EXHIBIT 1

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs CAL COBURN BROWN, Defendant	No 91-1-03233-1 SEA FINDINGS OF FACT AND CONCLUSIONS OF LAW ON DEFENDANT'S COMPETENCY TO BE EXECUTED

THIS MATTER came before the court on September 7, 2010 on defendant's Emergency Motion to Preclude Defendant's Execution on Grounds of Incompetency and Motion for Stay of Execution Pending Evidentiary Hearing The State was represented by James Whisman, Senior Deputy Prosecuting Attorney and the defendant was represented by Suzanne Elliot and Jeffrey E Ellis The Court has reviewed the Emergency Motion, the Response and Reply, Defendant's Additional Objection and Motion to Reconsider and the State's Response, as well as the

ORIGINAL

EXHIBIT 1

appellate court decisions in this case, and portions of the trial court record The court has heard oral argument Being fully advised in the premises, now therefore, the Court finds as follows

FINDINGS OF FACT

Procedural History

1 Cal Colburn Brown murdered Holly Washa on May 24, 1991 Brown was charged with and found guilty in King County Superior Court of Premeditated Murder in the First Degree with Aggravating Circumstances

2 Trial proceedings on the charge of Premeditated Murder in the First Degree with Aggravating Circumstances extended over a number of years At no time during the trial court proceedings did Cal Colburn Brown allege that he was insane at the time of the murder or that he was incompetent to stand trial He never raised the issue of competency before or during trial

3 Cal Colburn Brown did allege during the penalty phase of his trial that he had an untreated mental illness (bi-poloar disorder) that contributed to Ms Washa's death and that this untreated mental illness was a mitigating circumstance that merited leniency He further claimed that lithium was required to treat this condition Brown did not, however, claim that the lack of lithium rendered him insane or delusional at the time of the murder

4 The jury found that there were not sufficient mitigating circumstances to merit leniency Brown, therefore, was sentenced to death on January 28, 1994

5 Shortly after sentence was imposed, Brown was placed in the custody of the Washington State Department of Corrections Since his incarceration at the Washington State Penitentiary, Brown has on multiple occasions been diagnosed with bipolar disorder and

has continuously received psychotropic medications for this mood disorder, as described more fully below

6 Brown filed an appeal from his conviction and his sentence Brown also mounted collateral attacks, in both federal and state courts, upon the conviction and sentence In these challenges, Brown claimed that his attorneys did not adequately present information regarding his untreated mental health disorder to the jury, that the jury did not give adequate weight to his untreated mental health disorder, that his death sentence was disproportionate due to his untreated mental health disorder, and that the Eighth Amendment prohibits the execution of someone who suffered from a mental health disorder at the time of the murder In none of these challenges did Brown claim that he was insane or delusional at the time of the crime In none of these challenges did Brown claim that he was incompetent at the time of trial, throughout appeal and post-mandate proceedings, or presently, to assist his counsel

7 Brown's federal habeas corpus matter concluded on January 28, 2009, when the federal court mandate issued and the federal court's stay of execution was dissolved An execution date of March 13, 2009, was set by operation of RCW 10 95 160

8 On March 12, 2009, when Brown was 11 hours from execution, Brown telephonically addressed the Clemency and Pardons Board Brown's statement demonstrates his awareness that the imminent execution was intended to punish him for killing Holly Washa He expressed remorse for the crime and suggested that God knows he wishes he could bring his victim back

9 On March 12, 2009, the Washington Supreme Court granted a stay of execution to allow Brown to litigate his claim that Washington Department of Corrections' lethal injection

protocol violated the Eighth Amendment This stay was lifted on July 29, 2010 By statute, a new execution date was set for September 10, 2010, 30 judicial days later Brown and his counsel were notified of this new date on July 29, 2010

10 On September 3, 2010, 26 days after the stay of execution was dissolved, Brown filed an emergency motion for a stay of execution and for a hearing to determine his competency to be executed

Brown's Mental Health History

11 Brown was born in 1958 As an infant and child he was reported to be very agitated and "out of bounds" While in primary grades he was referred to mental health counseling Teachers noted Brown's aggression at age 8 As he moved through the school system, Brown's behavioral patterns of anger, irritability, excitability, and mood disregulation continued At age 18 Brown stalked and assaulted two women and pled guilty to assault with a deadly weapon in 1979

12 In 1983 he attacked a woman and was convicted of assault in the second degree and attempted assault in the first degree He was sentenced to 7 ½ years in the Oregon State Prison for this crime in 1984 He complied with prison rules and received only one infraction during his incarceration In 1985, prison mental health professionals diagnosed Brown as suffering from a mood disorder and prescribed lithium Brown filed suit against the prison to receive the lithium, and he was medicated during the last six months of his incarceration He was released on March 25, 1991 with a 30-day supply of lithium He apparently discontinued his lithium, and was reported by family members shortly thereafter to have "wild" and pressured speech, and to be "way out"

13 On May 23, 1991 defendant abducted Holly Washa from her car and ultimately tortured, raped and murdered her

14 On May 26, 1991 defendant flew to California and committed a similar crime against Susan Schnell, but she fortunately survived Brown was apprehended and gave three interviews to police on May 27, 1991 at 11 20 a m , May 27, 1991 at 7 55 p m and on May 28, 1991 at noon Those interviews were recorded The transcripts indicate that Brown was rational, focused and detailed in his descriptions of his crimes, that his speech was organized and coherent, and that he manifested a sophisticated perception of his legal peril

15 During Brown's federal habeus corpus hearing, defense psychiatrist Dr Maryonda Scher opined that at the time of the murder Brown was not suffering from delusions or hallucinations and wasn't psychotic She further testified that Brown intended to do the actions he committed, knew what he was doing, and appreciated right from wrong

16 On remand to the Department of Corrections after sentencing in this case, Brown's mental health status was evaluated by mental health staff at the Washington State Penitentiary On February 3, 1994 psychiatrist Dr Tim McBath conducted an interview and evaluation of Brown Dr McBath considered Brown's self-reported mental health history, including his prior use of lithium, observed Brown's behavior, which included pressure and rapid speech and inappropriate affect Based on this information Dr McBath provided an assessment of "Axis I (1) Probably Bipolar Disorder with history of at least hypomanic and possible manic episodes Currently exhibiting hypomanic symptoms " Other diagnoses included Sexual Sadism, Antisocial Personality Disorder,

distant Polysubstance Abuse (alcohol and marijuana), and Hyperactivity Disorder as a child per patient history Dr McBath prescribed a therapeutic trial of lithium

17 The same year psychiatrist Dr Carl Baum conducted a second mental health evaluation and observed that Brown appeared hypomanic on lithium He wrote "Rule out Atypical Bi-Polar Affective Disorder"

18 On May 4, 1995 Clinical Psychologist Dr Page at the Washington State Penitentiary evaluated Brown a third time for placement in a special prison housing unit Dr Page diagnosed Brown with "AXIS I – Sexual Sadism, Axis II—Antisocial Personality Disorder" He characterized the defendant as a "nonpsychotic individual" During his interview/evaluation, Brown denied hallucinations and delusions, but described "a history of hypomania and rapid mood cycling, especially when off of psychotropics" Brown reported that on his current regimen of Lithium and Sinequan he "apparently maintains fair emotional stability and sleeps satisfactorily" Dr Page found that during Brown's incarceration he "has been accountable, tractable, and relatively low-key"

19 On September 11, 1996 Dr Page again evaluated the defendant Dr Page opined that "Mr Brown's prior diagnostic categorizations as enumerated in the medical folder probably may stand without correction He certainly seems to exhibit Bipolar features and continued hypomania even on his current dosage of psychotropics" He notes that Brown has responded favorably to the structure and routine of imprisonment, and apparently was not an unreasonable threat to the orderly operation of the Oregon prison when he was incarcerated there

20 On July 16, 2009, psychiatrist Dr Grubb of the Penitentiary diagnosed Brown's bipolar disorder as "more or less stable" and prescribed continuing the psychotropic medication Depakote

21 Psychological Associates for the Department of Corrections periodically conducted routine mental status examinations of Brown during 2009 and 2010 . These records uniformly indicate the defendant is oriented to time, place, person, and situation, and demonstrates normal content of thought, well organized thought, and normal perception, affect and mood

22 Since 1994 Brown has been prescribed and taken either lithium or Divalproex for his bipolar disorder These medications are known as psychotropics (having an altering effect on the mind) but are not anti-psychotics Brown takes these medications without objection, although since he is incarcerated it cannot be known if his acquiescence is "voluntary " His lawsuit against the Oregon prison system to compel administration of lithium suggests that his medication compliance is voluntary Since 1994 Brown has exhibited manic symptoms of pressured speech, difficulty sleeping, and occasional grandiosity, despite taking lithium and Divalproex Brown has denied delusions and hallucinations By history his periods of depression are short and somewhat mild Defense counsel, who have regular contact with Brown, do not argue that he is currently incompetent to be executed

23 Bipolar disorder is a mental disease that can range from mild to severe In some instances the disorder includes psychotic symptoms, such as delusions and (typically auditory) hallucinations An individual suffering from the disorder with psychosis may be incompetent if the psychosis is so severe that it impacts his or her ability to understand

the charges, the nature of the proceedings or to assist counsel An individual suffering merely from the mood disorder, alone, is not incompetent

24 There is no evidence that Brown, during his long experience with bipolar disorder since at least his young adult years, whether on or off medication, has suffered from hallucinations, delusions, any form of psychosis or other dissociation from reality that would render him incompetent That is, his mood disorder does not and never has prevented him from appreciating his legal peril, understanding the relationship between his crime and his penalty, or assisting his attorneys in his defense To the contrary, Brown is a highly intelligent individual (in federal court testimony his I Q was indicated to be 144, within the top of percentile of intelligence scores) whose understanding of his situation is clear and has never been clouded by psychosis

Defendant's Presentation

25 Defendant relies primarily on the two declarations of psychiatrist George W Woods, Jr M D , both of which were signed on September 3, 2010 Dr Woods is board certified in psychiatry and neurology and maintains a private practice focusing on neuropsychiatry, psychopharmacology, workplace safety, and forensic consultation Dr Woods reviewed defendant's records and interviewed Brown by phone on September 3, 2010

26 Dr Woods advances the following opinions to a reasonable degree of medical certainty

a Mr Brown suffers from bi-polar disorder In many instances he has experienced mania <u>On several occasions, he has experienced psychosis</u>

b If not medicated, there is a reasonable likelihood Brown would suffer from symptoms of mood disruption, including both mania and/or depression <u>Mr Scott [sic] has experienced both depression and mania of psychotic proportions</u>

c These disruptions of Mr Brown's mood may impair his capacity to rationally understand the reasons for his execution due to his severe mental illness (emphasis supplied)

27 Dr Woods does not provide bases for these opinions He does not describe any instance in which Brown, even off medication, has experienced either depression or mania of psychotic proportions, nor can he cite to any documentation or evaluation by another health care professional of psychosis He does not cite literature or any other basis for the assertion that an individual with a bipolar disorder who has not previously suffered psychosis will now manifest psychosis if he discontinues his medication Absent psychosis or other thought disorder, Brown's mood disorder does not impair his perception of reality and does not affect his competency

28 Dr Woods' opinion that Brown's unmedicated bipolar disorder may impair his capacity to understand the reasons for his execution is speculative During the many years Brown suffered from his bipolar disorder and was not medicated, there is no evidence he experienced delusions or hallucinations, lost his rational thought processes, or lost touch with reality His mania may have intensified, his speech may have become more rapid and pressured, his sleep may have become more disturbed, and his irritability may have increased, but there is no evidence Brown suffered a thought disorder, delusions or hallucinations, or was ever insane

29 Dr Woods' opinions, without supporting bases, do not present substantial evidence or a prima facie claim that, without medication for his mood disorder, Brown would experience psychosis or other thought disorder that would impair his competency or his understanding of his crime and the reasons for his execution

1 Based on the foregoing Findings of Fact, the court enters its

CONCLUSIONS OF LAW

2 1 Brown's mental state is not distorted by a mental illness such that his awareness of the crime and punishment has little or no relation to the understanding of those concepts

3 shared by the community as a whole

2 Although competency to execute may be obtained through the voluntary or forced

4 administration of medically necessary drugs, there is no evidence that Brown has been forced to take medications More importantly, there is also no evidence that the

5 medication that Brown is currently taking is necessary for him to be rendered competent Even if he were to discontinue his psychotropic medications, there is no evidence that

6 Brown would become insane, delusional, unaware of his crime or impending punishment, or unaware of the reasons for his punishment

7 3 Brown is competent to be executed because he is capable of properly appreciating his peril and of rationally assisting in his own defense

8 4 Brown has failed to make a substantial showing of incompetency Cal Colburn Brown has produced no evidence of current incompetency or probable incompetency if his

9 medications were discontinued

Based upon the proceeding findings of fact and conclusions of law, the Court enters the

10 following

ORDER

11

1 Cal Coburn Brown's motion for a stay of execution and for an evidentiary

12 hearing into his competency is denied

2 Cal Coburn Brown's motion for reconsideration is denied

DONE IN OPEN COURT this 8th day of September, 2010

JUDGE SHARON S ARMSTRONG

EXHIBIT 2

1 THE COURT: All right.
2 CROSS-EXAMINATION
3 BY MR. SAMSON:
4 Q Good afternoon, Doctor.
5 A Good afternoon, Mr. Samson.
6 Q Doctor, the -- you mentioned a prior treating psychiatrist
7 who had put down in the records "rule out manic depressive."
8 Do you remember that doctor's name?
9 A Dr. Engel.
10 Q Dr. Engel did not prescribe lithium. Is that correct?
11 A He wrote -- as far as I can tell, no, he did not, although
12 Mr. Brown said he did. But Dr. Engel in a later -- at a later
13 time was interviewed and said in his records he did not see
14 that he had done that.
15 Q And rule out is a term used to essentially do that, rule
16 out a possible --
17 A It says you're thinking about the particular disorder in
18 regard to the individual that you're talking to.
19 Q But it's not that you're a hundred percent certain they
20 have it.
21 A That's right.
22 Q And, Doctor, you mentioned you relied on some medical or
23 mental health records that were created by psychiatrists and
24 psychologists at the state penitentiary?
25 A Yes.

1 Q Those were all created after Mr. Brown's trial in state
2 court in this case.
3 A That's correct.
4 Q So if you had given an opinion in 1993 at Mr. Brown's
5 trial, you would not have had those documents --
6 A That's correct.
7 Q You do not disagree with Dr. Maiuro's diagnosis of sexual
8 sadism.
9 A No. I don't disagree with that.
10 Q And that is a mental disorder?
11 A It's in the DSM.
12 Q Doctor, you mentioned that Mr. Brown tortured and raped
13 Holly Washa.
14 A Yes.
15 Q You've read his confessions?
16 A I heard parts of them.
17 Q You've actually listened to the tape?
18 A A bit of it. Not a lot of it. It was very hard to
19 understand.
20 Q He took pleasure out of those acts, did he not?
21 A I don't know.
22 Q As a sexual sadist he would receive sexual excitement from
23 acts such as torture and rape, would he not?
24 A Yes.
25 Q And he would receive pleasure from such acts?

A I don't know that that's in the diagnosis of sexual sadism but he certainly would be stimulated by it.

MR. SAMSON: Your Honor, if I may approach, please.

THE COURT: All right.

Q BY MR. SAMSON: Doctor, I've handed up a copy of your deposition. You recall the deposition that I took of you --

A Yes.

Q -- a few months past?

A Uh-huh.

Q And you were under oath.

A Yes, I was.

Q And I asked you to give the best answer you could possibly give to the questions I asked you?

A Yes.

Q And I allowed you to clarify any answers that you had given, if you later needed to correct those?

A Yes.

Q If you could turn to page 22 of your deposition.

A I said I assume he was getting some pleasure out of torturing these people and that certainly had painful consequences.

Q So you assumed he was getting pleasure out of --

A Yes, I guess so.

Q And you're aware that Mr. Brown used a electrical cord with the ends cut off to shock Holly?

01-CV-00715-TN pg 101-150

1 A Yes. With electricity, yes.
2 Q So he would have gotten pleasure out of that?
3 A I assume so.
4 Q And he raped her with an after shave bottle?
5 A Yes.
6 Q He would have gotten --
7 A Both vaginally and anally.
8 Q And he would have gotten pleasure out of that.
9 A I assume so.
10 Mr. Brown did many terrible things to that woman.
11 Q And as a sexual sadist -- does a person with sexual
12 sadism, do they get pleasure or sexual excitement from their
13 fantasies of this type of behavior?
14 A Yes.
15 Q So as Mr. Brown sits in his cell and thinks back on what
16 he did, he still receives some sexual excitement from that?
17 MR. LEVY: Objection, Your Honor.
18 THE WITNESS: Well, I don't know.
19 THE COURT: Sustained. Let's move on, counsel.
20 MR. SAMSON: Very good, Your Honor.
21 Q The antisocial personality disorder is an axis II
22 disorder.
23 A That's right.
24 Q That's his personality.
25 A That's right.

1 Q The same with sexual sadism?
2 A I don't know where that fits. It's actually a disorder
3 that I haven't had much to do with, and I just don't know.
4 Q You're not a forensic psychiatrist?
5 A No.
6 Q Your specialty is in multiple personality disorder?
7 A No. I don't have a specialty in psychiatry. I have dealt
8 with a lot of multiple -- nobody has a specialty in a certain
9 type of disorder.
10 Q You've not published any literature on bipolar disorder?
11 A No, I have not.
12 Q You've not published any literature on lithium treatments?
13 A No.
14 Q You've not published anything on antisocial personalities?
15 A No.
16 Q And you have not reviewed any published literature
17 specifically in preparing your opinion in this case.
18 A No.
19 Q Did you interview Mr. Brown's family members?
20 A No, I did not.
21 Q It took you several months to prepare your opinion in this
22 case?
23 A Yes.
24 Q You started in February 2002?
25 A Yes.

1 Q And you did not provide a written report until
2 October 2002?
3 A That's right. That's when I was asked to first provide
4 the report that I read from.
5 Q And at the time you were preparing your opinion you were
6 semiretired?
7 A Yes.
8 Q You were only working two days a week?
9 A That's right.
10 Q In 1993 you worked 85 percent?
11 A In 1993?
12 Q 1993.
13 A '93, yes.
14 Q You worked at Harborview --
15 A Yes, I was at Harborview at the time.
16 Q And you saw patients at that time in '93?
17 A Uh-huh. Yes.
18 Q You taught classes in '93?
19 A Yes.
20 Q You had a full workload in 1993?
21 A Right.
22 Q A diagnosis of unipolar is different from your diagnosis
23 of bipolar one. Is that correct?
24 A Bipolar disorder. Well, yes, but -- well, I already
25 explained what I thought happened there.

1 Q But it is different.
2 A It's -- yes. The words are different. But unipolar would
3 be the manic phase of the bipolar disorder.
4 Q Psychiatrists disagree. Would you agree psychiatrists can
5 look at the same patient and two psychiatrists could come up
6 with a different diagnosis?
7 A Obviously.
8 Q That's happened in this case?
9 A Well, you must be hiring somebody to rebut what I say.
10 Q And you agree that a majority of the professionals who
11 evaluated Mr. Brown in the 1980s, they diagnosed him as having
12 antisocial personality disorder. Correct?
13 A Which ones are you referring to?
14 Q You've reviewed his reports from the 1980s?
15 A Yes.
16 Q Those reports, the majority of the psychiatrists and
17 psychologists in the 1980s determined that Mr. Brown had
18 antisocial personality disorder.
19 A You're talking about the psychologists who tested him
20 repeatedly and then the two social workers that saw him at the
21 Oregon state penitentiary?
22 Q I'm talking about the medical records you reviewed from
23 the 1980s. Would you agree that the majority of those
24 professionals determined he had antisocial personality?
25 A Yes.

Q That's the most consistent diagnosis.
A Yes. But the psychologist didn't give him the tests that would show whether he was bipolar or not.
Q But they did not reach bipolar diagnosis. You agree with that?
A They weren't giving him the tests that would show it. The social workers did and the psychiatrist that gave him the medication did. They all did.
Q But they were the only ones. Right?
A In the eighties. I'm trying to think when Dr. Engel saw him. I think he was in the eighties, too, and he mentioned that as a rule-out.
Q But he did not prescribe lithium.
A He says he didn't. Mr. Brown says he did.
Q Now, one of your opinions in this case is that if Mr. Brown was on lithium and properly treated he'd be less likely to have committed the crime he committed?
A That's my opinion, yes.
Q But you can't say how less likely?
A There's no way to say that.
Q You can't say five percent --
A No way.
Q You have not subjected your opinion in this case to peer review?
A How would I do that?

1 Q Publish it.
2 A Oh, no. We don't publish single cases hardly at all.
3 Q So you have not done that.
4 A Right.
5 Q And there's no published criteria that you're aware of
6 supporting your opinion that Brown would have been less likely
7 to commit sexually violent crimes if treated with lithium.
8 Isn't that correct?
9 A I don't know of any literature about that.
10 Q And you did not run any tests to determine how less likely
11 Brown would have been to commit a sexually violent crime if
12 treated with lithium.
13 A There aren't any tests that you can do.
14 Q You didn't conduct any studies regarding that either.
15 Correct?
16 A I wouldn't even know how to do that.
17 Q And as a psychiatrist you cannot accurately predict the
18 likelihood of someone committing a crime.
19 A Psychiatrists or anybody else can't predict if they're
20 going to commit a crime.
21 Q You can't?
22 A You can say they're more likely to.
23 Q But you can't say how much more.
24 A No.
25 Q And there's no proof of a direct causal connection between

1 bipolar disorder and killing. Would you agree?
2 A No. There's no proof of that.
3 Q The vast majority of people with bipolar disorder do not
4 kill?
5 A They certainly do not.
6 Q And the vast majority of people with bipolar disorder do
7 not commit rapes?
8 A That's right.
9 Q And the vast majority of people with bipolar disorder do
10 not torture?
11 A That's right.
12 And the vast majority of people with bipolar disorder
13 do not have an antisocial personality as well.
14 Q So it was the antisocial personality disorder that caused
15 him to do this?
16 A It's a combination of the two.
17 Q Now, you do know Dr. Brinkley?
18 A Yes, I do.
19 Q In 1993 his office was down the hall from yours?
20 A Yes.
21 Q And in the past you have talked to Dr. Brinkley about new
22 medications?
23 A Yes, I have.
24 Q He has -- he is one who reads up on new medications?
25 A Well, he sees himself as a psychopharmacologist, you know,

1 which is -- as being -- that's what he does, and so he is very
2 involved in reading about medications, right.
3 Q And you have in the past talked to him about those new
4 medications.
5 A Yeah. When new medications -- once or twice I wasn't
6 aware of, you know, the way to use them and so forth, and I
7 walked down the hall and talked to him about them.
8 Q Like to ask you about the diagnostic criteria for bipolar
9 disorder that you discussed on your direct.
10 A Yes.
11 Q There are -- I don't know -- there are seven or eight that
12 you listed?
13 A There are seven for the manic phase and there are nine for
14 the depressed phase.
15 Q And it's your opinion he was manic at the time he
16 committed this crime --
17 A I think so, yes.
18 Q So seven for the manic. You've only found four of those
19 seven in existence. Is that correct?
20 A At the time of committing the crime? Well, I didn't know
21 how he was talking and I didn't know how he was sleeping and I
22 didn't know if he was grandiose. I didn't hear him say that.
23 And I didn't know if he was having trouble with rapid thoughts.
24 You know, there were three that I did know about, and so I
25 mentioned them.

1 Q Okay. Three?
2 A Uh-huh.
3 Q Goal-oriented activity?
4 A Marked increase in goal-oriented activity.
5 Q Distractibility?
6 A Distractibility.
7 Q Excessive involvement in pleasurable activities?
8 A With potential painful consequences.
9 Q Like to ask you about those, but let me first ask you is
10 it possible that those three diagnostic symptoms could also
11 result from the antisocial personality and sexual sadism?
12 A No. Typically your antisocial personality is not somebody
13 who has a marked increase in activities and distractibility.
14 Q Let's take the last one first, the excessive involvement
15 in pleasurable activities with potential painful consequences.
16 By that you're referring to the torture and the rape.
17 A And the murder.
18 Q And the murder.
19 The torture and the rape could be caused by the
20 sexual sadism?
21 A Yes.
22 Q Now, the goal-orientated activity was Mr. Brown traveling
23 from state to state, meeting various people, making -- picking
24 up information about those people, and then planning to meet
25 those people and actually following through and meeting those

1 people.
2 A Uh-huh. Yes.
3 Q And the same -- the distractibility is the same?
4 A Yes.
5 Q It's possible that was just Mr. Brown implementing his
6 scheme to find victims.
7 A Well, I don't know if he was trying to find victims during
8 this until it came to the end there, Miss Washa.
9 Q If you could turn to your deposition at page 21, please.
10 A What page?
11 Q Page 21.
12 A 21.
13 Q Starting at line 17 and through line 21, I asked you
14 whether it's possible that all this activity and this
15 distractibility was simply part of the scheme to find victims?
16 Your answer was that's a possibility.
17 A But I don't know if he meant to victimize them.
18 Q So it's possible this was all part of the scheme to find
19 victims.
20 A Yes. I suppose it is.
21 Q Goal-orientated activity, I'm goal-oriented right now.
22 A Are you showing a marked increase in goal-oriented
23 activity?
24 Q And most successful people, physicians such as yourself,
25 have been goal-orientated at times?

1 A I think the emphasis has to be on marked increase.
2 Q Now, when you interviewed Mr. Brown you only talked to him
3 for two hours?
4 A Little over two hours.
5 Q And you had no cause at that time to believe that he was
6 malingering?
7 A I didn't get that impression.
8 Q You didn't run any test to determine malingering?
9 A There aren't any tests to determine malingering.
10 Q Does the MMPI have any test?
11 A Ah, well the MMPI can -- yes, I'm sorry. I take that
12 back.
13 Q Now, Mr. Brown is under a sentence of death.
14 A Yes.
15 Q And if he does not prevail in these proceedings there's a
16 likelihood he will be executed.
17 A Yes.
18 Q And he does have an antisocial personality disorder.
19 A That's one of the diagnoses that I give him and other
20 people give him.
21 Q And one of the elements of that is deceitfulness?
22 A Yes.
23 Q And he has a history of deceitfulness.
24 A Yes.
25 Q And when you interviewed Mr. Brown you did not spend much

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1 time talking to him about the facts of this crime and this
2 case, did you?
3 A A little. Not much.
4 Q Mr. Brown did not say why he engaged in the torture and
5 rape?
6 A No.
7 Q He did not say why he killed Holly?
8 A No.
9 Q Do you -- are you aware of any evidence that he was
10 suffering delusions at the time of the crime?
11 A No. There's no evidence that he was.
12 Q No evidence of hallucinations?
13 A He wasn't psychotic, evidently.
14 Q And he intended to do the actions he committed?
15 A I believe so.
16 Q And he knew what he was doing when he committed the
17 crimes?
18 A I believe so.
19 Q And he knew right from wrong.
20 A I believe so.
21 Q Mr. Brown is an intelligent person.
22 A Yes. But he didn't have the control.
23 Q He has scored very high in I.Q. tests?
24 A Yes. He's scored very high. He's been in the top 1
25 percent, 2 percent, 10 percent, depending on who gave it to

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him.

THE COURT: In what range? 120 to 130?

THE WITNESS: He was 144 in one test. That's the only one I can remember the score on.

THE COURT: Smarter than me.

THE WITNESS: Well, on testing.

MR. SAMSON: I reserve comment on that, Your Honor.

Q You agree that Mr. Brown was able to comply with prison rules in Oregon without proceeding (inaudible)?

A There was one time when he was out of where he should be. He broke a rule. That's in the thing.

Q Now, I'd like to ask about sexual sadism for a few minutes before I wrap up here.

It involves real acts. Is that correct?

A I told you I don't know much about sexual sadism. I don't know whether it can be all in your mind and you're still a sadist or not, is what I'm saying. I think you have to have acts, but I'm not sure.

Q Would it assist you to look at the DSM-IV to recall the diagnostic --

THE COURT: She's not being tendered as an expert on that subject, so let's move on.

MR. SAMSON: Very well, Your Honor.

Q When you interviewed Mr. Brown in 2002 he was properly treated with lithium?

1 A In 2000 -- yes. Yes. And he had good blood levels.
2 Q And during the interview you did talk a little bit about
3 the actual crime in this case.
4 A Yes, very little.
5 Q And he used the term "hanky-spanky games"?
6 A Yes, he did.
7 Q What was he referring to?
8 A I think he was referring to the torture.
9 Q So even though he was on lithium properly treated he still
10 referred to what he did to Holly as a game.
11 A Yes, he did.
12 MR. SAMSON: Thank you, Your Honor.
13 THE COURT: Redirect?
14 MR. LEVY: May I have just a minute, please, Your
15 Honor?
16 **REDIRECT EXAMINATION**
17 BY MR. LEVY:
18 Q Would you say at the time of the crime that Mr. Brown's
19 ability to control his behavior was impaired?
20 A Yes.
21 Q Would -- if he had been on lithium at the time, would that
22 have improved his ability to control his behavior?
23 A I believe so.
24 Q Thank you.
25 Nothing further.

1 RECROSS-EXAMINATION
2 BY MR. SAMSON:
3 Q If a police officer was sitting in a car with Holly Washa,
4 Brown likely wouldn't have picked her as a victim, would he?
5 A I don't think so.
6 THE COURT: All right. Thank you, Doctor. You may
7 step down.
8 That's what you have for the day.
9 MR. LEVY: Yes, Your Honor.
10 MISS ELLIOTT: That is, Your Honor.
11 THE COURT: We'll be in recess until tomorrow morning
12 at 9:30.
13 Doctor, I found your testimony to be very helpful.
14 Thank you very much.
15 THE WITNESS: Thank you. You were very nice to me.
16 (At 2:38 p.m. proceedings were adjourned.)
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EXHIBIT 3

1
2
3
4 CLEMENCY AND PARDONS BOARD MEETING
5
6 Special Meeting
7 Re: Cal Coburn Brown
8
9
10
11 VERBATIM REPORT OF PROCEEDINGS
12 March 12, 2009
13 Olympia, Washington
14
15
16
17
18
19 Reported By:
20
Kristin DeLyn Manley, RPR, CCR
21 Registered Professional Reporter
Capitol Pacific Reporting, Inc.
22 2401 Bristol Court S.W.
Olympia, WA 98502
23 (360) 352-2054
scheduling@capitolpacificreporting.com
24 www.capitolpacificreporting.com
25

EXHIBIT 3

please put your cell phones on vibrate or turn them off. It will just make this go a lot more smoothly if we don't have this sort of interruption. And, Ms. Elliott, please proceed.

MS. ELLIOTT: At this point, I believe it would be appropriate - Mr. Brown wishes to make a statement to the Board and I would have him do that before I proceed into my presentation. And I believe your assistant has the proper phone number.

CHAIRPERSON SMITH: She is pretty good at that, making these calls and we will be able to hear from Mr. Brown on the overhead speakers.

MS. ELLIOTT: Thank you. He may not know exactly where we are in the proceedings, so if you could update him.

CHAIRPERSON SMITH: I will take a moment to do that, and you can have any communications you wish to have with him before he begins.

(Phone call being made to get Mr. Brown on the phone line.)

MS. GOTTBERG: Is this Mr. Brown? Mr. Brown, I'm going to put you on the overhead speakers and so the Clemency and Pardons Board can talk to you and you can talk to them. Hold on.

CHAIRPERSON SMITH: Mr. Brown? Hello, Mr. Brown? Mr. Brown?

MR. BROWN: Yes.

CHAIRPERSON SMITH: Okay. We can hear you now.

MR. BROWN: Okay.

CHAIRPERSON SMITH: Mr. Brown, the Clemency and Pardons Board has convened here in Olympia, Washington, in the senate hearing room at this time for considering the petition filed on your behalf, asking the Governor to commute your sentence or to grant a reprieve to allow a lethal injection trial to proceed in May.

Your attorney, Ms. Suzanne Elliott, has addressed the Board and indicated to us that you wish to make a statement to the Board. The - there are four board members here. A fifth member of our board could not be here today. This board is meeting in a special hearing to consider your petition, which was filed just this morning.

1 MR. BROWN: I very much appreciate your time.
2 CHAIRPERSON SMITH: And I will turn it over to
3 your attorney to see if she has any remarks she wishes
4 to make to you before you begin addressing us.
5 MS. ELLIOTT: Cal, this is Suzanne. It is my
6 understanding that you wanted to make a statement of
7 remorse to the Board.
8 MR. BROWN: Yes.
9 MS. ELLIOTT: You may proceed. And I think the
10 Board will give you as much time as you like or as a
11 little time as you like.
12 MR. BROWN: Well, first I cannot begin to tell
13 you how sorry and ashamed I am for what I have done.
14 Back in 1991, I was in a very dark place. I met Holly
15 Washa just before the Memorial Day weekend, I think it
16 was. And she was a young woman. She was full of life.
17 And I and I alone am responsible for ending her life.
18 If there was any way that I could go back, any way
19 that I could turn back the clock knowing what I now
20 know, what my mental situation was, having a chance to
21 get her back to the world, I would do so.
22 I mean, I can't use my lack of treatment for - for a
23 disease I didn't fully understand as any kind of excuse.
24 Not - none whatsoever. I mean, you cannot excuse what I
25 did. Killing Holly Washa did not just deprive her -

1 didn't just deprive her of her own life, as horrible as
2 this was, but it took her away from her friends and her
3 family far, far too soon.
4 My acts are so horrible and appalling to myself that
5 when I had a chance once I was arrested before - before
6 everything else, I voluntarily turned myself in. And I
7 was - you know, I confessed. I gave a full accounting
8 of my actions. And while I know that that can't give a
9 whole lot of comfort to Holly's family or her friends or
10 anybody else, I hope that the fact that she haunts me -
11 and she does, she haunts me to this day, every day -
12 that might help. I don't know.
13 There has not been one time since that time that I
14 haven't felt horrible about what I did. And if there
15 was any way I could tell her family that, I would do so.
16 If there was any way I could bring her back, I would do
17 so. I can't. God knows I wish I could, but I can't.
18 MS. ELLIOTT: Thank you, Cal.
19 MR. BROWN: That's all I can say.
20 MS. ELLIOTT: Thank you, Cal. I'm not sure we
21 can leave you on the phone to hear the rest of the
22 proceedings.
23 CHAIRPERSON SMITH: Excuse me for a moment. Are
24 there any questions from any board members for
25 Mr. Brown?

EXHIBIT 4

The Honorable Sharon S. Armstrong
Hearing Date:
Hearing Time:
Hearing Location:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. CAL COBURN BROWN, Defendant.	NO. 91-1-03233-1 SEA DECLARATION OF FRANK LEONETTI

I, FRANK LEONETTI, make the following declaration:

1. I have worked for the Department of Corrections (the Department) at the Washington State Penitentiary (WSP) for 26 years. I am currently employed as a Correctional Captain and have been so employed for over six years.

2. I have been assigned the responsibility of Chamber Team Leader for the execution of Cal Coburn Brown scheduled for September 10, 2010. I performed this same responsibility when Mr. Brown was previously scheduled for execution on March 13, 2009.

3. On March 12, 2009, I greeted Mr. Brown at the door of the building which houses the execution chamber at WSP when he was transported there by correctional staff. As we escorted Mr. Brown up the stairs to the holding cell he repeatedly stated to us "You guys are just going to be bringing me back down in a half hour." I would characterize his demeanor as cocky and self-assured during the entirety of my interactions with him on that date.

EXHIBIT 4

4. I was responsible for informing Mr. Brown of his conditions of confinement in the holding cell on March 12, 2010. During my conversations with him, he again repeatedly stated, "You are going to be bringing me back to my cell in a half hour".

5. I was present when Mr. Brown was notified that a stay had been granted, hours before his scheduled execution on March 12, 2010. I would characterize Mr. Brown's demeanor after the issuance of the stay as giddy and cocky. Mr. Brown was laughing, gloating, and making jokes directed at correctional staff. Mr. Brown stated to correctional staff, "I want to stay long enough that I get my pizza and root beer."

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED this 3 day of September, 2010, at Walla Walla, Washington.

FRANK LEONETTI

EXHIBIT 5

The Honorable Sharon S. Armstrong
Hearing Date:
Hearing Time:
Hearing Location:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. CAL COBURN BROWN, Defendant.	NO. 91-1-03233-1 SEA DECLARATION OF CHRISTOPHER BOWMAN

I, CHRISTOPHER BOWMAN, make the following declaration:

1. I have worked for the Department of Corrections (the Department) at Washington State Penitentiary (WSP) for 29 years. I am currently employed as an Associate Superintendent of Programs. My job duties include oversight of the Intensive Management Unit/Segregation units, Administrative Segregation, Capital Projects Engineers/Plant Maintenance, Environmental, Sustainability, Food Service Departments and Safety. I have been employed as an Associate Superintendent for three years.

2. As the designee of the Superintendent, I have frequent contact with Cal Coburn Brown with regard to preparation for his execution on September 10, 2010.

3. I met with Mr. Brown approximately one month ago, once his execution date had been set. During that meeting, Mr. Brown was cocky and was of the belief that he was not going to be executed because he had appeals pending. On that day, I provided him with a document informing him of his right to designate an immediate family member to witness his

EXHIBIT 5

execution. Mr. Brown wrote on that form, "No family member avalable [sic] for this evolution." Attached to this declaration as Attachment A is a true and accurate copy of the document completed by Mr. Brown on August 10, 2010.

4. Last week, I met with Mr. Brown again. During this meeting, Mr. Brown's demeanor was markedly different. I would characterize his demeanor as stoic and not quite as cocky as he had been at our previous meeting. At that meeting, on August 27, 2010, Mr. Brown was given the opportunity to elect an alternative method of execution. Mr. Brown declined to elect an alternative method and stated that he was refusing to elect "on the advice of counsel."

5. I met with Mr. Brown again yesterday, September 2, 2010. During our meting yesterday, we discussed the issues we would be meeting about in the next week, including disposition of his remains, disposition of his property, and when he will be taken to the holding cell. We also discussed the visit from his aunt and uncle which is scheduled for Monday, September 9th. We also discussed his last meal. Mr. Brown requested that he be given pizza and root beer, which was arranged for him when his execution was scheduled in March of 2009. I informed him he would be given the opportunity to select his last meal from the Washington State Penitentiary menu. Mr. Brown requested that he receive larger portions. I asked him to write down what he wanted. I would characterize Mr. Brown's demeanor at this meeting as cocky.

6. Also during our meeting on September 2, 2010, Mr. Brown told me that the ruling from Judge Coughenour was not the end of the line for him. Mr. Brown told me he and his lawyers were prepared for that ruling from Judge Coughenour and that there's nothing he could do about being executed. Mr. Brown also told me that he was not worried about being executed and his lawyers had new challenges and new surprises they would be filing in the next week to stop the execution.

7. During our meetings on September 2nd and 3rd, Mr. Brown and I had a conversation about his last words that will be spoken prior to the execution. After our conversations in preparation for the last execution, I had concerns that Mr. Brown's final words would be disrespectful toward Holly Washa's family. I expressed my concerns to Mr. Brown and told him that being disrespectful to the victim's family would not be appropriate. Mr. Brown told me, "I already apologized to them" and said his intent was not to disrespect them.

8. During our meetings on September 2nd and 3rd, I asked Mr. Brown how he was feeling. He told me that he realizes that there is nothing he can do about it, that he can't control his destiny, and that he understood that he may be executed and that he couldn't control it, and he was still going to file appeals to try and stop the execution.

9. I met with Mr. Brown again today, September 3, 2010. During the meeting today, Mr. Brown was again cocky. He provided me a written document articulating the food he wants for his last meal. The document also indicates that he wants all of his property and remains to go to Gilbert Levy. Mr. Brown handed this document to me personally. Attached to this declaration as Attachment B is a true and accurate copy of the document handed to me by Mr. Brown earlier today.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED this 3rd day of September, 2010, at Walla Walla, Washington.

Christopher Bowman

CHRISTOPHER BOWMAN

ATTACHMENT A

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
WASHINGTON STATE PENITENTIARY
1313 N. 13th Avenue • Walla Walla, Washington 99362-1065 • (509) 525-3610

August 10, 2010

Cal Brown, #998921
Washington State Penitentiary
1313 N. 13th Avenue
Walla Walla, WA 99362

RE: Witness Selection

Mr. Brown:

In accord with RCW 10.95.185 you are authorized to designate one immediate family member to serve as a witness to your execution, currently scheduled for September 10, 2010.

If you wish to exercise this privilege, I must know the name, address, telephone number, birth date, and social security number (if known) of the family member. This information must be provided to me no later than August 20, 2010.

Associate Superintendent Bowman will contact you on August 26, 2010, if we have not heard from you previously.

Sincerely,

Stephen Sinclair
Superintendent

I acknowledge receipt of this letter. 8-10-10 14:45

Cal Brown, #998921 Date 08/10

NO FAMILY MEMBER AVALABLE FOR THIS EVOLUTION.

cc: John Samson, AAG
Suzanne Elliott, Defense Attorney
Gilbert Levy, Defense Attorney
file

"Working Together for SAFE Communities"

recycled paper

ATTACHMENT A

ATTACHMENT B

45

WASHINGTON STATE PENITENTIARY

FOOD SERVICE DEPARTMENT

September 3, 2010

September 9th Dinner

Fresh Fruit
Tossed Salad
Tri-Taters
Sloppy Joe Sandwich
Bun
Peas
Catsup/ Italian Dressing
Fruit Drink

The above meal is the normal meal being prepared for the general population. Food Service has alternate items you may choose from to replace any of the entrees, vegetables, salads, and desserts listed below if you want an alternate meal. Please check one item in each category and submit to Food Services.

Entrée Meats:		Vegetables:		Salads:	
Sliced Turkey Breast		Broccoli		Tossed Green Salad	
Fried Chicken		Mixed Vegetables		Coleslaw	
Cheeseburger		Peas		Carrot Sticks	
Combination Pizza	✓	Carrots		Potato Salad	
Scrambled Eggs & Ham		Corn		Pasta Salad	
Burritos		Garden Vegetables		Macaroni Salad	
Meatballs					
Hot Dogs or Polish Dog					

Desserts:		Additional Items:	
Ice Cream		Baked Potato	
Fresh Fruit		Hash Browns	
Brownie		Dinner Roll	
Cookies (Chocolate Chip/Oatmeal/Sugar)		Mashed Potatoes	
		Macaroni & Cheese	
Cake		Fried Rice	
Apple Pie	✓	Steamed Rice	
		Mexi Rice	
		Potato Chips	

Comments: ICE WATER - COFFEE - MILK

Kerri Robinson 9-3-10
Kerri Robinson DATE
Food Manager 5

Stephen D. Sinclair 9/2/10
Stephen D. Sinclair DATE
Superintendent

ATTACHMENT B

-3-2010
820 Chris Bowman
Chris Bowman

I met with Mr Brown, #99892, on 9-3-2010, and he handed me a piece of paper that identified his request for his "Last Meal" (attached).

Last Meal

Pizza –
Thin Crust (it's usually too thick)
2/3 Sheet Pan Size (full w x 4/3 Long)
Lite on Sauce (about 1/2 of what you usually use $ also onions or peppers)
Xtra Cheese (Lots!)
Meat (Hamburger/Pepperoni/Sausage) (Lots)
mushrooms + olives
NO Peppers of Any kind
NO Onions of Any kind
NO Black Pepper
NO Other Veggies – Carrots, Squash, Tomatoes, Celery ect.

Dessert –

Beverage –
2 Litre Root Beer on
Ice water + Coffee + Milk (Lots)

Inmate Brown handed me this piece of paper today, 9-3-2010, identifying his request for his "Last Meal"
Chris Bowman
C Bowman
9-3-2010
0820

Remains & Property –
Gilbert Levy
2003 Western Ave Suite 330
Seattle WA 98121
888-777-0670 or 206-443-4670

EXHIBIT 6

The Honorable Sharon S. Armstrong
Hearing Date:
Hearing Time:
Hearing Location:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. CAL COBURN BROWN, Defendant.	NO. 91-1-03233-1 SEA DECLARATION OF STEPHEN SINCLAIR

I, STEPHEN SINCLAIR, make the following declaration:

1. I am currently employed as the Superintendent of the Washington State Penitentiary (WSP). I have been employed in this position since August of 2008. Prior to assuming the position of Superintendent, I was employed as an Associate Superintendent at WSP for 3 years. I have worked for the Department of Corrections (DOC) for 21 years.

2. As the Superintendent for WSP, I am responsible for supervising the execution of Cal Coburn Brown on September 10, 2010.

3. In accordance with my duties, I have met with Mr. Brown twice in anticipation of the scheduled execution. On my first visit, Mr. Brown was happy-go-lucky and cocky telling me that he had appeals pending that would stop his execution. On that first visit, I told Mr. Brown that I was there to provide him with information about the execution process and that my purpose in meeting with him was to make myself available to him to answer questions. At that meeting, I gave Mr. Brown the opportunity to select an alternative method of execution.

EXHIBIT 6

Mr. Brown told me he would not be signing anything "on the advice of counsel". Also at that meeting, when I offered to answer questions about the process, Mr. Brown said, "the only thing you can tell me is the identity of your team members".

4. I met with Mr. Brown, along with Christopher Bowman, again on August 27, 2010. On that date, I observed that his demeanor had changed as he was not so happy-go-lucky and cocky. Mr. Brown asked me if he could get "pizza and root beer again" as had been arranged for him prior to the last scheduled execution. I informed him that he would not be receiving pizza and root beer. He responded, "really, I'm not going to get real food?"

5. I have confirmed with medical staff that Mr. Brown is "med compliant" meaning he is currently taking his medications. I have also confirmed with medical staff that he is being provided his medications personally, at cell front, daily.

6. I have confirmed with correctional staff that Mr. Brown has had no visitors, other than his attorneys, since 2002. I have also confirmed with correctional staff that the only telephone calls made by Mr. Brown in the last month have been calls to his attorneys.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

SIGNED this 3 day of September, 2010, at Walla Walla, Washington.

STEPHEN SINCLAIR

EXHIBIT 7

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. CAL COBURN BROWN, Defendant.	NO. 91-1-03233-1 SEA EMERGENCY MOTION TO PRECLUDE DEFENDANT'S EXECUTION ON GROUNDS OF INCOMPETENCY AND MOTION FOR STAY OF EXECUTION PENDING EVIDENTIARY HEARING * THIS IS A CAPITAL CASE

MOTION

Cal Coburn Brown, who is scheduled to be executed at 12:01 am on September 10, 2010, moves this Court for an order precluding the State from executing him due to incompetence (sometimes called insanity).

Because Mr. Brown raises a colorable issue, this Court should immediately issue a stay of execution. This Court should then set a briefing schedule and entertain discovery motions from either party. Finally, this Court should set an evidentiary hearing where expert testimony can be taken on this issue.

Undersigned counsel is cognizant that this claim is raised "very late in the day." However, given the nature of the claim, that is precisely when it must be raised; in fact, the Supreme Court of the United States has held that is the *only* time

it can be raised. Any arguments by the State that this Court should deny Mr. Brown's requests because of when they are being made fails to understand the very nature of this claim and invites this Court to dispense with the Constitution. This Court cannot do so.

FACTS

The facts of Mr. Brown's crime have been established for many years and are undisputed.

On May 24, 1991, after two days of torture and rape, Mr. Brown murdered Holly Washa by stuffing her into a car trunk and slitting her throat. The Washington State Supreme Court described the condition in which authorities discovered her dead body—a condition that is horrifying but also vivid evidence of Mr. Brown's mental illness: :

> In addition to the lethal injuries, [authorities] described other trauma to Ms. Washa's body. Her pubic hair had been shaved. Her face was severely bruised. Both the inside and outside of her vaginal area were bruised. There was also bruising around her anus. The vaginal and anal injuries indicated forcible penetration with a hard object . . . . Her nipples showed abrasions and a linear pattern of bruising consistent with being whipped by a belt or cord. Similar bruising was found on her inner thigh, which also indicated whipping. Her feet and ankles were covered with bruises consistent with having been restrained. Her chest and abdomen had multiple stab and slicing wounds. An irregular blemish-like area of red drying on her inner thigh indicated burning.

State v. Brown, 940 P.2d 546, 549 (Wash. 1997). A jury convicted Mr. Brown of

aggravated murder in the first degree on December 10, 1993, and sentenced him to death a few weeks later. The death sentence was based on a finding that there were no mitigating circumstances warranting leniency—a finding based on prosecutor's testimony and argument debunking Mr. Brown's lack of mental illness or need for medication to control it, testimony that has proved to be untrue as the State of Washington has been medicating Mr. Brown for mental illness since the week after his trial.

The procedural history since that time is long and complicated, as is true of virtually every capital case.

Most recently, when the Washington Supreme Court lifted its stay of execution after rejecting Brown's arguments regarding this state's lethal injection protocols, the Department of Corrections announced it would execute Mr. Brown on September 10, 2010.[1]

Just a week after being sentenced, Mr. Brown was seen by a psychiatrist employed by the Washington State Department of Corrections (DOC). On February 4, Mr. Brown was evaluated by Dr. Tim. L. McBath, M.D., a psychiatrist with the Washington State Penitentiary. Dr. McBath described Mr. Brown as cooperative and accessible, but possessing an "elevated energy level, being animated and demonstrative in speech" that was "quite rapid and moderately

[1] This date was not set by any Court, but by the Department and Attorney General, based on their interpretation of RCW 10.95.

pressured." (See Exhibit A; Dr. McBath February 3, 1994 Evaluation, pg. 3). Dr. McBath concluded that Mr. Brown suffered an Axis I disorder: "Probable Bipolar Disorder with history of at least hypomanic and possibly manic episodes. Currently exhibiting hypomanic symptoms." *Id.* at 4. As such, Mr. Brown was prescribed 300 milligrams of lithium three times a day.

A follow-up evaluation was done three weeks later. On February, 23, 1994, Mr. Brown was seen by Dr. Carl Baum, M.D., another psychiatrist with the Washington State Penitentiary. Dr. Baum described Mr. Brown's speech as being somewhat "pressured" and "hyperverbal", including laughing inappropriately during the interview. (See Exhibit B; Dr. Baum, February 23, 1994 Evaluation, pg. 2). Dr. Baum concluded:

> Patient is on lithium 300, mg. three times daily. Will get a level on this dose and consider increased dose adjustment next month. Patient is not sleeping on 50 mg. of Sinequan and will increase the dose gradually to 150 mg. of Sinequan. Will see patient back in follow-up in one month.

Dr. Ronald D. Page, Ph.D., a clinical psychologist with the Washington State Correctional Facility, concurred with the continued prescription of psychotropic medication, concluding that "[C]ontinued mental health follow-up and maintenance with psychotropics would seem to be warranted." (See Exhibit C; Dr. Ronald D. Page, PhD, May 4, 1995 Evaluation, pg. 3).

At the directive of the Washington State Department of Corrections, Mr. Brown has been prescribed psychotropic medication over the last sixteen years.

Dates	**Prescribed Psychotropic Medication and Dosage**
Feb.3, 1994 – September, 2003	Lithium (300 mg) one tablet three times a day)
September 1- 18, 2003	Lithium 300mg (one tablet three times a day)
September 19 – 30, 2003	Divalproex (aka Depakote) 500 mg.
October 2003	Lithium (300 mg) and Divalproex (500 mg)
November 2003 – April 2010	Divalproex (Depakote) 500 mg

The diagnosis and prescribed medication as remained unchanged since 1994. As recent as July 16, 2010, Mr. Brown was diagnosed by a DOC physician, Dr. Grubb, as suffering from "bipolar disorder, more or less stable" and requiring medication. (See Exhibit D; Dr. David Grubb, M.D. July 16, 2009).

Dr. George Woods recently conducted an evaluation of Mr. Brown, in part, to determine his current competence. His declaration, which is attached, states that Mr. Brown's competence is achieved artificially—through the use of mood altering psychotropic medication. But for that medication, which is administered by the State, Mr. Brown there is a reasonable likelihood that Mr. Brown would not be

competent. In fact, despite being medicated by the Washington Department of Corrections continuously for years and years and years, Mr. Brown still shows significant signs of mania. As a result, his competence has been achieved only through the medication that the State has told him to take.

ARGUMENT

"[T]he Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane." *Ford v. Wainwright,* 477 U.S. 399, 409-410, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986). The prohibition applies despite a prisoner's earlier competency to be held responsible for committing a crime and to be tried for it. Prior findings of competency do not foreclose a prisoner from proving he is incompetent to be executed because of his mental condition.

The Washington State Constitution's prohibition against "cruel" punishment almost certainly prohibits the execution of a prisoner who is "insane," although it appears that the scope of the Washington State Constitution's protection have never been specified. Nevertheless, the Washington Supreme Court has held state courts possess inherent authority to grant a stay of execution upon a showing of intervening "insanity." *State v. Davis,* 6 Wash.2d 696, 717, 108 P.2d 641 (1940).

However, given that it is well established that Wash. Const. art. 1, § 14 is broader than its federal counter-part (*State v. Fain,* 94 Wash.2d 387, 390, 617 P.2d 720 (1980)), this Court should issue a stay so that the parties can address whether

the Washington Constitution's prohibition against executing a person who is incompetent is broader than the federal standard.

The State will certainly complain that this pleading comes too late. However, a capital defendant who asserts that he cannot be presently executed can only properly raise that claim just before the time of his execution. In addition, the failure of both the Washington statutes and the King County Prosecutor to bring Mr. Brown to court to set an execution date precludes Mr. Brown from raising this issue at the time the issue of a new execution warrant. As a result, the State contributed to the issue that it will soon complain about.

The federal constitutional standard prohibiting the execution of a prisoner who is incompetent is a complicated one.

The prohibition against execution of the mentally ill is based on ancient traditions of English common law. When *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), was decided, no state permitted the execution of the insane. *Id.* at 408 n. 2. Prior to *Ford*, however, the United States Constitution only provided procedural due process protection for the exemption from execution that was provided by state law. *See, e.g., Phyle v. Duffy*, 334 U.S. 431, 68 S.Ct. 1131, 92 L.Ed. 1494 (1948).

Ford recognized that the Eighth Amendment also provides a restriction on a state's substantive power to execute the mentally incompetent.

Alvin Ford was convicted of murder and sentenced to death in the State of Florida. Well after his trial and sentencing, Ford began to exhibit bizarre behavior, based on his apparent belief in a wide-ranging conspiracy against him, which included the delusion that his family and friends had been taken hostage. His attorney ultimately invoked the procedures of Fla. Stat. § 922.07 (1985) to have Ford declared incompetent to be executed. In accordance with that statute, which prohibited execution of a prisoner unless he had "the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him," the Governor of Florida appointed three psychiatrists to examine Ford. Each of the psychiatrists concluded that Ford had a severe mental disorder, but all of them concluded that he was competent to be executed under Florida law. Based on those opinions, the Governor signed a death warrant for Ford's execution, without further explanation. *Ford*, 477 U.S. at 402-04.

Two issues were before the Court in *Ford:* whether the Eighth Amendment prohibited the execution of the insane and whether the procedure employed by the Florida court to determine competency was constitutionally adequate. The Court's ultimate determination in Ford's favor on both issues was a plurality decision. Seven justices agreed that the Florida procedure was constitutionally inadequate; however, only four believed that a full evidentiary hearing was required. Justice Powell wrote separately to disapprove of Florida's procedure, but he would have

held that any procedure that provided an impartial officer and an opportunity for the prisoner to be heard was adequate. On the substantive issue, five justices agreed with the general principle that the execution of the insane, as proscribed in the common law and statutorily prohibited in all states, violated the Eighth Amendment; however, Justice Powell wrote separately on the issue of the definition of insanity.

In his discussion of the historical context of the prohibition against executing the insane, Justice Marshall, writing for himself and three others, recognized several historical bases for the rule. He first cited Blackstone for the principle that a man who becomes insane after judgment, but before execution, should have his execution stayed, "[F]or peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution." *Id.* at 406 (quoting 4 W. Blackstone, "Commentaries," 24-25). Other reasons were also offered in support of the common-law prohibition. The first was, "[T]he execution of an insane person simply offends humanity." 477 U.S. at 407. Second, Marshall noted, "[I]t provides no example to others and thus contributes nothing to whatever deterrence value is intended to be served by capital punishment." *Id.* The third reason advanced was, "[I]t is uncharitable to dispatch an offender 'into another world, when he is not of a capacity to fit himself for it.' " *Id.* (quoting Hawles, "Remarks on the Trial of Mr.

Charles Bateman," 11 How. St. Tr. 474, 477 (1685)). He identified as a fourth rationale, that "execution serves no purpose in these cases because madness is its own punishment...." 477 U.S. at 407. Finally, Marshall recognized, "[T]he community's quest for 'retribution'-the need to offset a criminal act by a punishment of equivalent 'moral quality'-is not served by execution of an insane person, which has a 'lesser value' than that of the crime for which he is to be punished." *Id.* at 408.

Justice Marshall found all of these reasons to have continued "logical, moral, and practical force...." *Id.* at 409. While not expressly adopting any of these rationales over another, Justice Marshall stated, "It is no less abhorrent today than it has been for centuries to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications." *Id.* at 417. He concluded, "Whether its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment." *Id.* at 410.

As Justice Powell noted in his concurrence, the determination of a prisoner's sanity is not an issue that can be resolved by reference to historical facts. 477 U.S. at 426.

Instead, it is a "basically subjective judgment ... [that] depends substantially on expert analysis in a discipline fraught with 'subtleties and nuances.' " *Id.* (quoting *Addington v. Texas*, 441 U.S. 418, 430, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979)). There is no "bright line"-no calculation or discrete measurement-for determining who is ineligible for execution. For this reason, the analysis is markedly different from that conducted in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (prohibiting execution of individuals who were under eighteen when they committed the crime), or *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (prohibiting execution of mentally retarded individuals).

Believing that Justice Marshall's opinion had not set forth the meaning of insanity in this context, and that the historical arguments "do not provide a common answer when it comes to defining the mental awareness required by the Eighth Amendment as a prerequisite to a defendant's execution," Justice Powell wrote separately to address that issue. *Id.* at 418-19.

Justice Powell specifically discounted one historical theory for the prohibition against execution of the insane-that an insane prisoner could not adequately assist counsel in making arguments against his execution. In Justice Powell's view, that justification has no force in modern practice, which provides far more extensive review of convictions and sentences-particularly death

sentences-than did the common law, including not only direct appeal but ordinarily both state and federal collateral review, throughout all of which the defendant has access to counsel, and indeed, the right to effective assistance of counsel at trial and on appeal. *Id.* at 420.

Justice Powell thus considered it "unlikely indeed that a defendant today could go to his death with knowledge of undiscovered trial error that might set him free." *Id.*

Justice Powell agreed, however, that other rationales identified by Justice Marshall remained valid:

> The more general concern of the common law-that executions of the insane are simply cruel-retains its vitality. It is as true today as when Coke lived that most men and women value the opportunity to prepare, mentally and spiritually, for their death. Moreover, today as at common law, one of the death penalty's critical justifications, its retributive force, depends on the defendant's awareness of the penalty's existence and purpose. Thus, it remains true that executions of the insane both impose a uniquely cruel penalty and are inconsistent with one of the chief purposes of executions generally. For precisely these reasons, Florida requires the Governor to stay executions of those who "d[o] not have the mental capacity to understand the nature of the death penalty and why it was imposed" on them. Fla.Stat. § 922.07 (1985 and Supp. 1986).

Id. at 422. Justice Powell observed that, in fact, while some states had more rigorous standards, prohibiting the execution of a defendant who is unable to assist in his own defense, "none disputes the need to require that those who are executed

know the fact of their impending execution and the reason for it." *Id.* And in his view, this was all the Eight Amendment required:

> Such a standard appropriately defines the kind of mental deficiency that should trigger the Eighth Amendment prohibition. If the defendant perceives the connection between his crime and his punishment, the retributive goal of the criminal law is satisfied. And only if the defendant is aware that his death is approaching can he prepare himself for his passing. Accordingly, I would hold that the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it.

Id.

Subsequent opinions from lower courts assumed that Justice Powell's definition of competence was controlling without much reference to the other language in *Ford.* See, e.g., *Scott v. Mitchell*, 250 F.3d 1011, 1014 (6th Cir.2001); *Massie v. Woodford*, 244 F.3d 1192, 1195 n. 1 (9th Cir.2001); *Coe v. Bell*, 209 F.3d 815, 825-26 (6th Cir.2000); *Fearance v. Scott*, 56 F.3d 633, 640 (5th Cir.1995); *Rector v. Clark*, 923 F.2d 570, 572 (8th Cir.), *cert. denied*, *Rector v. Bryant*, 501 U.S. 1239, 111 S.Ct. 2872, 115 L.Ed.2d 1038 (1991).

In one case, *Walton v. Johnson*, 440 F.3d 160, 170 (4th Cir.2006), the court analyzed the effect of the plurality opinion by reference to the principle announced in *Marks v. United States*, 430 U.S. 188, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977). In *Marks,* the Court held, "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the

Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds....' " 430 U.S. at 194 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n. 15, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)).

The *Walton* court noted that the issue was not quite clear, since Justice Powell had specifically stated that the "Court's opinion does not address ... the meaning of insanity." 440 F.3d at 170 n. 10 (quoting *Ford*, 477 U.S. at 418). Additionally, the *Walton* opinion recognized that Justice Marshall, in a dissent from the denial of certiorari in another case, *Rector v. Bryant*, 501 U.S. 1239, 1241-42, 111 S.Ct. 2872, 115 L.Ed.2d 1038 (1991) (Marshall, J., dissenting), argued forcefully that *Ford* left unsettled the parameters of mental disturbance that would prohibit execution. On the other hand, considering "the actual discussion of rationales and the overlapping agreement on one of the rationales in both the *Ford* plurality opinion and Justice Powell's concurrence" and in light of the Supreme Court's "acknowledgment of Justice Powell's proffered test (albeit in *dicta*) as the appropriate standard" in *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) (holding that the Eighth Amendment did not prohibit the execution of a mentally retarded inmate), overruled on other grounds by *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), the *Walton* court concluded that the *Ford* court effectively adopted Justice Powell's proffered two-

part test as the constitutionally minimum standard for determining mental competence to be executed. 440 F.3d at 170.

Given this uncertainty, it should hardly be surprising that the United States Supreme Court recently decided another case addressing the issue of defendant's competency at the time of his scheduled execution. This was the state of the law when Scott Panetti's case was decided.

Panetti, who suffered from a fragmented personality, delusions and hallucinations, killed his estranged wife's parents in front of his wife and their daughter. His habeas attorneys produced evidence that, while Panetti claimed to understand that the state wanted to execute him for the murders he committed, his mental illness had resulted in a delusion that the stated reason for his execution was a sham, and that the state actually intended to kill him to stop his preaching. *Panetti v. Dretke*, 401 F.Supp.2d 702, 708 n. 3 (W.D.Tex.2004). This claim had been presented in state court, resulting in the appointment of two experts to examine him. *Id.* at 704. Those experts concluded that Panetti was competent, and the state court ruled against Panetti without giving him an opportunity to rebut those opinions. *Id.* The district court that considered his claim held, first, that the state court opinion was not entitled to deference under AEDPA, as the proceedings in state court were constitutionally inadequate. 401 F.Supp.2d at 705-06.

The court then struggled with the question of whether Panetti was incompetent under the rationale of *Ford*. According to the district court, Justice Powell's opinion defined competence as perceiving the connection between the crime and the punishment, thereby satisfying the retributive goal of the death penalty. *Id.* at 709. In order to satisfy that goal, however, the prisoner's perception must include not just factual knowledge of the reason for execution, but also his understanding, or, as Justice Powell stated, "[T]he Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it." *Id.* at 709-10, quoting *Ford*, 477 U.S. at 422, 106 S.Ct. 2595 (emphasis added). The district court reviewed Fifth Circuit precedent on this issue, however, and concluded that the appellate court had not adopted Justice Powell's reasoning in its entirety, but only adopted his standard in a limited sense. "[T]he Fifth Circuit has, without any discussion of the potential broader import of the statement, apparently interpreted Justice Powell's use of the concept of 'awareness why' to require no more than knowledge of the required factual predicate for an execution." *Id.* at 710 (citing *Fearance v. Scott*, 56 F.3d 633, 640 (5th Cir.1995); *Barnard v. Collins*, 13 F.3d 871, 876 n. 2 (5th Cir.1994); *Garrett v. Collins*, 951 F.2d 57, 59 (5th Cir.1992); *Lowenfield v. Butler*, 843 F.2d 183, 187 (5th Cir.1988)).

Panetti had argued that he would be held incompetent using Justice Powell's reasoning, but the district court's dissection of the Ford opinions compelled a conclusion that Justice Powell's concurrence was not controlling, in that the opinion of the other four justices in the majority "specifically declined to reach a holding on the question of what standard should be used to determine incompetency for the purposes of the Eighth Amendment." 401 F.Supp.2d at 710. For this reason, the district court held, "[T]he Powell concurrence does not operate as binding Supreme Court precedent on what standard governs competency to be executed." *Id.*

Examining Fifth Circuit precedent, the district court concluded that the "retributive goal" requirement of Justice Powell's concurrence had not been adopted. "Ultimately, the Fifth Circuit test for competency to be executed requires the petitioner know no more than the fact of his impending execution and the factual predicate for the execution." *Id.* at 711. Panetti was aware that he was convicted for the murders of his in-laws and that he was to be executed. Although there was evidence demonstrating that Panetti did not appreciate the connection between the murders and his execution, under controlling Fifth Circuit precedent, his lack of understanding did not exempt him from the death penalty. *Id.* at 709-12.

On appeal, the Fifth Circuit declined to rule on the issue of whether the state's procedure for reviewing Panetti's claim was adequate and entitled to deference. *Panetti v. Dretke*, 448 F.3d 815, 817 (5th Cir.2006). However, on the issue of competence, the court reviewed its earlier decisions and concluded that the standard for competence to be executed in the Fifth Circuit required only that an inmate to be aware of his punishment and why he is to suffer it. *Id.* at 819-21. Holding that "awareness" was not synonymous with "rational understanding," the court found Panetti competent to be executed. *Id.*

The Supreme Court reversed. *Panetti v. Quarterman*, 551 U.S. 930, 127 S.Ct. 2842, 168 L.Ed.2d 662 (2007). Addressing a jurisdictional issue, the Court held that Panetti's petition was not "second or successive," within the meaning of 28 U.S.C. § 2244, as it held that the statute did not apply to bar *Ford* claims "filed when the application is first ripe." *Id.* at 947.

Turning to the issue of whether Florida's procedure to determine competence was entitled to deference, the Court discussed the split of opinions in *Ford* as to what was constitutionally required in a state competency proceeding. Applying *Marks*, 430 U.S. at 193, 97 S.Ct. 990, the Court held that Justice Powell's opinion on that issue, which "offered a more limited holding," constituted clearly established law and set the minimum standard for such a proceeding. 551 U.S. at 949.

Even under Justice Powell's standard, however, the Texas procedure was constitutionally inadequate. *Id.* at 950-52.

The process having been inadequate under *Ford*, and Justice Powell's opinion constituting clearly established law, the state court's opinion was not entitled to deference under AEDPA. *Id.* at 953-54.

Then the Court considered whether Panetti's delusions made him incompetent to be executed under *Ford*. Although it recognized that the application of the Eighth Amendment to the issue of executing the insane resulted from a plurality opinion, the Court neither referenced *Marks* nor deferred to Justice Powell's concurrence. *Id.* at 957-59. Instead, the Court acknowledged that *Ford* did not provide a precise standard for competency. "The four-Justice plurality discussed the substantive standard at a high level of generality; and Justice Powell wrote only for himself when he articulated more specific criteria." *Id.* at 957. Characterizing Justice Marshall's opinion as "the opinion of the Court," the *Panetti* Court recited these reasons from *Ford* as the foundation for the constitutional prohibition against executing mentally incompetent prisoners:

> [T]oday, no less than before, we may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life.... Similarly, the natural abhorrence civilized societies feel at killing one who has no capacity to come to grips with his own conscience or deity is still vivid today. And the intuition that such an execution simply offends humanity is evidently shared

> across this Nation. Faced with such widespread evidence of a restriction upon sovereign power, this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane.

Panetti, 551 U.S. at 957.

According to the Court, the prohibition rested upon reasons recognized at common law and recited in "the controlling portion" of Justice Marshall's opinion in Ford. 551 U.S. at 958. One of those reasons was the failure of such an execution to serve any retributive purpose. In most cases, imposition of the death penalty "has the potential to make the offender recognize at last the gravity of his crime and to allow the community as a whole ... to affirm its own judgment that the culpability of the prisoner is so serious that the ultimate penalty must be sought and imposed." *Id.* This effect is questionable, however, "if the prisoner's mental state is so distorted by a mental illness that his awareness of the crime and punishment has little or no relation to the understanding of those concepts shared by the community as a whole." *Id.* at 958-59.

Retribution was not the only rationale to be considered, however, as the Court went on to state, "[T]he other rationales set forth by *Ford* fail to align with the distinctions drawn by the Court of Appeals." *Id.* at 959. Later in the opinion, the Court repeated that the "principles set forth in *Ford* are put at risk" by the Fifth

Circuit's interpretation of the competence standard. *Id.* Likewise, the Court held, the Fifth Circuit's interpretation "find[s] no support elsewhere in *Ford,* including in its discussions of the common law and the state standards...." *Id.* (emphasis added). Thus, it held, it was "error to derive from *Ford,* and the substantive standard for incompetency its opinions broadly identify, a strict test for competency that treats delusional beliefs as irrelevant once the prisoner is aware the State has identified the link between his crime and the punishment to be inflicted." *Id.*

This language indicates that the Court in *Panetti* intended to do more than to simply include a delusional state as a factor that could fit an accused within the narrow test enunciated by Justice Powell. Although *Panetti* held that a delusional state could prevent an inmate from having a rational understanding of his fate, the Court refused to adopt Justice Powell's definition or to enunciate "a rule governing all competency determinations." *Id.* at 960-61. Instead, the opinion appears to open the analysis of competence to consideration of the other common law factors recognized by Justice Marshall as relevant to this issue.

A determination of mental illness is necessarily subjective, and the legal definition of competence is not precise. It is not surprising, therefore, that lower courts were left by the *Panetti* opinion without a specific measure of incompetence to be executed. This continued uncertainty provides yet another powerful reason for this Court to stay Mr. Brown's execution and conduct a full and fair hearing—

one which permits both parties to present their facts and argue the relevant, if not always clear law.

Panetti gives this Court guidance on how a competency analysis should be undertaken:

> The underpinnings of petitioner's claims should be explained and evaluated in further detail on remand. The conclusions of physicians, psychiatrists, and other experts in the field will bear upon the proper analysis. Expert evidence may clarify the extent to which severe delusions may render a subject's perception of reality so distorted that he should be deemed incompetent. Cf. *Brief for American Psychological Association, et al., as Amici Curieae* 17-19 (discussing the ways in which mental health experts can inform competency determinations). And there is precedent to guide a court conducting Eighth Amendment analysis. See, e.g., *Roper v. Simmons*, 543 U.S. 551, 560-564, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Atkins v. Virginia*, 536 U.S. 304, 311-314, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002); *Ford*, 477 U.S., at 406-410, 106 S.Ct. 2595.

Id. at 962.

Although the Court in Panetti declined to set forth a specific definition of incompetence applicable in all cases, as the district court observed on remand in *Panetti*, the Supreme Court made clear in its opinion in *Panetti* that, "in the Eighth Amendment context, 'insanity' does have a baseline definition: the test for competence to be executed involves not only a prisoner's factual awareness of the crime, the impending execution, and the state's reason for executing the prisoner, but also some degree of 'rational understanding' of the connection between the crime and the punishment." *Panetti v. Quarterman*, No. A-04-CA-042-SS, 2008

WL 2338498, *31 (W.D.Tex. March 26, 2008) (quoting *Panetti*, 127 S.Ct. at 2861).

However, the Court's citations to *Roper*, *Atkins* and *Ford* additionally suggest that Eighth Amendment analysis of a defendant's competence to be executed must include consideration of society's current perception of capital punishment and the effect of that perception on the determination of what constitutes cruel and unusual punishment in the context of competence to be executed. As the Court recognized in *Atkins*, "A claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'Bloody Assizes' or when the Bill of Rights was adopted, but rather by those that currently prevail." 536 U.S. at 311. More recently, the Court reasoned that the Eighth Amendment's scope must continue to evolve, "because '[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change.' " *Kennedy v. Louisiana*, --- U.S. ----, 128 S.Ct. 2641, 2649, 171 L.Ed.2d 525 (2008) (quoting *Furman v. Georgia*, 408 U.S. 238, 382, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Burger, C.J., dissenting)).

In *Ford*, the Court summarized the "ancestral legacy" against execution of the insane and concluded that it had "not outlived its time. Today, no State in the

Union permits the execution of the insane." 477 U.S. at 408. In *Atkins*, the Court reviewed recent legislation by the states to determine whether "evolving standards of decency" indicated a trend toward exempting mentally retarded offenders from execution. 536 U.S. at 312-13. Similarly, in *Roper,* the Court looked at the evolution of the law prohibiting the execution of juveniles since the time that it earlier held such executions constitutional. 543 U.S. at 562-65. In each of these cases, the Court decided that there was "objective indicia of consensus" sufficient to hold that the Eighth Amendment should be extended to exempt certain classes of offenders from punishment by death. On the whole, then, it can surely be said that there is a trend toward narrowing the class of inmates against whom the death penalty may be imposed consistent with the Eighth Amendment's prohibition against cruel and unusual punishment. As to whether this existence of this trend supports a conclusion that "evolving standards of decency" suggest a broader definition of incompetence than the baseline definition recognized in *Panetti* is another matter. However, it is a matter that must be explored before Mr. Brown can be executed.

Mr. Brown urges this Court to adopt the standard announced in *State v. Perry*, 610 So.2d 746 (La. 1992). In *Perry,* the Supreme Court of Louisiana held that the state cannot voluntarily medicate an otherwise-incompetent death row prisoner with antipsychotic drugs in order to carry out his death sentence.

Michael Owen Perry was convicted and sentenced to death for murdering his mother, father, nephew, and two cousins. Perry was age twenty-eight at the time of his offenses but had long lived with his parents due to his history of mental illness. At the age of sixteen, he was diagnosed as a schizophrenic, and had been committed by his parents to several mental institutions.

The Louisiana Supreme Court observed that for centuries no jurisdiction has approved the execution of the insane. Accordingly, the court ruled that the state's attempt to forcibly medicate an insane prisoner with antipsychotic drugs violated his rights under the state constitution. The *Perry* court opined that such an action violated the inmate's right to privacy as it required an unjustified invasion of bodily integrity with potentially dangerous and painful drugs. The court reasoned that when under the influence of psychotropic drugs, the inmate loses the ability to make medical decisions. The court further observed that executing an insane prisoner did not serve the social goals of capital punishment. The court concluded that the state could re-apply for a modification of the stay of execution of the death sentence if *Perry* regained his sanity independently, and without the influence of antipsychotic drugs.

In outlining the parameters of the state constitutional right to privacy, the court stated "that the state's plan to medicate and execute Perry would violate his bodily integrity, chemically alter his mind and will, and usurp his fundamental

right to make decisions regarding his health or medical treatment. Each of these interests is protected from unwarranted governmental intrusion by [state constitutional] right of privacy or personhood. Moreover, these invasions are particularly intrusive because the forcible administration of antipsychotic drugs creates a substantial risk of permanent injury and premature death." *Id.*, 758. The court also stated that the issue was whether forcible medication "is necessary to promote a compelling state interest, and is narrowly drawn to further only that interest." *Id.*, at 760. The court concluded, "even if prison safety and Perry's medical welfare were the state's true objectives, ... the state action proposed in the present case is not narrowly confined to the interests of prison safety and the inmate's medical interests...." *Id.*, 761. That is, the state did not simply seek to medicate the defendant to protect him and others and to take care of his medical needs, but the state also planned to execute him. In other words, "a physician's prescription and administration of antipsychotic drugs to a prisoner against his will, pursuant to the order of a state court or other government official, for the purpose of carrying out the death penalty, does not constitute medical treatment but forms part of the capital punishment sought to be executed by the state." *Id.*, 753.

The court concluded its analysis by declaring: "the compound of forcible medication and death that the state seeks to impose on Perry is a severe

punishment unacceptable to contemporary society. *After taking into account objective evidence of contemporary values,* it is evident that the punishment would offend civilized standards of decency." *Id.*, 768 (emphasis added). The court pointed out that "[t]he ethical standards of the medical profession reinforce this view and constitute further objective evidence of this standard of decency. Both the American Medical Association and the American Psychiatric Association have strongly urged physicians not to participate in legalized state executions.... Like the use of lethal injections, forcible medication in an attempt to restore competency constitutes a part of capital punishment that inherently conflicts with medical ethics." *Id.*, 769.

These cases demonstrate the multiple complex issues that are involved in a competency determination when the State seeks to take a human life. The cases alos make it exceedingly clear that competency can only be determined based on a careful examination of the present facts.

CONCLUSION

Based on the above, this Court should: (1) immediately issue a stay of execution or hold a hearing on that request; (2) set a briefing and discovery schedule; and (3) set a time for an evidentiary hearing.

DATED this 3rd day of September, 2010.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that on September 3, 2010, I delivered by hand a copy of this document to:

Mr. Daniel Satterberg
King County Prosecuting Attorney
King County Courthouse
516 Third Ave.
Seattle, WA 98104

Suzanne Lee Elliott

Suzanne Lee Elliott
Attorney for Cal Coburn

Exhibit A

MAR 0 1 '31

PSYCHIATRIC EVALUATION

NAME: BROWN, Cal
NO: 998921
DATE: February 3, 1994

Washington State Penitentiary
Tim L. McBath, M.D.
Psychiatrist

IDENTIFICATION: 35-year-old single Caucasian male.

SOURCE OF INFORMATION: Central File, current MHU chart, patient interview and examination.

BACKGROUND INFORMATION: Patient has been sentenced to Death for a conviction of Aggravated Murder in the First Degree. This relates to the abduction of a young lady from a Seattle Airport Hotel parking lot and the ensuing torture, rape, and eventual murder of the same.

HISTORY: Inmate relates he's been diagnosed as "Manic Depressive". He states he's also been considered a bipolar manic in the past. He says he's been given diagnoses as having an Antisocial Personality Disorder and in childhood Attention Deficit Hyperactivity Disorder and Conduct Disorder.

Currently, he complains of feeling "manic". By this he is meaning to describe a condition characterized by "elevated mood", feeling "inappropriately" happy, talking a lot, laughing and smiling frequently, feeling energetic, excessively so, and having great difficulty sleeping. His mind feels very active and he's reading voraciously up to 500 or 600 pages a day if material is available. He feels irritable and particularly bothered by any sort of noise, conversation, or music--especially when he's trying to go to sleep.

He's felt "manic" now a couple of weeks and believes it might be related somewhat to his having been moved from King County Jail and having gotten the trial over with. He also feels confident that his sentence will be overturned upon appeal.

Additionally, he describes feeling anxious because of the sentence and uncertainty of his placement. He is especially concerned that he'll eventually reside somewhere where it's not too noisy and he won't be bothered by other inmates.

He denies any profoundly elevated or expansive opinions about himself, no ideas of special power or perception. He denies any history of such. His conversation is not significant for any themes at this time.

He has felt depressed in the past but his depressive episodes last three days at the most and are "mild." His worst episode of depression lasted maybe a few days or weeks and occurred directly

after his most recent arrest about three years ago. During this time he was thinking about the need to kill himself and considering various methods. He had a piece of a plastic spoon which he was considering using. However, he never acted on this and eventually gave it up as "silly." He denies any history of suicide attempt. When he's depressed, he feels down, distressed; dysphoric, but doesn't describe any associated neuro-vegative signs, such as sleep, appetite, or disturbance of energy level lasting more than a day or so.

He denies any mood associated feelings or ideas of paranoia, persecution, or impending doom.

PSYCHIATRIC HISTORY: He describes frequent mental health and psychiatric evaluation and treatment periodically throughout his childhood, beginning as early as age seven or eight. He explains it's related mainly to disruptive behavior at school. He was violent at times and tended to be oppositional and uncooperative. He denies ever receiving any psychopharmacologic treatment throughout his childhood. He denies any particular benefit from the periodic counseling and therapy he would receive.

He was evaluated psychiatrically as a part of the violent offenders' evaluation in the Oregon penal system about six or seven years ago. He was treated with Lithium three or four years ago towards the end of his stay in the Oregon system. For a period of about six months, he was taking 1200 mg a day. He feels that this was at least mildly helpful in stabilizing some of his moods. However, Lithium didn't seem to help sleep too much and if anything it seemed to exacerbate his insomnia. He stopped taking it upon his release and was arrested for the instant offense within a couple of months. He believes he was manic at the time but denies any grandiose thoughts of a delusional nature.

He was treated with Sinequan, up to 250 mg at night for a period of about four months, ending four months ago, by Dr. Hefter at Shelton. This was for insomnia. It did help somewhat. He had mild complaint of dry mouth and constipation.

SUBSTANCE ABUSE HISTORY: During his adolescent and early adult years, he used alcohol heavily. He also used Marijuana heavily but denies much involvement with any other types of drugs and eventually cut back and discontinued use of alcohol and Marijuana. He did describe himself, if not incarcerated, as a "light social drinker." He has no history of a previous substance abuse treatment.

SOCIAL HISTORY: He was born in San Jose, California. His natural father left when he was two. He's had intermittent contact with him since that time. He was raised by his natural mother, who remarried five or six times. Some of his step-fathers were physically abusive. He has large segments of time in his childhood for which he has no memories. He has no specific memory of being sexually abused. He has two siblings, both younger, a brother and a sister.

He had frequent difficulties in school and received mental health attention throughout childhood. He denies any juvenile convictions or offenses. He dropped out of school after his junior year in high school. His grades in high school were poor. He did get a GED, claiming to have completed it above the ninetieth percentile. He had several years of college while incarcerated in Oregon in general studies.

He claims he was doted upon and spoiled by his mother's adoptive mother throughout childhood.

Previous offense record includes several convictions of Assault for which he has spent a year and then seven years in prison. He's also had previous convictions for writing bad checks.

MEDICAL HISTORY:

1. History of Otitis Media as a child with corrective surgery.
2. He denies any other serious illness, accident, or injury or operation. No history of head injury.

MEDICATIONS: PRN Aspirin for headaches which he tends to experience in severe levels associated with environmental noise.

MEDICAL ALLERGIES: None.

MENTAL STATUS EXAM: Patient was seen at cell front. He was cooperative and accessible. He presented with an elevated energy level, being animated and demonstrative in speech. He bore a broad smile and grinned throughout most of the interview. He laughed quite frequently and easily. Speech was quite rapid and moderately pressured. He was difficult to interrupt and redirect at times. He tended to provide a wealth of information with minimal prompting. Hygiene was fair.

Thoughts were logical, coherent, and sequential. No tangentiality. No loose associations. No elements of formal thought disorder. He denied auditory or visual hallucinations and does not appear to

attend to such. His speech was not significant for any bizarre, peculiar, or unusual ideas. No grandiose ideas or delusions. No persecutory paranoid ideas. His manner was ingratiating and overly familiar.

He denied any suicidal ideas, plans, or intent. He denied any violent or homicidal ideas. He did admit to a history of homicide which related to a manic episode. He expressed a modest degree of regret and remorse.

Intellect was grossly intact, including short and long-term memory. Sensorium was clear. He was alert and oriented. He focused and shifted fairly well for the purposes of our interview. Insight was fair to good with regard to psychiatric symptoms. Judgement fair with regard to limits of incarceration.

ASSESSMENT:

Axis I:
1) Probable Bipolar Disorder with history of at least hypomanic and possibly manic episodes. Currently exhibiting hypomanic symptoms.
2) History of Polysubstance Abuse, alcohol and Marijuana, distant.
3) History of a diagnosis of Attention Deficit Hyperactivity Disorder as a child per patient history.
4) History of diagnosis as Sexual Sadism per patient history.

Axis II: 1) Antisocial Personality Disorder
Axis III: No diagnosis
Axis IV: Severity of Psychosocial Stressors: Severe, 4
Axis V: Global Assessment of Functioning: 35 - 40
Estimated Highest in Last Year: 35 - 40

DISCUSSION: I don't feel he is a high risk for suicide or self-harm nor violent acting out at this point in time. He seems to believe he has a good chance on appeal and is well-acquainted with the rigors of incarceration. He is, however, irritable and stressed with environmental stimuli, particularly noise from other inmates. He may represent at least a moderate risk for acting out.

PLAN:

1. Lithium 300 mg po tid. We briefly discussed side effects and irrationale with a therapeutic trial.
2. CBC Chem Profile TSH now Lithium level in one week.
3. Doxepin 50 mg po qhs.

Exhibit B

MENTAL HEALTH EVALUATION

NAME: BROWN, Cal C.
NO: 998921
DATE: May 4, 1995

Washington State Penitentiary
Ronald D. Page, Ph.D.
Clinical Psychologist

INTERVIEW IMPRESSION: Mr. Cal Brown, a 37-year-old Caucasian, was evaluated today approximately one year subsequent to his conviction for Aggravated First Degree Murder. Mr. Brown was referred for consideration of his suitability for placement in the Special Housing Unit.

This man was evaluated in TMU and correspondingly dressed in prison-issue overall and cuffed. He stands 5' 9" and weighs a moderately obese 230 pounds. He also maintains a long scraggly beard and lengthy coiffeur. Mr. Brown maintained sound eye contact and related in a hypomanic, affectively positive, and verbose way. He unleashed a fusillade of descriptors and spontaneous remarks in response to most questions but generally was manageable within the interview context. He seemed friendly, frank, open, and freely admitted culpability. Mr. Brown denied hallucinations and no idea of reference or delusion was elicited. He freely described a history of hypomania and rapid mood cycling, especially when off of psychotropics. On his current regimen of Lithium and Sinequan he apparently maintains fair emotional stability and sleeps satisfactorily. He denies depression, nervousness, and other subjective distress. Basically, Mr. Brown's stance with me was fatuously friendly and rather disarming as contrasted with his history of egregious offenses.

BACKGROUND INFORMATION: Mr. Brown was born and raised in San Jose, eldest of three siblings. His parents were divorced when he was two years of age, and he primarily was raised by his mother thereafter. In keeping with his many years of criminal entanglement, Mr. Brown lost contact with family members many years ago. In his words, "I pretty well burned my bridges."

This man's developmental years were characterized by what he now labels as Attention Deficit Disorder, and he correspondingly received counseling for extended periods as a child and adolescent. He discontinued schooling after the eleventh grade in 1978 and entered the military. His enlistment lasted only about four months, and he was granted an honorable discharge because of pre-existing hearing impediment. He had not been in trouble with juvenile legal authorities but initiated a criminal career of fairly consistent larcenous activity soon after his military discharge. He was employed on an intermittent basis between jail terms as a cook. Mr. Brown primarily spent his time in jails but also was held briefly in Chino, California in around 1979 or early

1980. In 1983 he was convicted of Attempted Assault and Second Degree Assault and spent eight years in the Oregon State prison system until his release in 1991. While imprisoned, he earned his GED as well as an AA. He had been in the community for less than two months when apprehended on the offenses which brought this incarceration. Indeed, as described within the file, the Aggravated First Degree Murder which he committed in Washington state included a sustained period of domination, torture, and sadism involving his female victim. The assault in California a few days later appears to have followed a similar pattern but ended prematurely when the woman escaped.

Mr. Brown has never married. He admits some heavy alcohol usage in his early adulthood but essentially denies difficulty with chemical dependency throughout most of his adulthood. Psychiatric care since adolescence primarily has involved psychotherapy and psychotropics since 1991. He has been maintained on his current psychotropic regimen for the past year or so.

Mr. Brown's adaptation to prison has been satisfactory in most respects. He committed one infraction in May of 1994, involving the stockpiling of his Sinequan prescription. Otherwise, he has been accountable, tractable, and relatively low-key. He now functions as a tier porter, a position which he acquired in November of 1994.

DIAGNOSTIC IMPRESSION: Mr. Brown may be categorized as follows:

Axis I - Sexual Sadism
Axis II - Antisocial Personality Disorder
Axis III - No significant current health concern
Axis IV - No significant stressor other than confinement
Axis V - GAF: 85

Mr. Brown is a nonpsychotic individual with a lengthy criminal history. He appears to have lacked frustration tolerance, impulse control, and motivation to delay gratification. His offenses reflect what he considers to have been a lifelong propensity for domination and control of women. It seems rather conservative to suggest that he may exhibit a rather prominent/profound anger problem relating to women, leading to the acts of sexual sadism as described in the central file. Certainly, his deliberate cruelty to the victims went far beyond necessity for larcenous gain or sexual satisfaction.

RECOMMENDATION: Despite this man's undeniably extreme danger at large from the standpoint of larcenous acting

NAME: BROWN, Cal C.
NO: 99RR21
DATE: May 4, 1995
Page 3

out and/or sexually assaultive potential, he may not represent an unreasonable risk for placement in the Special Housing Unit. He seems to have programmed fairly well at IMU and does not conspicuously embody dynamics which would disrupt adaptation to the Special Housing Unit. While I do not have reference material from his lengthy stay in the Oregon State system, I surmise that he did not present a significant problem beyond the usual acting out associated with emotional immaturity and egocentrism. Continued mental health follow-up and maintenance with psychotropics would seem to be warranted.

Ronald D. Page, Ph.D.
Clinical Psychologist

RDP:bt

cc: Central Records
Classification Counselor Sutton - IMU
Health Records

Exhibit C

PSYCHOLOGICAL REVIEW

BROWN, Cal - 998921
Date of Birth: 4/16/58
Age: 38

Evaluator: Ronald D. Page, Ph.D.
Clinical Psychologist
Evaluation Date: September 11, 1996

REASON FOR REFERRAL:

Mr. Cal Brown, a 38-year-old Caucasian, was evaluated today at the request of his counselor. I previously evaluated Mr. Brown under similar circumstances in May of 1995. During the interim, Mr. Brown has completed anger/stress management and now is participating in related counseling with Mr. Assink. The current referral requested my impression of any change in Mr. Brown's perspective as a result of mental health intervention of the past year.

BEHAVIORAL OBSERVATIONS:

Mr. Brown was interviewed at IMU in a visitation booth. He appeared much as I described him in my last report, dressed in prison-issue orange overalls and cleanly groomed. He continues to maintain a long scraggly beard and a neatly appointed coiffeur. As before, he related with clipped speech in a hypomanic way. He was rational, coherent, and appropriately responsive to all questions. Mr. Brown denied recent depression and anxiety but emphasized his ardent interest in transfer to the Special Housing Unit. He spoke appreciatively of his participation in anger/stress management and related enthusiastically his benefits from the sessions with Mr. Assink. He further was able to explain a rational emotive framework for mitigating his accustomed angry response to provocation. He cited anecdotal situations which convincingly portrayed his understanding of the material. Mr. Brown denied sleep disturbance, except for that related to the noise in IMU. He spoke with resignation and relative self confidence about his self-perceived ability to adjust to prison life, if he is spared the death penalty. He also fully acknowledged culpability for his offenses, stating, "It's all my fault." When asked if he had a sexual problem, he expounded philosophically on his presumed underlying motivations, explaining a "power control-anger" motivational underpinning for his sadistic murder of the victim in 1994.

BACKGROUND INFORMATION:

Little space in this report will reiterate material included in my evaluation of May 4, 1995. Most germane to the present examination is this man's criminal history, which has been extensive during recent years. He initially spent lengthy jail terms in Oregon for Assault with a Deadly Weapon, Forgery, and Theft. He later was imprisoned from 1983 through 1991 in Oregon for Second Degree Assault and Attempted First Degree Assault. Following his release from Oregon, he was confined in California for Armed Robbery, False

Imprisonment, Attempted Murder, Extortion, and other convictions. The crime of 1994 in this state for which he now is incarcerated was a particularly brutal, sustained, and sadistic sexual assault/murder. This man continues to labor under detainers to both Oregon and California.

In addition to his criminal involvement, Mr. Brown's overall lifestyle appears to have been one of underlying estrangement from meaningful interpersonal relationships. He has never married, has been nomadic, and has been avoidant of sustained problem solving in any given situation or location. He appears to have carried a marked underlying loathing and embitterment, presumably for himself and for others in general.

Since this man's confinement in IMU, he has performed satisfactorily within the limitations of that setting. His last infraction was in 1994. As mentioned above, he most recently has completed anger/stress management and continues to work with mental health personnel on his temper and self-perception. He now is medicated with Doxepin and Lithium, which further mitigates his tendency to hypomania and short-fused reactivity to provocation. The Doxepin assists him with sleep as well.

CONCLUSIONS:

Mr. Brown's prior diagnostic categorizations as enumerated in the medical folder probably may stand without correction. He certainly seems to exhibit Bipolar features and continued hypomania even on his current dosage of psychotropics. While he has been an assaultive and larcenous risk in the community for many years, he apparently responds favorably to the structure and routinization of imprisonment. To my knowledge, he was not an unreasonable threat to the orderly operation of the Oregon State Penitentiary during his lengthy stay there. His self-stated plan for the future is to survive in prison and to create some semblance of a "normal life" in the Special Housing Unit if possible. During the past year, he appears to have understood if not assimilated a rational emotive philosophy for reducing his previously established meager angry reaction to thwarting or provocation. As such, I cite no psychological contraindication to his favorable consideration for transfer from IMU to the Special Housing Unit, assuming continued freedom from infractions and overall cooperation with correctional staff. Obviously, considering his extensive record of assaultiveness in various contexts, he realistically should be considered to be a potentially high risk of violence/escape in any situation affording the ready expression of these potentials.

Ronald D. Page, Ph.D.
Clinical Psychologist

RDP:bt

cc: Central Records
Classification - Headquarters
Health Records

Exhibit D

PSYCHIATRIC NOTE

NAME:	BROWN, Cal	IMU-N
NO:	998921	Washington State Penitentiary
DATE:	July 16, 2009	David G. Grubb, M.D.
DOB:	04/16/1958	

Page 1 of 1

S: "I've got legal assignment, I'm fine."

O: Last recent appeal about lethal injection procedures. Eager to leave. See recent mental health please. Seems stable.

A: Bipolar disorder more or less stable.

P: Continue Depakote 1000 b.i.d. Return in three months.

DGrubb-M7

DGG:rke
D: 07/16/09
R: 07/17/09
T: 08/03/09

David G. Grubb, M.D.
Psychiatrist

Exhibit E

DECLARATION OF GEORGE W. WOODS, JR., M.D.

I, George W. Woods, M.D., declare as follows:

1. I was asked to review records and conduct an evaluation at the request of counsel representing Cal Coburn Brown to determine:

a. Whether Mr. Brown currently suffers from a mental disease or defect; and, if he does,

b. Is that mental disease being treated and/or managed with the use of medication;

c. Whether Mr. Brown suffered from that same mental disease at the time of his crime and trial; and, if so,

d. Whether, at the time of Mr. Brown's crime, the use of appropriate medications would have helped treat his mental illness.

2. In response, I offer the following opinions, which I hold to a reasonable degree of medical certainty:

a. Mr. Brown suffers from a serious mood disorder, namely bi-polar disorder;

b. Mr. Brown suffered from this mental disorder at the time of his crime;

c. In fact, Mr. Brown suffered from this mental disorder long before his crime;

d. Mr. Brown's clinical history reflects that he has responded well to medication, including lithium and depakote (valproic acid);

e. Significantly, for over 15 years the Washington Department of Corrections has been treating Mr. Brown with medication in order to control his mood disorder. The medical personnel at the Department of Corrections would not have instituted and continued this course of treatment for so many years if it was not medically appropriate and effective. As recently as July 16, 2010, Mr. Brown was diagnosed by a DOC physician, Dr. Grubb, as suffering from "bipolar disorder, more or less stable" and requiring medication.

f. Any claim that mood stabilizing drugs like lithium or depakote do not have or would not have a positive and stabilizing effect on Mr. Brown is unfounded and contrary to a voluminous amount of evidence;

g. To the contrary, from the time that Mr. Brown was first started on lithium (while in the Oregon prison system) until the present he has responded well to medications.

3. In sum, it is reasonably medically certain—indeed, from the available evidence it is certain—that Mr. Brown suffers now and suffered at the time of his crime from a serious mood disorder—one that has been successfully managed through the use of psychotropic medication.

QUALIFICATIONS

4. I am a licensed physician specializing in psychiatry and neuropsychiatry. I currently maintain a private practice focusing on neuropsychiatry, psychopharmacology, workplace safety, and forensic consultations.

5. I am a Fellow of the American Psychiatric Association, and a member of the California Psychiatric Association and the Northern California Psychiatric Association. I am also a member of the American Neuropsychiatric Association, the American Psychological Association, the American Society of Addiction Medicine and the Black Psychiatrists of America.

6. I am Secretary General of the International Academy of Law and Mental Health, where I am a member of the Scientific and Executive Committees. I also serve on the Advisory Board of the Center for African Peace and Conflict Resolution, California State University, Sacramento, California; and the Global Advisory Board for Humiliation and Dignity Studies, Trondheim University, Norway, and Columbia University, New York, New York.

7. I received my bachelor's degree from Westminster College in Salt Lake City, Utah, in 1969; and was awarded my medical degree from the University of Utah in 1977. I then completed a rotating medical internship at Alameda County Medical Center (Highland Hospital), in Oakland, California, which included internal medicine, surgery, orthopedic surgery, Emergency Medicine, and Obstetrics/Gynecology. In 1981, I completed my psychiatric residency at the Pacific Medical Center in San Francisco, California, where I served as Chief Resident my senior year. During my psychiatric residency, I pursued specialized neurological electives at Kaiser Permanente Hospital, Oakland, California. These electives consisted of extended, three month clerkships, in which I was assigned to the Neurology department, conducting neurological examinations and diagnosing neurological disorders, including movement disorders, headache disorders and central nervous dysfunctions, among others.

8. In 1982, I then participated in a National Institute of Mental Health/American Psychiatric Association Fellowship, during which I developed the first medical/psychiatric unit at Pacific Presbyterian Hospital. This unit administered to patients with either medical illnesses that had psychiatric manifestations or psychiatric patients with severe medical illness that could not be treated effectively on regular medical units. The focus of my Fellowship was Geriatric Psychopharmacology, the study of medication use with elderly populations. Geriatric Psychopharmacology, however, is an extremely valuable approach to the study of psychopharmacology in general. The medical/psychiatric/neurological/pharmacological training and experience I gained during this period proved relevant to other patient populations, particularly forensic populations, who experience a higher incidence and greater interaction of

drug, mental and neurocognitive problems than the general population. Following the completion of my Fellowship, I become the Director of Outpatient Geriatric Services for the San Francisco Family Services Agency. In that capacity, I conducted home visits with elderly patients who manifested psychiatric symptoms. Medical examinations and neurological intervention were frequently required.

9. From 1983 through 1990, I provided neuropsychiatric care at Crestwood Manor, Vallejo, California, a long-term psychiatric facility, dedicated to treating severely ill patients. Many of these patients came from state hospitals with atypical presentations and the diagnosis of mental retardation. Atypical presentation of psychiatric symptoms is common among forensic populations as well, particularly in areas that may lack community mental health services and or widespread availability of intensive treatment. Many of these patients Many of Crestwood's clients also had multiple, co-occurring disorders that required an understanding of pharmacology, neurology, and psychiatry, as noted by the American Neuropsychiatric Association.

10. From 1989 to 1994, I served as Clinical Director of the New Beginnings Chemical Dependency Program, an inpatient substance abuse detoxification and rehabilitation center housed at Doctors Hospital in Pinole, California. In 1994, I was appointed as Senior Consulting Addictionologist by Doctors Hospital, and oversaw complex withdrawals and detoxifications, and developed research protocols for the use of new medications for opiate withdrawals and sedation in the intensive care units. During my tenure, New Beginnings evolved into program that treated patients with what are called co-occurring disorders, meaning persons who have multiple psychiatric disorders – which is the norm, rather than unusual. Many persons with neuropsychiatric disorders attempt to self-medicate their symptoms.

11. The clinical facilities at Doctors Hospital afforded access to a Single Photon Emission Computerized Tomography (SPECT), which was utilized to determine brain function. My neuroimaging experience also includes the study of Magnetic Resonance Imagining (MRI) and Cathode Scans (CT), focusing on the different uses of structural imaging and functional imaging, like the SPECT and the Positive Emission Tomography (PET). From 1990 through 1995, I also served as the Coordinator and Psychiatric Consultant to the Insomnia Division of the Doctors Hospital Sleep Disorders Center. The assessment of sleep disorders, the evaluation of disorders in the architecture of sleep, is a seminal component of diagnosing medical illness and psychiatric disorders, and formulating appropriate pharmacological interventions. Sleep disruption is frequently the first overt symptom of an underlying medical, neurological, or psychiatric disorder. Disruption of sleep can be found in almost all psychiatric disorders. Impairment of normal sleep patterns is also often a contributing cause of and exacerbated by substance abuse.

12. In 1991, I was retained by Neurocare Corporation, a treatment facility in Concord, California, specializing in head-injury and neurological disorders, to work with neurologically impaired individuals who had psychiatric manifestations of their cognitive impairments. The

facility was a multidisciplinary environment in which the treatment team consisted of neurologists, neuropsychiatrists, neuropsychologists, and social workers. Treating physicians required an intimate knowledge of brain/behavior relationships in order to avoid misdiagnosis of atypical symptom presentations.

13. In 1992, I received my board certification in psychiatry by the American Board of Psychiatry and Neurology. I joined the faculty of the University of California, Davis, Medical School, Department of Psychiatry, in 1996. For the next four years, I taught Forensic Psychiatry and Criminal Responsibility to psychiatrists in the Postgraduate Forensic Fellowship.

14. In 1998, at the request of Kenyan and Tanzanian Medical Societies, I assisted their nations in developing mental health delivery services after the Kenyan/Tanzanian Embassy bombings. The initial focus of the project centered on the acute trauma suffered by survivors and families of those killed and injured in the bombing. Appropriate diagnosis and treatment for trauma survivors required assessment of and treatment for pre-existing psychiatric and neurologic disorders and an appreciation of the consequences of chronic exposure to trauma that predated the bombings.

15. I am currently an Adjunct Professor on the faculty of Morehouse School of Medicine, Department of Psychiatry, in Atlanta, Georgia, where I teach courses in Clinical Aspects of Forensic Psychiatry to third and fourth year residents. I am also on the Faculty of the Department of Educational Leadership and Public Policy, California State University, Sacramento, California.

16. My clinical private practice is based in Oakland, California. I have been qualified and testified as an expert in numerous civil and criminal cases in state and federal courts.

CLINICAL IMPRESSIONS AND SUPPORTING INFORMATION

17. Mr. Brown suffers from an Axis I mood disorder. He presents with a lengthy history that is completely consistent with bi-polar disorder.

18. The fact that Mr. Brown suffers from a serious mood disorder is, in my opinion, a fact that I would not expect a psychiatrist who reviewed Mr. Brown's history to dispute.

19. Ample anecdotal and congruent documentary evidence confirm that Mr. Brown's mental disorders and defects pre-existed the date of his offense and his trial. Because time is short, this declaration sets forth only some of the salient facts. I can, of course, expand this declaration if given more time or testify in support, if permitted by the Court.

20. Cal Brown was born April 16, 1958 near San Jose, California. The delivery was complicated. Reports of his infancy and early childhood describe Mr. Brown as a "very agitated baby" and as "out of bounds." Brown was seeing mental health counselors by the first or second

grade. Evidence suggests family members rejected him and that teachers observed aggression by the age of eight.

21. While in prison in 1985, mental health professionals diagnosed Brown as suffering from a "mood disorder" and prescribed lithium. As I understand it, Mr. Brown filed a lawsuit in order to compel treatment by state officials. In any event, Mr. Brown took lithium for about 5 or 6 months before his release from the Oregon State Prison. After his release, Mr. Brown left Oregon, failed to take his medication, and went to California, where he visited his sister (Heidi Tetz). Ms. Tetz's description of Mr. Brown is entirely consistent with mania ("wild," pressured speech, and "way out.")

22. After Mr. Brown was sentenced to death, a psychiatric evaluation was performed by Dr. Tim McBath at the Washington State Penitentiary (WSP). Dr. McBath's evaluation drew from several sources. Dr. McBath concluded: "Probable Bipolar Disorder with history of at least hypomanic and possibly manic episodes. Currently exhibiting hypomanic symptoms...Antisocial Personality Disorder." Dr. McBath's treatment plan included: (1) Lithium 300 mg (2) CBC Chem Profile (3) Doxepin 50 mg.

23. A second psychiatric evaluation of Mr. Brown was performed in 1994 at WSP by Dr. Carl Baum. The evaluation noted that Brown had been taking lithium, but further noted that he nevertheless "appears hypomanic." Dr. Baum's diagnosis included the notation: "Rule out Atypical Bipolar Affective Disorder" Dr. Baum's treatment plan appropriately suggested increased doses of lithium and the monitoring of his blood levels.

24. A third evaluation was conducted in 1995, by Dr. Ronald Page, a clinical psychologist employed by the State of Washington Department of Corrections. Dr. Page's evaluation confirms Brown's continued use of lithium and sinequan and acknowledges that under the current regiment Brown maintains fair emotional stability and sleeps satisfactorily. Further, Page's evaluation acknowledges that Brown's adaption to prison has been satisfactory, committing one infraction of stockpiling sinequan. Dr. Page concluded that the continued use of psychotropic drugs was warranted.

25. Dr. Page conducted a follow up evaluation on September 11, 1996. That evaluation confirms Brown's continued use of doxepin, depakote, and lithium, "which further mitigates his tendency to hypomania and short-fused reactivity to provocation. The Doxepin assists him with sleep as well." Additionally, the evaluation concludes that Brown continues to exhibit bipolar features and continued hypomania even on the current dosage of medication. This is significant because Mr. Brown continues to exhibit symptoms of hypomania today, including sleep disruption, irritability, pressured speech and flight of ideas.

26. Department of Corrections records further reveal that Mr. Brown has continued on mood stabilizing, psychotropic medications.

MEDICOLEGAL FINDINGS

27. I hold the foregoing opinions to a reasonable degree of medical certainty, and if called as a witness, I would and could testify truthfully to the opinions set forth above.

28. The evidence is overwhelming that Mr. Brown suffers from a serious mood disorder.

29. In addition to the numerous times that Mr. Brown has exhibited the signs and symptoms of mania (which are amply described in Mr. Brown's history), the simple fact that he has been treated with mood stabilizing, psychotropic medications for nearly two decades can only lead to the conclusion expressed above.

30. Asserting that Mr. Brown does not now or did not at the time of his crime and trial suffer from a serious mood disorder which can be effectively controlled through the proper use of medication is contrary to the overwhelming weight of the evidence.

31. This is not only my opinion; it is the opinion of the psychologists and psychiatrists employed by the State of Washington who were charged with treating Mr. Brown while imprisoned since the early 1990's. It was also the opinion of the individual who treated Mr. Brown during his imprisonment in Oregon.

32. If anyone suggested at Mr. Brown's trial that he did not suffer from a serious mental disorder—one that could be effectively treated with psychotropic medications—history has clearly proven that suggestion to be completely incorrect, to a reasonable medical certainty.

33. Mr. Brown's medical disorder is such that, without medication during his entire period of imprisonment, there is a reasonable likelihood that, if not medicated by state actors, Mr. Brown would, again, suffer from symptoms of mood disruption of psychotic proportions which may impair his capacity to rationally understand the reason for his execution. I believe that a qualified physician familiar with Mr. Brown's diagnosis and history and involved in his treatment would confirm that likelihood. Indeed, I believe that the sole reason Mr. Brown is medicated is to control his mental disorder and prevent such decompensation. I have separately rendered opinions on that issue in another declaration signed this date.

I declare under the penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and was executed on

September 3rd, 2010.

George W. Woods, Jr., M.D.

DECLARATION OF GEORGE W. WOODS, JR., M.D.

I, George W. Woods, M.D., declare as follows:

1. I am a licensed physician specializing in psychiatry and neuropsychiatry. I currently maintain a private practice focusing on neuropsychiatry, psychopharmacology, workplace safety, and forensic consultations. My *vitae* is attached.

2. As a forensic neurpsychiatrist, I am familiar with the legal standards relating to "incompetency" or "insanity" at the time of execution, as discussed in the leading federal and state cases.

3. I was asked to conduct an evaluation at the request of counsel representing Cal Coburn Brown to determine Mr. Brown's current mental state as it relates to his "competence" in light of his imminent execution date. Because time is short, I have set forth the essence of my opinion. If given more time, I could expand on this opinion orally or in writing.

4. I offer the following opinions, which I hold to a reasonable degree of medical certainty:

a. Mr. Brown suffers from a serious and severe mental disease or disorder. He has a lengthy history of bi-polar disorder. There are many instances in his life where he experienced mania. On several occasions, he has experienced psychosis.

b. But for the psychotropic medications that have been administered to Mr. Brown by the State of Washington Department of Corrections during his entire period of imprisonment, there is a reasonable likelihood that, if not medicated by state actors, Mr. Brown would, again, suffer from symptoms of mood disruption, including both mania and/or depression. Mr. Scott has experienced both depression and mania of psychotic proportions. These disruption of Mr. Brown's mood may impair his capacity to rationally understand the reason for his execution due to his severe mental illness.

c. Mr. Brown continues to have symptoms of hypomania. In my telephone interview, Mr. Brown described difficulty sleeping that keeps him awake several times per week. His speech continues to be pressured, and he was grandiose. These symptoms exist even when he has been medicated for decades.

I declare under the penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and was executed on

__September 3rd, 2010.

_George W. Woods, Jr., M.D.

EXHIBIT 8

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: (Name, DOC#, DOB) BROWN, CAL 998921 04/16/1958

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 07/20/2010

☐ AD SEG ☒ IMU ☐ _____

PULHES Changed? ☒ No ☐ Yes Current S Code: 4

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought: ☒ Normal	☐ Delusions (check type below):			
		☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought: ☒ Well organized	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
		☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception: ☒ Normal	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
		☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect: ☒ Normal	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
		☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood: ☒ Normal	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
		☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
P is compliant with his medications prescribed at this time.

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

Sleep:	☒ Normal	☐ Hypersomnia	☐ Insomnia	☐ Disturbance: _____
Appetite:	☒ Normal	☐ Increased	☐ Decreased	
Weight:	☒ Normal	☐ Weight gain	☐ Weight loss	

Comments: P seems to be programming well in IMU.

5. Diagnostic Impression:

Axis I: _____ Axis IV: _____
Axis II: _____ Axis V (GAF): _____
Axis III: _____ Maximum GAF within past year: _____
Comments: None at this time.

6. Referral: None at this time.

7. During interview, displayed SMI symptoms? ☒ No ☐ Yes

Interviewer (Print or Stamp): Amy Evensen, Psych Associate Signature: _____

State law (RCW 70.02; RCW 70.24.105; RCW 71.05.390) and/or federal regulations (42 CFR Part 2; 45 CFR Part 164) prohibit disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law.

EXHIBIT 8

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: BROWN, CAL
(Name, DOC#, DOB) 998921 04/16/1958

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 01/08/2009

☐ AD SEG ☒ IMU ☐ _____

PULHES Changed? ☒ No ☐ Yes Current S Code: 3

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought: ☒ Normal	☐ Delusions (check type below):			
		☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought: ☒ Well organized	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
		☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception: ☒ Normal	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
		☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect: ☒ Normal	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
		☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood: ☒ Normal	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
		☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
No issues

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

Sleep: ☒ Normal ☐ Hypersomnia ☐ Insomnia ☐ Disturbance: _____

Appetite: ☒ Normal ☐ Increased ☐ Decreased

Weight: ☒ Normal ☐ Weight gain ☐ Weight loss

Comments:

5. Diagnostic Impression:

Axis I: _____ Axis IV: _____

Axis II: _____ Axis V (GAF): _____

Axis III: _____ Maximum GAF within past year: _____

Comments: Offender Brown presented as well groomed and interacted appropriately with staff. He protested the fact that all death row offenders were moved to IMU--but he made his protest appropriately and explained his points clearly. No indication of emotional or cognitive distress.

6. Referral:

7. During interview, displayed SMI symptoms? ☒ No ☐ Yes

Interviewer (Print or Stamp): Peter Beck, Psychology Associate Signature: _____

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: BROWN, CAL
(Name, DOC#, DOB) 998921 04/16/1958

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 02/05/2009

☐ AD SEG ☒ IMU ☐ _____

PULHES Changed? ☒ No ☐ Yes Current S Code: 3

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought:	☐ Delusions (check type below):			
	☒ Normal	☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought:	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
	☒ Well organized	☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception:	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
	☒ Normal	☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect:	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
	☒ Normal	☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood:	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
	☒ Normal	☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
No issues

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

Sleep: ☒ Normal ☐ Hypersomnia ☐ Insomnia ☐ Disturbance: _____
Appetite: ☒ Normal ☐ Increased ☐ Decreased
Weight: ☒ Normal ☐ Weight gain ☐ Weight loss
Comments:

5. Diagnostic Impression:

Axis I: _____ Axis IV: _____
Axis II: _____ Axis V (GAF): _____
Axis III: _____ Maximum GAF within past year: _____

Comments: Offender Brown presented without indication of emotional or cognitive distress. He discussed his frustration with the system and then wished the committee a non-confrontational day.

6. Referral:

7. During interview, displayed SMI symptoms? ☒ No ☐ Yes

Interviewer (Print or Stamp): Peter Beck, Psychology Associate Signature: _____

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: BROWN, CAL
(Name, DOC#, DOB) 998921 04/16/1958

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 02/27/2009

☐ AD SEG ☒ IMU ☐

PULHES Changed? ☒ No ☐ Yes Current S Code: 3

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought: ☒ Normal	☐ Delusions (check type below):			
		☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought: ☒ Well organized	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
		☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception: ☒ Normal	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
		☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect: ☒ Normal	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
		☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood: ☒ Normal	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
		☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
No issues

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

Sleep: ☒ Normal ☐ Hypersomnia ☐ Insomnia ☐ Disturbance:

Appetite: ☒ Normal ☐ Increased ☐ Decreased

Weight: ☒ Normal ☐ Weight gain ☐ Weight loss

Comments:

5. Diagnostic Impression:

Axis I: _____ Axis IV: _____

Axis II: _____ Axis V (GAF): _____

Axis III: _____ Maximum GAF within past year: _____

Comments: Offender Brown talked resignedly about his frustration with DOC and the clock winding down toward his execution. He felt that many of the little rules governing life in IMU were unnecessary and did not make sense. He presented with no indication of acute emotional or cognitive distress.

6. Referral:

7. During interview, displayed SMI symptoms? ☒ No ☐ Yes

Interviewer (Print or Stamp): Peter Beck, Psychology Associate Signature: [signature]

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: (Name, DOC#, DOB) BROWN, CAL 998921 04/16/1958

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 06/02/2009

☐ AD SEG ☒ IMU ☐ ___ | PULHES Changed? ☒ No ☐ Yes Current S Code: 3

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought: ☒ Normal	☐ Delusions (check type below):			
		☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought: ☒ Well organized	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
		☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception: ☒ Normal	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
		☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect: ☒ Normal	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
		☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood: ☒ Normal	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
		☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
No issues

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

~~Sleep: ☒ Normal ☐ Hypersomnia ☐ Insomnia ☐ Disturbance: ___~~

Appetite: ☒ Normal ☐ Increased ☐ Decreased
Weight: ☒ Normal ☐ Weight gain ☐ Weight loss
Comments:

5. Diagnostic Impression:

Axis I: ___ Axis IV: ___
Axis II: ___ Axis V (GAF): ___
Axis III: ___ Maximum GAF within past year: ___

Comments: Offender asked about pillow cases for the pillows that the death row prisoners recently received. He also asked about re-doing the store list. He presented with no indication of acute emotional or cognitive distress.

6. Referral:

~~7. During interview, displayed SMI symptoms? ☒ No ☐ Yes~~

Interviewer (Print or Stamp): Peter Beck, Psychology Associate Signature: [signature]

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STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

OFFENDER I.D. DATA: BROWN, CAL
(Name, DOC#, DOB) 998921 01/01/2001

MENTAL STATUS EXAMINATION

FACILITY: WSP DATE: 10/22/2009

☐ AD SEG ☒ IMU ☐ _____

PULHES Changed? ☒ No ☐ Yes Current S Code: 3

1. Primary Observations:

A)	Appearance:	☒ Neatly groomed	☐ Acceptable	☐ Disheveled	☐ Poor hygiene	
B)	Oriented:	☒ Time	☒ Place	☒ Person	☒ Situation	
C)	Eye Contact:	☒ Good	☐ Fair	☐ Poor		
D)	Cooperation:	☒ Cooperative	☐ Acceptable	☐ Manipulative	☐ Suspicious	☐ Uncooperative
E)	Speech (rate):	☒ Normal	☐ Accelerated	☐ Retarded	☐ Pressured	☐ Poverty
			☐ Audible	☐ Inaudible	☐ Dysarthric	☐ Incoherent
F)	Attention:	☒ Normal	☐ Distractible	☐ Unfinished tasks	☐ Poor concentration	

2. Symptoms—Psychological Processes:

A)	Content of thought: ☒ Normal	☐ Delusions (check type below):			
		☐ Thought broadcasting	☐ Being controlled	☐ Nihilistic	☐ Somatic
		☐ Thought withdrawal	☐ Markedly illogical	☐ Persecutory	☐ Reference
B)	Form of thought: ☒ Well organized	☐ Loosening of associations	☐ Flight of ideas	☐ Racing thoughts	☐ Neologisms
		☐ Poverty of content of speech	☐ Perseverations	☐ Blocking	☐ Clanging
C)	Perception: ☒ Normal	☐ Hallucinations (check type):	☐ Auditory	☐ Visual	☐ Tactile
		☐ Gustatory	☐ Olfactory	☐ Somatic	☐ Hypersensitivity
D)	Affect: ☒ Normal	☐ Inappropriate	☐ Constricted	☐ Blunted	☐ Flat
		☐ Labile	☐ Pressured	☐ Driven	☐
E)	Mood: ☒ Normal	☐ Anxious	☐ Irritable	☐ Angry	☐ Hostile
		☐ Sad	☐ Depressed	☐ Withdrawn	☐
		☐ Elated	☐ Euphoric	☐ Expansive	☐

3. Current Medication and Compliance:
No issues

4. Behaviors:

☐ Current suicidal ideation ☐ Current suicide attempt ☐ Current assaultive ideation
☐ Current suicide plan ☐ Current suicide command hallucinations ☐ Current assault command hallucinations
☐ History of suicidal ideation ☐ History of suicide attempt ☐ History of assaultive ideation

Sleep: ☒ Normal ☐ Hypersomnia ☐ Insomnia ☐ Disturbance: _____
Appetite: ☒ Normal ☐ Increased ☐ Decreased
Weight: ☒ Normal ☐ Weight gain ☐ Weight loss
Comments:

5. Diagnostic impression:

Axis I: _____ Axis IV: _____
Axis II: _____ Axis V (GAF): _____
Axis III: _____ Maximum GAF within past year: _____

Comments: P interacted appropriately. He discussed his court case, his wish to be back in Unit 5 and his medications. No indication of emotional or cognitive distress.

6. Referral:

~~7. During interview, displayed SMI symptoms? ☒ No ☐ Yes~~

Interviewer (Print or Stamp): Peter Beck, Psychology Associate Signature: _____

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EXHIBIT 9

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT, v. CAL COBURN BROWN, APPELLANT.	)	**ORDER** Supreme Court No. 85045-3 King County No. 91-1-03233-1 SEA

This matter came before the Court on its September 9, 2010, En Banc Case Conference, and the Court having unanimously determined that Appellant Brown has not made the showing required to justify relief sought:

FILED SUPREME COURT STATE OF WASHINGTON SEP 9 PM 1:48 BARBARA R. CARPENTER CLERK

Now, therefore, it is hereby ordered that:

(1) the motion for discretionary review is denied and;

(2) the emergency motion to stay is also denied.

DATED at Olympia, Washington this 9th day of September, 2010.

For the Court,

Madsen, C.J.
CHIEF JUSTICE

593/185

EXHIBIT 9