murder that she was abused by her dad. The evidence is in an article on Courtney's trial published on internet:

► "Morin said that Schulhoff seemed introverted and he felt she had been psychologically damaged as the result of the abuse," a police officer later wrote in a report. Investigators never found any proof of abuse." [13]

Other statement found in article on Morin's trial:

► "They (police investigators) had told him it's understandable whenever a man defends his girlfriend by killing someone who has abused her." [23]

Although investigator didn't find any proof of abuse, it doesn't mean that there was no abuse. Why no proof was found? There are several reasons. *First*, It's very often the case that policemen didn't believe if a young girl or woman charges a man or even her father with assault - and what about if daughter known as a 'bad girl' charges her dad with assault and abuse? *Second*, it is very difficult to find the proof if there is only the abused girl and the dead violator. Confrontation of Courtney or Morin with Steve Schulhoff was impossible as he was dead and it is sure that Steve didn't boast about violation and assault against her daughter to anybody. *Third*, remember also the 'fingerprints scandal', hot topic in Seminole county in May and June 2007 – about 1,500 crimes should be re-examined (see articles in Orlando Sentinel) – it doesn't indicate good and responsible approach of police experts; maybe it could be explanation why there was not found (or even not seek) any evidence of abuse. If fingerprints, why not something else? Maybe this conclusion appears rather speculative but it should be examined. And *fourth*: The following sentence from the above cited passage is interesting: "*Steve Schulhoff had gone to the police before his death seeking information about how to rein in his unruly daughter …*" Maybe, it is only a sentence of a journalist, without any deeper meaning. However, Steve Schulhoff was driver, a building supplies salesman [24], he was often driving his truck. Maybe, the sentence signalizes that policemen were his acquaintances – if so, it is clear why police didn't find (or didn't seek) any proof of abuse.

► Assistant State's Attorney Jim Carter … highlighted the testimony of the eight witnesses who took the stand for the prosecution, including an acquaintance of Morin who heard him discuss killing the victim in front of the defendant four months before the murder. [14]

► One of Morin's friends, Ivan Friedman, told jurors that he heard Morin talk about killing Schulhoff's father months before the slaying. 'She was complaining. She was crying. . . . At that point he said, 'Well, I'll dig up a gun and kill him,' and she'd giggle,' Friedman said. [16]

Comment: Ivan Friedman was Morin's friend and he testified against Courtney. However, was his testimony indeed a testimony against Courtney? It was Morin who said *"Well, I'll dig up a gun and kill him"*, not Courtney. What did Courtney? *"She was complaining. She was crying … she'd giggle"*, nothing else according to Friedman's testimony. Courtney didn't say 'Don't do it!', she'd giggle instead any answer – but to giggle, *it is not* evidence of premeditation, *it is not* evidence that she plotted the plan of the murder. To giggle, it is even *not* evidence that she agreed with Morin. On the opposite, to giggle, *it is* evidence of her innocence; *it is* evidence of her mental state; *it is* evidence that

she was naïve and childlike, maybe more naïve than others at the same age, but she simply was. To giggle, *it is* evidence that she didn't realize serious consequence of Morin's words – it corresponds very good with her mental state, see parts 3, 5 of [1] for more details. To giggle, *it is* evidence that she simply didn't take seriously Morin's words – it corresponds also very well with her recorded police interview immediately after the murder:

> ► In *recorded interviews* the day of the murder, the teenager insisted she told Morin not to harm her father, who forbade the couple from seeing each other, and even threatened to call police. She maintained that she returned from walking the dog and found Morin covered in blood and boasting that he had "solved" their problems. [11]

Remember that nobody disproved this police record.

Maybe, witnesses heard Courtney and Mr. Morin to speak about killing. But to say (for instance) 'I would like to kill him' after being raped, after upbringing by beating and putting in jail – it *is not evidence* that Courtney developed the plan of the murder.

> ► Michael Morin admitted, on several occasions, he killed Mr. Schulhoff and because of that he was facing the death penalty. He convinced Courtney that if she would say she did it, he would be freed and then he would get her out. The state attorney has letters they wrote each other in county jail before the trial expressing this. [36]

The presented citation explains the aim of Courtney's 'surprising confession' after jurors announced their verdict:

> "Your honor, I would like to openly admit in court that Michael Morin is not the person who killed my father. I was. So I accept full responsibility and I accept the verdict," Schulhoff told Seminole Circuit Court Judge O. H. Eaton [9], [18]; see also part 7 of [1].

It is now clear that Courtney indeed tried to help her love, her boyfriend Morin. She tried to save Morin's life standing face to face to life in prison without parole, she tried to save Morin's life although it could be dangerous for her; thus, she can't be as bad as some people say.

> ► Prosecutors said Courtney supplied the bat and convinced her 20-year old boyfriend, Michael Morin, to use it. "*She set it outside the room for Michael. She got a change of clothes for Michael*, so he wouldn't get his own clothes bloody, and then she sent him in to do her dirty work," said prosecutor Jim Carter. [12]

> ► He cited the testimony of two police detectives who said that the evening after the killing, Schulhoff confessed to helping Morin by giving him the murder weapon, an aluminum Louisville Slugger, and removing the victim's protective dog from the family home. [9]

Comment: Prosecutor's closing arguments are based on the unrecorded interviews immediately after the murder; however, such interviews are trashy and were refused when new trial was requested. Moreover, the unrecorded review is very similar to Morin's police interview immediately after apprehesion. But Morin's police interview hardly can be considered as exact evidence because Morin plotted and tried to save himself. Exact physical evidence doesn't exists, no fingerprints, no DNA were presented in the Courtney's trial. Fingerprints expert even testified in Mr. Morin's trial that no fingerprints were found although four different methods were used – it is strong objection against prosecutor's statement. Where is any evidence that Courtney indeed had the baseball bat in her hands? Nowhere. Thus, *nobody can say who put the baseball bat outside the bedroom*. It is possible that it was Courtney's dad who put away the bat outside his bedroom when coming home. *There is no evidence that the baseball bat was prepared for murder in advance.* Moreover, according to one explanation of premeditation presented in part VI of this document*: "The preparation of arms or other instruments required for the execution of the crime, are indications of premeditation, but are not absolute proof of it …"*

Regarding the clothes, did Courtney prepare the clothes before the murder or she simply gave him the new clothes only after the murder or he alone took some clothes? One can find the following discrepancy in reading documents of the Mr. Morin's trial in April 2007:

> Also testifying Monday was Emily Booth-Varan, a DNA expert with the Florida Department of Law Enforcement. She told jurors that the blue shorts Morin was wearing when he was arrested had the victim's blood on them. [23]

According to State Attorney statement: "… s*he got a change of clothes for Michael… "*. According to DNA expert there was victim's blood on the blue shorts – thus no change. Who told the truth? State attorney or DNA expert? Blood on shorts found by expert is definite evidence, statement of State Attorney are only words addressed to jury with the aim to convince jury that defendant is indeed guilty…

> ►Assistant State's Attorney Jim Carter told jurors in his closing argument that the only charge that fit the crime was first-degree murder.

Comment: The conclusion of the attorney is subjective and typical for prosecution. He presented only those evidence and "surrounding circumstances" that supported the verdict 'guilty'; it is his job.

One general note – the main difficulty of the jury system: The state attorney presents his overvalued conclusion (first-degree murder in this case). The defense attorney presents his conclusion that is very often also overvalued (innocent in this case). The process of jurors' deliberation is analyzed in [7a]: members of jury should decide which of these overvalued conclusions is true – none of them is true, the truth is somewhere between the two conclusions.

Summary and conclusions:

◆ Although *"circumstances surrounding the killing"* are required in the Standard Jury Instructions (it is obvious that only full and comprehensive circumstances are adequate), *only the prosecution part of circumstances was presented in the trial*. Members of jury could hear only the presentation of the state attorney and the testimony for the prosecution, nothing else. The question is *why*? The result is that *the deliberation of jurors was based on incomplete information – it is very serious defect*.

◆ It is very strange and elusive that nothing of the family background, nothing on the suicide attempt, no medical reports, police reports on assault, no testimony for the benefit of Courtney, nothing of these facts was presented in the trial. All these facts are *"circumstances surrounding the killing"* that are required by the Standard Jury Instructions as important facts for jurors deliberation.

◆ According to defense lawyers *the evidence against Courtney was weak*. The defense lawyers old the judge before the trial the case against Courtney was so weak that they wanted him to throw it out [9], [14] – this implies they were sure the evidence is indeed weak; their statement was not an exaggeration given to the jury during the trial.

◆ Members of jury were confused by some arguments presented by the prosecutor, by some conflicting testimony of police investigators; some of them were even unfair, some of them were rejected later.

◆ Members of jury were not able to evaluate the unique and specific circumstances surrounding the killing; partly as the necessary information was not given to them, partly as they didn't employ or leave out some of the possibilities that Standard Jury Instructions offer.

◆ Members of jury could hear only the presentation of the state attorney and the testimony for the prosecution, nothing else; the information on the murder given to them was not comprehensive; their deliberation based on incomplete information.

◆ It was the duty of members of jury to require additional information for their deliberation, information about specific circumstances surrounding the killing; they didn't do it, the simply believed what the prosecutor said.

◆ The testimony of witnesses in the county trial is empty and misleading without considering the specific surrounding circumstances of the homicide. Members of jury had lack of information to do it.

◆ Courtney's explanation of events, her recorded interview with police shortly after the murder, *was never disproved*.

◆ The Courtney's unrecorded interviews that were refused two months after the trial should have been refused immediately; if not, the comparison of recorded and unrecorded interviews *should result in reasonable doubts* what is true – thus, members of jury evaluated erroneously the police interview. According to Standard Jury Instructions, chap. 3.7, see also part VI below: *"A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence … If you have a reasonable doubt, you should find the defendant not guilty."*

◆ Only three persons were present at the crime scene in the moment of murder: Steve Schulhoff that was killed, Courtney and Morin, nobody else, no witness. The accounts that Courtney and Morin gave to police early after the murder are controversial. Thus, only exact evidence and clues can give response to the question 'guilty or not guilty.'

◆ Exact evidence like fingerprints or DNA is for her benefit: *nobody was able to present any evidence that connected Courtney Schulhoff to that baseball bat*.

◆ Courtney's complicated family background was not taken into account in the county trail, see part III and parts 2, 3 of [1] for details; the sequence of Courtney's life is terrible: [*divorce of parents → her father's girlfriend → stress at home → persistent problems with father → beating → physical, mental and sexual abuse → assault (incest) → depression → suicide attempt → killing → life without parole*]

◆ The fundamental principles of criminal law were not taken into account (*In dubiis mitius. – In dubiis reus est absolvendus – In dubio pro reo*): neither if the question 'guilty – not guilty' was adjudicated, nor if the problem of premeditation was investigated. These principles are called *"reasonable doubts"* in the Standard Jury Instructions.

◆ Moreover, *the premeditation was not proven beyond reasonable doubt* as it is requested in the Standard Jury instructions. It seems that members of jury simply accepted prosecutor's closing arguments although they had good reasons for reasonable doubts; the jury system failed in Courtney's case; see the excellent analysis in [7].

IV. Mr. Michael Morin's trial, April 2007: some comments and questions

Courtney Schulhoff was found guilty in first degree murder premeditated not because she killed but because she helped plan the murder. On November 9, 2006, two months after her conviction to life without parole, Courtney Schulhoff signed the sworn statement with new and completely different information on the murder: she said her father had sexually abused her and that's why she killed him, her boyfriend Morin had no part in the slaying. [20], [21], [22]

> She provided her new account in a sworn statement Nov. 9, two months after her conviction. … In her statement, she said he had raped her several months earlier, something she had not reported to police. --- Without telling Morin, she decided to kill her father, who was asleep inside, she said. [20]
>
> In a sworn statement in November, she said her father had sexually abused her and that's why she killed him. [21]
>
> In a sworn statement in November, she told attorneys that Morin had no part in the slaying. She said she killed her father because he had sexually abused her. [22]

The trial with Mr. Michael Morin was held in Sanford court room in April 2007. Detailed information about the trial can be found in Orlando Sentinel [3]. Courtney Schulhoff testified in his trial and she and she again affirmed that she killed her father, not Mr. Morin; she killed him because he had raped her: [20], [21], [22], [23], [24]

> Without telling Morin, she decided to kill her father, who was asleep inside, she said. She got the family's greyhound out of the house, put on baggy clothes, grabbed her father's aluminum Louisville Slugger bat and beat him to death, she said. He did not wake up. He did not resist. The only sound he made was "like a gurgling," she said in her deposition. Morin, she said, came inside a few minutes later, and when he saw the body, ran to the bathroom and threw up. He tried to talk her into calling the police, she said, but she refused. [20]
>
> Convicted murderer Courtney Schulhoff, 19, today told jurors that she alone beat her father to death in his Altamonte Springs bed with a baseball bat three years ago. She said her boyfriend, Michael Morin Jr., 23, had no idea what she was up to. She said she and Morin had gone to the movies that

night. Morin was standing outside the apartment when she went inside, picked up the bat and quietly went into her father's bedroom and killed him. She said she didn't know how many times she struck him. --- She hated her father, she said. He had raped her, refused to let her drop out of Lyman High School and tried to keep her from seeing Morin, she said. --- She told jurors that she and Morin never plotted together to kill her father. Courtney Schulhoff said she only told Morin about the slaying moments after her father was dead. [24]

Let's comment the sworn statement and the testimony. Two important new facts were presented openly and on a formal level: first, Courtney was sexually abused by her father; second, Courtney killed her father and Mr. Morin even never plotted the killing. Let's discuss what is true and what is not true.

The first statement on sexual abuse: Courtney said that her father had sexually abused her, he raped her and it was the reason (or one of the reasons) why she hated him. *This assertion appears to be true*, with very high probability approaching 100%. Mr. Morin's interview at police immediately after apprehension in February 2004 is the possible evidence of veracity; the important statements are presented at the beginning of part II and discussed also in part III of this text. I emphasize that I mean the police interview immediately after apprehension, not his later statement when he manoeuvred and changed his testimony.

Courtney mentioned the rape not only in her sworn statement and in her testimony in the trial but also in her letters:

"It was about fourth months prior to me going to trial, that I came forward to my attorneys with the truth. They had asked me why I had not told them sooner and I simply told them because I was embarrassed to talk about being raped by my dad. When I was arrested at the age of sixteen, I didn't fully understand the consequences or punishment until I had turned eighteen. Upon the realization of what I was facing, I decided to tell my attorneys the truth."

"I could have gotten manslaughter rather than first degree, had I testified in my trial. I firmly believe that because the jury would have heard about my dad's 'not-so fatherly' actions. In the US, if anyone is found guilty of sexually assaulting a minor, the usually face 25-life. Had I done the responsible thing by pushing my embarrassment aside and reporting my dad to the authorities, I believe the roles would be reversed."

"It is true that hardly anything is known regarding my family such as my upbringing, childhood, my suicide attempts, teenage years and sexual abuse from my father at the age of fifteen. These aspects of my life were simply disregarded. Brushed aside: Why? I am not entirely sure."

"I signed an affidavit yesterday for the Department of Children and families (DCF) to send me my case file of all the times. I called DCF in regards to abuse from both my mother and father. I have police reports from when my dad called them on me..."

There is one problem, one weak point: All information about sexual abuse, rape, assault originate from Courtney: Courtney's affidavit, Courtney's testimony in the trial, Courtney's statement to her attorneys, Courtney's letters … and the articles in Orlando Sentinel [3] are also based on Courtney's testimony. May we believe her?

It is impossible to find a witness or a *direct* evidence of the 'not-so-fatherly' actions. It is sure that any action of that type was only between Courtney and her father, it is sure that nobody else was present. Thus, how to verify her statement? If direct evidence doesn't exist, it is possible to find *indirect* evidence or even a chain of indirect evidence. And there are facts that can be easily verified and that support her statement on abuse: her suicide attempt, her stay in mental health center in Winter Park, her lack of concern for school and life in general etc., she wore black clothes, she fell into a very deep depression when her family moved to Florida in 1999, she hated her father – why?; see also part III of this text or parts 3, 5 of [1] for further details. *All these facts are in coincidence with her statement on the 'not-so-fatherly' actions*, and although none of these facts is a direct proof, none of these facts is against the statement about *the 'not-so-fatherly' action.* Moreover, all these statements can be verified: there should be a medical report from the mental hospital (it would be the best evidence), maybe, some of Courtney's teachers or schoolmates remember and are able to confirm her problems in school. Regarding the fact that "Police didn't find any proof of abuse" see part III of this text for discussion.

Jennifer, Steve Schulhoff's sister, and Elaine Bouck, his girlfriend, argued against Courtney and claimed that Steve Schulhoff was not abusive: [25]

> The hardest part of the Morin's trial for Schulhoff's sister was the characterization that her brother was abusive. She and Elaine Bouck, Steven Schulhoff's girlfriend at the time of his murder, said nothing could be further from the truth.
> For Bouck and Jennifer Schulhoff, on some level, justice has been served, but the rift between an aunt and her niece may take much longer to heal, if ever. [25]

It was the only objection against Courtney's statement. It is clear that the objection of Steve's sister and girlfriend is trashy. It's sure that Steve didn't boast about violation and assault against her daughter to his sister and to his girlfriend; on the opposite, it's sure that he tried to hide his abusive appetite from both women. And even if her sister or her girlfriend would have a suspicion that Steve was abusive, they would never admit it in the trial.

> "Anybody who knows, my brother has the keys to heaven. That's all I have to say," said Jennifer Schulhoff.[25]

Nobody has keys to heaven. It is well known that it depends only on St. Peter, the heavenly porter, who enters heaven. It is not sure that St. Peter will open the heaven gate to a man that used such method of upbringing of her daughter like beating, arresting, mental, physical, sexual abuse, who had and kept his girlfriend instead of proper care of his daughter.

The second statement that Courtney plotted the killing and killed her father alone: This is not true and there exist several proofs and reasons. (i) Some of the reasons why Courtney couldn't be the person who killed are given in part 8 of my report [1] and similar reason is published also in the article [19]: she was simply not strong enough to hit the strokes by the baseball bat. (ii) Witnesses testified in Courtney's trial that they had heard Courtney and Mr. Morin to speak about killing; thus, her statement that Mr. Morin never plotted the murder and came inside the house only after the murder is not true. (iii) If Courtney's testimony in Mr. Morin's trial and her recorded interview at police in February 2004 are compared, it can be seen that the testimony and interview are conflicting; for instance: Courtney wanted to call police (according to interview) – Mr. Morin wanted to call police (according to testimony). (iv) Police experts have several evidence that Mr. Morin was the killer; for instance, his recorded statement after apprehension in February 2004 and his phone call after apprehension: [21], [22]

> Jurors on Monday are likely to hear a recording of Morin's statement to police. He told them he picked up the bat as he headed into the victim's bedroom but then blacked out, and the next thing he remembered was being covered in blood. [21]

> On Monday, jurors will likely hear the recording of a phone call Morin made to his father from Seminole County Jail shortly after his arrest. "What'd you do?" asks Morin's father, Michael Morin Sr. "You don't want to know. ... Basically, you need to know your son's not getting out of this alive," Morin Jr. said. "I took somebody's life, Dad." "Who?" his father asks. "Steve Schulhoff." [22]

There are also other proofs that *were not presented* in the Mr. Morin's trial and that approved that Mr. Morin was the person who plotted the murder, who developed the plan of the killing. In internet readers' comments to articles on Mr. Morin's trial published in Orlando Sentinel we can read the following question: [38]

> Mel, Orlando, FL, March 11, 2007: "I knew Courtney (she was my neighbor when she lived in Waterfod Lakes and we went to school together for a little while) and I knew Mike (we went to school together, and he dated one of my friends). She would/could not have done that herself, and I seriously doubt that Mike did nothing." [38]

> Mel, AOL, Apr 25, 2007: "I knew them both too. I lived in the same neighborhood in Waterford as Courtney, and one of my best friends dated Mike before he was with Courtney. ... If you're from here, then you should remember the story channel 9 did right after they were arrested about Mike's diary in jail. He wrote in great detail about how *he was going to kill* one of his best friends and take over his identity in order *to stay out of trouble* for Mr. Schulhoff's murder. *Why isn't anyone mentioning this?*" [38]

> Mel, AOL, Apr 25, 2007: "... And *why isn't anyone mentioning* the diary he kept when he (Morin) was first arrested? He wrote in great detail about killing one of his friends to take over his identity *in order to stay out of trouble for killing* Mr Schulhoff. *He had the whole scenario written out*, up to what to say and where to take him to shot him." [38]

It is sure that TV story channel 9 didn't publish this information without evidence; we can even assume that TV took this information from police; thus it is true information. It is in fact evidence that it was Mr. Morin who developed the plan of the murder and that the murder has typical features of the

murder premeditated. One very important question is included in the above quotations: *Why isn't anyone mentioning this?*

State attorney should have an interesting letter:

> Michael Morin admitted, on several occasions, he killed Mr. Schulhoff and because of that he was facing the death penalty. *He convinced Courtney that if she would say she did it, he would be freed and then he would get her out.* The state attorney has letters they wrote each other in county jail before the trial expressing this. [36]

This letter of Mr. Morin explains Courtney's surprising confession in her trial and also her testimony in Mr. Morin's trial, her attempt to present herself a very bad girl and to present Mr. Morin as a good boy: Courtney simply did what Mr. Morin asked. It is lightly understandable: Mr. Morin was her boyfriend and she loved him; thus, she was able to do anything what could save his life (remember that he was twenty at the time of the murder and eligible for death penalty). The letter also indicates that Mr. Morin intrigued and plotted before both trials – of course, he tried to save himself, but if he convinced his girlfriend Courtney to blame everything on herself he complicated her position before her appeal and other post-conviction procedures – and Courtney didn't realized it and because of her love she did what he wanted. However, there is one question: *"state attorney has letters that they wrote each other in county jail" – why these letters weren't presented in the trial* as evidence against Mr. Morin? Only nearly harmless love letters were presented:

> Assistant State Attorney Jerry Jones read aloud from letters she had written from her jail cell to Morin's. "Do you still love him?" Jones asked. "I care about him," she said. [28]
>
> Hadn't she sent love letters from her jail cell to Morin, including one with a passage from Romeo and Juliet, (Assistant State Attorney) Jones asked. "Yes," Schulhoff said. "Are you a modern-day Juliet?" Jones asked. "No, Mr. Jones," she said... [27]

Courtney also said in her testimony that her attack with bat was not the first murder attempt:

> The attack with the bat was not her first murder attempt, she said. She had earlier tried to kill her father by putting bleach in his food and rigging the brakes on his truck, she said, but those attempts had failed. [24]

It seems that this *statement is not true* because Courtney aspired to present herself as a very bad girl in Mr. Morin's trial; the reason is explained above – her aim was to save Mr. Morin. However, even if it would be true, it was only Courtney's response to the sexual abuse and rape, thus according to facts given in the part on psychological aspects of premeditation (and in correspondence with the Standard Jury Instruction) it can be hardly considered as evidence of premeditation.

It seems that the Orlando Sentinel Staff Writer Rene Stutzmann caught very well how Courtney testified and why she testified just in this way: [28]

> Courtney Schulhoff's testimony, set for Tuesday, had promised to be high drama. She did not disappoint. Schulhoff shuffled to the witness stand in chains. She is already serving a life prison term for murder. A separate jury concluded she helped carry out the plot against her father. She had been an awful child, according to her testimony. She was a thief a truant, a drug abuser, a runaway. *But her testimony was intended to do good, to save a life -- Morin's*.
> On the witness stand, she was angry, defiant and unapologetic. Yes, she had single-handedly beaten her father to death. No, Morin had done nothing to help, not until cleanup, after it was done. She was the tough one, she said. When he saw the body, Morin threw up, she said. [28]

There is another interesting fact. Members of jury found Mr. Morin guilty in first degree murder premeditated but judge delayed the penalty phase of the trial:

> Jurors today (April 25,2007) convicted a 23-year-old man of first-degree murder in the baseball-bat slaying of his girlfriend's father, who had been trying to break up their romance. The jury found Michael Lawrence Morin Jr. guilty of murdering Steven Schulhoff in his sleep. Jurors deliberated just shy of four hours. They are to return May 14 and recommend a sentence of life in prison or death. [26]
>
> A judge today (May 14, 2007) delayed until next month the penalty phase of the baseball bat murder trial of Michael Lawrence Morin Jr. Jurors returned to court this afternoon, ready *to hear evidence about Morin's family life and psychological makeup, but a defense psychologist was unavailable*, so Circuit Judge O.H. Eaton Jr. reset the hearing for June 18. [29]
>
> Typically, the penalty phase of a murder case is held soon after guilt or innocence is determined. Morin's case was delayed until this week (June 20, 2007) to accommodate a defense witness. --- A car

> thief convicted of killing his girlfriend's father with a baseball bat was sentenced to life in prison Tuesday. [30]

The aim of the delay was to enable the testimony of the defense psychologist. It is interesting because no psychologist testified in Courtney's trial although she was child in the time of offense (sixteen plus about six weeks) and Mr. Morin was adult (twenty). *Why evidence about Morin's family life was so much important and why no information about Courtney childhood was presented?* It seems it is typical for Florida justice: trials with children were held where the testimony of psychologist was refused although the expert was waiting in front of the court room, see part IX of this text or [37]. The testimony of psychologist is obligatory in trials with children in civilized countries (for instance in Great Britain and in other European countries).

V. Diminished responsibility, testimony of psychologists

The explanation of the term 'diminished responsibility (capacity)' can be found in many law resources, e.g. in the legal dictionary at the website [4]:

> "A contention of diminished capacity means that although the accused was not insane, due to emotional distress, physical condition or other factors he/she could not fully comprehend the nature of the criminal act he/she is accused of committing, particularly murder or attempted murder. It is raised by the defense in attempts to remove the element of premeditation or criminal intent and thus obtain a conviction for a lesser crime, such as manslaughter instead of murder. --- Diminished responsibility requires a substantial impairment caused by an abnormality of mind which may cover not only abnormalities of perception or cognition, but also an abnormality affecting the ability to exercise will power, and extreme emotional states falling outside the medical definitions of illness and abnormality."

The facts presented in part III of this text and in parts 2, 3, 5 of [1] argue for the diminished responsibility: Courtney's mental state at the time of the killing and before fits very good the features of diminished responsibility; she was indeed under influence of strong emotional distress etc. Consider especially the situation of a fifteen- or sixteen-age girl that is mentally, physically and sexually abused and even raped by her father. Young girls are embarrassed to speak about assault and the consequence of assault and incest could be long-term or even persistent; no proof is necessary, it is known to any police investigator or to any expert in psychology that examines sexual offense. *Diminished responsibility because of assault and incest that results in suicide attempt and lack of concern for school and life* in general is significantly different from (for instance) diminished responsibility under influence of drugs or alcohol (frequent argument of defence lawyers).

However, there is one problem. Diminished responsibility is a statutory defence in Great Britain and in many other European countries but only in several states of the USA. Especially, diminished responsibility is not accepted in Florida; defence based on diminished responsibility is accepted only if the term is applied as synonym of insanity. Of course, diminished responsibility is *"outside the medical definitions of illness and abnormality"* and judges and state attorneys require irrefutable proofs. Nevertheless, there are two objections against this approach, against simple refusal of diminished responsibility.

First, according to the Standard Jury Instructions (see part 7 of this text) *"…you will then consider the circumstances surrounding the killing in deciding if the killing was [crime charged] or …"* It is clear that *"extreme emotional states falling outside the medical definitions of illness and abnormality"* are important circumstances surrounding the killing. It is also clear that such states result in diminished responsibility (see the passage at the opening of this part). Thus, *refusal of diminished responsibility is in fact inconsistent with the Standard jury Instructions*!

Second, let's use common sense: to do it, it is in fact the aim and the task of the members of jury. Jurors are usually not experts in law; they should apply their common sense and appreciate the story presented by the prosecutor and the story of the defence lawyers and compare the stories with presented evidence. The process of jurors' deliberation is clearly described in [7]: it is not easy and jurors sometimes err – sometimes because the cause is too much complicated, sometimes because they haven't sufficient information etc. Using common sense, jurors should ask several questions: Is a girl that lived in complicated family conditions described above, a girl mentally, physically and sexually abused and raped by her dad at the age of fifteen, dangerous for the human society? Is Courtney

indeed as dangerous that she must be removed from the human society once for ever? The answer is: *Whatever Courtney did, she did as a victim of assault and incest, and 'life without parole' is miscarriage of justice – common sense is sufficient for this conclusion (and the will to apply the common sense in the post-conviction procedures*).

One lawyer from one institution in Tallahassee said (sorry, I haven't agreement to publish his/her name): *"I agree with you that her case is a tragedy and should be corrected….I will keep your information and look for other legal resources to help Ms. Schulhoff."* What will say judges during the post-conviction procedures?

VI. Premeditation

The first part of this chapter presents a detailed analysis of premeditation based on the Standard Jury Instruction 2007. Other definitions or explanations of premeditation found in various law documents published at www-pages are investigated in the second part. All presented documents are analyzed from the point of view of Courtney Schulhoff's case.

A) Premeditation in the Standard Jury Instructions 2007

If the defendant is charged of the *first degree murder premeditated* (Florida Statute, §782.04–1a), members of jury should compare the charge with evidence. The explanation of *"killing with premeditation"* in the Standard Jury Instructions 2007 is comprehensive and correct. The problem is that the Standard Jury Instructions *are often not read carefully and not understood in all details* by the 'honorable and blameless citizens', members of jury. This approach often results in incorrect and false interpretation of the Instructions by the members of the jury and maybe also by the state attorneys or judges. Several parts of the Standard Jury Instructions related to the first degree murder premeditated are presented below for further references. The key words of the Instructions are: *"killing after consciously deciding to do so"*, *"the period of time must be long enough to allow reflection by the defendant"*, *"consider the circumstances surrounding the killing in deciding"*, and *"reasonable doubt"*.

► [*Standard Jury Instruction, chap. 7.2: Murder – First Degree*]
'Killing with premeditation' is *killing after consciously deciding to do so*. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. *The period of time must be long enough to allow reflection by the defendant*. The premeditated intent to kill must be formed before the killing.
The question of premeditation is a question of fact to be determined by you from the evidence.
It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you *beyond a reasonable doubt* of the existence of premeditation at the time of the killing.

► [*Standard Jury Instruction, chap. 7.1: Introduction to homicide*]
Read in all murder and manslaughter cases. In this case (defendant) is accused of (crime charged). Give degrees as applicable.
Murder in the First Degree includes the lesser crimes of Murder in the Second Degree, Murder in the Third Degree, and Manslaughter, all of which are unlawful.
A killing that is excusable or was committed by the use of justifiable deadly force is lawful.
If you find (victim) was killed by (defendant), you *will then consider the circumstances surrounding the killing in deciding* if the killing was (crime charged) or was [Murder in the Second Degree] [Murder in the Third Degree] [Manslaughter], or whether the killing was excusable or resulted from justifiable use of deadly force.

► [*Standard Jury Instruction, chap. 3.7: Plea of not guilty, reasonable doubt, burden of proof*]
A *reasonable doubt* as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence.
If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

■ **Accusation and conviction of the defendant.** Let's briefly describe the process of accusation of the defendant in the first degree murder premeditated. According to the Standard Jury Instructions

cited above, there are the following two important features of the felony: *"… killing after consciously deciding to do so"* and *"the period of time must be long enough to allow reflection by the defendant"* – I will refer by [*] to these word for a moment.

Policemen, police investigators, detectives investigate the murder from the beginning, they examine the offender etc. and they are the first persons that charge the offender with the murder premeditated. But it is only an accusation that must be proved or disproved in the trial; police investigators are only witnesses in the trial, not persons that decide anything.

Who is the person that contends '*it was premeditated murder'* in the trial? It is the ***prosecutor, the state attorney***. Of course, it is natural that prosecutor charged the defendant. But before charging he should responsibly evaluate the arguments of police. But the prosecutor aspires to bring the defendant to prison, it is his job. Thus, the prosecutor is able to contend that *any* of the police arguments satisfies the conditions [*] and to miss out some of *"the circumstances surrounding the killing"*; it is well-known that the prosecutor's presentation is often (very) aggressive, unfair, etc., simply 'a spectacle for the jurors' rather than unemotional presentation of exact evidences. The result is that the charging of the defendant depends on the *subjective* evaluation of one person only. The prosecutor simply presents his 'story'– it is his job, he is paid for that. He is able to find any killing as premeditated and to miss out *"consciously deciding"* or the *"circumstances surrounding the killing"* He is able to find anyhow short time interval as sufficient for premeditation.

Members of jury should deliberate, evaluate, appreciate, and compare the 'story' of state attorney and that of defense lawyer – but above all, they should compare with evidences and carefully evaluate the final statement of the prosecutor ('*guilty in premeditated murder'*) and that of the defense attorney (*usually 'no guilty'*) in the case of murder. But if jurors know that a murder occurs and a dead body exists, it is sure that they give prosecutor the truth without any meditation whether the conditions [*] were satisfied – simply *it was* premeditated murder because the prosecutor contends this fact.

The process of jurors' deliberation, the origin of tragic jurors' errors and the limits of jury system are excellently analyzed in the following article: *The Louise Woodward Trial: Why Louise Woodward was convicted.* Lawrence M. Solan, Brooklyn Law School [7], see also part 12 of my previous report [1].

The Courtney Schulhoff's trial was analyzed in part III of this text.

■ **Psychological aspects of premeditation**. According to the Standard Jury Instruction 2007 "*Killing with premeditation is killing after consciously deciding to do so*". Thus, what is the meaning of the word *conscious*? We can find the following explanation of this word in the Internet British Encyclopedia: "conscious – *perceiving, apprehending, or noticing with a degree of controlled thought or observation; capable of or marked by thought, will, design, or perception; done or acting with critical awareness"*.

What is usually *not* considered in the trial, it is the simple and natural fact whether the defendant *is able* *"to consciously decide to kill"*. I don't speak about insanity, it is out of question in this case; I mean the actual mental condition of the defendant at the moment of the murder and during some period of time before the murder. These conditions belong to important *"conditions surrounding the killing"* that are important for jurors' deliberation as it is required by the Standard Jury Instructions.

There are two types of the actual mental conditions of the teenage defendant: (i) subjective, unique, specific mental condition of the particular defendant and (ii) general and clinical mental condition that are common and typical for all teenagers.

***Regarding the subjective, unique, specific mental condition*:** I tried to deduce some information on Courtney's mental condition in various articles and documents; the results of my deduction are in parts 2, 3, 5 of my report 'View over the ocean' [1] and a brief summary is in part III of this text.

I repeat here again the following passage from Courtney's letter: *"It is true that hardly anything is known regarding my family such as my upbringing, childhood, my suicide attempts, teenage years and sexual abuse from my father at the age of fifteen. These aspects of my life were simply disregarded. Brushed aside: Why? I am not entirely sure."*

Thus, Courtney's curriculum vitae was simply terrible: [*divorce of parents → her father's girlfriend → stress at home → persistent problems with father → beating → physical, mental and sexual abuse → assault (incest) → depression → suicide attempt → killing → life without parole*].

The fact that teenagers can be easily affected by adults and especially by those adults to whom he/she has some emotional relations belongs among typical psychological features of adolescents. The following information is interesting in this context; it was found in readers comments to articles on Mr. Morin's trial in Orlando Sentinel:

> Mel, AOL, Apr 25, 2007: "I knew them both too. I lived in the same neighborhood in Waterford as Courtney, and one of my best friends dated Mike before he was with Courtney. ... If you're from here, then you should remember the story channel 9 did right after they were arrested about Mike's diary in jail. He wrote in great detail about how *he was going to kill* one of his best friends and take over his identity in order *to stay out of trouble* for Mr. Schulhoff's murder. *Why isn't anyone mentioning this?*" [38]

> Mel, AOL, Apr 25, 2007: "... And *why isn't anyone mentioning* the diary he kept when he (Morin) was first arrested? He wrote in great detail about killing one of his friends to take over his identity *in order to stay out of trouble for killing* Mr Schulhoff. *He had the whole scenario written out*, up to what to say and where to take him to shot him." [38]

TV story channel 9 took this information from police, it's sure. An unanswered question is why this information was not used in trials. If the information on diary was applied it could clear up who premeditated the murder and who was only affected by outside design, ideas and intents. It is one of the important *"surrounding circumstances"* that were not considered in the trial.

A girl under mental condition as described above, a girl that is victim of sexual abuse of her dad, is much more sensitive, much more susceptible and much more open to accept ideas of a close person as Mr. Morin for Courtney at that time was. However, if she accepted such external ideas and influences, if she indeed was speaking with Mr. Morin about killing as witnesses testified, it can't be considered as developing the plan of the murder as she *wasn't able* *"to consciously decide to kill"* as it is required by the Standard Jury Instructions.

Regarding general mental condition that are common and typical for all teenagers: I refer to the detailed report the 'Joint report by Human Rights Watch and Amnesty International'[8] and to the booklet 'Second Chances: Juveniles serving life without parole in Michigan prisons'[2]; the most significant and relevant parts are cited below.

Both publications are based on the serious scientific research in psychology and neuroscience. The combination of psychology and neuroscience is very important. Arguments of psychologists are very often considered as subjective and irrelevant by prosecutors, judges or jurors in USA like such arguments would be only and attempt to free the defendant, an attempt based on 'empty words that should appear as serious and scientific'. Neuroscience produces the magnetic resonance imaging (MRI) images of the anatomy and function of the human brain at different ages (child, juvenile, adult) that supports the psychological arguments – neuroscience is in fact the material basis of psychology that can't be simply refused.

The scientific arguments strongly and forcible support the above mentioned subjective, unique, specific mental condition of the defendant and can't be simply refused as too much general: first because what is general and common, it is also valid in a particular case; second, as the consideration of the latest achievements of psychology and neuroscience should be a natural, obvious and self-evident part of jurors' deliberation if they should correctly and responsible "*to consider the circumstances surrounding the killing*" as it is requested in the Standard Jury Instructions.

In carefully reading and analyzing the report or the booklet at least *"reasonable doubts"* arise: Is the teenage girl able of "*consciously deciding to kill*" if she is under the above described mental condition, if she is a victim of abuse and assault? Strictly using the words of the Standard Jury Instruction: *"if you have a reasonable doubt, you should find the defendant not guilty."* **–** it results in '*not guilty in the first degree murder premeditated*' in Courtney's particular case.

►Joint report by Human Rights Watch and Amnesty International [8], chap. V, pp. 45-49

The difference between youth and adults according to psychology:

Psychological research confirms what every parent knows: _children, including teenagers_, act more irrationally and immaturely than adults. According to many psychologists, _adolescents_ are less able than adults to perceive and understand the long-term consequences of their acts, to think autonomously instead of bending to peer pressure or the influence of older friends and acquaintances, and to control their emotions and act rationally instead of impulsively. All of these tendencies affect a child's ability to make reasoned decisions.

Research has established that adolescent thinking is present-oriented and tends to either ignore or discount future outcomes and implications. At least one researcher has found that teenagers typically have a very short time-horizon, looking only a few days into the future when making decisions.

Psychological research also consistently demonstrates that children have a greater tendency than adults to make decisions based on emotions, such as anger or fear, rather than logic and reason. Studies further confirm that _stressful situations only heighten the risk that emotion, rather than rational thought_, will guide the choices children make. In the most emotionally taxing circumstances, children are less able to use whatever high-level reasoning skills they may possess, meaning that even mature young people will often revert to more child-like and impulsive decision-making processes under extreme pressure.

The difference between youth and adults according to neuroscience:

Neuroscientists have produced magnetic resonance imaging (MRI) images of the anatomy and function of the brain at different ages and while an individual performs a range of tasks. They have uncovered striking differences between the brains of adolescents and those of adults. Much of this scientific research into the biological distinctions between adults and children reveals that these differences occur along an age continuum —they do not magically disappear at a given age — and the rate at which the adolescent brain acquires adult capabilities differs from individual to individual. Nevertheless, researchers have identified broad patterns of change in adolescents that begin with puberty and continue into young adulthood.

A key difference between adolescent and adult brains concerns the frontal lobe. The frontal lobe of teenagers is composed of different quantities and types of cell matter and has different neural features than the adult brain. Researchers have linked the frontal lobe (especially a part of the frontal lobe called the prefrontal cortex) to "regulating aggression, long-range planning, mental flexibility, abstract thinking, the capacity to hold in mind related pieces of information, and perhaps moral judgment." In children, the frontal lobe has not developed sufficiently to perform these functions. Throughout puberty, the frontal lobe undergoes substantial transformations that increase the individual's ability to undertake decision-making that projects into the future and to weigh rationally the consequences of a particular course of action.

Adult brains use the frontal lobe to rationalize or apply brakes to emotional responses. Adolescent brains are just beginning to develop that ability.

►Second Chances: Juveniles serving life without parole in Michigan prisons [2]

The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult. ---Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult." [*U.S. Supreme Court Justice John Paul Stevens in: Thompson v Oklahoma, 487 U.S. 815 at 835 (1988)*]

Yet the current scheme of automatic adult treatment and mandatory life sentences for juveniles fails to take into account this lesser culpability and competency of children which makes them fundamentally different from adults.

Less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. The basis for this conclusion is too obvious to require extended explanation. While it is well recognized that the combination of immaturity, inability to calculate consequences, and the inability to understand the effects of their actions on others, can reduce adolescents' culpability for offenses, current system does not provide for punishment consistent with the lesser culpability of _adolescents_. Juveniles convicted of first-degree murder are given the same maximum sentence used to punish adults for this crime, life without possibility of parole. _Natural life sentences imposed on juveniles are inherently more harsh than those imposed on adults. The punishment of a sentence of life without parole for a fifteen- or sixteen-year-old is significantly different than this same sentence imposed on a thirty-year-old for the same crime._

Immaturity reduces culpability for offenses. Culpability for offenses is measured, and should be punished, in proportion to a person's ability to appreciate the wrongfulness of their actions or control their behavior to conform with the law. Altogether, the body of research on adolescence supports the conclusion that juveniles are not as culpable for offenses as adults, because they lack the same maturity necessary to control their actions and understand the consequences of those actions. _Dramatic and rapid changes occur in the development of adolescents' physical, intellectual, emotional, and social capabilities from ages twelve to seventeen._ Cognitive and psychological features of adolescence, such as immaturity, inability to calculate consequences, and inability to understand how their actions affect others, can reduce adolescents' ability to anticipate the effects of their actions. This

hinders their ability to foresee all the potential harms that could be caused before acting, and hence their ability to appreciate the wrongfulness of those consequences. Adolescence is a time when peer groups, schools, and other settings strongly influence development and choices. Adolescents are highly susceptible to the manipulations of others, especially adults, and therefore are likely to be less culpable than their adult co-defendants.

Life without parole sentences for juveniles do not take into account the unique individual characteristics of the offense or of the adolescent.

The scientific arguments presented in the Amnesty International Report and the Michigan booklet indicate that *rational conscious deciding or controlled thought are not typical for juveniles*. There is one problem: It's sure that most of judges and state attorneys and nobody of the 'honorable and blameless citizens, members of jury' never read the reports. There is another problem: state attorneys will brush aside the scientific arguments because they mar their job and their ambition to get the offender in prison, if possible once for ever. It was always difficult to carry new scientific arguments into life: remember Galileo Galilei and his famous words in the trial *'E pur si muove!' ('And yet it moves!')*

■ **Adolescents in The Standard Jury Instructions.** The Standard Jury Instructions are addressed to adult courts. There is the possibility of motion of the juvenile defendant to adult court in US law; it is even mandatory sometimes. If an adolescent is moved to adult court the same Standard Jury Instructions are applied to his/her case as to adults. *Apparently*, there is nothing specific regarding teenagers in Instructions. However, *in careful reading* the Instructions and *deeply thinking over* all statements (it should be obvious for jurors) one can find and conclude that *the specific features of adolescents must be considered in the adult court*: it is implicitly included in the words *"If you find (victim) was killed by (defendant), you will then consider the circumstances surrounding the killing in deciding if the killing was …"* The quoted sentence immediately and clearly implies the following conclusions: *the age of defendant is an important circumstance surrounding the killing; the age of defendant is important for jurors' deliberation* if they should correctly decide what kind of murder occurs. Scientific arguments that reflect the age of the defendant are presented above.

Even *if the juvenile defendant is considered as adult according to the law he/she is in fact juvenile*: it is sure that the motion to adult court doesn't accelerate the development of defendant's brain. "*Child is not a little adult*" said some time ago Florida Governor Jeb Bush (remember that the word 'child' is used to denote also adolescents, e.g. in Florida Statute and in other documents). The members of jury and also the judges of the court of appeals *must* (not only should) take into account this fact. They *must* consider the specific features of the juvenile defendant – if not it results in conflict with the Standard Jury Instruction as the *"circumstances surrounding the killing"* must be consider; the defendant *must be able "to consciously decide to kill".* See the explanation of *"consciously"* above, read the corresponding parts of the Amnesty International Report and of the Michigan booklet quoted above and try to answer the question whether the teenage defendant is able of consciously thinking, especially if the defendant is affected by such *"surrounding circumstances"* as Courtney was.

Courtney was 16 plus about 6 weeks at time of murder, she was 18 plus about 9 months in the time of the trial. Nevertheless, only her age at the time of the offense is important, both in the trial and for the court of appeals. She was not only *"a petite, baby-faced, naïve girl, maybe more childlike than others"* at her 16 according to some articles at www-pages, she was also a victim of abuse and assault.

■ **Seriousness of the crime.** There is another fact that *must* be considered if the defendant should be correctly adjudicated: *Is the juvenile defendant as dangerous that he/she must be removed from the human society once for ever?* The question is related to the fact that the penalty for the first degree murder premeditated is *mandatory* LWOP, 'life without parole'. Responsible members of jury and responsible judges of the court of appeals should consider also the impact of their decision. The question of defendant's seriousness and perversity is closely related to the psychological aspects of premeditation. Consider the statement of the Standard Jury Instructions: "*If you find (victim) was killed by (defendant), you will then consider the circumstances surrounding the killing in deciding.*" To deliberate on the seriousness and perversity of the defendant is in good correspondence with the Instructions, it is in fact obligatory for jurors.

Thus, in this particular case: Is a girl that lived in complicated family conditions described above, a girl mentally, physically and sexually abused and raped by her dad at the age of fifteen, dangerous for the human society? Is Courtney indeed as dangerous that she must be removed from the human society once for ever?

One could answer: no she is not, but there is no other possibility because the 'life without parole' is mandatory in Florida Law. It is *erroneous conclusion in general*; such conclusion only indicates no full and deep understanding of the Standard Jury Instruction and refusal and apprehension of taking personal responsibility for explanation of the Instructions and for decision. LWOP is mandatory for the first degree murder – did Courtney's offense fit the first degree murder without any reasonable doubt if all "*surrounding circumstances*" are considered? There is one difficulty of this particular case: not all "*surrounding circumstances*" were presented in the trial, only the prosecution part of them; the question is why? However, the above presented general mental conditions that are in detail explained in the Amnesty International Report and in literature cited herein and the arguments presented in the previous part on adolescents are sufficient for refusal of 'life without parole', at least in Courtney's particular case. Even if the verdict of jurors is 'guilty in murder premeditated' the judge is allowed to refuse this verdict. As I said before, only the courage to take personal responsibility for decision and the knowledge of the latest achievements of psychology and neuroscience are sufficient – I understand that it is difficult similarly as it was difficult to accept the new idea 'Earth is spinning' in the 17th century.

■ **Time aspects of premeditation.** According to Standard Jury Instruction: *"the period of time must be long enough to allow reflection by the defendant."* How to find the needful period of time? How to find that the period of time is long enough? It is impossible to give a general answer and the Standard Jury Instruction correctly reflects this fact.

The offense (killing) is designed by a person. Thus, *the needful period of time depends on the specific, unique and individual characteristics of the person* that plans the offense, on his/her individual process of thinking, on his/her actual mental condition etc. This conclusion is in fact included in the Standard Jury Instructions in the above cited sentence: *"… to allow reflection by the defendant."* – it is only necessary to read carefully the Instruction and to understand all details. Anybody knows that being distressed, excited, shocked etc. results in inability to concentrate itself; thus the time needed for premeditation is much longer if even the premeditation is possible. This means that time interval is closely related to the ability of *"… consciously deciding to do so…"* – and the meaning of *"consciously"* was discussed above.

The ability of forming of premeditation (or even of fast forming) strongly depends on the actual mental condition of the person as it will be demonstrated also below. Anybody knows that being distressed, excited, shocked etc. results in inability to concentrate itself; thus the time needed for premeditation is much longer if even the premeditation is possible. Thus, the time aspects of premeditation are also related to diminished responsibility of the defendant.

The determination of *"the period of time long enough for premeditation*' depends in practice on the subjective appreciation of the prosecutor (see the part on charging the defendant), of one person only, and reflects his/her subjective meaning affected by the fact that the prosecutor aspires to bring the defendant to prison – and this sentence is true only in case if the prosecutor ever deals with such 'irrelevant details' as *"the period time long enough …"* or the *'unique individual characteristics of the defendant'* are. Thus, it is very often the case that defendant is incorrectly charged with premeditation.

B) Other definitions or explanations of premeditation and comments

The aim if this chapter is to present other definitions or explanations of premeditation found in documents at www-pages and to discuss them from the point of view of Courtney's case; some of them were applied as supporting arguments in the first part of this document.

■ **The 5th District Court of Appeal of the State of Florida v. Case No. 5D00-1185, pp. 6, 7** [31]

The juvenile defendant was adjudicated guilty of premeditated first-degree murder of his grandmother; the published opinion contains the explanation of premeditated murder by the judges of the 5 DCA in Daytona Beach.

> A premeditated design to effect the death of a human being is a *fully formed and conscious* purpose to take human life, formed upon reflection and deliberation, entertained in the mind before and at the time of the homicide. The *law does not prescribe the precise period of time which must elapse between the formation of and the execution of the intent to take human life* in order to render the design a premeditated one; *it may exist only a few moments and yet be premeditated*. If the design to take human life was formed a sufficient length of time before its execution to admit of some reflection and deliberation on the part of the party entertaining it, and the party at the time of the execution of the intent was fully conscious of a settled and fixed purpose to take the life of a human being, and of the consequence of carrying such purpose into execution, the intent or design would be premeditated within the meaning of the law although the execution followed closely upon formation of the intent. [*McCutchen v. State*, 96 So. 2d 152 (Fla. 1957)].
>
> *Premeditation may be formed in a moment and need only exist for such time as will allow the accused to be conscious of the nature of the act he is about to commit* and the probable result of that act. [Blackwood, 777 So. 2d at 406, quoting DeAngelo, 616 So. 2d 440.]

The approach to premeditation in the above cited document appears to be consistent with the Standard Jury Instruction: *"the law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing …"* and *"the period of time must be long enough to allow reflection by the defendant"* It is true that it is not possible *"…to prescribe the precise period of time which must elapse between the formation of and the execution of the intent…"*, this statement of judges is correct.

However, judges try to specify the time interval and it is at least strange: the premeditation *"may exist only a few moments"* or even *"may be formed in a moment"* – but *only a moment* and *fully formed conscious deliberation*? It is rather strange and rather conflicting (remember: *conscious* = *perceiving, apprehending, or noticing with a degree of controlled thought or observation; capable of or marked by thought, will, design, or perception; done or acting with critical awareness*). Only a person with brain similar to the 64-bit dual-core processor of a personal computer would be able of *"fully formed and conscious"* decision in a moment.

Will to kill may be formed in a few moments, but not murder premeditated, which requires "*continued* persistence"; there is essential difference between the will to kill and premeditation as we will see below [33]. It is clear that *"continued persistence"* is inconsistent with *"only a moment"*. It is immediately obvious that *"only a moment"* is inconsistent with *"…premeditation should require more substantial contemplation and should be confined to instances of real and substantial reflection,."* see below [34].

Moreover, the ability of fast forming of premeditation strongly depends on the actual mental condition of the person. Anybody knows that being distressed, excited, shocked etc. results in inability to concentrate itself; thus the time needed for premeditation is much longer if even the premeditation is possible (it is just the case of Courtney). In a bit different word, this means that the actual mental state that could result in diminished responsibility (see part V of this text) should be taken into account if premeditation is evaluated; thus, it is not correct to refuse diminished responsibility.

Another problem: It is often the case that judges, state attorneys etc. refer to other similar cases in preparing their documents (we can see it above). However, the above presented quotations clearly imply: if there was found in a particular case and for a particular defendant that premeditation was formed in a moment, it is *very erroneous* to apply this conclusion to any other case, it is *very erroneous* to contend that only a moment was sufficient also for any other defendant. The reason is that the specific *"surrounding circumstances"* of different defendants are different and the defendants are different. According to the Standard jury Instructions "*the period of time must be long enough to allow reflection by the defendant"* and according to the above quotation *"the amount of time needed for premeditation regarding an act depends on the person and the circumstances"*. Thus, the evaluation of premeditation *must* be specific for the particular defendant – the frequent and favorite reference to previous cases is erroneous and if it is mechanically applied it should be refused as unlawful. See also the definition of premeditation in Wikipedia [32] below.

> Premeditation may be established by *circumstantial evidence*, *id.*, as it is often impossible to prove by *direct testimony* and must be inferred by circumstances surrounding the homicide. *Griggs v. State*, 753 So. 2d 117 (Fla. 4th DCA 1999).

I refer to part III of this text where the testimony of witnesses was discussed in detail. I repeat here only that witnesses simply said, as it should be in testimony, what they could hear with their own ears and what they could see with their own eyes. Witnesses only knew that she hated her dad and didn't know and didn't understand any others connections and circumstances; nobody of them knew Courtney's actual mental condition etc. However, members of jury or judges *must* consider *the testimony in relationship* with other *"surrounding circumstances of killing"* as it is required by the Standard Jury Instructions – just this approach is called deliberation. It is *great error* and unfortunately *frequent error* to consider the *testimony alone*, without connections with others events and circumstances, and to conclude that the testimony alone, without context, represent an absolute and conclusive evidence of premeditation.

> *Evidence from which premeditation may be inferred* includes the nature of the weapon used, the presence or absence of adequate provocation, previous problems between the parties, the manner in which the murder was committed, the nature and manner of the wounds inflicted, and the accused's actions before and after the homicide. [*See Bedoya v. State,* 779 So. 2d 574 (Fla. 5th DCA 2001).]

Regarding *"adequate provocation"* and *"previous problems between parties"*: mental and sexual abuse and assault abuse against Courtney are the most significant events; harsh method of upbringing applied by her father (beating, he let her arresting), her state of shock, anxiety, fear and strong stress two days before the murder are described above in the part on psychological aspects of premeditation and in parts 2, 3, 5 of my report 'View over the ocean'.

Regarding "*the accused's actions before and after the homicide*": Courtney and Mr. Morin visited a double movie just *before* the murder. If a premeditated murder is being prepared, it is not usual to visit movie – it seems they did it because she needed to relax and to forgot for a moment (remember her mental condition at the evening, see part 5 of the 'View over ocean'). Courtney admitted *"blasé behavior after the murder — in addition to eating fast food, the couple took a long nap in the house with her father's body"* – it also indicates something strange and it could be understood only from the point of view of Courtney's mental state at that day (thus, it is not evidence of her perversity and callousness; moreover, this text originates from the internet record of TV-court live broadcast and journalist need an 'attractive and shocking story' as it is well-known and sometimes a bit transform the reality). There was no attempt to hide the dead body (police found his body, stuffed inside a large plastic container, near the foot of his bed), no attempt to remove evidence and clues: policemen found blood on walls and on ceiling of the room, Mr. Morin's bloody dress, and the baseball bat with bloody blurs. Courtney was not apprehended by police but her mum took her to police office. All these events and facts indicate that what happens at that night was some instant emotion, some mental shunt that resulted in killing. They simply returned from cinema and Mr. Morin decided to take the occasion and to kill Mr. Schulhoff. Courtney made every effort to stop him and even to call police (as we know from her recorded interview at police, see part III) but it was too late.

Regarding *"wounds inflicted"*: at lest three strokes by baseball bat, the trauma fractured the skull and drove fragments of the skull into the brain. No DNA, no fingerprints were found at the baseball bat, no physical evidence tying Courtney to the bat. (see part III of this text for details).

■ Wikipedia, the Open Internet Encyclopedia [32]

I refer to Wikipedia; although there are sometimes presented reservations to the texts (anybody can write the text without any check or verification etc.) Wikipedia is now accepted by US courts.

> Premeditated murder is the crime of wrongfully causing the death of another human being (also known as murder) after *rationally considering* the timing or method of doing so, in order to either *increase the likelihood of success*, or *to evade detection or apprehension*.
>
> State laws in the United States vary as to definitions of "premeditation." In some states, premeditation may be construed as taking place *mere seconds before the murder.* Premeditated murder is usually

defined as one of the most serious forms of homicide, and is punished more severely than manslaughter or other types of murder.

Regarding *"rationally considering"* see the psychological aspects of premeditation; regarding *"mere seconds before the murder"* see the time aspects of premeditation; regarding *"to increase the likelihood of success*, or to *evade detection or apprehension"* see the comments above on the actions before and after the homicide above. Regarding *"mere second before the murder"* see the discussion of time aspects of premeditation above – this approach applied in some states of US is in fact at variance with the definition of premeditation.

Premeditation, frequently referred to in the vernacular with the term *"in cold blood"*, is contemplation of acting out an intended crime, thinking about, planning, or plotting a crime beforehand and not in a moment of duress or imminent danger. The amount of time necessary between planning and the act to prove premeditation cannot be arbitrarily fixed. Premeditation in the context of murder describes *actions which were planned prior to their being executed*. The establishment of premeditation in homicide generally carries with it the inability to argue innocence by cause of insanity.

Thus, premeditation and insanity are in conflict mutually. If we slightly develop the text of Wikipedia, we can say that premeditation is related to the actual mental condition: *premeditation and the state of shock, stress, fear, anxiety, depression etc. are not consistent; just the opposite is true – they are inconsistent.* Moreover, the state of shock, stress, fear etc. is inconsistent with *"cold blood"* (see the part of psychological aspects of premeditation or part III of this text or parts 3, 5 of the report [1] for details related to Courtney's mental state).

Wikipedia refers to the website USLegal, http://definitions.uslegal.com/p/premeditation/ :

Premeditation is planning, plotting or deliberating before doing something. ... Premeditation is an element in first degree murder and shows the element of intent necessary to convict of the crime. The amount of time necessary between the planning and the act to prove premeditation is judged on a case by case basis. Murder in the first degree consists of an intentional, deliberate and premeditated killing, which means that the killing is done after a period of time for prior consideration. The duration of that period cannot be arbitrarily fixed. *The time in which to form a deliberate and premeditated design varies as the minds and temperaments of people differ, and according to the circumstances in which they may be placed*.

The time that is necessary for premeditated design depends on the person and on the circumstances as it was argued before.

■ The 'Lectric Law Library's Lexicon [33]

Premeditation – with planning or deliberation. *The amount of time* needed for premeditation regarding an act *on depends the person and the circumstances*. It must be long enough, after forming the intent to act, *for the person to have been fully conscious* of the intent and to have considered the act.

This text is in fact an attestation of the above presented considerations on the time aspects of premeditation and it is consistent with the Standard Jury Instruction.

Premeditation - a design formed to commit a crime or to do some other thing before it is done. *Premeditation differs essentially from will*, which constitutes the crime, because it supposes besides *an actual will, a deliberation and a continued persistence which indicate more perversity.*

The preparation of arms or other instruments required for the execution of the crime, are indications of premeditation, but *are not absolute proof of it*, as these preparations may have been intended for other purposes, and then suddenly changed to the performance of the criminal act. --- Murder by poisoning must of necessity be done with premeditation.

Regarding *"an actual will, a deliberation, and a continued persistence which indicates more perversity "*: I refer again to the part on psychological aspects of premeditation; in addition, I emphasize the mental, physical and sexual abuse and assault. Witnesses in the trial testified that they heard Courtney and Mr. Morin speak about killing long time before the murder, but it was Courtney's response and reaction to abuse and assault – thus, it doesn't indicate *"more perversity".*

Let's ask where was *"... an actual will, a deliberation and a continued persistence..."*? As we know from testimony, it was Mr. Morin who proposed to use a gun (see part III of this text for detailed discussion). And we know from readers' comments to articles in Orlando Sentinel (see part IV of this text) that "*He (Mr. Morin) wrote in great detail about how he was going to kill one of his best friends and take over his identity in order to stay out of trouble for Mr. Schulhoff's murder."*

On the contrary we know from recorded Courtney's police review after the murder that: *"…she told Morin not to harm her father…", "… she talked her boyfriend out of killing her father several times…", "…then he told me that if I called the cops, that he was gonna kill me or find a way to kill me, because he knew bounty hunters…"* We can read opposite statements only in Courtney's unrecorded statements and in Morin's police interview (see part III of this text for discussion).

Regarding *"the preparation of arms …"*: No fingerprints, no DNA were presented in the Courtney's trial. Fingerprints expert testified in Mr. Morin's trial that no fingerprints were found although four different methods were used. Thus, *nobody can say* who put the baseball bat outside the bedroom. It is possible that it was Courtney's dad who put away the bat outside his bedroom when coming home. Interviews with both defenders at police after the murder are controversial; it isn't sure which of them is true. *There is no exact evidence that the baseball bat was prepared for murder in advance* --- According to a testimony Morin wanted to shoot her dad but they had no gun (and Courtney did giggle, see part III of this text). It is rather strange, it is very easy to get a gun for an adult man – maybe he made little effort or little money cash. In any case, the conclusion is that *there is no evidence* that *"the preparation of arms …"* was *as intensive as it should be in the case of the premeditated murder*.

Regarding *"murder by poisoning"*: Courtney mentioned an attempt to kill his dad using poison during Mr. Morins's trial; however, it is seems that it is not true; see part IV for further discussion.

■ **Law Dictionary, 5th edition, by S. H. Gifis, published by Barron's Educational Series.** [34]

Premeditation. Forethought; the giving of consideration to a matter beforehand "for some length of time, however short." 56 S.E. 2d 678, 681. As one of the elements of first-degree murder, the term is often equated with intent and "deliberateness," though it is said that *premeditation should require more substantial contemplation and should be confined to instances of "real and substantial reflection*." Perkins & Boyce, Criminal Law 132 (3rd ed. 1982).

Premeditate. To think of an act beforehand; to contrive and design; to plot or lay plans for the execution of a purpose. Premeditation refers to the decision to plan to commit a crime, generally murder. A premeditated murder is thought out beforehand, but no specific length of time is needed for premeditation.

I want to emphasize the words *"…premeditation should require more substantial contemplation and should be confined to instances of real and substantial reflection."* This means that (first) the person must be able of *"substantial contemplation"* and (second) the person must have time enough for the *"substantial contemplation"* – it was said above in a bit different words; thus, the Law Dictionary affirms the previous statements and conclusions.

C) Summary and conclusions

◆ Members of jury were not able to evaluate the unique and specific circumstances surrounding the killing; partly as the necessary information was not given to them, partly as they didn't employ or leave out some of the possibilities that Standard Jury Instructions offer.

◆ The general and clinical mental condition common and typical for all teenagers and that are based on the latest scientific investigation in the field of psychology and neuroscience were not considered in the trial. If the murder should be evaluated correctly it is necessary to consider among others also scientific knowledge at disposal.

◆ The general and clinical mental conditions indicate that rational conscious deciding or controlled thought are not typical for juveniles, infirm the ability of consciously deciding and of premeditation of teenager; thus they imply at least reasonable doubt on premeditation.

◆ The subjective, unique and specific mental condition of the defendant (persistent stress, anxiety, fear, depression, suicide attempt, shock etc.), the mental, psychical and sexual abuse and even assault (incest) several months before the murder; nothing of that was presented and considered in the county trial although it results in reasonable doubt on or even in elimination of premeditation

◆ Sexual offense is extraordinary serious in US law, thus Courtney was in fact victim of a serious and significant criminal act; everything what she did was under influence of this serious crime against her.

◆ The seriousness of the crime was not correctly evaluated in the trial. Is a girl that lived in complicated family conditions described above, a girl mentally, physically and sexually abused and raped by her dad at the age of fifteen, as dangerous for the human society that she must be from the human society once for ever?

◆ It's a very difficult problem that what is natural and obvious in other countries, it is not accepted in Florida: the testimony of psychologist in trials with children, the diminished responsibility etc. – although these data are the *"surrounding circumstances"* required by the Standard Jury Instructions.

VII. Manslaughter

According to the Standard Jury Instructions murder in the first degree includes the manslaughter as the lesser crime. Manslaughter is defined in the Florida Statute as killing that is not excusable homicide or murder:

> The killing of a human being by the act, procurement, or culpable negligence of another, without lawful justification according to the provisions of chapter 776 and in cases in which such killing shall not be excusable homicide or murder, according to the provisions of this chapter, is manslaughter…

Standard Jury Instructions present the following explanation of manslaughter:

> To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:
> 1. (Victim) is dead.
>   *Give 2a, 2b, or 2c depending upon allegations and proof.*
> 2. a. (Defendant) intentionally caused the death of (victim).
>   b. (Defendant) intentionally procured the death of (victim).
>   c. The death of (victim) was caused by the culpable negligence of (defendant).
>
> However, the defendant cannot be guilty of manslaughter if the killing was either justifiable or excusable homicide as I have previously explained those terms.
> *Give only if 2(a) alleged and proved, and manslaughter is being defined as a lesser included offense of first degree premeditated murder.*
> In order to convict of manslaughter by intentional act, it is not necessary for the State to prove that the defendant had a premeditated intent to cause death.
> *Give only if 2b alleged and proved.*
> To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Courtney didn't kill her dad, thus items 2a, 2c are excluded. Item 2b and the explanation of the term *'procure'* together with the *"circumstances surrounding the killing"* (that must be considered according to the Standard Jury Instructions in deciding whether the first degree murder or a lesser crime was committed) could imply *manslaughter as the possible offense that fits Courtney's crime*. However, is it possible to say and was it proved in the trial that Courtney indeed and without reasonable doubts *"persuaded, induced prevailed upon or caused a person to do something"*? Please, read attentively previous parts of this text, especially parts III, IV and you will see that it wasn't Courtney who induced the killing.

A more detailed explanation of manslaughter can be found in the West's Encyclopedia of American Law [35]:

> In most jurisdictions, voluntary manslaughter consists of an intentional killing that is accompanied by additional circumstances that mitigate, but do not excuse, the killing. The most common type of voluntary manslaughter occurs when a defendant is provoked to commit the homicide. It is sometimes described as a heat of passion killing. In most cases, the provocation must induce rage or anger in the defendant, although some cases have held that fright, terror, or desperation will suffice.
>
> If adequate provocation is established, a murder charge may be reduced to manslaughter. Generally there are four conditions that must be fulfilled to warrant the reduction: (1) the provocation must cause rage or fear in a reasonable person; (2) the defendant must have actually been provoked; (3) there should not be a time period between the provocation and the killing within which a reasonable person would cool off; and (4) the defendant should not have cooled off during that period.
>
> Provocation is justifiable if a reasonable person under similar circumstances would be induced to act in the same manner as the defendant. It must be found that the degree of provocation was such that a reasonable person would lose self-control. In actual practice, there is no precise formula for determining reasonableness. It is a matter that is determined by the trier of fact, either the jury or the judge in a nonjury trial, after a full consideration of the evidence.

Comments: Regarding points (1), (2): See the part on psychological aspects of premeditation above, the parts 2, 3, 5 in my previous report 'View over the ocean' for greater details. Consider especially the situation of a fifteen- or sixteen-age girl that is mentally, physically and sexually abused and even raped by her dad. Consider her fear, anxiety and distress just before the murder; see part 5 of the 'View over the ocean'. Regarding points (3), (4): The time aspects are important for manslaughter. Please, ask any expert in psychology how long-term or even persistent the consequence of rape and incest could be.

Thus, one can again conclude: T*he first degree murder premeditated was erroneous verdict, miscarriage of justice. Manslaughter might be the possible offense that fits Courtney's crime* – and if manslaughter, thus ***manslaughter with strong mitigating circumstances*** that <u>*significantly reduce*</u> the maximum penalty for manslaughter.

*However, I have presented **objections against manslaughter** above and I concluded that manslaughter might be the possible offense; this means that **there is another possibility***, see part VIII.

VIII. Back to juvenile justice?

Chapter 985.56 of the Florida Statute explains the indictment of juveniles:

> (1) A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 985.0301(2) unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult: (a) On the offense punishable by death or by life imprisonment; and (b) On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

Courtney was charged by with a violation of law punishable of life, the indictment on the charge was returned by the grand jury and she was handled as an adult and sentenced to life without parole. However, it was demonstrated above that the verdict of the trial jury was incorrect and the judgment 'life without parole' was unfair. Let's now read the chap. 985.56 of the Florida Statute:

> (3) If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence under s. 985.565.

Chapter 985.565 defines sentencing powers, procedures and alternatives for juveniles prosecuted as adults:

> (1) POWERS OF DISPOSITION.--
> (a) A child who is found to have committed a violation of law may, as an alternative to adult dispositions, be committed to the department for treatment in an appropriate program for children outside the adult correctional system or be placed on juvenile probation.
> (b) <u>*In determining whether to impose juvenile sanctions instead of adult sanctions, the court shall consider the following criteria*</u>:
> 1. The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions.
> 2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
> 3. Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted.
> 4. The sophistication and maturity of the offender.
> 5. The record and previous history of the offender, including:
>   a. Previous contacts with the Department of Corrections, the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, law enforcement agencies, and the courts.
>   b. Prior periods of probation.
>   c. Prior adjudications that the offender committed a delinquent act or violation of law as a child.
>   d. Prior commitments to the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, or other facilities or institutions.
> 6. The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services and facilities of the Department of Juvenile Justice.

7. Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available.
8. Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

The criteria enumerated here in chap. 985.565 are the same as those enumerated in chap. 985.556 (see part II of this text).

The procedure that should be followed in making determination on transfer to adult court is prescribed in the above cited part of the Florida Statute. However, it seems that the pole star of determination on Courtney's transfer to adult court was the simple (primitive) idea 'she was somehow involved in killing (not important how), thus she must be excluded from human community once for ever – if gallows, gun, chair, needle or gas are impossible, thus to bury as living (what life without parole in fact is) – bad girl is not worth of complicated consideration' – typical procedure of some people and in a specific society.

The circumstances of the alleged offense that should be considered in making determination on transfer to adult court according to Florida Statute (see above) were in fact not correctly and responsibly considered and appreciated; especially items 1, 2, 4, 6, 7, 8 of the above presented Chap. 985.556, paragraph (4) of the Florida Statute; reasons are presented in the previous text.. It is serious error because in compliance with (4e) "Any decision to transfer a child ... must ... include consideration of, and findings of fact with respect to, all criteria in paragraph (c).

Let's repeat the statements of the last paragraph in other words: *The seriousness of Courtney's offense was not correctly appreciated although the necessary information was at disposal (especially those on assault); the possibility of Courtney's correction was strongly underestimated. Her offense to the community was not as high that transfer to adult court was necessary and the first degree murder premeditated and life without parole – it was simply miscarriage of justice.*

Thus, what are the sentencing alternatives? The answer can be found again in Florida statute, chap 985,565, part (4):

(4) SENTENCING ALTERNATIVES.--
(a) *Adult sanctions.* -- 1. Cases prosecuted on indictment.--If the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult. If the juvenile is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he or she was indicted as a part of the criminal episode, the court may sentence as follows: a. As an adult; b. Under chapter 958; or c. As a juvenile under this section.
(b) Juvenile sanctions. -- *For juveniles transferred to adult court but who do not qualify for such transfer* under s. 985.556(3) or s. 985.557(2)(a) or (b), *the court may impose juvenile sanctions under this paragraph*. If juvenile sentences are imposed, the court shall, under this paragraph, adjudge the child to have committed a delinquent act. Adjudication of delinquency shall not be deemed a conviction, nor shall it operate to impose any of the civil disabilities ordinarily resulting from a conviction. The court shall impose an adult sanction or a juvenile sanction and may not sentence the child to a combination of adult and juvenile punishments. An adult sanction or a juvenile sanction may include enforcement of an order of restitution or probation previously ordered in any juvenile proceeding. However, if the court imposes a juvenile sanction and the department determines that the sanction is unsuitable for the child, the department shall return custody of the child to the sentencing.

As we can see, ***the court may impose juvenile sanctions*** and as we demonstrated above, ***there are good reasons for juvenile sanctions***. The specific and unique features of Courtney's case are (see the previous text for details):

◆ Whatever she did, she did it as victim of mental, physical and sexual abuse and rape, as victim of complicated family conditions (upbringing by beating and arresting etc.). ◆ There are relevant, significant and substantial reasons to assert that the appreciation of her case was too schematic and facile, without knowledge of the most important facts.

◆ The most important problem is the schematic, facile and frivolous approach of many people and even rejection of important features, of important *"circumstances surrounding the killing"* that are required by Standard Jury Instructions. (extreme emotional states falling outside the medical definitions of illness and abnormality). If the law resources were correctly and carefully read and understood in all details and if all important known facts were considered by the Grand Jury, presented

in the trial and considered by members of the trial jury, the verdict should never be 'the first degree murder premeditated'.

◆ Her case is open, rehearing and other post-conviction procedures will follow. It is possible to find a legal resources how to help her; it is not necessary to count on clemency (which likelihood approaches to zero in the case of LWOP).

There is only one technical question: which of the courts should impose juvenile sanctions now? Trial in Sanford was held in September 2006 and Courtney's appeal was denied by the 5 District Court of Appeal at the end of February 2008. There are also some ***postconviction procedures*** defined in the Rule 3.850 of Florida Rules of Criminal Procedure that could result in juvenile sanctions. However, ***as time flows, it seems that the possibility of juvenile sanctions is lost***. Nevertheless, ***manslaughter seems to be realistic even now***.

Thus, what is necessary? ***It is necessary to find an enthusiastic, inventive and eager lawyer who will pro bono act as Courtney Schulhoff's defense attorney and will help her in post-conviction procedures*** (rehearing, next appeal etc.). I believe there are such lawyers in Florida.

IX. There is not only Courtney Schulhoff

The Courtney Schulhoff's case was analyzed in this text and in [1]; let's present two other examples.

Rebecca Falcon, Florida.[37] ... In Panama City, Rebecca began 10th grade at Rutherford High School. However, one night Rebecca got a call from a friend in Kansas, who informed Rebecca her boyfriend was seeing another girl.
It was a school night. Rebecca became very depressed and got into her grandfather's liquor cabinet. She drank almost a quart of whiskey; then she received a call from a 14 year-old friend from school. He asked her to come outside for a little while and said he would meet her in the front of the house. When Rebecca saw him arrive, she finished off the whiskey and went outside through her bedroom window. The boy was accompanied by his 18 year-old cousin, Clifton, and the three of them walked around the neighborhood.
Shortly after their walk, Clifton said he knew where there was a party. So they hailed a cab. The 14 year old friend had his bike so he could not take the cab. That is when Rebecca joined the 18 year-old in the back-seat of the cab and the younger friend left.
Clifton, the 18 year-old, was known to walk around armed and had his gun with him this night. During the ride, Clifton directed the cabdriver to a deserted street, pulled out a gun, and asked him for money. When the cabdriver began making defensive movements, the gun went off, wounding the cabdriver. He died six days later. Rebecca ran from the scene to her grandmother's house.
Rebecca's mother remembers "Rebecca called me the next day upset and crying. She told me she had seen a man shot. I immediately flew to Florida and, together, we to the police. However, Rebecca would not give police Clifton's name. She said she had promised him and the 14 year-old friend she wouldn't give police their names. The detectives told us if she didn't name him, they would find him themselves, and they assured us he would implicate Rebecca."
Detectives found Clifton and told him Rebecca blamed everything on him. He turned around and blamed everything on her. Subsequently, they were both indicted as adults and charged with 1st degree murder and armed robbery. They were tried separately by the same prosecutor, Jim Appleman. In April 1999, Rebecca was convicted of felony murder and sentenced to life without possibility of parole (the only option for 1st degree murder in the state of Florida). She now resides at Lowell Women's Prison.
There was no physical evidence found inside or outside the cab linking Rebecca to the crime: No fingerprints, no hair samples, and no DNA. The only evidence recovered was Clifton's thumb print on the outside of the door. A footprint several yards away was found to match Rebecca's tennis shoe. But an expert at her trial testified it was a popular brand and size of shoe. - Although the American Bar Association had arranged a psychological evaluation through a specialist, Marty Byer, Rebecca's attorneys would not allow the psychologist to take the stand. Ms. Byer had spent an entire day assessing Rebecca and was fully prepared to testify. However, Rebecca's attorneys felt her testimony was irrelevant.- There were no psychologists appointed by the state to examine Rebecca and her history, no rehabilitation experts to evaluate her potential, and no judge to personally look everything over in order to make a careful and informed decision.

Comment: "Detectives found Clifton and told him Rebecca blamed everything on him. He turned around and blamed everything on her." What to say? Any teacher in school is able to find the truth if boy *A* blames on boy *B* and boy *B* blames on boy *A* – and detectives are not able to find the truth?

Only the cabdriver, Clifton and Rebecca were present at the crime scene. Thus, the only testimony against Rebecca was the Clifton's testimony and it's clear that he blamed everything on her because he

wanted to save himself. It was Clifton who has the gun and Rebecca was intoxicated by whiskey; it's clear that Rebecca was only by accident present at the crime scene. Moreover, there was no physical evidence linking Rebecca to the crime. On the opposite, it is obvious that the offender was the 18-year old stupid boy Clifton, nobody else. Why is Rebecca serving life without parole?

Amy Black, Michigan.[2]. Amy Black's history of sexual abuse started when she was only seven years old. As a teenager, Amy began using drugs and running away from home. When she was sixteen, Amy *was present when her older boyfriend got into a fight with another man and stabbed the man to death*. Amy helped clean up the mess. When they were both arrested a few days later, Amy's boyfriend told her to take the blame because she was only 16. She confessed based on her belief that she'd be charged as a juvenile. According to testimony, there were no appropriate juvenile facilities for girls that would accept serious offenders. The judge, noting specifically the lack of resources for female juvenile offenders, decided his only option was to sentence Amy as an adult. Amy was sentenced in 1991 for aiding and abetting first-degree murder and has now served thirteen years (seventeen in 2008), in an adult prison, of a life without parole sentence.

Comment: It is known that Amy's boyfriend got into fight with another man – thus the killing wasn't the first degree murder, but the second degree. It was clear from the beginning that sixteen age girl wasn't able to kill an older man in combat. There was no problem to find the truth – that Amy took the blame and that she only helped clean up the mess, nothing else; but it seems *there was no interest to find the truth* – similarly as *there is no interest now to correct the miscarriage of justice.*

The history of premeditated murder is explained in Wikipedia [32]:

Premeditated murder" was first brought into trial in the 1963 trial of Mark Richardson, in which Richardson was found guilty of murdering his wife Cindy Cleave. Richardson had plotted his wife's murder for three years from the time that they were married. He was found guilty of premeditated murder and sentenced to life in prison. *The trial of Mark Richardson was played out in the hit series "Walker Texas Ranger" on the episode titled "Guilty Conscious*".

Would any director be so courageous that he would make a movie exactly according to the above presented stories?

Wikipedia [32] offers also the following information:

Life without parole. --- About a dozen countries worldwide allow for minors to be given lifetime sentences that have no provision for eventual release. Of these, only some — South Africa, Israel, Tanzania, and the United States — actually have minors serving such sentences, according to a 2005 joint study by Human Rights Watch and Amnesty International [8]. Although South Africa does allow life imprisonment for children below 18 years of age, it is not without the possibility of release. In terms of parole laws, a person sentenced to life will be eligible for parole after serving 25 years. Of these, the *United States has by far the largest number of people serving life sentences for crimes they committed as minors*: 9,700, of which 2,200 are without the possibility of parole, as of October 2005.

Mexico. Life imprisonment is defined as any long and determinate sentence ranging from 20 years up to a maximum of 40 years. The Mexican Supreme Court ruled in 2001 that *life imprisonment without the possibility of parole is unconstitutional because it is cruel and unusual punishment*, in violation of Article 18 of the Constitution of Mexico.

Whilst 'life without parole' is unconstitutional in Mexico, whilst 'life without parole' is applied only to terrorists (in Israel), *'life without parole' in US is applied not only to juveniles that indeed killed somebody, but also to children that didn't kill anybody, that were only bystanders at the crime scene or that were only by accident present at the crime scene of the first degree murder premeditated or felony first degree murder.* Moreover, the verdict 'guilty in the first degree murder' *depends on what members of trial jury believed, not on what was proved by exact evidence in the trial – and it is not the same!* It is known that indictment that wouldn't be sufficient for complaint in Great Britain is sufficient for life sentence in USA [7]. Please, read any website on the DNA innocence project in USA as further evidence of US justice problems.

Isn't erroneous that 'life without parole' is obligatory even *for children that didn't kill anybody and their participation in killing was given only by their difficult living conditions or they were only by accident present at the crime scene*? To remove the child that even didn't kill anybody from human society once for ever – to bury as living – what else 'life without parole' is? Isn't it too simplified and

too primitive? Isn’t the whole justice system erroneous if it enables the ‘life without parole’ penalty under these circumstances?

Law may be hard, law must be hard to murders especially if the first degree murder is proved and there are no reasonable doubts, if all surroundings circumstances are taken into account as it is requested in Standard Jury Instructions and in other law resources – and it is just the problem of US justice. *‘Life without parole’ for nothing – that’s indeed terrible*!

X. Appendix

Russian writer *Aleksandr Isayevich Solzhenitsyn* [32], Nobel Prize Laureate in literature 1970, described in his famous three volume work *The Gulag Archipelago* the Soviet concentration camp system, slave labor economy, so called show trials etc. in the epoch of Leninism and Stalinism, 1918-1956. The novel is based upon Solzhenitsyn's own experience as well as the testimony of 227 former prisoners and Solzhenitsyn's own research into the history of the penal system.

The following dialogue between two prisoners is presented in the book:

“What you did and what is your penalty?”
“I did nothing and my penalty is twenty five years.”
“Impossible! You had to do something if your penalty is twenty five. Ten years is for nothing!”

As we can see above, *life without parole* is possible in US today for nothing or for something what is punishable by 8 – 15 years in other countries. --- *No comment.*

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