Jon M. Sands
Federal Public Defender
District of Arizona
Cary Sandman (AZ Bar No. 004779)
Amanda C. Bass (AL Bar No. 1008H16R)
Eric Zuckerman (PA No. 307979)
Assistant Federal Public Defenders
850 West Adams Street, Suite 201
Phoenix, Arizona 85007
cary_sandman@fd.org
amanda_bass@fd.org
eric_zuckerman@fd.org
602.382.2734 Telephone
602.382.2800 Facsimile

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Clarence Wayne Dixon, Petitioner, vs. David Shinn, et al., Respondents.	No. CV-14-258-PHX-DJH DEATH-PENALTY CASE

State Court Record
Arizona Supreme Court, No. CV-22-0117
Petition for Special Action and Appendix Volume 1

Arizona Supreme Court

Civil Special Action

CV-22-0117-SA CLARENCE WAYNE DIXON v HON. ROBERT OLSON/STATE

Appellate Case Information

Case Filed: 7-May-2022

Case Closed:

Dept/Composition

Side 1. CLARENCE WAYNE DIXON, Petitioner

(Litigant Group) CLARENCE WAYNE DIXON

Attorneys for: Petitioner

Cary S Sandman, Esq. (AZ Bar No. 4779)

Amanda Bass, Esq. (AL Bar No. ALBASS)

Eric Zuckerman, Esq. (UT Bar No. UTZuckerman)

Jon M Sands, Esq. (AZ Bar No. 10441)

Side 2. THE HONORABLE ROBERT CARTER OLSON, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal, Respondent Judge

(Litigant Group) THE HONORABLE ROBERT CARTER OLSON, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal

Attorneys for: Respondent Judge

Robert Carter Olson, Esq. (AZ Bar No. 12836)

Side 3. STATE OF ARIZONA, Real Party in Interest

(Litigant Group) STATE OF ARIZONA

Attorneys for: Real Party in Interest

Jeffrey L Sparks, Esq. (AZ Bar No. 27536)

Colleen Clase, Esq. (AZ Bar No. 29360)

CASE STATUS

May 7, 2022.....Pending

PREDECESSOR CASE(S)		Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
PIN	S1100CR202200692					

3 PROCEEDING ENTRIES

1.	7-May-2022	FILED: Petition for Special Action Pursuant to A.R.S 13-4022(I); Certificate of Compliance (Petitioner Dixon)
2.	7-May-2022	FILED: Appendix to Petition for Special Action (Volumes I-III); Certificate of Service (Petitioner Dixon)
3.	8-May-2022	FILED: Crime Victim's Response to Petition for Special Action Pursuant to A.R.S. 13-4022(I); Certificate of Service; Certificate of Compliance; Crime Victim's Notice of Appearance under A.R.S. 13-4437(A) (Crime Victim)

Information presented in this document may not reflect all case activity and is subject to change without notice.

ARIZONA SUPREME COURT

CLARENCE WAYNE DIXON, Petitioner, vs. THE HONORABLE ROBERT CARTER OLSON, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal, Respondent Judge, STATE OF ARIZONA, Real Party in Interest.	Case No. _____ Pinal County Superior Court Case No. S1100CR202200692 Maricopa County Superior Court Case No. CR2002-019595 Arizona Supreme Court Case No. CR-08-0025-AP **(Capital Case)** **(Expedited Ruling Requested)**

PETITION FOR SPECIAL ACTION PURSUANT TO A.R.S. § 13-4022(I)

Jon Sands
Federal Public Defender

Cary Sandman (AZ Bar No. 004779)
*Amanda C. Bass (AL Bar No. 1008H16R)
*Eric Zuckerman (PA Bar No. 307979)
Assistant Federal Public Defenders
407 W. Congress, Suite 501
Tucson, Arizona 85701
(602) 382-2816 (telephone)
(602) 382-2801 (facsimile)

**Admitted pro hac vice*

Counsel for Clarence Wayne Dixon

I. Introduction

Petitioner Clarence Wayne Dixon, through undersigned counsel, seeks this Court's special action review of the Pinal County Superior Court's May 3, 2022 Order finding him mentally competent to be executed. The record developed at the May 3, 2022 evidentiary hearing on Mr. Dixon's claim that he is mentally incompetent to be executed consisted of uncontroverted medical evidence that Mr. Dixon experiences delusions about the reasons for his execution, a result of his paranoid schizophrenic illness, that renders him mentally incompetent to be executed under *Panetti v. Quarterman*, 551 U.S. 930 (2007).

Over the span of three decades, Mr. Dixon has been unable to overcome his psychotically driven belief that all levels of the state and federal judiciary, including members of this Court, have conspired to deny him relief on a claim that the Northern Arizona University ("NAU") police department lacked authority to investigate, arrest, and collect his DNA in an unrelated 1985 criminal case.[1] Since 1991, Mr. Dixon has prepared an unending stream of pro se filings on this issue, fired his lawyers in the capital murder case so that he could continue to pursue this issue, and more recently has filed judicial complaints seeking disbarment of this Court's members based on his belief that they are involved in an "extrajudicial

[1] Mr. Dixon was never arrested by the NAU police, and his DNA was collected by the Arizona Department of Corrections.

killing, an illegal and immoral homicide created in the name [of] and for the people of Arizona." (AppV1 123.)

The Superior Court correctly found that Mr. Dixon proved he suffers from a longstanding schizophrenic illness. (AppV1 34.) However, by ignoring or failing to apprehend uncontroverted medical evidence, the Superior Court erroneously concluded that Mr. Dixon's evidence fell short of proving either by a preponderance or by clear and convincing evidence that he experiences delusions or that he is mentally incompetent for execution. (AppV1 37.) In so finding, the Superior Court abused its discretion.

First, the record developed at the May 3, 2022 evidentiary hearing demonstrates that the Superior Court's factual findings are clearly erroneous. And second, the Superior Court misapplied and therefore violated *Panetti* when it relied on constitutionally insufficient indicia of Mr. Dixon's *awareness* of the crime for which he was sentenced to death and his *awareness* of his scheduled execution as proof of his rational understanding of his execution's meaning and purpose. The Superior Court's reasoning was soundly rejected in *Panetti*, which held the awareness standard constitutionally deficient and set forth a test for mental incompetency that requires delusions to be assessed within the framework of the psychotic illness giving rise to them. The Superior Court failed to do that.

The Court should thus grant Mr. Dixon's Petition for Special Action review and reverse.

II. Jurisdictional Statement

This Court has jurisdiction under A.R.S. § 13-4022 which provides that "[w]ithin five days after the superior court . . . rules whether the prisoner is competent, a party may file with the Arizona supreme court a petition for special action to obtain review of the superior court's decision." A.R.S. § 13-4022(I).

III. Statement of the Issues

1. Did the Superior Court abuse its discretion in finding Mr. Dixon mentally competent to be executed?

2. Do Mr. Dixon's schizophrenia-induced delusions prevent him from rationally understanding the meaning and purpose of his execution?

IV. Statement of Material Facts

i. The pre-hearing process

Petitioner Clarence Wayne Dixon is scheduled to be executed on May 11, 2022. (AppV1 6.) On April 8, 2022, Mr. Dixon filed a Motion to Determine Mental Competency to be Executed in the Pinal County Superior Court wherein he argued that expert evidence established that he "is presently unable to form a rational understanding of the State's reason for his execution rendering him incompetent to be executed[]" under the Eighth Amendment to the U.S. Constitution. (AppV1 13.)

That same day, the Superior Court found that Mr. Dixon demonstrated his entitlement to a hearing under A.R.S. § 13-4022, *Ford v. Wainwright*, 477 U.S. 399 (1986), and *Panetti v. Quarterman*, 551 U.S. 930 (2007), and scheduled that hearing for May 3, 2022. (AppV1 26–27.)

The State petitioned this Court for special action relief from the Superior Court's grant of a hearing on Mr. Dixon's Eighth Amendment claim (Pet. for Special Action, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 13, 2022), Doc. 1) and, after the matter was fully briefed (Resp. in Opp. to Pet. for Special Action, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 18, 2022), Doc. 5; Reply in Supp. of Pet. for Special Action, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 21, 2022), Doc. 8), this Court remanded the matter to the Superior Court with instructions "to reconsider its ruling in light of the response and reply" filed by the parties (Order, No. CV-22-0092-SA, *State v. Hon. Robert Carter Olson* (Ariz. April 25, 2022), Doc. 10). On April 27, 2022, the Superior Court did so and reaffirmed its grant of a hearing. (AppV1 29–32.)

On April 26, 2022, the parties filed the reports of their respective experts with the Superior Court. Mr. Dixon's expert, Lauro Amezcua-Patino, M.D., answered two referral questions: first, as a result of longstanding schizophrenic illness, "[i]s Clarence's mental state so distorted, or his concept of reality so impaired, that he

lacks a rational understanding of the State's rationale for his execution?"; and second, "[d]oes Clarence's mental illness prevent him from rationally understanding the relationship between his crime and the punishment, or from grasping the societal values the State seeks to vindicate through his execution resulting from the severity of the crime?" (AppV1 262.) Dr. Amezcua-Patino determined that Mr. Dixon, as someone with paranoid schizophrenia, "is disconnected from reality, especially as it relates to his legal case." (AppV1 263.) He explained:

> [Clarence's] visual, auditory, and tactile hallucinations further aggravate his detachment from reality. Clarence's thought process is contaminated by concrete thinking, which is common in those diagnosed with schizophrenia. Clarence's concrete thinking causes him to fixate on an issue that limits his ability to abstractly consider the societal values the State seeks to vindicate through his execution. This results in his inability to form a rational understanding of the State's reasons for his execution.
>
> Clarence holds a fixed delusional belief that his incarceration, conviction, and forthcoming execution stem from his wrongful arrest by the NAU police in 1985. That belief has no basis in fact—since it was the Flagstaff Police, *not* the NAU police, that arrested him—nor is Clarence able to grasp that this belief has no basis in fact, which renders Clarence's understanding of why he'll be executed irrational.
>
> . . .
>
> Clarence's delusions are not solely focused on the factual basis of his claim, but he expresses deluded and paranoid beliefs about why the issue has been repeatedly denied by the courts. His historical writings demonstrate a longstanding delusional belief that the courts, the prosecution, and his own counsel have conspired to wrongly deny his NAU claims so that he can be illegally executed. This delusional belief is consistent with Clarence's diagnosis of schizophrenia with paranoid ideations. Clarence's recent writings show a significant escalation of these delusions, including his belief that the Arizona Supreme Court justices "ghoulishly inflict a constitutional[ly] infirm, illegal and

> immoral homicide upon my person and body." Clarence believes the Arizona Supreme Court justices will be disbarred and has reported each justice individually to the Commission on Judicial Conduct. Clarence believes that the prosecutors and judiciary have conspired to "ignore statutes and uphold unlawful and unconstitutional convictions." Clarence believes the Arizona Supreme Court, United States Supreme Court, **and almost all other levels of the courts have conspired to deny his NAU claim so they can execute him, including to protect the State of Arizona and its universities from political embarrassment. As discussed below, these paranoid delusions significantly impair Clarence's ability to rationally contemplate his crime, punishment, and the relationship between the two.**

(AppV1 163–64 (emphasis added).)

The report of the State's expert, Carlos Vega, Psy.D, reflects that he answered the following referral questions: first, "[i]s Clarence Dixon's mental state so distorted, or his concept of reality so impaired, that he lacks a rational understanding of the State's rationale for his execution?"; and second, "[i]s Clarence Dixon, due to a mental disease or defect, presently unaware that he is to be punished for the crime of murder or unaware that the impending punishment for that crime is death?" (AppV3 38.) Dr. Vega opined, first, that Mr. Dixon does not have paranoid schizophrenia and suffers from anti-social personality disorder rather than mental illness (AppV3 42); and second, that Mr. Dixon is mentally competent to be executed because:

> Clarence is so well aware of the State's rationale for his execution that he wishes he resided in a different State, one that did not have the death penalty. He also made it clear that he does not want to die and believes there is nothing to be gained by his execution. He even goes as far as to say that if he could bring the victim back to life, he would. He made it

> clear that he was "going to fight [his execution] until the end." He has deluded himself into believing that he found case law, that supports his position.
>
> . . .
>
> Furthermore, Clarence insists that he has no memory of the murder, and this additionally motivates him to fight against being put to death. The notion that he has no memory of the incident surrounding the death of the victim appears to be true since Clarence revealed to this writer that if he were to suddenly remember having killed the victim, he would have a sense of relief at his execution.
>
> . . .
>
> [Clarence] is suffering from personality disorder, and this is responsible for his deluded notion that the government has refused to agree with his legal argument, not because his argument is not sound but rather the government is afraid of the consequences of admitting they are wrong. Clarence is so well aware of his impending punishment and reported that this is responsible for his current level of depression.

(AppV3 43.)

ii. <u>The evidentiary hearing: Mr. Dixon's case-in-chief</u>

At the evidentiary hearing on May 3, 2022, Mr. Dixon presented the testimony of Dr. Amezcua-Patino and introduced 30 exhibits in his case-in-chief. (AppV1 55–128; AppV1 258–327; AppV2 6–99; AppV3 6–36, 44–92.) Dr. Amezcua-Patino testified that he has been he is a licensed physician and, since 1988, has specialized in psychiatry. (AppV1 55.) For the last 34 years Dr. Amezcua-Patino has maintained his clinical psychiatric practice and has 37 years' worth of experience diagnosing and treating people with schizophrenia. (AppV1 55–56, 59–60.) In 2012, and again in 2022, Dr. Amezcua-Patino diagnosed Mr. Dixon with paranoid schizophrenia. (AppV1 73–74.)

More than three decades earlier, two court-appointed psychiatrists Otto Bendheim, M.D., and Maier Tuchler, M.D., first diagnosed Mr. Dixon with schizophrenia following his arrest in 1977 for a bizarre assault that resulted in him being found mentally incompetent to stand trial and committed to the Arizona State Hospital before being adjudicated legally insane two days before the murder for which he was sentenced to death. (AppV1 78–83, 279–85, 286–88, 327; AppV2 6.)

Dr. Amezcua-Patino testified that Mr. Dixon clearly satisfied the diagnostic criteria for a schizophrenic illness under the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V")—a psychotic illness which derives from a thought disorder characterized by delusions, hallucinations, cognitive symptoms, paranoia, and lack of emotionality. (AppV1 67–68.) He testified that people with schizophrenia are often intelligent and can "maintain a high level of sophistication in their thinking." (AppV1 70.) In men, "[t]he full-blown symptoms of schizophrenia usually get manifested in the late teens, early 20s" which, Dr. Amezcua-Patino testified, is when Mr. Dixon experienced the onset of that psychotic disorder. (AppV1 71–72, 79–80.)

Dr. Amezcua-Patino testified that Mr. Dixon, as a direct result of his schizophrenic illness, experiences auditory, visual, and tactile hallucinations. (AppV1 96–97.) He also experiences "paranoia, meaning he's distrustful and concerned about what other people are trying to do to him[,]" and delusional

grandiosity. (AppV1 98, 106.) According to Dr. Amezcua-Patino, Mr. Dixon "feels that there is a plot where the judicial system has to protect themselves from his claims because his claims [related to the Northern Arizona University Police] will be terribly embarrassing." (AppV1 98.) Dr. Amezcua-Patino testified about the questioning techniques he employed with Mr. Dixon over the course of several in-person evaluations designed to test the rigidity of his delusions:

> Particularly the last two visits. What I was trying to test is if he's thinking about the rationale. You know, he's filed multiple pleadings. He has gone to multiple courts. He has been rejected by multiple courts. It was important for me to understand, especially as he was getting closer, you know, to moving from death row to death watch, if the stress related to that will make him less delusional, meaning it's time to perceive reality in a different way.
>
> And so I had multiple – multitude of techniques in terms of empathic understanding, empathic questioning, you know, paradoxical intention, to try to get him to explain to me how it is that despite all of this evidence that has been provided in front of him about, again, the irrationality of his request, including from his attorneys, and he always gets back to the same point, which is, **"They say that they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed."**

(AppV1 99–100 (emphasis added).) Dr. Amezcua-Patino testified that Mr. Dixon's delusional belief that he is going to be killed for reasons other than murder is "unshakable" and explained that he "actually lives in a separate reality inside of his head." (AppV1 95–96.) "And we see glimpses of that reality when he writes[.]" (AppV1 96.)

Dr. Amezcua-Patino next testified about the process for evaluating a person's mental competency to be executed. (AppV1 60.) He testified that in-person evaluations allow the psychiatric examiner to "understand [ ] behavior in front of you" (AppV1 61), and multiple examinations allow for the assessment of "the consistency of the symptoms over time" (AppV1 61–62). And because "the issue of competence . . . is affected by a psychiatric diagnosis[,]" Dr. Amezcua-Patino testified that it requires "a comprehensive analysis of what has happened with that individual's life." (AppV1 60.)

In order to evaluate Mr. Dixon's mental competency for execution, Dr. Amezcua-Patino testified that he reviewed "about 5,100 pages of documents" that pre-dated [Mr. Dixon's] incarceration and contained "lifetime type of information." (AppV1 63.) That information reflected that "the issue of mental illness and schizophrenia has been raised long before this last set of meetings with [Mr. Dixon]." (AppV1 64.)

Dr. Amezcua-Patino met Mr. Dixon in person "[f]our times" and "a fifth time" including his visit nearly a decade ago. (AppV1 63.) He explained that repeated visits with Mr. Dixon were important because, as someone with paranoid schizophrenia, "Mr. Dixon is distant" and "it was important to try to dig into his own self to understand what is going on in his mind, and trying to understand some of his delusional thinking to see if – how unshakeable it is." (AppV1 64–65.) Dr. Amezcua-

Patino testified that multiple visits were necessary to assess "consistency of symptoms" which "manifested every time I meet with him." (AppV1 64.)

Dr. Amezcua-Patino testified that in order for a person to be mentally competent to be executed "he needs to be able to not only understand that somebody wants to kill him, but he needs to understand the reasons for that[,]" including the societal interests in his execution. (AppV1 73, 101.) "And he has to have enough rationality to develop that understanding." (AppV1 73.) Dr. Amezcua-Patino testified that, in Mr. Dixon's case, "in all the time that I've spent with him, he has not been able to do that." (AppV1 101.) This is because, Dr. Amezcua-Patino explained, when prompted to consider his impending execution, Mr. Dixon "goes back to this same premise of: They're afraid of me embarrassing them" because of his claim against the NAU police. (AppV1 101.) Dr. Amezcua-Patino testified that while "[t]here have been some different variations over the years in terms of different wording to the same thing, and going into different explanations, which is not unusual for people with delusional thinking[,]" the crux of Mr. Dixon's psychotic delusion "always go[es] back to the same [psychotic delusional] premise, meaning: **They want to execute me because they don't want to be embarrassed**." (AppV1 101–02 (emphasis added).)

Dr. Amezcua-Patino testified about Mr. Dixon's delusional thought content evidenced by his writings over time, and many of which were admitted into evidence

at the hearing. (AppV1 103–26.) Those writings consist of numerous pro se court filings and, more recently, complaints against members of this Court seeking their disbarment for allowing "the unconstitutional, infirm, illegal, and immoral ghoulish infliction of a homicide upon my person and body" for their "action or inaction in considering my petition for writ of habeas corpus" pertaining to the NAU police. (AppV1 121–25.) As recently as April 16, 2022, Mr. Dixon wrote to the Commission on Judicial Conduct in which he stated:

> I find it unconscionable that these Arizona Supreme Court members would lack professional integrity involving a capital case. Their lack of impartiality and fairness leads directly to an extrajudicial killing, an illegal and immoral homicide created in the name and for the people of Arizona.

(AppV1 123.) On April 30, 2022, Mr. Dixon again wrote to the Commission stating:

> Although my and my legal team's efforts to stop my execution may be in vain, the deliberate misapplication and ignoring of Arizona statutes and the law, specifically A.R.S. 15-1627, will result in an extrajudicial killing that would merit disbarment of those who are unconcerned with their unprofessional reason for being even after the 12th hour.

(App. V1 125; AppV3 45.)

Dr. Amezcua-Patino explained that Mr. Dixon's ability to interpret the law, cite statutes, and write somewhat coherently in some areas does not mean that he is mentally competent to be executed, because the underlying factual premises in his so-called coherent writings are the byproduct of psychotic delusions which have no basis in reality. (AppV1 143–51.) Mr. Dixon's mental illness render's him mentally

incompetent under *Panetti*: he lacks a rational understanding of the State's rationale for his execution because "[a]t the end of the day, . . . Mr. Dixon doesn't believe that his execution is because society wants to punish him for the murder of the victim in the case he was sentenced to death for, but, rather, it's because society and the courts seek to protect themselves from the embarrassment of granting his meritless claim[.]" (AppV1 126.)

On cross-examination, Dr. Amezcua-Patino testified that the Office of the Federal Public Defender retained him at his hourly rate of $450 per hour. (AppV1 134–35.) He also testified that he visited Mr. Dixon four times since August 2021 and spent approximately "30 to 40 hours" reviewing records and evaluating Mr. Dixon's mental competency for execution. (AppV1 135–36.) Dr. Amezcua-Patino testified that in March 2022, due to the fact that he was not registered with the Maricopa County Superior Court's list of Rule 11 mental health evaluators, he did not qualify as a Rule 11 expert in a different case but was recognized by the court as an expert in the field of psychiatry. (AppV1 138–39.)

When asked by counsel for the State whether Mr. Dixon "understands that the DNA profile that was entered into the law enforcement national database that was collected as a result of these convictions for the 1985 sexual assault . . . was then used to match him, his profile from the DNA collected from the victim Ms. Bowdoin in the murder case?" Dr. Amezcua-Patino testified that Mr. Dixon "knows the fact

because somebody told him that." (AppV1 140.) He agreed that Mr. Dixon "is aware that the state intends to execute him for the murder of Ms. Bowdain [sic]" because he "has been told that that is the reason. That is not what he rationally believes." (AppV1 142.)

The Superior Court questioned Dr. Amezcua-Patino next. (AppV1 143-44.) The court asked Dr. Amezcua-Patino to explain how to reconcile Mr. Dixon's high intelligence and pro se writings which "seem to suggest, . . . ordered thought" and "rationality," with Dr. Amezcua-Patino's opinion that he does not rationally understand the State's reasons for his execution. (AppV1 143–44.) Dr. Amezcua-Patino testified that it was important to view Mr. Dixon's writings "in the context of an illness[.]" (AppV1 145.) "[T]he fact that he knows the law, and the fact that he knows facts about the law, doesn't mean that these conclusions of law are rational[,]" Dr. Amezcua-Patino explained. (AppV1 145.) He added further that "there are a number of factors here so factual knowledge is not the same as rational understanding." (AppV1 145.)

The Superior Court asked how Mr. Dixon's "bad decisions" and litigation of the NAU issue "nearly 30 times in numerous state and federal courts" over the years led Dr. Amezcua-Patino to "jump to the conclusion that this is delusional, irrational, . . . versus a person who is facing very serious charges and perhaps rationally even if it is a very low probability approach, if it might have been his best play." (AppV1

148.) Dr. Amezcua-Patino explained that "number one, you cannot disconnect him from the fact that he suffers from Schizophrenia" and "schizophrenia in itself raises a probability of delusional thinking." (AppV1 149.) Additionally, "delusional means that your thoughts are irrational, they're fixated and unbreakable[.]" (AppV1 149.) He testified further that "if you look at the whole package, we have an individual who suffers from Schizophrenia that has had a consistent delusion for a long time and that delusion can terminate his ability to be rational about what is happening to him." (AppV1 150.)

iii. The evidentiary hearing: the State's demonstrably insufficient rebuttal

The State called Carlos Vega, Psy.D, and entered two exhibits[2] into evidence in rebuttal. (AppV1 157–76.) In all, Dr. Vega's direct examination consisted of just twenty pages of transcript. (AppV1 157–76.) Dr. Vega testified that he received his doctorate in psychology and works primarily with the courts to conduct Rule 11 prescreens and competency assessments pursuant to Rule 26.5 of Arizona's Rules of Criminal Procedure. (AppV1 157–59.) He stated that he has testified as an expert in the Pinal County Superior Court in "[m]ostly in DCS cases." (AppV1 159.) Dr. Vega testified that in that context, he generally interviews the subject of his evaluation "one time." (AppV1 160.)

[2] Those exhibits consisted of Dr. Vega's report and CV. (AppV3 37, 38–43.)

In Mr. Dixon's case, Dr. Vega testified that he reviewed "a number of evaluations, a number of court documents" and conducted a 70-minute evaluation of Mr. Dixon by video. (AppV1 162.) He testified that Mr. Dixon denied receiving psychotropic medications and appeared to have "above average intellect." (AppV1 164–65.) They talked about politics and, according to Dr. Vega, Mr. Dixon's reference to President Biden as a "lukewarm leader" indicated that he "is acutely aware of reality." (AppV1 166.)

Dr. Vega testified that Mr. Dixon "whine[d] and complain[ed]" about prison staff taking his address book and then stated he needed to conduct a more thorough search to determine whether it had been misplaced. (AppV1 167.) According to Dr. Vega, this showed that "what you see is an individual that is at the time when I'm evaluating him is not the one least bit delusional." (AppV1 167.) Dr. Vega testified that Mr. Dixon said his DNA had been obtained illegally, he had no memory of the murder, and, in response to a hypothetical question from Dr. Vega about "what if all of a sudden you have a recollection that you did kill [the victim], and he said . . . you know, if I killed her, if I have memories of killing her, on my way to execution, I would feel relief." (AppV1 169–70.)

Dr. Vega testified that Mr. Dixon could not be delusional because "in order for there to exist, a delusion, in order for there to be a delusion, you it is impossible for it to happen." (AppV1 172.) When asked by the State, "does what Mr. Dixon's

specific diagnosis is, ultimately affect your opinion about whether he has a rational understanding of the State's reason for his execution?" Dr. Vega testified, without hesitation, "Yeah, of course it does." (AppV1 173.) Dr. Vega stated he diagnosed Mr. Dixon with "antisocial personality disorder[.]" (AppV1 173.)

Dr. Vega testified that even if Mr. Dixon held the delusional belief about the courts conspiring to reject his NAU claim in order to protect government actors from embarrassment, he is nonetheless mentally competent to be executed based on factors found insufficient in *Panetti*: because "it doesn't affect the connection between I murdered her or I don't remember murdering her. I may have murdered her. And I am being executed." (AppV1 174–75.) Ignoring the fact that Mr. Dixon's competency to represent himself was never evaluated pre-trial, Dr. Vega testified further that Mr. Dixon's mental competency for execution is supported by the fact that he "was never found incompetent to represent himself." (AppV1 175.) According to Dr. Vega, Clarence's writings also reflect that he "is not delusional." (AppV1 176.)

On cross-examination, Dr. Vega admitted that he has never previously evaluated a person's mental competency for execution. (AppV1 177.) He also testified that he is not a medical doctor, has no patients, and has no experience treating people with schizophrenia, or evaluating or monitoring their symptoms over time. (AppV1 177–78.) When asked whether he researched the standards for

performing a competency evaluation of his magnitude, Dr. Vega responded that he "did a little bit, very little." (AppV1 231.)

Dr. Vega admitted that he evaluated Mr. Dixon only once and for 70 minutes by video. (AppV1 232, 234.) He could only see the top half of Mr. Dixon's body and so had no idea whether Mr. Dixon was shackled or fidgeting throughout the evaluation. (AppV1 232–33.) Dr. Vega denied knowing "who else was in the room behind the camera" during the evaluation and admitted a corrections officer could have been present and he would never have known. (App.V1 233.) He also admitted that in-person evaluations are preferable and that he could have requested more than a single visit with Mr. Dixon. (AppV1 235–36.)

Dr. Vega testified that he audio-recorded his interview with Mr. Dixon because "I didn't trust my memory really well[,]" and then intentionally destroyed the recording. (AppV1 179.) He testified that he recorded the interview both so that he could write out exact quotes from Mr. Dixon in his report and to refresh his recollection. (AppV1 179.)

Dr. Vega testified that he found Mr. Dixon cognitively intact because "of motions that he writes and stuff[.]"[3] (AppV1 180.) When asked how that finding could be reconciled with Mr. Dixon's prior neuropsychological test scores showing

[3] Dr. Vega later testified that he "didn't read" and "just barely, you know, looked at" Mr. Dixon's writings. (AppV1 223.)

"significant cognitive impairments[,]" Dr. Vega dissembled, claiming that because an MRI of [Dr. Vega's] own brain showed "significant" pathologies, validated neuropsychological "test results . . . don't say a lot to me." (AppV1 181.) He then added "and of course I am not all completely there." (AppV1 181.) Then in an about-face, Dr. Vega reported finding that Mr. Dixon showed "cognitive distortions." (AppV1 191–92.)

Dr. Vega admitted that information Mr. Dixon provided about his weight, reason for weight loss, and the number of days until his execution were all incorrect (AppV1 183–85) but denied that this was evidence of confusion (AppV1 186). He also admitted that impending execution "may affect [Mr. Dixon's] memory here and there." (AppV1 186.)

Defying his own non-diagnosis of a psychotic disorder, Dr. Vega testified that Mr. Dixon hallucinates regularly (AppV1 194–95) and "could very well have had delusional disorder"[4] and affirmed that he could "[a]bsolutely" be on the "schizophrenic spectrum" (AppV1 195–96, 216). After describing Mr. Dixon's hallucinations and apparent delusional disorder—a psychotic mental illness in the DSM-V, Section 297.1—Dr. Vega completely switched gears, denying the plain

[4] Dr. Vega testified that if Mr. Dixon does, in fact, have a diagnosis of paranoid schizophrenia "it is definitely comorbid to the principle [sic] diagnosis of a personality disorder." (AppV1 207, 221–22.) As explained below, this is an impossibility under the DSM-V. He also said of Mr. Dixon, "he's got that paranoid personality thing." (AppV1 216.)

meaning of his report. He testified that while he wrote in his report that "there is no doubt that [Mr. Dixon] is deluding himself legally[,]" this does not mean Mr. Dixon is delusional because he used this phrase to mean that Mr. Dixon was "just kidding yourself[]" or "messing with yourself." (AppV1 196.)

Dr. Vega agreed that Mr. Dixon's "beliefs about his NAU argument and about why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[.]" (AppV1 200.) This is the very definition of a delusional belief incidental to a schizophrenia diagnosis in the DSM-V. (AppV3 62.) Defying reason and common sense, let alone professional diagnostic standards, Dr. Vega insisted the DSM-V definition of delusional thinking was wrong and that his own personal standard should be applied. Objecting to the DSM-V definition of "delusion," he claimed that only bizarre delusions qualify as "delusions" for a schizophrenia diagnosis and the DSM-V failed to "define[] it correctly." (AppV1 200–07.) Eventually, Dr. Vega was forced to admit that: (1) Mr. Dixon satisfied each and every one of the DSM-V criteria for a diagnosis of paranoid schizophrenia; and (2) that this diagnosis squared with Mr. Dixon's longstanding documented history of that psychotic illness. Then, in total disregard of recognized professional diagnostic standards, he denied that Mr. Dixon suffers from that psychotic disorder. (AppV1 207–215.) Dr. Vega topped it off with an assertion that Mr. Dixon has

antisocial personality disorder, and of course he made this diagnosis by refusing to apply the DSM-V criteria for the diagnosis. (AppV1 217–21.)

With respect to Mr. Dixon's mental competency for execution, Dr. Vega conceded that Mr. Dixon "is fixated on the NAU issue" and its denial by the courts. (AppV1 222.) He agreed that Mr. Dixon has paranoid thoughts. (AppV1 223.) And he agreed that Mr. Dixon "has a deluded notion the government has refused to agree with his legal argument, . . . because the government is afraid of the consequences of admitting they are wrong, really even though they believe it to be right[.]" (AppV1 223.) He confirmed that "this is [Mr. Dixon's] belief." (AppV1 223.) Dr. Vega admitted that despite relying on Mr. Dixon's writings as evidence of his rational understanding, he neglected that very evidence, admitting he "didn't read" and "just barely, you know, looked at" Mr. Dixon's writings. (AppV1 223.)

Dr. Vega testified that his evaluation of Mr. Dixon's competency to be executed focused on assessing what transpired related to the murder and whether Mr. Dixon was involved. (AppV1 226.) He confirmed that the extent of his inquiry consisted of asking Mr. Dixon whether he knew the murder victim, recalled the murder, and Mr. Dixon's statements that he would not be executed if he lived in a state without the death penalty, did not recall the crime and could not bring the victim back, and would feel relief if he were to hypothetically regain his memory. (AppV1 226–27.) Specifically, Dr. Vega assessed whether "he can connect the facts that they

were executing him because of the murder, yes." (AppV1 227.)

With respect to the claim that Mr. Dixon expressed "relief" in response to Dr. Vega's hypothetical, Dr. Vega admitted that those were not Mr. Dixon's exact words and he asked no follow up questions. (AppV1 228–30, 239–40.) Dr. Vega also testified that he never asked Mr. Dixon the question "why do you believe that you are being executed" because "I didn't have to. I really didn't have to ask him what he believed. I mean it was – it was obvious." (AppV1 230–31.)

On redirect, Dr. Vega reiterated his opinion that Mr. Dixon's desire "to prevent" his execution "says he absolutely understands the connection" between his murder conviction and execution which renders him mentally competent for execution. (AppV1 238–39.) As noted, this conclusion was reached in this critical forensic context only after: (1) he indefensibly disregarded professionally recognized standards for diagnosing a schizophrenic psychotic disorder; (2) he diagnosed Mr. Dixon with ASPD, again in reckless indifference to the standardized diagnostic criteria; (3) he discounted psychometrically valid neuropsychological measures validating Mr. Dixon's neurocognitive disabilities, with a quip that these scientific measures meant nothing to him; and (4) he based his ultimate conclusions principally on statements he attributed to Mr. Dixon and then intentionally destroyed that evidence.

V. Argument

A. The evidence demonstrates by a preponderance and by clear and convincing evidence that Mr. Dixon is mentally incompetent to be executed

In *Panetti*, the U.S. Supreme Court articulated the two-step test under the Eighth Amendment for determining whether a person is mentally incompetent to be executed. That test requires asking, first, whether a prisoner suffers from a mental illness; and second, whether a prisoner's mental illness "obstructs a rational understanding of the State's reason for his execution." 551 U.S. at 956-57. The Supreme Court explained that where a "prisoner's mental state is so distorted by 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," then the fundamental respect for humanity underlying the Eighth Amendment bars his execution. *Id.* at 957-59.

Importantly, the Supreme Court in *Panetti* rejected an incompetency test predicated on a prisoner's *awareness* that he committed murder; his *awareness* that he will be executed; and his *awareness* that "the reason the State has given for the execution is his commission of the crimes in question." *Id*. at 956. Such an awareness standard, the Supreme Court held, is "too restrictive to afford a prisoner the protections granted by the Eighth Amendment." *Id*. at 956-58.

The evidence presented at the May 3, 2022 hearing is clear and convincing that Mr. Dixon satisfies *Panetti*'s two-step test. Step one asks whether Mr. Dixon suffers from serious mental illness. *Id.* at 956-57. The evidence unequivocally demonstrated, and the Superior Court determined, that Mr. Dixon suffers from a longstanding psychotic disorder—namely, paranoid schizophrenia. (AppV1 34.) Dr. Vega's testimony to the contrary was indefensible and bordered on making a mockery of the proceedings. He agreed the diagnostic criteria for a psychotic illness are present, but idiosyncratically refused to apply them in defiance of professionally recognized standards. (AppV1 207–15.) He then applied an antisocial personality diagnosis that was unsupported by requisite diagnostic criteria. (AppV1 217–21.)

Step two in *Panetti* asks whether a prisoner's mental illness "obstructs a rational understanding of the State's reason for his execution." 551 U.S. at 956-57. Dr. Vega is unequivocally disqualified from credibly answering this question. He engaged in a discreditable, arbitrary, and capricious diagnostic process, in defiance of professional standards, to find Mr. Dixon does not suffer from a psychotic disorder, when in fact, as the Superior Court found, Mr. Dixon does. (AppV1 34.) Dr. Vega is therefore in no position to address step two, the *causation* prong in the *Panetti* analysis: whether Mr. Dixon's serious mental illness impairs his rational

understanding of the State's reasons for his execution.[5] Only Dr. Amezcua-Patino is able to credibly address this question. And he did.

Dr. Amezcua-Patino explained how Mr. Dixon's paranoid schizophrenia and the delusions that contaminate his thought process prevent him from understanding that he is going to be executed as an expression of the State's outrage at the murder he was convicted of carrying out, and instead lead him to believe that government actors "want to execute me because they don't want to be embarrassed." (AppV1 101–02.)

B. The Superior Court abused its discretion in finding Mr. Dixon mentally competent to be executed

The Superior Court found that Mr. Dixon proved both by a preponderance and clear and convincing evidence "that [he] has a mental disorder or mental illness of schizophrenia[.]" (AppV1 34.) With respect to whether Mr. Dixon's psychotic illness prevents him from rationally understanding the State's reasons for his execution, the Superior Court found the evidence presented at the hearing "conflicting and ambiguous." (AppV1 35.)

The court determined that Mr. Dixon failed to demonstrate that he is mentally incompetent to be executed by relying on statements from Dr. Amezcua-Patino's

[5] Dr. Vega also testified that his ultimate opinion about whether Mr. Dixon has a rational understanding of the State's reasons for his execution is dependent on his ASPD and non-diagnosis of schizophrenia, which the Superior Court made a factual finding was incorrect. (AppV1 173.)

interviews with Mr. Dixon reflecting his awareness that the State seeks to execute him "for murder[,]" as well as indicia of Mr. Dixon's above-average intelligence and pro se writings that reflected "sophistication, coheren[ce,] and organized thinking, and fluent language skills[.]" (AppV1 35, 36.)

The Superior Court also relied on what it called "persuasive observations that were also offered by Dr. Vega, . . . reflecting that, if [Mr. Dixon] had a memory of the murder, he would have a sense of relief on his way to his execution." (AppV1 36.)

And despite finding that Mr. Dixon proved by clear and convincing evidence that he suffers from paranoid schizophrenia—a psychotic thought disorder characterized by delusional thinking—the Superior Court found Mr. Dixon's beliefs about the judiciary's reasons for denying his legal claim related to the NAU police "arguably delusional." (AppV1 35.)

i. <u>The Superior Court decision is irreconcilable with uncontroverted medical evidence in the record demonstrating that Mr. Dixon's psychotic delusions obstruct his ability to rationally understand the State's reason for his execution</u>

The Superior Court's finding that Mr. Dixon's claim pertaining to the NAU police was only "arguably delusional" is clearly erroneous; it conflicts with the court's contrary finding that Mr. Dixon suffers from a psychotic disorder, as well as the uncontroverted medical evidence demonstrating otherwise. Dr. Amezcua-Patino has explained that, in the context of Mr. Dixon's paranoid schizophrenic thought

disorder, his "unshakeable" belief that the judicial system and actors in it have all conspired to wrongly deny his NAU claim to shield government entities from embarrassment is nothing less than a psychotic delusion under the diagnostic criteria, and prevents him from developing the rationality of thought necessary to understand the meaning and purpose of his execution. (AppV1 64–65, 73, 63–64; AppV3 62.) This evidence is not refuted by Dr. Vega, whose contrived opinions conflict with generally accepted diagnostic criteria.[6]

The Superior Court thus clearly erred when it found without supporting evidence that Mr. Dixon engages in only "arguably delusional thinking," consequent to a mere "favored legal theory." (AppV1 35.) Once the Superior Court determined Mr. Dixon suffered from schizophrenia, by definition, it was required to also conclude that Mr. Dixon, in fact, experiences delusional thinking.

ii. The Superior Court made clearly erroneous factual findings that are unsupported by the record

The Superior Court's finding that evidence of Mr. Dixon's mental incompetency is "conflicting and ambiguous" is also clearly erroneous. (AppV1 35.)

[6] The Superior Court's finding also disregarded points on which both experts agreed: Dr. Vega conceded that Mr. Dixon's "beliefs about his NAU argument and why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence[,]" thus qualifying as a delusion under the DSM-V definition. (AppV1 200.) Dr. Vega even acknowledged that Mr. Dixon "could very well have had delusional disorder" and "[a]bsolutely" be on the "schizophrenic spectrum." (AppV1 195–96, 216.)

Dr. Amezcua-Patino is the only expert who assessed Mr. Dixon's mental competency under the appropriate standard, and he testified unequivocally that Mr. Dixon lacks a rational understanding of the meaning and purpose of his execution. (AppV1 73, 101.)

The Superior Court relied on evidence that Mr. Dixon made "reflective observations" in prior writings, has high-average intelligence, and has "shown sophistication, coherent and organized thinking, and fluent language skills in pleadings and motions that he drafted" in order to "reject[]" the assertion that Mr. Dixon's fixation over the NAU issue "is dispositive" of competency question. (AppV1 35–36.) This is clearly erroneous for two reasons.

First, the Superior Court's reliance on indicia of intelligence to support its finding that Mr. Dixon failed to demonstrate that he is mentally incompetent to be executed is refuted by the medical evidence. Intelligence does not minimize the effect of a serious psychotic illness such as paranoid schizophrenia. Dr. Amezcua-Patino testified that people with schizophrenia are often intelligent and can "maintain a high level of sophistication in their thinking[.]" (AppV1 70.) It is *not* counterintuitive: intelligence does not relieve the sufferer of paranoid schizophrenia from auditory and visual hallucinations or psychotic delusions. As Dr. Amezcua-Patino explained, Mr. Dixon's intellectual abilities must not be confused for mental competency because, as someone with paranoid schizophrenia, Mr. Dixon's

writings are rooted in psychotic delusions which have no basis in reality. (AppV1 143–51.) Mr. Dixon's writings thus needed to be understood "in the context of an illness[.]" (AppV1 145.)

It must follow from the above that there is nothing in the nature of "coherence" and "sophistication" in writings driven by psychotic delusions. This is plainly evident from nearly all Mr. Dixon's writings but especially the two handwritten letters from Mr. Dixon to the Arizona Judicial Commission in April 2022 where he demands that the members of this Court be disbarred based on purely conspiratorial and delusional beliefs pertaining to his impending execution. (AppV1 120–25; AppV3 15–19, 20–24, 25–29, 30–34, 35–36.) There, Mr. Dixon embraced the irrational belief that—no matter what the State's stated rationale for his execution––his execution "will result in an extrajudicial killing that would merit disbarment of those who are unconcerned with their unprofessional reason for being even after the 12th hour." (AppV1 125.) The evidence is both clear and convincing: as a result of his paranoid schizophrenic illness, Mr. Dixon "has had a consistent delusion for a long time and that delusion can terminate his ability to be rational about what is happening to him." (AppV1 150.)

Rather than rely on the uncontroverted medical evidence, the court deemed "persuasive" Dr. Vega's claim that Mr. Dixon said he would feel "relief" if he were to hypothetically regain his memory. (AppV1 36.) Such evidence is neither

persuasive nor relevant. Mr. Dixon's hypothetical *imaginary* beliefs are not a substitute for understanding Mr. Dixon's real-time psychotically driven belief: that state officials have conspired to unlawfully execute him to avoid embarrassment. Moreover, Dr. Vega's claim is undermined by his intentional destruction of this evidence and defeated by his admission that those were not Mr. Dixon's exact words, the context was omitted, and he asked no follow up questions. (AppV1 228–30, 239–40.) The Superior Court's reliance on Dr. Vega's observation that Mr. Dixon has a rational understanding of the State's reasons for his execution is also clearly erroneous because Dr. Vega testified that Mr. Dixon's "specific diagnosis [] ultimately affect[s his] opinion about whether he has a rational understanding of the State's reason for his execution[]" (AppV1 173), but the Superior Court found Dr. Vega's non-diagnosis of schizophrenia erroneous (AppV1 34). By Dr. Vega's own words, if his non-diagnosis of schizophrenia is erroneous, his opinion on whether Mr. Dixon rationally understands the State's reasons for his execution cannot be relied upon.

Moreover, as explained above, Dr. Vega's opinions were untethered from diagnostic norms and bordered on the farcical. Dr. Vega evaluated Mr. Dixon for 70 minutes over video and openly admitted that he did "very little" research into the standards for evaluating a person's mental competency to be executed, based his medically unfounded opinions substantially on Mr. Dixon's statements and,

knowing that, intentionally destroyed the audio recording of Mr. Dixon's actual statements prior to the hearing. Dr. Vega also admitted that he never asked Mr. Dixon why he believes he is being executed, capriciously refused to apply the DSM-V diagnostic criteria for schizophrenia, delusions, and persecutory delusions, and failed to apply the DSM-V diagnostic criteria to his own diagnosis of antisocial personality disorder. *See* Section IV, *supra*. After destroying his recorded interview, Dr. Vega testified that he does not "trust [his own] memory really well," while noting he [is] not all completely there," and he explained his refusal to consider neuropsychological test results showing Mr. Dixon's impaired cognitive function with a reference to "significant" pathologies shown on an MRI of his own brain. (AppV1 179, 181.) The Superior Court clearly erred when it relied on Dr. Vega's unreliable observations about Mr. Dixon's mental competency.

iii. <u>The Superior Court misapplied *Panetti v. Quarterman*</u>

While acknowledging *Panetti*'s standard, the Superior Court failed to apply it. (AppV1 34–35.) In finding Mr. Dixon's mental competency claim unproved, the court relied on statements from Mr. Dixon that reflected his awareness that the State says it "want[s] to kill me for murder[.]" But that is precisely the "too restrictive" inquiry that the Supreme Court rejected in *Panetti*. 551 U.S. at 956-58. Mr. Dixon's awareness of the State's rationale does not show he has a rational understanding of it. The Superior Court also characterized Dixon's reaction to the judiciary's denial

of his legal claims as suggesting only Dixon's perception of judicial "bias." (AppV1 35.). Yes, Mr. Dixon believes there is judicial bias, but that amounts to a "so what?" The question is whether his perception of bias is grounded in reality. The evidence shows it is not: the judges in Arizona are not, as Mr. Dixon believes, plotting his execution as part of a coverup of his unlawful arrest in order to protect the NAU police and government entities from embarrassment.

The Superior Court found that Mr. Dixon proved by clear and convincing evidence that he has paranoid schizophrenia. (AppV1 34.) However, it dismissed the unrefuted medical evidence of Mr. Dixon's psychotic delusional thought process resulting therefrom as only "arguably delusional" and merely reflective of Mr. Dixon's "favored legal theory." (AppV1 35.) Again, Mr. Dixon does have a favored legal theory, but that alone begs the relevant question: whether that theory is grounded in a serious mental illness which impairs Mr. Dixon's rational understanding of the reasons for his execution. *Panetti* required the Superior Court to focus on that question. It should have assessed Mr. Dixon's mental competency within the framework of his schizophrenic illness and the psychotic delusions to which it characteristically gives rise. *Id.* at 960 ("The beginning of doubt about competence in a case like petitioner's is not a misanthropic personality or an amoral character. It is a psychotic disorder."). Applying this legal framework, here, Mr. Dixon's favored legal theory is wrapped in his delusional belief in a broad judicial

conspiracy to conceal that the NAU police in 1985 acted without statutory jurisdiction by arresting him in an unrelated criminal case, investigating, and collecting his DNA. Under *Panetti*, "the legal inquiry concerns whether these delusions can be said to render [Mr. Dixon] incompetent." *Id.* at 956. Here, the evidence shows it does.

Panetti suffered from mental illness "indicative of schizo-affective disorder" that "result[ed] in a genuine delusion involving his understanding of the reason for his execution." *Id.* at 954. Like Mr. Dixon, Panetti believed that "the stated reason is a sham." *Id.* 954-55. Just as Panetti believed that "the State in truth wants to execute him to stop him from preaching[,]" *id.*, Mr. Dixon mental illness has had parallel effects. He believes that "[t]hey say they want to kill me because I killed someone. But I know that they want to kill me because they don't want to be embarrassed" by his exposé—an exposé that is entirely constructed on his delusional belief—that the NAU police acted without statutory jurisdiction. (AppV1 99–100.)

The State's experts in *Panetti* "resisted the conclusion that petitioner's stated beliefs were necessarily indicative of incompetency, particularly in light of his perceived ability to understand certain concepts and, at times, to be clear and lucid[.]" *Compare id.* at 955 (cleaned up), *with* AppV1 34–36. As Dr. Amezcua-Patino did at the hearing before the Superior Court, Panetti's experts testified that this should be reconciled as follows:

> Well, first, you have to understand that when somebody is schizophrenic, it doesn't diminish their cognitive ability. . . . Instead, you have a situation where—and why we call schizophrenia thought disorder[—]the logical integration and reality connection of their thoughts are disrupted, so the stimulus comes in, and instead of being analyzed and processed in a rational, logical, linear sort of way, it gets scrambled up and it comes out in a tangential, circumstantial, symbolic . . . not really relevant kind of way. That's the essence of somebody being schizophrenic[.]

Panetti, 551 U.S. at 955.

As already discussed *supra*, the Superior Court's reliance on indicia that Mr. Dixon is aware that he faces execution for murder, has historically written "coherent" pleadings on some issues, and has above-average intelligence to adjudicate the competency question was an abuse of discretion. *DeLuna v. Petitto*, 247 Ariz. 420, 423 ¶ 9 (App. 2019) ("An abuse of discretion occurs when the court commits an error of law in reaching a discretionary decision or when the record does not support the court's decision.").The Superior Court compounded those errors by contravening *Panetti* when it failed to assess Mr. Dixon's ability to understand the meaning and purpose of his execution in the context of his schizophrenic illness and his delusional belief that the State wants to kill him to protect government entities and actors from embarrassment. *McGuire v. Lee*, 239 Ariz. 384, 386 ¶ 6 (App. 2016) ("An abuse of discretion includes an error in interpreting and applying the law.").

VI. Conclusion

For the foregoing reasons, Mr. Dixon respectfully asks that the Court grant his Petition for Special Action and reverse the order of the Pinal County Superior Court finding him mentally competent to be executed.

RESPECTFULLY SUBMITTED this 7th day of May, 2022.

Jon Sands
Federal Public Defender

Cary Sandman (AZ Bar No. 004779)
*Amanda C. Bass (AL Bar No. 1008H16R)
*Eric Zuckerman (PA Bar No. 307979)
Assistant Federal Public Defenders
407 W. Congress, Suite 501
Tucson, Arizona 85701
(602) 382-2816 (telephone)
(602) 382-2801 (facsimile)
cary_sandman@fd.org
amanda_bass@fd.org
eric_zuckerman@fd.org

**Admitted pro hac vice*

/s/Cary Sandman
Counsel for Clarence W. Dixon

ARIZONA SUPREME COURT

CLARENCE WAYNE DIXON, Petitioner, vs. THE HONORABLE ROBERT CARTER OLSON, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal, Respondent Judge, STATE OF ARIZONA, Real Party in Interest.	Case No. _____ Pinal County Superior Court Case No. S1100CR202200692 Maricopa County Superior Court Case No. CR2002-019595 Arizona Supreme Court Case No. CR-08-0025-AP **(Capital Case)**

APPENDIX TO PETITION FOR SPECIAL ACTION
VOLUME I

Jon Sands
Federal Public Defender

Cary Sandman (AZ Bar No. 004779)
*Amanda C. Bass (AL Bar No. 1008H16R)
*Eric Zuckerman (PA Bar No. 307979)
Assistant Federal Public Defenders
407 W. Congress, Suite 501
Tucson, Arizona 85701
(602) 382-2816 (telephone)
(602) 382-2801 (facsimile)

**Admitted pro hac vice*

Counsel for Clarence Wayne Dixon

TABLE OF CONTENTS

VOLUME 1

Warrant of Execution, *State v. Dixon*, No. CR-08-0025-AP (Ariz. April 5, 2022) AppV1 6

Motion to Determine Competency, *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. April 8, 2022) AppV1 10

Order Re: Review of Defense Motion to Determine Competency to be Executed, *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. April 8, 2022) AppV1 26

Reconsideration and Order Regarding Defense Motion to Determine Competency to be Executed, *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. April 27, 2022) AppV1 29

Ruling that Defendant is Competent to be Executed, *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. May 3, 2022) AppV1 33

Transcript of Determination of Competency Hearing (Morning Session), *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. May 3, 2022) AppV1 38

Transcript of Determination of Competency Hearing (Afternoon Session), *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. May 3, 2022) AppV1 131

Exhibits Admitted at Determination of Competency Hearing, *State v. Dixon*, No. S1100CR202200692 (Pinal Cnty. Super. Ct. May 3, 2022):

Hearing Ex. 1 Curriculum Vitae of Lauro Amezcua-Patino, M.D. AppV1 258

Hearing Ex. 2 Addendum to March 31, 2022 Report, April 25, 2022, and Psychiatric Evaluation Report, March 31, 2022 by Lauro Amezcua-Patino, M.D. AppV1 261

Hearing Ex. 3 Psychiatric Examination Report by Otto Bendheim, M.D., September 2, 1977. ..... AppV1 279

Hearing Ex.4 Psychiatric Examination Report by Maier Tuchler, M.D., September 2, 1977. ..... AppV1 286

Hearing Ex. 5 Arizona Department of Corrections Psychological Report, April 23, 1981. ..... AppV1 289

Hearing Ex. 6 Neuropsychological-Psychological Evaluation Report by John Toma, Ph.D., June 30, 2012 ..... AppV1 296

Hearing Ex. 7 Psychiatric Evaluation Report by Lauro Amezcua-Patino, M.D., September 7, 2012 ..... AppV1 322

Hearing Ex. 8 Arizona State Hospital Physician's Orders Page AppV1 327

VOLUME 2

Hearing Ex. 9 Minute Entry Verdict, *State v. Dixon*, No. 98107 (Maricopa Cnty. Super. Ct. Jan. 5, 1978) AppV2 6

Hearing Ex. 10 Arizona Medical Board License Profile of Lauro Amezcua-Patino, M.D. AppV2 7

Hearing Ex. 11 Schizophrenia Diagnostic Criteria from DSM-5..... AppV2 9

Hearing Ex. 12 Petition for Writ of Habeas Corpus, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994) AppV2 16

Hearing Ex. 13 Letters to Ninth Circuit Judge Nelson and Judge Thompson, *Dixon v. Stewart*, No. 97-16849 (9th Cir. Nov. 6, 1997) AppV2 31

Hearing Ex. 14 Petition for Post-Conviction Relief, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Oct. 1, 2001)..... AppV2 38

Hearing Ex. 15 Can & Do the Courts Collude by Clarence W. Dixon, 2001 ..... AppV2 43

Hearing Ex. 16 Complaint Against a Judge (J. Michael Flournoy), March 12, 2002. ..... AppV2 51

Hearing Ex. 17 Reply to State's Response to Petition for Review, *State v. Dixon*, No. 1 CA-CR 02-0203-PR (Ariz. Ct. App. Apr. 29, 2002) AppV2 53

Hearing Ex. 18 Clarence Dixon Letter to the Commission on Judicial Conduct, June 12, 2002 ..... AppV2 55

Hearing Ex. 19 Draft Motion to Suppress DNA Evidence, May 2003 ..... AppV2 56

Hearing Ex. 20 Motion Three to Reconsider Denial of Change of Judge, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. June 27, 2006) AppV2 63

Hearing Ex. 21 Petition for Writ of Habeas Corpus, *Dixon v. Shinn*, No. HC-21-0007 (Ariz. Apr. 15, 2021) AppV2 65

Hearing Ex. 22 Second Response to State's Reply to First Response, *Dixon v. Shinn*, No. HC-21-0007 (Ariz. May 20, 2021) AppV2 78

Hearing Ex. 23 Petition for Writ of Certiorari, *Dixon v. Arizona*, No. 21-6820 (U.S. Nov. 12, 2021) AppV2 82

VOLUME 3

Hearing Ex. 24 Reply to State's Response, *Dixon v. Arizona*, No. 21-6820 (U.S. Feb. 18, 2021) AppV3 6

Hearing Ex. 25 Complaint Against a Judge (Andrew Gould), April 11, 2022 ..... AppV3 15

Hearing Ex. 26 Complaint Against a Judge (Ann Timmer), April 11, 2022 ..... AppV3 20

Hearing Ex. 27 Complaint Against a Judge (Kathryn King), April 11, 2022 ..... AppV3 25

Hearing Ex. 28 Complaint Against a Judge (William Montgomery), April 11, 2022 ..... AppV3 30

Hearing Ex. 29 Clarence Dixon Letter to the Commission on Judicial Conduct, April 16, 2022 ..... AppV3 35

Hearing Ex. 30 Curriculum Vitae of Carlos Vega, Psy.D. AppV3 37

Hearing Ex. 31 Psychological Evaluation by Carlos Vega, Psy.D., April 23, 2022 ..... AppV3 38

Hearing Ex. 32 Clarence Dixon Letter to the Commission on Judicial Conduct, April 30, 2022 ..... AppV3 44

Hearing Ex. 33 Arizona Department of Corrections, Rehabilitation & Reentry Medical Records AppV3 46

Hearing Ex. 34 Arizona State Hospital Record AppV3 51

Hearing Ex. 35 Tempe Police Departmental Report No. 77-06700 ..... AppV3 52

Hearing Ex. 36 Schizophrenia Spectrum and Other Psychotic Disorders from DSM-5 ..... AppV3 62

Hearing Ex. 37 Unmet Need for Mental Health Care in Schizophrenia: An Overview of Literature and New Data From a First-Admission Study, Schizophrenia Bulletin, Vol. 35, No. 4, pp. 679–695 (2009) AppV3 65

Hearing Ex. 38 Antisocial Personality Disorder from DSM-5 ..... AppV3 82

Hearing Ex. 39 Evaluating Competency for Execution after *Madison v. Alabama*, The Journal of the American Academy of Psychiatry and the Law, Vol. 48, No. 4 (2020) AppV3 87

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,	)	Arizona Supreme Court
	)	No. CR-08-0025-AP
Appellee,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CR2002-019595
CLARENCE WAYNE DIXON,	)	
	)	
Appellant.	)	**FILED: 04/05/2022**
	)	
	)	

WARRANT OF EXECUTION

This Court heard and considered the appeal in the above-entitled cause on March 29, 2011, and on May 6, 2011, affirmed the judgment of the Superior Court in Maricopa County, State of Arizona, and filed its OPINION, which is still in effect and has not been affected by any subsequent decision of this or any other Court.

On February 11, 2014, following the denial of relief in Appellant's first post-conviction proceeding, this Court denied Appellant's petition for review filed pursuant to Rule 32.16, Ariz. R. Crim. P.

On February 24, 2022, the Attorney General filed a motion to issue a Warrant of Execution, which motion was granted by this Court on April 5, 2022,

Therefore, pursuant to Rule 31.23(c), Ariz. R. Crim. P.,

IT IS ORDERED fixing Wednesday, the 11th day of May, 2022, as the date for commencement of the execution time period when the judgment and sentence of death pronounced upon CLARENCE WAYNE DIXON by the Superior Court in Maricopa County shall be

executed by administering to CLARENCE WAYNE DIXON by intravenous injection a substance or substances in a quantity sufficient to cause death, except that CLARENCE WAYNE DIXON shall have the choice of execution by either lethal injection or lethal gas. CLARENCE WAYNE DIXON shall choose either lethal injection or lethal gas and notify the Department of Corrections at least twenty (20) calendar days prior to the date of execution. If CLARENCE WAYNE DIXON fails to choose either lethal injection or lethal gas and notify the Department of Corrections of that decision, the penalty of death shall be inflicted by lethal injection, pursuant to A.R.S. § 13-757(B).

IT IS FURTHER ORDERED that this Warrant is valid for twenty-four (24) hours beginning at an hour to be designated by the Director of the Department of Corrections, with written notice of the designated hour to be given to the Supreme Court and parties at least twenty (20) calendar days prior to the date of execution.

IT IS FURTHER ORDERED that the Clerk of this Court shall prepare and certify a true and correct copy of this Warrant and shall cause the same to be delivered to the Director of the Department of Corrections and the Superintendent or Warden of the State Prison, at Florence, Arizona, and the same shall be sufficient authority to them for the execution of CLARENCE WAYNE DIXON.

IT IS FURTHER ORDERED that, upon the execution of CLARENCE WAYNE DIXON, the Superintendent or Warden shall, pursuant to Rule 31.23(d), Ariz. R. Crim. P., make a return of this Warrant

to the Supreme Court of Arizona, which return shall show the manner and time of execution.

Dated in the City of Phoenix, Arizona, at the Arizona Courts Building, this 5th day of April, 2022.

/s/
ROBERT BRUTINEL, Chief Justice

/s/
ANN A. SCOTT TIMMER, Vice Chief Justice

/s/
CLINT BOLICK, Justice

/s/
WILLIAM G. MONTGOMERY, Justice

/s/
KATHRYN H. KING, Justice

Justice John R. Lopez IV and Justice James P. Beene are recused and did not participate in the determination of this matter.

STATE OF ARIZONA

SUPREME COURT

I, Tracie K. Lindeman, Clerk of the Supreme Court of the State of Arizona, hereby certify the above and foregoing 3 pages to be a full and true copy of the Warrant of Execution of CLARENCE WAYNE DIXON, filed by said Supreme Court in the above-entitled action on this 5th day of April, 2022.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Supreme Court of the State of Arizona this 5th day of April, 2022.

/s/
Tracie K. Lindeman
Clerk of Court

FILED PINAL COUNTY
SUPERIOR COURT
REBECCA PADILLA

APR 08 2022

Jon M. Sands
Federal Public Defender
District of Arizona
Cary Sandman (AZ Bar No. 004779)
Assistant Federal Public Defender
407 W. Congress, Suite 501
Tucson, Arizona 85701
cary_sandman@fd.org
520.879.7500 Telephone
520.622.6844 Facsimile

Counsel for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA, Plaintiff, vs. CLARENCE WAYNE DIXON, Defendant.	Case No. CR2002-019595 **MOTION TO DETERMINE MENTAL COMPETENCY TO BE EXECUTED** **(Oral Argument Requested)** **(Capital Case)**

Clarence Dixon is a 66-year-old legally blind man of Native American ancestry, who has long suffered from a psychotic disorder—paranoid schizophrenia. Previously, an Arizona court determined that he was mentally incompetent and legally insane. Mr. Dixon has a documented history of delusions, auditory and visual hallucinations, and paranoid ideation.

On April 5, 2022, the Arizona Supreme Court issued a warrant of execution scheduling Mr. Dixon's execution date for May 11, 2022. Warrant of Execution, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Apr. 5, 2022); *see also* Ariz. R. Crim. P. 31.23(c). Mr. Dixon's execution by the State of Arizona will violate A.R.S. § 13-4021, which prohibits the State from executing an individual who is mentally incompetent to be executed. Mr.

Dixon's execution will also violate the Eighth Amendment to the United States Constitution and corresponding provisions of the Arizona Constitution which "prohibit[] a State from carrying out a sentence of death upon a prisoner who is insane." *Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986); *State v. Davis*, 206 Ariz. 377, 380–81 ¶¶ 12–13 (2003) (interpreting the prohibition against cruel and unusual punishment contained in Article 2, Section 15 of the Arizona Constitution consistently with the Eighth Amendment to the U.S. Constitution).

As set forth below, Mr. Dixon's mental illness renders him incompetent to be executed by depriving him of the ability to rationally comprehend the meaning and purpose of the punishment the State of Arizona seeks to exact by his execution—that is, Mr. Dixon's mental illness thwarts his ability to form a rational understanding of the State's reasons for his execution. *See Madison v. Alabama*, 139. S. Ct. 718, 723 (2019). Because Mr. Dixon "presents reasonable grounds" in support of his request for a determination of his mental competency to be executed, he respectfully asks the Court to grant the instant motion. *See* A.R.S. § 13-4022(C). This request is supported by the accompanying memorandum.

Memorandum of Points and Authorities

I. Arizona's definition of incompetency to be executed is unconstitutional

A person who is sentenced to death shall not be executed if he is mentally incompetent to be executed. A.R.S. § 13-4021(A). A prisoner's attorney may file a motion in the superior court requesting the court to order that the prisoner be examined for mental competency to be executed. A.R.S. § 13-4022. If the superior court determines that the motion is timely and presents reasonable grounds for the requested examination, the court must appoint experts to determine whether the prisoner is incompetent to be executed. A.R.S. § 13-4022(C). After the examinations are completed, the court may conduct a hearing, during which all parties may present evidence regarding the prisoner's competency to be executed. A.R.S. § 13-4022(E).

A.R.S. § 13-4021 sets forth the standard for mental incompetency to be executed,

providing that "'[m]entally incompetent to be executed' means that due to a mental disease or defect a person who is sentenced to death is presently unaware that he is to be punished for the crime of murder or that he is unaware that the impending punishment for that crime is death." A.R.S. § 13-4021(B).

Arizona's standard for adjudicating an individual's competency to be executed conflicts with the federal constitutional standard. The controlling competency standard was defined by the Supreme Court in *Panetti v. Quarterman* where it held that mental competence requires a prisoner to be able to "reach a rational understanding of the reason for the execution." 551 U.S. 930, 958 (2007). The Court repudiated the awareness standard (like the one in Arizona's statute), holding that a competency standard that only examines "whether a prisoner is aware 'that he [is] going to be executed and why he [is] going to be executed'" is "too restrictive to afford a prisoner the protections granted by the Eighth Amendment. *Id.* at 956-57 (alteration in original). The Court held that a prisoner's simple awareness that he is going to be executed and his "awareness of the State's rationale for an execution" is insufficient. *Id.* at 959. The prisoner must also have a rational understanding of the State's reason for the execution. *Id.* The Court reasoned that "[t]he principles set forth in *Ford* are put at risk by a rule that deems delusions relevant only with respect to the State's announced reason for a punishment or the fact of an imminent execution, as opposed to the real interests the State seeks to vindicate." *Id.* (internal citation omitted).

Arizona's standard for competency unconstitutionally narrows review to a prisoner's awareness of the crime for which he is to be punished and of the impending punishment of death. Arizona's "awareness standard" for incompetency to be executed was held unconstitutional in *Panetti*. After *Panetti*, "[t]he critical question is whether a 'prisoner's mental state is so distorted by a mental illness' that he lacks a 'rational understanding' of 'the Sate's rationale for [his] execution.' Or similarly put, the issue is whether a 'prisoner's concept of reality' is 'so impair[ed]' that he cannot grasp the execution's 'meaning and purpose' or the 'link between [his] crime and its punishment.'"

Madison, 139 S. Ct. at 723 (alteration in original) (internal citation omitted).

II. Clarence Dixon is incompetent to be executed.

Mr. Dixon is presently unable to form a rational understanding of the State's reason for his execution rendering him incompetent to be executed. *Madison*, 139 S. Ct. at 723. His "'concept of reality' is 'so impair[ed]' that he cannot grasp the execution's 'meaning and purpose' or the 'link between [his] crime and its punishment.'" *Id.*

A. There is substantial evidence demonstrating that Mr. Dixon is mentally incompetent to be executed

As explained below, there is substantial evidence demonstrating that Mr. Dixon is not competent to be executed. Accordingly, in accordance with the procedures required by A.R.S. § 13-4022(A), Mr. Dixon's counsel requests that this Court order forthwith that Mr. Dixon be examined for mental competency under the governing constitutional standard.

B. This motion is timely

A motion for an examination under A.R.S. § 13-4022 is untimely if it is "filed fewer than twenty days before a scheduled execution[.]" A.R.S. § 13-4024(A). This motion is timely because it is being filed more than twenty days before Mr. Dixon's May 11, 2022 scheduled execution date.

C. This motion presents reasonable grounds for the requested examination

The evidence demonstrates that Mr. Dixon is incompetent to be executed. He suffers from a psychotic mental disorder, paranoid schizophrenia, which is a severe mental illness expressed in delusional thinking and auditory and visual hallucinations. His mental illness has previously resulted in findings of incompetency and insanity. More recently, Lauro Amezcua-Patino, M.D., a clinical and forensic psychiatrist, has determined that Mr. Dixon lacks a rational understanding of the State's reasons for his execution. Mr. Dixon has thus presented a *prima facie* case demonstrating his incompetency to be executed under *Panetti*, and therefore there are "reasonable grounds for the requested examination."

A.R.S. § 13-4022(C).

i. Clarence Dixon's history of incompetency and mental illness

Mr. Dixon has a long and well-documented history of severe mental illness, including prior findings of incompetency, a legal finding of not guilty by reason of insanity (NGRI), and multiple diagnoses of paranoid schizophrenia.

In 1977, Mr. Dixon was arrested for an assault; his bizarre behavior both during and after the offense immediately led to questions as to his mental competency. The superior court trial judge referred him for Rule 11 competency proceedings. As a result, in September 1977, Mr. Dixon was found incompetent by two different court-appointed psychiatrists. One of the psychiatrists determined that Mr. Dixon lacked the mental capacity to "make competent decisions regarding the waiver of [his legal] rights" and that his understanding of the consequences of entering a plea of guilty "is not rational." (Ex. 1 at 1.) The other court-appointed psychiatrist found that Mr. Dixon was unable to "assist counsel in the preparation of his defense. At this time he presents symptoms of undifferentiated schizophrenia, in partial remission." (Ex. 2 at 3.) Both psychiatrists found that Mr. Dixon legally incompetent and he was committed to the Arizona State Hospital (ASH). *See Pate v. Robinson*, 383 U.S. 375, 378 (1966) (conviction of an accused while he is legally incompetent violates due process). He was released from ASH approximately two months later, after a third psychiatrist found he regained competency to stand trial.

At trial for the 1977 assault, Mr. Dixon was found NGRI and released. However, recognizing Mr. Dixon's serious mental illness and his corresponding need for in-patient treatment, the trial judge also ordered the State to commence civil commitment proceedings. (Ex. 3.) The murder, for which Mr. Dixon is sentenced to death in these current proceedings, occurred on January 7, 1978, less than 48 hours after the trial judge had ordered the State to institute civil commitment proceedings. (Ex. 4.)

Subsequently, in 1981, a psychological evaluation of Mr. Dixon administered by the Arizona Department of Corrections described symptoms consistent with his paranoid schizophrenic psychotic disorder, reporting that he "operates on an intuitive, feeling level,

with much less regard for rationality and hard facts," and that he experiences "grossly disturbed perceptual and thought patterns, clear paranoid ideation, feelings of frustration, and moderate agitation." (Ex. 5 at 1, 2.) The evaluation recorded that Mr. Dixon's mental illness was "producing inefficiency of intellectual functioning[]" (Ex. 5 at 1) and concluded that he was a "severely confused and disturbed prisoner" (Ex. 5 at 2).

In November 2002, Mr. Dixon was indicted for the 1978 murder based on the discovery of inculpatory DNA evidence. (Ex. 4.) At the time of the 2002 indictment, Mr. Dixon was already serving seven life sentences for 1985 convictions arising out of a sexual assault of a Northern Arizona University ("NAU") student. It was in 1995, during Mr. Dixon's incarceration on the 1985 convictions, that the Department of Corrections collected a DNA sample from Mr. Dixon which ultimately linked him to 1978 murder.

But long before his 2002 indictment for the 1978 murder, Mr. Dixon had embraced what amounts to a psychotically driven delusional belief that the incident leading to his 1985 conviction for the assault on the NAU student resulted from a wrongful arrest by the NAU Police—an agency he believed not to be a legal entity. (*See* Ex. 6 at 3.) This delusional thinking had no basis in fact for twofold reasons: first, the NAU Police Department <u>was</u> a legal entity, but second, even if it was not a legal entity it would have made no difference—Mr. Dixon was not arrested by the NAU Police; rather he was *lawfully* arrested by the Flagstaff City Police. (*See* Ex. 6 at 3.) Relevant here, however, his delusional beliefs, and the inability to distinguish what is real from what is pure fantasy, eventually spilled over into the capital murder proceedings.

During his capital trial, Mr. Dixon fired his court-appointed attorneys and decided to represent himself, after his counsel concluded they could not ethically raise a *false* claim. The *false* claim Mr. Dixon wanted his counsel to raise resulted from his delusional belief that his DNA sample had been wrongfully obtained. He imagined (without basis in fact) that had he not been wrongfully arrested by the NAU Police, he would not have been incarcerated in the Department of Corrections for the assault on the NAU student and his DNA sample would never have been obtained and linked to the 1978 murder. (*See* Ex. 6

at 3.)

In other words, Mr. Dixon's delusional rationale for firing his counsel was based on his irrational belief that the DNA sample taken from him in 1995, while incarcerated for sexually assaulting a NAU student ten years earlier, was inadmissible in his capital case because the NAU Police were not a legal entity when they arrested him in 1985. (Ex. 6 at 1.) This claim, however, was based on a complete fantasy, it lacked *any* basis in fact: Mr. Dixon had not been arrested by the NAU Police; what's more, records prove he had been lawfully arrested by the Flagstaff City Police and the collection of the DNA sample by Department of Corrections staff in 1995 had no connection to Mr. Dixon's *lawful* arrest for the 1985 offenses.

After Mr. Dixon senselessly fired his capital trial counsel so that he could raise the meritless NAU issue, he immediately filed a Motion to Suppress the DNA evidence based on the NAU issue and, when the trial court denied his motion he filed a special action in the Arizona Supreme Court, which was also denied. While ineffectively representing himself, Mr. Dixon was convicted and sentenced to death.

For almost thirty years, Mr. Dixon has been unable to overcome his psychotically driven belief that the NAU Police lacked authority to investigate and arrest him in 1985, that therefore his 1985 conviction was illegal, and his DNA was illegally obtained, thereby voiding his murder conviction. He has obsessed over this issue ("the NAU issue"), preparing and submitting an unending stream of pro se filings in state and federal courts. Mr. Dixon first raised the NAU issue in a pro se petition for postconviction relief in July 1991, well before he was indicted for the 1978 murder. That petition was denied[1] and affirmed on appeal[2]

In December 1992, Mr. Dixon wrote five letters in 18 days to his appellate counsel

---

[1] Minute Entry, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Dec. 16, 1991).

[2] Memorandum Decision, *State v. Dixon*, No. 1 CA-CR 92-0171-PR (Ariz. Ct. App. Dec. 3, 1992).

about the NAU issue.[3] Then, in a letter to the superior court judge, Mr. Dixon claimed that he was "greatly harmed" because his appellate lawyer "did not include the most important and possibly most valid claim" in the reconsideration motion that appellate counsel filed in the court of appeals.[4] At the same time, Mr. Dixon wrote to the court of appeals judges regarding appellate counsel's "anemic motion" and filed a pro se supplement where he claimed IAC of trial counsel "in several areas but none so significant as to whether the [NAU] police had lawful authority to exist and execute police powers."[5] In February 1993, Mr. Dixon again wrote to the superior court judge stating that he filed a Bar complaint against appellate counsel and was seeking possible legal action.[6]

Also in February 1993, he filed his first pro se filing, a petition for writ of habeas corpus, in the Arizona Supreme Court alleging the NAU Police had no authority to gather evidence. The court denied his petition and subsequent petition for review. Five months later, in February 1994, he filed a petition for writ of habeas corpus in Pinal County Superior Court claiming he was illegally confined because the NAU officers lacked authority to enforce Arizona laws. The court transferred his case to Coconino County. He then filed a petition for special action in Pinal County, which was dismissed in July 1994. Six weeks later, in August 1994, he filed a notice of postconviction relief in Coconino County and then filed his petition about two months later. On April 14, 1995, his petition was denied. His subsequent petitions for review were denied. In October 2001, he filed a petition for postconviction relief in Coconino County, which was denied four months later in February 2002. He filed two petitions for review in 2002 and 2003 that were denied.

---

[3] *See* Letter to Judge Richard Mangum from Clarence Dixon at 1, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Jan. 12, 1993)

[4] Letter to Judge Richard Mangum from Clarence Dixon at 2, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Jan. 12, 1993)

[5] Letter to Judges of the Court of Appeals from Clarence Dixon, *State v. Dixon*, No. 1 CA-CR 92-0171-PR (Ariz. Ct. App. Jan. 13, 1993); Supplement to Motion for Reconsideration at 5, *State v. Dixon*, No. 1 CA-CR 92-0171-PR (Ariz. Ct. App. Jan. 13, 1993)

[6] Letter to Judge Richard Mangum from Clarence Dixon, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Feb. 1, 1993)

During the pendency of his capital trial and appeals, he has repeatedly raised this issue with counsel and continues to raise this issue. In 2021, he filed pro se petitions for habeas corpus in the Arizona Supreme Court and a petition for a writ of certiorari in the United States Supreme Court. His certiorari petition was denied on March 21, 2022.

In all, Mr. Dixon has initiated proceedings related to his NAU issue 27 times in eight different courts: three county superior courts, the state court of appeals and supreme court, the federal district and ninth circuit courts, and most recently, the U.S. Supreme Court. Mr. Dixon believes, without basis in reality, that his NAU issue is "rooted in constitutional principles of law[,]"[7]and "Black Letter Law . . . which plainly states that issues of jurisdiction may be brought at any time[.]"[8] This is despite prior counsel, and several courts, explaining to him why his NAU claim is factually baseless and fails on the

---

[7] *See, e.g.*, Petition for Writ of Habeas Corpus at 3, *Dixon v. McFadden*, No. HC-93-0006 (Ariz. Feb. 16, 1993); Petition for Review at 7, 9, *State v. Dixon*, No. 1 CA-CR 96-0427-PR (Ariz. Ct. App. June 4, 1996); Petition for Review at 7, 9, *State v. Dixon*, No. 1 CA-CR 95-831-PR (Ariz. Ct. App. June 20, 1996); Petition for Review at 5, 8, *State v. Dixon*, No. CR-96-0447-PR (Ariz. August 6, 1996); Memorandum to Petition for Writ of Habeas Corpus at 9, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. Feb. 6, 1997); Reply to Supplement to Motion to Suppress DNA Evidence at 4, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. June 21, 2006); Petition for Special Action at 3, 5, *Dixon v. Klein*, No. 1 CA-SA-07-0034 (Ariz. Ct. App. Feb. 16, 2007)

[8] *See, e.g.*, Petition for Writ of Habeas Corpus at 11, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994); Response to State's Motion to Dismiss Petition for Writ of Habeas Corpus at 4, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Apr. 5, 1994); Petition for Post-conviction Relief at A6, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Oct. 31, 1994); Reply to Motion to Dismiss Post-conviction Petition at 4, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. July 17, 1995); Motion for Rehearing at 2, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Aug. 28, 1995); Amended Petition for Writ of Habeas Corpus at M6, *Dixon v. Lewis*, No. 95-cv-01852 (D. Ariz. Oct. 19, 1995); Memorandum to Petition for Writ of Habeas Corpus at 13, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. Feb. 6, 1997); Reply to Report and Recommendation at 6–7, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. July 18, 1997); Petition for Writ of Habeas Corpus at 6, *Dixon v. Shinn*, No. HC-21-0007 (Ariz. Apr. 15, 2021); Motion for Reconsideration at 2, *Dixon v. Shinn*, No. HC-21-0007 (Ariz. June 4, 2021); Petition for Writ of Certiorari at 7, *Dixon v. Arizona*, No. 21-6820 (U.S. Nov. 12, 2021); Reply to State's Response at 6, *Dixon v. Arizona*, No. 21-6820 (U.S. Feb. 18, 2022).

merits.[9]

Mr. Dixon nonetheless embraces the imaginary: that the courts have all abused their discretion when considering his NAU issue and have intentionally ignored his issue because of its viability.[10] As the record here shows, Mr. Dixon has pursued this claim obsessively to his detriment, including by firing capital trial counsel so that he could

---

[9] *See, e.g.*, Ex. 6; Ex. 7 at 3; Minute Entry at 2, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Dec. 16, 1991); Memorandum Decision at 4, *State v. Dixon*, No. 1 CA-CR 92-0171-PR (Ariz. Ct. App. Dec. 3, 1992); Report and Recommendation at 9–13, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. July 2, 1997); Transcript Re Motion for Reconsideration of Suppression of DNA Evidence at 3–9, 11–12, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. July 12, 2006); Order denying habeas petition, *Dixon v. Shinn*, No. HC-21-0007 (Ariz. May 21, 2021).

[10] *See, e.g.*, Ex. 8 at 5–6; Petition for Writ of Habeas Corpus at 7, 10–11, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994); Response to State's Motion to Transfer Petition for Writ of Habeas Corpus at 2, 5, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Apr. 13, 1994); Petition for Review at 4, 8–9, *State v. Dixon*, No. 1 CA-CR 96-0427-PR (Ariz. Ct. App. June 4, 1996); Petition for Review at 4, 8–9, *State v. Dixon*, No. 1 CA-CR 95-831-PR (Ariz. Ct. App. June 20, 1996); Petition for Review at 4, 7, *State v. Dixon*, No. CR-96-0447-PR (Ariz. August 6, 1996); Memorandum to Petition for Writ of Habeas Corpus at 11, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. Feb. 6, 1997); Motion to Reconsider Ruling of May 12 at 2, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. June 12, 2006); Petition for Special Action at 11, *Dixon v. Klein*, No. 1 CA-SA-07-0034 (Ariz. Ct. App. Feb. 16, 2007); Petition for Special Action at 13, *Dixon v. Klein*, No. 1 CA-SA 07-250 (Ariz. Ct. App. Nov. 21, 2007); Motion to Supplement Opening Brief at 2–3, *State v. Dixon*, No. CR-08-0025-AP (Ariz. Feb. 12, 2010); *see also, e.g.*, Petition for Writ of Habeas Corpus at 4, *Dixon v. McFadden*, No. HC-93-0006 (Ariz. Feb. 16, 1993); Petition for Special Action at 5–6, *Dixon v. Coxon*, No. M-94-0044 (Ariz. June 22, 1994); Notice of Post-conviction Relief at Attach. A, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Aug. 22, 1994); Petition for Post-conviction Relief at A5–A6, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Oct. 31, 1994); Motion for Rehearing at 2–3, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Aug. 28, 1995); Response to State's Answer to Amended Petition for Writ of Habeas Corpus at 4, *Dixon v. Lewis*, No. 95-cv-01852 (D. Ariz. Dec. 27, 1995); Reply to Report and Recommendation at 3–4, *Dixon v. Lewis*, No. 95-cv-01852 (D. Ariz. Apr. 16, 1996); Reply to Report and Recommendation at 5, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. July 18, 1997); Petition for Review, *State v. Dixon*, No. CR-03-0076-PR (Ariz. Mar. 7, 2003); Motion to Suppress the DNA Evidence at 6, 8–9, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. May 1, 2006); Petition for Writ of Certiorari at Questions Presented, *Dixon v. Arizona*, No. 21-6820 (U.S. Nov. 12, 2021).

litigate it, and filing Bar complaints, motions for change of counsel, or motions to proceed pro se when confronted by counsel who could not ethically raise it given its lack of factual support.[11]

As Dr. Amezcua-Patino explains in his report, Mr. Dixon's pro se pleadings over the NAU issue "reveal his delusional, paranoid, and conspiratorial thought content." (Ex. 8 at 12.) For instance, they demonstrate that he believes: prior counsel "purposefully exclude[ed] the [NAU] issue"[12] courts have "refused and ignored applying relevant law" because of the nature of his crime and possibility of his release[13]; relief has been denied on this claim because "[t]he State is embarrassed that for many years [the NAU police] has operated without statutory authority[]"[14]; the courts' action on the NAU issue reflects their deliberate and "continued evasion" of his right to relief[15]; the courts have engaged in "obvious subterfuge"[16] and are purposefully in "collusion" to deny him his rights (Ex. 10); that the "cumulative, continuous and concerted effort by state and federal judges on its face smacks of collusion and conspiracy or, at the least, complicity and the reader is left considering the circumstantial weight to tell if judicial collusion is found[]" (Ex. 10 at

---

[11] *See, e.g.*, Petition for Writ of Habeas Corpus at 2, *Dixon v. McFadden*, No. HC-93-0006 (Ariz. Feb. 16, 1993); Motion to Change Counsel, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. Oct. 11, 2005); Minute Entry, *State v. Dixon*, No. CR 2002-019595 (Maricopa Cnty. Super. Ct. Mar. 16, 2006); Petition for Writ of Certiorari at 11, *Dixon v. Arizona*, No. 21-6820 (U.S. Nov. 12, 2021); Reply to State's Response at 1, *Dixon v. Arizona*, No. 21-6820 (U.S. Feb. 18, 2022);*see also* Ex. 9.

[12] Motion to Supplement and Consolidate Petition for Writ of Habeas Corpus at 2, *Dixon v. McFadden*, No. HC-93-0006 (Ariz. Mar. 11, 1993).

[13] Petition for Writ of Habeas Corpus at 10, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994).

[14] Petition for Writ of Habeas Corpus at 11, *Dixon v. Murphy*, No. CV94041734 (Pinal Cnty. Super. Ct. Feb. 3, 1994).

[15] Reply to Report and Recommendation at 4, *Dixon v. Lewis*, No. 95-cv-01852 (D. Ariz. Apr. 16, 1996).

[16] Petition for Review at 8, *State v. Dixon*, No. 1 CA-CR 96-0427-PR (Ariz. Ct. App. June 4, 1996); Reply to Report and Recommendation at 6, *Dixon v. Stewart*, No. 97-cv-00250 (D. Ariz. July 18, 1997).

8)[17]; and that judges have engaged in deliberate "obstruction" in denying his NAU claim (Ex. 11) evidencing their "spirit of ill-will towards [him]"[18]. (*See also* Ex. 9 at 12.)

In a 1997 letter to the Ninth Circuit Court of Appeals, Mr. Dixon expressed his belief that the courts denied him relief on the NAU issue "because to follow and apply the law would have been politically disastrous, a dark embarrassment to the state universities."[19] (Ex. 9 at 12.)

In the decades since, Mr. Dixon has written many letters to judges, justices, attorneys, and organizations seeking assistance litigating the NAU issue only to be told that they cannot ethically file the claim or his issue "does not meet the[ir] standards." (Ex. 12; Ex. 7.)

During state postconviction proceedings, in 2012, Mr. Dixon was evaluated by John Toma, Ph.D., and Lauro Amezcua-Patino, M.D. Dr. Toma found that he suffered from "mood, thought and perceptual disturbances" and that there were "significant cognitive [brain] impairments noted from his neuropsychological test scores." (Ex. 13 at 21, 22.) Further, the neuropsychological tests indicated possible brain damage meeting the diagnostic criteria for Cognitive Disorder, Not Otherwise Specified (NOS). (Ex. 13 at 18, 22-23, 24.) Mr. Dixon also underwent neuroimaging that evidenced brain abnormalities. (Ex. 14 at 4.)

In addition to the findings of brain impairment, Dr. Toma also found evidence of Mr. Dixon's mental illness, including severe depression, paranoia, perceptual disturbances, and diagnosed him with a psychotic disorder, schizophrenia. (Ex. 13 at 21-22, 24.) Dr. Toma also administered the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and corroborated a finding that Mr. Dixon suffers from "[a] psychotic disorder (such as Schizophrenia)[.]" (Ex. 13 at 20.) Dr. Toma found that Mr. Dixon met the DSM-

---

[17] *See also* Petition for Post-conviction Relief at A5–A6, *State v. Dixon*, No. 11654 (Coconino Cnty. Super. Ct. Oct. 1, 2001).

[18] Petition for Review at 5, 7–8, *Dixon v. Klein*, No. CV-07-0415-PR (Ariz. Dec. 5, 2007).

[19] Letters to Judge Nelson and Judge Thompson from Clarence Dixon, Dixon v. Stewart, No. 97-16849 (9th Cir. Nov. 6, 1997).

IV-TR diagnostic criteria for Paranoid Schizophrenia. (Ex. 13 at 24.)

Similarly in 2012, Dr. Amezcua-Patino observed that Mr. Dixon "exhibits evidence of positive, negative and cognitive deficits associated with schizophrenia, with a predominance of paranoid ideation and cognitive difficulties[.]" (Ex. 15 at 5.) Dr. Amezcua-Patino noted that "[s]chizophrenia is a chronic, severe, and disabling brain disorder that affects about 1 percent of the world population. People with [schizophrenia] may hear voices other people don't hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them." (Ex. 15 at 4.) Dr. Amezcua-Patino also explained that hallucinations and delusions are common symptoms in patients with schizophrenia.

Dr. Amezcua-Patino concluded Mr. Dixon "suffers from chronic and severe psychiatrically determinable thought, cognition and mood impairments that are expected to continue for an indefinite period of time of a Schizophrenic nature[.]" (Ex. 15 at 4.)

D. Clarence Dixon is incompetent to be executed

Apart from the 2012 evaluation, Dr. Amezcua-Patino reevaluated Mr. Dixon over three separate visits during 2021 and 2022, and he concluded that Mr. Dixon is unable to form a rational understanding of the State's reasons for his execution. (Ex. 9 at 12–13.) Dr. Amezcua-Patino indicated that Mr. Dixon suffers from persistent delusions related to his legal case as well as visual, auditory, and tactile hallucinations. (Ex. 9 at 12.) Despite being legally blind, Mr. Dixon reports seeing dead children watching him. Mr. Dixon's "capacity to understand the rationality of his execution is contaminated by the schizophrenic process which results in his deluded thinking about the law, the judicial system, his own lawyers, and his ultimate execution[.]" (Ex. 9 at 13.) Mr. Dixon is disconnected from reality and experiences concrete thinking, which is common to those diagnosed with schizophrenia. (Ex. 9 at 12.) Concrete thinking causes Mr. Dixon to fixate on an issue that is unrelated to his execution, limiting his ability to abstractly consider why he is to be executed. This contributes to his inability to form a rational understanding of the State's reasons for his execution. (Ex. 9 at 12–13.)

Dr. Amezcua-Patino's findings demonstrate that Mr. Dixon is incompetent to be executed. In *Panetti*, the Supreme Court recognized that "[g]ross delusions stemming from a severe mental disorder may put an awareness of a link between a crime and its punishment in a context so far removed from reality that the punishment can serve no proper purpose." *Panetti*, 551 U.S. at 960. Mr. Dixon has long suffered from persistent delusions related to his criminal case. His delusions impair his concept of reality such that he cannot reach a rational understanding of the reason for the execution. *See id.* at 958. "[A] delusional disorder can be of such severity—can so impair the prisoner's concept of reality—that someone in its thrall will be unable to come to grips with the punishment's meaning." *Madison*, 139 S. Ct. at 729 (internal quotation omitted). Mr. Dixon's delusions cause him to believe that the Arizona Supreme Court Justices are conspiring to murder him. (*See* Ex. 9 at 13.) These delusions prevent him from understanding the meaning of the punishment the State seeks to exact.

Over the past thirty years, Mr. Dixon has experienced regular hallucinations, seeing people who do not exist and hearing voices that are not there. He "ultimately believes that he will be executed because the NAU police wrongfully arrested him in 1985 and the judicial system—and actors in it, including his own lawyers—have conspired to cover up that fact." (Ex. 9 at 13.) His concept of reality is so impaired that he cannot form a rational understanding of "the retributive message society intends to convey with a death sentence." *Id.* at 727. It would offend humanity to execute Mr. Dixon, a person who is so wracked by mental illness that he cannot comprehend the "meaning and purpose of the punishment." *Panetti*, 551 U.S. at 686.

III. Conclusion

Mr. Dixon has filed a timely motion which presents reasonable grounds justifying an examination for incompetency to be executed. A.R.S. §§ 13-4024(A); 13-4022(C). Mr. Dixon requests that this Court appoint experts to determine whether he can form a rational understanding of the State's rationale for his execution. *See Panetti*, 551 U.S. at 959. Mr. Dixon also requests an evidentiary hearing where he may present evidence to demonstrate

that he is incompetent to be executed. *See* A.R.S. § 13-4022(C).

Respectfully submitted this 8th day of April, 2022.

Jon M. Sands
Federal Public Defender
District of Arizona

Cary Sandman

s/ Cary Sandman
Attorney for Defendant

Certificate of Service

I hereby certify that on April 8, 2022, an original and copies of the foregoing document were filed in person at the Pinal County Superior Court and emailed to:

Jeffrey L. Sparks
Acting Unit Chief
Arizona Attorney General's Office
Jeffrey.Sparks@azag.gov

Capital Litigation Docket
Arizona Attorney General's Office
CLDocket@azag.gov

Colleen Clase
Attorney for Leslie James
Colleen.avcv@gmail.com

s/ Jessica Golightly
Assistant Paralegal

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: April 8, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF: **STATE OF ARIZONA** PLAINTIFF AND **CLARENCE WAYNE DIXON** DEFENDANT	**S1100CR202200692** **ORDER RE:** **REVIEW OF DEFENSE MOTION TO DETERMINE COMPETENCY TO BE EXECUTED,** **pursuant to A.R.S. § 13-4021,** ***et seq.***

The Defendant having filed in this Court, in the county where the Defendant is apparently located, a *Motion to Determine Competency to be Executed*, pursuant to A.R.S. § 13-4022(A), which was forwarded by the Clerk to this Division.

IT IS HEREBY ORDERED assigning this matter to the Hon. Robert Carter Olson, for all further proceedings.[1]

IT IS FURTHER ORDERED that the Clerk of the Court shall open a criminal file and assign a case number to this proceeding, and the Clerk shall file the motions received this date and future filings in that file.

The Court having reviewed the pending motion, the Court **FINDS** that the instant motion is timely, within the meaning of A.R.S. § 13-4024(A), and the Court makes the threshold determination that the motion satisfies the minimum required showing that reasonable grounds exist for the requested examination and hearing, within the meaning of A.R.S. § 13-4022(C) and as otherwise required by *Ford v. Wainwright*.

[1] The assigned judge's judicial Assistant is Connie Herrera, who may be contacted at (520) 866-5572 or cherrera@courts.az.gov.

IT IS FURTHER ORDERED setting this matter for SCHEDULING HEARING on Tuesday, April 12, 2022, at 3:30 P.M., before the Hon. Robert Carter Olson.[2] Counsel should have their nominations ready for mental health experts, who must be available to conduct an expedited examination and report, ideally by Tuesday, April 26, 2022, and Counsel should be prepared to select a hearing date, and the Court is contemplating Tuesday, May 3, 2022.

If counsel prefers assistance with identifying a mental health expert, Counsel may alternatively contact the *Vulnerable Persons Unit* of this court, which maintains a list of mental health experts who are under contract with Pinal County for appointment to conduct competency examinations.

For purposes of planning for the competence hearing, the Defendant will be presumed competent for execution, subject to a showing of incompetence by clear and convincing evidence, pursuant to A.R.S. § 13-4022(F), and the standard for determining competence is set forth in A.R.S. § 13-4021(B) and further instructed by the *Panetti v. Quarterman*. And any expert reports shall be shared without redaction, since all privileges are waived, pursuant to A.R.S. § 13-4022(D). If there is any disagreement as to the presumption, burden, standard, or any procedural requirement mandated by *Ford* or other authority, a memorandum is to be filed by Monday, April 18, 2022, with any response by Friday, April 22, 2022.

IT IS FURTHER ORDERED granting Defendant's *Motion to Exceed Page Limit*, and the same grant is extended to the State with any Response.

IT IS FURTHER ORDERED that Defendant shall promptly file a notice with the trial court and Supreme Court of Arizona, informing both courts of this proceeding.

---

[2] Counsel may appear by video conference, which shall be hosted on *WebEx* and may be joined at www.webex.com or by using one of *WebEx*'s desktop, tablet, or phone applications (If you are new to video conferencing, please test your connection and equipment by visiting www.webex.com).

COUNSEL ARE RESPONSIBILE FOR ESTABLISHING A GOOD CONNECTION, INCLUDING HIGH QUALITY AUDIO FROM A CAPABLE MICROPHONE & SPEAKER (OR HEADSET), BEFORE THE START OF THE HEARING, SO THAT COUNSEL CAN HEAR AND BE CLEARLY UNDERSTOOD, AND COUNSEL SHOULD ALSO PROVIDE A VIDEO FEED.

The *WebEx* Meeting ID and Passcode may be obtained from the Court's Judicial Assistant.

DATED this 8th day of April 2022,

HON. ROBERT CARTER OLSON
Superior Court Judge

Emailed/Mailed/Distributed Copy:

JEFFREY L. SPARKS
ACTING UNIT CHIEF
ARIZONA ATTORNEY GENERAL'S OFFICE
Jeffrey.sparks@azag.gov

Capital Litigation Docket
Arizona Attorney General's Office
CLdocket@azag.gov

COLLEEN CLASE
Attorney for Leslie James
Colleen.avcv@gmail.com

CARY SANDMAN
OFFICE OF THE FEDERAL PUBLIC DEFENDER
Cary_sandman@fd.org

OFFICE DISTRIBUTION:
JUDGE/OLSON

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: April 27, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF: **STATE OF ARIZONA** PLAINTIFF AND **CLARENCE WAYNE DIXON** DEFENDANT	**S1100CR202200692** **RECONSIDERATION AND ORDER REGARDING DEFENSE MOTION TO DETERMINE COMPETENCY TO BE EXECUTED,** **pursuant to A.R.S. § 13-4021, *et seq.*** **(Capital Case)**

On April 25, 2022, the Arizona Supreme Court accepted jurisdiction of a *Petition for Special Action* filed by the State, thereby resulting in an order to "[remand] to the superior court with instructions to reconsider its ruling [on April 8, 2022] in light of the response and reply."

The Court has accordingly reconsidered its prior ruling, as instructed by the supreme court, including considering the *Response to Motion to Determine Mental Competency to be Executed*, filed by the State on April 13, 2022, and the *Reply in Support of Motion to Determine Mental Competency to be Executed*, filed by the Defendant on April 18, 2022, as follows:

VENUE

The Court **AFFIRMS** that Defendant filed his *Motion to Determine Competency to be Executed* in the county where the Defendant is located, as required by *A.R.S.* § 13-4022(A), and the Court notes that the State does not dispute that the motion was filed in the correct venue.

PROCEDURE UPON RECEIPT OF MOTION

The Court respectfully **AFFIRMS** its interpretation that the procedural statute, *A.R.S.* § 13-4022(C), establishes an event-driven procedure that requires the superior court to make two threshold determinations "**[o]n receipt of a motion** for examination of competency," [emphasis added].

Such that when a specific event occurs, i.e. the receipt of the motion, the superior court must determine if the motion is timely, and the superior court must determine if the "motion" presents reasonable grounds for the requested examination. This statute does not authorize or invite the superior court to wait for a response or reply, nor does it authorize the superior court to defer consideration, and this statute specifically directs the superior court to look to the motion to determine if reasonable grounds exist for the requested examination; it makes no reference to looking to any responsive pleading when making this determination.[1]

In applying this statutory construction, the Court acknowledges that it did not wait for a response and reply before issuing its prior ruling and finding that reasonable grounds were shown in the motion for an examination, which appears to be the clear requirement of the statute. On reflection, however, the Court agrees with the State that § 13-4022(C) does not direct (or authorize) the superior court to take the next step of granting a hearing without waiting for a response and reply (and perhaps waiting for the reports on the examination, which have now been received).

Accordingly, on reconsideration, the Court agrees that its initial decision to grant a hearing was premature, and that initial decision will therefore be reconsidered *de novo* and addressed below.

--

---

[1] The Court notes that the phrase "on receipt of a" is found 133 times in *Arizona Revised Statutes* and, without reviewing each example, seems to universally direct action upon the event of receiving some item or document, which also appears to be the legislative construct of § 13-4022(C).

The Court also observes that this type of event-driven language is not found in the more common mental health examination in Criminal Rule 11, but a proceeding under § 13-4021, *et seq*., is obviously different and uniquely time-sensitive, due to the narrow 35 day time-period between issuance of a warrant of execution and the date of execution, pursuant to Criminal Rule 31.23(c). This informs the obvious rationale for the statute to require action "on receipt," as described above, in order to complete the required procedure in the available time, to avoid the superior court frustrating the timeframe in the supreme court's warrant of execution.

TIMELINESS

The Court **AFFIRMS** that the instant motion is timely, within the meaning of *A.R.S.* § 13-4024(A), and the Court notes that the State does not dispute that the motion was timely.

EXAMINATIONS

The Court **AFFIRMS** that reasonable grounds were shown by the Defendant in his motion for an examination, but the Court now makes the additional finding that reasonable grounds remain for an examination after consideration of the response and reply, such that the Court **AFFIRMS** its prior ruling to order an examination.

Specifically, the Court **FINDS** that the Defendant satisfied the minimum required showing that reasonable grounds exist for the requested examination, within the meaning of *A.R.S.* § 13-4022(C) and as otherwise required by *Ford v. Wainwright*, as was evidenced by the report by Dr. Lauro Amezcua-Patino, M.D., a clinical and forensic psychiatrist, who prepared an unsworn statement dated March 31, 2022, just eight days before the instant motion was filed, which opines that the Defendant currently lacks a rational understanding of the State's reasons for his execution, and that same statement offers a diagnosis, a discussion about Defendant's understanding, and references the doctor's conclusion that certain legal theories embraced by the Defendant are delusional, *Motion to Determine Competency to be Executed*, Exhibit 9.

The State's Response largely repeats the procedural and mental health history provided in Defendant's motion and, essentially, argues that these issues have been raised before, that prior courts have rejected Defendant's claims of incompetence, and that there is no meaningful evidence that the Defendant's condition has worsened or changed. This same argument was a significant observation in Justice Thomas' dissent[2] in *Panetti v. Quarterman*, 551 U.S. 930, 962–63, 127 S. Ct. 2842, 2863–64, 168 L. Ed. 2d 662 (2007), but this position was not embraced by the majority view, which this Court is obligated to follow.

Pursuant to *A.R.S.* § 13-4021 and the Eighth Amendment, the superior court is charged with determining whether the Defendant is mentally incompetent, based on the Defendant's competence <u>at this time</u> to be executed by the State of Arizona, such that this inquiry is not answered by the determination of Defendant's

---

[2] The context of the observations of Justice Thomas were in relation to addressing the barrier to a second or successive *habeas* under *The Antiterrorism and Effective Death Penalty Act of 1996* (AEDPA).

competence decades ago, for which a different standard and test were also applied, upon which the State unconvincingly frames its argument to show that the Defendant is currently competent to be executed.

In simplest terms, the State has offered no contemporary professional opinion to inform this question or rebut the opinion of Dr. Amezcua-Patino, nor did it admittedly have any obligation to do so at this time; but in the absence of such a showing, the only opinion from the current era was provided by Defendant, and that showing meets the minimum requirement to find that reasonable grounds exist for the requested examination.

For these reasons, following reconsideration in light of the response and reply, the Court respectfully finds no basis to depart from its initial order for examinations, and **IT IS HEREBY ORDERED** affirming the Court's prior ruling, pursuant to § 13-4022(C), and granting Defendant's request for examinations.

HEARING

The Court having already conceded *supra* that a hearing should not have been granted upon receipt of the motion, the Court now turns to the question of whether to grant a hearing to the Defendant after having received the response and reply, and the Court noting that it has also now received conflicting opinions from Dr. Lauro Amezcua-Patino and Dr. Carlos Vega.

Good cause appearing, the Court **FINDS** and **AFFIRMS** that the Defendant has a right under Arizona and Federal law to a full, fair, and adequate hearing before the Court, including the opportunity to present evidence, examine witnesses, and make arguments, as previously ordered, which shall commence on Tuesday, May 3, 2022, at 9:00 A.M.

To be clear, the finding that the Defendant has made the requisite showing for an examination, and that the Defendant has a right to a hearing, is not a determination or adjudication of any issue on the merits at the hearing.

Now, therefore, and following reconsideration as ordered by the supreme court, **IT IS ORDERED** affirming the Court's prior ruling on April 8, 2022, except as modified, supplemented or explained by this ruling.

eSigned by Olson,Robert 04/27/2022 19:20:21 GCIEPdmC

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: May 3, 2022

THE HONORABLE ROBERT CARTER OLSON

IN RE THE MATTER OF: **STATE OF ARIZONA** PLAINTIFF AND **CLARENCE WAYNE DIXON** DEFENDANT	**S1100CR202200692** **RULING THAT DEFENDANT IS COMPETENT TO BE EXECUTED,** **pursuant to A.R.S. § 13-4021, *et seq.*** **(Capital Case)**

On this date, this Court presided over a competency for execution hearing; and at the conclusion of the hearing, this matter was taken under advisement,

Now, therefore,

The Court **FINDS** that Defendant filed his *Motion to Determine Competency to be Executed* in the county where the Defendant is located; the request for an examination was timely; and this Court has jurisdiction to decide this question, pursuant to *A.R.S.* § 13-4021, et seq.

The Court further **FINDS** that the Defendant made the minimum required showing that reasonable grounds exist for this examination, within the meaning of *A.R.S.* § 13-4022(C) and as otherwise required by *Ford v. Wainwright*, and that the Defendant, therefore, has a right under Arizona and Federal law to a full, fair, and adequate hearing, including the opportunity to present evidence, examine witnesses, and make arguments, which is now completed.

Without conceding the constitutionality of the standard set forth in *A.R.S.* § 13-4021(B), the parties stipulated at the start of the hearing to apply the following standard when assessing competency in this action:

> whether Clarence Wayne Dixon's mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

Finally, as a matter of judicial economy (in light of the certain review of this decision by a higher court), the parties have consented to the Court making duplicate findings as to the standard of proof that is borne by the Defendant, pursuant to *A.R.S.* § 13-4022(F), which requires clear and convincing evidence, and the alternative standard of a preponderance of the evidence, which may arguably be required by Fourteenth and Eighth Amendments.

With respect to the hearing,

The evidence presented at the hearing consisted of 39 exhibits, admitted by stipulation, and the testimony of Dr. Lauro Amezcua Patiño, M.D., FAPA, and Dr. Carlos Vega, Psy.D., both of whom were qualified as experts and without objection, pursuant to Evidence Rule 702, and the expert witnesses examined the Defendant but presented conflicting opinions. Accordingly, their opinions are judged just as any other testimony, and the Court may give any such testimony as much credibility and weight as the Court thinks it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the hearing.

As a threshold determination, under both standards of proof, the Court **FINDS** that the Defendant has a mental disorder or mental illness of schizophrenia, albeit that this mental disorder or illness can fall within a broad spectrum, which the Defendant has shown through the testimony of Dr. Patiño and multiple exhibits. This determination, however, does not decide the question of competency. Rather, this threshold determination requires the Court to further consider whether Defendant's mental state is so distorted by this mental illness that he lacks a rational understanding of the State's rationale for his execution.

In an effort to meet this burden, the Defendant relies heavily on his "NAU legal challenge" to show that he lacks a rational understanding. Specifically, for several decades, the Defendant has immovably claimed that the NAU police department in some way initiated, without lawful authority, an investigation into a sexual assault

case in Flagstaff during 1985. And as a result, the Defendant argues that he is entitled to the suppression or reversal of everything that happened to him as a result of the claimed unlawful action by the NAU police department, including reversal of that conviction, nullification of the subsequent authority vested in the Department of Corrections to take a DNA sample from the Defendant while incarcerated for the 1985 case, and suppression of the resulting DNA evidence and reversal of his conviction in this case for which a warrant of execution is now pending.

On the one hand, this is an elegant theory that could make all of his legal problems go away; on the other hand, the chance of success with this argument was highly improbable (if not non-existent), yet the Defendant remains unbending in his commitment to this argument, whether due to hubris, poor judgment, a longshot strategy for lack of a better argument, or a delusion, as Defendant claims.

In support of his argument, Dr. Patiño opines that the NAU legal challenge is evidence of delusion as a result of his schizophrenia, noting the Defendant's claims that the judges and attorneys have conspired to wrongly deny his claim, as well as claiming that judges are denying his claims to protect the State or law enforcement from embarrassment or that judges are engaging in an "extra-judicial" killing of the Defendant, as well as other and cumulative evidence that was presented at the hearing.

For example, in Exhibit 2, Dr. Patiño expands on these observations with the following remarks from his interview on August 25, 2021: "They are not disagreeing with me; they just want to kill me for murder. They are ignoring the law." And later, on March 10, 2022, the Defendant communicated a different message, essentially that his claims were denied due to bias: "When questioned about the judicial system's rationale for denying his claims, Clarence stated that he did not think the judges, attorneys for the state, or his own attorneys were plotting against him, but stated his belief that this reflected that they are, "Not against me but have a firm and decided philosophy that the law enforcement should always be backed up." The Defendant went on to opine that this was a result of Arizona's judges coming from the "prosecutor services bar."

In simplest terms, when considered as a whole, the testimony and evidence about the NAU legal challenge is conflicting and ambiguous, includes inflammatory remarks and reflective observations by the Defendant, but it provides a window into arguably delusional thinking concerning the Defendant's rational understanding of the judiciary's rationale for denying his favored legal theory. The Court rejects Defendant's assertion that this is dispositive of the issue before this Court, but it

clearly provides some insight into the Defendant's rational understanding in regard to the State's rationale for his execution.

As for the remaining evidence presented at hearing, there were persuasive observations that were also offered by Dr. Vega, including the Defendant's statements that were memorialized by Dr. Vega, which provide insight into the rational understanding by the Defendant of the State's rationale for his execution, such as the Defendant reflecting that, if he had a memory of the murder, he would have a sense of relief on his way to his execution.

Furthermore, it is undisputed that the Defendant's intelligence is not less than average and probably classified in a high-average range. Dr. Patiño testified as to the different characteristics with schizophrenia that are typical for persons of low intelligence versus high intelligence, including the fact that persons of higher intelligence can have higher levels of functioning. And the Court notes that the Defendant has shown sophistication, coherent and organized thinking, and fluent language skills in the pleadings and motions that he has drafted and that were entered into evidence as exhibits, combined with the fact that he previously earned an income from other inmates for drafting pleadings for hire, although the Court is mindful that Dr. Patiño opines and cautions that such observations do not preclude his conclusion of incompetence.

Finally, although the Defendant claims that he has no memory of the murder that is the subject of this warrant of execution, which may be the result of a blackout, the Court notes that there is no evidence of dementia or a related impairment that would otherwise implicate an Eight Amendment consideration.

Now, after considering and weighing the substantial but conflicting testimony and evidence that was admitted at the hearing, and after considering the arguments of counsel, and being satisfied that a thorough and detailed examination has been completed by two qualified, expert witnesses, and being satisfied that the record adequately informs the decision about whether the Defendant can rationally understand the State's rationale for his death sentence and scheduled execution,

For this, and other good cause,

The Court **FINDS** that Clarence Wayne Dixon is presumed to be competent to be executed, pursuant to *A.R.S.* § 13-4022(F).

The Court **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by clear and convincing evidence, to show that his mental state is

so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

As a matter of judicial economy, although it is a much closer question,

The Court further **FINDS** that Clarence Wayne Dixon has NOT met his burden to rebut this presumption, by a preponderance of the evidence, to show that his mental state is so distorted by a mental illness that he lacks a rational understanding of the State's rationale for his execution.

IT IS HEREBY ORDERED that the warrant of execution in this cause is NOT stayed, pursuant to *A.R.S.* § 13-4022(G).

IT IS FURTHER ORDERED that no matters remain pending; this is a final judgment; and closing this file.

eSigned by Olson,Robert 05/03/2022 23:51:41 e1ow8ksn

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA, Plaintiff, vs. CLARENCE WAYNE DIXON, Defendant.	)	No. CR202200692

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(Determination of Competency Hearing)

BEFORE THE HONORABLE ROBERT CARTER OLSON
Judge of the Superior Court

Florence, Arizona
May 3, 2022
9:19 a.m.

REPORTED BY:

LESLIE C. CRAITH, RPR
Arizona Certified Reporter
Certificate No. 50850

COPY

A P P E A R A N C E S

For the Plaintiff:

ARIZONA ATTORNEY GENERAL'S OFFICE
By: Jeffrey L. Sparks, Acting Chief Counsel
Gregory Hazard Senior Litigation Counsel
2005 North Central Avenue
Phoenix, Arizona 85004

For the Defendant:

OFFICE OF THE FEDERAL PUBLIC DEFENDER
By: Eric Zuckerman, Assistant Federal Public Defender
Cary Sandman, Assistant Federal Public Defender
Amanda Bass, Assistant Federal Public Defender
850 West Adams Street, Suite 201
Phoenix, Arizona 85007

For the Crime Victim:

Arizona Voice for Crime Victims
By: Colleen Clase
111 East Taylor Street
Phoenix, Arizona 85004

Also Present:

Angela Fairchild, Defense paralegal
Daniel Vidal, Plaintiff paralegal

INDEX

WITNESS	PAGE
LAURO AMEZCUA-PATIÑO	
Direct Examination By Mr. Zuckerman	18

EXHIBIT	DESCRIPTION	ID	AD	EX
1	CV of Lauro Amezcua-Patino, M.D.	20	10	
2	Addendum to various reports by Lauro Amezcua-Patino, M.D.		10	
3	Psychiatric Examination Report by Otto Bendheim, M.D., 9/2/1977	41	10	
4	Psychiatric Examination Report by Maier Tuchler, M.D., 9/2/1977	43	10	
5	Arizona Department of Corrections Psychological Report, 4/23/1981	47	10	
6	Neuropsychological-Psychological Evaluation Report by John Toma, Ph.D.,6/30/2012	51	10	
7	Psychiatric Evaluation Report by Lauro Amezcua-Patino, M.D., 9/7/2012	55	10	
8	Arizona State Hospital Physician's Orders Page	45	10	

9	Minute Entry Verdict, State v. Dixon, No. 98107, Maricopa Co. Sup. Ct, 1/5/1978		10
10	Arizona Medical Board License Profile of Lauro Amezcua-Patino	20	10
11	Schizophrenia Diagnostic Criteria from DSM-5	31	10
12	Pet. For Writ of Habeas Corpus, Dixon v. Murphy, No. CV94041734, Pinal Co	68	10
13	Letters to Ninth Circuit Judge Nelson and Judge Thompson, Dixon v. Stewart, No. 97-16849	69	10
14	Pet. for Post-Conviction Relief, State v. Dixon, No. 11654, (Coconino Co. Sup. Ct, 10/1/2001	66	10
15	Can & Do the Courts Collude by Clarence W. Dixon, 2001	70	10
16	Complaint Against a Judge, (J. Michael Flournoy) 3/12/2002	72	10
17	Reply to State's Response to Petition for Review, State v. Dixon, No. 1 CA-CR 02-0203-PR	73	10
18	Clarence Dixon Letter to Commission on Judicial Conduct, June 12, 2002	74	10
19	Draft Motion to Suppress DNA Evidence, May 2003	75	10
20	Motion Three to Reconsider Denial of Change of Judge, State v. Dixon, CR2002-019595	77	10

21	Petition for Writ of Habeas Corpus, Dixon v. Shinn, No. HC-21-0007	77	10
22	Second Response to State's Reply to First Response, Dixon v. Shinn, No. HC-21-0007	78	10
23	Petition for Writ of Certiorari, Dixon v. Arizona, No. 21-6820	81	10
24	Reply to State's Response, Dixon v. Arizona, No. 21-6820	83	10
25	Complaint Against a Judge, (Andrew Gould), 4/11/2022		10
26	Complaint Against a Judge, (Ann Timmer), 4/11/2022	83	10
27	Complaint Against a Judge, (Kathryn King), 4/11/2022	85	10
28	Complaint Against a Judge, (William Montgomery), 4/11/2022	85	10
29	Clarence Dixon Letter to Commission on Judicial Conduct, 4/16/2022	86	10
30	CV of Carlos J. Vega		10
31	Psychological Evaluation by Dr. Carlos Vega		10
32	Letter from Clarence Dixon to Judicial Commission	87	88

Florence, Arizona
May 3, 2022
9:19 a.m.

P R O C E E D I N G S

THE COURT: We are here on CR202200692 -- somebody have a -- okay. We have a problem. I think somebody's speaker is still on. If you could X out your speaker. Testing. One, two, three, testing. I think there's still one on, but it's better. Just make sure your speaker is X'd out; that it's not producing any sound. Okay.

We will give this a try. All right. We're here on CR202200692, State of Arizona versus Clane -- Clarence Wayne Dixon -- we are still having feedback.

(Off-the-record discussions regarding to technical difficulties.)

THE COURT: We will get the IT people back up here.

Well, I heard a few chimes. Maybe our problem's been fixed. Okay.

All right. Let's try again. We're here on CR202200692, State of Arizona versus Clarence Wayne Dixon.

Let's go ahead and have counsel please

identify for -- for the record.
Sir.
MR. ZUCKERMAN: Good morning, Your Honor. Eric Zuckerman for Clarence Wayne Dixon. With me I have Amanda Bass and Cary Sandman, and Angela Fairchild is our paralegal.
THE COURT: Very well. And, sir, I'm sorry, I didn't catch your name.
MR. ZUCKERMAN: Eric Zuckerman, Your Honor.
THE COURT: Mr. Zuckerman. Very well.
For the State.
MR. SPARKS: Good morning, Your Honor, Jeff Sparks for the State, along with me is Greg Hazard, and Daniel Vidal, our paralegal.
I also wanted to point out that the statutory victim is Leslie James, watching via Webex, and her attorney, Colleen Clase, is in the courtroom.
THE COURT: And, Ms. Clase, if you'd like to go ahead and identify for the record.
MS. CLASE: Of course. Good morning, Your Honor. Colleen Clase on behalf of victim, Leslie James, who is watching on the Webex.
THE COURT: Are you in communication with her to be able to confirm that she's able to hear?
MS. CLASE: Yes, Your Honor.

THE COURT: And it's still working?
MS. CLASE: It is, the last I heard.
THE COURT: If you hear to the contrary, please let me know immediately.
MS. CLASE: Of course. Thank you.
THE COURT: Daniel, we were having lots of feedback and then some static, but it appears our problems are past. Perhaps it was just from you coming up the elevator. So we're all set. All right.
Apparently Livestream can't hear.
(Off-the-record discussion regarding technical difficulties.)
THE COURT: Folks who are listening, we are having some technical problems here. And I think we have the Webex problem straightened out, but we have received a report that people are not able to hear on the Livestream system. So we are trying to confirm whether that has been fixed now, as well, or if that's still a problem area. Testing one, two, three.
All right. Word I have is we are good. If anybody hears from a client or associate that they're having a difficulty hearing, please let me know.
With that, third try. We are -- we're getting started again. CR202200692. Counsel have identified, as has the victim representative. This is

date and time set for the competency hearing that was filed by defense.

And, Counsel, just as a few housekeeping matters, is the rule being invoked by either side as to witnesses being present to hear testimony of another.

MR. SPARKS: Yes, Your Honor, by the State.

MR. ZUCKERMAN: Your Honor, if I may?

THE COURT: Sir.

MR. ZUCKERMAN: I do think it would, likely, be appropriate for -- since the testimony that's going to be presented today is all expert testimony, I think it may be appropriate for the experts to be able to listen to each other and what they're going to say so that they can respond.

MR. SPARKS: Your Honor, we -- the experts have seen each other's reports. There shouldn't be any surprises, I don't think, about, you know, what each expert intends to say. So, for that reason, the State would request the Court invoke the rule.

THE COURT: We can revisit this later, but at this time, since there wasn't advanced notice of this -- we obviously don't have Dr. Vega with us today. I believe he is appearing by Webex this afternoon. You can raise this again later, Mr. Zuckerman, when we get to Dr. Vega's testimony, if you'd like to revisit this.

But at this point the Court will not invoke that.

All right. Are there any stipulations as to the list of exhibits?

MR. SPARKS: Your Honor, the State doesn't object to admission of any of the exhibits that the defense has offered.

MR. ZUCKERMAN: And, Your Honor, the defense does not object to -- I believe the State has offered two exhibits.

THE COURT: So there's no objection to what's been marked 1 through 31 being admitted, correct?

MR. SPARKS: Correct.

MR. ZUCKERMAN: Yes, Your Honor, correct.

THE COURT: Very well. Then, without objection, by stipulation, it's ordered that Exhibits 1 through 31 are admitted.

Okay. Any other stipulations, any other agreements, before we proceed?

MR. SPARKS: No, Your Honor.

MR. ZUCKERMAN: No, Your Honor.

THE COURT: Very well. Then since -- since defense has the burden, obviously, defense is going to go first and last, does defense wish to make an opening statement?

MR. ZUCKERMAN: I do, Your Honor. Just as a

1 housekeeping matter, we had filed two pretrial briefs
2 relating to the standard of proof and the burden of
3 proof. And I just wanted to raise that as a unresolved
4 issue before we begin.
5 THE COURT: The -- when you say defense
6 filed two, I received the prehearing memo that was
7 filed, I believe --
8 MR. ZUCKERMAN: Right.
9 THE COURT: -- on the 18th.
10 MR. ZUCKERMAN: It just has two -- two
11 arguments --
12 THE COURT: Oh, two arguments.
13 MR. ZUCKERMAN: -- in the one brief. Thank
14 you.
15 THE COURT: All right. First, as to the
16 issue of the definition of mentally incompetent to be
17 executed, while I think the State isn't conceding the
18 issue of 13-4021(B), the -- I believe the State is
19 stipulating to the Panetti standard for purposes of this
20 hearing.
21 Is that correct, Mr. Sparks?
22 MR. SPARKS: That's correct, Your Honor.
23 THE COURT: And, Mr. Zuckerman, I assume
24 that is specifically what you are asking for and what
25 was requested in your memo, correct?

MR. ZUCKERMAN: That's correct.

THE COURT: All right. So the Court notes that there's a stipulation that the Panetti standard will be used and will be the standard by which the Court will be determining the competence of the defendant.

Then that takes us to the question of the standard of proof. And I note that there is not agreement on this. Just by way of a draft ruling -- and then I'll let you make a argument if you feel something else is appropriate -- obviously, whatever we do here today is going to end up in front of another court very quickly. And as a matter of judicial economy, my sense is that it makes sense for me to make the rulings both on preponderance and on clear and convincing so that that record is available for a reviewing court. Obviously, if -- if the State doesn't make the lower burden, it's going to kind of subsume the higher.

And if the State meets the clear and -- excuse me -- if defense meets the clear and convincing, then, obviously, they've met preponderance. But if it's somewhere in between, I'll make those -- those two rulings as well. Is that acceptable?

MR. ZUCKERMAN: Yes, Your Honor.

MR. SPARKS: Yes, Your Honor. Thank you.

THE COURT: Okay. Any other housekeeping

matters before we get started?

MR. ZUCKERMAN: No, Your Honor.

THE COURT: Anything else from the State?

MR. SPARKS: No, Your Honor. Thank you.

THE COURT: Okay. Then let us begin with openings.

And, gentlemen, just because -- Counsel, just because we have people listening by Webex and by Livestream, I prefer that you just remain in your seats, be comfortable, keep the microphones right in front of you.

And let's proceed, Mr. Zuckerman.

MR. ZUCKERMAN: I prefer that as well. So thank you, Your Honor.

Good morning, Your Honor.

THE COURT: Good morning.

MR. ZUCKERMAN: Clarence Dixon has a long, well-documented history of mental incompetency, legal insanity, and consistent diagnoses of schizophrenia with paranoid ideations that spans four decades. Mr. Dixon regularly experiences visual and auditory hallucinations, and his thought content is contaminated by persecutory delusions.

The federal constitutional standard governing whether Clarence is mentally competent to be

1 executed requires probing whether he can rationally
2 understand the State's reasons for executing him.
3 The Supreme Court explained in
4 *Panetti v. Quarterman* this means asking whether
5 Clarence, in light of his mental illness, can rationally
6 comprehend the connection between his crime and the
7 community values the State seeks to vindicate through
8 his execution in light of his crime's severity. In
9 simple terms, does Clarence Dixon rationally understand
10 the meaning and purpose of his impending execution?
11 Clarence's schizophrenia is a thought
12 disorder that contaminates his ability to think
13 rationally. For more than 35 years, Clarence has been
14 obsessed over and been driven by the delusional belief
15 that his DNA was illegally seized by the
16 Northern Arizona University Police Department in an
17 unrelated 1985 criminal case; the NAU police were
18 illegally involved in his prosecution for that crime;
19 and the courts, prosecutors, and his own attorneys have
20 all conspired to repeatedly deny or avoid his claim.
21 Clarence's schizophrenia causes his thought
22 process to be concretely fixed on this delusion, and he
23 is unable to escape it. And in Clarence's delusional
24 belief system, the purpose of his execution is not an
25 expression of society's condemnation of the murder he

1 was convicted of committing, but, rather, his execution
2 is an illegal, immoral, extrajudicial killing intended
3 to silence him in order to protect State agencies from
4 political embarrassment.
5 The evidence presented at this hearing will
6 demonstrate that although Clarence has a surface
7 awareness of the fact that he was convicted of murder
8 and sentenced to death for it, Clarence is not mentally
9 competent to be executed because he does not rationally
10 understand the State's reasons for his execution.
11 Thank you.
12 THE COURT: Thank you, sir.
13 Mr. Sparks.
14 MR. SPARKS: Your Honor, the evidence will
15 show that nothing about Mr. Dixon's belief in the legal
16 challenge he's raising to his conviction prevents him
17 from rationally understanding the State's reasons for
18 his execution.
19 The Court will hear that he told Dr. Vega
20 that he doesn't -- he claims not to remember committing
21 the murder, but that if he did, he would be relieved
22 because then he would feel that the death sentence was
23 warranted.
24 I think that right there shows that he does
25 rationally understand why he is going to be executed.

The fact that he thinks his conviction is invalid and continues to challenge that, doesn't really go to the issue of whether or not he understands the purpose of his execution.

So the State believes that the evidence falls far short of establishing the Panetti standard that Dixon is incapable of rationally understanding the reasons for his execution.

THE COURT: Thank you, sir.

All right. Defense, please call your witness.

MR. ZUCKERMAN: Your Honor, defense calls Dr. Lauro Amezcua-Patiño.

THE COURT: Doctor, would you please come forward.

MR. ZUCKERMAN: He's in the hallway.

THE COURT: Oh, very well.

(Witness summoned.)

THE COURT: Doctor, if you'd please come forward to be sworn in by the clerk.

DR. AMEZCUA-PATIÑO: Mind if I bring my water?

THE COURT: You certainly may.

DR. AMEZCUA-PATIÑO: Thank you.

LAURO AMEZCUA-PATIÑO,
having been called as a witness herein and duly sworn by the Clerk, was examined and testified as follows:

THE COURT: Sir, please have a seat over here. Morning.
THE WITNESS: Good morning, sir.
THE COURT: Make yourself comfortable. Pull up to the microphone. And would you state your name for the record.
THE WITNESS: Name is Lauro Amezcua-Patiño.
THE COURT: Doctor, just a few quick things. We have a court reporter who needs to take everything down. It's important we only have one person speaking at a time, which is harder than it sounds. So please make sure you let the attorneys finish their questions before you answer; and, likewise, they'll do the same before they ask you the next question.
If you hear either attorney say "objection," just pause until I give you further instructions.
And then just, finally, keep in mind the court reporter takes down words. So things like head nods don't show up in a transcript, and, likewise, uh-huh doesn't work as well as yes or no.
THE WITNESS: Certainly, Your Honor. No

problem.

THE COURT: Okay. Mr. Zuckerman.

MR. ZUCKERMAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ZUCKERMAN:

Q. Good morning, Dr. Patiño.

A. Good morning.

Q. Dr. Patiño, could you tell the Court what your degree is in.

A. I'm a licensed physician in the state of Arizona since 1988. I specialize in psychiatry.

Q. Can you give the Court a sense of your experience as a doctor?

A. Came to Arizona in 1985. And I was trained at Maricopa Medical Center as the -- as a psychiatrist. After graduation, I stayed at Maricopa Medical Center as the director for emergency psychiatry for about three years.

Since then I've been both in the public and the private sector. Probably half my work has been in the inpatient setting. I've worked in probably every single hospital in the Valley, Maricopa County, including Arizona State Hospital.

So my clinical practice has not stopped for the

1 last 34 years. I became licensed in Arizona in 1988.
2 I'm also licensed -- I was licensed in the state of
3 Colorado. I did not maintain that license. And I'm
4 currently licensed in Texas and Georgia, too, just
5 recently. So my clinical practice has been seeing
6 patients, basically, for a very long time.
7 I've also been involved in the Community Mental
8 Health Center. I was a medical director for the
9 East Valley Behavioral Health Association, ComCare, at
10 the time, back in the '90s and early 2000s.
11 I was appointed to the Psychiatric Security
12 Review Board by three different governors. And for the
13 last -- I was there for about nine years. And the last
14 five I was a chairman of the board for the not guilty by
15 reason of insanity or guilty but insane type of
16 situation.
17 Right now, for last ten years, I've been the
18 shift medical officer for Oasis Behavioral Health. I'm
19 the medical director, basically. And I'm in charge of
20 all the adolescent patients in that facility.
21 I used to have a practice called
22 Metropolitan Neuro Behavioral Institute. That
23 practice -- I divested myself of that practice in
24 November of last year. And I still work for that
25 practice part-time seeing outpatients, basically.

Q. Thank you.
MR. ZUCKERMAN: Your Honor, at this time I know we have already moved all of the exhibits into evidence, so I'm just going to sort of skip ahead.
Q. BY MR. ZUCKERMAN: But, Doctor, I would like to just show you your -- the CV that you've provided, which is Exhibit 1.
THE COURT: Just to be clear, you may publish at will.
MR. ZUCKERMAN: Okay. Thank you.
Q. BY MR. ZUCKERMAN: Dr. Patiño, are you able to see this on the screen?
A. Yes, I am.
Q. Okay. Great. And is this your CV that accurately -- and does is accurately represent your experience?
A. Yes, it does.
MR. ZUCKERMAN: And, Your Honor, I would -- this has already been moved into evidence, so just wanted to have the doctor authenticate it.
Could we also pull up Exhibit 10 please.
MR. HAZARD: Your Honor, we're not able to see the exhibits on our screen.
THE COURT: I'm not able to see on it mine either. Do you now have it?

MR. HAZARD: Not yet.
MR. ZUCKERMAN: And, Your Honor, if need be, we did provide paper copies. So of the -- ones I'm going to be publishing on the screen have highlighting for the Court's convenience, but if that doesn't work, we can go off the paper copies.
THE COURT: All right. Why don't we -- do you have the paper copy of 10 to look at for now?
MR. SPARKS: We do, Your Honor.
THE COURT: Okay. We're getting the IT people back here. So, hopefully, we'll get that sorted soon. But in the meantime, if you'd continue, Mr. Zuckerman.
MR. ZUCKERMAN: Thank you, Your Honor.
Q. BY MR. ZUCKERMAN: Dr. Patiño, does this appear to you to be your medical licensing?
A. That is correct.
Q. Okay. And are you active at this point as a medical doctor?
A. Yes, I am.
Q. Okay. Thank you.
Doctor, have you previously conducted competency evaluations to determine whether someone is competent to stand trial?
A. I have. But it's been a while since I have done

that.
Q. And have you conducted competency evaluations to determine whether someone is competent to be executed?
A. Yes, I have.
Q. Okay. Have you been qualified as an expert witness in either state or federal courts?
A. Yes, I have.
Q. Okay. In both?
A. Yes.
Q. And I know you talked about a little of this before, but how many years of experience do you have diagnosing and treating people with schizophrenia?
A. 37.
Q. Now, you mentioned that you work in and out of a variety of different hospitals. On any given year, how many patients, who have been diagnosed with schizophrenia, do you interact with?
A. 150 to 200.
Q. And do you -- are you involved in diagnosing patients with schizophrenia as well?
A. Yes, I am.
Q. And are you involved in monitoring their symptoms after they've been diagnosed?
A. Yes.
Q. And do you prescribe medication to help treat

1 their symptoms?
2 A. Yes, I do.
3 MR. ZUCKERMAN: Your Honor, at this time I
4 would move to qualify Dr. Patiño as an expert witness in
5 forensic psychiatry.
6 THE COURT: Any objection?
7 MR. HAZARD: No objection.
8 THE COURT: Without objection, so ordered.
9 MR. ZUCKERMAN: Thank you.
10 Q. BY MR. ZUCKERMAN: Dr. Patiño, I'd like to speak
11 about the process for conducting an evaluation to
12 determine whether someone is competent to be executed.
13 As far as the interview of the person, can you
14 speak to whether it's preferred to do an evaluation in
15 person as opposed to over video?
16 A. The process of determining someone being
17 competent for an execution or competent to stand trial
18 requires that you do a comprehensive analysis of what
19 has happened with that individual's life.
20 So psychiatric diagnosis is like writing the
21 script of a movie in which you have to have a lot of
22 chapters that you have to put together and try to
23 understand so you can reach a conclusion.
24 So the issue of competence is a much narrower
25 issue, that it is affected by a psychiatric diagnosis.

1 So the competency is basically looking at two areas, you
2 know, the factual understanding of the law, and the
3 rational understanding of the process.
4 Q. Now -- and we're going to talk about this, but
5 before we get ahead of ourselves, as part of that
6 evaluation, do you see people in person?
7 A. Yes, I do.
8 Q. Okay. And is there a reason that you see people
9 in person as opposed to doing a video interview of that
10 person through videoconferencing software on a computer?
11 A. Medicine, in general, psychiatry in particular,
12 requires understanding of behavior in front of you. So
13 there's a lot of nonverbal information we're trying to
14 collect in terms of interaction, empathy, emotions going
15 back and forth, body posture.
16 There are a multitude of issues that we're
17 trained to do in terms of psychiatric interviewing that
18 requires the connection with the patient so you can at
19 least attempt to make it. Not that it's always
20 possible, though.
21 Q. And do you generally see someone more than once,
22 or are there advantages with seeing someone more than
23 once?
24 A. There are a lot of advantages in -- in the
25 understanding part, which is the art part of psychiatry,

1 but it's also important to see the consistency of the
2 symptoms over time.
3 So part of our assessment requires that we look
4 at two major parameters, one is exaggeration and
5 consistency, you know, to understand what is happening
6 with the patient.
7 Q. And can you tell us what, if any, importance
8 reviewing records has in making a competency
9 determination?
10 A. Well, in general, we want to understand the
11 movie, if you may. So we want to see what has been
12 written about that person, what other observers have
13 documented. We want to get the history from the
14 patient, too. And we want to make sure that we are
15 connecting all those pieces together.
16 Q. When you talk about the history, do you mean a
17 social history of the person and the things that they've
18 gone through in their life?
19 A. Psychiatric diagnosis looks at three parameters:
20 One is the biology of the problem; the psychology of the
21 problem; and the sociology of the problem. So we have
22 to -- basically, when we look at history, we're looking
23 at biopsychosocial parameters that we can put together
24 so we can reach a conclusion.
25 Q. Now, I want to talk a little bit about what

you've done in this particular case.
Have you reviewed records related to Mr. Clarence Dixon?
A. Yes, I have.
Q. Okay. Can you give the Court a sense of, roughly, how many pages of records you've reviewed?
A. Yeah, that question was raised, so I had to go back and look at it. It's probably about 5,100 pages of documents.
Q. Okay. And do you know approximately how long, over what period of time, those documents relate to in Mr. Dixon's life?
A. I think that some go back to before his incarceration -- some of them. So it's probably lifetime type of information.
Q. Okay. And how many times did you visit in person with Mr. Dixon at Arizona prison?
A. Four times.
Q. Okay. And did you also visit with him a fifth time several years ago?
A. Yes. The first time I became acquainted with Mr. Dixon was in 2011, 2012, I believe.
Q. And I know you talked about this generally, but why did you think it was important to meet with Mr. Dixon multiple times in the past several months?

A. Well, again, in order for me to understand and to look at the consistency of symptoms, the intensity of symptoms, the impact of the symptoms, and the questions of being released, I had to -- to visit with him more than once.

Q. What role, if any, does his history of diagnoses of schizophrenia with paranoid ideations play on your decision to see him repeatedly?

A. Well, the issue of mental illness and schizophrenia has been raised long before this last set of meetings with him.

And even though the questions ask forensically, for me it was important to understand if there's been consistency on the manifestations of schizophrenia. That diagnosis wasn't made by me initially. There were other doctors. He was found not guilty by reason of insanity. He was referred to the State hospital. Never made it to the State hospital, for whatever reason.

But there's been a consistency of symptoms, and I think it's been manifested every time I meet with him. So that becomes important.

Q. Did you encounter any challenges in building a rapport with Mr. Dixon, and, if so, why do you believe that was?

A. Well, in the context of a schizophrenic process,

1 I think that Mr. Dixon is distant. So he's not a
2 trusting person in terms of allowing you to get inside
3 of his world.
4 So, for me, it was important to try to dig into
5 his own self to understand what is going on in his mind,
6 and trying to understand some of his delusional thinking
7 to see if -- how unshakeable it is. Because that, for
8 us, becomes important in terms of the intensity and the
9 firmness of the delusional thinking and how amenable he
10 is to change, if you may.
11 Q. Is that sort of distance, that you described on
12 the part of Mr. Dixon, a common characteristic for
13 people with a history of schizophrenia diagnoses?
14 A. Yes. That's part of what we call negative
15 symptoms.
16 Q. Okay. Do you feel that over the four -- and, I
17 guess, five, including 2012, visits that you had with
18 Mr. Dixon you were able to build somewhat of a rapport
19 and probe into his delusions?
20 A. Yes, I did.
21 Q. Okay. Doctor, I want to talk --
22 THE COURT: Mr. Zuckerman, just to try to
23 get our AV problems sorted out --
24 MR. ZUCKERMAN: Sure.
25 THE COURT: -- we're going to need to take a

pause at some point. I don't know whether this is the right moment. But when you're ready --

MR. ZUCKERMAN: I think this would be a great moment.

THE COURT: Okay. Then we're going to take a brief pause to let the IT people come back and hopefully solve our presentation problem. We're just going to take a pause to get the projection system working, so that hopefully we can put to rest these other technical problems. The estimate is it's going to take about 20 minutes. Hopefully it will be a little bit less, but we will start back up just as soon as we can.

With that, we're going to take a brief recess.

(A recess is taken at 9:57 a.m., after which the proceedings resume at 10:16 a.m.)

THE COURT: We are back on the record on CR202200692. Dr. Patiño is on the stand.

Folks, I am sorry for all these technical problems today. Believe it or not, this normally works fairly smoothly. So I don't know what's happened to us today.

But, in any event, we appear to have projection, as well as our desktop screens working. So

1 let's keep our fingers crossed and the IT people nearby,
2 and begin again.
3 Mr. Zuckerman, when you're ready.
4 MR. ZUCKERMAN: Thank you, Your Honor.
5 Q. BY MR. ZUCKERMAN: Dr. Patiño, I want to talk
6 generally about schizophrenia and what it entails.
7 Can you start by just talking to the Court about
8 what the DSM is and how it's used?
9 A. The DSM stands for the Diagnostic and Statistical
10 Manual of mental disorders. And we are in the 5th
11 version. I think it's recently, within the last month
12 or so, we have the revision of the 5th chapter of DSM.
13 DSM is -- can I say -- it's an agreement among
14 professionals and professional associations in terms of
15 speaking the same language of diagnosing mental
16 disorders.
17 Q. And for disorders such as schizophrenia and other
18 mental disorders, does the DSM lay out criteria that can
19 be met in order to qualify for a diagnosis?
20 A. Well, DSM provides as a guide in terms of what
21 are the symptoms that are commonly found, and
22 establishes certain parameters so we don't deviate from
23 where the diagnosis should be. So, yes, it has -- it
24 has different criteria.
25 Q. Okay. What's in front of you is what's been

1 admitted as Defense Exhibit 11. I would love if you
2 could just walk us through the diagnostic criteria for
3 schizophrenia, starting with criteria A. Just
4 generally.
5 A. Yeah. Can you enlarge it? I can't really see it
6 that well. Okay.
7 Q. That better?
8 A. Yes. Basically, the diagnosis of schizophrenia
9 requires a number of signs and symptoms. And it's
10 basically, in general, four sets of symptoms we have to
11 look into. Some is what we call the positive symptoms,
12 delusions and hallucinations. Another one is the
13 negative symptoms. That has to do with disorganized
14 speech, what we call lack of emotionality and distance.
15 And then we also have a series of cognitive symptoms.
16 So it's important to understand that
17 schizophrenia, even though we classify it as a mental
18 disorder, is really a neurodevelopmental disorder. It's
19 a disorder of the brain. It's technically a disorder of
20 brain decay that takes a very long time to progress.
21 Q. And when you are evaluating a patient in person,
22 are you asking questions in order to try and probe
23 whether that patient has various symptoms that might
24 identify them as having a specific mental illness?
25 A. Well, it's not just -- -- yes, we have to ask the

1 questions so we can get information from the patient,
2 but we also have to look at the behavior in general.
3 Because sometimes, because of the nature of
4 schizophrenia, the patient may not be very willing to
5 let you see what's inside of their head, basically.
6 Q. Why might someone who has schizophrenia not be
7 willing to let you see what is inside their head?
8 A. Depending on what the reality of their thinking
9 is, they will question your motives, you know? And they
10 may be concerned about you questioning their reality.
11 Q. Is paranoia a characteristic that is often seen
12 in people who have schizophrenia?
13 A. Paranoia is one of the types of -- of distorted
14 thinking. And paranoia is not always delusional. It
15 can be an exaggerated fear. But in a delusional
16 context, yes. Patients that tend to be paranoid, tend
17 to be very guarded.
18 Q. Does paranoia in people raise challenges that you
19 face when interviewing them?
20 A. Yes, it does.
21 Q. Could you give an example or maybe just talk a
22 little bit about what those challenges are and how you
23 attempt to overcome them?
24 A. Well, you attempt to overcome it by your training
25 and experience and how you ask the questions. And you

1 have to be very neutral and not be judgmental of their
2 thinking. If you -- if you get critical of their way of
3 thinking and their perception of reality, they will shut
4 you out. They will not let you in.
5 Q. Are people who -- can people who have
6 schizophrenia also be intelligent?
7 A. Oh, absolutely. There is a percentage of people
8 with schizophrenia that maintain a high level of
9 sophistication in their thinking, even though they may
10 have other cognitive issues in terms of problem solving,
11 attention, concentration, things of that sort.
12 Q. Do you face situations when you're interviewing
13 patients where symptoms of schizophrenia are not
14 apparent immediately, but then become apparent over
15 time?
16 A. Yes. But that's commonly the progression of
17 schizophrenia.
18 Q. I -- that was a poorly phrased question.
19 Over the course of your interview, are you able
20 to reveal symptoms of schizophrenia that you might not
21 have been able to see immediately when you began your
22 interview with the person?
23 A. Yeah. That's particularly true for delusional
24 thinking. Because to reach the conclusion of delusional
25 thinking, you have to have a reality that is intense,

1 unique, and unbreakable for that particular person in
2 the context of their environment.
3 So -- so sometimes you have to get secondary
4 information, you know. Because sometimes a patient may
5 tell you something that is delusional that sounds
6 rational.
7 Q. And what do you mean by secondary information?
8 What types of things would you look to?
9 A. Well, observations from other people, writings
10 from them, situations in terms of their behavior,
11 isolation, refusal to participate in certain activities,
12 the consistency and repetitiveness of the same thinking.
13 So we have to explore that.
14 Q. Is there an age at which schizophrenia symptoms
15 commonly manifest in men?
16 A. Yes. The full-blown symptoms of schizophrenia
17 usually get manifested in the late teens, early 20s.
18 I'm hesitant, because there are confounding factors that
19 may accelerate or delay some of those things.
20 Q. Are there sometimes triggering events that can
21 cause the symptoms to manifest in a person -- a
22 triggering event in a person's life that could then
23 cause the symptoms to manifest?
24 A. Any stressful event in anybody's life can have a
25 serious impact on brain functioning. So in terms of a

1 schizophrenia, we have to understand it's a lifelong
2 disorder and it has multiple risks. And there are
3 certain situations that may increase the risk of
4 developing schizophrenia, of which Mr. Dixon has a
5 multitude of those.
6 But I -- I think that there's certain ways that
7 the individuals try to cope with their distorted
8 thinking that may actually make things worse.
9 Q. You just said that schizophrenia is a lifelong
10 illness. Does that mean it's not curable?
11 A. I think there's a misconception on the treatment
12 of schizophrenia. There is no treatment for
13 schizophrenia. There is treatment for some of the
14 symptoms associated with schizophrenia, but we haven't
15 gotten to the point that we understand schizophrenia
16 well enough that we can say if we do A, B, and C, the
17 patient is going to go back to an acceptable, normal
18 self.
19 Q. Now, we've talked a lot about schizophrenia
20 generally. And your role here today is to assess
21 whether Mr. Dixon is competent to be executed.
22 A. Correct.
23 Q. Is it fair to say that just because someone has
24 schizophrenia doesn't mean that they're incompetent to
25 be executed?

A. That is correct.
Q. Okay. What do you have to do -- what types of things do you have to look at with a person who's schizophrenic in order to make that determination whether they're also incompetent to be executed?
A. Well, you have to look at the -- number one, their factual understanding and their rational understanding of what is happening, the process, what is being -- what it's leading to. Right?
So he needs to be able to not only understand that somebody wants to kill him, but he needs to understand the reasons for that. Okay? And he has to have enough rationality to develop that understanding.
Q. Okay. And we'll talk more in depth about that in a little bit.
But is it fair to say that you must look at the individual person and not just the diagnosis that they may have?
A. That is correct.
Q. Okay. Now I want to talk about how everything we've talked about applies to Mr. Dixon.
Have you diagnosed him with a mental illness?
A. Yes, I have.
Q. And what mental illness have you diagnosed him --
A. Schizophrenia.

Q. And did you also diagnose him with a mental illness when you saw him in 2012?
A. I believe so, yes.
Q. Okay. And was that consistent with your diagnosis -- your recent diagnosis?
A. That is correct.
Q. Okay. Are there certain factors that predispose Mr. Dixon to having schizophrenia?
A. There are a multitude of risk factors for schizophrenia. In general, any of us -- population in general that don't have a family history of schizophrenia, you have a risk of one percent. So probably about, I don't know, more than three million people in the United States suffer from schizophrenia.
But then there's certain factors that increase your risk. For example, if you have two parents with schizophrenia, your risk goes up to about 40 percent. You have an identical twin, then your risk goes up to 50 percent. If you have a family history, any member of the family, the risk is about ten percent. So that is the load. Right?
But, in general, you have a one percent risk. Anybody in the late teens, one percent of the population, are going to develop schizophrenia.
Then we have to look at psychosocial factors.

1 For example, trauma at birth. Being born with anoxia to
2 the brain, that increases the risk substantially.
3 Malnutrition increases your risk substantially.
4 Psychological trauma increases your risk substantially.
5 So as you keep adding factors, you keep increasing the
6 risk.
7 Q. Now, in Mr. Dixon's case, did he have trauma at
8 birth as far as you're aware?
9 A. Yeah. I believe he was born as a blue baby. He
10 had anoxia at birth.
11 Q. Could you just explain to us what that means to
12 be born as a blue baby?
13 A. It means that -- that something happened in the
14 process of delivery that caused you to not be able to
15 breathe. So, basically, you turn blue. And then
16 emergency measures have to be taken to keep you from
17 dying.
18 Q. So the lack of oxygen that Clarence Dixon
19 experienced at birth raised his risk of developing
20 schizophrenia; is that an accurate statement?
21 A. That is correct.
22 Q. Okay. What about emotional and physical abuse or
23 neglect? Is that something that's present in
24 Mr. Dixon's case as well?
25 A. Yes. We usually think of abuse or chronic

1 neglect in the context of psychological issues or
2 psychological trauma. But the reality is that chronic
3 stress is a biological trauma because of your stress
4 response that is always active. So that in itself is
5 somewhat toxic to the brain. So that precipitates or
6 increases the risk of developing schizophrenia.
7 Q. And was that present in Mr. Dixon's case?
8 A. That is correct.
9 Q. And what about -- this is sort of similar, but
10 sexual exploitation in teenage years, is that something
11 that can be a contributing factor?
12 A. If it is in the context of another stress. So
13 that creates another chronic stress reaction.
14 Q. And is that something that is present in
15 Mr. Dixon's social history?
16 A. That is correct.
17 Q. And what about chronic illness, such as problems
18 with your heart, needing heart surgery, other chronic
19 illnesses? Is that something that can be a
20 contributing -- contributing to predisposition for
21 schizophrenia?
22 A. Illness -- medical illnesses, in general,
23 actually, particular viral infections during early
24 childhood, has been associated with schizophrenia.
25 Chronic illnesses, like cardiac disorders, yes, can have

an impact.
Q. And is that present in Mr. Dixon's case?
A. That is correct.
Q. Now, we've talked about -- as part of your review, I think you said you reviewed 5,200 pages of documents.
And do you -- how do you use those documents? Once you've evaluated the patient, how do you incorporate what you learn in those documents into a diagnosis?
A. Well, I'm looking for the risk factors. I'm looking for all the information that is available, okay, that is not being provided by the patient, that will kind of help me determine the risk.
Q. What about prior findings by other doctors who have evaluated a patient? Is that relevant in your determination?
A. It's relevant in the context of chapters of the movie, if you may, that I can see what other people have seen.
Q. So in this analogy, the movie is Mr. Dixon's life up until this point?
A. That is correct.
Q. And the chapters are sort of the individual events or experiences that he's gone through, like --

sort of like a snapshot in time that add up to that movie?

Is that -- am I accurately stating this analogy that you've been referring to?

A. That is correct.

Q. Okay. I want to walk you through some of the documents that you've reviewed as part of your evaluation.

MR. ZUCKERMAN: Start with Exhibit 3.

Q. BY MR. ZUCKERMAN: Dr. Patiño, I'm showing you what's been admitted as Exhibit 3.

Is this a document that you've reviewed?

A. Yes, it is.

Q. Okay. And is this a psychological evaluation for Mr. Dixon from 1977?

A. Psychiatric, I believe, isn't it?

Q. Psychiatric? Okay.

MR. ZUCKERMAN: Can you zoom in.

THE WITNESS: I can't read the top part. Is that Dr. Bendheim?

Q. BY MR. ZUCKERMAN: Yes, that's right. This is Dr. Bendheim.

A. Yeah. That's -- yeah, it's a psychiatric evaluation.

Q. Psychiatric evaluation.

And you said you reviewed this document. I'm just going to read a line from this.

MR. ZUCKERMAN: If you could just scroll over the highlighted portions.

Q. BY MR. ZUCKERMAN: Are you able to see that --

A. Yes.

Q. -- on your screen?

A. Yes.

Q. And I'm just going to read this aloud as you read it to yourself, and then I'm just going to ask you to explain the significance, if any, of what I read here:

The exact nature of his mental illness could not be determined, but a schizophrenic psychosis is considered to be the most likely diagnosis.

As far as you're aware, is this the first time that schizophrenia was identified as a possible issue in Mr. Dixon's life?

A. That is correct.

Q. Okay. And this evaluation occurred in 1977, right?

A. Correct.

Q. Do you have an idea of approximately what the age of Mr. Dixon would've been at this time?

A. 20.

Q. Okay.

A. About 20 years old.
Q. Somewhere in his early 20s?
A. Yes.
Q. And you've testified that that's generally the age when schizophrenic symptoms start to manifest?
A. Correct.
Q. Okay. Let's move to Exhibit 4. Just leave it just like that.
Dr. Patiño, this is a evaluation -- a psychiatric evaluation by Dr. Tuchler -- I think I'm saying that, hopefully, correctly --
A. Correct.
Q. -- from 1977. Is this a document you reviewed?
A. Yes, I did.
MR. ZUCKERMAN: And if we could go to page -- I guess page 3 where the highlighted portions are.
Q. BY MR. ZUCKERMAN: And I'm going to do the same thing, and I'm going to do this with many documents. But I'm just going to read the highlighted portion here and then ask you about it:
At the present time, he presents with symptoms of undifferentiated schizophrenia in partial remission. I would consider him dangerous to self and probably gravely disturbed.

1 Now, is that something that you considered as
2 historical evidence of possible schizophrenia for
3 Mr. Dixon?
4 A. Yes, I did.
5 Q. Okay. Now, I believe that you mentioned early on
6 in your testimony that Mr. Dixon was found not guilty by
7 reason of insanity in Superior Court; is that correct?
8 A. That is correct.
9 Q. Is that something that you considered as well?
10 A. Yes.
11 Q. Okay. And what is the significance of these --
12 these findings from 1977, which are from so long ago?
13 Why are they significant to your determination
14 about whether Mr. Dixon has schizophrenia today?
15 A. Well, it's one chapter of the movie. That it was
16 so severe that two psychiatrists were concerned that he
17 could not be tried, and he was not guilty by reason of
18 insanity. That's a pretty serious finding, if you may.
19 Now, if you put that in the context of his age
20 and the time that this was happening, that is also
21 correlated with potential schizophrenia. And not
22 unusually, the first episode of schizophrenia is like
23 that.
24 Actually, in the natural history of
25 schizophrenia, most people either by psychosocial or

biological stress or by abuse of substances may develop the first psychotic breakdown. In this particular case, it was identified, and was recommended to be hospitalized.

Q. Now, we talked a little bit about how sometimes events in peoples' lives can trigger symptoms of schizophrenia manifesting.

Are you aware whether there was any significant event around this time that could've triggered this in Mr. Dixon?

A. I believe that -- and Mr. Dixon had a very complicated relationship with his father. And I think it was around this time when the father passed away. And I think that that was -- I mean, and I have discussed that with Mr. Dixon in terms of how conflicting it was for him to have somebody who would be aggressive and abusive toward him and his sister, and then feeling bad about it. Right? So he had a lot of difficulty coping during that time. So that was a serious stressor, I would say.

Q. I'm going to pull up what has been admitted as Exhibit 8.

Now, Doctor, this is a -- this is a sheet from the Arizona State Hospital. It's a physician order sheet.

Did you review this document as part of your analysis?
A. Yes, I did.
Q. Okay. And do you see on the top in handwriting it says: Thorazine 75 milligrams or 200 milligrams?
A. That is correct.
Q. And could you tell the Court, what is Thorazine?
A. Thorazine is the oldest antipsychotic on the market. It was developed in the 1950s. Actually, it was developed as an antivomiting sedative medication, where they found that it had some positive effect on psychosis. So it was widely used.
Even at the time that I was in training in 1985 to '88, it was highly used antipsychotic medication. Unfortunately, it had a lot of bad side effects. So we don't use it as much anymore because of the multitude of effects on the brain that may cause more damage than benefit.
Q. Was this a drug that was commonly prescribed for people who had been diagnosed with schizophrenia?
A. That is correct.
MR. ZUCKERMAN: Let's pull up Exhibit -- what's been admitted as Exhibit 5. If you could just zoom in on the top of that please so we can see what the title is.

1 Q. BY MR. ZUCKERMAN: Doctor, on the screen is what
2 has been admitted as Defense Exhibit 5. This is a
3 Arizona Department of Corrections Psychological Report
4 from April 23rd, 1981.
5 Is this a document that you've reviewed?
6 A. Yes, I did.
7 Q. Okay. And, again, I'm going to read some
8 highlighted portions to you, and just -- afterwards, I'm
9 going to ask you to talk about what significance they
10 have, if any:
11 The prisoner operates on an intuitive
12 feeling level, with much less regard for
13 rationality and hard facts.
14 And I'm just going to read through all of them,
15 and then you can talk about this report generally:
16 The prisoner reported grossly disturbed
17 perceptual and thought patterns, clear paranoid
18 ideation, feelings of frustration and moderate
19 agitation. The pattern of data that is most
20 typical of a severely confused and disturbed
21 prisoner.
22 Since distorted thinking and perception have
23 been rather clearly reported by Inmate Dixon,
24 suppression of schizophrenia symptoms is
25 quite likely to help control the disorder. Some

elements of chronicity suggested a guarded prognosis with treatment.

And on the next page we have the Sixteen Personality Factor test. We haven't really talked about this yet, but can you talk about what significance, if any, standardized testing administered to patients can play in determining what their ultimate diagnosis is?

A. In simple terms, there's no psychological test diagnostic of anything. Right? Psychological tests and investigation are patterns of either behavior or brain functioning that allow the diagnostician to connect the dots to the movie.

So it's no different than a pneumologist listening to somebody's lungs and hearing some crackles and order an x-ray, and then they make an interpretation of how that x-ray connects to this.

So there's no -- even though -- and even though psychological testing can be very useful, it's not diagnostic in any sense.

Q. Is it fair to say that it can help confirm a belief that you -- or a suspicion that you have that someone might have a particular mental illness?

A. It can help you refine the movie. And it can help you understand the movie a little better. But there's no one diagnostic test for anything in

psychiatry, basically.

Q. Now, looking at page 2 --

MR. ZUCKERMAN: If you could just zoom in on that.

Q. BY MR. ZUCKERMAN: -- on the Sixteen Personality Factor test, here highlighted I have elevated levels of showing easily upset, feels disturbed, feels grandiose, singled out, hallucinates, distorts reality, feelings of confusion, and bizarre and psychotic thoughts.

Are those findings consistent with a diagnosis of someone who's schizophrenic?

A. I think it helps you understand at that moment in the patient's life that those symptoms can be concurrent with schizophrenia.

Q. Okay. And just going to the last highlighted portion that's on . . .

This is the last section -- the last sentence I'm going to read, and then I'm just going to ask you to talk about it:

Inmate Dixon shows evidence of substantial, generalized psychotic pathology, which tends to make his behavior withdrawn and ineffective. Antipsychotic drugs may well improve performance and well-being. Since extreme paranoid ideation was also shown, a medication like Stelazine --

A. Stelazine. Sorry.
Q. -- Stelazine may be worth considering. Haldol is likely to be an effective substitute.
Can you talk about what those medications are and what they were used for in the late 1970s. Or, I'm sorry, early 1980s.
A. Yeah. Basically, before the advent of what we call today atypical antipsychotics, we had typical antipsychotics, and there were two classes of them: the high potency and the low potency. And those were just technical issues in terms of side effect profiles. Some were more sedating that others.
But at the end, they were all medications that blocked dopamine in the brain. And they all had different complications because of that. So Stelazine was a very effective, high potency antipsychotic, probably newer that Haldol. Haloperidol at that time was a little older medication, not to say Thorazine, which was the oldest.
So during those times we had a multitude of typical antipsychotics. You may come across names like Navane, Stelazine, chlorpromazine. So there are a big number of them that are mostly history nowadays. Probably Haldol and Thorazine still remain as potential uses.

1 Q. Is it significant to you the findings from this
2 report and the recommendations for the prescriptions in
3 making your ultimate decision about what's going on with
4 Mr. Dixon's brain today?
5 A. It's important understanding that these
6 medications are antipsychotic medications, not
7 antischizophrenia medications. The psychosis can come
8 from a lot of different reasons. So we use them to
9 treat psychosis.
10 If the psychosis is so severe that it's impeding
11 the ability of the individual to function, then we need
12 to reduce the intensity of those symptoms so they can be
13 more functional. So we talk sometimes about we used a
14 lot in certain settings more to control behavior than
15 necessarily to treat an illness.
16 Q. Okay. I want to pull up what's been admitted as
17 Exhibit -- Defense Exhibit 6.
18 And this is a psychological evaluation done by
19 Dr. Toma in 2012. Is this a document that you reviewed?
20 A. Yes, I did.
21 Q. Okay. I'm going to go to page 19.
22 Now, are you aware whether Dr. Toma administered
23 a full neuropsychological battery on Mr. Dixon in 2012?
24 A. I believe he did. Yes.
25 Q. Okay. And you reviewed the results as described

in his report?
A. Yes, I did.
Q. Okay. For the main clinical scales, clinical -- clinically significant and high elevations were noted on the psychopathic deviate, paranoia, and schizophrenia scales. These scales were interpreted using the Harris-Lingoes subscales to identify the main experiences that contributed to the elevation of each scale.
Now, what's the significance of those findings from the standardized testing administered by Dr. Toma?
A. They're important in the context of the clinical presentation. Right? So when we have a clinical presentation of somebody where the question of schizophrenia is being raised, as well as behavioral disturbances and paranoia, we need to fit this into the movie, if it does fit into the movie.
And, basically, what this is telling me is that Mr. Dixon has manifested schizophrenia-like symptoms, in particular, paranoia and some behaviors that may be perceived as being asocial or antisocial.
Q. And this occurred in 2012, so it is a couple decades after the last document we've reviewed from the Arizona Department of Corrections psychologist's assessment in 1981.

1 What significance does it have that we -- over
2 such a large period of time, we're still seeing symptoms
3 and evidence of schizophrenia?
4 A. If you remember when I testified before, I said
5 that schizophrenia is a lifelong disorder. This backs
6 up our consistency. Right?
7 Q. Are you familiar with the MMPI-2?
8 A. Yes, I am.
9 MR. ZUCKERMAN: Let's go to page 20.
10 Q. BY MR. ZUCKERMAN: The results of the MMPI-2 are
11 consistent with observations, his reported
12 history, and outside sources of information that
13 indicate that Mr. Dixon seems to experience
14 thought, mood, and perhaps perceptual
15 differences. He tends to be isolative and is
16 generally mistrustful of others. A psychotic
17 disorder such as schizophrenia is suggested by
18 these tests and is consistent with the
19 observations made back in 1977 when two Rule 11
20 psychiatrists opined he was experiencing a severe
21 depression with underlying psychotic
22 disturbances.
23 Can you just give the Court a little background
24 of what the MMPI is and what, if anything, these types
25 of results mean to you?

A. MMPI is the Minnesota Multiphasic Personality Inventory, which initially evolved as a personality profiling type of test. But they -- it's very well structured and it's very well measured. So it gives us some idea of psychopathology besides using determination of psychiatric or psychological issues.

But we have to be very careful because it has to be taken in context of everything together. So, again, none of these tests replaces the movie, if you may. Right?

So, for me, as a psychiatrist, I have to think in terms of how does this fit into this movie? How does it explain these behaviors that have occurred over time?

Q. And just turning to page 24, did you review the diagnosis that Dr. Toma came to in 2012?

A. Yes, I did.

Q. And what was that diagnosis?

A. Schizophrenia paranoid type; schizoaffective disorder depressed type; cognitive disorder NOS; and alcohol -- NOS stands for not otherwise specified at the time -- and alcohol dependence.

Q. What is a rule-out?

A. Rule-out means that you want to consider eliminating that diagnosis from your movie.

Q. Okay. And is schizophrenia a spectrum?

A. Schizophrenia is a syndrome, meaning that there are a lot of signs and symptoms that come together and that they're persistent over time, intense enough to cause dysfunctionality and that can be, as far as we know, having significant genetic and environmental causes. And that is likely to last lifelong. Right.

Q. Now, you also saw Mr. Dixon in 2012, right?

A. Yes, I did.

Q. And you've already said that you diagnosed him with schizophrenia after seeing him in 2012 as well?

A. That is correct.

Q. And your report is in the record as -- has been admitted as Defense Exhibit 7.

Now, I want to talk a little bit about the fact that Mr. Dixon has been incarcerated for the past 35 years, but there aren't records of treatment for schizophrenia over that time.

Can you explain why that might be?

A. I mean, I have to go back --

MR. HAZARD: Objection. Calls for speculation.

THE COURT: Can you put some foundation in. Sustained.

MR. ZUCKERMAN: Certainly.

Q. BY MR. ZUCKERMAN: Are people who are diagnosed

with schizophrenia always treated for their -- or, I'm sorry.

Are people who are schizophrenic, who have schizophrenic traits, are they always treated?

A. No.

Q. Why might someone who has schizophrenia not have treatment for it?

A. Well, the number one reason in the general population is they don't want to be treated. And in this country we have the freedom to not be treated. So if you're not going to be treated and you're not a danger to yourself or other people, you won't be treated. So I'm going to venture to say that most people with schizophrenia are not treated.

Now, in a correctional setting, it depends on the correctional setting. In the correctional setting, usually, let's say, the squeaky wheel gets the oil, meaning people who are agitated, violent, danger to themselves. They get medicated not to treat schizophrenia, to get them sedated. Right?

If you look at the movie of Mr. Dixon, in particular, he's manifested what we call schizoid personality features for most of his life; that with his high intelligence he actually coped with it until his late teens by getting into himself and reading a lot.

1 So the fact that he has been in that role for so
2 long actually has facilitated him being inside of
3 himself for a very long time.
4 Q. So does the fact that there are not records of
5 Mr. Dixon being prescribed antipsychotic medication over
6 the past 35 years while he's been incarcerated mean he
7 doesn't have schizophrenia?
8 A. Absolutely not.
9 Q. And are people who have schizophrenia --
10 generally, do they believe that they're mentally ill?
11 A. Most of them don't.
12 Q. Okay. And as I understand your testimony, unless
13 someone is dangerous, or violent, or is in the midst of
14 a obvious psychotic episode, if they don't seek
15 treatment themselves, they likely won't get treatment?
16 A. Most -- most -- yes. Most of the patients with
17 schizophrenia that I come across, they come to the
18 hospital because of the manifestations of acute
19 psychosis, actively hallucinating, being agitated,
20 fighting, many of them being hospitalized against their
21 will.
22 And we can stabilize them, and we recommend that
23 they continue treatment. I'm not saying that we
24 shouldn't recommend that, but treatment is complex and
25 complicated.

1 So the most common natural history of treatment
2 is that the patient stops taking the medications and
3 eventually gets a second breakdown. And after two or
4 three or four hospitalizations there might be a way to
5 do some commitment or to get them into long-term
6 treatment against their will.
7 Q. Now, you talked a little bit about Mr. Dixon
8 being on death row. Just to flesh that out a little
9 bit, how does the fact of Mr. Dixon's incarceration
10 affect the visibility and obviousness of symptoms that
11 he may have?
12 A. Well, I mean, if you weren't talking about death
13 row, if we were talking about chronic neglect, right,
14 that nobody's paying attention to him, he's in his cell
15 for 23 hours a day, he gets to go out -- for somebody
16 with schizophrenia who is very much inside of his head
17 and basically going around living his own life inside of
18 his head in his cell, it may actually have become a
19 survival skill.
20 Q. So you talk about Mr. Dixon living inside of his
21 head. Does that mean that he's sort of internalizing
22 symptoms that he may have, as opposed to talking to
23 others about them?
24 A. Internalizing actually applies more to coping
25 skill; that you are internalizing to deal with your

frustration. He actually lives in a separate reality inside of his head. And we see glimpses of that reality when he writes, for example, or when he talks to you, or when you try to push him into something, he may -- he may react angrily.

And I think that that was seen in Dr. Toma's evaluation where he -- after doing the Rorschach, looking at distorted thinking, he became very paranoid, very agitated.

Q. Now, are you aware whether Mr. Dixon has any physical limitations as far as his sight?

A. Yeah. I believe he's legally blind.

Q. Okay. Do you think that that blindness has any impact on the presentation of any symptoms that he might have?

A. Well, I mean, again, I think it -- his blindness has temporarily become a barrier for him to be able to get inside of himself, because he likes to read. So, fortunately, he was allowed to have, like, talking books, you know, something to help him stay connected with some reality outside of him.

Q. Now, you said that you've diagnosed Mr. Dixon with schizophrenia. I just want to talk about some of his specific symptoms.

Does Clarence have hallucinations?

A. Yes, he does.
Q. Can you explain to the Court some examples of the hallucinations that he has?
A. Since back in the 1970s, I think it was actually around the time that his father passed away, he started hearing a voice calling his name. And that voice comes and goes. It's not there all the time. I mean, initially, he may have felt somewhat annoyed by it and amused or angry at it, but he has learned to kind of ignore that voice.
He also has visual hallucinations of people inside of his cell. He has tactile hallucinations, people touching him while he's in the cell.
Q. Can you describe some of the visual hallucinations he experiences?
A. He -- I think he's had multiple, but one that comes to mind is him seeing this boy inside of his cell, this white boy inside of his cell, that is not very nice to him. I can't recall specifically if the boy talks to him or not. But -- but I think that there's been some communication. And this particular hallucination is important because it makes him angry.
Q. Why does it make him angry?
A. Let me see if I recall specifically. I think that it is -- I don't recall specifically what makes him

angry. I don't want to speculate on that.
Q. Is there a racial element?
A. Somewhat. But -- Clarence is very proud of his heritage. Right? And he -- he doesn't turn his heritage necessarily into a fight with the white man, but I think that there is some component of him feeling that why a white man, white child? Right? Why not one that is not white?
Q. And Clarence is Native American?
A. Correct.
Q. Okay. So we've talked about his delusion -- I'm sorry -- his hallucinations. Does Clarence also experience delusions?
A. Yes.
Q. Okay. Can you talk a little about the delusions that he experiences?
A. Well, he obviously experiences paranoia, meaning he's distrustful and concerned about what other people are trying to do to him.
And then he has this very consistent -- actually, since I've known him, this consistent delusion that there is a plot from the judicial system to kill him. He feels that there is a plot where the judicial system has to protect themselves from his claims because his claims will be terribly embarrassing.

I think -- just recently, I think he was trying to disbar the Supreme Court Justices, something like that.

Q. Okay. And we're going to talk about the competency standard a little bit, and then we're going to go through some of his writings and I'll ask you to talk about the significance of them.

A. Sure.

Q. But have you tried to shake his delusion to see if he'll stick to it, or if he'll come off of it?

Have you -- have you employed any techniques during your interviews with him to sort of test the rigidness of his delusions?

A. Yes. Particularly the last two visits. What I was trying to test is if he's thinking about the rationale. You know, he's filed multiple pleadings. He has gone to multiple courts. He has been rejected by multiple courts.

It was important for me to understand, especially as he was getting closer, you know, to moving from death row to death watch, if the stress related to that will make him less delusional, meaning it's time to perceive reality in a different way.

And so I had multiple -- multitude of techniques in terms of empathic understanding, empathic

1 questioning, you know, paradoxical intention, to try to
2 get him to explain to me how is it that despite all of
3 this evidence that has been provided in front of him
4 about, again, the irrationality of his request,
5 including from his attorneys, and he always gets back to
6 the same point, which is, "They say that they want to
7 kill me because I killed someone. But I know that they
8 want to kill me because they don't want to be
9 embarrassed."
10 Q. And is this delusional belief -- is it
11 unwavering?
12 A. He's unshakable. He has not waved one bit since
13 I've known him.
14 Q. Now, like I said, we'll talk about sort of some
15 indications of that in his writing. But, first, I want
16 to talk a little bit about the competency-to-be-executed
17 standard, as you understand it.
18 What do you understand as the requirement for
19 someone to be competent to be executed?
20 A. My understanding is that there are two parameters
21 that we need to measure. One is: Does the individual
22 have factual understanding of the process? Meaning who
23 is an attorney? Who is the judge? Who's the jury?
24 And then a rational understanding of the purpose
25 of the execution: What is leading to me being executed?

1 So we need to measure those two parameters.
2 Q. So are we sort of talking about drawing a
3 rational link between the crime and the punishment?
4 A. That is correct.
5 Q. Okay. And you said, I think, the purpose of his
6 execution. Are we sort of talking about that someone
7 needs to be able to grasp the meaning, societal's
8 interests in his execution?
9 A. That is correct.
10 Q. Okay. Is Mr. Dixon able to do this?
11 A. So far, in all the time that I've spent with him,
12 he has not been able to do that.
13 Q. Okay. What happens in Clarence's mind when he is
14 prompted to consider his impending execution?
15 A. He goes back to this same premise of: They're
16 afraid of me embarrassing them. There have been some
17 variations over the years in terms of different wording
18 to the same thing, and going into different
19 explanations, which is not unusual with people with
20 delusional thinking. But you always go back to the same
21 premise, meaning: They want to execute me because they
22 don't want to be embarrassed.
23 Q. And they don't want to be embarrassed by
24 conceding that he was illegally arrested by the
25 Northern Arizona University Police Department? Is that

1 the crux of what this delusion focuses on?
2 A. That's the crux of the delusion. I think that
3 over time he may have explained a couple of different
4 ways. But at the end, that is the crux of the delusion.
5 Q. Okay. We've talked about what happens when
6 Clarence is prompted to think about his impending
7 execution. How does that compare?
8 What does a neurotypical person think about?
9 What do they contemplate when they're prompted to
10 consider their impending execution?
11 A. Well, I mean, most neurotypical individuals will
12 be able to move from I don't understand to I understand
13 to some degree of acceptance, in some cases, some degree
14 of remorse. But, in general, rational understanding
15 that I am being executed because of a crime.
16 Q. Okay. Now, is it fair to say that Clarence has
17 an obsession over this issue?
18 A. No. It's not an obsession. It's a delusion.
19 Those are two different things.
20 Q. What about perseveration? Do you believe that he
21 perseverates over the issue?
22 A. Well, perseveration is a cognitive process. And,
23 yes, he does perseverate about it, and that's part of
24 his cognitive deficits, if you may.
25 Q. Now, you've reviewed a number of writings by

1 Clarence, right?
2 A. Yes, I have.
3 Q. Okay. I'm going to pull some of these up on the
4 screen and read portions to you again, like I did
5 before. And then I'm going to ask you to explain the
6 significance or how they sort of fit into or don't fit
7 into what you've described about Mr. Dixon's delusions.
8 A. Yes.
9 Q. Okay. I'm pulling up what's been introduced as
10 Defense 14.
11 THE COURT: I'm sorry?
12 MR. ZUCKERMAN: Defense Exhibit 14.
13 Q. BY MR. ZUCKERMAN: I'm going to go to page -- I
14 think it's marked as page A5:
15 It can be inferred from the circumstances
16 that when Judge Mangum denied the first
17 post-conviction relief petition he knew 1981
18 statutes A.R.S. 1-215 23 and 15-1627 applied. It
19 can be inferred from the circumstances that
20 Judge Flournoy, likewise, knew of the existence
21 and applicability of the 1981 amended statutes.
22 Then I'm going to jump down two paragraphs:
23 So why ignore and disregard defendant's
24 claim? Because to apply and interpret the 1981
25 statutes would cause the release or retrial of a

1 convicted felon and, more importantly, cause
2 great embarrassment to the Arizona Board of
3 Regents and the fraternity of police statewide.
4 A judge shall not be swayed by partisan
5 interests, public clamor, or fear of criticism.
6 It cannot be said Judge Mangum's and
7 Judge Flournoy's rulings did not contain certain
8 of the elements of Canon 3(B)(2). Their
9 intentionally erroneous applications of Goode may
10 arise to willful misconduct of office.
11 Additionally, Judge Flournoy's knowledge that
12 Judge Mangum knowingly ruled erroneously may have
13 violated Rule 81, Supreme Court of Arizona Canon
14 3(D)(1) disciplinary responsibilities. By
15 knowingly and intentionally citing *Goode v.*
16 *Alfred* and refusing to interpret the correct 1981
17 statutes, Judge Mangum and Flournoy abandoned
18 their oaths of office, the rule of law, and
19 the integrity of the State judiciary.
20 Now, is this a document you reviewed?
21 A. Yes, I did.
22 Q. And this was filed in 2001; is that correct?
23 A. That is correct.
24 Q. Okay. How does this fit into Clarence's
25 delusions as you've described them?

A. I mean, it fits in the context of my prior testimony, meaning consistency.

Q. And I went a little bit out of order, so you'll have to excuse me. I'm going to pull up Exhibit 12. And this is a 1994 petition for writ of habeas filed in Superior Court.

And did you review this document?

A. Yes, I did.

Q. And I'm going to go to page 10:

> Application of law shows petitioner's claim to be meritorious, yet petitioner believes the trial and appellate courts refused and ignored applying relevant law because of the horrendous nature of the sexual assault, the possibility of petitioner's release, and the State's embarrassment that for many years a law enforcement entity has operated without statutory authority.

And so this occurred in 1994. Is this one of the earlier examples of Mr. Dixon's delusions coming out through his writings?

A. That is correct.

Q. And what about this is delusional?

A. Well, we get back to the same issue of the State's embarrassment. That has been pretty consistent

1 over time, which -- I mean, it's delusional in itself,
2 but it also negates -- I mean, also describes some of
3 the degree of delusional grandiosity that he can know
4 more than the law experts.
5 Q. So my understanding of what you're saying is that
6 Mr. Dixon believes that his claim about the NAU police
7 is being denied not because it's legally wrong, he
8 believes that the judges believe it's legally correct,
9 but deny it anyway?
10 A. Correct.
11 Q. And he believes that because the judges are
12 trying to protect themselves and the police department
13 from embarrassment?
14 A. Correct.
15 Q. Okay. I'm going to go to the next one, which is
16 13 -- Defense 13. Starting on page 2 -- this is a
17 letter that Mr. Dixon wrote to Judge Nelson in 1997.
18 And you reviewed this document, right?
19 A. Yes, I did.
20 Q. Okay. I firmly believe the courts sought to deny
21 me the constitutional protections of due process
22 and search and seizure not only because these
23 courts felt me guilty, but because to follow and
24 apply the law would've been politically
25 disastrous, a dark embarrassment to the State

1 universities and unfair to the victim. The many
2 judges who ruled on my petitions swore an oath
3 of office to uphold the laws of the state, its
4 constitution, and the U. S. Constitution. To
5 allow such a misapplication of the law to stand
6 ignores and defies such oaths of office. To
7 allow such a misapplication of law to stand
8 lowers the court and law to mundane and dangerous
9 capriciousness, and panders to the social and
10 political forces not germane to the rule of law.
11 And does this fit into the delusion and sort of
12 the historical consistency of the delusion as you've
13 described it?
14 A. That is correct.
15 Q. Defense Exhibit 15. This is an article that
16 Clarence wrote in 2001 entitled "Can and Do the Courts
17 Collude?"
18 This is a document you reviewed?
19 A. Yes, I did.
20 Q. I'm going to read starting on the first page
21 here:
22 Can state and federal judges conspire to
23 deny a person a lawful right? To collude is to
24 act in collusion or conspire, especially for a
25 fraudulent purpose. Collusion is a secret

1 agreement for fraudulent or illegal purpose;
2 conspiracy.
3 Does Mr. Dixon believe that there is a conspiracy
4 or a collusion that is occurring surrounding his legal
5 claim?
6 A. Yes, he does.
7 Q. Going to page 7:
8 From petitioner's first post-conviction
9 relief petition of July 31, 1991, to the petition
10 for writ of certiorari to the United States Court
11 of Appeals for the Ninth Circuit, on February 23,
12 1998, the state and federal courts have refused
13 not to reinterpret statutes, but to apply correct
14 statutes in an effective effort to deny relief of
15 a constitutional magnitude. A meritorious claim
16 was raised only to be thwarted by judge -- by
17 judicial rulings that are more than simple
18 mistakes or oversight, but cognizant actions to
19 deny a petitioner guaranteed protection under the
20 Due Process Clause of the Fourteenth Amendment to
21 the United States Constitution and Article 2
22 Section 4 of the Arizona Constitutions.
23 And going to the last page of this:
24 The cumulative, continuous, and concerted
25 effort by state and federal judges on its face

1 smacks of collusion and conspiracy or at the
2 least complicity, and the reader is left
3 considering the circumstantial weight to tell if
4 judicial collusion is found.
5 Does this -- is this consistent with Mr. Dixon's
6 delusional belief over time, as you've described it?
7 A. Yes, it is.
8 Q. Okay. Defense Exhibit 16. This is a complaint
9 that was filed by Mr. Dixon against Judge Flournoy. And
10 going to page 2:
11 Judge Flournoy was explicitly informed of
12 the statutes applicable to my criminal Rule 32
13 claim that NAU police lacked jurisdiction at the
14 time of my June 1985 arrest. In September 2001 I
15 filed a criminal Rule 32 petition alleging
16 obstruction by Judge Mangum and Judge Flournoy of
17 my right to due process and my right to fair and
18 impartial hearings. This is my third criminal
19 Rule 32 petition, and because the superior court
20 judges and appellate state court judges will not
21 order a fair and impartial hearing on my due
22 process claim, I seek suspension or censure of
23 Judge Michael Flournoy.
24 Is it common that, over time, Mr. Dixon has
25 seeked disbarment or suspension against the judges he

1 believes are colluding against him?
2 A. Can you repeat the question? I'm not sure I
3 understood it.
4 Q. Sure. Is it common that, over time, Mr. Dixon
5 has sought disbarment or sanctioning -- official
6 sanction against the judges he believes are conspiring
7 to deny his claim?
8 A. It's consistent in the context of his
9 schizophrenic and delusional process. I don't think it
10 would be consistent under nondelusional process.
11 Q. Exhibit 17, Defense Exhibit 17. This is a 2002
12 reply to the State's response to his petition for
13 review. On page 1:
14 Certain statutes were intentionally and
15 improperly ignored by the trial and Rule 32
16 court judges and insuccessful attempts to deny
17 defendant certain rights guaranteed by the state
18 and federal constitutions. The defendant asserts
19 his third Rule 32 petition was improperly denied
20 by Judge Flournoy, who should've recused himself
21 because he is a named participant in defendant's
22 claim of obstruction by two superior court
23 judges.
24 Because the trial and Rule 32 court judges
25 actively sought to misapply the law and let --

1 and the authority of campus police and is -- and
2 the authority of campus police is challenged, the
3 Court's jurisdiction became and is an issue.
4 Defendant's claims are further bolstered by the
5 cumulative effects of State and Rule 32 court
6 judge to intentionally set aside principles of
7 judicial recusal and principles of statutory
8 application and interpretation.
9 This is a document you reviewed, and it's
10 consistent with Mr. Dixon's expression of his delusion
11 over time?
12 A. That is correct?
13 Q. Going to Defense Exhibit 18. This is a letter
14 written in 2002 by Mr. Dixon to the commissioner -- I'm
15 sorry -- the executive director of the Commission on
16 Judicial Conduct.
17 Did you review this?
18 A. Yes, I did.
19 Q. Okay. You wrote that, quote:
20 Bad faith implies that a judge was fully
21 aware of his duty under the law at the time of
22 his ruling and then willfully ruled contrary for
23 reasons of his own. This is exactly the
24 circumstances under which Judge Flournoy and
25 several others acted.

1 Mine is a unique and exceptional claim, and
2 I firmly believe all commission members need to
3 know this very valid challenge to the police
4 authority and the judicial bad faith involved.
5 Beyond the possibility of my freedom lies the
6 very real damage to the judiciary and the rule of
7 law bad faith acts endanger. My complaint
8 against Judge Flournoy is real and an integral
9 part of the Arizona justice system. And because
10 my police authority claim is rare and a political
11 firebomb, the public needs to be represented by
12 the Commission on Judicial Conduct.
13 You talked previously about grandiosity. Could
14 you explain whether evidence of grandiosity comes out in
15 this writing and, if so, what significance that has?
16 A. Delusional grandiosity comes in different forms.
17 It can come in the form of I know better and I know
18 more, even though the evidence is not rational. Right?
19 It's not supportive of that.
20 And someone that is consistent on his
21 presentation, it's not the irrationally of thinking that
22 there's a conspiracy, it's actually the irrationality of
23 his defense. I mean, the defense that he's been
24 claiming since 1970-something is irrational.
25 Q. Right. Exhibit 19. Just to follow up on what

1 you just said, is Mr. Dixon's belief that the judiciary
2 and lawyers are conspiring against him to deny this
3 claim, despite the fact that it is legally meritorious,
4 is that also irrational?
5 A. Yes, it is.
6 Q. This is a 2003 memorandum of points and
7 authorities filed by Mr. Dixon. Is this a document you
8 reviewed?
9 A. Yes, I did.
10 Q. And I'm going to just skip to the second page
11 because it's somewhat repetitive of the claim -- of the
12 statements that I've been reading. Down towards the
13 middle of the page:
14 A judge shall not be swayed by partisan
15 interests, public clamor, and fear of criticism.
16 Does Mr. Dixon believe that the judges who are
17 denying his claim are being swayed by politics?
18 A. Yes, to some degree.
19 Q. And going just to the second to last sentence of
20 this page:
21 A judge who has knowledge or who receives
22 reliable information that another judge has
23 committed a violation of this code shall take or
24 initiate appropriate action.
25 Is that consistent with his delusion over time

1 that multiple courts and multiple judges are conspiring
2 to wrongfully deny his claim?
3 A. That is correct.
4 Q. Defense Exhibit 20 is a Motion to Reconsider
5 Denial of Change of Venue.
6 On the first page -- this is a document you
7 reviewed?
8 A. Yes.
9 Q. Defendant seeks to preserve for appeal, if
10 necessary, allegations of interest and prejudice
11 which prevent a fair and impartial pretrial and
12 trial environment.
13 Page two: Judge Klein's negative response to a
14 duty of office is prima facie evidence of
15 interest and prejudice. Allowing the State's
16 response to stand without prior judicial scrutiny
17 is a violation of the Code of Judicial Conduct.
18 Now we're at 2002 here. Is this a further
19 continuation of the consistency of delusions that you've
20 talked about?
21 A. That is correct.
22 Q. Okay. Defendant Exhibit 21, page 8. I'm sorry.
23 This is PDF page 8. This is page 5 of the pleading.
24 You'll see -- this is a document you reviewed as well,
25 right?

A. That is correct.
Q. And you'll see here he writes:
This claim is controversial because it challenges successfully the authority of the college campus police to investigate felony crime.
And that's, as you understand, the basis for why Mr. Dixon believes that his claim is so controversial, right?
A. That is correct.
Q. Defendant's Exhibit 22. We're going to jump ahead now to recent filings. This is from May 20 of 2021.
And before we talk about this, you said earlier in your testimony that you believe that you were interested in seeing how Clarence's move to death watch affected his thinking. And you actually saw him for the last time after he was moved out of his normal housing and in to death watch; is that correct?
A. That is correct.
Q. How did he present to you at that time in comparison with how he presented to you in the previous visits?
A. He didn't seem in good shape. I mean, consistently, he had had some basic physical

1 functioning. So he didn't look good physically. He was
2 coughing a lot. He was mentioning that when he was
3 moved to death watch that his medication for Valley
4 Fever was removed. He hadn't had it for a couple weeks.
5 And he was constantly coughing. He looked to me like
6 he'd lost a lot of weight. He looked more depressed.
7 But not much different in terms of the delusional
8 thinking. I mean, it's still pretty consistent in the
9 context of him not feeling well physically.
10 Q. Okay. This is -- this is a filing that
11 Mr. Dixon -- a pro se filing Mr. Dixon filed in the
12 Arizona Supreme Court on May 20th, 2021. And on page 2:
13 Dixon stated in his petition for writ of
14 habeas corpus that no justice or judge had ever
15 provided statements of fact and conclusions of
16 law in support of their denials.
17 Is that accurate? Have you reviewed pleadings
18 where there have been reasoned opinions denying
19 Mr. Dixon's claim?
20 A. Yes. And it's something that I discussed with
21 him, specifically.
22 Q. So this is a factually inaccurate statement?
23 A. That is correct.
24 Q. Okay. And --
25 THE COURT: I'm sorry, Mr. Zuckerman. What

exhibit is that?

MR. ZUCKERMAN: I'm sorry. This is Defense 22.

THE COURT: Thank you, sir.

Q. BY MR. ZUCKERMAN: You said that you talked to him about this. How did he respond when you confronted him with the fact that he's wrong and he has been given reasons, decisions, denying his NAU claim?

A. Every time I've tried to shake his irrationality, if you may, he would actually get a little upset with me, and then he will go back to explain to me the law. Right? He always goes back to, "Yeah, but you need to understand this is this, and this happened."

And then I will go and ask, "Well, what about the advice that you have received from your attorneys? And what" -- I think he's fired some people. He's representing himself.

And so I asked -- I ask, "Do you believe anything that they tell you?"

And then he will basically say no, and go back. That's what we call the circumstantial thinking, always going back to the original delusional premise that he seems to have a need to be going back to.

Q. And you talked about Mr. Dixon representing himself. You reviewed documentation that demonstrated

that Mr. Dixon represented himself at trial; is that correct?

A. That is correct.

Q. And do you know why he fired his counsel at trial?

A. I believe it had to do with a similar situation, the same claim. And I believe, and he has told me, that attorneys have tried to discourage him from filing these claims. And he basically thinks that they're wrong. And then if you push him a little too much, then those attorneys become part of the conspiracy too.

Q. Defendant's Exhibit 23. This is a filing in the Supreme Court of the United States. A cert. petition from November 12, 2021, which is relatively recently. And on page 2:

> Does the Supreme Court have jurisdiction to -- and I'm going to do my best in reading the handwriting here -- to find justice where a three-tier court system deliberately and systematically deprive a prisoner sentenced to death the right of due process and equal protection by intentionally ignoring the law which clearly benefited the prisoner?

Is this consistent with Mr. Dixon's delusion over time?

A. Yes, it is.
Q. Okay. Defense Exhibit 24. Oh, you know, I'm going to go back to 23 because I missed a couple of quick quotations there. This is PDF page 16:

> The Arizona Supreme Court knowingly and willingly used an unlawful and unconstitutional conviction to effect the statutory execution manifesting justice without the law.
>
> Deliberate mishandling of the statute by not one but many and all judges and justices indicates prima facie bias and prejudice when a whole block of jurists -- this word's unintelligible -- Mr. -- deliberately the Supreme Court oversight is mandated.

Now, before we continue, you testified that Mr. Dixon's legally blind, right?
A. That is correct.
Q. But these are handwritten, right?
A. That is correct.
Q. So are you aware of the -- of a stencil that he uses in order to create these writings? Did he describe that to you?
A. He's described that for me, yes.
Q. Okay. Do you think that it would be incredibly time consuming for Mr. Dixon to use that stencil to

1 create these filings?
2 A. That is correct.
3 Q. Okay. So is it fair to say that Mr. Dixon has to
4 go to a great deal of effort in order to create these
5 filings that he has been sending off to the various
6 courts, including the Supreme Court?
7 A. I believe so, yes.
8 Q. Defense Exhibit 24. This is a reply to the
9 State's response to a cert. petition in the
10 Supreme Court, filed on February 18, 2021. Going to go
11 to PDF page 4 and 5:
12 Since 1991 Mr. Dixon has brought this
13 straightforward claim to Arizona's judiciary in
14 four post-conviction relief petitions and one
15 special action.
16 All the many Arizona judges and jurists who
17 had the opportunity and duty to follow and apply
18 the law deliberately and systematically deprived
19 Mr. Dixon of constitutional rights found in
20 Arizona's and in the United States Constitution.
21 Is this a document you reviewed, and is this
22 consistent with his delusions?
23 A. Yes, it is.
24 Q. Defense Exhibit 26. This is an Arizona bar
25 complaint, a complaint filed to the Arizona Commission

on Judicial Conduct, from April 11, 2022. We are going to go to page 4 of the document:

> I strongly request that Justice Timmers action or inaction in considering my petition for writ of habeas corpus be grounds for disbarment.
>
> The lack of appropriate and professional conduct allows for the unconstitutional, infirm, illegal, and immoral ghoulish infliction of a homicide upon my person and body.

Is this a document that you reviewed and considered?

A. Yes, I did.

Q. And is it consistent with his delusions over time?

A. That is correct.

Q. Does this represent somewhat of an escalation where he's now alleging that there's going to be a homicide inflicted upon him?

A. I think it's -- yes, an escalation of intensity. I don't want to say it's a change of the delusional process. I think it's not unusual to start incorporating more facts into your delusional life.

Q. So the crux of the delusion remains the same, but his intensity, as he gets closer to his impending execution, is escalating?

A. I think -- I think that his concern and inability to convince people that his beliefs are rational creates a lot of frustration for him.

Q. Exhibit 27, this is a judicial complaint filed against Justice King, of the Arizona Supreme Court. And this is similar to the last one, but I'm going to read it anyway, on page 4, PDF page 4:

> I strongly request that the Commission on Judicial Conduct find Justice King's denial of my petition for writ of habeas corpus to be completely lacking in professional workmanship and her oath of office. Justice King should, therefore, be disbarred. Her lack of impartiality and fairness will cause to inflict a unconstitutional, infirm, if not illegal, if not immoral, homicide upon my person and body. Again, consistent with the delusions?

A. That is correct.

Q. Exhibit 28, judicial complaint against Justice Montgomery filed on the same day. On PDF page 4:

> Justice Montgomery's bias and prejudice in my case is a violation of Canon 2 Code of Judicial Conduct, impartiality and fairness, a violation of his oath of office, in addition to a

1 code violation.
2 And on the last page of this document:
3 Justice Montgomery's conduct allows the
4 State, by way of the Department of Corrections,
5 to ghoulishly inflict an unconstitutional,
6 infirm, illegal, and immoral homicide upon my
7 person and body.
8 You reviewed this document?
9 A. Yes, I did.
10 Q. And it's consistent with his delusion over time?
11 A. That is correct.
12 Q. Okay. 29 -- Defense 29, this is a letter to the
13 Judicial Commission -- I'm sorry, the Commission on
14 Judicial Conduct, filed April 16th, 2012. I'm sorry,
15 2022. Thank you.
16 I believe it's the last page of this document:
17 I find it unconscionable that these
18 Arizona Supreme Court members would lack
19 professional integrity involving a capital case.
20 Their lack of impartiality and fairness leads
21 directly to an extrajudicial killing, an illegal
22 and immoral homicide created in the name and for
23 the people of Arizona.
24 Now, Mr. Dixon here talks about an extrajudicial
25 killing. What's the significance of that?

A. Well, that's an exaggeration of the paranoia and delusional thinking in terms of him believing that the actions of the conspiracy have raised -- have risen to the point of him not being able to defend himself in any way, and that he's going to get killed anyway because the courts want him dead.

MR. ZUCKERMAN: Okay. We had one more exhibit, which I -- it's the exhibit that we shared with you guys over the weekend, after the call with Dr. Vega.

MS. FAIRCHILD: It's 32.

MR. ZUCKERMAN: Does the Court have that exhibit?

MS. FAIRCHILD: Yeah.

MR. ZUCKERMAN: This has been introduced as Exhibit 32. And this is an April 30th, 2022, letter from Clarence to the Judicial Commission.

Okay. This has been marked as Exhibit 32. It has not yet been admitted.

MS. FAIRCHILD: Do you have that one up there?

THE COURT: Is there any objection to the admission of 32?

MR. HAZARD: No, Your Honor.

MR. SPARKS: No objection.

THE COURT: And just to be clear,

Mr. Zuckerman, you're asking for it to be admitted?

MR. ZUCKERMAN: That's correct, Your Honor.

THE COURT: Without objection, 32 is admitted.

MR. ZUCKERMAN: Thank you.

Q. BY MR. ZUCKERMAN: We may not have this to put in front of you, but you reviewed the recent writing that we gave you. It's a April 30th, 2022, letter to the executive director of the Judicial Commission.

A. Yes, I did receive that.

Q. And I'm going to read this, and you just tell me if it's something you reviewed:

Although my legal team's efforts to stop my execution may be in vain, the deliberate misapplication and ignoring of Arizona statutes and the law, specifically A.R.S. 15-1627, will result in an extrajudicial killing that would merit disbarment of those who are unconcerned with their unprofessional reason for being ever after the 12th hour.

That's another word that I have trouble . . .

You reviewed that document?

A. Yes, I did.

Q. Okay. And that's the most recent writing from Clarence, only a few days ago, relating to this issue;

is that right?
A. That is correct.
Q. Okay. Does the fact that Mr. Dixon is able to interpret the law, and cite statutes, and write somewhat coherently in areas, mean that he is not schizophrenic or that he's not competent to be executed?
A. No, absolutely not.
Q. I'm sorry. It's -- I asked that question confusingly.
So it doesn't mean that he's competent to be executed merely because he can write in a way that seems coherent, right?
A. That is correct.
Q. Okay. At the end of the day, is it fair to say that Mr. Dixon doesn't believe that his execution is because society wants to punish him for the murder of the victim in the case he was sentenced to death for, but, rather, it's because society and the courts seek to protect themselves from the embarrassment of granting his meritless claim?
A. That is correct.
Q. Okay.
MR. ZUCKERMAN: Your Honor, my plan -- if we could, just for a second -- with Dr. Patiño was to recall him after Dr. Vega's testimony so that he can

1 address what Dr. Vega says and what is in his report.
2 Given that -- given that the Court has sort
3 of held under advisement the decision of whether to
4 allow Dr. Patiño to listen --
5 THE COURT: Maybe it's efficient if I
6 address that under advisement right now, and then you
7 can continue as you feel appropriate.
8 MR. ZUCKERMAN: Thank you.
9 THE COURT: The Court notes that the State
10 has -- has invoked the rule. Specifically, under
11 Evidence Rule 615(c), the Court finds it is appropriate
12 for both of the expert witnesses, for the defense and
13 the State, to have access to the testimony of the other.
14 So they may be present, listen in, or be briefed by
15 counsel to -- for purposes of addressing that.
16 This only goes to the two expert witnesses
17 as essential to the presentation of the -- of the cases
18 that are being presented to both sides -- by both sides.
19 However, if there are any other witnesses that are going
20 to be called in rebuttal, or otherwise, the rule is
21 invoked as to any other witnesses.
22 So, Mr. Zuckerman, where does that leave
23 what you were going to address?
24 MR. ZUCKERMAN: Yeah. Just in case we have
25 time issues, because we haven't yet reached

1 cross-examination, I just want to ask Dr. Patiño a
2 couple quick questions about Dr. Vega's report.
3 Q. BY MR. ZUCKERMAN: Dr. Patiño, you've had the
4 opportunity to review Dr. Vega's report?
5 A. Yes, I have.
6 Q. Okay. Do people with antisocial personality
7 disorder generally experience delusions?
8 A. Generally not.
9 Q. When you are seeing delusions and hallucinations,
10 what -- do you then consider -- would you then typically
11 consider a diagnosis of antisocial personality, or would
12 you look to other diagnoses in the DSM?
13 A. The acute diagnosis of psychosis, delusional
14 thinking, hallucinations, does not include antisocial
15 personality initially, because you want to look at the
16 most probable causes of the problem. And it can be
17 schizophrenia, it can be drug-induced, it can be
18 depression, it can be mania. There are a lot of other,
19 more significant, possibilities. That is because
20 personality disorders are pervasive and lifelong. So
21 it's not something that is just looked at initially when
22 somebody is suffering from psychosis.
23 Q. And delusions are not part of the DSM criteria
24 for antisocial personality disorder; is that correct?
25 A. That is correct.

MR. ZUCKERMAN: Your Honor, can I just -- can we maybe break for just a couple minutes while I consult with counsel before I conclude?

THE COURT: Would you prefer to take the lunch break and then finish up?

MR. ZUCKERMAN: That would be fine as well. If I have any further questions, they'll be brief.

THE COURT: All right. Let's go ahead and do that. I'm going to handle a couple housekeeping matters, but we'll break in just a couple minutes.

And so why don't we start up again at 1:15 so that we can make up a little bit of time.

Just as a housekeeping matter, the Court does order the court reporters, who are attending to this hearing, are to provide expedited transcripts and provide them to both of the parties, as well as the copy filed with the court.

And the court reporters, as the day goes on, the intention is to hopefully have those available for you tomorrow, if not the following day.

With that, is there anything else before we take a break, or any other records to make?

MR. ZUCKERMAN: No, Your Honor.

MR. SPARKS: No, Your Honor.

THE COURT: We're going to take a recess.

And, Doctor, ask you to be back here at 1:15, and we will pick up where we left off with defense concluding their direct examination.

MR. ZUCKERMAN: Thank you.

THE COURT: We'll be at recess.

(A recess is taken at 11:45 a.m., after which the proceedings resumed and have been transcribed in a separate volume.)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
Vs	)	
	)	CR202000692
CLARENCE DIXON,	)	
	)	
	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE ROBERT CARTER OLSON

REPORTER'S TRANSCRIPT OF PROCEEDINGS

DETERMINATION OF COMPETENCY HEARING

Florence, Arizona
May 3, 2022
1:15 p.m.

BY: YVONNE M. DE LA TORRE
Certified Reporter
No. 50470

I_N_D_E_X

WITNESS	D	C	RD	RC
FOR THE DEFENDANT				
Amezcua-Patino Lauro		4	21	
FOR THE PLAINTIFF				
Vega, Carlos J	26	47	107	

1 APPEARANCES:
For the Plaintiff Jeffery Sparks
2 Greg Hazard
Attorneys at Law
3
4 For the Defendant Eric Zuckerman and
Amanda Bass
5 Attorneys at Law
6
BEFORE THE HONORABLE ROBERT CARTER OLSON
7
*****
8
9 Florence, Arizona
10 May 3, 2022
11 THE COURT: All right. Lets go back on the
12 record on CR20200692. All counsel previously identified
13 are present.
14 MR. ZUCKERMAN: Eric Zuckerman for Clarence
15 Wayne Dixon and with me are Amanda Bass, and Cary Sandman
16 and our paralegal is Angela Fairchild.
17 MR. SPARKS: Jefrey Sparks for the state
18 along with Greg Hazard and our paralegal Daniel Mccall.
19 THE COURT: Very well. Thank you. Very
20 well. As you see, we have switched court reporters so on
21 we go.
22 Anything to address before we get Dr. Patino
23 back on the stand?
24 MR. ZUCKERMAN: Your honor, I'd just like
25 the record to reflect the presence of Dr. Vega and just

the fact that he has not been present to observe Dr. Patino' testimony up until this point.

THE COURT: Understood.

Anything else, Mr. Sparks?

MR. SPARKS: No Your Honor.

THE COURT: Very well.

Doctor, if you please come forward and resume your place on the witness stand.

Good afternoon, doctor.

Sir, you are still under oath and Mr. Zuckerman, please proceed.

MR. ZUCKERMAN: Your honor, we have no further questions for direct examination.

THE COURT: Very well.

Mr. Sparks, will you be conducting cross?

MR. SPARKS: Mr. Hazard will, Your Honor.

THE COURT: Mr. Hazard.

MR. HAZARD: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HAZARD:

Q. Dr. Patino, the office of the Federal Public Defender retained you on this matter, correct?

A. That is correct.

Q. And are you being compensated for your work on

1 thia matter?
2 A. Yes, I am.
3 Q. And what rate or what fee are you?
4 A. Fee is $450 an hour.
5 Q. And we just limit it, I know that you did work on
6 the Dixon' case back in 2012 in another type of
7 proceeding, but I just want to focus on your work on the
8 competency determination proceedings and I see that you
9 evaluated Mr. Dixon first on August 25 of 2021, correct?
10 A. Correct.
11 Q. And then February 17 of 2022?
12 A. Correct.
13 Q. March 10th of 2022?
14 A. Correct.
15 Q. And then most recently April 19 of 2022?
16 A. That is correct.
17 Q. And your testimony on direct was that this is --
18 this is a nice thing to be able to see Mr. Dixon,
19 interview Mr. Dixon over time, correct?
20 A. That is correct.
21 Q. And numerous times?
22 A. Yes.
23 Q. Okay. Do you have an estimate of how many hours
24 you have devoted to the Dixon' matter on these competency
25 issues, including today testimony?

A. Are you talking about the hours including review of records, everything?

Q. Everything?

A. I have to go back and look at my invoices, but it is probably about 30 to 40 hours.

Q. Okay. And you charge the same hourly rate even for the record reviews and whether you are testifying, doing review or what have you, correct?

A. That is correct.

Q. Okay. When I interviewed you yesterday, I asked you about your prior experience evaluating inmates for a competency to be executed determination like we are having here in this matter, correct?

A. That is correct.

Q. And you told me about your experience in two cases, there was a case you mentioned in Texas in 2006, is that correct?

A. That is correct.

Q. And then you also mentioned the David Scott Detrich' case that was here in Arizona, that you work on in 2010, do I have that correct?

A. That is correct.

Q. Okay. And do you know that a warrant for execution has not been issued for Detrich's case.

MR. ZUCKERMAN: Objection relevance.

1 THE COURT: You may answer if you're able.
2 THE WITNESS: I don't know.
3 Q. Okay. Are you sure that your work on Detrich's
4 case involved evaluating for determination for competency
5 to be executed?
6 A. As far as I remember, I mean, I lost track of
7 that particular case, but I didn't normally don't follow
8 the cases after my testimony. I don't really know what
9 happened with it. I do know that there were issues of
10 cognitive impairment and he ended up being remanded to
11 trial again or something like that by the 9th circuit.
12 Q. It is possible that your work was more involving
13 a psychiatric evaluation like you did for Dixon in 2012,
14 that kind of work?
15 A. It is possible.
16 Q. Okay. Opposing counsel also asked you on direct
17 about your experience in doing competency determinations,
18 correct?
19 A. Correct.
20 Q. And you mentioned it had been awhile since you
21 had done one. Do you by awhile, do you know what you mean
22 by that?
23 A. Not really. I know that there was a moment in
24 time -- when I was doing my PSRB work between '95 to 2002,
25 2003, I didn't do any forensic during that time and my

1 understanding is that the rules from the court changed in
2 the that you had to be registered to do that. To do rule
3 11s and is somewhere in that time that happened.
4 Q. All right. And on March 25th of this year, you
5 were called by the attorney representing Sean Patrick
6 Davidson to testify at that evidentiary rehearing in the
7 Maricopa county superior court, is that correct?
8 A. That is correct.
9 MR. ZUCKERMAN: Objection relevance.
10 THE COURT: I'm sorry.
11 MR. ZUCKERMAN: It seems like these are
12 questions going towards Dr. Patino's qualifications to be
13 qualified as an expert witness which we are already past
14 at this point.
15 THE COURT: Mr. Hazard, wher eare you going?
16 MR. HAZARD: Well, it also goes to his
17 credibility and defense did bring up his experience and
18 competency determinations on direct so this goes to that.
19 THE COURT: Okay. Overruled. You may
20 continue. This is a bench proceeding, I will sort out
21 what is relevant but just please, please stay on track
22 with the relevant issues, Mr. Hazard, as you proceed.
23 Q. The court in that case found you not qualified to
24 testify as an expert in competency, correct?
25 A. My understanding was it was ruled not registered

to do it but my, my question about psychiatric evaluation was in question.

Q. Right. So do you agree with me that that judge found you not qualified as a competency expert, but recognized you as an expert in the field of psychiatry?

A. I mean, I don't want to be playing with the words but I think that it was found to not be registered. So by not being registered, I was incompetent.

Q. Would you like to see a minute entry of the court's order in that case?

A. I haven't seen it so.

Q. Would it refresh your memory maybe to see it?

A. I don't think that that was during my testimony. I don't think that that issue was resolved. So I don't remember ever mention, the judge every mentioning anything like that.

Q. Well, the Minute Entry states, it is ordered for purposes of competency, Dr. Patino is not qualified as an competency expert but is recognized as an expert in the field of psychiatry.

MR. ZUCKERMAN: Objection. The witness stated he wasn't even present for this so it doesn't -- I don't see how it is relevant to impeaching the witness. It is something that he has no knowledge of it, which is what he indicated in his testimony.

THE COURT: Mr. Hazard?

MR. HAZARD: Your honor the entry is the states that Dr. Patino was sworn and testified and was present.

THE COURT: It shows what time he came and left and thus when that was said?

MR. HAZARD: It doesn't specify that the time on it.

THE COURT: The objection is sustained. Mr. Hazard, please move on?

MR. HAZARD: The only time that is on it your is 9:59 a.m., that is the beginning of the hearing.

THE COURT: Okay.

Please move on, I think that you made your point.

Q. Do you agree that Dixon understands that the DNA profile that was entered into the law enforcement national database that was collected as a result of these convictions for the 1985 sexual assault, do you agree Dixon understands that that profile was then used to match him, his profile from the DNA collected from the victim MS. Bowdoin in the murder case?

A. I would have to say that he knows the fact because somebody told him that.

Q. Well, how do you know somebody has told him that?

A. Because he told me.
Q. But he represented himself in that trial, correct?
A. I don't understand the question.
Q. Well, he represented himself in the trial?
A. I believe so, yes.
Q. In the murder trial, correct?
A. I believe so.
Q. Okay. And these pleadings that he has been filing, he has been challenging the DNA evidence both collected as a result of that conviction in 19 for the 1985 sexual assault as well as the DNA that was used against him in the murder trial, correct?
A. Not that I can recall. I mean, I haven't had discussions with him about the DNA in that detail.
Q. So you haven't reviewed any records that indicate pleadings where he is challenging the in and trying to have that evidence of DNA suppressed?
A. Based on the fact that his arrest was illegal.
Q. Right and so he has been battling -- he has been trying to suppress the DNA evidence that ultimately led to his conviction for murder and sentenced for death, correct?
A. I think that the DNA has been mentioned but his primary goal has always been the illegality of the arrest.

Q. Correct, but he is trying to suppress the DNA evidence in order to try to get his convictions vacated, correct?

A. No. He wants to have his conviction vacated, period. I don't know what would happen within the DNA evidence. I am not a legal expert on that.

Q. Would you agree that the filings that he has made, in court, that he knows that as long as his death sentence is in tact, he will be executed?

A. I think he understands the fact that the state wants to kill him.

Q. Okay. In your interview with Dixon on March ten of 2022, when you asked him about the judicial system' rationale for denying his claims, Dixon told you that he did not think the judges, the attorney for the state or his own attorneys were plotting against him in that interview, correct?

A. That is correct.

Q. And you agree that Dixon is aware that the state intends to execute him for the murder of Ms. Bowdain?

A. He is aware that has been told that that is the reason. That is not what he rationally believes.

Q. I understand that is your opinion Dr. But he understands the fact of that, correct?

MR. ZUCKERMAN: Objection this is all the

Dr.' Opinion of the doctor testifying about his opinions of what Mr. Dixon has told him so.

THE COURT: Mr. Hazard, I'm not sure I understood the question, if you rephrase that question?

Q. Do you agree that Dixon is aware the state intends to execute him for the crime of murder of Ms. Bowain?

A. I think I have testified before that he knows those facts, yes.

MR. HAZARD: No further questions, your honor.

THE COURT: Okay. Counsel, I am going to ask the witness a few questions and then I will return to Mr. Hazard for further cross-examine and then obviously for rebuttal, redirect.

Q. Doctor, I'd like you to help walk me through your, your testimony and specifically as it relates to delusions about the NAU police scenario and his diagnosis he has schizophrenia.

First off, with respect to the schizophrenia, I think you make the point in your report, that it is most commonly found in lower IQ people but also applies to higher IQ people but the systems or the traits or the functionality of the patient is different depending on those factors, am I summarizing that correctly?

A. That is correct, yes.

Q. And I think the conclusion you reach is that Mr. Dixon has at least an average if not a superior level intelligence, is that correct?

A. That is correct.

Q. And I know that you mentioned in your opinion, about positive and negative symptoms. I think that you described?

A. That is correct.

Q. And I guess, I guess I'd like to hear you kind of walk me through his how those symptoms impact his functionality and let me give a little context to that as I see the writings Mr. Zuckerman put on the screen, I will tell you candidly some of those are better written than some of the lawyers that have filed motion that I've read.

And those seem to suggest, I guess for lack of a better description, ordered thought and help me understand what I am seeing on the screen what I am seeing that he is proceeding and I think that in one of the reports it that mentioned that he sort of hired out as a paralegal in prison and is writing Rule 32s for other inmates and so on.

Which again to somebody not trained in psychiatry, suggest, you know, high level functioning rationality, that sort of thing?

A. Okay. I am going to have to explain to you, Your Honor in the context of an illness, right.

In the fact that he knows the law, and the fact that he knows facts about the law, he doesn't mean that these conclusions of law are rationale. Right. So knowing the facts doesn't translate into him making good, rational decisions that will allow him to, one, be successful at the pleadings he is making and second, to be able to assist on his defense. Right. So there are a number of factors here so factual knowledge is not the same as rational understanding.

So when you -- when you talk about the schizophrenia process, you are talking about a multitude of factors. You talk about negative symptoms, positive symptoms, but if the basis of your pleading is irrational, it doesn't matter how much you know the facts, right?

Because the conclusions are rationale. So he consistently has the same process, there being minor abbreviations I think over the years in terms of my attorney sometimes help me, my attorneys sometimes don't help me, but the premise, the main premise continues to be irrational.

Q. And maybe this is kind of what is getting me to the question, as I reviewed the report that Mr. Dixon' attorney attached to his motion for this hearing to be

1 held, that the cornerstone really of setting this hearing
2 was conclusion about not having the rationale
3 understanding of the execution.
4 And in your -- in your opinion, you provide
5 lots of information about delusional legal opinions that
6 he has and that sort of thing that. And respectfully,
7 obviously I reviewed your curriculum vitae, it is
8 impressive and I understand that your medical training and
9 psychiatry training that you have, I don't see anything in
10 there about any legal training and I think that you
11 testified that you don't have any legal training other
12 than you probably had some course work on testifying or
13 some things like that but no formal legal education, is
14 that correct?
15 A. Well, I part of my training, my first 4 years of
16 training in psychiatry included forensic psychiatry. If
17 you ask me if I did an specialty in forensic psychiatry,
18 the answer is no.
19 Q. Okay. Here is what I'm getting to.
20 Where does the conclusion come from about
21 his legal theories being delusional and let me put it in
22 this term, I hesitate to use the sport's analogy because I
23 know nothing about sports, but I am going to use the
24 analogy of Hail Mary, long pass in football where it is a
25 low probability event but there is sort of nothing to lose

1 and so you know the throw may be made and it may be a very
2 long shot for whether or not there is going to be any
3 benefit that comes from that and I guess the question is
4 this, not knowing all of the facts of the earlier cases,
5 there is a certain elegance to the legal theory that he
6 has been following in that not knowing what his other
7 options were and obviously the attorneys that provide the
8 detailed me to him on why the attorney didn't feel that
9 would be an effective argument, doesn't go on and express
10 any opinions of what the better approach would be, just
11 that this is not something that they're in a position to
12 go forward with. And I am I mean I think I think we can
13 agree the conclusion about the NAU police department being
14 involved in the investigation.
15 And try to turn that into a suppression of
16 everything that may follow is a very low probability
17 event. On the other hand, there wasn't some uncertainty
18 as to university police so there was a later statutory
19 correction, there certainly is an established legal
20 concept of suppression of evidence, it has never been
21 taken as far as what he has been advocating for but on the
22 other hand, the approach that he has taken, you know, does
23 have as his purpose if he can convince anybody of it which
24 I don't think is going to happen, but if he could, it
25 theoretically makes all of legal problems go away or at

1 least as to this case, if not the earlier conviction of
2 Coconino county so again recognizing it is a very low
3 probability proposition, not knowing what other tools he
4 had to work with, I mean even one of the observations I
5 thing this is your report where I think that you wrote for
6 decades Clarence Dixon has fixated over in pursuing this
7 delusion belief to his detriment. He fired his
8 court-appointed attorneys and represented himself at the
9 capital trial after they refused to raise his factually
10 baseless issue and he has filed appeals over this issue
11 nearly 30 times in numerous state and federal courts.
12 And of course part of this ties in that
13 potentially even gives color to firing his attorneys if
14 the attornies wouldn't present this issue, that issue
15 might be waived and which would at least perhaps it would
16 be an incredibly bad decision but Frankly, persons charged
17 with crimes are free to make bad decisions in the defense
18 of their cases so I guess what I am trying to say is, how
19 do you make the I guess the jump to the conclusion that
20 this is delusional, irrational, if you will, approach that
21 he has taken versus a person who is facing very serious
22 charges and perhaps rationally even if it is a very low
23 probability approach, if it might have been his best play.
24 And I guess how do we connect all of these
25 dots to your ultimate conclusion?

A. You, well, the number of things that you are, number one, you cannot disconnect him from the fact that hs suffers from Schizophrenia, I don't think that is in doubt so the fact he has has been found to suffer from schizophrenia in itself raises a probability of delusional thinking.

Then we have to get into the definition, what is delusional right because delusional means that your thoughts are irrational, they're fixated and unbreakable, those kind of like the way defined in the context of your environment by the most people and not everybody but most people around you will believe that those thoughts are not logical or rationale if you may. All right.

So if you put together the fact that he has Schizophrenia, that we have identified some of the dissolutions together with some other things like hallucinations and mounted affect and isolation socially, things like that. So if he was not schizophrenic, I would probably contemplate your suggestion you know that the maybe there is something here but it also raises the issue of is he malingering? Right. Is he faking this so he can be not executed. Now, there are a lot of things in this particular case and we really didn't get into it, it speaks against that.

One is the fact he has Schizophrenia, the fact that he is consistent and consistence are the hallmark of malingering and he is not aggregating his symptoms which is usually the hallmark of malingering, you exaggerate your symptoms. There is also a TOM1 test that was done by Dr. Toma in 2012 just got to somebody trying to fake cognitive deficits. It is called a test of memory malingering so if you look at the whole package, we have an individual who suffers from Schizophrenia that has had a consistent delusion for a long time and that delusion can terminate his ability to be rational about what is happening to him.

Q. So if one was to discount the NAU legal theory, as being proof to be considered, would the rest of your observations still draw you to the same conclusion or do they tie into the NAU conclusion that that they rely on each other I guess is what I am asking?

A. Well if you remember initially I was asked if being a schizophrenic makes you automatically not rationale. The answer is no. But if you, the consistency, intensity and the unbreakability of that whole proces that has lasted I guess more than 30 years, right, indicates in the context of a patient with schizophrenia that the most likely explanation to the irrationally that we see is a mental disorder.

THE COURT: Okay. Thank you, Dr.

THE WITNESS: thank you.

Mr. Hazard, any followup?

MR. HAZRD: No, Your Honor.

THE COURT: Mr. Zuckerman?

MR. ZUCKERMAN: Yes, thank you.

REDIRECT EXAMINATION

BY MR. ZUCKERMAN:

Q. Dr. Patino, the judge was asking you about Clarence's delusions as they relate to the factual basis of his claim. Which is that the NAU police illegally seized his DNA, correct?

A. No. That the NAU police arrested him, right.

Q. Right and leading to his DNA being seized?

A. Correct, yeah.

Q. So he is delusional on one hand about the factual basis of his claim, correct?

MR. HAZARD: Objection leading.

THE COURT: You may answer if you are able.

THE WITNESS: Yes.

Q. You have talked on direct examination about his belief that judges, lawyers, police, have all conspired to deny this claim, correct?

A. That is correct.

1 Q. Okay. And you said on direct examination that
2 the reason that they have conspired to deny his claim is
3 not because they think it is without merit, but because
4 they believe that to agree with the claim would lead to
5 embarrassment on the state university system and the
6 government in general?
7 MR. HAZARD: Objection, asked and answered.
8 THE COURT: You may answer if you are able.
9 THE WITNESS: That is correct.
10 Q. Okay. So it seems to me that we are dealing with
11 two related delusions, one related to the factual basis of
12 his claim and the other related to the fact that Mr. Dixon
13 believes that his claim is being denied, not because
14 judges disagree with him legally, they actually agree with
15 him, but they're nonetheless denying his claim to silence
16 him and so that they can protect other state agencies,
17 correct?
18 A. That is correct.
19 Q. Okay. So we are talking about complicated issues
20 here, but it seems that there -- scratch that.
21 When Mr. Dixon writes about an extrajudicial
22 killing, why do you think he characterize it that way?
23 MR. HAZARD: Objection beyond the scope.
24 THE COURT: You may answer if you are able?
25 THE WITNESS: In that is a worsening of his

1 delusional thinking taking it as the ultimate consequence
2 of the plot if you may.
3 Q. The plot that you refer to, that is referring to
4 a plot, not that judges disagree with him, right, but that
5 they agree with him, but want to kill him anyway, is that
6 I mean is that an accurate characterization it seems like
7 take about two different interrelated delusions, one
8 related to the crime and the factual basis of the crime?
9 And one related to the reasons that his
10 claim has been denied 30 some times over the past 40
11 years?
12 A. That is correct.
13 Q. The crime that we are talking about is the 1985
14 crime that resulted in his DNA being seized, not the crime
15 that he has been sentenced to death for, right?
16 MR. HAZARD: Objection, clarification,
17 vague.
18 THE COURT: Are you talking about the
19 Coconino conviction?
20 MR. ZUCKERMAN: Yes. The NAU conviction.
21 THE COURT: Maybe rather than using the
22 years, talking about the Coconino case and this case is
23 the Phoenix case ASU. if you can rephrase the question?
24 MR. ZUCKERMAN: Coconino county. Not from
25 Arizona so I apologize Your Honor. Coconino Flagstaff.

1 Q. Mr. Dixon was convicted of a crime resulting from
2 his arrest by the NAU police in Flagstaff, right?
3 A. That is correct.
4 Q. And that's different from the crime that we are
5 here about today that he has been sentenced to death for
6 which occurred in Maricopa county?
7 A. That is correct.
8 Q. Okay. And Mr. Dixon' belief is that the courts
9 are conspiring to deny an otherwise meritorious claim and
10 execute him because they want to protect the system from
11 admitting that his arrest in a different crime arising
12 from Coconino county because they want to protect agencies
13 from admitting that that arrest was illegal, a different
14 crime?
15 A. That is correct.
16 Q. When Mr. Dixon thinks about when he is -- when he
17 is prompted to think about the fact that he is going to be
18 executed, in a number of days, is he able to contemplate
19 the severity of the crime and society' goals in
20 vindicating societal interest by executing him or does he
21 automatically go and think about a different unrelated
22 crime?
23 A. We talked specifically about that and he has a he
24 admittedly goes back to the issues of why he is not going
25 to be executed meaning that he is going to have these

claims and he is, I don't know, he is going to be filing more appeals and things of that sort and now, his reaction though is very schizophrenic like. He is very disconnected from death.

MR. ZUCKERMAN: Nothing further. Thank you.

THE COURT: Thank you.

Is Dr. Patino subject to recall?

MR. ZUCKERMAN: Yes, your honor. I would like him to sit in on Dr. Vega' testimony and do plan to recall.

THE COURT: Okay. Dr. Petino, we ask you to stay here because you are subject to recall but this will conclude your testimony.

The witness: Can I wait over there?

THE COURT: Wherever you like.

THE WITNESS: Okay. Thank you.

MR. ZUCKERMAN: Possible to a take a 5 minutes recess before we begin with the next witness?

THE COURT: Certainly.

MR. ZUCKERMAN: Thank you.

(Break)

THE COURT: Counsel ready to resume?

MR. ZUCKERMAN: Yes, Your Honor.

THE COURT: All right.

Back on the record in on CR202200692, State versus Clarence Dixon. Court notes the presence of all counsel previously identified.

And Mr. Zuckerman , is there any other witness that defense wishes to call?

MR. ZUCKERMAN: No, Your Honor. We rest.

THE COURT: Very well. Mr. Sparks?

MR. SPARKS: Thank you, Your Honor.

I also have if its okay I indeed to turn on my video when examining Dr. Vega so he can see me to facilitate communication case I hope.

DR. CARLOS VEGA

^ Called as a witness herein, having been first duly sworn, was examined and testified as follows:

THE COURT: Thank you. Dr. Vega just a few quick things, obviously by using a webex, this adds some challenges to the testimony. We do have a court reporter. It is important that we only have one person speaking at a time. Please make sure that you wait for the attorneys to complete their question before you answer. They will do the same thing. Also, please keep in mind that head

nodding thinks like that we see and know what mean but they won't make their way in the record so please make sure you use words like yes or no and sort of thing.

If you hear any objection, just pause until I give you further instruction and again with this being webex, if there is anything that you are unable to hear or understand clearly, please let me know and like wise, the one exception to talking over somebody is if their sound cuts out please get my attention just as a quickly as you can so we can deal with this so you don't miss anything that is said in court understood?

THE WITNESS: Understood.

THE COURT: Great.

And Mr. Sparks?

DIRECT EXAMINATION

BY MR. SPARKS:

Q. Good afternoon, Dr. Vega,

A. Good afternoon.

Q. Can you tell us a little bit about your educational background?

A. I sure can. I obtained my bachelors from the University of Miami in psychology, then went and got my

1 master's and doctorate at the lower southeastern
2 University in Fort Lauderdale and that is what I did.
3 Q. And with that, can you go in and tell us about
4 your professional experience since receiving those
5 degrees?
6 A. Well, yes, I started out, well, I did my
7 internship back in Miami at Miami memorial health center.
8 And then in 1982, I came out here to Arizona which I love
9 and worked for the behavioral health agency of Central
10 Arizona which we called BACA, back then long time ago in
11 Casa Grande. And then I worked there as a clinical
12 psychiatrist and clinical director. Did that several
13 years and then around 1987, 1988, I went to private
14 practice started over in St. Luke's medical center. Had
15 an office there in psychiatrist and then moved on to
16 basically stayed in Casa Grande. And I have been
17 primarily focused on doing psychological evaluations.
18 And I don't do therapy anymore. I did in
19 the early '80s and that is basically and I've done a lot
20 of DCS Work, a lot of work with patient rehab, disability
21 determination service.
22 And I, you know, I also in as far as family
23 cases, you know, divorce cases. Capacity to parents, and
24 I have worked a lot with the courts doing a boatload of
25 Rule 11 prescreens, I've done Rule 11s and Rule 26.5. I

have done a lot of that lately especially and I'm powering down as you can see, a little older. I am looking at you, Mr. Sparks, in the face you look like my grandson and but so I am powering down a little bit so I really enjoy the type of work in especially competency stuff I enjoy it.

I wish I was getting paid as much as Dr. Patino though, that is not the case.

But I want to shout out hi to Dr. Patino. He is a great guy and always hard to get ahold of him so but I want say hi to him and Your Honor.

Q. Yeah. Let me ask, have you testified here in Pinal County superior court as an expert witness before?

A. Oh yeah, millions of times. Mostly DCS Cases. I haven't done a lot of testifying as far as Rule 11 so Rule 11 prescreens but I have. And I have done some. And most of my testifying has been with DCS and it has been, you know, in the hundreds.

Q. Okay. We are going to show on the screen what has been marked as exhibit 30. Give that a second to show up?

A. Do I see it?

Q. Not yet. You should in a minute though. It is not up yet.

I will move on to another question and then once it is loaded, maybe I can revisit that.

So you mentioned having done a number of psychological evaluations for the court, when you do that an evaluation, whether it is for a DCS as you mentioned or Rule 11, how many times do you generally interview the subject of the evaluation to complete an evaluation?

A. Generally one time. I see help one time.

Q. Okay. And that is sufficient to complete the evaluation in most of those cases?

A. Yes, it is sufficient you know depending on the referral question I take the time that is necessary and I only opine after I have sufficient information to opine.

Q. Okay. How did you become involved in this case?

A. I believe that you was is you that contacted me? Somebody contacted I believe it was you correct you asked if I would be interested and I said yes I would be interested.

Q. Okay. And did you complete an evaluation of Clarence Dixon and prepare a report based on your involvement in this case?

A. I did. I did.

Q. Okay. Okay. And as part of your, the evaluation that you conducted in this case, were you asked to answer the question whether Clarence Dixon' mental state is so distorted or his concept of reality is so impaired that he lacks a rational understanding of the state's rational for

his execution, is that a question that you are asked to answer?

A. Yes.

MR. ZUCKERMAN: Objection just a he hasn't been qualified as an expert witness up to this point.

THE COURT: Mr. Sparks?

MR. SPARKS: Your honor, I don't believe that is required under the Arizona rules of evidence but in any case, the court has heard his background and qualifications and believe he is certainly qualified to testify as an expert witness.

THE COURT: In Arizona courts, Mr. Zuckerman, normally not formally done, is there an objection to his professional qualifications?

MR. ZUCKERMAN: No, your honor.

THE COURT: The court does expressly find that Dr. Carlos Vega is a qualified expert to testify as to his investigation report in this matter.

Mr. Sparks?

Q. Okay. And as part of your the evaluation that you conducted in this case, did you review records?

A. Yes.

Q. And without listing everything, can you just kind of summarize or characterize the type of records that you reviewed in this case?

A. I reviewed a number of evaluations, a number of court documents that outlined all of the details of this case as to why they felt that we needed to see whether Mr. Dixon was competent to be executed.

Q. Okay. And did you also conduct an interview with Mr. Dixon as part of your evaluation?

A. I did.

Q. All right. And how by what method did you conduct that interview?

A. By video. I don't remember the name of the video, but it was it basically a video set up that was actually pretty nice. Compared to securist from the jail is horrible. But that is another story. But this one was very good at DOC, the Browning unit I believe and --

Q. And, sorry, go ahead?

A. I was just stating I conducted, I heard him well, I saw him fairly well. I would say well. I would say that I was able to see him well and you know it went quite well. We about spent 70 minutes together on one video.

Q. Okay. And in conducting the interview over video, as opposed to in person, did you feel that you are missing any information that you needed or anything like that by conducting it over the video rather that in person?

A. I don't feel I missed a thing.

Q. Okay. And is conducting an interview over video in a context like this, is that something that is accepted in your field?

A. I would hope so.

Q. Okay. So we have shared on the screen what has been marked as exhibit 31. Can you see that, Dr. Vega?

A. Yes.

Q. Okay. And can you confirm that is the report that you authored in this case?

A. Yes, it looks like the first page.

Q. It appears to be it?

A. Yeah I can only do the first page but yeah it does, that appears to be accurate, yeah.

Q. Okay. Thank you.

Okay. So I'd like to go back to the talk a little bit about the interview that you conducted with Mr. Dixon, can you describe kind of when you first got started, how did he appear? How did your conversation start out? How did he seem? How did he come across to you?

A. He was very cordial. He's easy to understand. He came in, he had very good posture, he came in with a cane you know he is blind and so he was helped to the chair. And he folded his cane and placed it down and then we just began to converse and then there was, you know,

uneventful.
Q. All right. And did he tell you anything about the length of time he had been incarcerated?
A. Yeah I believe he did. It was 30 some odd years.
Q. Did you feel that you were able to establish a rapport with Mr. Dixon during this interview?
A. I did, yes.
Q. Okay. And did Mr. Dixon say anything to you about receiving any psychotropic medications?
A. He stated that he has never received psychotropic medications, according to him, he has never been offered.
Q. Okay.
A. But I did -- sorry.
Q. I didn't mean to put cut you off.
THE COURT: Excuse me, Dr. Vega and Mr. Sparks, just need to slow down the exchange a little bit because there is a bit of a delay with webex and so for the court reporter, there is some overlaps.
A. Okay. So Your Honor I will try to go -- I'm horrible at this I'm very, I speak too fast you know. But I'll try to slow down a little bit.
Q. So will I.
Okay. So tell me, did Mr. Dixon identify some health issues he had been having, did he describe those to you?

A. Yes he identified really one health issue that was bothering him and it was a cough. He said he had this persistent cough and that he needed cough drops everyday. And that and they I guess he was not getting the cough drops everyday so he was complaining about the fact that they weren't, you know, giving him enough cough drops.

Q. All right. And just in general, during your interaction with him, you know, how well was he able to communicate with you, provide information, provide personal information, that type of thing?

A. Oh, very well. I mean, he is obviously an average to above average intellect. His verbal intelligence is quite high and he was like I said cordial. He wasn't necessarily very depressed but he was somewhat blunted in his affect a little bit and later I would ask him about the depression and then he made the comment in hey you know, how would you feel if you were getting put to death? And so I felt that he probably was suffering like an adjustment disorder with depressed mood you know reacted depression, situational depression if you will but it wasn't severe by any means I would say mild to moderate maybe or maybe moderate.

Q. Would it be unusual for someone in his situation to experience depression?

A. No. I think he made his point quite clear, it

wasn't unusual at all.

Q. All right. And did Mr. Dixon mention anything to you about politics?

A. He did, yeah. One point he did. He was talking about suicide and homicidal ideations and he was joking I mean and he said he has thoughts of maybe killing Trump but he it was definitely at a joking level. I never took it seriously so I just I went ahead and I asked him, I said what do you think of President Biden?

And I felt his response was remarkable, he goes at first he goes, incompetent and then he stops and he says, no, lukewarm leader. And I have to say, you know, that was a very interesting appraisal, you know. The reason that I put that in there and the reason that I asked also, is because of we were talking about going to, talk about schizophrenia psychosis and you know and one of the things that you know over the 40 some odd years I have been in this business is you know there is a tendency of individuals that are schizophrenic that not to be quite in touch with reality, you know.

And then there are comments like this that you can tell that the individual make you such a statement is acutely aware of reality. And has a very good grasp of reality.

Q. Okay. And did you also have a discussion with

him regarding him losing his address book? Can you tell us about that discussion?

A. I did. We were talking about he I -- we were talking about his interpersonal dealings and whether he was reaching out to anyone and because he's rather disenfranchised from his family, et cetera. And he said, you know, that he had pen pals and had this address book and then initially he started to complain about the DOC staff you know the I believe that maybe the staff took it and dadada and he started to kind of whine and complain about it.

And then as he kept going he said that, you know, I really got to do a more thorough search, I got to go back and do a more thorough search to see whether maybe I misplaced it, something to that effect and I also was in all honest, I was floored by that comment because an individual who is delusional is usually delusional, you know, about whatever is going on, you know, and here he began what appeared to have been an opportunity for him to, you know, they're taking my address book away, they're trying to prevent me blah, blah, blah blah but he recovered and in that recoverability, what you see is an individual that is at the time when I am evaluating him is not the one least bit delusional.

Q. Okay. And turning to your conversation with him

about his prior criminal offenses, what did Mr. Dixon say to you about the incident in 1977 where he hit a teenage girl with a pipe, did he tell you anything about that how he felt about it?

A. Yes. I asked him about it and I had already read that he may have been motivated to do that because it reminded him of his wife, he was having a lot of trouble with and so I asked him you know what happened? And that he basically he stated, well, she was just there and then he said, and there were a lot of things going on, there was a lot of things going on and in a basically talking about things going on his mind which could very well have been the issue with his wife. I also asked him, did she remind you of anyone and he said no.

But then he said, she was there and there was a lot of things going on and I hit her. And then I asked I said well how did you feel? Did you feel bad? He says yes I felt bad but I needed to run. I the one thing I did do is I knew I had to get out of there or something to that effect.

Q. Okay. And we will get into a little more detail on this issue in a few minutes but you wrote that Mr. Dixon told you about his legal theory challenging the validity of his conviction and the presentation of DNA evidence in the murder case, is that right?

A. Yes. He pretty much he reiterated that we very talked about and talk about here which is that he felt that the DNA, you know, he prefaced everything in a very rationale way. And he prefaced things?

THE COURT: Mr. -- Dr. Vega. Hold on a second.

I am going to turn this up higher, Dr. Vega, can you do kind of a testing one 1, 2, 3.

THE WITNESS: 123.

THE COURT: Sorry to interrupt you.

Q. Okay. I think that you are okay you were telling us how he was describing the legal challenge that has been talked about that he has been making?

A. Right and because essentially that I started to talk to him, I wanted to get more of an a idea as to what you know as I'm a psychologist I am not that I am not interested in the legality of things necessarily. I want to know, hey, did did you do this or what was going on in your head? You know what kind of things were, I want to find out of about him, you know.

And essentially, he mentioned that about the DNA and that it was obtained in improperly legal and I said well was it your DNA? I mean, were you there? He says well, and essentially he said I am not going to deny the evidence. These are his words, I am not going to deny

1 the evidence, and but I don't remember what happened.
2 And so he said I know I had sex with her
3 because my DNA was there, but I don't remember killing her
4 and I said, well, I said well you don't remember any of
5 it? He said I don't remember any of it but I don't
6 remember killing her and I can tell he was basically
7 intimating that it doesn't seem fair to him that he would
8 be put to death for something he doesn't remember doing.
9 He didn't say he didn't do it or he did it
10 but he said I don't remember doing it. And then he
11 floored me when I proceeded to talk to him about that and
12 I said to him, well, you know it he said well and I asked
13 him were you drinking a lot? Oh yeah I was drinking a
14 lot. And we already know he was having black outs from
15 the documents and so he essentially acknowledged that he
16 was in an alcoholic black out where he didn't remember
17 anything.
18 And then he says to me, and I go well what
19 if you remember, what if all of a sudden you have a
20 recollection that you did kill her, and he said the
21 following he said, you know, if I killed her, if I have
22 memories of killing her, on my way to execution, I would
23 feel relief.
24 And you know essentially, you know he is
25 telling me that you know that he that the one of the

1 things that really upsets him is that he really can't
2 remember whether he did this or not. I found that to be
3 credible, you know his statement to be credible but
4 ultimately he says but the reason that I believe the DNA
5 issue is because, you know, we live in a county that is a
6 where the rule of law needs to apply and then he went into
7 how he is completely convinced that that was illegally
8 obtained or whatever and illegal. And that therefore,
9 they should not -- they should not execute him because
10 then because of the fact that they have obtained something
11 that is illegally obtained so, and so, you know, he went
12 on about the fact that he tried everything.
13 And I, you know, I have to tell you, you
14 know judge Olson, you know when he said that Hail Mary
15 pass I mean that is exactly a tremendous analogy because
16 this is he is only, you know, his only shot at this. He
17 is completely aware of this. He is completely convinced.
18 Is he misguided? Is he misguided perhaps? Is he you know
19 misperceived the facts? Yes. Did he lose time and time
20 and time again? Yes, he did.
21 But, hey, you know, people don't have to be
22 delusional, you know in order to be arrogant, in order to
23 be narcissistic and think that they have a truth, think
24 they know more than others. And I think that others don't
25 get it when they do.

1 We know that politicians in particularly are
2 good at that. And so, you know, I don't think I mean I
3 can understand how someone could call it delusional and
4 having heard that Dr. Patino, I can understand the
5 reasoning but I don't agree. I mean, I think that you
6 have delusions, you have paranoia and you have cognitive
7 distortions and this, at best falls on the paranoia at
8 best. I think it is like it as a narcicisstic, narcissist
9 aspect of his personality that he believe that he is
10 convinced that he is right. And and and Frankly, you know
11 when I hear that he is trying something that has a what
12 judge Olson referred to low probability proposition. You
13 know a low probability proposition means it isn't
14 impossible. So therefore it cannot be a delusion because
15 for in order for there to exist, a delusion, in order for
16 there to be a delusion, you it is impossible for it to
17 happen. It is a matter of, you know, is the aliens and
18 were the aliens that provided the DNA evidence, you know.
19 And that is the distinction.
20 Q. Okay. Let me ask you a few questions about a few
21 things that you mentioned in there.
22 One, you talked about and you're also
23 referred to in your report you know potential personality
24 disorders. There has been, you know, testimony and
25 reference in other reports about schizophrenia. Does,

1 does what Mr. Dixon' specific diagnosis is, ultimately
2 affect your opinion about whether he has a rational
3 understanding of the state' reason for his execution?
4 A. Yeah, of course it does. I mean, here we have
5 first of all, one of things that I found on in reviewing
6 everything here, is that the elephant in the room is not
7 diagnosed.
8 You know, in psychiatry, it is psychology we
9 have principle diagnosis and we proposition, I will --
10 schizophrenia spectrum comorbidity in the case but I will
11 suggest to you in my opinion, the primary principle
12 diagnosis is a personality disorder.
13 I mean, this is a personality disorder and
14 it is an antisocial personality disorder to start with,
15 those narcissist empowerment elements. So because first
16 of all personality disorders don't come in one package
17 okay but you know if you look at the definition of a
18 personality disorder, you see exactly what happened with
19 Mr. Dixon and what continued to happen with Mr. Dixon
20 while he was in the DOC okay because he was never treated
21 for paranoid schizophrenia at the DOC. Not once. But yet
22 he spent many hours constantly in the library, the law
23 library and according to him, it was I don't know how many
24 thousands of hours, well that is what we will call
25 maladaptive recurrent behaviors which is the definition of

a paranoia -- of a personality disorder.

When you continue to behave in a way that is maladaptive and guess what you continue to behave in a way that is maladaptive.

Q. Okay. And let me also ask you about Mr. Dixon' legal claim that you discussed and that he talked about with you. Let me kind of give you a hypothetical related to that.

If Mr. Dixon if his belief as to why the courts have continually rejected that claim was delusional so lets say Mr. Dixon believes that the courts have rejected his claim not because it is legally wrong but because of the courts and potentially attorneys are conspiring to cover up the fact that if they granted him relief because his claim is right, it would be embarrassing to the legal system, to the police that kind of this so lets assume that is is why he thinks his claim has been rejected.

Does the fact that he holds that belief prevent him from rationally understanding the state's reason for his execution?

A. Not at all. Not at all.

Q. Why is that?

A. The fact of the matter is if he were absolutely delusional, okay, if you were absolutely delusional, it

1 would be in a very circumscribed manner but it doesn't
2 affect the connection between I murdered her or I don't
3 remember murdering her. I may have murdered her. And I
4 am being executed.
5 You know, I saw somewhere in my as I was
6 looking at all documents I saw there was a case there
7 about Panetti that had to do with this and this guy was
8 delusional, but the guy in my understanding is this
9 Panetti guy, he himself killing his in-laws I believe and
10 then he and you know, he gets in an -- he starts thinking
11 they are persecuting me and you know, because I of my
12 religious belief, you know. They're conspiring against me
13 because of my belief. They are going to put me down
14 because I cannot not -- I am not able to preach because
15 not able to preach the gospel, something to that effect.
16 So the connection is gone in that case.
17 The connection is never gone here. It is
18 very integral. And the issue of in a incompetence is in a
19 way kind of I think completely unfounded and especially
20 when you consider that this individual was never found
21 incompetent to represent himself.
22 And I got to tell you, I've done those. I
23 have been called to do several, I have been referred
24 individuals, is this person competent to represent
25 themselves? So I submit to you that if he is incompetent

1 and he was incompetent at the time, then they should have
2 had an incompetency hearing with regards to him
3 representing himself. Again, that didn't happen. Not
4 only did it not happen but according to judge Olson, he
5 said well I nobody has written and he does better than a
6 lot of the lawyers that I have seen. I'm sorry, that is
7 not delusional. You can call it socracy, maybe I don't
8 know or rationalization, intellectualization, but I don't
9 think it meets the criteria of delusion because low
10 probability of something happening is still probable that
11 it could happen. It is probable. That he could that that
12 hail Mary pass could be caught okay. And so, you know,
13 that just it is just not there in my opinion.
14 Q. So I think that you essentially stated this but
15 to answer the question, in your professional opinion, is
16 Mr. -- does Mr. Dixon have a rational understanding of the
17 state's reasons for his execution?
18 A. Yes, he does.
19 Q. Just one moment, please. Okay. And in your
20 opinion, does Mr. Dixon make a connection between the 1978
21 murder he was convicted of and his upcoming execution?
22 A. Yes, he does.
23 MR. SPARAK: Thank you. No further
24 questions, Your Honor.
25 THE COURT: Thank you, Mr. Sparks.

Mr. Zuckerman?

CROSS-EXAMINATION

BY MR. ZUCKERMAN:

Q. Good afternoon, Dr. Vega.

A. Good afternoon.

Q. Are you able to see me or probably not?

A. No. I am not able to see you. It is dark.

Q. I don't have a webex hook up here so I mean happy to proceed?

A. Are you better looking than I am? I am just kidding.

Q. Dr. Vega, you have never evaluated someone to determine whether they're competent to be executed before, is that correct?

A. That is correct, I have never done that.

Q. And you don't have any active patients, is that fair?

A. No. I don't do any treatment at all. No psychotherapy. Probably a little bit of a whim, but I take it with me. I take this thing a little personal sometimes, as you can probably see. So I don't. I don't do, I'd probably go crazy if I did it so I just do the avows.

Q. Okay. So you don't treat people who are

schizophrenic?

A. No.

Q. Okay. You don't see them?

A. No.

Q. You don't see them repeatedly to monitor their symptoms?

A. No, I don't.

Q. Okay. And you don't use talk therapy with patients who are schizophrenic?

A. Right. I don't. The only time I do any kind of therapy if I am must say is I do very brief like a ten-minute cognitive therapy type of intervention hearing during middle of a psychological evaluation I may do that. That is the extent of my therapy. In order to maybe you know give the person a little taste of what therapy feels like and maybe get them enticed to get some therapy. That is the only therapy that I do.

Q. And you are not a medical doctor So you can't treat people with medication once they're diagnosed, correct?

A. Right. No. I am not a medical, not a medical doctor And really hard sometimes to get a medical doctors to see my people, but that is another issue.

Q. Okay. You believe that Clarence was cooperative and honest with you during your interview?

A. Yeah I think for the most part he was.

Q. Okay. Did you audio record your interview with Mr. Dixon?

A. I think I yeah I took a voice memo thing in order to just I was taking notes and since, you know, I didn't trust my memory really well, I said I am going to tape to make sure I used in order to write the report and then I erased it and I deleted it. I'm sorry.

Q. So you recorded everything that he told you?

A. Yeah, like I said in the voice memo and then I deleted it, yes, correct.

Q. And you did that so that you can write out exact quotes of what he said in your report?

A. Well, in part and, you know in part to do that and in part just to refresh my recollection.

Q. What happened to that audio recording?

A. I don't know. It is deleted. I don't know what happens to it.

Q. Why did you destroy it?

A. Why did I destroy it? Because it was it was just served its purpose. It was just to assist me you know just like with notes you know once I -- once I finished I use my notes to write a report, the report is the my the my final product, you know.

Q. You know you would be testifying at at a hearing

in this matter, right?
A. Yes.
Q. Okay. Dr. Vega, you wrote in your report, quote, it is evident his cognitive and memory functioning are in tact, unquote, do you remember writing that?
A. Yes.
Q. Okay. Now, you didn't perform any testing to assess his cognitive or memory function, did you?
A. No.
Q. Okay. You reviewed Dr. Toma' report that found that the results of neuropsychological testing indicated a diffused pattern of brain damage?
A. I read something about that yeah. The neuropsychological function, yeah.
THE COURT: Dr. Vega, can you repeat the last part of your answer.
A. Yeah, I did read that there was some neurological and he I think he went on to say there was some cognitive disorder NOS, something like that that that may be some you know idiosyncrasies in way that he you know his cognitions that you know shown by the test results but I found him to be I mean perfectly fine as far as being able to communicate and I think that somebody who can write the kind of motions that he writes and stuff, that you know I don't know what kind of tests you can give but be a better

1 measure of his verbal comprehension.
2 Q. Yeah. And I think that what you are referring to
3 in Dr. Toma's report is his finding that there are
4 significant cognitive impairments noted from his
5 neuropsychological test scores, do you remember reviewing
6 that?
7 A. Yeah. When I had my MRI I that significant
8 number of this and that that was supposedly pathological
9 and of course I am not all completely there. I there was
10 no clinical evidence of it so you know test results are
11 highly interpretive. And test results are supposed to get
12 you to what the person actually has. And you know if he
13 has that kind of neurocognitive deficit, how do you
14 reconcile with what he has done?
15 So you know if you can't reconcile then he
16 may not have participated wholeheartedly in the test, I
17 don't know. The test results are not don't say a lot to
18 me. It is the person interpreting and other collateral
19 data that is more important.
20 Q. And tests result have validly scales in order to
21 determine whether the person is malinger in Dr. Toma's
22 test found no indication of malingering, is that fair?
23 A. Yeah. And that is irrelevant.
24 You can have an IQ test, you can have an IQ
25 test as a matter of fact today you can have IQ test right

now with a psychologist where they come in and I say the person has a 70 IQ. All right. And they didn't do an adaptive functioning or they did an adaptive functioning scale and the adaptive functioning was above average or superior.

And the person was perfectly functional and had a driver's license, work, had you know, married, had a mortgage. And so okay he didn't do well on the test, he didn't test well.

Q. Dr. Vega, you wrote in your report, quote, Clarence was alert and oriented across all spheres. He was capable of providing all of his personal identifying information without hesitation and this includes his height at 5 feet 8 inches tall, and weight of 145 pounds, he stated that lately he has been losing weight and he attributes this to the normal process of aging.

A. Yes, he said that.

Q. Okay. Can you pull up -- pull up --

THE COURT: Dr. Vega, wait for the next question, please.

MR. ZUCKERMAN: Your honor I am going to put up what I am going to mark for identification purposes as exhibit 33 and I have a copies for the court and counsel.

Q. Dr. Vega, can you tee the exhibit on the screen?

A. Nope.
Q. Can you see that now?
A. Not yet.
Q. Your Honor --
A. I can.
Q. Okay. Go to page 8690 and highlight a portion.
Dr. Vega, I am showing you what has been marked for identified purposes as exhibit 33. And these are department of correction medical records. And if you will see here, on April 12 of 2022, which was just a matter of days before you met with Mr. Dixon, he was weighed and his weight came in at 125 pounds, do you see that here?
A. Yes.
Q. So that is 20 pounds less than he told you he weighed, is that correct?
A. Yes.
Q. Okay. And do you see below that where is says that Mr. Dixon has something called wasting syndrome?
A. Yes, I see that.
Q. Okay. So he wasn't losing weight because of the natural aging process, he was losing weight because he has wasting syndrome, is that fair?
A. Yeah, that is what it appears to be, yes.
Q. Okay. So when he told you -- so when he told you

he was 125 pounds, sorry, when he told you he was 145 pounds, that was incorrect?

A. That is. That wasn't correct.

Q. When he told you he was losing weight because of natural aging, that was incorrect?

A. Yes.

Q. Okay.

A. Yes. Well I yeah I never yeah I as a matter of fact, interestingly so I didn't make a comment on that but I certainly, I certainly did not but that one that I didn't confront him about that one but he did say that he did say that.

Q. What do you mean confront?

A. Not confronted but I was going to mention to him hey you know, that is not the normal processing of ageing but I didn't think to explore that further so that is my bad, you know.

Q. Yeah but in your report, you point this out as evidence that his cognitive function is in tact, isn't that right?

A. Well, yeah. I mean, well wait his cognitive function is in tact. The fact that he doesn't -- that he is under the impression that this is the normal processing of aging or something that he may just believe, that does not have a varying on the rest of it or the fact that he

is saying 145, you know, versus 125. Well, you know, we all make mistakes. But overall, he was well-oriented, a very nice person, we discussed everything, he gave every single account. Everything that I read pretty much he reiterated it.

And you know overall, you know, his cognitive ability average above. Dr. Patino said the same thing.

Q. You said in your report, that Mr. Dixon stated he was on death row and he was going to be executed in 11 days, do you remember writing that?

A. Yes. He did say that. That is a mistake. He probably was referring to the 11th day of May, I don't know but he did say that, yes. And that was wrong.

Q. And for the record, that is on page 3 of Dr. Vega's report.

Now, you met with the Clarence on April 22 and his execution is scheduled for May 11, that is 19 days, not 11, correct?

A. That is correct.

Q. So he was wrong about his weight?

A. Yeah.

Q. Correct, he was wrong about his weight?

A. He was wrong about his weight.

Q. He was wrong about the date?

A. And wrong about the date and wrong --

Q. Yes? He was wrong about why he is losing weight, correct?

A. Yes.

Q. He was wrong about how many days it was until he is going to be executed, is that fair?

A. Well, he said 11 days.

Q. Okay. That doesn't indicate evidence of confusion to you?

A. No. Absolutely not. You know, you know I he was wrong about those details I mean he is about to be put to death so, you know, it may affect his memory here and there so.

Q. Okay. And you -- and you feel that he was reliable and accurate in the information he reported to you?

A. For the most part yes I thought he was. He was rational, he was, you know.

Q. Okay. On direct examination, you stated and also in your report, you stated, quote, asked what he in talking about the incident from 1977, where he was a arrested for hitting a woman with a pipe, you stated, quote, asked what he did after he hit her and if he felt bad about hitting her and he said, that after he hit her, he ran and that he did feel bad about hitting her but

mostly I did not want to get caught, is that accurate?

A. Yes.

Q. Okay.

A. Yeah, that is accurate. Yes.

Q. Okay. And can you pull up and Your Honor before we move on, I'd like to move 33 into evidence.

THE COURT: Any objection?

MR. SPARAKS: No objection.

THE COURT: Without objection, 33 is admitted.

MR. ZUCKERMAN: Mark for identification 34.

THE PARALEGAL: May I approach?

THE COURT: Thank you but don't need to ask any longer.

THE PARALEGAL: Okay.

THE COURT: Thank you though.

Q. Dr. Vega, on direct examination, you made a big deal about the fact that Clarence said I didn't want to get caught. I ran, and he said that because he needed to get out of there so he didn't get caught, right?

A. Well I just quoted what he told me, yes.

Q. That is what he told you, is that fair?

A. Yes.

A. What he told me. This is what he told me.

Q. Do you see the exhibit here which is the Arizona

state hospital psychological report that is detailing the description of the crime?

A. Yes.

Q. Okay. Quote, after the assault occurred, Clarence went and sat in his car to wait for the arrival of the police, end quote.

A. Correct.

Q. So evidence from the time of the crime indicates that he didn't run to try to get away. In fact, he sat in the car to wait until he was arrested, is that fair?

A. Well, yeah I just saying what he told me. He also said that she didn't remind him of anybody.

Q. Right can we Your Honor move this seek to move into 34.

MR SPARKS: No no objection.

THE COURT: Without objection, 34 is admitted.

MR. ZUCKERMAN: Your honor I'd like to mark for identification purposes that will be 35. That is I7 please.

THE COURT: Okay.

Q. Page 3, please? Doctor, can you see this exhibit?

A. No.

Q. Can you see this?

A. Okay. You went up too far. You went up too far. Okay. Okay.

Q. Okay. I am showing you.

A. Okay. I see it now.

Q. Thank you. I'm showing you what has been marked for identification purposes as 35 and this is a police report from the incident in question.

And it states, quote, I asked Clarence what happened, he stated that he walked up to Ms. Guerra and said something to her, then struck her over the head with a pipe. He ran to his vehicle which was parked at the rear of the space when Ms. Guerra began to scream at the time he threw the pipe into his vehicle and I showed Clarence Dixon the pipe I found on the front seat of his vehicle and asked him if he struck Ms. Guerra with it, and he replied, yes.

You testified that Mr. Dixon told you that he just didn't want to get caught and that he ran away, right?

A. That is -- those were his words.

Q. Okay. But the police report shows that he fully confessed to the crime immediately after while sitting in his car waiting for police, is that fair?

A. No. I, look, he is going by what he remembers and he basically the contradicted. He said there is he

ran. Now he the thing is he ran now but he didn't tell me he ran to his vehicle but he ran, you know.

Q. You said --

A. He said I ran. I ran to my vehicle so I mean I don't understand so yeah so that is what he told me. I don't see it as an incredibly different from what you are showing me other that the fact he went to his vehicle because he said he didn't want to get caught. Now you can argue maybe subconsciously he wanted to get caught, I don't know. But that is what he told me, that is his recollection.

Q. And his recollection is different from what these facts read from this police report seem to indicate, right?

A. You know, just maybe in a way to some degree. To some degree I never pursued it, where did you run to? Maybe if I asked him where did you run to he may have told me so to my car, I don't know. I have no idea but it is so yeah he I don't see -- he is telling me that is what he did and here it is exactly what he did. He hit her with a pipe and then he ran.

Q. Mr. Dixon --

A. You know --

Q. Mr. Dixon also told you he has no memory of the crime he was sentenced to death for, correct?

A. Yes. He had no memory for what happened that day and no memory for that or for the other thing, yes.

Q. Okay. And you believe that to be true?

A. Well, I do because of what he mentioned, I believe that it rings true because of what he -- because of what he told me. Now, is it true? Is he lying to me? You know, I don't know. It is possible I guess, but you know, he did state that he didn't know or no, that he knew that he had had sex with her and the only reason he knew was because of the evidence and he did not want to deny the evidence.

And but he definitely objected to the notion that he killed her.

Q. You wrote in your report that Mr. Dixon has cognitive distortions, is that fair?

A. That is correct and I think that you're pointing to some of these out.

Q. I'm sorry?

A. And I think that you are pointing out on some of those things you know that you know that distortions of thought. And these can very well be related to some of the psychological quirks that happened that it may not connect things sometime because it's again it is very mild, it is very minor, and it is very consequential.

Q. Those conditions, distortion or misremembered

1 facts seem to contradict your assertion that his cognition
2 and memory were fully in tact, is that fair?
3 A. No, they are not contradicted at all, at all, I
4 mean you know, you are talk about a couple of little
5 items, an item here and there but in terms of the -- of
6 the bulk of, you know, of what transpired, you know, I
7 mean especially when something traumatic happens. You
8 know, when people suffer trauma, you know one time I
9 capsized in the middle of the ocean and then I remember we
10 were rescued 24 hours later and then later comparing notes
11 as to what happened. Well different stories. You know
12 and all entirely different individuals all of the are
13 doctors and you know so it is kind of like you know.
14 Those are quirks of memory. These happen.
15 But you know in terms of him having cognitive distortions,
16 yes I think he definitely has that.
17 And but you look at his work, look at what
18 he's done and look at how he explains things to you. And
19 he is only conclude and not only like I mentioned,
20 Dr. Patino agreed that average to above. Absolutely.
21 Q. We are going to get to that.
22 Dr. Vega, you agree that Mr. Dixon and I
23 think you said on direct examination has not been treated
24 during the time that he has been incarcerated in the past
25 30 years with mind-altering medication?

A. That is what he told me. And I didn't see any. I didn't see any records that he has been so.

Q. Okay. And you agree that he has diminished level of interpersonal relations?

A. Yes, he does have that. He does have.

Q. And you agree that he is asocial?

A. No, I said he suffers from personality disorder and I believe it is antisocial personality with both empowerment and narcissistic features, yes.

Q. You said he has an apparent lack of interest in social interactions, right?

A. Well, he has a deficiency in social interactions, it is not complete -- he has some deficiencies, but he does want to connect I mean he does have a monitor. I believe that he and then the address book issue that he wanted to connect with his pen pal so he has some, but overall I think he does have that problem you know.

Q. Right. I mean you wrote he has 3 brothers and acknowledged he wasn't close to any of them and had lost contact. It has been documented in prior evaluations that Clarence never felt connected to anyone. It has been documented in prior evaluation that sorry he went on to describe himself as a loner.

And he reiterated that which has been documented in terms of not having any friends. You wrote

that, right?

A. Yes, yeah.

Q. And asociality refers to the lack of an interest in social interactions or a manifestation of limited opportunity for social interactions, is that fair?

A. Yes, that is a fair statement.

Q. You didn't on direct examination talk at all about this, but Clarence told you about his hallucinations, right?

A. Yes.

Q. He told you that he regularly hallucinates a dancing white child and that agitates him, right?

A. Yes, he did.

Q. He reveals that is frustrating to him and pisses him off because he doesn't understand why the child has to be a white boy that he sees, right?

A. Right.

Q. He told you that he believes that his hallucinations are a result of a brain tumor, right?

A. Yes.

Q. Do you have any reason to believe that he does have a brain tumor?

A. No. I have no reason to believe that he that is a brain tumor.

Q. You agree that he has hallucinations, do you have

any reason to doubt that?
A. No. You know I know there was Dr. Vega before said he had hallucinations but one of the things that is evident here is that they're not prominent so that you know schizophrenia usually have you know prominent hallucination and a lot of times in case like this, it would be command hallucinations?
Q. You agree that he has a history of long experiences hallucinations, is that fair?
A. I woul say he has a he has hallucinations but I don't think they are prominent hallucinations, I mean the nature of the hallucination is important so maybe he does have hallucinations but the term of diagnosis for example, I would have gone with diagnosis of delusional disorder versus a schizophrenia paranoid type based on the fact that the that the hallucinations are not the least bit prominent.
Q. Okay. So you think a diagnoses of delusional disorder is appropriate?
A. I yeah in looking back, of course, this is Monday morning quarter-backing okay so in looking back and then look about at he told me I think that he could very well have had delusional disorder, now having said that, having said that, I believe that diagnostically if he at one time had a full blown psychotic breakdown, which may be the

case, you know, then I don't think you diagnose delusional disorder but if you are to ask me, what my clinical impression was based on our interview, and what he told me, and assuming that I believe he had delusions, I would have gone I know assuming that I believe that he what he did that that repetitive motion filing was in fact border on the paranoid, I would diagnose him with delusional disorder I absolutely. And I see that before, by the way, I diagnosed that before on other people.

Q. Okay. Because you --

A. And sorry go ahead.

Q. You wrote in your report, quote, there is no doubt that he is deluding himself legally end quote do you remember writing that?

A. Yes I do believe he is deluding himself and you know like I said I don't think that it is a question of, you know, deluding himself doesn't mean that delusional. It is you usually the phrase deluding yourself you are just kidding yourself. You are messing with yourself. I think that it falls under the area of cognitive distortion or under the area of maybe a paranoia, but not delusion.

Q. You wrote, quote, he has deluded himself into believing that he found case law that supports his position, end quote. Do you remember writing that?

A. Yes, I do.

Q. You wrote, quote, this is responsible for his diluted notion that the government has refused to agree with his legal argument, not because his argument is sound, but rather the government is afraid of the consequences of admitting they are wrong, do you remember writing that?

A. Yes, exactly. Correct.

Q. So you believe that Clarence has a diluted notion that the government, the courts, the police, his lawyers, have been denying his motion, even though they agree it is right, because they are afraid of the consequences of admitting they are wrong?

A. Now, I don't know, I don't think that that is exactly correct. I think that he primarily sees himself as, you know, he basically sees them as not being as, you know, as perceptive as he is about the law. That he for example he is not delusional with his lawyers. He says this lawyer, an appellate lawyers I think something about an appellate lawyer that had done him harm. Okay. And then of course he had to take it over but it wasn't as though he was conspiring or was a conspiracy. There is no evidence at all that he believes that. There is no evidence that know is is basically saying these people are CYA, basically.

And that is where it is. I mean I think

that is so repetitive, I can understand somebody saying, well, you know maybe it is delusional. I don't think so. I don't believe it is delusional, but because again, I and I think that the, you know, there was notion earlier, this is a no probability proposition right but it is not impossible. Therefore, it is not delusional.

Q. I am not talking about the factual basis of his NAU claim. I am talk about his belief and I am going to read your quote again.

Quote, this is responsible for his deluded notion that the government has refused to agree with his legal argument. Not because his argument is not sound, but rather, the government is afraid of the consequences of admitting they are wrong. You wrote those words, right?

A. Yes.

Q. And for the record that is Dr. Vega's report at page 6.

Dr. Vega, Dr. Vega, you have wrote, written that there is no doubt that Clarence is deluding himself, that he has deluded himself into believing that he found case law to support his position, that he has a deluded notion about the government refusing to agree with his legal argument, not because of the basis of the argument, but you're saying he is not delusional. How -- how is he

1 deluding himself and how does he have deluded notions that
2 are not delusional?
3 A. No, because he believes he is right -- he is
4 fixated on the fact that he is right and they're wrong.
5 And that he is going to and and that he has no other
6 choice but to continue to try to prove to them that this
7 is right and in every single case at the end of it all, he
8 says I him right they're wrong. They're really not coming
9 they're not look at a to me any narcissists would say the
10 same thing, you know, any narcissists that believes that
11 you know that he has the you know the monopoly of truth on
12 truth, right, and that everybody else doesn't because they
13 know more. And so you know the issue is you know we are
14 splitting hairs here, is that a delusion? I don't think
15 so. I think it's a function of his personal diagnosis
16 while is personality disorder and not schizophrenic.
17 Q. Now you say it is not a delusion and you said the
18 on direct examination because delusion the definition of
19 delusion involved wild ideas such as aliens being involved
20 or something completely unbelievable, is that correct?
21 A. That is correct.
22 Q. Okay.
23 A. There is no possibility, no probability of ever
24 of it being correct.
25 Q. Okay.

A. If I may ask?
Q. Maybe if I can just ask the next question.
A. I'm sorry, go ahead go. Ahead.
Q. Thank you.
Can we pull up I2.
Your Honor I am going to mark I believe we are at 36 now did you want to move it had they exhibit 35?
MR. SPARKS: No objection.
THE COURT: Without objection, 35 is admitted.
MR. ZUCKERMAN: Thank you.
Q. Now before doctor, Before we scroll down, doctor, So we just talked about your definition of delusions as being wild ideas that involve aliens that are completely unbelievable?
Before we talk further about that, do you believe that Clarence beliefs about his NAU argument and about why it has been consistently denied is a fixed belief that is not amenable to change in light of conflicting evidence?
A. Yes.
Q. Okay. Lets --
A. He is definitely fixated on it. He is fixated on it.
Q. He is fixated on it. Okay. Lets pull up this is

now 36 for identification.

Doctor, You are familiar with the DSM of course, right?

A. Yes, I am.

Q. And the DSM is literature used by a psychiatrist and psychologist to define the types of things that we are talking about today, is that fair?

A. It is a guide in psychologist and psychiatrist, yes.

Q. Scroll just to the top, please.

And you see this says schizophrenia spectrum and other psychotic disorders, do you see that on the screen there?

A. Yes, I do.

Q. Now I am going to scroll down to the DSM definition of delusions and I am going to read the highlighted portion. Delusions are fixed beliefs that are not amenable to change in light of conflicting evidence. And that is what you just said his belief is related to this NAU issue and to the reason that it has been denied, correct?

A. No. What I said was that that is -- okay. So the DSM five is says delusions are fixed beliefs that are not amenable to fix and that is true, however, that is not the whole story. That is not the whole story. You know.

1 And delusions, the delusions you know I hate to say it but
2 delusions, there is a difference between delusions and
3 paranoia, know know and the difference is, is that a
4 delusion for in order for there to be a delusion, there is
5 no possibility of what they are -- what they are alleging
6 for to occur and on the other hand, it is is a very low,
7 very little probability.
8 Q. Right. Lets scroll down to the second paragraph
9 and the definition for delusions.
10 I am going to read this here, delusions are
11 deemed bizarre if they are clearly implausible and not
12 understandable to same cultured peers and do not derive
13 from ordinary life experiences. An example of a bizarre
14 delusion is the belief that an outside force has removed
15 his or her internal organs and replaced them with someone
16 else' organs without leaving any wounds or scars.
17 Sort of like the example that you gave about
18 aliens being involved, right?
19 A. Exactly.
20 Q. Okay. So in the DSM diagnosis of delusions,
21 there are 2 categories. One category is delusions are
22 fixed beliefs that are not amenable to change in light of
23 conflicting evidence.
24 And the second category is bizarre delusions
25 that involve wild beliefs such as aliens being involved or

having your organs replaced, is that an accurate statement that I just said?

A. That is what the DSM, that is what the DSM five stated, correct.

Q. And are you saying that the DS five is wrong about the definition of delusions?

A. I am saying that -- I am saying that the DSM. five is defining it this way, but the and my court over 40 years of working in this field, delusions are beliefs that are impossible. Paranoia are beliefs that are improbable. And then cognitive distortions is the one further below. So that is what I am saying.

That is a lot and if I may, if you look at case law, like this Panetti case, you know, is it that -- did you I guess you, I don't know who wrote it up, you know, in that particular case. Take a look at the delusions. Take a look at what the delusions are. Take a look. And delusions are not that he filed 26 motions that were almost as good as any lawyer can file, but that the motions are what, you know.

Q. So just to be clear --

A. That there is a force, an evil force that is preventing you know something that is impossible and that is what I believe but yeah so if you want to -- if so basically, listening to Dr. Patino, and looking at the

definition of delusion according to the DSM 5, fine, I can understand how long one can conclude delusions in that case.

Q. Okay. So you --

A. I don't -- I don't want -- abide by that. Is think that there is a better way of explaining that.

Q. But you agree that Clarence meets the definition in the DSM 5 of having delusions?

A. Yes, I have to agree because it is, I mean, you I have to agree. I just don't agree -- I don't agree that they defined it correctly.

Q. Your belief is that the DSM 5 definitions of delusions, is incorrect?

A. Yes.

Q. Okay. And can we pull up your honor move this into evidence please?

A. That is I should say that first sentence anyway.

Q. All right.

THE COURT: Any objection to 36?

MR. SPARKS: No objection.

THE COURT: Without objection, 36 is admitted.

Q. Exhibit 11 please. Previously admitted.

A. Well -- Your Honor if I may say thing please. I want to say --

THE COURT: Dr. Vega, please wait for a question.

Q. Dr. Vega, are you able to see the exhibit on the screen?

A. Yes.

Q. All right. Can you zoom in on?

A. I can't see.

Q. We are going to zoom in for you on diagnostic criteria, please.

Dr. Vega, do you agree that this is the diagnosis criteria under the DSM 5 for schizophrenia?

A. Yes.

Q. You have already said that Mr. Dixon has delusions under the DSM5 definition, correct?

A. Yes.

Q. You already said that Mr. Dixon experiences hallucinations, correct?

A. Well, you know, I did say that based on what you showed me, but I want to amend that a little bit because we what I did say was that that definition, that first sentence is insufficient, it is not incorrect, but it's insufficient.

Okay. It is not -- I don't believe -- I believe that it is correct, but it is not sufficient in terms of delusion. So when I see the criteria now that

you are showing me, delusions you know I am thinking of the delusions that I like I mentioned to you, which are delusions of grandiosity that go beyond, you know, you know, beyond what could be probable and delusions of any other kind of delusions or persecution like that go beyond what would be probable and so yes, that is a true. So the definition is that is really, I don't know if that is really the definition, like I said, that is a guide that is ultimately that's a guide but a delusion in my professional experience with 40 years behind me is an impossible belief, something that is impossible to occur. I stand by that.

Q. And you mentioned persecutory delusions. And a persecutory delusion under the DSM is quote the belief that one is going to be harmed harassed and so forth by individual organization or a group, do you agree with that definition?

A. Right. I believe, well no not necessarily. Not necessarily. I think it's the belief once again has to be that that the belief is an outrageous belief that you will be harmed in this fashion so yes I do if you include outrageous so again it is insufficient, it is not incorrect but it is insufficient and, you know, it is insufficient.

Q. You do agree that the DSM definition of

1 persecutory delusion does not include outrageous and in
2 fact it is under a different subsection from the bizarre
3 delusions that you are describing?
4 A. That is correct. That is correct. That is
5 correct. I think that watered down the definition of
6 delusions yes I do believe that.
7 Q. So going back to DSM diagnosis for schizophrenia,
8 you believe you said that he meets the DSM five definition
9 of delusions and you have told us that he experienced
10 hallucinations, correct?
11 A. Well, he is diagnosed with that he is diagnosed
12 with that. Now I will tell you this, I will tell you
13 this, again, we go back to the hallucination all right so
14 if we go back to the hallucinations, how pernicious are
15 those hallucinations because that is very important here
16 so number one, the delusions are I question the diagnosis.
17 Again, I don't know what happened or what may have
18 happened at one point. Okay. But the more recent matter,
19 I question the diagnosis of a paranoia schizophrenia and
20 if there is one, it is definitely comorbid to the
21 principle diagnosis of a personality disorder, that is all
22 I am saying.
23 Q. Okay. And we will talk about the personalty
24 disorder in a few moments.
25 I feel maybe we are at an impasse about the

DSM diagnoses so I will move on. But you know you've mentioned narcissim a lot and isn't it fair to say the that grandiosity is the defining feature in narcissism?

A. There is grandiosity in yeah narcissism.

Q. And?

Q. Sorry?

A. Yes.

Q. Grandiose delusions are hallmark of schizophrenia, is that fair?

A. Look, grandiose delusions, again, matter of degree. That is why we have 2 different diagnoses. You have the you have the -- you have it at the level of the narcissist and how he is credible.

And then you have it at the level of a grandiose at the level if schizophrenia which is a completely bizarre or out of touch with realty belief because that is the whole aspect of this you know schizophrenia usually persons out of touch with reality and narcissists is not out of touch with reality.

Q. Okay. But you have said that Mr. Dixon believes that over 27 different court cases have been denied against him, not because of the legal claim is wrong or not even because they think the legal claim is wrong, but because they want to protect themselves and the university and the government at large from embarrassment. That is

what you said Clarence believes, correct?
A. Because he thinks that he knows that he knows and that they try to cover the cover themselves yes.
Q. Okay.
A. Protecting themselves basically, yes.
Q. And is that belief not grandiose?
A. Well, there is some grandiosity to it yeah but there is also yeah there of course there is some grandiosity to it because you know he keeps doing it, he keeps, he keeps trying it again, right, in the hopes that somebody will come through at some point so.
Q. And is Clarence' belief that the courts are denying his claim not because they believe it is to be wrong, but because they know it to be right, yet are trying to protect other government agencies, not persecutory?
A. Well, I don't know that that is if it is a course of the persecution at all. It is a question of covering themselves, not trying to persecute him. Just that they are trying to, you know, they will look bad if they give in. I don't know if that if I would call that persecution. I never got the feel what he felt persecuted and I never got the the he felt they were in collusion with his lawyers. He just simply felt that he knew more than the lawyers. That he knew more about the law and

that he can do a better job and obviously that is the you know they didn't find him incompetent to represent himself. Nobody said anything.

Q. You are aware that in 1977, he was found incompetent to represent himself after an evaluation and was committed to the Arizona state hospital for restoration of competency, right?

A. That was then and he was restored and this is now.

Q. And you are aware he was found not guilty by reason of insanity by former United States supreme court justice O'connor in that case back when she was sitting as judge in Maricopa county?

A. I am aware of that and that is one of the reasons why I said that I really don't know whether he may have had a complete psychotic break and was in fact presenting as a clinical picture of paranoid schizophrenic.

Q. And you are aware that when he represented himself in his capital case, there was never a competency hearing done or a competency evaluation conducted in order to determine whether he was competent to represent himself, is that correct?

A. That is correct and I have done several of those.

Q. Now, you mentioned in your report that there are a number of references made to Clarence suffering from

1 schizophrenia; however, throughout his imprisonment that
2 spans over 3 decades, he was never treated for a psychotic
3 disorder, do you remember writing that?
4 A. Yes, I that is what he told me.
5 Q. Now are you aware that the national comorbidity
6 study finds that 40 percent of people will schizophrenia
7 are untreated?
8 A. I am not aware of that.
9 Q. Okay. I am going to mark I3 and move 36 in.
10 THE COURT: I think you already admitted
11 that?
12 Q. I lost track?
13 Going to mark I3 as 37 please?
14 A. Well, I'm not quite that far along.
15 Q. You are not surprised by that, that is your?
16 A. No. Not not in the least. I mean I have been in
17 the -- I have done a lot of those.
18 Q. So it is not uncommon for people who have
19 schizophrenia to go untreated?
20 A. A mental and have other mental health issues that
21 go untreated yes or a maltreatment.
22 Q. You should be sharing. All right.
23 And if just scroll down to the highlighted
24 portion there. And marked for identity as Exhibit 37.
25 Which confirms what we are talking about 40

1 percent of people with schizophrenia report that they have
2 not received any mental health treatment in the preceding
3 6 to 12 months and Your Honor move 37 into evidence?
4 THE COURT: Any objection?
5 MR. SPARKS: No objection.
6 THE COURT: Without objection, 37 is
7 admitted.
8 Q. Dr., Are you aware that Clarence was prescribed
9 Thorazine when he was in the Arizona state hospital?
10 A. Thorazine. I was not aware of that.
11 Q. Sorry I couldn't make that out.
12 THE COURT: Can you repeat that Dr. Vega?
13 A. No, I was not. I was not aware of that, no.
14 Q. If he was prescribed Thorazine, would change your
15 opinion in any way?
16 A. No. I told you I think I mentioned before that I
17 did see a report where it was recommended, I just didn't
18 know whether he actually accepted it.
19 Q. And he was also recommended to take haldol or
20 stelazine, are you aware of that as well.
21 A. No. Well, again that would be consistent with
22 someone who is psychotic.
23 Q. So if he was recommended that, then there is a
24 reasonable likelihood that he was psychotic at that time,
25 is that fair?

A. Yes, as a matter of fact, there is -- there is a good reason that he is a psychotic could be. Could also be a brief psychosis but you know diagnosed schizophrenia at that time so go with that.

Q. And you're aware that in 1981 an Arizona Department of Corrections psychological evaluation conducted determined that he showed signs of severe psychosis and likely schizophrenia?

A. Is that the one where individual I that is the one where he goes on to say that maybe be a good idea to give him medication?

Q. That is right?

A. Yeah, yes.

Q. And you are aware that both doctors that evaluated him in 1977 said that they suspected schizophrenia?

A. Yes.

Q. And you are aware -- sorry.

And you are aware that that testing was administered to him on two occasions, one in 1981, and one in 2012 and both times found elevated levels that indicate schizophrenia?

A. Lets talk about that, if you will, if you want to. The MPI 2 schizophrenia scale.

Q. Right my question is just whether you are aware

that that was administered, and those are the results?

A. I am aware. I'm aware of it. I am aware of it.

Q. Okay. And you said that Clarence described hypersomnia to you, is that correct?

A. Yeah, he he he didn't describe it. Yeah he described it. He said he was sleeping an awful lot.

Q. And on page 4 of your report, you wrote quote he describes hypersomnia quote, do you remember writing that?

A. Yes.

Q. And you are aware that hypersomnia studies have found that hypersomnia is common with patients with schizophrenia?

A. I mean, you have symptoms of depression that accompany schizophrenia but not necessarily hypersomnia. So certainly hypersomia will not be something that would clinically does not present to psychotic so I'm aware of all that I am aware of the past not going through all of the past but what I saw clinically. Would I evaluate it clinically? I it wasn't a sort of depressed mood there is no evidence that he was psychotic when he was talking to me.

Q. Is there evidence that he had paranoia?

A. Yeah, maybe. Maybe to you know he does that paranoid personality, that suspiciousness that maybe that not treating you fair.

1 And so there is that, but, you know, other
2 than the issue of the you know of the existence of the
3 evidence, I don't -- I just don't think it is reaches that
4 point, you know, but we can call the paranoia. I mean, I
5 I be okay calling it paranoia, if you want. I don't, you
6 know.
7 Q. And --
8 A. I think that it isn't that we will say that it is
9 close so lets say it is pre paranoia.
10 Q. And you gave an example of the paranoia being the
11 situation with his address book but you said this he then
12 recovered from the paranoia, correct?
13 A. No. I -- no, that wasn't necessarily a
14 definition of paranoia. That is not a definition of
15 paranoia. It was he was being, you know, he was being
16 accusatory and he was trying to externalize blame if you
17 will and certainly was that would have been a good
18 occasion to get paranoid, good occasion to get delusional
19 and he didn't do either.
20 He just recovered and said no hey, look I
21 think I need to relook at.
22 So that was a huge revelation because it
23 does show that, you know, his propensity of course is to
24 what are they doing to me and then he realizes maybe the
25 fact that I am blind is going to make it difficult for me

to find my address book you know.

Q. And you never ascertain what he believed actually happened to his address book, correct?

A. No. No only that he couldn't find it.

Q. Right and you know that people who are schizophrenic, they don't believe that they're ill or they don't want other people to know if they're ill usually, is that correct?

A. I all I know is that we, you got group data and you got individualized data and so schizophrenia can do a lot of things and it can vary in a lot of ways. So I know that schizophrenia can do this and that but what I'm telling you right now, he was not actively -- he was not having any active symptoms of paranoia schizophrenia so if he is paranoid schizophrenia let's say he is paranoid schizophrenia based on the records he would be paranoid schizophrenia and in remission at this time.

Q. And, in fact, yesterday in our interview you told me that you believed him to be on the schizophrenic spectrum, is that fair?

A. Yes. Absolutely. Of course he's got that paranoid personality thing. Yeah. That tenancy of a they don't care about me these four operating he said something about these four operation if there were four of us just medical doctors so the more money they didn't do a fig for

me. You know is that delusional? Come on. You know. I mean, is, this is an individual who is pretty well in touch with reality and makes it very clear hey I dont' want to die you know. I don't want to die and he is doing everything that he can that he thinks he can do in order to prevent from dying. I can appreciate that.

Q. Is it fair to say that for the past 35 years, Clarence has been incarcerated, you don't have evidence of a pattern of manipulation or deceitfulness, do you?

A. No. The only thing that no not that not that the pattern itself was it's not that, no.

Q. And in the past 35 years, he has been incarcerated there is no pattern of violence or aggressions?

A. That I know of, no.

Q. And no pattern of disregard for safety to self or others for the past 35 years he has been incarcerated?

A. I I do -- I don't know of any of that, yes.

Q. And no pattern of criminal behavior in the past 35 years?

A. Yeah I didn't see -- I was not informed of any of that.

Q. And no pattern of impulsivity for the past 35 years?

A. Right.

Q. And you don't have any evidence that before the age of 15, he evidenced a repeated pattern of aggressions with people or animals, do you?

A. Well there was some evidence that he may have been abusing animals, there something there that he.

Q. You told me yesterday that?

A. I don't --

Q. You don't know when that occurred, right?

A. I don't know when that occurred and then he later denied it.

Q. Right. So you don't put too much stock in that because it is contested and you don't know when it happened and you also don't know whether it was a pattern, right?

A. You put stock in that this way. Okay. There is evidence that he has, you know, repeated criminal behavior, very maladaptive behavior, he is doing 6 consecutive sentences, that is pretty good evidence of a personality disorder. That is, you know maladaptive. Again, maladaptive in doing patterns of behavior that is antisocial so.

Pretty good evidence of antisocial personalities are not the person found prior to antisocial personality, that is usually the case. Doesn't have to be the case.

1 But things like cutting a cat' head off and
2 molested his sister would be consistent with what later
3 turns out to be pretty good evidence of antisocial
4 personality, sir.
5 Q. But as you told me yesterday, you don't know
6 whether that occurred prior to the age of 15 or if it
7 occurred at all, correct?
8 MR. SPARKS: Objection asked and answered.
9 THE COURT: You may answer if you are able
10 Dr. Vega?
11 THE WITNESS: No right I mean it just an
12 issue that those things could be consistent with what do
13 know.
14 Q. But for them to be antisocial personality
15 criteria is has to be a pervasive pattern that extends
16 over a course of years and over the past 35 years this is
17 no evidence of any of that, is that fair?
18 A. That is not that is not that is not true at all.
19 I mean that the fact of the matter is that you know you
20 can have this kind of personality disorder, antisocial
21 personality disorder and once you are in a confined
22 setting, you as a matter of fact individuals that are
23 sociopathic for example do very well in person.
24 Sometimes they are very well behaved in
25 person. So that is not fair at all but what you do have

is maladaptive patterns and one of the maladaptive patterns of behavior of course are those motions. And that is intertwined with adaptive my understanding I just learned today that he would do motions for other people that he was like an in-jail, jail lawyer or whatever they call them, in house lawyer or whatever and so you know, so so you know so that aspect of the personality kind of since then.

And so --

Q. Is it fair that the DSM criteria for antisocial personality disorder requires those pervasive pattern of disregard for in violation of the rights of others occurring since age 15?

A. Right. Here is what is evident.

The DSM following reminds you is the guide, okay, the diagnosis is is my diagnosis what I as a clinician determine as a diagnosis and in my estimation the nature and the quality of behavior, what has happened what has he has how he has behaved since, how he is behaving now that attitudes he expressed, you know, and suggest that yes that he does have -- he does have a personality disorder. He could be in the burnout phase of the personality disorder that happens also by the way, you know, and where you would ask him asymptomatic and certainty in a secured he is not going to be asystematic

so.

Q. Okay. And you said that you believe that his antisocial personality disorder could become morbid with schizophrenia, correct?

A. Yes that is what we used to have axis 1, axis 2 diagnosis. As a matter of fact back then and that is a curiosity to me to be honest with you. How come there was no axis 1 and axis 2 diagnosis? And I mean really axis 2 diagnosis. Where is it? It wasn't there.

Q. I'm going to mark I believe what 38 and I think we haven't moved 37 in so move that in now.

THE COURT: 37 is already in.

Q. I5. Mark this as 38, please?

Doctor, this is the DSM diagnostic criteria for antisocial personality disorder.

And I am just going to scroll down to criteria D. here.

And this says the occurrence of antisocial behavior is not exclusive during the course of schizophrenia or bipolar disorder so in fact the DCS 5 says that schizophrenia and anti social personality disorder cannot be comorbid because schizophrenia is a rule out, is that at least your understanding of the DSM as I've read it to you?

A. Sorry but I am going to read D, the occurrence of

antisocial behavior is not excusatory during the course of schizophrenia or bipolar disorder and right and in his case it is not you know anti social behavior is not a function of the schizophrenia.

Q. But that just says exclusively during the course of schizophrenia and you do agree that schizophrenia is not a curable disease, right?

A. Schizophrenia may or may not be a curable disease but the presence of an antisocial disorder is highly likely here and there could be comorbidity and comorbidity schizophrenia.

Q. Now --

A. So what can you say, it is in his DNA, you know.

Q. Doctor, we have talked we talked a lot about diagnoses we talked about schizophrenia, we talked about antisocial personality disorder.

But really the crux of this is whether Mr. Dixon can rationally understand the meaning and purpose of his execution, is that your understand of the standard, right?

A. That is correct.

Q. Okay. Now you conceded before that Mr. Dixon is or sorry is fixated on the NAU issue and the court's denial of it, right?

A. That is correct.

Q. Okay. And you agree that he experiences paranoia related to that, is that fair?

A. May have some paranoia thoughts yeah. Some of that could be paranoid, lets say that he does.

Q. Okay. And I know I read this before but you agree that Clarence has a deluded notion the government has refused to agree with his legal argument, not because of his argument is sound but rather because the government is afraid of the consequences of admitting they are wrong, really even though they believe it to be right, that is his belief, right?

A. Yes.

Q. Okay.

A. That is correct.

Q. Have you read through Mr. Dixon' legal writings?

A. No. I didn't read just I just barely, you know, looked at them but you know.

Q. Okay. We are not going to pull any up.

Do you know that Mr. Dixon has written that he believes that his execution will be an extrajudicial killing?

A. I heard something about that, yes.

Q. Okay. Although, my and my legal team's efforts to stop any execution may be in vain, the deliberate misapplication and ignoring of Arizona statutes and the

law specifically and he states the statute, will result in the extrajudicial killing that would merit disbarment on those unconcerned with their unprofessional reason and he goes on I mean is that evidence of paranoia in your mind?

A. Yeah, I think that is yeah that is consistent with everything else. Its basis is that they are wrong in doing this to me so lets just say yes lets say yes to paranoia.

Q. Okay. And are you aware that he has filed bar complaints against all of the Arizona Supreme court justices?

A. I am -- I am aware of that.

Q. And he believes that they should be disbarred because of their actions in his case, right?

A. Again, I am.

Q. I want to talk to you a little bit about your competency inquiry and conclusion section of your report.

Now, just give me a moment while I pull this up.

THE COURT: Take your time.

Are we at a good breaking spot? Lets take a midafternoon break for 15 minutes going back by that clock.

(Recess)

THE COURT: All right. We are back on the

1 record on CR2022692, State versus Clarence Wayne Dixon.
2 all counsel previously identified are present.
3 And we have Dr. Vega on webex and I think
4 Mr. Zuckerman, you were finishing your cross or continuing
5 your cross, I should say.
6 MR. ZUCKERMAN: I am finishing.
7 Q. Hello, again. Dr. Vega, you know we talked a lot
8 about diagnostic criteria, definitions and that sort of
9 thing but at the end of the day, we are really here for is
10 to determine whether Clarence Dixon meets the standard to
11 determine whether he is competent for execution and I want
12 to talk if we can I want to go through your competency
13 inquiry section in your report.
14 Now, I have read this very carefully and my
15 understanding is to assess Clarence' competency to be
16 executed, you begin by asking him about the 1997 incident
17 that resulted in a not guilty by reason of insanity
18 verdict, is that correct?
19 A. Yes.
20 Q. You asked him about the facts of the case?
21 A. Yes.
22 Q. You then asked him about the DNA and murder
23 conviction, correct?
24 A. Yes.
25 Q. Clarence quote reiterated that it was an illegal

conviction, that his DNA was collected by the NAU police and they did not have jurisdiction, correct?

A. Yes.

Q. And --

A. Correct.

Q. And to clarify he is wrong about this. The Department of Corrections took his DNA, not the NAU police, is that your understanding?

A. That is correct.

Q. You focused your competency inquiry on assessing what transpired related to the murder and whether Mr. Dixon was involved, is that fair?

A. That is right.

Q. You asked Clarence whether he knew the victim, is that right?

A. Yes.

Q. And you --

A. I did.

Q. You probed his involvement in the crime?

A. I did.

Q. Clarence told you he didn't remember the crime but he is aware his DNA was there and he knows what he has read in police reports, is that fair?

A. Yes.

Q. Clarence talked about his belief that the police

should have focused on other possible suspects because he didn't remember the crime, is that fair?

A. That is correct.

Q. Clarence told you have he believes if he was in another state, without the death penalty, he would not be executed, is that right?

A. Correct.

Q. And Clarence told you knowing whether he committed the murder or not, won't change a thing and he can't bring the victim back, right?

A. That is true.

Q. And you also testified that Clarence made a statement about feeling relief and we will talk about that in a second.

But he also made that statement to you, right?

A. Yes.

Q. And that was the extent of your competency inquiry to determine whether Mr. Dixon was competent to be executed, is that fair?

A. Whether he had a rational understanding where the had a rational understand and that he can connect the facts that they were executing him because of the murder, yes.

Q. Right. Thank you. Now, you testified on direct

1 examination that Clarence made a statement to you that he
2 would be relieved going to his death if he suddenly
3 remembered making the -- if he remembered committing the
4 crime, that was your testimony, right?
5 A. That is what he told me.
6 Q. Now, Dr. Vega, you understand the significance of
7 your task here, right?
8 A. Yes, to determine whether he understands the
9 connection.
10 Q. And the stakes here, a man's the decision of
11 whether a man will be executed or whether he will be
12 potentially restored to competency rests on this decision
13 so it is of great magnitude, would you agree with that?
14 A. Yes, it is.
15 Q. And you were very careful throughout your report
16 to accurately represent exactly what Clarence told you, is
17 that fair?
18 A. Well, I mean yes I mean I represented what he
19 told me yes. I tried to be accurate.
20 Q. And to do that, you used quotations throughout
21 your report to detail exact words that Clarence spoke, is
22 that right?
23 A. I did.
24 Q. And you used those exact quotations so that there
25 would be no question about the context of those statements

and so that it wasn't filtered through your characterization of them, is that fair?

A. That is correct.

Q. And you were able to use exact quotes in your report because you listened to an audio recording of your interview while you were writing the report, is that fair?

A. Not always. Not always, no. I mean, a lot of them I'd written down myself then, yeah, I don't even think I listened to the whole video thing.

Q. But you were able to refer to the audio recording?

A. I think the audio recording, I referred to it very little in all honesty.

Q. But you were able to use that to utilize exact statements that Clarence made word for word so that they would be accurate, right?

A. To refresh my memory. That was part of part of the reason yes that may have been part of the reason.

Q. And when Clarence made word-for-word statements, you did your best to put them in quotation so that would be reflected that way, is that correct?

A. Right I do that all the time, yes.

Q. Okay. I'm going to pull up what what has been marked an exhibit 31 this is your report. Page 5, which is the last page.

Sorry the second to the last page. The second to the last page, page 5.

I am going to ask you to zoom into the very last paragraph, to the very last sentence under the competency inquiry paragraph?

A. What does that start with?

Q. Dr. Vega, if you can look here, just above the section where it says conclusions and recommendations. Do you see that?

A. Yes.

Q. Now --

A. Yes.

Q. Right above that, there is a sentence and that sentence says I'm going to read it word for word. Lastly, when Clarence was asked hypothetically how he would feel if he were to suddenly have a memory of having killed her, and he replied that if he were to recall having murdered that girl, he would have a sense of relief on his way to his execution, did I read that accurately?

A. That you did read accurately, yes.

Q. Nowhere in that sentence are there any quotation marks, is that fair?

A. Yes, there is no quotations there.

Q. And nowhere in your report does it indicate that you directly asked him the question, why do you believe

that you are being executed, is that fair?

A. Well, I didn't have to. I really didn't have to ask him what he believed. I mean it was -- it was obvious.

Q. Dr. Vega, is it fair that nowhere in your report does it indicate that you asked him why he believes he is being executed?

A. That particular question that way, I don't know if it's fair or not. I just didn't think it was necessary.

Q. Dr. Vega, you have made some pretty sweeping conclusions after a single 70-minute video evaluation of Mr. Dixon, did you do any research into what is required or recommended for performing a competency evaluation of this scale?

A. I did a little bit, very little.

Q. Okay.

A. Essentially it is just a question of you know connecting this murder to the execution.

Q. Can you pull up I8 and unfortunately I lost track of our exhibits?

THE COURT: Were you going to ask admit 38?

MR ZUCKERMAN: Yes please.

TH COURT: State objection on 38?

MR. SPARKS: No objection.

THE COURT: No objection. 38 is admitted.

MR. ZUCKERMAN: Your Honor marking for identification purpose 38.

THE COURT: This is number 39.

Q. Dr. Vega, what is on the screen in front of you is a guide, an article entitled evaluating competency for execution after Madison V. Alabama by two PHDs and this is published in the American psychiatry in the law. Have you ever reviewed this article?

A. I don't believe so.

Q. Okay. And I'm going to turn to page 5. Dr. Vega, this guide says that evaluators should meet with defendants in person for an appropriate length of time when conducting a competency evaluation. Now you never met with Mr. Dixon in person, you did it over a video, is that fair?

A. I did.

Q. And you don't know, sorry, you were only able to see the top half of his body, correct?

A. That is correct.

Q. You don't know if he was shackled on the feet, is that fair?

A. That is fair.

Q. You don't know if his legs were twitching during the time that you were talking to him, is that fair?

A. That is true, I don't know.
Q. Okay. And you don't know if his hands were twitching or if he was fidgeting or making any moments at the time that you are talking to him, is that fair?
A. Yeah I yeah I his hands were yeah I yeah lets that is fair, definitely better if I was in person.
Q. And you don't know who else was in the room behind the camera, is that fair whether there was a corrections?
A. That is correct.
Q. And things?
A. Yes.
Q. Sorry you, there could have been a corrections officer in that room and you did not know, is that fair?
A. That is fair, that is fair.
Q. Okay. And this article says that evaluators should meet with evaluees for an appropriate period of time which will vary based on the evaluee's mental state. In situations where the evaluee is too impaired to knowingly participate in the interview process, interviews may be brief.
Other interviews however can last several hours. Now your interview obviously, from your testimony he wasn't too impaired to participate, right?
A. Yeah right, he wasn't impaired, right.

Q. But your evaluation was only an hour and ten minutes, is that fair?
A. That is fair.
Q. And you did everything that you needed to do in including establishing a rapport and deeply probing his thought beliefs in that period of time, is that right?
A. I believe I have sufficient information to give an opinion.
Q. And this guide says that is a single meeting may be sufficient to provide a defendants who are cognitive in tact and not actively displaying symptoms of mental illness but you have said that he was displaying that he may be on the schizophrenia spectrum, paranoia personality, I believe you referenced delusional disorder, different possible symptoms of mental illness, is that fair?
A. No, that it not fair. I said exactly that he was extended no symptoms whatsoever of he was asymptomatic with regards to schizophrenia. Paranoid schizophrenia.
Q. And this article says that in other more complex situation involving defendants exhibiting cognitive decline and active symptoms of mental illness, it may be necessary to meet with the defendant on multiple occasions and you didn't do that, you had one visit, right?
A. Yes, that is correct.

Q. And you could have had more if you had requested it, is that fair?
A. That is correct.
Q. And in fact when --
A. I needed it.
Q. When we spoke yesterday, you told me that it was possible that Mr. Dixon was psychotic at the time that Dr. Petino evaluated him, that that was a possibility and you just didn't know, is that fair about what you said?
A. That is correct. That is correct. I would not know. I said it was possible. A lot of things are possible but.
Q. And you also told me yesterday that competency is fluid and it can change from day to day but you only saw Mr. Dixon once, right?
A. That is correct.
Q. And are you aware that doing a remote forensic evaluation in a case like this, is a deviation from standard practice?
A. I am not aware of that. I was asked and you know if I wanted to do it and I said I would only do it this way and and they told me that it was fine. I was comfortable doing it. I do competency evaluations all the time via video and if I felt that for some reason that was an impediment, I would have, you know, said so.

Q. And are you aware that guidelines published by both the American Academy of psychiatry and the law and the American psychological association reflect a strong preference for in-person examination whenever feasible?

A. Well, I that is kind of obvious isn't it.

Q. Right. And you said that you have done video evaluations before but those are generally prescreen for Rule 11 competency to be tried evaluations, is that fair?

A. Generally but also the 26.5 of done for full rule 11.

Q. You have never done a video evaluation for an hour and ten minutes before this in a case where the results of your evaluation can very well determine if a man lives or dies, is that fair?

A. That is fair.

MR. ZUCKERMAN: And may I have a moment.

THE COURT: Certainly. Take your time.

MR. ZUCKERMAN: Your honor, no further questions.

THE COURT: Thank you, sir.

Mr. Sparks?

THE COURT: Ask to admit exhibit 39?

39 did you wish to admit?

MR ZUCKERMAN: Thank you.

THE COURT: Any objection?

MR. SPARKS: No objection.

THE COURT: And without objection 39 admitted.

Mr. Sparks when you are ready.

REDIRECT EXAMINATION

BY MR. SPARKS:

Q. Okay. Let me go back. You were asked just a few minutes ago, about page 5 of your report where you wrote when Clarence was asked hypothetical how he would feel if he were to suddenly have a memory of having killed her, and he replied if he were to recall having murdered that girl, he would have a sense of relief on his way to his execution and there were no quotation marks, did you accurately in that sentence report what Mr. Dixon said to you?

A. Yes. Absolutely he would be relieved. He'd have a sense of relief, a sense of relief.

Q. Okay. And you were shown a number of documents toward the beginning of your cross-examination relating to Mr. Dixon' arrest in his 1997 offense, did anything in those documents change any of your opinions?

A. No. This is -- that was history.

Q. And whether or not Mr. Dixon' beliefs about his legal claim are constitute delusions or something else,

1 regardless of the label put on them, or let me rephrase
2 that, I apologize.
3 If those beliefs did qualify as delusions,
4 would that change your opinion about his ability to
5 rationally understand the reasons for his execution?
6 A. No, it would not.
7 Q. You were also asked a number of questions about
8 the DSM 5 and the diagnostic criteria regarding
9 schizophrenia and antisocial personality disorder. When
10 it comes to reaching a diagnosis, is the DSM a checklist
11 that you just check off you know the requirements or does
12 it require application of your clinical judgment to reach
13 a diagnosis?
14 A. The DSM 5 is a guide and it is the judgment of
15 the clinician.
16 Q. Okay. And then lastly, it is has been emphasized
17 today that Mr. Dixon has repeatedly made a number of
18 challenges to his convictions, what does the fact that he
19 has been for years and continues to this day to be
20 challenging those convictions, what does that tell you
21 about his understanding of the reasons for his execution,
22 if anything?
23 A. He wants to prevent it. He wants to do
24 everything that he can in order to see whether there is a
25 possibility that they would accept his position and not

execute him.

Q. And does it say anything about his understanding of the connection between his conviction of murder and his execution?

A. It says he absolutely understands the connection.

MR. SPARKS: No further questions. Thank you Dr. Vega

MR. ZUCKERMAN: Your honor just a couple of very brief question based on redirect if that is possible.

THE COURT: You may.

CONTINUED EXAMINATION

BY MR. ZUCKERMAN:

Q. Dr. Vega, regarding the statement of Clarence hypothetically saying that he would have a feeling of relief, you don't state anywhere in your report why Clarence said he would be relieved if he remembered having committed the murder, is that fair?

A. I don't say that -- I don't say -- I'm basically stating what he said. I think the statement speaks for itself.

Q. Is it fair to say that you never asked Clarence any followup questions related to that statement?

A. No. I thought no I did not -- I did not ask him any followup questions.

Q. And is it fair to say that the entire context surrounding that statement and the questions that you asked him, would or would have been captured on the tape that we no longer have here today, is that fair?

A. Of course.

MR. ZUCKERMAN: Thank you. Nothing further.

THE COURT: Any followup.

MR. SPARKS: No Your Honor, thank you.

THE COURT: Is Dr Vega subject to recall or may he be excused?

MR. SPARKs: No Your Honor. He can be excused.

THE COURT: You in agreement?

MR. ZUCKERMAN: Yes, I agree.

THE COURT: Very well.

Dr. Vega, thank you very much for your patience and making yourself available through this long day. You are excused or may remain listening at your pleasure.

The witness: Thank you. Thank you very much, your honor.

THE COURT: Mr. Sparks any other witnesses?

MR. SPARKS: No Your Honor the state rests.

THE COURT: Very well. Does defense wish to call rebuttal witnesses?

MR. ZUCKERMAN: No, Your Honor.

THE COURT: Very well. May Dr. Patino be excused at this point?

MR. ZUCKERMAN: He may unless he wishes to stay for the rest of the proceeding, but we do not intend to call him again. Thank you.

THE COURT: Mr. Sparks, any reason to keep Dr. Patino here?

MR. SPARKS: No, your honor.

THE COURT: Very well. Dr. Again thank you very much for being here today and also thank you for your patience as we were struggling through some technology problems this morning. Take care sir.

THE WITNESS: Have a good day.

And you are certainly welcome to stay if you wish.

Okay. Counsel, do you want a few minutes to gather your thoughts before closing or are you ready to begin?

MS. BASS: We are ready, Your Honor I will be delivering the closing argument for defense.

THE COURT: Mr. Sparks same question?

MR. SPARKS: We are ready to proceed. Thank you.

THE COURT: Okay. So defense has the burden

so the defensse will get to go first and last.

Whenever you are ready.

MS. BASS: Yes, this is Ms. Bass.

And thank you, Your Honor. And may it please the court.

We've talked a lot today about Panetti and I just want to state for the court's reference that in that case the United States Supreme court articulated that 8th amendment test for determining whether a person is mentally incompetent to be executed.

That test asks whether is a prisoner's, quote, mental illness obstructs a rational understanding of the state' reason for his execution. End quote.

The Supreme court also explained that where a prisoner' mental state and I quote is so distorted by mental illness that his awareness of the crime and the punishment has little or no relation to the understanding of those concepts shared by the community as a whole. End quote.

Then the fundamental respect for humanity underlying the 8th amendment bars his execution. Certainly the supreme court in Panetti reject an incompetency test predicated on a prisoner' awareness that he committed murder. His awareness that he was convicted, his awareness that he will be executed. And his awareness

1 that quote the reason the state has given for his
2 execution is his commission of the crimes in question.
3 End quote.
4 Such an awareness standard, the supreme
5 court held is too restrictive to afford a prisoner the
6 protections guaranteed by the 8th amendment.
7 The evidence before the court today
8 establishes by clear and convincing evidence that first
9 Clarence suffers from a long-standing psychotic disorder,
10 namely paranoid schizophrenia.
11 And second the evidence establishes that
12 Clarence's schizophrenia illness and the delusions that
13 are it's hallmark prevent him from rationally
14 understanding the state's reasons for executing him.
15 And that is because Clarence believes that
16 his execution will amount to what he calls an
17 extrajudicial killing. That is the result of the judicial
18 system and actors in it deliberately denying his legal
19 claim related to the NAU police, not because his arguments
20 are unsound, not because they believe he is simply wrong
21 on the law, but rather as even Dr. Vega recognizes in his
22 report, quote, because the government is afraid of the
23 consequences of admitting that they are wrong, end quote.
24 Under Panetti Clarence' understanding of why
25 he will be executed is fundamentally irrational which

1 renders him mentally incompetent to be executed. The
2 evidence before the court demonstrates that Clarence
3 suffers from a long-standing psychotic disorder.
4 Since 1977, over a span of more than 40
5 years, 3 psychiatrist and 2 psychobiologist have all
6 recognized the same thing. And that is that Clarence
7 suffers from paranoid schizophrenia.
8 As you heard today, schizophrenia is a
9 mental illness, a neurodevelopmental on for which there is
10 simply no cure.
11 So if Clarence was schizophrenic in 1977,
12 and in 1981, and in 2012, then he is still schizophrenic
13 today.
14 Dr. Vega is the only mental health
15 professional in 45 years who after spending an hour and
16 ten minutes with Clarence over video concludes that
17 Clarence' hallucinations and his delusions are the result
18 of a personality disorder rather than schizophrenia.
19 Dr. Vega testified today that he has no
20 experience treating people with schizophrenia or
21 diagnosing them in a clinical setting.
22 Dr. Amezcua-Patino meanwhile is a physician
23 and a psychiatrist who for 3 decades or more has
24 specialized in the diagnosis and treatment of people with
25 psychotic disorders and schizophrenia in particular.

1 Despite recognizing that Clarence meets all
2 of the diagnostic criteria under the DSM5, for paranoid
3 schizophrenia, Dr. Vega, nonetheless concludes that he
4 does not suffer from that psychotic illness and instead he
5 suffers from antisocial personality disorder.
6 But Dr. Vega could point to no evidence to
7 support criterion C. For the antisocial personality
8 diagnosis at 4th in the DSM5 and that is that Clarence had
9 a conduct disorder that onset before the age of 15.
10 Nor is there evidence to support the
11 existence of criterion A. that Clarence has a pervasive
12 pattern of disregard for in violation of the rights of
13 others occurring since age 15. Since for the last 35
14 years while incarcerated Clarence has not demonstrated the
15 requisite characteristics. If someone truly has
16 antisocial personality disorder, one would expect to see
17 conduct disorder, a pattern of it, not just one or two
18 uncorroborated isolated incidence before the age of 15,
19 but a pattern of conduct disorder before the age of 15 and
20 would expect to see that pattern continue throughout the
21 incarceration.
22 Respectfully, Dr. Vega' conclusion that
23 Clarence does not have schizophrenia despite meeting all
24 of the diagnostic criteria for that psychosis disorder and
25 his conclusion that Clarence instead has antisocial

1 personality disorder, despite not meeting almost any of
2 the essential diagnostic criteria set forth in the
3 governing manual, the diagnostic and statistical manual of
4 mental health disorders, those conclusions are simply
5 unreliable. Dr. Vega testified today that in his view,
6 the DSM criteria don't matter.
7 It is also important to point out that none
8 of the five psychiatrists and psychologists who evaluated
9 Clarence over the course of 4 decades were familiar with
10 his health and mental health history and his functioning,
11 diagnosed him with antisocial personality disorder.
12 And yet after a 70-minute video interview,
13 Dr. Vega does so for the very first time and not
14 withstanding his recognition that critically criterion for
15 that diagnosis that set forth in the DSM 5 are unmet.
16 The evidence before the court is clear and
17 convincing that Clarence has paranoid schizophrenia and to
18 this day continues to experience the symptoms of that
19 psychotic disorder, including auditory and visual
20 hallucinations, delusions, paranoia, asociality.
21 Second, the evidence before the court
22 demonstrates that Clarence' schizophrenic illness and the
23 delusions that are it's hallmark obstruct his ability to
24 rationally understand the state's reasons for executing
25 him.

In Clarence' April 16 letter to the Arizona judicial commission, he demands the Arizona Supreme court justices be disbarred. He does so because in his delusional belief system, their deliberate denial of his NAU claim, quote, leads directly to an extrajudicial killing, an illegal and an immoral homicide in the name of and for the people of Arizona, end quote.

Clarence' delusions around his upcoming execution are further evidenced by his April 30 letter to the judicial commission' executive director. There he claims that the Arizona Supreme court justices, quote, deliberate misapplication and ignoring of Arizona statutes and the law, will result in an extrajudicial killing that would merit disbarment on those who are unconcerned with their unprofessional reason for being even after the 12th hour. End quote.

The evidence before the court demonstrates that ultimately, Clarence believes that his execution is an extrajudicial killing that is a result of the judicial system and various actors in it. Deliberately denying his legal claim related to the NAU police, not because his argument is unsound, not because the system and actors in it believe that he is incorrect. But rather because they want to protect the government from embarrassment.

Dr. Vega' recognizes this in his report at

page 6.

The issue here today is not about the merits of Clarence' NAU claim. Is it viable legally or not? Is there a legal argument to be made in support of his position ? The crux of this issue is not the ultimate merits of Clarence' NAU issue and whether some lawyer may have opted to raise it at some point. The issue is Clarence' reasons, fundamental delusional beliefs that span decades about why the system has denied relief on that issue.

That is what is fundamentally delusional, that is what is contaminated by the schizophrenic thought-process that he experiences.

Dr. Amezcua-Patino's report and testimony explain how Clarence' delusions are functions of his psychosis which contaminates his thought-process and prevents him from being able to rationally understand that he is going to be executed by the State of Arizona as an expression of it's outrage at the murder that he was convicted of carrying out.

Dr. Vega' testimony has not rebutted this. His entire competency inquiry was premised on answering the wrong questions. As reflected on page 5 of his report. Under the competency inquiry section, Dr. Vega states, quote, I focused my inquiry on assessing what

1 transpired and whether he was involved end quote.
2 He then goes on to conclude quote Clarence
3 is so well aware of the state's rationale for his
4 execution that he wishes to reside in a different state,
5 one that did not have the death penalty. End quote.
6 And that is at Dr. Vega report page 6.
7 Dr. Vega also states that quote Clarence is
8 not suffering from any mental disease or defect that
9 results in making him unaware that he is to be punished
10 for the crime of murder or unaware that the impending
11 punishment is death.
12 But as Panetti instructs, Clarence's
13 awareness that he was convicted of murder, his awareness
14 that the state seeks to execute him for that crime, and
15 his awareness that he is scheduled to die and wants to
16 live is simply not the test of incompetency under the 8th
17 amendment.
18 Dr. Vega testified today that he never asked
19 Clarence why he believes he is being executed, which is
20 the critical question.
21 Dr. Vega also has claimed, I'm sorry,
22 Dr. Vega testified that in response to a hypothetical
23 about how Clarence would feel if all of a sudden he were
24 to remember committing the murder, Clarence allegedly said
25 that he would feel relief at his execution. Dr. Vega

1 testified today that he recorded that interview with
2 Clarence. And when writing his report, he listened to
3 that interview. And was careful to designate everything
4 that was an exact quote from Clarence with quotation
5 marks. He did this so that the court can assess Clarence'
6 statements directly. And without characterization by a
7 third party. Unfortunately, that audio recording has been
8 destroyed but the absence of quotation marks in Dr. Vega'
9 report where he talks about Clarence supposedly feeling
10 relief at his execution underscores the unreliability of
11 Dr. Vega' interpretation of what Clarence said to him.
12 Dr. Vega also testified today that he asked
13 no followup questions to such a critical statement. And
14 so he never probed what Clarence meant by this statement.
15 Dr. Vega' ultimate opinion on the issue of
16 Clarence' competency is unreliable for all of those
17 reasons. And also given the brevity of his interview
18 which occurred by video of Clarence, and his failure to
19 ask the relevant questions and apply the appropriate
20 standard under Panetti.
21 Dr. Patino on the other hand saw Clarence
22 four times for 6 hours and carefully probed Clarence'
23 beliefs about the reasons for why the state seeks to
24 execute him.
25 The evidence before the court is clear and

1 convincing. That in Clarence 'delusional belief system,
2 his impending execution will be an extrajudicial killing
3 by the state that is illegal and immoral, in the same way
4 that drone strikes that kill civilians abroad and which
5 have also been called extrajudicial killings are illegal
6 and immoral.
7 Dr. Vega notes in his report that Clarence
8 draws this comparison. Ultimately, Clarence believes that
9 the purpose of his execution is to protect the government
10 from admitting that they're wrong in denying his NAU
11 issue.
12 And that is despite government actors
13 knowing that he is actually right. That is a delusion.
14 It is a delusion that is a direct function of his paranoid
15 and schizophrenic mind.
16 And it prevents him from rationally
17 understanding the meaning and purpose of his scheduled
18 execution.
19 Thank you.
20 THE COURT: Thank you Ms. Bass.
21 Mr. Sparks?
22 MR. SPARKS: Your honor, to start out the
23 evidence presented today did not show that Mr. Dixon
24 believes he is going to be executed to prevent
25 embarrassment to the system.

1 It showed that he has argued again and again
2 that his convictions are invalid.
3 And, you know, regardless of what his
4 beliefs are or how to characterize as to why these claims
5 being denied, his pleadings for years now have made very
6 clear that he is aware that his execution is based on his
7 conviction for murder and that he understands the
8 Connection between those two and that is the reason why is
9 continually makes this legal challenge.
10 I am going to touch on that again but to
11 back up. There was competing testimony today about the
12 diagnosis and how Mr. Dixon should be diagnosed. I don't
13 believe that that is something that the court really needs
14 to resolve in order to reach the ultimate issue here.
15 Because as Dr. Patino testified today, the fact alone that
16 Mr. Dixon may be schizophrenic doesn't necessarily mean he
17 is capable of rationally understanding the state's reasons
18 for his execution.
19 And the exhibits presented and the testimony
20 of Dr. Patino today failed to establish whether under a
21 clear and convincing standard or even under a
22 preponderance standard that Mr. Dixon is incapable of
23 understanding the state' rationale for his execution.
24 And, again, what the evidence has showed
25 today that Dixon' claim really boils down to the argument

1 that because he continues to make this legal challenge to
2 his convictions and because of the nature of his belief as
3 to why they're being rejected, he doesn't understand the
4 reason for his execution.
5 But that evidence doesn't meet the Panetti
6 standard. There is -- it is not inconsistent for Dixon to
7 have an irrational understanding of the reasons for his
8 execution and to have beliefs that may be incorrect about
9 why his claim challenging the convictions that ultimately
10 are the bases for that execution are being denied.
11 You know, there has been a lot of talk about
12 using the phrase an extrajudicial killing. I think if you
13 look at that in context, what are you saying that because
14 my convictions are invalid and no court will recognize
15 that fact, my execution is unlawful? I think that nothing
16 about that suggests that because he used that phrase or is
17 making that argument again shows that he is incapable of
18 reaching a rational understanding of the reasons for his
19 execution. And I think that has been recognized in the
20 response the state filed to the original motion for a
21 competency determination by numerous courts throughout the
22 history of his case.
23 This claim he is raising and continues to
24 raise is nothing new. He has been raising it since the
25 pretrial stages for his murder trial and now the courts

1 look at the claim albeit in a slightly different context,
2 they were looking at it as to whether his trial counsel or
3 the trial judge should have been on notice that
4 potentially there was a competency issue and none of those
5 courts found that his raising this, you know, ultimately
6 frivolous or however you want to categorize it legal
7 argument even suggest that his competency should have been
8 looked into.
9 And that hasn't changed to this day. Again,
10 like I said, the testimony and evidence presented today
11 showed that his claim is based on him continuing to raise
12 that legal argument. It wasn't enough to show incompetent
13 and now, it doesn't prove that under the Panetti standard
14 he is incapable of understanding the reasons for his
15 execution.
16 I think some of the most and again it is his
17 burden to prove he is incapable of using or having a
18 rational understanding of the reasons for his execution.
19 Under the statute it is his burden to prove, he hasn't met
20 it. However, the information and the testimony provided
21 by Dr. Vega today, specifically relating Mr. Dixon'
22 statements about the murder and his beliefs about it,
23 suggest that he truly does have a rational understanding
24 of the reasons for his execution and again I think the
25 probably the most probative statement there is his

1 statement that he would feel relief, either there was the
2 criticism that there were no quotation marks there,
3 Dr. Vega testified he accurately represented Mr. Dixon'
4 statement to that effect so there is no reason to believe
5 that that is inaccurate.
6 And again, it is not the state' burden to
7 prove that Mr. Dixon in fact does have a rational
8 understanding but that evidence shows that he has a strong
9 understanding of the connection between his conviction of
10 murder and the fact he is going to be executed for that.
11 And the fact that he is trying to invalidate
12 that conviction and may have some false beliefs about the
13 reason he has been unable to do so, doesn't bear on the
14 fact that he is capable of having a rational
15 understanding.
16 And so based on the evidence presented
17 today, Your Honor, we don't believe the Mr. Dixon has met
18 the standard under Panetti and under either a standard of
19 proof.
20 THE COURT: Thank you very much Mr. Sparks.
21 Ms. Bass, Mr. Zuckerman, who is gong to do
22 the final word?
23 MR. ZUCKERMAN: Your Honor, the issue is not
24 about whether Mr. Dixon' NAU claim itself is rational or
25 whether there is a possibility that it could be successful

or if it is whether other lawyers could come up with something like that. It is almost irrelevant to this finding that this court must make. The issue is the fact that have Mr. Dixon has a contaminated thought-process and has deep conspiratorial beliefs that the Arizona Supreme courts, the United States Supreme court, the U.S, district court, the circuit court of appeals have all agreed to deny this claim. Not because they believe it is wrong, but because they want to silence him so that they can save the police department, and the Northern Arizona University system, and the State of Arizona from the embarrassment of admitting that that claim is ripe.

When a normal person, a neurotypical person considers an impending execution for a crime they committed, they are able to think about the severity of the crime, how horrible it was and that the society has decided to vindicate societal interests based on the severity of that crime by executing them and they come to terms with that or they don't but they're able to rationalize why it is happening.

When Mr. Dixon thinks about the fact that he is going to be executed in a number of days, he doesn't think about the crime that he committed, he doesn't think about the severity. He doesn't think about society' interest in vindicating it based on the severity.

All he can think about is this conspiracy, a judicial conspiracy to deny his claim and he is never able to contemplate the nature of his execution, the meaning of his execution or the real purpose of his execution. And for that reason, he is not competent to be executed.

THE COURT: Thank you. Thank you. Very well. Court is going to take this matter under advisement and work the way through all the exhibits including those that were admitted this afternoon so I am reading and need to read and refresh some of these.

My intention is to get a ruling out sometime tonight. Obviously, I understand time is of the essence. And like-wise hopefully we will have the reported transcripts sometime tomorrow, hopefully. Or if not the following day.

Any other matters to address today before we call it a day, Mr. Zuckerman?

MR. ZUCKERMAN: No, Your Honor. Thank you for your time.

THE COURT: Mr. Sparks, anything else?

MR. SPARKS: No, your honor. Thank you.

THE COURT: Very well. And then we are adjourned. Thank you all.

Metro NBI
Metropolitan Neuro Behavioral Institute

Metropolitan Consulting Corporation PC
Lauro Amezcua-Patiño, MD, FAPA.

Corporate Office , Testing and rTMS office
4055 W. Chandler Boulevard, Suite #5
Chandler, AZ 85226

Clinical Office
70 N. McClintock Suite #4
Chandler AZ 85226

CURRICULUM VITAE

480-464-4431, Cell: 602-339-3779
480-464-2338 Fax
E-mail:LauroAP@metronbi.com
www.metronbi.com

LICENSURES & CERTIFICATION

Licensures	Arizona #17900, DEA # BA1622061, XA1622061(Buprenorphine License)
Certification	*Fellow, American Psychiatric Association* *Diplomate, American Board of Psychiatry & Neurology,* *Diplomate, Diplomate America Board of Adolescent Psychiatry,* *Diplomate, American Board of Forensic Medicine*
Languages:	*English and Spanish*

PROFESSIONAL EXPERIENCE

(Current Positions)

Medical Director-CEO -President	***Metropolitan NeuroBehavioral Institute, PLLC***	***2005 - Current***
President	***Metropolitan Consulting Corporation***	***2008 - Current***
Medical Director	***Oasis Behavioral Health Hospital***	***2013 - Current***
Medical Director	***Footprints to Recover Detox Residential***	***2017 - 02/2019***

(Past Positions)

Adolescent Medical Director	Aurora Behavioral Healthcare Tempe Hospital	2012 - 2013
Medical Director	Youth Development Institute (sex offender RTC) Metropolitan	1999 - 2007
Medical Director - CEO Chairman	Psychiatric Physicians, PC	1994 - 2005
Adolescent Services Director Medical	Aurora Behavioral Health Hospital	2010 - 2012
Director Crisis Services Director of Crisis	Banner Desert Medical Center	2001 -2006
Assessment Medical Director	MBC/Biodyne Arizona	2000 - 2005
Director of Assessment	St. Luke's Behavioral Health Center Arizona	1993 - 2001
Medical Director Crisis/UM Director C.	Partnership for Youth and Families	1996 - 2001
Dependency Services Director	Desert Vista Hospital	2001 - 2003
C. Dependency Services Associate Med.Dir	Charter Behavioral Health System Charter Medical - East	1995 - 1999
Medical Director	Valley Desert Vista Hospital	1996 -1996
Medical Director	ComCare	1991 - 1995
Medical Director	Maricopa Clinical Management	1992 -1994
Medical Director	East Valley Behavioral Health Assoc.	1992 - 1993
Emergency Psychiatry Director Hispanic	Maricopa Medical Center-Director ER Psych	1990 - 1992
Consultant	Arizona State Hospital	1989 - 1991
Staff Psychiatrist	Camelback Community Counseling East	1988 - 1990
Consulting Psychiatrist Emergency Psych.	Valley Alcoholism Council	1988 - 1990
Consultant	Human Dynamics Institute	1988 - 1990

EDUCATION	***INSTITUTION***	***GRADUATION***
Psychiatry Residency	Maricopa Medical Center	1989
Family Medicine Externship	University of California, Irvine.Dept. Family Medicine	1984
Clinical Internship	Instituto Mexicano del Seguro Social, Mexico	1982
Medical Degree	Escuela de Medicina de Mexicali, UABC, Mexico	1981
College Degree	Instituto Salvatierra, UABC, México	1977

HOSPITAL STAFF PRIVILEGES

Oasis Behavioral Health Hospital

Prior Privileges at St. Joseph's Hospital/Barrows Neurological Institute, St. Luke's Hospital and Medical Center, Banner Desert Medical Center, Desert Vista Hospital, Maricopa Medical Center, Mesa General Hospital, Chandler Regional Hospital. Tempe St. Luke's, Aurora Behavioral Healthcare Tempe, Scottsdale Health Care Systems, Honor Health.

PROFESSIONAL ASSOCIATIONS:

American PsychiatricAssociation
Fellow. 2003 to Date

Arizona Psychiatric Society -
Past President 1997 - 1998
President 1995 - 1997
President Elect - 1994
Vice President - 1993
Secretary - 1992
Treasurer - 1990 - 1991
Government Relations Committee - Co-chair- 1990 -
2001 Ad Hoc Committee, Legislative Issues - Chair 1990

American Neuropsychiatric Association American

GOVERNOR'S APPOINTMENTS:

Member, Joint Legislative Committee on Sex Offender Treatment-Summer-Fall 1997 Governor's Behavioral Health Action Committee, Member 1993-94
State of Arizona, Psychiatric Security Review Board, Member 1997 to February 2006
Vice-Chairman, June 1999 to 2001
Chairman, April 2001 to February 2006
Member, Arizona State Hospital Capital Construction Committee Jan 2000 to Dec 2002

ACADEMICS:

Adjunct Assistant Professor of Medicine-Midwestern University, Phoenix, Arizona. 7/1998 to Date
Adjunct Assistant Professor of Medicine-AT Still University, Arizona. 02/2014 to Date

FOUNDATIONS AND NOT FOR PROFIT ORGANIZATIONS:

Board Member, Ballet Arizona, 1990-1993

CORPORATE DISCLOSURES:

Prior Member of Speaker's Bureau for: Astra-Zeneca, Lundbeck/Takeda Pharmaceuticals, Lilly Pharmaceuticals, Pfizer, Merck.

Current Member Speaker Bureau for Otsuka Pharmaceuticals

Prior Member Cultural Diversity Board and Zyprexa Board, Lilly Pharmaceuticals. Member, Advisory Board, Republic Bank, AZ.

Member, Governing Board, Oasis Behavioral Health Hospital Dec 2013 to Date.

PUBLICATIONS:

Removing the Mask. Mental Health and the Hispanic Patient"
Cover Story **April 2006 http://www.mdnetguide.com/departments/2006-april/mc_cover.htm**

"What you should know and are afraid to ask, Drugs among children and adolescents" a parent's guide. Publish America, 2004. ISBN 1-4137-2647-X. www.publishamerica.com

Most recent Research Experience/Principal Investigator:

2008 Pfizer protocol A1281158, 2008

Otsuka Aspire 246 Protocol,

2009 Covance 31-07-246 Protocol.

2018 Molindone Double Blind Protocol, Aggression Associated with ADHD

2017 Ketamine Infusion for the treatment of Post Partum depression

2019 OCD Double Blind New compound Study

Forensic Medical Experience

Extensive forensic medico-legal experience in both Criminal and Civil Cases, particular expertise in Death Penalty Cases involving mental health issues, including high profile cases, locally and nationally. (list of cases upon request)

Metro NBI
Metropolitan Neuro Behavioral Institute

Metropolitan Consulting Corporation, PC.
Lauro Amezcua Patino, MD, FAPA[1]
4055 W. Chandler Blvd. Suite 5
Chandler, AZ 85226
602-339-3779
480-393-7175 (Fax)

Patient Name:	Dixon, Clarence
Age:	66 years old
DOB:	08/26/1955
Sex:	Male
Ethnicity:	Native American
Date of Evaluation:	August 25, 2021, February 17, 2022, March 10, 2022, April 19, 2022
Court Case Number:	CR2002-019595
Referral Source:	Office of the Federal Public Defender, District of Arizona
Psychiatrist:	Lauro Amezcua-Patino, MD, FAPA.

Addendum to 03/31/2022 Report[2]

At the request of the Federal Public Defender, District of Arizona, Mr. Clarence Dixon was re-evaluated on April 19, 2022. He was informed of the request for evaluation and the limits of confidentiality, and he verbally consented to the re-assessment.

Clarence was evaluated in Browning Unit at the Arizona State Prison Complex in Florence, Arizona in a private room, with a guard observing outside of the door. Since our last visit on March 10, 2022, Clarence has been moved to a different unit and placed under a Death Watch protocol.

Interview summary April 19, 2022

The writer discussed with Clarence the most recent legal filings and his understanding of the process. When discussing legal issues, he became quite concrete and repeated frequently that his pleadings are being denied without any explanation, "Because they don't have a legal rationale." "They just want to kill me." He stated, "The courts are the bread and butter, attorneys lie, the attorneys are in agreement with law enforcement." "The system is against me because I am attacking law enforcement." "The judicial system was started to keep black men under control."

Clarence was able to describe the components of the judicial system as previously described, however, he has significant difficulty assisting his attorneys because he is not able to understand the irrationality of his legal arguments and he continues to focus on deluded and conspiratorial beliefs about why his legal arguments have been consistently and repeatedly denied. He reported that his understanding of the law is black and white, and he cannot see it any other way. He reported

[1] My CV is attached hereto as Exhibit A.
[2] My March 31, 2022 report is attached hereto as Exhibit B.

that his attorneys are filing documents with the clemency board, but he believes he must be released because of the unconstitutional basis of his arrest.

Since the last visit, Clarence has heard a voice calling his name and again reported that he has heard this voice since 1977, "when we moved to Tempe." Clarence admitted to having unusual experiences when alone in his cell, such as feeling somebody touching him. He reported that he has spent a lot of alone time in his life and described himself as a loner: "I have never had friends but I like helping people."

Clarence reported having had multiple Sweat Lodge Ceremonies while in prison and, at times while in sweat lodge, he would feel himself spinning and floating outside of his body, but always aware that he was on his knees on the floor. "I felt like everything was part of me."

He reported that over the years he has dealt with stress by "laying on my boat, then a thought will come to my mind like, should I have a cup of coffee; I say no, and then I hear a voice telling me 'but is a warm cup of coffee.' I have an eternal of experiencing me from me"; "I live inside of my little universe, because the universe outside wants to kill me."

Clearance was noted to have lost weight since the last visit in March 2022 and was noted to be constantly coughing. He reported that his "Valley Fever" medication was discontinued when he was transferred to Death Watch.

Clarence was noted to be withdrawn, tired, and somewhat fatigued. He reported that his sleep is erratic but denied any active suicidal or homicidal ideas.

Clarence's affect was flat, mood depressed, associations were noted to be at times circumstantial and at times concrete. Paranoia was noted in his descriptions of the prison staff with whom he comes into contact on Death Watch, his exaggerated distrust of the judicial system, and his unwillingness to let people engage with him emotionally.

Clarence's depression appears to be significantly worse and he is experiencing further decompensation of his mental faculties. He has stopped taking showers. As he nears execution, his tendency is to retreat into the delusional world that he has created for himself which makes it more difficult to communicate with him in a fact-based way. Throughout my questioning of him, Clarence was disconnected from the reality of his surroundings and situation. He also exhibits a grandiosity consistent with the schizophrenia diagnosis that results in him seeing himself above the legal system that he believes is trying to illegally kill him.

Referral questions:

1. Is Clarence's mental state so distorted, or his concept of reality so impaired, that he lacks a rational understanding of the State's rationale for his execution?

2. Does Clarence's mental illness prevent him from rationally understanding the relationship between his crime and the punishment, or from grasping the societal values the State seeks to vindicate through his execution resulting from the severity of his crime?

In my best opinion, Clarence suffers from a psychiatrically determinable impairment that significantly affects his ability to develop a rational understanding of the State's reasons for his execution.

Clarence is disconnected from reality, especially as it relates to his legal case. His visual, auditory, and tactile hallucinations further aggravate his detachment from reality. Clarence's thought process is contaminated by concrete thinking, which is common in those diagnosed with schizophrenia. Clarence's concrete thinking causes him to fixate on an issue that limits his ability to abstractly consider the societal values the State seeks to vindicate through his execution. This results in his inability to form a rational understanding of the State's reasons for his execution.

Clarence holds a fixed delusional belief that his incarceration, conviction, and forthcoming execution stem from his wrongful arrest by the NAU police in 1985. That belief has no basis in fact—since it was the Flagstaff Police, *not* the NAU police, that arrested him (FPD 7027-7029)—nor is Clarence able to grasp that this belief has no basis in fact, which renders Clarence's understanding of why he'll be executed irrational.

For decades, Clarence has fixated over and pursued these delusional beliefs to his detriment: He fired his court-appointed attorneys and represented himself at his capital trial after they refused to raise this factually baseless issue; and he has filed appeals over this issue nearly thirty times in numerous state and federal courts.

Despite explanations from prior lawyers and the courts for why the issue is baseless, Clarence is unable to rationally understand why he has not obtained relief on this issue. Clarence also holds a fixed delusional belief that the repeated denial of his pro se pleadings related to the NAU issue are the result of a judicial conspiracy. This is reflected most recently in letters Clarence has written to Arizona Republic Reporter Laurie Roberts and to the Arizona Commission on Judicial Ethics (FPD 7898-7899, FPD 8211-8212) In his letters, Clarence claims, "My story involves the deliberate mishandling of a case, mine, so that an execution could result" (FPD 7898); and he demands that the Arizona Supreme Court Justices be disbarred, stating that "their lack of impartiality and fairness leads directly to an extra-judicial killing, an illegal and immoral homicide created in the name of and for the good people of Arizona." (FPD 8211-12).

Clarence's pro se filings over many decades reveal his delusional, paranoid, and conspiratorial thought content. He has, for instance, expressed the irrational beliefs that: his prior lawyers "purposefully exclude[ed] the [NAU] issue" (FPD 6547); courts have "refused and ignored applying relevant law" because of the nature of his crime and possibility of his release (FPD 6562); relief has been denied on this claim because "[t]he State is embarrassed that for many years [the NAU police] has operated without statutory authority[]" (FPD 6563); the courts' action on the NAU issue reflects their deliberate and "continued evasion" of his right to relief (FPD 6780); the courts have engaged in "obvious subterfuge" (FPD 6790, FPD 6952) and are purposefully in "collusion" to deny him his rights (FPD 6973-6980); that the "cumulative, continuous and concerted effort by state and federal judges on its face smacks of collusion and conspiracy or, at the least, complicity and the reader is left considering the circumstantial weight to tell if judicial collusion is found[]" (FPD 6980; *see also* FPD 6983); and that judges have engaged in deliberate

"obstruction" in denying his NAU claim (FPD 6988) evidencing their "spirit of ill-will towards [him]" (FPD 7356-7357). Clarence also believes that the courts have denied his claim "because to follow and apply the law would have been politically disastrous, a dark embarrassment to the state universities." (FPD 6962.)

Clarence's delusions are not solely focused on the factual basis of his claim, but he expresses deluded and paranoid beliefs about why the issue has been repeatedly denied by the courts. His historical writings demonstrate a longstanding delusional belief that the courts, the prosecution, and his own counsel have conspired to wrongly deny his NAU claims so that he can be illegally executed. This delusional belief is consistent with Clarence's diagnosis of schizophrenia with paranoid ideations. Clarence's recent writings show a significant escalation of these delusions, including his belief that the Arizona Supreme Court justices "ghoulishly inflict a constitutional[ly] infirm, illegal and immoral homicide upon my person and body." (FPD 7877, FPD 7881, FPD 7886, FPD 7891.) Clarence believes the Arizona Supreme Court justices will be disbarred and has reported each justice individually to the Commission on Judicial Conduct. (FPD 7873-7897.) Clarence believes that the prosecutors and judiciary have conspired to "ignore statutes and uphold unlawful and unconstitutional convictions." (FPD 6028-6029.) Clarence believes the Arizona Supreme Court, United States Supreme Court, and almost all other levels of the courts have conspired to deny his NAU claim so they can execute him, including to protect the State of Arizona and its universities from political embarrassment. (FPD 6562-6563, FPD 6962, FPD 6965). As discussed below, these paranoid delusions significantly impair Clarence's ability to rationally contemplate his crime, punishment, and the relationship between the two.

While Clarence can verbalize a surface awareness that the State intends to execute him for a crime that occurred in 1978 and for which he was convicted, it is my professional opinion that Clarence nonetheless lacks a rational understanding of the State's reasons for his execution. That is because, at bottom, Clarence ultimately believes that he will be executed because the NAU police wrongfully arrested him in 1985 and the judicial system—and actors in it, including his own lawyers—have conspired to cover up that fact. Clarence cannot rationally draw a connection between his crime and punishment because he is unable to contemplate the societal values the State seeks to uphold through his execution. When Clarence is prompted to think about his execution, his contaminated thought process prevents him from focusing on anything other than his delusional obsession that there exists a vast conspiracy to deny him relief on an issue that is completely unrelated to the crime for which he was sentenced to death. As a result, Clarence does not rationally understand the relationship between his crime and his impending execution. Clarence cannot rationally understand that the State seeks, through his execution, vindication due to the severity of his offense. Instead, he believes the State's rationale for his execution involves a conspiracy to wrongly deny his NAU claim in order to illegally murder him for political reasons.

Clarence's hallucinations also appear to relate to his conspiratorial delusions. His belief that the goal of the judicial system is to "keep black men under control" may relate to his persistent hallucinations of a white child watching and laughing at him. Clarence reports that he is upset that the child is white."

As the records, Clarence's history, and my evaluations illustrate, while Clarence can verbalize an awareness of the legal process and has a limited capacity to exercise rational judgment in some

areas of life, his beliefs about why he is incarcerated and why the State seeks to execute him are fundamentally irrational. His capacity to understand the rationality of his execution is contaminated by the schizophrenic process which results in his deluded thinking about the law, the judicial system, his own lawyers, and his ultimate execution despite multiple attempts over many years to disabuse him of his irrational beliefs.

3. How has Death Watch affected Clarence Dixon's mental state?

4. At the time of Clarence's reevaluation, he had been on Death Watch for 14 days. The effects on Mr. Dixon are apparent. Since the last evaluation, Mr. Dixon has mentally decompensated. He is more withdrawn and presents with severe depression. He has stopped showering and his paranoia has increased.

   It is a well-known fact that the extreme isolation of any individual leads to severe psychological and psychiatric distress; vulnerable individuals such as those with mental disorders are particularly more susceptible to decompensations.

   In Clarence's case, the psychosocial and physical stress related to increased isolation, lack of any privacy, and 24-hour supervision has likely worsened his delusional and paranoid thinking, initiated a new depressive episode, and worsened his anxiety. In the context of his blindness, deathwatch becomes is a new challenge with new uncertainties that challenges all of his acquired abilities to manage his blindness.

Lauro Amezcua-Patino, MD, FAPA.

Lauro Amezcua Patino MD

Digitally signed by Lauro Amezcua Patino MD
Date: 2022.04.25 09:13:40 -05'00'

April 25, 2022

Date

Metropolitan Consulting Corporation, PC.
Lauro Amezcua Patino, MD, FAPA[1]
4055 W. Chandler Blvd. Suite 5
Chandler, AZ 85226
602-339-3779
480-393-7175 (Fax)

Patient Name:	Dixon, Clarence
Age:	66 years old
DOB:	08/26/1955
Sex:	Male
Ethnicity:	Native American
Date of Evaluation:	August 25, 2021, February 17, 2022, March 10, 2022
Court Case Number:	CR2002-019595
Referral Source:	Office of the Federal Public Defender, District of Arizona
Psychiatrist:	Lauro Amezcua-Patino, MD, FAPA.

Psychiatric Evaluation

The patient was referred for psychiatric re-evaluation by the Federal Public Defender, District of Arizona. Mr. Clarence Dixon was informed of his attorney's request for evaluation and the limits of confidentiality, and he provided verbal informed consent for the review. Clarence was previously evaluated by this writer in 2012 at the age of 55 for a psychiatric diagnostic assessment at the Browning Unit of the Arizona State Prison Complex in Florence, Arizona.

Referral Questions:

1. Is Clarence Dixon's mental state so distorted, or his concept of reality so impaired, that he lacks a rational understanding of the State's rationale for his execution?

2. Would Death Watch increase the likelihood that Clarence Dixon would manifest or experience a worsening of any impaired mental states described in Question 1? If so, why?

Method:

Clarence was evaluated by this writer in Central Unit at the Arizona Department of Corrections facility in Florence, Arizona for approximately 2 hours for a Clinical Interview and verification of history on Wednesday, August 25, 2021; again for approximately 1 hour on Thursday February 17, 2022, at the same facility; and for a third time for approximately 1 hour on Thursday, March 10, 2022, at the same location.

[1] My CV is attached hereto as Exhibit A.

Records provided for review:

The records provided for my review are attached hereto as Exhibit B.

History:

Mr. Clarence Dixon is a 66-year-old Native American currently residing in the Central Unit of the Arizona State Prison Complex in Florence, Arizona. Since my prior report approximately 11 years ago, Clarence has developed significant visual deterioration, to the point of being declared legally blind in 2015. (FPD 5069.)

He was cooperative and eager to participate in a conversation with this writer. He reported that he has been experiencing significant difficulty sleeping, primarily problems with sleeping irregularly and at different times of the day. He admits to feeling occasionally fatigued.

Past Psychiatric History:

Mr. Dixon has a long history of mental disturbances affecting his life. He remembers suffering from severe depression at age ten and manifested by feelings of hopelessness, helplessness, decreased energy, decreased motivation, and a lack of interest. He states he suffered from three such episodes prior to his incarceration.

On June 5, 1977, Clarence was arrested by the Tempe Police Department for assaulting Christy Guerra, age 15, with a metal pipe, causing a severe cut to the top of her head. Ms. Guerra stated that Clarence walked up to her stating “Nice evening, isn't it?” before striking her. Ms. Guerra screamed and Clarence retreated to his vehicle followed by Ms. Guerra. Tempe Police arrived on the scene and took Clarence into custody. He was charged with Aggravated Assault with a Deadly Weapon.

Dr. Maier Tuchler and Dr. Otto Bendheim were retained by the Maricopa County Superior Court to determine if Clarence was competent to stand trial.

On September 2, 1977, Dr. Tuchler found Clarence incompetent to stand trial and further opined that Clarence exhibited "several characteristics which are clearly abnormal. Although he is oriented for time, place, and person, and is fairly well educated, he is exceedingly slow in responses, markedly withdrawn, and obviously depressed. Blocking is characteristic and has prolonged the interview interminably." Dr. Tuchler stated his belief that Clarence may have been lashing out at the victim, Christy Guerra while responding to fantasies that he was attacking his wife. He further stated, **“It is the opinion of this examiner that at the commission of the offense Clarence Dixon was presenting a transient mental illness in which reality was lost to him, and he presented as an undifferentiated schizophrenia (sic).”**

On September 2, 1977, Dr. Otto Bendheim found the defendant incompetent to stand trial, stating "he is so severely depressed he blocks so much and hesitates between answers to the

extent that many answers remain totally unanswered." He further stated, "I believe this man is suffering from very severe depression, possibly with an underlying psychosis. The exact nature of his mental illness could not be determined, but schizophrenic psychosis is considered to be the most likely diagnosis. " Dr. Bendheim opined, **"without the presence of the mental disturbance, the act of violence would not have taken place."**

On September 15, 1977, Clarence was placed at the Arizona State Hospital to restore competency. On October 6, 1977, David L. White, Ed.D stated that he believed Clarence's poor emotional condition to be the result of a poor marital situation which he has perceived as being without a solution. He was seen as being racked by guilt and depression, and, although Clarence believed he would not harm himself, he could manage to "accidentally" die or be killed by someone else.

Clarence (has reported) further hat on one occasion, his father beat him severely and, for this and other reasons, he harbored animosity towards his father. On October 26, 1977, Clarence was believed to be competent to stand trial by John W. Marchildon, MD. Dr. Marchildon stated that Clarence did not have a mental illness at the time of his evaluation, diagnosing him with Social Maladjustment without Manifest Psychiatric Disorder and Marital Maladjustment.

On December 12, 1977, the Honorable Sandra Day O'Connor requested an opinion of the doctors as to whether the defendant was in "such a state of mind that he did not know right from wrong and whether the defendant knew the quality and nature of his acts and consequences thereof at the time of the commission of the alleged offense." On January 5, 1978, Clarence was found not guilty by reason of insanity. The Court ordered the County Attorney's Office to commence civil commitment proceedings, but Clarence remained out of custody. Two days later, Deana Bowdoin was found in her apartment, sexually assaulted and murdered.

Clarence has consistently reported experiencing auditory and visual hallucinations on many occasions. He is somewhat guarded and defensive when asked about these perceptions, and it is obvious he doesn't like talking about them.

This writer conducted a psychiatric evaluation of Clarence on September 7, 2012, for approximately two hours at the Browning Unit of the Arizona State Prison Complex in Florence, Arizona. I noted that Clarence was guarded and defensive in his demeanor, especially when discussing his psychiatric history. I diagnosed him with schizophrenia, paranoid type, chronic and major depression, recurrent.

John Toma Ph.D. evaluated Clarence in excess of fourteen hours over the following dates: 04/18/2012, 04/19/2012, 05/02/2012, and 06/26/2012. This evaluation consisted of clinical interviews, as well as a battery of neuropsychological testing to determine if Clarence suffered from any psychological abnormalities. There were several elevated scales on the Minnesota Multiphasic Personality, indicating Clarence is mistrustful of others, and not comfortable in social situations, has unrealistically high expectations about other people while at the same time being fearful of others, believing they may harm him.

Clarence's scores on the Schizophrenia scale indicate he experiences "a number of unusual beliefs, that he may become withdrawn, may rely excessively upon fantasy and that he may be generally sad, blue, anxious and on the Restructured Clinical scale. Clarence showed a significantly elevated response to the Antisocial Behavior scale (RC4). "This scale indicates Clarence has trouble conforming his behavior to the law, and it reflects his years of illicit drug and alcohol abuse."

On the Rorschach Inkblot Test, Clarence consistently gave responses showing paranoid ideation and psychotic content, as well as some morbid responses indicating difficulties with depression. He also made a number of very bizarre comments or made several responses that included symbolism which is almost exclusively given by schizophrenic patients. During this test, Clarence became quite agitated and paranoid, and at the end of the test, he angrily accused Dr. Toma of "getting into my head."

Dr. Toma diagnosed Clarence as suffering from schizophrenia, paranoid type and considered ruling out schizoaffective disorder, depressed type, and cognitive disorder, NOS. He further diagnosed alcohol dependence by history. In his conclusions, Dr. Toma states, "It is clear now, with the test data obtained during this evaluation, that the Rule evaluators for his first conviction in 1968 were accurate in their opinions that he suffered from a psychotic disorder. At the time of the murder of Deana Bowdoin, he would have been in the early stages of a schizophrenic illness."

Substance Abuse History

Clarence stated that he started smoking marijuana at age fourteen. He said he was "never a regular smoker" but would use the drug when available. He stated that he sometimes used this substance with his wife Geraldine Eagleman but was not a hard-core user. He has said that he used methamphetamine a couple of times but never really liked the drug.

Clarence reportedly began using alcohol at around age sixteen on an occasional basis. He stated that his drinking increased to the point that he was drinking probably every night. Clarence reportedly drank daily from 1977 until he went to prison in September of 1978. He said he would usually drink beer but sometimes drink a bottle of vodka. He stated that he experienced frequent blackouts from vodka at this time. He described his blackout frequency from vodka as "about once every two or three weeks."

Medical History

Clarence has experienced various medical issues throughout his lifetime. He was born with a congenital heart defect known as coarctation of the aorta (FPD 001.) Before reaching the age of two, he experienced seizures. (FPD 039-040.) On September 6, 1959, at age four, he was seen for a cut on his forehead due to hitting a door and received stitches. (FPD 006.) On June 29, 1960, Clarence received services from a physician after a mirror fell and shattered, cutting his right leg and necessitating sutures. (FPD 008.)

Medical records show Clarence continued to suffer from cardiovascular problems. In 1961, at around age six, he was noted to lack a palpable pulse in his lower extremities. (FPD 009-010.) In 1967, Dr. M. Molthan noted 12-year-old Clarence had a murmur, a history of leg cramps, and a cardiac catherization done in the past. (FPD 035.) Dr. Molthan concluded Clarence suffered from coarctation of the aorta and recommended surgery. (FPD 035.) On February 6, 1968, Clarence had open-heart surgery in Phoenix to repair his aorta. (FPD 035-036.) It should be noted that when Clarence was on his way home from the hospital, he was preoccupied with fear at his father's perceived anger at him since he had forgotten his shoes at the hospital. (FPD 122.) About three weeks after undergoing heart surgery, on February 20, 1968, Clarence was hospitalized for three days due to weakness and discomfort at the operative site.

As an adult in his mid-twenties, Clarence was noted as having a history of rheumatic fever, aorta complications, and a heart murmur. (FPD 291.) An electrocardiogram (EKG) report dated January 5, 1979, indicated possible left atrial hypertrophy or intraatrial conduction defect. (FPD 545.) When Clarence was in his early forties, in October 1997, an EKG noted moderate to severe aortic insufficiency with normal left ventricular dimension and systolic function. (FPD 385.)

Clarence was diagnosed with glaucoma in 2000. (FPD 557.) On February 6, 2015, Dr. Michael Horsely deemed Clarence legally certified as blind in both eyes. (FPD 5069.) In June 2020, EKG results indicated sinus bradycardia, possible left atrial enlargement, rightward axis, incomplete right bundle branch block, and abnormal. (FPD 1443.) In July 2021, Clarence started receiving treatment for Coccidioidomycosis, also known as Valley Fever. (FPD 5207.) He has intermittently received a special wasting diet since 2012 (FPD 783, 779, 837, 916, 1045) with an order recently placed in January 2022 due to his underweight body mass index (BMI). (FPD 5800.)

Psychosocial History:

Clarence was born on August 26, 1955, at the Navajo Medical Center in Fort Defiance, Arizona, the third of six children of Wilbur and Ella Dixon and reportedly born as a “blue baby” due to a congenital heart condition known as coarctation of the aorta. He was apparently delivered in breech presentation, weighed less than six pounds, and remained in an incubator his first month of life.

Clarence has described his upbringing as troubled due to his belief that his father was cold and domineering with no praise for the children. He has described his mother as a tranquil and passive person.

As a child, Clarence feared his father who reportedly spoke to Clarence and his siblings in a demeaning manner, frequently telling them they were worthless. His father was belligerent and abusive. If one child did something to anger Clarence’s father, he would punish all children. He would reportedly line the children up and hit them with a belt until they cried. It should be noted that Clarence’s father suffered from migraine headaches, has been described as having “mental problems,” and was prescribed Darvon and Librium.

Clarence's mother did nothing to stop his father's violent tirades and never asserted herself to protect the children. Clarence has reported feeling betrayed by his mother.

In high school, Clarence recalls being beaten up by his father for a minor transgression. He was sent to California to live with his sister Ellen. According to Clarence's brother Perry Dixon, Clarence was "pretty beat up" when placed on the bus to California.

On March 18, 1975, Clarence married Geraldine Eagleman in Window Rock, Arizona. They moved in May 1976 to Tempe, Arizona, where both planned on attending college. This was, by all accounts, an unhappy marriage. Clarence stated that the girl he assaulted in 1977 bore a "superficial resemblance to his wife." Geraldine divorced Clarence in 1979 while he was in prison.

Mental Status Examinations:

Interview summary August 25, 2021

Mr. Dixon was brought into a private interview room with assistance from guards due to his blindness, sat straight in front of me, and agreed to have a conversation with this writer. During the interview he stated, "The State is trying to execute me" and "They charged me with first-degree murder in 2002." When confronted with the state of his recent legal issues related to the death sentence, he stated, "There are issues of jurisdiction that can be brought up anytime; it is the black letter of the law." Clarence became excited about the conversation and when confronted with the number of appeals he has submitted on this issue he stated, "They never explain why my claims are denied."

When asked about what it is like to be on death row, he stated, "I have been in prison for 35 years, I hold my biological imperative, I need to further myself, I have a strong biological imperative, I need to further myself."

He further stated, "They believe I am guilty" and conveyed his belief that it was for no other reason that because they "say so." "They are not following their own rules," he said. He denied feeling that being Native American or Navajo explains this.

We discussed Clarence's history of psychiatric illness and he was asked about his recollection of being found Not Guilty by Reason of Insanity. He stated, "I was found incompetent in court in the past, I was ordered to the Arizona State Hospital, and someone dropped the ball."

He reported that when he was young, he was "weak and stupid." He also stated that: "My wife messed up with my head. She wanted a good life and a good provider. We got married quite quickly. When we moved to Tempe, she took an overdose of aspirin. She felt I did not bring anything to the marriage. I brought nothing to the marriage. I was working at the time."

He reported difficulty trusting anybody. When asked about his hopes, he stated: "I want them to recognize the Law. They are not disagreeing with me; they just want to kill me for murder. They are ignoring the law."

Clarence reported that when he feels the guards are nudging him, he tries to go to sleep and follow "Andy." He believes that Andy is his deep self, and when he wakes up, he says, "I am not going to be weak and slow."

Clarence admitted to hearing voices speaking to him inside his head. He stated, "There is something inside of me that is loose. I am loco, I am broken."

He admitted to feeling quite angry about himself. "The anger comes from somewhere." He also reported during this interview that there are two ghosts inside of his cell and that "somebody touches me in my shoulder, I turn around, and nobody is there."

Interview summary February 17, 2022

Mr. Dixon was brought into the private interview room by a guard who assisted him to his chair due to his blindness. The interview was initiated by re-introducing myself, obtaining verbal informed consent for the interview, and explaining the purpose of the visit.

He was asked initially if he was aware that the State of Arizona may have filed for a date of execution in his case. He reported being aware. When asked about his feeling about this filing, he stated:

> Sometimes I feel a tinge of fear. Other times I feel a sense of adventure. At times, I feel a sense of relief. I have been locked up for 35 years. I am reaching the endpoint. I either be released from prison or will be released from prison on my legal claim.

When questioned about the nature of his hope to be released from prison, he stated:

> I filed a petition for a writ of certiorari with the United States Supreme Court. Only a handful of applications are selected, and mine was selected. The Supreme Court gave me a docket number. They also told the State Attorney General to respond to my petition. They responded, and yesterday, my attorney and I finished my reply. My claim is straightforward; it is easy to understand.

Clarence continued that, "Since 1991, every judge and every jurist, or appellate judge to this date, they have denied my claim even though it is straightforward, it is a good claim."

When asked who believes it is a reasonable claim, Clarence stated, "Based on two state statutes. One Statue did not include campus police as peace officers before the law was changed in August 1985; the crimes occurred in June 1985."

When confronted with all the appeals he has submitted since 1991 to different jurisdictions and judges, he admitted that his requests had been denied. He stated, "Yes, different judges, what I say is that they are in denial. They have never given me statements of fact."

We again discussed his history of incarceration for the last 35 years and his life before imprisonment. He reported that before he was incarcerated, he was "stupid and weak." He continued:

> "Stupid because I did not know what I had, and weak because I was gullible and easily lead astray, childish and manipulated." He also stated, "Now I have my own sense of self. I know that when I get out, I know where to go to get help. Find a job, find a place to stay, and all that sort of stuff. I have three women, my attorney, my mitigation specialist, and my investigator. There are many women that will help me get situated there in Phoenix.

When asked about how he is different now than before incarceration, he stated:

> Back then, I was beginning my adult life. And I had no value. I didn't attach any value to it. Now, I'm an older adult male. I know I only have a few years to live. And I'm not all that. I'm not ambitious. I've wasted my entire adult life in prison. If I get out, I just want to enjoy the days when I enjoy the people I come in contact with. I'm going to experience freedom.

I asked if the appeals to the Supreme Court and the multiple appeals he had done before were based on the two laws. He replied:

> For the United States Supreme Court justices to rule on my behalf, they have to rule that my 1985 conviction was unlawful. And that means that my convictions back then were unconstitutional and unlawful. And that means that the convictions now were partially based on the conviction back then also become illegal, illegal or unlawful, and unconstitutional. My conviction must be overturned. And they will remand me back to the Coconino County Superior Court.

During this interview, Clarence was questioned about the voice he hears inside of his head, and he stated:

> I have heard the voice for a while, almost all my life, and I have learned to put it in a bit of a compartment. The first time I heard the voice, I was in third grade on the playground, and I heard someone say 'Clarence,' looked around, and nobody was close to me. It was not that frequent—every 2 to 3 months. It didn't tell me to do anything bad, just saying my name.

Clarence reported that after he moved to live at a Methodist mission when he was about ten years old, he started developing an intense sense of aloneness and emptiness that he has had since. He admitted liking being alone since he was little and enjoyed reading a lot, especially about World War II. He reported that books took him to different places, like an escape. He admitted that he felt "separate" from other people and said that he enjoys "jeopardy" on his tablet.

He reports his belief that he has a tumor in his head. He also reports visual hallucinations, including seeing dead children that are watching him.

When we further discussed deathwatch and the details of isolation and being watched around the clock, Clarence reported feeling that isolation and constant surveillance is cruel punishment.

Interview summary March 10, 2022

The visit with Mr. Dixon started at around 9 a.m. and lasted for approximately 1 hour and 5 minutes. Our conversation focused on the issues related to his pending appeals and interaction with his legal team.

He was specifically questioned regarding the multiple appeals he has submitted and the nature of the denials. Clarence stated, "The judges and justices have never given me statements of fact and conclusions of law as to why they denied my claim." He added that "The closest they got was to tell me that the law was against me in relation to the claim of police jurisdiction." When questioned further about specific rulings, opinions of judges, and his own attorneys' views he replied: "There is no word, they just say 'We deny it.'"

I asked directly if he considered the courts' blanket denials as an indication that his arguments are correct. In response, he stated:

> They can't explain it. Okay, here it is. One statute said that the NAU police or the State University Police had jurisdiction over certain crimes on campus and that stay on campus; then they have this other statute that defines who is a peace officer. Then University Police are not included in the definition of a peace officer.
>
> And these two statutes, they were in effect, full force, and the effect was in June of 1985. They were in full effect on campus. Now, I say I tell him, okay the crime occurred, a mile and a half off-campus. They don't have the powers to investigate. To bolster my claim, they aren't even peace officers, although they call themselves police officers, they could not serve a search warrant because they were not peace officers. They were working outside of their jurisdiction.

When questioned about the judicial system's rationale for denying his claims, Clarence stated that he did not think the judges, attorneys for the state, or his own attorneys were plotting against him, but stated his belief that this reflected that they are, "Not against me but have a firm and decided philosophy that the law enforcement should always be backed up."

He stated that at one point, one of his attorneys (Vikki Liles) tried to convince him to not file an appeal on his NAU issue. When questioned about why his own attorneys do not agree with him filing appeals based on this issue he stated: "Judges are part of the bread and butter. They really can't eliminate the bread and butter. Right? Because here I am. I'm trying to push this unpopular claim. And if they push it for me, the judge may look at it unfavorably. So the next time they come with another client, that client is going to suffer because of me."

When asked about his NAU claim sounding illogical to multiple attorneys he stated:

> My claim is logical. If NAU police do not have the authority to investigate crimes off-campus, and the crime occurred off-campus, then logically, they should have kept their head out of it. That means they have no power to investigate off-campus.
>
> What I'm saying is that collectively, they have a mindset. As Arizona's judges, almost all of these judges in Arizona don't come from the public defender's side of the bar, they come from the prosecutor services bar. And that's for a reason. No wonder an FBI study done back in 1985 or '84, someone came out and said that 5% of the people incarcerated in state and federal prisons are innocent. Right? That's an awful lot of people doing innocent time. We're doing someone else's time. Doing time for somebody else's crime. It is a corrupt system. How long do you think all these black men and women were lynched in America? Decades. And then the men who got charged for the lynching are found not guilty.

When confronted with the fact that he interprets the law differently than the judges who have reviewed his NAU claim, he stated: "I have a case, I am advocating for myself using the law. I am giving the Judges the best and most favored law."

When asked if there was any possibility his interpretation of the law was faulty or incorrect, he stated:

> There is no possibility at all. You can ask my attorney Amanda if my legal reasonings are incorrect. She's a lawyer and she will tell you certain things. So if my legal reasoning was not correct, why is it the United States Supreme Court wanting to look at it? All the help I need from my attorneys is assistance. I write up my own position. I give it to Amanda and she fills in the date and checks the references, and gives it back to me for signature. That is what they do. The Supreme Court is looking at my claim, and they will issue a decision before April 5th.

Clarence appears his stated age; he is medium tall and medium build and required assistance with ambulation with a cane due to blindness; however, his gait was appropriate. He was noted to be clean and well kept, without evidence of malnourishment or physical violence.
He was alert and talkative, with an indifferent mood and somewhat blunted affect. He was noted to be guarded and somewhat distrustful.

His thought processes are pretty rigid and somewhat circumstantial, and his ability to problem solve appears quite limited by his distorted thinking and inability to exercise objective judgment, as evidenced by his deluded understanding of the legal process regarding his appeals. He also seems to have a deluded sense of the law as it applies to his arrest. He admits to visual, auditory, and tactile hallucinations, and his thought content seems to be contaminated by grandiosity and concreteness. His ability to exercise objective judgment appears to be quite limited and tainted by his hallucinations and thought content disturbances. His memory seems intact, but his ability to concentrate is poor.

Diagnoses:

- Schizophrenia Paranoid Type.
- Major Depression Disorder
- Alcohol Dependence in Full remission
- Glaucoma with Secondary Blindness
- Non24 sleep cycle disorder

Assessment:

It is my professional opinion, which I hold to a high degree of medical certainty, that Clarence suffers primarily from the mental disorder of schizophrenia.

Schizophrenia starts in early adulthood and is marked by premorbid and prodromal subthreshold symptoms leading up to full onset. People with schizophrenia typically have corresponding deficits in neurocognitive functioning, which persist even with medication. Schizophrenia is chronic and debilitating and affects every aspect of functioning.

Schizophrenia is a neurodevelopmental disorder. It is diagnosed based on the presence and severity of symptoms, including hallucinations, delusions, thought disorder, and negative symptoms. Symptoms are typically grouped into three domains: positive symptoms, which include delusions and hallucinations; negative symptoms, which include avolition, social withdrawal, loss of interest or motivation, and lack of hygiene; and thought disorder, which provides for impaired cognitive functioning in many areas (executive functioning, memory, attention and concentration, information processing and social cognition). Typically, the cognitive dysfunction results in unstable employment, poor relationships, and difficulty with independent living. To be diagnosed with schizophrenia, a person does not usually have all these symptoms. The presence of only positive symptoms is sufficient for diagnosis.

Schizophrenia is a complex neurodevelopmental disorder that in most individuals has a pre-illness lower than average intelligence that continues to decrease as the illness progress. However, there is a subgroup of individuals with high intelligence that tends to manifest continued high intelligence during the course of the illness and tend to manifest fewer negative symptoms. In some cases, these patients may appear normal to the untrained observer.

Based on my evaluation of Clarence and the available records reviewed, Clarence presents with both positive, cognitive, and negative symptoms of schizophrenia.

In patients who have schizophrenia, substance abuse is a common co-morbid condition. Clarence's history of substance abuse is consistent with the high rates of comorbidity substance-related disorders in schizophrenia.

Referral questions:

1. Is Clarence's mental state so distorted, or his concept of reality so impaired, that he lacks a rational understanding of the State's rationale for his execution?

   In my best opinion, Clarence suffers from a psychiatrically determinable impairment that significantly affects his ability to develop a rational understanding of the State's reasons for his execution.

   Clarence is disconnected with reality, especially as it relates to his legal case. His visual, auditory, and tactile hallucinations further aggravate his disconnect with reality. Clarence's thought process is contaminated by concrete thinking, which is common in those diagnosed with schizophrenia. Clarence's concrete thinking causes him to fixate on an issue that is unrelated to his execution, limiting his ability to abstractly consider why he is to be executed. This results in his inability to form a rational understanding of the State's reasons for his execution.

   Clarence holds a fixed delusional belief that his incarceration, conviction, and forthcoming execution stem from his wrongful arrest by the NAU police in 1985. That belief has no basis in fact—since it was the Flagstaff Police, *not* the NAU police, that arrested him (FPD 7027-7029)—nor is Clarence able to grasp that this belief has no basis in fact, which renders Clarence's understanding of why he'll be executed irrational.

   For decades, Clarence has fixated over and pursued this delusional belief to his detriment: He fired his court-appointed attorneys and represented himself at his capital trial after they refused to raise this factually baseless issue; and he has filed appeals over this issue nearly thirty times in numerous state and federal courts.

   Despite explanations from prior lawyers and the courts for why the issue is baseless, Clarence is unable to rationally understand why he has not obtained relief on this issue.

   Clarence's pro se filings reveal his delusional, paranoid, and conspiratorial thought content. He has, for instance, expressed the irrational beliefs that: his prior lawyers "purposefully exclude[ed] the [NAU] issue" (FPD 6547); courts have "refused and ignored applying relevant law" because of the nature of his crime and possibility of his release (FPD 6562); relief has been denied on this claim because "[t]he State is embarrassed that for many years [the NAU police] has operated without statutory authority[]" (FPD 6563); the courts' action on the NAU issue reflects their deliberate and "continued evasion" of his right to relief (FPD 6780); the courts have engaged in "obvious subterfuge" (FPD 6790, FPD 6952) and are purposefully in "collusion" to deny him his rights (FPD 6973-6980); that the "cumulative, continuous and concerted effort by state and federal judges on its face smacks of collusion and conspiracy or, at the least, complicity and the reader is left considering the circumstantial weight to tell if judicial collusion is found[]" (FPD 6980; *see also* FPD 6983); and that judges have engaged in deliberate "obstruction" in denying his NAU claim (FPD 6988) evidencing their "spirit of ill-will towards [him]" (FPD 7356–7357). Clarence also believes that the courts have denied his claim "because to follow and apply the law would have been politically disastrous, a dark embarrassment to the state universities." (FPD 6962.)

While Clarence can verbalize a surface awareness that the State intends to execute him for a crime that occurred in 1978 and for which he was convicted, it is my professional opinion that Clarence nonetheless lacks a rational understanding of the State's reasons for his execution. That is because, at bottom, Clarence ultimately believes that he will be executed because the NAU police wrongfully arrested him in 1985 and the judicial system—and actors in it, including his own lawyers—have conspired to cover up that fact.

As the records, Clarence's history, and my evaluations illustrate, while Clarence can verbalize an awareness of the legal process and has a limited capacity to exercise rational judgment in some areas of life, his beliefs about why he is incarcerated and why the State seeks to execute him are fundamentally irrational. His capacity to understand the rationality of his execution is contaminated by the schizophrenic process which results in his deluded thinking about the law, the judicial system, his own lawyers, and his ultimate execution despite multiple attempts over many years to disabuse him of his irrational beliefs.

2. Would Death Watch increase the likelihood that Clarence Dixon would manifest or experience a worsening of the impaired mental states described in Question 1? If so, why?

It is a well-known fact that extreme isolation of any individual leads to severe psychological and psychiatric distress; vulnerable individuals such as those with mental disorders are particularly more susceptible to decompensations.

In Clarence's case, the psychosocial and physical stress related to increased isolation, lack of any privacy, and 24-hour supervision is likely to worsen his delusional and paranoid thinking, initiate a new depressive episode, and worsen his anxiety. In the context of his blindness, deathwatch becomes a new challenge with new uncertainties that will challenge all of his acquired abilities to manage his blindness.

Under his circumstances, deathwatch isolation is analogous to psychological torture that is highly likely to lead to psychiatric decompensation.

Lauro Amezcua-Patino, MD, FAPA.

Lauro Amezcua-Patino MD

Digitally signed by Lauro Amezcua-Patino MD
Date: 2022.03.31 07:06:12 -07'00'

03/31/2022
Date

OTTO L. BENDHEIM, M.D.
CAMELBACK PROFESSIONAL BUILDING
5051 NORTH 84TH STREET
PHOENIX, ARIZONA 85018
TELEPHONE 955 1090

RECEIVED
SANDRA D. O'CONNOR
SEP 7 1977
JUDGE OF THE SUPERIOR COURT

FILED
Sep 14 1977

September 2, 1977

98107

The Honorable Sandra D. O'Connor
Judge of the Superior Court, Division 29 I
Superior Court Building
Phoenix, Arizona 85003

re: Clarence W. Dixon
Cr # 98107

Dear Judge O'Connor:

Clarence W. Dixon was examined upon your request. The examination took place at my office in Phoenix on August 26, 1977. The interview lasted for one hour and 45 minutes but due to the condition described below, the examination was not entirely satisfactory and no very definitive conclusion could be reached. For this reason the defendant was asked to return to my office on August 31, 1977. He was then given another hour and 15 minutes of intensive psychiatric interview on August 31, 1977. After spending more than the usual time with this defendant, I arrived at the following opinion:

Opinion

1. While the defendant is of normal or superior intelligence, while he is well oriented and fully aware of his present circumstances, he is so severely depressed, he blocks so much and hesitates between answers to the extent that many questions remained totally unanswered, that I feel he is at this time not able to stand trial; and while he understands the nature of the proceedings against him, he is not able to assist counsel in the preparation of his own defense.

2. While the defendant has a substantial and competent awareness of his legal rights, he cannot make competent decisions regarding the waiver of these rights. I feel that while he has a factual understanding of the consequences of entering a plea of guilty, this understanding is not rational because repeatedly during the interview the defendant said, "I just want to get sentenced. Maybe I should get sentenced and go to prison for three years," this with many tears, with suppressed sobbing and with the attitude of utter despair and desperate depression.

3. I believe that this man is suffering from very severe depression, possibly with an underlying psychosis. The exact nature of his mental illness could not be determined but a schizophrenic psychosis is considered to be the most likely diagnosis.

4. I consider it quite likely that given time and proper treatment, this defendant will become competent to stand trial within two to six months.

5. It is recommended that the defendant be admitted to the Arizona State Hospital for a period of intensive observation and therapy until his competency is restored.

001327

Opinion

6. In view of the police reports and the transcript of the preliminary precinct hearings, it is my opinion that there is a potential dangerousness to others. From my own observation, I found the defendant definitely "gravely disabled."

7. The victim of the alleged crime as well as the investigating police officer considered this man confused, disoriented and irrational at the time and shortly after the alleged offense. I would agree with this estimation of his mental condition and would further state that the possible motive, which the defendant mentioned in explanation of his act of violence, is irrational, and would indicate presence of serious mental illness.

One could conclude, tentatively, that he was not fully aware of the difference between right and wrong, not fully in control of his actions, not fully aware of the nature and consequences of these actions, and that he was unable to conform to the requirements of the law and of society at that time.

8. I have a strong feeling that without presence of the mental disturbance, the act of violence would not have taken place.

I had available background material made available to me through the courtesy of Paul Lazarus, Esq., of the County Attorney's Office. This material consisted mainly of police reports and transcript of the preliminary hearing. These were carefully reviewed and taken into consideration.

Examination

Identification

The defendant is a very slightly built, young adult, full blooded Navajo. He stands 5' 8", weighs only 115 pounds. He has long dark hair, wears eye glasses, has no beard. He appears quite poorly developed and the face appears quite emaciated. His expression is one of severe depression. There is much crying and suppressed sobbing during the entire interview. I believe that the defendant cooperated to the best of his capacity.

History

He told me that he was born in Fort Defiance in 1955. Both parents were full blooded Navajos. They were divorced after they had eight children. The father was a well educated high school principal, later an Educational Specialist for the BIA. He died following surgery on his legs several years ago. The mother is living and well. There are four brothers and three sisters living and well.

The defendant is not aware of any neurological or psychiatric disease within the family except that his father used to suffer from migraine headaches and consulted a psychiatrist in Farmington, New Mexico.

History

The defendant states that he was the only one of the eight brothers and sisters who got along with their father. The others did not like him and for this reason, he is the only one who is trying to achieve a college education.

The defendant was graduated from high school in Fort Defiance at age 19, with average grades. He is now attending Arizona State University with the objective of an engineering degree. At the present time he is working steadily as an automobile mechanic at a service station in Chandler. He has held thisjob for one year. Before that he held another similar job, also for about a year.

Health He states that his own health has been poor. He had cardiac surgery apparently for a valvular defect when he was 12 years of age. He states that he made a good recovery. He has never had any fainting spells, epilepsy, head injuries or any other serious illness except for heart disease.

Legal He has had no prior experiences with legal authorities except one arrest for disturbance of the peace in Window Rock some three or four years ago, when he was drinking and making a nuisance of himself.

Marital He was married a year and a half ago. There are no children. He describes his marriage as unhappy, which is described below.

Mental Status

He is very well oriented. He knows the exact time of day, day of week, date, etc. He knows the address of the professional building, knows that I am a psychiatrist, "a person trained to analyze mental disorders." He knows that he came in order to see "if I was mentally sane."

He knows that he is charged with assault with a deadly weapon, defines this term quite correctly, and knows that this would be criminal and punishable. He has an excellent idea of the functions of judge, jury and prosecuting attorney. After hesitating a great deal, he finally gives the name of his own attorney, Mr. Balkan. He hopes that he can trust him but, after long hesitation and much urging, he tells me that he cannot tell his own attorney everything that he knows. Neither can he tell me, his court appointed psychiatrist, because it is too difficult and he just cannot talk.

He tells me however that he remembers all the incidents on that particular night. He had not been drinking, he had not been taking any illegitimate drugs, marijuana, etc.

He has an excellent understanding of the meaning of waiver of rights but I do not believe that he can act rationally upon such a decision because on several occasions he assures me that he wants to be sentenced and put into prison, that he is very remorseful, and that he is totally puzzled, bewildered, and cannot talk about what has happened.

He has an understanding of the meaning of plea of guilty, knows its consequences, "a prison sentence," but again I do not believe that he can rationally enter such a plea.

Mental Status

I tried to go over the scene of the crime again and again. The defendant is unable to open up, relax and talk about it, except as mentioned on a separate page. He did tell me however, "I was irrational that night."

The defendant displays a superior intelligence, good fund of general knowledge, excellent mathematical abilities, sufficient capacity to interpret proverbs, define differences, etc. etc.

I found no evidence of true delusions or hallucinations with the one marked exception of a possible delusional thought content at the time of the act of violence.

Throughout the entire interview the defendant spoke in a low, monotonous voice, interrupted by sobbing and crying, and at times inaudibly low so that I had to repeat my questions frequently. Often there was a pause of one to three minutes before he could answer. Often he did not answer at all.

During the second interview, on August 31, 1977, the defendant was equally depressed, blocked, appeared at times retarded in psychomotor activities, and always preoccupied with most unpleasant and sad thoughts. His facial expression was one of utter despair, the voice again very low, at times unintelligible, and he cried on several occasions.

He readily admitted to me that something was wrong with him and that he didn't know quite what it was. When I suggested that he undergo treatment for his obvious severe depression, he hesitated for a long time and then came up with his fear that if he were to be hospitalized at this time, it would curtail his progress in college and he may lose an entire semester. I indicated to him that in his present condition, he could hardly be expected to perform well in engineering school, whereupon he answered that somehow he feels he could handle his studies, this not brought forth with a great deal of conviction, and again was interspersed with sobbing, hesitation, ambivalence, doubtfulness and uncertainty.

When I asked him to go again over the alleged crime, he made a statement very similar to the one given on a separate page, which he had made during the previous interview.

He again talked aboutthe unhappiness in his marriage, the fact that he had considered divorcing his wife on several occasions, that while he has not displayed any violence in her presence nor had any intent to hurt her, nevertheless he did not consider it impossible at all that a substitute for his wife, for instance the victim who was totally unknown to him, could have served as an object of his suppressed despair, anger and disappointment in his wife.

Respectfully submitted,

OTTO L. BENDHEIM, M. D.

OLB:dl

001330

5.

Name Clarence W. Dixon

77 009016 Date 8/26/77

COMPETENCY TO STAND TRIAL

1. Does the defendant have the mental capacity to appreciate his presence in relation to:

A. Time — 11:30 AM, Friday, August 26, 1977

B. Place — Professional building in Phoenix

C. Person — You are a psychiatrist, a person trained in analyzing mental diseases

D. Things — to see if I was mentally sane

2. Are his mental processes such that he apprehends that he will be in a court of justice charged with a criminal offense? yes

A. What is the charge? — assault with a deadly weapon

B. Definition — assault - striking someone
deadly weapon - any object that could inflict harm upon a person

C. Is this a crime? — yes

D. Is it punishable? — yes

3. Does he apprehend that there will be a judge on the bench? yes

A. What is his function? To see that justice is carried out for both sides

4. Does he apprehend that a prosecutor will be present who will try to convict him of a criminal charge? yes

What is his function? — to defend the State and the innocent

5. Does he apprehend that there may be a jury present to pass upon evidence adduced as to his guilt or innocence of such charge? yes

What is its function? — they make the final decision whether a person is guilty or not guilty

6. Does he apprehend that he has a lawyer who will undertake to defend him against that charge? yes

What is his name? — Mr. Baikan

001331

6. Name Clar[illegible]e W.Dixon

COMPETENCY TO STAND TRIAL 77 009016

7. Does the defendant believe that he can trust and confide in his lawyer?

Yes

8. Does the defendant apprehend that he will be expected to tell his lawyer the circumstances and the facts surrounding him at the time and place where the law violation is alleged to have been committed, to the best of his mental capacity (whether colored or not by mental aberration)?

Long hesitation -- I don't want to tell him everything

9. Does the defendant have memory sufficient to relate those things in his own personal manner? yes

A. Was he intoxicated? no

1. How much did he drink? nothing

2. In what period of time?

3. Had he eaten during the 12 hour period prior to the event? yes

B. Was he under the influence of alcohol? no

C. Was he under the influence of drugs? no

1. Name of drugs none

2. Quantity

3. Time of consumption

10. Waiver of rights

A. What is meant by waiver of rights? when you push away your rights

B. Do you know that you do not have to talk to me about the events leading to the charges? yes

C. If you choose to talk to me about this, do you know that your statements will be quoted in my report to the court? yes

11. What does a plea of guilty mean? It means to admit that you have done something wrong.

12. What are the consequences of entering a plea of guilty? a prison sentence

OTTO L. SHNEIDER, M. D.

001332

Defendant Statements pertaining to events leading to charges

The following statements were made by the defendant voluntarily, knowing that his remarks would be quoted to the court. He understood that he did not have to talk to me about the events.

The defendant stated that on the night of June 4 he felt quite bad. He had had difficulties with his wife, particularly since the visit of her little nine year old brother. The defendant felt that in the presence of her brother, his wife had tried to be a fine wife, an exemplary housekeeper etc., but when there were no witnesses, she would treat him, the defendant, like a little puppy or infant. She would just sit around the house reading, sleeping, doing nothing, some times not even cooking for him. "She would just do nothing."

He was particularly irritated with her and on that particular day, he had had a fight with three customers, a fight which he had provoked. He had told one of the customers that he considered him stupid because the customer asked where he should put the oil into his car. After the defendant called him stupid, the customer called him a dumb Indian, was sarcastic and the defendant began a fight with all three of them. He was beaten up by the three.

Later on at midnight, he left his service station at the termination of his work, but instead of going home, he drove around; then parked silently somewhere in the neighborhood; then proceeded to drive again; got out of his car, took a metal pipe into his pocket, and when he approached the victim, whom he did not know at all, he made an innocent remark to her and then hit her over the head.

When I asked him how he could explain this, there was a long pause of perhaps two minutes. He could not talk, just sobbed and cried, then came out with the following statement, "Some times I keep thinking that this girl was my wife. Maybe subconsciously I wanted to hit my wife. She does not do anything, she sleeps and sits around." He then gives an expression of extreme unhappiness, again blocks, is unable to talk, unable to make any further statements.

OTTO L. BENDHEIM, M. D.

001333

MAIER I TUCHLER, M.D.
6415 NO 26TH STREET
PHOENIX, ARIZONA 85018
955-6470

FILED
Sep 14 1977 11:24 am
WILSON D. HUDSON, Clerk
By B. Bowers Deputy

RECEIVED
SANDRA D. O'CONNOR
SEP 15 1977
JUDGE OF THE SUPERIOR COURT

September 2, 1977

The Honorable Sandra D. O'Connor
Judge, The Superior Court
Maricopa County Courthouse
Phoenix, Arizona 85003

Re: Clarence W. Dixon
CR: 98107

Dear Judge O'Connor:

Clarence Dixon presented at this office in the afternoon of August 29, 1977, for psychiatric evaluation pursuant to your authorization. The following is a report.

Clarence Dixon is a twenty-two year old Navajo, born at Fort Defiance August 2?, 1955. He was educated at Window Rock High School between 1971 and 1972, with further training at Huntington Park night school when working in Los Angeles as a gas station attendant in 1972 to 1973. He returned to Chinle where he lived with his mother, attended Chinle High School and graduated in 1974.

The above brief resume was reported in a soft spoken voice which could hardly be heard, with much blocking. He spoke in monosyllables and although the material above presented is relatively without sensitivity, he had great difficulty in reporting even so brief a history.

He moved with his mother to Tryea from Chinle after his father died in 1975. His father was a teacher in Chinle. Clarence is the fourth of a sibship of eight.

As a boy of twelve he was treated at Children's Hospital in Phoenix for heart murmur and underwent cardiac surgery.

Since the Summer of 1976 he has been attending A.S.U. and is starting his sophomore year. He is living in Tempe with his wife at 950 South Terrace Road. He married in 1976. His wife is a navajo whom he met at Window Rock. The above few paragraphs were obtained with great difficult and it was equally difficult for the patient to report that he had been involved in disturbing the peace in Window Rock. He was arrested for disturbing the peace while intoxicated at a friend's home.

He recognizes that he becomes personally disturbed when drinking which leads to his spontaneous comment that his wife states he does not care about anything or anybody. He describes many bouts with loneliness and on June 5th, he reported he had had a bad day at work. He works at a service station between three and eleven o'clock, in Chandler, a job he has held since August of last year.

He got into a quarrel with a Chicano when out in a tow car, pulling a broken down vehicle to the station. He was on his way home when the incident occurred. He states he didn't feel like going home although he does not know what got him upset. He pulled off a side street and parked. He sat in the car for fifteen minutes he recalls, stating "It was a nice night."

He does not know why he put a pipe in his pocket and walked. He related the facts of the incident quite as he had reported them to the police. As he reports his history, in those areas of sensitivity, he blocks and breaks into tears.

It becomes obvious that he has had difficulties with his marriage. She wanted him to live at home and on one occasion he went to the gas station where he stayed over night. His wife broke windows in their apartment and called the police on him when they were having a fight. He states, "It was all saved up, all my anger."

There is no immediate history of drugs involving alcohol, the usual psychedelics or l.s.d. While living in Los Angeles he tried cocaine, barbiturates and marijuana but there is no evidence of drug intoxication prior to this reported incident.

In reviewing the Justice Court transcripts of June 22, 1977, the arresting office, Mr. Philip Cicero, reported the patient seemed confused but could not give the officer a reason why he did it.

On this date Mr. Dixon is able to review the Constitutional rights waived on entering a plea of guilty which were read to him, and he was able to respond with a moderate degree of blocking but certainly with comprehension of the consequences of entering such a plea of guilty , on both a rational as well as a factual basis.

He understood he was to appear before a Judge, before a jury with prosecution and defense attorneys pleading each side of the alleged assault with a deadly weapon for which he is charged.

Clarence is a college level student but it is extremely difficult to understand through this examination, the degree of his emotional difficulties for the mental status examination reveals several characteristics which are clearly abnormal. Although he is oriented for time, place and person, and is fairly well educated, he is exceedingly slowed in responses, markedly withdrawn and obviously depressed. Blocking is characteristic and has prolonged the interview interminably.

As the patient reports on his relationship with his wife, his contents become somewhat bizarre and it is the opinion of this examiner that Clarence Dixon was under the delusionary belief that the victim, Christy Guerra, may have been identified in his mind as his wife. In other words, he was slashing out at a stranger while responding to fantasies that he was attacking his wife.

His marriage is indeed in a stormy situation and much rage is felt toward the wife although he has great difficulty expressing it. It is the opinion of this examiner that at the time of the commission of the offense Clarence Dixon was presenting a transient mental illness in which reality was lost to him, and he presented as an undifferentiated schizophrenia.

I would thus feel that he is not now competent to stand trial although he is able to

understand the nature of the proceedings against him he cannot assist counsel in the preparation of his defense. At this time he presents symptoms of undifferentiated schizophrenia, in partial remission.

He remains depressed and is markedly blocked and has great difficulty controlling his tears. His affect is flat and it is exceedingly difficult to make contact with him. This is the type of case where a second and a third interview are frequently needed as well as an interview with the patient's kinfolk.

Lacking this latter opportunity, I would urge that he be evaluated at the State Hospital for I would consider him dangerous to self and probably gravely disturbed. That he has been dangerous to a fifteen year old is in evidence.

This undifferentiated schizophrenia is the cause of the incompetency. The defendant may become competent to stand trial after reasonable treatment at the State Hospital as recommended in view of his therapeutic needs and potential danger to the community.

Very truly yours,

Maier I. Tuchler M.D.

Maier I. Tuchler, M.D.

mit:mgf

ARIZONA DEPARTMENT OF CORRECTIONS
Arizona Correctional Training Facility
Route 7, Box 777
Tucson, Arizona 85777
Telephone (602) 294-3451

DATE TESTS BEGUN 23APR1981
DATE TESTS COMPLETED 23APR1981
DATE OF REPORT 28APR1981

NAME: Dixon, Clarence Wayne 38977 ISSUE: P-12 FILE NUMBER: ARIZACTF-127

AGE: 25 GENDER: MALE REFERRED BY:

P S Y C H O L O G I C A L R E P O R T

This 25 year old prisoner is here evaluated from a mental health standpoint; thus the focus and language of this report are directed toward such a context.

INTELLECTUAL FUNCTIONING

Inmate Dixon achieved an IQ of 106, a level of functioning best described as high average. (For full listing of tests and scores, see technical appendix.) Psychosis may be producing inefficiency of intellectual functioning; the prisoner may be more competent than the IQ data imply.

TEMPERAMENT AND HABITS:

Inmate Dixon is a highly introverted person who seeks stimulation from his own thoughts and feelings. His friendships are likely to be few, long lasting and quite deep. The pattern also suggests a pessimistic outlook on life.

The prisoner operates on an intuitive, feeling level, with much less regard for rationality and hard facts. He may find it easy to empathize, to understand, and to respond to subtleties of feeling, but can thus be easily hurt, and may err in his judgments by overdependence on intuition and on personal relationships.

001161

Inmate Dixon is a person who takes his responsibilities more seriously than the average person, but without excessive moralizing. Conflict with less dedicated people may be a problem, but his dependability and discipline can be desirable features.

The prisoner is likely to be fairly tactful in dealing with people, but may experience some difficulty when openness and candor are required. Situations in which relations with people are on a superficial level are most congenial; those which stress expression of genuine feelings less so.

Inmate Dixon is more in tune with broad goals than with the details of their accomplishment, but not to any extreme degree. He will be most comfortable in situations where creative effort is more valued than highly objective focus.

MOTIVATIONAL PATTERNS:

Inmate Dixon seeks status and prestige through (usually legitimate) self assertion. Habits of status striving seem more involved than deep seated need; one may expect less concern about prestige as the situation permits or reinforces giving priority to other goals.

The prisoner is highly motivated toward career success. However, while he deeply desires vocational achievement, he has not developed the habits and daily behaviors that lead to such accomplishment. He needs opportunities, supervision, encouragement, counseling; otherwise, he will have to settle for less than the fulfilment of the career goals.

Inmate Dixon values sensual pleasure and responds strongly to sexual and romantic stimulation. Much of this orientation is at the level of desire rather than fulfilment and thus some frustration is implied. Counseling, increased sexual opportunity, or diversion of sexual energies into sublimated forms of expression all may help resolve the substantial conflict.

Looking at less intense motives that contain conflict, Inmate Dixon vaccilates between independent, mature behavior and feelings of dependency upon the parents. Continuing, low level efforts to complete the emancipation process, or to accept limited dependency, can be anticipated.

PSYCHOPATHOLOGY

The prisoner reported grossly disturbed perceptual and thought patterns, clear paranoid ideation, feelings of frustration, and moderate agitation. The pattern of data is that most typical of a severely confused and disturbed prisoner.

THERAPY AND PROGNOSIS

Specific suggestions about treatment for this prisoner tend to be redundant with the report of symptoms. However, some additional factors can be reported. Since distorted thinking and perception have been rather clearly reported by Inmate Dixon, suppression of schizophrenic symptoms is quite likely to help control the disorder. Some elements of chronicity suggest a guarded prognosis with treatment.

TECHNICAL APPENDIX

The following scores have been analyzed in the preceding narrative; they are printed here for future use as a basis for assessment of change, or as an aid in addressing new issues.

ABILITIES AND APTITUDES

ALL SCORES ARE EXPRESSED IN THE "IQ NUMBER SYSTEM" (M=100,SD=15) FOR EASE OF COMPARISON. "BAN" REPRESENTS A SCORE BELOW ALL NORMS.

CULTURE FAIR INTELLIGENCE TEST, SCALE 2: IQ = 106

SUMMARY OF ACHIEVEMENT GRADE LEVELS:

READING = 12.0
ARITHMETIC = 8.9
WRITING = 11.7

EDUCATION COMPLETED (IN YEARS, AS REPORTED BY THE CLIENT): = 14

SIXTEEN PERSONALITY FACTOR TEST, FORM C
Norms used = Male Inmates, Arizona

?	STEN SCORE	FACTOR	LOW MEANING	PROFILE 1 2 3 4 5 6 7 8 9 10	HIGH MEANING
	7	A	RESERVED		OUTGOING
	8	B	DULL		BRIGHT
	8	C	EASILY UPSET		CALM
	3	E	SUBMISSIVE		DOMINANT
	1	F	SOBER, SERIOUS		HAPPY-GO-LUCKY
	7	G	EXPEDIENT		CONSCIENTIOUS
	2	H	SHY, TIMID		VENTURESOME
	6	I	TOUGH-MINDED		TENDER-MINDED
	4	L	TRUSTING		SUSPICIOUS
	7	M	PRACTICAL		IMAGINATIVE
	8	N	FORTHRIGHT		SHREWD
	5	O	PLACID, SERENE		APPREHENSIVE
	6	Q1	CONSERVATIVE		EXPERIMENTING
	9	Q2	GROUP ORIENTED		SELF DIRECTED
	4	Q3	UNDISCIPLINED		DISCIPLINED
	7	Q4	RELAXED		TENSE, DRIVEN
	8	MD	OPEN		DEFENSIVE

ITEM RESPONSES BY POSITION: LEFT = 45, MIDDLE = 11, RIGHT = 49.

COMPOSITE SCORES FROM PERSONALITY FACTOR DATA

ANXIETY LEVEL	5.3	INDEPENDENCE	5.1	EXTROVERSION	1.7
NEUROTICISM	6.6	BEHAVIOR CONTROL	5.7	DISCREETNESS	8
EMOTIONALITY	9.4	ACTING-OUT TENDENCY	4.6	SUBJECTIVISM	7

VOCATIONAL INFERENCES FROM PERSONALITY FACTOR DATA

INTERPERSONAL CONTACT PREFERENCE	4.4	ATTENTION TO DETAIL	7.3
LEADERSHIP ROLE COMPATIBILITY	3.9	REGARD FOR RULES AND REGULATIONS	5.6
SCHOOL ACHIEVEMENT ORIENTATION	7.4	CREATIVE ORIENTATION	7.7
ON-THE-JOB GROWTH TENDENCY	8.8	HUM = 8 INT = 7	

001163

28APR1981 Dixon, Clarence Wayne 38977 PAGE - 4

CLINICAL ANALYSIS QUESTIONNAIRE, PART II
Norms used = Male Inmates, Arizona

?	STEN SCORE	FAC	PROFILE 1 2 3 4 5 6 7 8 9 0 1 2 3 4	HIGH SCORE MEANING
	4	D1	*	OVERCONCERNED WITH HEALTH MATTERS
	5	D2	*	DISGUSTED: THINKS OF SELF HARM
	7	D3	*	RESTLESS; EXCITED; HYPOMANIC
-2	9	D4	*	EASILY UPSET; FEELS DISTURBED
	7	D5	*	FEELS WEARY; LACKS ENERGY TO COPE
-1	8	D6	*	BLAMES SELF; FEELS GUILTY
	9	D7	*	BORED WITH PEOPLE; WITHDRAWS
-1	10	PA	*	FEELS GRANDIOSE, SINGLED OUT
-2	6	PP	*	CONDONES ANTISOCIAL ACTS
-2	9	SC	*	HALLUCINATES; DISTORTS REALITY
	3	AS	*	HAS REPETITIVE THOUGHTS & IMPULSES
	4	PS	*	FEELS WORTHLESS, INCOMPETENT

ITEM RESPONSES BY POSITION: LEFT = 46, MIDDLE = 31, RIGHT = 59.

COMPOSITE SCORES

FEELINGS OF DEPRESSION	6.2	FEELINGS OF CONFUSION, INADEQUACY	8.6
OVERT DISTRESS	3.6	BIZARRE (PSYCHOTIC) THOUGHTS	7.2
ANTISOCIAL BEHAVIOR TENDENCIES	4.7	RISK OF DANGER TO THE SELF	5.6
DENIAL OF PSYCHIATRIC SYMPTOMS	4.4		

MOTIVATIONAL ANALYSIS TEST

UNINT	INTEG		PROFILE * 1 2 3 4 5 6 7 8 9 10		TOTAL	CONFLICT
9	5	Ca	I U	Career	8	10
7	3	Ho	I U	Home/Parent	5	10
6	5	Fr	I U	Fear	6	7
3	7	Na	U I	Narcism	4	1
5	7	Se	U I	Superego	6	4
3	5	SS	U I	Self Sentiment	2	4
9	5	Ma	I U	Mating/Sex	8	10
3	4	Ps	U I	Pugnacity	1	5
7	9	As	U I	Assertiveness	10	3
5	6	Sw	U I	Sweetheart	5	5

* I = Integrated
U = Unintegrated
B = Both scores same

TOTAL INTEGRATION 6
TOTAL CONFLICT 7

001164

ARIZONA DEPARTMENT OF CORRECTIONS
Arizona Correctional Training Facility
Route 7, Box 777
Tucson, Arizona 85777
Telephone (602) 294-3451

DATE TESTS BEGUN 23APR1981
DATE TESTS COMPLETED 23APR1981
DATE OF REPORT 28APR1981

NAME: Dixon, Clarence Wayne 38977 ISSUE: H-40 FILE NUMBER: ARIZACTF-127

AGE: 25 GENDER: MALE REFERRED BY:

Psychological Report to Medical Staff

LIFE STYLE PATTERNS:

Inmate Dixon is a highly introverted person who seeks stimulation from his own thoughts and feelings. His friendships are likely to be few, long lasting and quite deep. The pattern also suggests a pessimistic outlook on life which may predispose depressive feelings at critical times in the life process.

The prisoner operates on an intuitive, feeling level, with little regard for rationality and hard facts. The continuous risk of emotional insult engendered by this oversensitivity subjects the prisoner to some physiologic stress, and the pattern is unlikely to change greatly without major psychological intervention.

Inmate Dixon is a person who takes his responsibilities more seriously than the average person, but without excessive moralizing. Conflict with less dedicated people may be a problem, but his dependability and discipline can be desirable features.

The prisoner is likely to be fairly tactful in dealing with people, but may experience some difficulty when openness and candor are required. Situations in which relations with people are on a superficial level are most congenial; those which stress expression of genuine feelings less so.

Inmate Dixon is more in tune with broad goals than with the details of their accomplishment, but not to any extreme degree. He will be most comfortable in situations where creative effort is more valued than highly objective focus.

MOTIVATIONAL PATTERNS:

Inmate Dixon seeks status and prestige through (usually legitimate) self assertion. Habits of status striving seem more involved than deep seated need; one may expect less concern about prestige as the situation permits or reinforces giving priority to other goals.

The prisoner is highly motivated toward career success. However, while he deeply desires vocational achievement, he has not developed the habits and daily behaviors that lead to such accomplishment. He needs opportunities, supervision, encouragement, counseling; otherwise, he will have to settle for less than the fulfilment of the career goals.

Inmate Dixon values sensual pleasure and responds strongly to sexual and romantic stimulation. Much of this orientation is at the level of desire rather than fulfilment and thus some frustration is implied. Counseling, increased sexual opportunity, or diversion of sexual energies into sublimated forms of expression all may help resolve the substantial conflict.

Looking at less intense motives that contain conflict, Inmate Dixon vaccilates between independent, mature behavior and feelings of dependency upon the parents. Continuing, low level efforts to complete the emancipation process, or to accept limited dependency, can be anticipated.

HEALTH RISK PATTERNS:

Inmate Dixon stands at only average risk from stress related disorders. If symptoms of such conditions do appear, the prisoner should repond to counsel regarding conscious stress avoidance / reduction, coupled, of course, with appropriate medical management of the disease process.

Focussing specifically upon coronary artery disease, Inmate Dixon stands at less than average risk from a psychological standpoint. Thus, no remedial steps, other than appropriate medical care, seem indicated.

The prisoner seems able to give normal attention to the demands of risky situations; he does not seem "accident prone". There are no guarantees, but it seems that Inmate Dixon needs only to exercise normal caution, and is likely to do exactly that

MEDICAL / PSYCHIATRIC FACTORS (FOR PHYSICIAN USE):

Inmate Dixon shows evidence of substantial, generalized psychotic pathology, which tends to make his behavior withdrawn and ineffective. Anti-psychotic drugs may well improve performance and personal well-being. Since extreme paranoid ideation was also shown, a medication like "Stellazine" may be worth considering. Some arrangement to monitor possible side effects should be made. "Haldol" is likely to be an effective substitute for the phenothiazines if blood pressure is elevated, or if photosensitivity or other skin problems should arise. Substantial doses of any "major tranquilizer" may, of course, require covering dosage of anti-parkinsonian agents.

The medical suggestions above need to be considered within a framework of two major reservations, as follows:

(1) While the decision logic used conforms to generally accepted psychiatric standards, it cannot substitute for the judgment of the physician who accepts and exercises his responsibility for his patient.

(2) The suggestions are based upon limited knowledge of the inmate, and upon data that can, by their nature, never be perfect.

BILTMORE EVALUATION AND TREATMENT SERVICES

Clinical, Forensic, Neuropsychological
207 East Monterey Way, Phoenix, AZ 85012
Telephone: (602) 957-8822 Fax: (602) 957-0777 email: jtoma@biltmoreevaluation.com

Neuropsychological/Psychological Evaluation

CONFIDENTIAL

Client Name: Clarence Dixon **Date of Birth:** 08/26/55
Age: 56 **Sex:** Male
Ethnicity: American-Indian/Navajo **Language:** English
Referred by: Kerrie Droban, Esq. **Examiner:** John J. Toma, Ph.D.
Court Number: CR2002-019595 **Dates of Evaluation:** 04/18; 04/19; 05/02; 06/26/12
Date of Report: 06/30/12

Reason for Referral:

Ms. Droban, who was the attorney for Mr. Dixon, requested a full neuropsychological and psychological evaluation of her client and a report of the findings as they may relate to the planning of Mr. Dixon's defense.

Evaluation Process:

Mr. Dixon was evaluated and tested in semi-private rooms, in the Browning Unit, at the Arizona Department of Corrections facility. The evaluation consisted of clinical interviews and several neuropsychological and personality tests. Overall, over fourteen hours were spent in direct contact with Mr. Dixon.

Limits of Confidentiality:

Mr. Dixon had been informed by his attorney of the examination. He authorized the release of this report to his attorney and legal team. He was apprised of the limitations to confidentiality as a result of the disclosure of information that would indicate a danger to him or others and of my record keeping policies which conform to state and federal guidelines.

Outside Sources of Information:

Ms. Droban provided several documents for my review which are listed in Appendix A of this report.

Acculturation Assessment:

Racial, ethnic, spiritual and cultural background was taken into account when completing this evaluation. A general acculturation assessment was conducted in accord with the DSM-IV-TR - Outline for Cultural Formulation. Mr. Dixon's cultural and spiritual identity, cultural and spiritual explanations for presenting problems, cultural factors related to psychosocial environment and levels of functioning, cultural elements of the relationship between the

examiner and the client, and overall cultural and spiritual factors related to diagnosis and testing, were thoroughly examined and considered with all of the data available during this evaluation.

Mr. Dixon is an American-Indian who is affiliated with the Navajo Nation of Arizona. He was born on the reservation at Fort Defiance. His primary language is English but he stated that since he has been imprisoned he has taught himself the Navajo language (Diné Bizaard). Although Mr. Dixon reported that he has taught himself his native language, when asked if he felt he was connected to the Navajo culture, he responded, "I don't feel connected." He elaborated, "But I'm very proud that I taught myself to read and write in Navajo." He added, "When I daydream about getting out I dream about finding a place in New Mexico, near the reservation but off the reservation, and building myself a Hogan with a basement."

When asked about his spiritual beliefs, he stated that he was reared with the Methodist beliefs and generally referred to himself as a "Methodist" until his "third or fourth year of prison." He said that at that time "I started going to the sweat lodge until January of 1993 but they don't have it on death row." He reported that he is "more or less Agnostic" now in terms of his spiritual beliefs.

There were no barriers to the free exchange of information as Mr. Dixon's primary language is English. I did not see a spiritual or cultural foundation for a mental illness, nor did I see any reason, based upon his beliefs and practices, to modify any of the tests.

Tests Administered:

Intelligence:

Wechsler Adult Intelligence Scale – IV (WAIS-IV)

Language:

Woodcock Johnson-III Tests of Achievement, Passage Completion Subtest
Benton Controlled Oral Word Association Test (COWAT)
Categorical Fluency Test (CFT)
Boston Naming Test

Sensorimotor:

Halstead-Reitan Battery – Finger Tapping Subtest
Halstead-Reitan Battery – Hand Dynamometer Subtest
Halstead-Reitan Battery – Trail Making A Subtest
Halstead-Reitan Battery – Tactual Performance Subtest (TPT)
Grooved Peg Board (GPB)
Handedness Questionnaire

Memory:

Rey Complex Figure Test (RCFT)
Logical Memory Subtest of the Wechsler Memory Scale-III
California Verbal Learning Test-II (CVLT)

Tests of Effort/Malingering:

Test of Memory Malingering (TOMM)
Rey 15 Item Memory Test (RMT)

Auditory Perception/Attention:

Halstead-Reitan Battery – Speech-Sounds Perception Subtest (attempted)
Halstead-Reitan Battery – Seashore Rhythm Test
Mesulam Cancelation Test (attempted)

Executive Functioning:

Wisconsin Card Sorting Test (WCST)
Halstead-Reitan Battery – Booklet Category Test (BCT)
Halstead-Reitan Battery – Trail Making B Subtest
Stroop Color Word Association Test (attempted)

Personality Tests:

Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
Thematic Apperception Test (TAT)
Rorschach Inkblot Test

BACKGROUND

Mr. Dixon reported that he was found Not Guilty by Reason of Insanity (NGRI), for a crime committed in June, 1977. He stated that he was civilly committed to the Arizona State Hospital in January, 1978 but was "never picked-up." He was subsequently arrested and convicted for a burglary and assault. He was sentenced to five years in prison. Following this prison sentence, he was arrested and convicted of several charges related to sexual assault of a woman in 1985. While in prison, in 2002 he was charged with the murder of a woman that occurred, just two days after he was found NGRI in 1978. He explained, "I was in prison and there was a DNA match." He was convicted of this crime and sentenced to death.

Mr. Dixon was married for 2 ½ years and was divorced while in prison in 1979. He reported no current relationship with his ex-wife and they did not have children. Both of his parents are deceased. His father died at the age of forty-eight (in 1975), from a heart condition and his mother died in 2002, at the age of seventy-six. He has three brothers and two sisters. He thought his brother Perry (age fifty-eight) lived in Phoenix. His brother Duane (now fifty-five) lives in Fort Defiance. His brother Willard (age fifty-three) resides in Phoenix, "I guess." His oldest sister Ellen (age sixty-two or sixty-three) lives in Minnesota and his sister Lotta (age fifty-four) resides in Fort Defiance. He has not had contact with his sister Ellen since his father's funeral in 1975. His other siblings have refused to have contact with him since his mother's death in 2002. He said that his siblings "got mad" at him because he did not attend his mother's funeral "but I didn't have the money." Mr. Dixon reported no relationships or connections to anyone outside of the prison.

Mr. Dixon was fully cooperative and open during this evaluation. His disclosures were reasonably consistent with the records that were provided for my review. The test results, given his eyesight limitations, are believed to be an accurate reflection of his current functioning.

Early Development/Middle Childhood:

As indicated above, Mr. Dixon was born in Fort Defiance, Arizona. When I asked him about his birth history, he responded, "My mom told me that I was a breach baby. I came out

butt first. I was born in the PHS ("government hospital"). I was born in the early morning and I was born a month premature. My mom said I was in the incubator for a month." He thought, however, that he reached developmental milestones in a timely manner but later told me that he did not speak until the first grade and that he was held-back a year in kindergarten. He also recalled that was born with a heart murmur for which he later received surgery.

Mr. Dixon said that his mother was a "homemaker" during his childhood and that his father was a teacher and eventually a principle in the school system. His father also apparently held a position as an "Education Specialist" for the BIA (Bureau of Indian Affairs) at one point in his career. Mr. Dixon described his father as "a very smart man but flawed like everyone else." He said that his father was a "Methodist" who did not drink or smoke. His father apparently was "a dissertation short of a Ph.D." He said that others referred to his father as "It" (the English word for a word they used in Diné) because he "married the prettiest girl in high school" and because the school team, which his father coached, "won the state championship." Mr. Dixon noted, however, that his father had several extramarital relationships and that he had several illegitimate children throughout the reservation. He added, "We would have toys and they would disappear. I think he was taking them to my half-siblings throughout the reservation."

When Mr. Dixon was asked about his earliest memories, he recalled, "I guess I was three- or four-years-old and my father was doing this dirt road from the house he was building - my mother's house on her land." He further explained, "My mother's father was a big shot in the army and he got a bunch of land when he retired. My mother got acres of land. My father was a public school teacher and he worked on building my mother's house evenings and weekends. My earliest memory is that I remember crying because he was leaving me behind."

Mr. Dixon initially described his early childhood as being "enjoyable, fun, carefree but nowadays troubling." He said that he had a heart condition resulting in low blood pressure to his legs. He recalled that as a child, on the reservation, "we ran all over bare foot." He elaborated, "I had big calluses on my feet. My legs and feet would hurt in the afternoons because of my heart murmur." He added, "My mother used to be always mad at me for needing to be taken to the hospital. One time she threw a Campbell's soup at me and hit me. I just ran into the tool shed." He said that he was always "treated differently" than his siblings because of his heart problem and the related problems with his legs and feet. He explained, "They [*referring to his parents*] were a little more distant. I didn't feel connected to my mother. I really didn't feel connected to anyone." He said that his siblings "weren't around" and that he spent most of his childhood doing things "alone."

Mr. Dixon said that he "feared" his father. He explained, "He had a temper. I don't remember him beating my mother but he beat us though. Not often but we knew that his word was law when we were really young. A lot of people respected him because he was a dissertation away from a Ph.D." Mr. Dixon described his father with, "He was an excellent provider but a lousy father." He said that he did "not really" feel a connection to his father. He emphasized, "I didn't feel connected to anyone." He recalled that his father saw a psychiatrist for what he believed was related to "trying to balance out his mood. My father was on drugs in the 1960's. He was an angry man. A distant man. There were times when he was friendly and loving but most of the time I was afraid of him. He was mean."

Mr. Dixon said that both of his parents frequently put him down by calling him names such as "stupid." He said his father always called him "stupid" and that his mother "just parroted him." He added, "I was pushed and pulled in both directions. You had to handle the old man a

certain way – walk on eggshells." He described his mother as being a "passive woman." He elaborated, "I loved her to death but I had no respect for her. I guess I dislike women because of her." He recalled, at this time in the evaluation, "I have an anger issue - probably from my father. When I used to do stuff he used to be mad." When I asked him for an example, he recalled, "Like when I was helping build the foundation he would call me a 'stupid ass' and say things like 'don't be doing it that way.'" He then emphasized that his father was a "big shot" because he was an "Education Specialist" for the BIA and "a lot of people thought highly of him." The contrast between how he felt towards his abusive father and how others' perceived his father was something Mr. Dixon appeared to still be struggling with."

Mr. Dixon remembered that he was always hungry. He explained, "We had a beautiful Irish Setter and we went to Gallup, NM every two weeks to buy a big bag of dog food. I used to eat dog food throughout the day. My father had all this expensive stuff and yet we were hungry. He would buy cameras and stuff to pick-up women."

Mr. Dixon said that because he was held back a year in kindergarten he was in the same classes as his brother Duane. He said that they were not permitted to learn the Navajo language in school because "it was against the law." He stated that he performed well in school but remembered that he had to wear shoes that were "too small" in the fourth and fifth grades. He stated that because of this "both of my big toes are in-grown." He remembered that he had to walk to the hospital, several miles on his own, for surgery and that his toes were bleeding. He recalled this event to have occurred when he was eight or nine. He also remembered that in the third grade, when he thought that he was about ten or eleven, he was "extremely depressed." He explained, "I remember being in the playground all by myself. I had no friends. I just cried because I felt so alone. I was extremely tired and felt separated from everybody." He recalled that he experienced this "extreme depression" twice that year. The second time was when he sat alone in a field on a concrete block. He added, "I had the same feelings."

At around the age of ten, Mr. Dixon remembered that his family spent two summers in Hogan, Utah. He said that his father was "working toward his doctorate." He recalled that he was given a model airplane and that he cut his finger on the blade and "I had to get six stitches." He said that his father got mad at his mother and sister because he cut his finger. He added, "He got mad at the stupidest things." He elaborated, "He would be screaming and yelling. He would get mad at my mom for not washing the coffee pot the right way." He further explained, "The mood of our father affected the mood of the house."

Mr. Dixon recalled that "around the same time" [*when he was about ten*] his father "beat the hell out of my sister in her first year of college." He continued, "She got expelled and she spent the afternoon sitting in the station wagon. My father was trying to get my sister back in and he couldn't get her back in so he beat the hell out of her. She leaves and we don't see her for a dozen years."

In the sixth grade he was sent to boarding school. He added, "I hated it." He said that within his first three weeks he "caught lice." He emphasized that he was told "it was against the law" to speak Navajo and he felt this to be oppressing. He recalled no other specific childhood experiences and said that he progressed in school.

I confronted Mr. Dixon with statements in the records that indicated he made a "guillotine" and "cut the heads off of cats." He adamantly denied this. He explained, "I played a lot with tools and stuff but I never made a guillotine and I never cut off cats' heads. The closest thing that I ever did to hurt an animal was when I was twelve or thirteen my mom got me a microscope for my birthday. I dissected a frog and then used the microscope. The only other

thing I can remember is when my father gave us firecrackers to play with I caught a bullfrog and put a firecracker in his mouth. That's the closest thing I ever did that could have been sadistic. He said that this was just one of the things that the "cold case detective made up."

Adolescence:

Mr. Dixon said that at the age of thirteen he had to have heart surgery. He recalled being flown from Fort Defiance to Phoenix Children's Hospital. This was a traumatic experience for him. He explained, "After the operation I couldn't find my shoes. I was worried that dad's gonna be angry because I lost my shoes. I was in pain after the operation but that's all I could think about." He added, "That memory pisses me off. You think I would have been happy because I'm going home to see my brothers and sisters but I'm worried about my shoes. What a fucked-up way to live."

Mr. Dixon said that his father bought a trailer and he lived with his two brothers, in the trailer, when he started his freshman year of secondary school. He said that his father moved from Fort Defiance to Mini Farms because he got a job as a principle. He reported that his father left his mother and moved "eighty miles away." He recalled that his mother worked as a cook in the school. He said that his relationship with his father, at that time, was "not at all good." He recalled that he left the family in his junior year after a big argument with his father. He said that he accused his father of "setting my mom up with a job so he could leave her and that's what he did."

Following his junior year of secondary school, Mr. Dixon said that he moved to Los Angeles for a summer where he stayed with his sister. He said that his sister was the secretary for an "Indian Movement – LA Chapter" and that this was "in the mid-seventies after the movie Wounded Knee." He said that they lived in a "compound outside of LA" and he spent two-to-three months "hitch-hiking around" because "I didn't have transportation." He recalled that he had to hitch-hike to night school. After the summer with his sister he moved back to Fort Defiance to live with his mother. He said that he finished secondary school in 1974.

When I asked Mr. Dixon about the statement in his records that he had molested his sister, he responded, "That's not true either." He said that the only thing that he could remember that would even remotely suggest that was when he was tied in the same bed as Lotta. He explained, "When we were younger, maybe six or seven or maybe younger, we used to run at the window when we were supposed to be taking naps. My mother tied me to the bed with Lotta." He said that his head was at one end of the bed and hers was at the other end but that they were both tied to the bed. He said that nothing sexual occurred.

Adulthood:

After secondary school, Mr. Dixon moved in to the trailer that his father gave to his brother Duane. He said that his father had remarried and he was "not talking to his father" at the time. He recalled that he was working at a gas station in Window Rock. In 1975 his father passed-away after a heart operation. Mr. Dixon was twenty at the time of his father's death.

Mr. Dixon married Geraldine Eagleman at the age of twenty-one, in 1976. They decided to move to Phoenix and Mr. Dixon enrolled at Arizona State University (ASU). In 1977 he was adjudicated NGRI for "assaulting a girl with a pipe." At one point during the evaluation he said that the woman he assaulted was his ex-wife. *I noted in the records that he assaulted a woman*

who "bore some superficial resemblance to his wife." He was not committed to the hospital, however, until January 5, 1978 "but they never picked me up." In September, 1978 he was convicted of burglary and assault on "a college coed in Tempe." He said that he was sentenced to prison from September of 1978 to March of 1985. His wife divorced him while he was in prison in 1979.

After his release in 1985 he went to live with his brother Duane in Flagstaff. He said that he was working for a gas station "pumping gas." He was only out for three months and was arrested and convicted for charges relating to sexual and aggravated assault and kidnapping of a "single woman." He spoke about the Northern Arizona University (NAU) Police "not really being police" which was not considered in his conviction. He brought this issue up several times throughout the sessions I had with him. In spite of this potential defense, he was sentenced again to prison. He said that in November, 2002, while he was still incarcerated, he was charged and eventually convicted for a crime that occurred just two days after he was ordered to present himself to the Arizona State Hospital as NGRI in 1978. He said that the charges were filed as a result of a "DNA match" which they found "thirty years later." He was convicted and sentenced to death. Mr. Dixon has been incarcerated, almost entirely, from 1978.

Education/Employment History:

Mr. Dixon was held-back a year in kindergarten but reported no other difficulties in school. He graduated from secondary school in 1974. He said that he is now fifteen credits short from achieving a bachelor's degree. He reported that he received his Associates Degree from Pima College in General Studies. He said that he achieved this degree while he has been incarcerated.

Mr. Dixon has been incarcerated most of his adult life. His first job was "pumping gas" in Window Rock, Arizona. He was nineteen when he obtained this job. He worked for this gas station for about two years. He said that he worked for a gas station and driving a tow truck while he lived in Tempe and was attending ASU. He was working at this job when he was first arrested.

Substance Use/Abuse History:

Mr. Dixon reported that started smoking marijuana at the age of fourteen. He said that he smoked the drug on a "hit and miss" basis. He explained, "I was never a regular smoker. Just once in awhile. I just smoked it with my ex-wife. I never went hard-core looking for it." He also said that he tried his fathers' "Darvon and Librium" but "they didn't do anything for me."

Mr. Dixon reported that he had a problem with alcohol. He said that he started drinking, on a "catch as - catch can" basis at the age of sixteen. He said that in 1976 he started drinking regularly, which he explained was, "probably every night." He said that in the middle of 1977 to the time when he was sent to prison in September, 1978, he drank every night and experienced blackouts "about once every two weeks or three weeks." He stated that that he "got buzzed on three beers" but that some nights he drank a bottle of vodka. He said that he blacked-out from the vodka whenever he drank it. He added, "I didn't eat much at that time."

Mr. Dixon reported an extensive family history of alcoholism and possibly abuse of illicit drugs. He said that his brother Willard drank excessively. He also reported that his brothers Perry and Willard were convicted of dealing drugs on the Navajo reservation. He said that many

of his extended family members are "drinkers." He elaborated, "Quite a few on my mother's side and my father's father was an alcoholic."

Records indicate that Mr. Dixon previously admitted to using methamphetamine "a couple of times" and that he had condoned the use of "peyote" for ceremonial purposes although there was no indication that he actually used this drug.

Sexual Development/Relationships:

Mr. Dixon said that he is heterosexual and has only had sexual experiences with women. He reported that he was never sexually abused as a child although he recalled his first sexual experience was with an "older woman" when he was sixteen. He explained, "I hated it. She was drunk. She more or less just wanted me to take her home so she gave it to me to get a ride home. It didn't mean anything to her but I was hurt by it."

Mr. Dixon stated that he had a problem which began in 1978. He said that he had difficulty controlling his sexual energy. He has been convicted of sexual crimes related to this difficulty. When asked about the repeated sexual offenses, Mr. Dixon stated that they started when he was in his early twenties. He recalled, "I used to get drunk after work. I'd get off work at around ten and walk around sin city. I'd get home and she'd be gone to work [*referring to his wife*]. I hardly seen my wife. I was getting free booze at work [*he explained that driving a tow truck to accident scenes they would often find unopened bottles of alcohol*]. The first time I was walking around and I noticed a door was open. I went inside and the adrenaline was pumping. I saw a guy sleeping on the couch and I walked around his apartment. I took a calculator from the desk. After that I started checking doors on my night walks. If they were open I'd walk in. Once I saw a girl sleeping on her bed in her panties and a tee-shirt. I didn't do anything but that got me excited." He said that when he was having sex with women "I got aroused from the dominance and the power. I like the idea of control or dominance but I don't like to hurt. Handcuffs hurt but straps don't. I used straps."

Mr. Dixon reported no other unusual experiences except, "I remember I woke-up one morning in this girls' apartment and I don't know how I got there." During the last session, however, I informed him that some of his TAT responses were suggestive of sexual identity issues. He responded, "Well maybe the ten percent of me that is homosexual is coming out. I had these feelings when I was younger. I caught myself walking with a limp hand once and sometimes I wondered what it was like to be a girl. I don't have any identity issues now though."

Mr. Dixon has no current, human contact, outside of the prison. He has not spoken to his siblings since his mothers' death. He stated that prior to prison his relationship with his siblings was "okay." He indicated, however, that he did not feel connected to anyone as a child and still has no feelings of connectedness to anyone now. His parents were abusive (emotionally and physically) and although he "loved his mother to death," he felt that she was distant from him and not connected to him. He said that he did not feel connected to his father.

Mr. Dixon was married for 1 ½ to two years in 1976. As indicated above, he was adjudicated NGRI for assaulting his wife with a lead pipe in 1977. His wife divorced him when he was serving time in prison. He had nothing to say about that relationship other than "I had a lot of resentment" toward her.

Criminal History:

Mr. Dixon reported no involvement with the Juvenile Justice System and no childhood behaviors to warrant such involvement. He said that he was first convicted of a DUI when he was eighteen. He was living in Window Rock, AZ at the time. He reported "a couple more DUI's" when he was eighteen and nineteen in Gallup, NM. He also stated that he was charged with soliciting prostitution in 1978. He said that he spent five days in jail and received a $15.00 fine for this offense.

As indicated above, Mr. Dixon was adjudicated NGRI in 1977 (for assaulting a young girl whom he thought was his ex-wife or she looked like his ex-wife). He was never placed in the Arizona State Hospital. He reported, however, that he has been incarcerated, almost entirely, since 1978 when he was first convicted of assault.

Medical History:

Mr. Dixon stated that he was born with a heart murmur and received surgery when he was thirteen. He stated that has had five surgeries on his eyes and said that he has been diagnosed with Glaucoma in both eyes. He said that he has had a cataract removed from his right eye and that he was no blind in that eye. His vision was seriously compromised and some of the tests could not be administered. He stated that he suffers from shingles on his chest and under his left arm. He is treated with aspirin for his heart condition and is prescribed eye medication. He also thought that he might have a "urinary condition" because he has "bumps" on his stomach buttocks that are sore.

Mr. Dixon reported no history of head trauma, seizures, serious accidents or other serious illnesses.

Psychiatric History:

Mr. Dixon was adamant that he does not suffer from a mental illness. He stated that he has never been treated with psychiatric medications. He reported that he was hospitalized for two months in 1977 after he assaulted a woman with a lead pipe. He said that he had to talk to two psychiatrists. He was adjudicated NGRI for that offense but was never hospitalized. When I asked him why he was adjudicated NGRI if he did not have a mental illness, he said "It was depression. A lot of depression and resentment towards my wife."

***Mood*:**

As indicated above, Mr. Dixon reported two periods of time, in the third grade, when he was "extremely depressed." He described himself as feeling "alone, distant, empty and hopeless." He said that he did not have any friends at the time. When I asked him if there was anything else going on in his life at the time, he was unable to recall anything significantly out of the ordinary.

Mr. Dixon stated that when his father died he experienced a third bout of depression. He said that he was "living by myself" in a trailer and that he had lost his job. He said that he felt "really, really depressed and suicidal" at that time.

He reported that he has been fighting depression, on and off, since his childhood. He said that the depressive episodes "come and go." He reported that he has always felt "mousy," "unassertive," "passive" and like he was a "weakling" throughout his childhood and into his adulthood. He added, "I had huge feelings of inferiority." He said that he ended up getting into a fight (racial reasons) and that he won the fight. He said that after that fight "For the first time I felt like a man. I felt whole. I was finally taking care of myself. Finally these guys were respecting me." He stated that the "chief of the yard" kept him "around" because he was "the educated one. I could write letters to the judge."

When asked how he handles these periods of depression, Mr. Dixon stated, "I fight them with exercise." He stated that he does between six- and seven-hundred push-ups a week and that he runs three-to-four miles a week "Or I walk fast for two hours." He said that he goes to the "rec pen" every chance he can get. He added, "I do lots of weight training." He said that this is not driven behavior, rather it is a way to fight boredom and depression.

When he was asked about excessive energy or other possible driven behaviors, he reported that his energy level does not change much. He said that he is "fastidious" and not "OCD" in terms of his environment. He stated that there are times when he takes everything off the floor in his cell and "cleans every corner." He said that he does this once a month or once every two months. He added, "It used to be more regular when I had long hair." He noted, however, that his socks have to be folded a certain way and "everything in its place and a place for everything." He explained, "I'm not fastidious all the time. It's just routines to occupy myself. It's prison life."

***Thought*:**

Mr. Dixon denied the experience of racing thoughts. He said that he sometimes "giggles to myself" to change his mood. He said that when this happens he thinks about something funny from T.V., when he is depressed, to try and keep himself from being depressed. He added, "Nowadays I have depression a lot because of my eyesight. I can't read anymore so I try to keep busy with other things. We can't get books on tape and I don't have a cassette recorder and no money for a cassette player. I don't have any family support because of not being able to go to my mother's funeral." He said that he was able to work when he was in the general population but he can't work on death row. He also said that other inmates used to pay him to type Rule 32 motions and other "legal stuff" when he was in the general population but he can't do that now. He adamantly denied periods of confusion, disorganized or disturbing thoughts, paranoid ideation, and dangerous thoughts.

It is noteworthy, however, that after he finished the Rorschach test there was an abrupt change in his mood. He was very agitated and started yelling at me that I was "trying to get into my head." It took several minutes to calm him down. When I later reviewed his test results with him and commented that several of the tests suggested paranoid ideation, he said that he sometimes feels that others are going to harm him but attributed it to being in prison. It is also noteworthy that he seemed to obsess or perseverate on some thoughts. For example, he repeatedly brought up the issue that his defense related to the NAU police was never heard. He seemed to be obsessing with this thought and it was apparently noted as problematic during his prior criminal trials. Thought perseveration appears to be a problem.

***Perception*:**

Mr. Dixon reported that he "thought" he was hearing voices" in the "late 1980's." He said that he heard his name being called ("*Clarence, Clarence*") "from a distance." He said that these hallucinations "lasted about a year or 1 ½ years and it went away." He reported no psychiatric treatment at that time, adding, "I've always refused."

Mr. Dixon stated that he keeps seeing someone out of the "corner of my eye and there's no one there or I see a mouse running across the floor." He said that these visual distortions occur about once every two or three days, usually in the evening and only since he has been on death row. He added, "I've always had an active imagination." He then spoke about being a "phase three inmate" and how he only has four "rec days" a week. He also spoke about being in the "hole" and how he had visual distortions when he was there. He thought these were all related to sensory deprivation. He denied other perceptual distortions initially but during the last session he told me that sometimes he has "lapses in time" when he sees something on T.V. and then lapses into fantasy about that "and next thing I know an hour and a half has gone by." He also talked about visions or dreams that he has about future events. He said that he has spoken to the psychologist in the prison about these and that he has been able to dream of things that actually come true later.

Mr. Dixon said that his father was treated with Darvon, Librium and Sudafed to "try and balance out his mood." He recalled that his father took these medications in the 1960's. He described his father as an "angry" and "distant" man. He was unaware of any other family member, aside from dependence on illicit drugs and alcohol, who suffered from a mental illness.

Two Competency evaluations were completed in September, 1977 but Dr. Benheim and Dr. Tuchler. Dr. Bendheim opined that Mr. Dixon suffered from "very severe depression, possibly with an underlying psychosis. The exact nature of his mental illness could not be determined but a schizophrenic psychosis is considered to be the most likely diagnosis." Dr. Tuchler also opined that Mr. Dixon suffered from "indifferentiated schizophrenia." Both evaluators opined that he was not competent. He was subsequently sent to the Arizona State Hospital for evaluation. The discharge summary from the hospital, (dated 09/15/7)7 indicated a diagnosis of "Social maladjustment without manifest psychiatric disorder" and "Marital adjustment." They found no evidence of a mental illness.

Mr. Dixon's ex-wife was interviewed by probation for a sentencing report in 1977. She was recorded as saying that her husband suffers from severe emotional problems and that he was not compliant with psychiatric treatment. She indicated that he was prescribed Prozac.

TEST RESULTS

Mental Status/Behavioral Observations:

Mr. Dixon is a fifty-six-year-old, right-handed, Navajo male. He presented in prison clothing and with good hygiene and grooming. He said that he was 5' 8" tall and that he weighed about 130 pounds. He was bald with brown eyes. There were no distinguishing tattoos. There was a noticeable impairment to his eyes. He was also missing a tooth from the left side of the front of his mouth. Mr. Dixon brought two pairs of glasses with him to correct his vision during some of the tests but they did not always work and one of the tests could not be administered. He made good eye contact and was cooperative throughout all the testing sessions. As indicated

above, he was quite agitated and appeared to be paranoid after the Rorschach test was administered. He also appeared to be paranoid at the beginning of the last session and was agitated and spoke about the detention officers monitoring him. He was easily calmed during this latter session but not after the Rorschach was adiministered.

Mr. Dixon was fully oriented to person, place and time. He was also generally alert and aware. At times he was hyper-alert and very attentive to what was going on outside of the room. He had no difficulty tracking the conversation. He reported no problems related to attention, concentration, or memory. There were no gross deficits observed in these areas during the interview sessions. These functions were formally tested and the results are reported in subsequent sections of this report. His speech typical for rate, tone and volume until the last session when he was angry and spoke rapidly. There were no unusual movements noted.

Mr. Dixon reported his mood to be "good" but clearly stated that he periodically combats depression related to his situation. For the most part, he presented as euthymic. There were two brief periods when he presented with what seemed to be paranoia and anger. He denied sleep or appetite disturbances. He reported no suicidal or homicidal ideation. His thoughts were otherwise generally logical, coherent and goal-directed. I saw no behaviors to suggest that he was actively hallucinating during any of the sessions but he recalled some experiences that sounded like he might perceive himself to be able to see future events.

Mr. Dixon appeared to be giving his best effort for all of the tests. He persisted with difficult tasks without complaint. He attempted every test offered, even if it was clear that he would not be able to complete the task because of his eyesight. He frequently changed his glasses to accommodate the test stimuli. All of the tests reported in the following sections appear to be either unaffected or only mildly affected by his eyesight. There were three tests that could not be administered (Mesulam Cancelation Test and Stroop Color Word Test) as a result of his eyesight problems but he attempted both.

Testing Environment:

All tests were administered and scored according to the standardized procedures. Mr. Dixon brought two pairs of reading glasses and alternated between them throughout the testing sessions. There were three tests that could not be administered as a result of his visual problems (Stroop, Mesulam, and Speech-Sounds Perception). There were no auditory difficulties reported or observed. The auditory version of the MMPI-2 was also used or available to assist with visual problems, in spite of adequate reading comprehension abilities. There were no other modifications needed for the other tests.

The test scores were interpreted in light of all the data obtained during this evaluation. The testing conditions were adequate. The testing room itself was well lit, there were minimal distractions and the furniture was adequate. His hands were unshackled and unencumbered throughout the testing sessions.

Test Score Comparisons:

The test manuals were used to administer and score these tests. The test results, whenever possible, were compared with normative data established by Heaton and his colleagues that was published in 2004 (Revised Comprehensive Norms for an Expanded Halstead-Reitan

Battery). The Heaton et al. norms come from a comprehensive, demographically adjusted data set. These norms utilize scores from Caucasian and African-American adults from ages 20 to 85.

For tests that could not be evaluated with the Heaton et al. norms or for tests that were not published by Halstead and Reitan, the test publisher norms were used. The Halstead Impairment Index was calculated from the scores of the seven tests that encompass that index.

Tests of Effort/Symptom Validity:

Cognitive Effort:

Some of the tests administered have subscales which are similar to independently constructed tests of effort. For example, the California Verbal Learning Test-II (CVLT-II) and the Wechsler Logical Memory subtest (WMS) have forced-choice and/or, yes/no recognition subtests. These subtests are very similar to the separately constructed tests of effort/malingering. They are equally as good in terms of assessing effort and have a good foundation of normative data as well. In addition, the intelligence test itself is constructed in such a way that response variance can be used to asses effort. As a supplement to these tests which were already a part of the battery, the Test of Malingered Memory (TOMM) and the Rey Memory Test (RMT) were administered.

Mr. Dixon's score on the yes/no recognition task of the CVLT was 15/16 for hits, with one false positive. His score on the forced choice task of the CVLT was also 15/16 which was very good. These results indicate good effort. His score on the yes/no recognition task for the Logical Memory subtest was 100% and indicative of good effort.

His score on the first trial of the TOMM was 100% and no further trials were needed. His score on the RMT was also perfect.

Essentially, all of the tests of effort indicated that Mr. Dixon was attempting to do his best and there is no question as to the validity of his cognitive test results.

Intelligence:

The Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV):

The Wechsler Adult Intelligence Scale–IV (WAIS-IV) is a widely used intelligence test and the most current Wechsler Intelligence Scale available. It provides a global measure of ability and four composite scores to clarify more specific cognitive abilities. The WAIS-IV was administered and scored according to the standardized procedures as outlined in the manual. The results from this test were interpreted with caution and after consideration of all of the data obtained and available during this evaluation.

Mr. Dixon's test results and his behaviors during this test suggest that he was putting forth good effort. He approached each task in a focused and diligent manner and did not give-up on items that were difficult. He persisted until either time was up or he could not find an answer to the questions. He reported no problems seeing the test stimuli and when needed, he used one of his two pairs of glasses.

His Full Scale Intelligence Quotient (FSIQ) was found to be in the *average* range. His General Ability Index (GAI) was, however, in the *superior* range and was significantly higher than his FSIQ. This difference could be suggesting that factors other than ability were affecting

his performance on the test. The GAI removes scores related to attention, concentration and speed of processing which can be impaired by factors such as: physical problems, psychiatric conditions, medications and brain damage. It is noteworthy that on tasks where processing speed was a factor, Mr. Dixon performed well below the other subtests. This could be related to his visual problems or one of the factors noted above and not necessarily ability. The factor index scores may help explain this.

Mr. Dixon's Verbal Comprehension (VCI) score was in the *high average* range with a Perceptual Reasoning (PRI) index score in the *superior* range. These two index scores were not significantly different from each other and they indicate well-developed verbal and spatial reasoning skills. These scores are likely more reflective of his abilities than either of the other two index scores. His Working Memory (WMI) index was in the *average* range and significantly lower than his PRI and VCI. The WMI measures attention and concentration which are the precursors to new learning. Sometimes this index can be affected by psychiatric symptoms but not by vision. His Processing Speed Index (PSI) was in the *extremely low* range of functioning and significantly lower than all of the other global measures. Although there is a visual component to the subtests that form this composite score, Mr. Dixon did not complain about an inability to see the test stimuli. It is noteworthy that the stimuli for this subtest are much larger than some of the other test stimuli where no impairment was noted. Although this difference (and impairment) could be related to visual problems it is more likely reflecting brain damage.

For the individual subtest scores, there was a significant weakness noted on the Symbol Search (SS) and Coding subtests which both contribute to the PSI. These weaknesses seem to be reflecting something other than visual problems and are likely reflecting some type of brain damage. Significant strengths were noted on the Matrix Reasoning (MR), Vocabulary (VC), Visual Puzzles (VP) and Information (IN) subtests. These subtest strengths suggest well-developed verbal and spatial skills, a good command of the English language and good long-term memory for information typically acquired in school. Some of the visual details in the MR subtest are much smaller than the stimuli in both the Coding and SS subtests and Mr. Dixon performed very well on this subtest.

Overall, Mr. Dixon's cognitive abilities lie in the *average* range of functioning but this score appears to be much lower than his actual abilities, especially given the GAI score which was in the *superior* range. As discussed, his overall FSIQ was affected by impaired processing speed and by subtests measuring attention and concentration (working memory). Although his scores on the working memory subtests were not impaired, they were significantly lower than the index scores that suggest where his true abilities lie. This weakness (working memory) and the impaired processing speed scores are likely suggesting brain damage. His premorbid abilities are likely in the *high average* or *superior* range of functioning with otherwise fairly well-developed abilities across the other cognitive domains.

Auditory Perception/Attention:

The Speech-Sounds Perception Test could not be administered because Mr. Dixon could not see the score sheet adequately, even with his glasses.

The Seashore Rhythm Test was administered to evaluate nonverbal, auditory perceptual ability. This test is audio-taped and consists of a series of like and unlike musical beats. It

measures the ability to discriminate between two tonal patterns and determine if they are the same or different. Mr. Dixon's score was *moderately impaired* on this test.

These results indicate impaired attention for nonverbal information.

Language:

Reading Comprehension:

The Passage Completion Subtest from the Woodcock III Tests of achievement was administered to obtain a reading comprehension level, primarily to determine Mr. Dixon's ability to read and understand the test items in the MMPI-2 test. His abilities were more than adequate for the independent administration of this test and appeared to be at college level.

The Benton Controlled Oral Word Association Test (COWAT), a test that measures verbal phonemic fluency and the Categorical Fluency Test (CFT), a test that provides semantic cueing for word categorization, were both administered. Mr. Dixon did not appear to have difficulty following the test instructions. His score on the COWAT and the CFT were both in the *high average* range and are consistent with what would be expected given the verbal scores obtained on the WAIS-IV.

The Boston Naming test, which requires the individual to recall the names of various pictures, was also used to assess verbal fluency. Mr. Dixon's score on this test was found to be *above average* which is again consistent with his WAIS-IV verbal scores.

Overall the verbal fluency tests suggest good expressive and receptive communication skills with no impairment noted.

Sensorimotor:

Mr. Dixon's scores on the handedness questionnaire indicate that he is strongly right-handed and footed. Aside from one left-handed sibling, all of his family members were right-handed. His questionnaire results suggest that he likely has language and motor functions specialized within the left hemisphere of his brain which would be consistent with 70% of right-handed males.

The Trail Making Test was used to measure overall psychomotor functioning and speed. Mr. Dixon's Trial A score, which is the better of the two Trials for processing speed, was in the *mild to moderately impaired* range.

Mr. Dixon's dominant hand score on the Finger Tapping Test, which is a test of fine motor coordination and speed, was in the *mild impairment* range. His nondominant hand score was in the *mild to moderate impairment* range. It is noteworthy that Mr. Dixon had some difficulty inhibiting and coordinating finger movements for the middle finger during this task. There is some literature to suggest that difficulties with motor inhibition could be related to lesions anywhere in the brain and not necessarily reflective of specifically lateralized damage.

Test results for the Grooved Peg Board Test, which is also a test of fine motor coordination and speed, indicated, *mild to moderately impaired* performance for his dominant hand and *moderate impairment* for his nondominant hand.

Mr. Dixon's grip strength was measured with the Hand Dynamometer Test. His dominant hand score was in the *mild to moderately impairment* range and his nondominant hand score was in the *below average* range.

The Tactual Performance Test (TPT), in addition to spatial memory, also offers a measure of psychomotor speed for dominant, nondominant, and for both hands. During this test Mr. Dixon was blindfolded and asked to place wooden blocks of various shapes into a same-shaped slot on a wooden board. He completed all three trials (dominant, nondominant and both hands) of the test without difficulties observed in grasping or manipulating the blocks. It is important to note that his approach to this task was random and without a good problem-solving approach. Even when he had the benefit of both hands, he still randomly approached the task. Not surprising, his dominant and nondominant hand scores were in the *mild impairment* range of functioning. When he was able to use both hands, his score improved but still fell in the *below average* range. This test clearly did not involve vision and these results suggest that vision may not have been the issue with the WAIS-IV impaired processing speed scores.

Essentially, overall, the motor test results indicate impaired performance across all of the tests administered. His dominant hand scores were consistently in the *mildly impaired* range with *mild to moderate impairment* noted for fine motor skills. His nondominant hand scores ranged from *below average* for grip strength to *mild or mild to moderately impaired.* When he was able to use both hands to complete a gross motor task, his score fell in the *below average* range. These scores are actually consistent with the PSI score from the WAIS-IV and many of the results are totally independent of vision. With the observations made, these test results suggest a diffuse pattern of brain damage.

Memory:

Verbal Memory:

The CVLT-II was administered according to standardized procedures and without interruptions. Mr. Dixon's free recall score for the first trial was *below average.* His score after five repetitions (fifth trial) was *average.* His cumulative learning score (sum of five trials), was also in the *average* range. His short delay score (after a distraction list) was *average* with a long delay recall score that was *above average*. These scores suggest the possibility of some difficulties with attention for which he was apparently able to compensate with repetition. His overall retention of the verbal material he was able to learn was good. As indicated earlier, his forced choice and recognition subtests scores, for this test, both indicated good effort.

Memory for the gist of two stories was tested using the Logical Memory Subtest of the Wechsler Memory Scale-III. Mr. Dixon's immediate recall of logically related material was within the *superior* range. His learning slope was in the *high average* range with a thematic content score in the *high average* range as well. The scores for this test are consistent with his

VCI scores on the WAIS-IV. They suggest, when evaluated in light of his CVLT-II scores, that Mr. Dixon is able to overcome some difficulties with attention by using contextual and/or thematic cues. As indicated earlier, his score on the forced choice subtest for this test indicated good effort.

These findings suggest that Mr. Dixon, in spite of some mild problems with attention, can learn and retain verbal information. His scores on these tests of verbal learning are consistent with what we would expect given his verbal scores from the WAIS-IV.

Spatial Memory:

Visual-spatial memory and visual-construction skills were tested with the Rey Complex Figure Test (RCFT). Mr. Dixon's score on the copy, immediate and delayed recall trials of this test were all *above average*. His scores on the immediate recall was also *average* with a delayed recall score that was *above average*. There are many details on the test stimulus and given his scores, visual problems did not appear to impact his performance on this test.

Mr. Dixon's scores on both of the TPT memory tasks (free recall and location) were in the *average* range when using the Heaton normative data. His score on the location portion of this test was, however, *impaired* when applied to the normative data used for the Halstead-Reitan impairment index. Although his scores reflect mostly adequate performance, there is some suggestion that he may have some impairment for spatial memory.

Overall, the spatial test results generally suggest adequate spatial organization and memory abilities for fine details and gross memory. His score on the spatial, localization task of the TPT was, however, *impaired* when using the Halstead-Reitan Impairment Index. These scores could be suggesting the possibility of damage to the right hemisphere.

Executive Functioning:

The Wisconsin Card Sorting Test (WCST) was used to measure conceptualization, problem-solving and cognitive flexibility. It is thought to measure the functioning of the dorsolateral prefrontal cortex. Mr. Dixon completed six separate categories which is overall *average* performance. His perseverative error score was, however, found to be *mildly impaired*.

The Stroop Color Word Association Test (both Original and Dodrill versions) was attempted but Mr. Dixon could not see the test stimuli.

The Booklet Category Test (BCT) is a test that has some relationship to cognitive flexibility and problem-solving abilities. The Booklet Category Test is also a sensitive but nonspecific frontal lobe measure as well. It is thought to measure conceptualization, problem-solving and cognitive flexibility. Mr. Dixon's score was *below average* on this test.

The second portion of the Trail Making Test (B) is also a measure of cognitive flexibility in addition to psychomotor speed. Mr. Dixon's score on this test was in the *mild to moderately impaired* range of functioning.

Essentially, two of the three tests of executive functioning were impaired and the third test score was *below average* and certainly below what would be expected given the spatial and verbal reasoning index scores from the WAIS-IV. These results suggest the possibility of damage to the frontal lobes reflected by difficulties in executive functioning.

Halstead Impairment Index:

The Halstead Impairment Index is a score derived from the individual's performance on seven of the Halstead-Reitan battery of tests. Included in the index are the scores from the Category Test, TPT (total score, memory, and localization scores), Seashore Rhythm and Speech Sounds Perception tests, and the Finger Tapping Test (dominant hand). Cutoff scores from six of these tests (Speech Sounds could not be administered due to visual impairment) were used to score this index.

Five of the six available scores (Category Test, TPT Total Time and Location, Seashore Rhythm, and Finger Tapping) were impaired. This was sufficient to suggest brain damage independent of the effects of potential psychiatric symptoms.

Neuropsychological Test Summary:

Mr. Dixon's test scores suggest overall *average* intellectual functioning but *superior* general abilities. His verbal and nonverbal composite scores were *high average* and *superior* respectively. Attention, concentration and especially processing speed scores were significantly lower and likely resulted in the lower FSIQ from what would be predicted by his general abilities. Visual problems and/or potential brain damage were suggested as the possible reasons.

Overall, impairment was noted for the tests that measure executive functioning (frontal lobes) and processing speed. At least two of the impaired processing speed tests did not require vision (Mr. Dixon was blindfolded during one test and grip strength does not require vision) and the other tests did not appear to be affected by visual problems. In fact, observations during the finger tapping test suggested some difficulties with motor inhibition and coordination which is a good predictor of brain damage. There were other indicators of possible difficulties with attention and one score for spatial memory (primarily organization). These results suggest that Mr. Dixon may suffer from some type of brain impairment which does not appear to be lateralized. Further evaluation is warranted.

Personality/Behavioral:

Minnesota Multiphasic Personality Inventory–2 (MMPI-2):

The MMPI-2 is an objective personality test, which is thought to provide information concerning both the structure and content of personality. The MMPI-2 has acceptable validity and reliability normative data as well as subscales which can assess the individual's test-taking approach. Testing conditions were good. The audio version of this test was administered due to Mr. Dixon's visual problems.

The results from Mr. Dixon's MMPI-2 were interpreted cautiously, conservatively and in light of all other data obtained. He took approximately double the time needed to complete this test as a result of his visual problems and the need for the audio version of the test. He

approached the test in a focused and task-oriented manner. He appeared to understand the importance of answering items honestly and carefully. He did not indicate or present with behaviors to suggest that he had difficulty understanding the test items or instructions.

Validity scales on the MMPI-2 indicate that Mr. Dixon may have responded with some inconsistency (VRIN-Variable Response Inconsistency scale was slightly elevated) but not to the point where the test was invalid. The other inconsistency scale (TRIN-True Response Inconsistency) was also within an acceptable range. All of the Infrequency scales (F - Infrequent Responses, F_P - Infrequent Psychopathology Responses, F_B – Front/Back and F_S – Infrequent Somatic Complaints) were within acceptable ranges. The Symptom Validity (FBS) scale and Dissimulation Index (F-K) were also within acceptable ranges. These scales indicate that Mr. Dixon did not exaggerate, over-report, or embellish psychiatric symptoms. The Uncommon Virtues (L-r) scale and the Adjustment Validity (K-r) and Superlative Self-Presentation (S) scales were all within acceptable ranges as well. Essentially, Mr. Dixon produced a valid test protocol for a cautious interpretation.

For the main clinical scales, clinically significant and high elevations were noted on the Pd (Psychopathic Deviate), Pa (Paranoia), and Sc (Schizophrenia) scales. These scales were interpreted using the Harris-Lingoes Subscales to identify the main experiences that contributed to the elevation of each scale.

There was one main scale contributing to the elevation of the Pd scale. The scale measuring Authority Problems (Pd_2) was significantly elevated. His score on the Paranoia scale indicates that Mr. Dixon is suspicious and mistrustful of others, that he is sensitive to criticism and that he may be hostile, argumentative and emotionally labile. Only one of the Harris-Lingoes subscales was elevated. The Naiveté (Pa_3) was the most significantly elevated and suggests that Mr. Dixon may have unrealistically, optimistic attitudes about other people. He may be, at least initially, more trusting and he may present with high moral standards.

There were no subscale elevations for the Schizophrenia scale. The high elevation on this scale indicates that Mr. Dixon experiences a number of unusual beliefs, that he may become withdrawn, may rely excessively upon fantasy and that he may be generally sad, blue, anxious and somatic. The possibility of bizarre thoughts and/or perceptual disturbances is also indicated by this clinical scale.

For the Restructured Clinical scales, there was one significant elevation on the Antisocial Behavior (RC4) scale. This scale indicates that Mr. Dixon has had trouble conforming his behavior to the law and it reflects his years of illicit drug and alcohol abuse. Consistent with observations and the main clinical scales, it also suggests that he is mistrusting and fearful of others with the belief that others may harm him.

The Content and Content Component scales indicate that Mr. Dixon is uncomfortable in social settings (Social Discomfort/Introversion SOD and SOD_1) and that he may actually be fearful of others. He tends to prefer to be alone which is consistent with his score on the Schizophrenia scale. His scores also reflect a general and perhaps over-concern with his health (HEA_3) which could be a way to cope with anxiety. It could also be reflecting his ongoing visual problems and some other concerns which may be related to aging and isolation.

For the PSY-5 and Supplementary Scales, there were only two clinically significant elevations on the INTR (Introversion) and the AAS (Addiction Admission) scales. The INTR scale is consistent with Mr. Dixon's other scores suggesting that he is not comfortable in social settings and that he prefers to isolate himself from others.. The AAS elevation indicates that Mr.

Dixon acknowledges that he drank alcohol and/or abused drugs too much and to the point where he perceived himself to be addicted.

The results of the MMPI-2 are consistent with the observations, his reported history and the outside sources of information. They indicate that Mr. Dixon seems to experience thought, mood and perhaps perceptual disturbances. He tends to be isolative and is generally mistrustful of others. A psychotic disorder (such as Schizophrenia) is suggested by these test results and is consistent with the observations made back in 1977 when two Rule 11 psychiatrists opined that he was experiencing a severe depression with underlying psychotic disturbances.

Thematic Apperception Test:

The Thematic Apperception Test (TAT) is a projective personality test. It is thought to provide information regarding the content of one's personality. Unlike objective personality tests, there are no true/false answers, and the subject is simply asked to create stories from pictures. There are no validity indicators for this test and interpretation is based upon deviations from "typical" responses to the stimulus cards. This test was also interpreted cautiously in light of other data available during this evaluation.

Mr. Dixon understood the directions and was generally able to meet the requirements of this assessment but he required ongoing prompting to do so. He seemed to be quite relaxed in spite of the ambiguity of this test. His responses were generally logical and coherent and rich in clinical significance.

It is noteworthy that Mr. Dixon misidentified the sex of two of the characters in this set of test stimuli. This is sometimes suggestive of sexual identity issues. It is also noteworthy that his protocol was filled with themes of death, dying and pervasive loss. These types of responses suggest underlying and deep-rooted depression. Contrasting this morbidity were unusual fantasy themes where the intensity of the fantasy was not suggested by the stimuli. This contrast can be suggestive of difficulties regulating happiness as well as sadness. Sometimes this response pattern can suggest a bipolar mood disorder but in his protocol, the depression was much more pronounced.

Mr. Dixon identified the parental figures that are typically perceived in the test stimuli. Consistent with his reported history, he commented on the "role of the mother" but projected an experience that was not genuine. He also projected a son who was distant from the mother or not really connected to her. His response to the stimulus that typically elicits information about the father/son relationship was described as a "moment." Again, their relationship was disconnected and they were projected as "wondering" about the "son's future." It is noteworthy that he was unable to provide a conclusion to the story he developed; rather he left the relationship and the scene he projected unresolved.

For the individual characters, with which Mr. Dixon clearly identified, he projected them as indecisive, sad, lonely, wounded, and embarrassed with contrasting states of "exceedingly happy," "weightless," and "unencumbered." Again, this contrast in projected emotional states could be suggesting difficulties regulating extreme periods of sadness and happiness.

Overall this protocol suggests the possibility of difficulties regulating emotion; possibly resulting in extreme states of both sadness and happiness. There is some indication that Mr. Dixon may also suffer from sexual identity issues which may indicate that he has had some sexual experiences that he was not able to disclose during the interview. This was evaluated

further, given these results, during the last session and he spoke about the "ten percent" of him that is homosexual [*see sexual history section*] but denied identity issues in the present.

Rorschach Inkblot Test:

The Rorschach Inkblot test is another projective personality test that was administered and scored, using Rapaport, Gill and Schafer procedures. This test is thought to provide information into the enduring structure of personality. Interpretation was made cautiously and after consideration of all the other data available during this evaluation.

Mr. Dixon became quite agitated during this test and after the test was over he was quite angry and accused me of trying to get "inside my head" and "find psychological problems." He seemed to be quite paranoid. This was likely because of the ambiguity of this test. Consistent with this, he produced, a constricted protocol with seventeen responses (fourteen is minimum and nineteen is average).

Overall form level was within the psychotic range. He had difficulty integrating form with other details of the test stimuli (such as color). Difficulties incorporating color with form is correlated with mood disturbances. There were some morbid responses which suggest difficulties with depression. He also made a number of very bizarre comments or made several responses that included symbolism which are almost exclusively given by schizophrenic patients. One of his responses (detail to whole), which included symbolism, is suggestive of serious psychotic disturbance. Approximately 53% of his responses included either a bizarre or unusual statement and/or some symbolic interpretation. About 47% of his responses were consistent with paranoid ideation. Only two of his seventeen responses were perceptions of humans which indicates social isolation and introversion which is often consistent with schizophrenics as well. Two of his responses included references to himself which clearly indicates boundary problems and difficulties perceiving reality accurately. Finally, about 30% of his responses incorporated space which is suggestive of oppositional traits.

The results from the Rorschach are remarkably consistent with the MMPI-2 and the TAT test results and the observations made during this evaluation. They suggest that Mr. Dixon experiences thought and perceptual disturbances and may have some difficulties regulating emotion (primarily depression). Social isolation and the possibility of oppositional traits were also noted in this protocol.

Diagnostic Formulation:

The test results and behavioral observations suggest that Mr. Dixon suffers from mood, thought and perceptual disturbances. There are also significant cognitive impairments noted from his neuropsychological test scores. It might be easier to address these disturbances separately.

***Mood*:**

Across all three of the personality tests there is indication of depression. A fairly severe disturbance in mood, primarily depression, was also observed by the two Rule 11 evaluators in 1977. Mr. Dixon also complained that he has struggled with depression throughout his childhood, adolescence and adult life. He reported periods when he was suicidal. He also

reported a history of child abuse (emotional and physical) that would certainly provide the foundation for depression.

Mr. Dixon did not, however, endorse symptoms or behaviors associated with manic or hypomanic states although there was some indication of this possibility in the TAT. In spite of this, the most prudent interpretation of the test results and his reported history would be that he has and continues to experience bouts of depression. These bouts include a depressed mood for most of the time and weeks at a time. During these periods, Mr. Dixon has struggled with periods uncontrollable crying (primarily childhood as he did not admit to these in adulthood), difficulties focusing and suicidal ideation.

***Thought*:**

Observations during testing, outside sources and the results from the current tests clearly indicate that Mr. Dixon suffers from paranoid thoughts. There is some indication from the interview that he may also experience some grandiose thoughts but these did not appear to be as obvious. The paranoid thinking seems to be independent of mood as it appeared abruptly during this evaluation and independent of any prominent mood symptoms. Essentially, the thought disorder appears to be independent of mood although the intensity of the mood disturbance could increase the paranoid thoughts.

***Perception*:**

Mr. Dixon did not endorse consistent or ongoing perceptual disturbances. The visual hallucinations that he spoke of could be related to sensory deprivation and/or transitional wake/sleep states (hypnagogic/hypnopomic). His MMPI-2 test results indicate, however, that he may experience some bizarre perceptual disturbances although he did not disclose these.

***Summary*:**

Essentially, there is a clear history of periodic but frequent depressive episodes that have occurred since childhood. The test data and observations (dating back to 1977) indicate paranoid ideation. Mr. Dixon would have been in his early adulthood at the time of those Rule 11 evaluations which is consistent with the onset of most psychotic disorders. Although we have no clear disclosure of perceptual disturbances, the test results suggest otherwise. At minimum, these symptoms meet DSM-IV-TR diagnostic criteria for Schizophrenia, Paranoid Type but given the repeated depressive episodes, Schizoaffective Disorder, Depressed Type should be considered. It is important to emphasize that the paranoid ideation (at minimum), persists in the absence of mood symptoms. This would preclude a diagnosis of Major Depressive Disorder, with Psychotic Features.

***Cognition*:**

The results from the neuropsychological test battery indicate a diffuse pattern of brain damage of unknown etiology. His test results indicate overall psychomotor slowing as well as coordination and motor inhibition problems. For the tests that measure executive functioning (frontal lobes), deficits suggestive of possible brain damage were also noted. Finally, there were

some test results that suggested mild difficulties with attention and the possibility of some spatial memory problems. There is no history of serious head trauma or serious medical conditions that could account for these deficits. His visual problems, although considered, could not account for all of the deficits noted by his test results. Effort was clearly not an issue.

Mr. Dixon reported that he consumed alcohol excessively during his late adolescence and early adult years but he has been incarcerated for most of his adult life and the pattern of test results do not suggest a relationship between his current deficits and his abuse of alcohol. With further evaluation, the etiology might become apparent. At this point in time, however, his test results and the related deficits meet DSM-IV-TR diagnostic criteria for Cognitive Disorder, Not Otherwise Specified (NOS).

***Other Axis I Considerations*:**

Substance Use/Abuse:

Mr. Dixon struggled with an addiction to alcohol throughout his early adulthood. He was convicted of alcohol-related crimes, reported withdrawal symptoms (blackouts primarily), tolerance and he experienced interpersonal problems related to his drinking. He has been incarcerated since 1985 and has not had access to alcohol (or he has but has not drunk). As such, it is important to note his history of Alcohol Dependence.

***Sexual History*:**

Mr. Dixon has been convicted of at least three sexual offenses (rape). Although these offenses involved some form of control of the victim and in some instances physical pain, independent of the forced sexual act, Mr. Dixon reported that he does not get aroused from inflicting pain on his victims; rather he is aroused by the dominance and the power over his victims. He did not report recurring intense fantasies or urges of control or dominance. He said that typically he would be drinking, his inhibition decreased and he would become aroused while walking the streets at night. His recall of the events leading to the arousal and rape would not, however, meet diagnostic criteria for a sexual paraphilia.

***Personality Disorders*:**

Mr. Dixon reported no behaviors to suggest that he would have met a childhood or adolescent conduct disorder. There were some behaviors reported in the records to suggest some serious, emotional disturbances but these were isolated and not confirmed by Mr. Dixon. In spite of these possibilities, his difficulties with the law began in early adulthood and were initially related to his drinking. The sex offense convictions also did not appear until early adulthood. These two separate types of behaviors do not, in and of themselves, meet diagnostic criteria for a personality disorder although they are clearly antisocial in nature.

Diagnostic Impression:

Axis I		Schizophrenia, Paranoid Type
	Rule Out	Schizoaffective Disorder, Depressed Type
		Cognitive Disorder, NOS
	History of	Alcohol Dependence
Axis II		No Diagnosis

Legal Considerations

Trial Competency:

Current State of Competence:

Mr. Dixon cooperated with me throughout the testing. He did not require an excessive amount of external support to remain focused and complete the tasks. During the last two sessions, however, there were two periods when he was quite paranoid and agitated.

Mr. Dixon suffers from a serious psychotic disorder. He is able to control his symptoms because he is in a very confined living space with little, other, direct human contact. During trial proceedings, he is likely to decompensate without psychiatric treatment. He should be monitored closely for competency issues currently as they were quite apparent in past proceedings (he fired several attorneys, his competence was questioned once in 1978 and he was adjudicated NGRI in 1978 as well) but not always addressed. He has made it clear that he does not want to present mitigation and this could result in difficulties assisting counsel in his current Post-conviction case.

Competence in 2002:

Two Rule 11 doctors evaluated Mr. Dixon in 1977 and found him to be incompetent to stand trial. He was subsequently found to be Not Guilty by Reason of Insanity. In 2002 his competence to stand trial was not questioned in spite of his inability to cooperate with several attorneys. His competence to represent himself was not questioned. Mitigation was not presented at sentencing. He was clearly not capable of representing himself and his competence to proceed should have been questioned, especially given the fact that he was not treated for his psychiatric disorder, the main symptom of which is paranoid ideation. This was likely the reason he was unable to work with his attorneys at that time and there should have been an evaluation of his ability to make rational decisions to waive his right to an attorney.

Mental Status at the time of the Offense:

Mr. Dixon could not recall the events in 1978 (murder of Deana Bowdoin) which resulted in his conviction and death sentence in 2002. He was unable to contribute information and the police reports or summary of the crime scene did not provide much information regarding the state of mind of the offender. His mental status should have been questioned, however, as he had

been adjudicated as "insane" just two days prior to the offense in question and he was ordered into the Arizona State Hospital. He was not receiving any psychiatric treatment at the time the offense in 1978 occurred. It is clear now, with the test data obtained during this evaluation, that the Rule 11 evaluators for his first conviction in 1978 were accurate in their opinions that he suffered from a psychotic disorder. He would have been, at the time of the murder of Deana Bowdoin, in the early stages of a schizophrenic disorder.

Recommendations:

Mr. Dixon should be evaluated by a psychiatrist for possible benefits of psychotropic medications. He should be monitored closely for irrational and suicidal thoughts and behaviors. He should also be monitored closely for any deterioration in his mental state as he could become paranoid, agitated and uncooperative.

Ms. Droban may wish to consider neuroimaging as the cognitive test results are suggesting a diffuse pattern of brain damage. An MRI might be appropriate for this client and may assist in understanding the etiology of the cognitive deficits noted in the neuropsychological test results.

I hope the information contained in this report is helpful to you as you plan for Mr. Dixon. If you have any questions, please feel free to contact me directly.

John J. Toma, Ph.D.
Licensed Psychologist – Arizona

Appendix A

State of AZ, Presentence Investigation	dated 10/05/78
Superior Court of AZ, Sentence – Prison	dated 11/02/78
AZ Board of Pardons and Paroles	dated 06/01/83
Superior Court, Flagstaff, AZ, Transcript of Proceedings	dated 12/17/85
Superior Court, Appeal Filed	dated 03/19/87
Codis DNA Match Data Response	dated 05/02/01
Complaint vs. Judge Michael Flournoy	dated 03/12/02
Superior Court of AZ, Reporter's Transcript	dated 11/26/02
Superior Court, Petition for Review in Supreme Court	dated 03/06/03
Inmate Grievance Form – Missed a meal	dated 01/05/05
Psychological Evaluation, Steven R. Gray, Ed.D, P.C.	dated 06/16/05
Letter from Mr. Dixon to Mr. Carr and Mr. Countryman	dated 08/09/06
Letter to Garrett Simpson, Esq. from Clarence Dixon	dated 09/27/06
Request for Expenditure of Funds	dated 12/07/07
Request for Expenditure of Funds, Nathaniel Carr	dated 09/07/07
Request for Expenditures of Funds	dated 10/12/07
Conference Setting Trial, Minute Entry, Oral Argument Set	dated 11/06/07
Pro Pre Defendant or Constitutional Rights	dated 11/30/07
Clarence Dixon	dated 12/13/07
Subpoena to Carron Bigel Pietkoewicz	dated 12/13/07
Miscellaneous Subpoenas	dated 12/13/07
Superior Court, Subpoenas	dated 01/08/08
Letter to Mr. Carr from Mr. Dixon	dated 02/07/08
Superior Court, Motion to allow Petitioner to proceed Pro Se	dated 02/07/08
Superior Court, Nunc Pro Tunc Correction	dated 03/03/08
Slip Listing, Kenneth P. Countryman, PC	dated 03/04/08
Superior Court of AZ, Order allow contact visit with petitioner	dated 04/02/12
Apache Elementary (School Records)	for 1964
Arizona State Hospital	from 09/15/77 to 11/02/77
Superior Court of AZ	from 06/05/77 to 11/09/81
AZ Department of Corrections, Adult Parole Services	from 02/15/85 to 05/31/85
Cold Cases	from 10/23/19 to 01/22/02
Tempe Police Report	from 09/18/78 to 09/30/02
Criminal Court Case Information, Case History	from 11/26/02 to 12/20/02
Tempe Police Report	from 04/26/96 to 04/07/03
Department of Health Services	from 08/23/57 to 10/24/03
Completed Juror Questionnaires	from 11/13/07 to 11/14/07

Metropolitan Consulting Corporation, PC.

Lauro Amezcua Patino, MD, FAPA

4055 W. Chandler Blvd. Suite 5
Chandler, AZ 85226
480-464-431
480-464-2338 (Fax)

Patient Name:	Dixon, Clarence
Age:	57
DOB:	08/26/1955
Sex:	Male
Ethnicity:	American Indian
Date of Evaluation:	September 7, 2012
Court Case Number:	CR2002-019595
Referral Source:	Kerrie Droban, ESQ.
Psychiatrist:	Lauro Amezcua-Patino, MD.

Psychiatric Evaluation

Patient referred for psychiatric evaluation by his Attorney Ms. Droban, for a diagnostic psychiatric evaluation. Mr. Dixon was informed of her attorney's request for evaluation and limits of confidentiality, and he provided a verbal informed consent for the evaluation.

Method:
Mr. Dixon was evaluated by this writer at the Arizona Department of Corrections facility in Florence Arizona, In the Browning Unit for approximately 2 hours for a Clinical Interview and verification of history. Review of extensive records including psychiatric evaluations dating back to 1977. Review of Neuropsychological evaluation by Dr. Toma.

History of Present Illness:
Mr. Clarence Dixon is a 57 y/o, American Indian, currently residing at the Browning Unit of the Arizona Department of Corrections in Florence, Arizona. Mr. Dixon reported chronic symptoms of depression on and off since his incarceration, and at least 3 distinct episodes of severe depression in his lifetime before incarceration, manifested by decreased energy, sadness, decreased motivation, decreased interest, feelings of helplessness, hopelessness and worthlessness.
He reported at least one period of time while incarcerated when he experienced auditory and visual hallucinations.

Mr. Dixon has a documented history of being guarded and easily frustrated; was diagnosed as suffering from a thought disorder in 1977 that rendered him NGRI in 1977. However when confronted with his paranoid ideation he becomes quite defensive and irritable.
Currently he reports no difficulty sleeping, and an average appetite, admits to continued feelings of hopelessness and hopelessness, and expressed strong distrust toward detention, authorities and Government officials due to his perception of being discriminated because of his ethnic background. Denied symptoms that would meet criteria for Mania, Generalized Anxiety Disorder, OCD, Dissociative disorders, Dementia, Panic Disorder.

Past Psychiatric History and Substance Abuse"
Mr. Dixon was evaluated psychiatrically in 1977 by 2 independent psychiatrists and diagnosed as suffering from depressive and psychotic symptoms most likely resulting from a schizophrenic process. Mr. Dixon is currently not receiving any active pharmacological psychiatric intervention.
Mr. Dixon admits to using drugs since age 14, starting with Marijuana, and abused some of his father's anxiety and pain medications. Admitted to a history of blackouts whenever he drank vodka.

Medical History:
He was diagnosed with a Coarctation of the Aorta corrected surgically around age 13 at Phoenix Children's Hospital. He suffers from severe Glaucoma with progressive blindness. No history of seizures, stroke, head injuries, epilepsy or other neurological disorders reported.

Family History:
Mr. Dixon reported an extensive family history of alcoholism and drug abuse, and 2 brothers were convicted of drug dealings on the Navajo reservation.

Psychosocial History
He is originally from Fort Defiance Arizona, reportedly was born 1 month premature. Father was a teacher with the Bureau of Indian Affairs and mother stayed home. Reportedly he was held one year back in kindergarten, and admitted to having experienced severe depression around age 10 or 11.
He described his father as being easily angered, physically abusive and easily frustrated. Mr. Dixon was reportedly sent to a boarding school and in the 6th grade. He moved out after his junior year in High School after having had a serious argument with his father, and spent the summer in Los Angeles, CA with his sister. He denied any history of sexual abuse or sexual abuse perpetration. His father passed away in 1975.
Mr. Dixon married in 1976 and moved to the Phoenix Metro Area, and enrolled at Arizona State University. In 1977 he was adjudicated Not Guilty for Reason of Insanity for assault, and wife divorced him while he was in prison between September 1978 and March 1985, sentenced for assault and burglary.

Allegedly, 3 months after his release of prison he was arrested and convicted for aggravated sexual assault and kidnapping in Flagstaff where he was residing with his brother Duane after release from prison.
In 2002 he was convicted via DNA match for a crime that allegedly occurred in 1978 before his NGRI visit to the Arizona State Hospital and sentenced to Death.

Mental Status Examination:

Mr. Dixon appeared his stated age, he is medium tall and thin built, and initially during the interview he was noted to be quite irritated, distrustful and frustrated, without being physically violent and was not sure if he wanted to discuss his history with this writer. Eventually after 4-5 minutes of conversation he became more cooperative and less guarded, he apologized and stated that he was upset that the detention officers brought him into a small detention cell about 1 hour earlier and that they were doing it on purpose, to bother him. During the interview he was noted to be guarded and somewhat talkative, with some degree of confabulation, and over inclusive with his answers. His affect was intense with a somewhat anxious and restless mood. At times he was noted to be distrustful and paranoid, in particular when discussing prior psychiatric history. His associations were logical with over inclusive stream of thought, at times circumstantial. His thought content was somewhat hopeless and angry toward detention officers because of his perception of being constantly watched; and a mild to moderate degree of ideas of reference. He was well oriented to time, place, person and circumstances, and aware of recent social and political events. His memory appears to be intact, he appears to be of average to above average intelligence, his insight is poor, and his ability to exercise objective judgment is intact.

Summary of Dr. Toma's Neuropsychological Test:

1. Overall average intellectual functioning and superior general abilities.
2. Low concentration, attention and processing speed.
3. Overall improvement for the tests that measure executive function.
4. MMPI is concurrent and consistent with his history of mood, thought and perceptual disturbances, and suggestive of a Schizophrenic Process.
5. TAT suggests the possibility of difficulty regulating emotions.
6. Rorschach was remarkably consistent with the MMPI and TAT with evidence of mood and thought disturbance with difficulty regulating emotions.

These results suggest that Mr. Dixon may suffer from some type of brain impairment which does not appear to be lateralized.

Diagnoses:

I: Schizophrenia Paranoid Type, Chronic.
Major Depression recurrent
Alcohol Dependence in Full remission

II: None

III: Glaucoma with Secondary Blindness

IV: Extreme, mostly enduring circumstances (death penalty)

V: 59 current, 59 last year.

Discussion:

Based on the review of all available records, prior psychiatric evaluations, progression of symptoms, current psychiatric symptoms and neuropsychological findings, it is my best professional opinion, with a high degree of medical and psychiatric certainty that Mr. Dixon suffers from chronic and severe psychiatrically determinable thought, cognition and mood impairments that are expected to continue for an indefinite period of time of a Schizophrenic nature, complicated with depressive symptoms and historical alcohol dependence.

Schizophrenia is a chronic, severe, and disabling brain disorder that affects about 1 percent of the world population. People with the disorder may hear voices other people don't hear. They may believe other people are reading their minds, controlling their thoughts, or plotting to harm them. Schizophrenia affects men and women equally. It occurs at similar rates in all ethnic groups in the world, Symptoms of hallucinations and delusions usually start between ages 16 and 30, and Men tend to experience symptoms a little earlier than men.
The symptoms of schizophrenia fall into three broad categories: positive symptoms, negative symptoms, and cognitive symptoms. Positive symptoms are psychotic behaviors not seen in healthy people. People with positive symptoms often "lose touch" with reality. These symptoms can come and go. Sometimes they are severe and at other times hardly noticeable, depending on whether the individual is receiving treatment. Negative symptoms are associated with disruptions to normal emotions and behaviors. These symptoms are harder to recognize as part of the disorder and can be mistaken for depression or other conditions. Cognitive symptoms are subtle. Like negative symptoms, cognitive symptoms may be difficult to recognize as part of the disorder. Often, they are detected only when other tests are performed. Cognitive symptoms include the following: Poor "executive functioning" (the ability to understand information and use it to make decisions), Trouble focusing or paying attention, Problems with "working memory" (the ability to use information immediately after learning it). Cognitive symptoms often make it hard to lead a normal life and earn a living. They can cause great emotional distress.

Mr. Dixon exhibits evidence of positive, negative and cognitive deficits associated with schizophrenia, with a predominance of paranoid ideation and cognitive difficulties as defined by Dr. Toma's report

Mr. Dixon is likely to benefit from a period of treatment that should include antipsychotic medications and antidepressants, with the goal of facilitating decrease of symptoms and development of more adaptive and less destructive coping.

As suggested by Dr. Toma, a more comprehensive neuropsychiatric assessment that may include an MRI, PET scan and Quantitative Electroencephalography with LORETA localization may be helpful of further rule out any other potential neurological conditions.

Thank you for the opportunity to evaluate this challenging and unfortunate individual, if I can be of further assistance, please do not hesitate to contact my office.

Respectfully

Lauro Amezcua-Patino, MD, FAPA.

ARIZONA STATE HOSPITAL
PHYSICIAN'S ORDERS

This information has been disclosed to you from records whose confidentiality is protected by Federal Law. Federal Regulation (42 CFR, Part 2) prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

DATE	TIME	PROB. NO.	MEDICINES, DIET, ETC.
Sept 15/77			[illegible] Blood Count
			[illegible]
			[illegible]
			[illegible] Film
noted			[illegible] Tetanus 0.5cc.
			[illegible] in 4-6 weeks
			[illegible] Tests:
9/15/77 10 [illegible]			Thorazine 75mg IM or 200mg P.O. of 46 PRN for agitation
9/15/77			① multivitamin T tab daily
			② SMA 12
noted			③ EKG
			④ Consultation written for Dr. Nelson for evaluation of [illegible]
9/15/77 2 [illegible]			Judith Williams RN. Dr. [illegible]
23-77			IV ASA mg 600 stat. [illegible]
Noted			Data Sutter PDPN 9/23/77 7:30 PM
noted			
30 Sept 77			Psychological testing - re question of psychosis.
May Sun [illegible]			J W [illegible]
noted			
5 OCT 77			Transfer to moderate security no medication on mod-sec. except ASA 600 mg. of 4 hr. pm headache to see Dr. White. J W [illegible]
[illegible]			

Dixon, Clarence W
07-13-10

Max. Sec.

PHYSICIAN'S ORDERS