No. 22-99006

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Clarence Wayne Dixon,

Appellant,

vs.

David Shinn, et al.,
Appellees.

On Appeal from the United States District Court
for the District of Arizona
Case No. CV-14-00258-DJH

State Court Record
Pinal County Superior Court, No. S1100CR202200692
Transcripts

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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
(Scheduling Conference)

BEFORE THE HONORABLE ROBERT CARTER OLSON
Judge of the Superior Court

Florence, Arizona
April 12, 2022
3:36 p.m.

REPORTED BY:

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

COPY

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2

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Florence, Arizona
April 12, 2022
3:36 p.m.

P R O C E E D I N G S

THE COURT: We are here on CR202200692, in the matter of State of Arizona versus Clarent -- Clarence Wayne Dixon.

Let's start with defense counsel. And, sir? And, sir, it'll probably work best if you just stay in your seat and pull that microphone up so that the folks online can hear.

MR. SANDMAN: Good afternoon, Your Honor. Cary Sandman, appearing on behalf of Mr. Dixon.

THE COURT: Very well. And I note the motion for pro hac vice admission, which I will get to in just a moment, for the co-counsel.

And for the State, Mr. Sparks?

MR. SPARKS: Good afternoon, Your Honor. Jeff Sparks, from the Attorney General's Office for the State.

THE COURT: Okay. And, Ms. Clase, are you on the line?

MS. CLASE: Your Honor -- good afternoon, Your Honor. Colleen Clase, on behalf of the victim,

Leslie James, who is present in the courtroom today.

THE COURT: Thank you, ma'am. And, again, it'll work best if you just stay in your seat. When the time comes, just pull the microphone up.

Okay. Before we go too much further, Mr. Sparks, I've received a -- a motion for pro hac vice admission of Mr. Zuckerman and Ms. Amanda Bass. I assume the State is taking no position on that motion?

MR. SPARKS: That is correct, Your Honor.

THE COURT: The Court does find that the motion and the supplements that have been filed are in compliance with Rule 39, and it's ordered that pro hac vice admission for Eric Zuckerman and Amanda Bass is granted by the Court. And I will sign the -- the form of order when we conclude the hearing.

So let's then add for appearances -- Mr. Zuckerman, if you'd please identify for the record.

MR. ZUCKERMAN: Good afternoon, Your Honor. Eric Zuckerman for Clarence Dixon.

THE COURT: And, ma'am, are you Ms. Bass?

MS. BASS: Yes, sir.

THE COURT: Okay. Have I missed anyone who was appearing as counsel in this matter?

I know we've got a couple other people that are listening in on Webex. But anyone else who needs to

identify for the record? Okay. Hearing none.

This is date and time set for scheduling conference. Obviously, the Court has received, and I trust that all the parties have received my -- my order for today's hearing. And long and short of it, my thought is to use this, just in the short time before the date that the Supreme Court has set for execution, to get this completed.

My thought was to have a deadline for the reports, as I indicated in my -- in my order of April 26th, and contemplating a hearing date on May 3rd. I don't know whether that is reasonable, possible, or what you are thinking.

But let's start with those scheduling issues, and any assistance or order that is needed with respect to any appointment of any experts. And then we will get on to the issues of -- regarding the actual nature of the hearing.

So, Mr. Sandman, since you filed the motion, would you like to address those scheduling issues, or one of your colleagues?

MR. SANDMAN: Sure. I can do that, Judge.

THE COURT: Sure.

MR. SANDMAN: You know, part of the scheduling that the Court has proposed really hinges on

which expert's going to be appointed for our side of the case.

As you know, Dr. Amezcua-Patino has already examined Mr. Dixon and will likely do so again, but he would be the doctor we would want appointed. And assuming that's acceptable to the Court, then he can meet any -- meet the schedule that you've proposed.

THE COURT: Okay.

MR. SANDMAN: And so can counsel.

THE COURT: Okay. And just -- just from a housekeeping standpoint, is he already -- has he previously been appointed on this matter? Or what's the nature of his engagement and, I guess, from a financial standpoint as well?

MR. SANDMAN: Well, we've -- we've retained him some months ago.

THE COURT: Okay.

MR. SANDMAN: And he will -- can continue under that arrangement in terms of the financial arrangements.

THE COURT: Okay. And, again, I'm not trying to go too far with this, just there's an existing arrangement that you're asking to continue for purposes of this proceeding, correct?

MR. SANDMAN: Yes, Your Honor.

THE COURT: And just to be clear, is that the -- is that the only expert that you're asking to have appointed?

MR. SANDMAN: Your Honor, at this time, yes. Now, there's a possibility we -- we may have an additional expert or experts, but we don't know yet whether that's the case. But we wouldn't need to have them appointed, per se, I don't believe, in order for them to testify, assuming they've examined Mr. Dixon, and so on.

THE COURT: Mr. Sparks, I assume you're taking no position on the requested defense expert?

MR. SPARKS: No position on that issue. Correct, Your Honor.

THE COURT: And I'm sorry, Mr. Sandman, I -- I did not write down that expert's name. So what's the doctor's name?

MR. SANDMAN: Dr. Amezcua-Patino. And he was the doctor that supplied the report that's appended to our motion.

THE COURT: Very well. It is ordered appointing Dr. Patino for -- for this engagement for the services provided under this motion. And that -- that will be under the existing contract terms as previously negotiated, on current retention, but the services

rendered specifically related to this proceeding will be billed separately to the court, and then the -- obviously, the future billing that the court will handle with the Governor.

Anything else, Mr. Sandman, on expert before I go to Mr. Sparks?

MR. SANDMAN: No, Your Honor.

THE COURT: Okay. Mr. Sparks, what about for the State?

MR. SPARKS: Your Honor, so it was my understanding, based on the Court's order, that the parties should be looking at experts that are on the Pinal County Superior Court list of contracted mental health professionals. So those are the experts that I contacted regarding availability to do an evaluation under the Court's proposed time line.

I did confirm that Dr. Carlos Vega would be able to do an evaluation and complete a report by April 26th. So in light of that, Your Honor, I would request that the Court appoint Dr. Vega to evaluate Mr. Dixon.

THE COURT: And just to be clear, Mr. Sparks, and if my wording in my order was unclear, I wasn't intending to restrict you to the Pinal County list because of the specialized nature of this inquiry;

merely offering that as a resource if you are looking for names with which the Court regularly deals. But if you have a -- someone else that you would prefer to appoint -- have appointed, that certainly is acceptable as well.

MR. SPARKS: Well, Your Honor, at this stage, you know, I can't confirm that I have someone else who has the availability to complete the evaluation for the time line. And as it's -- the State doesn't object to the schedule that the Court has set forth in its order.

So in light of that, we would prefer that the Court appoint Dr. Vega so that we can maintain the schedule that the Court has suggested.

THE COURT: Very well. It is ordered, then, Dr. Carlos Vega is appointed per the Court's standard hourly service arrangement with Dr. Vega, to be -- to be billed to Pinal County.

And just to be clear, Dr. Vega -- this is -- this is not just a typical Rule 11 examination, and obviously should look to the Attorney General's Office to get guidance and direction as to the scope and areas of inquiry that the State wishes to have evaluated.

And beyond that, Mr. Sandman, and, Mr. Sparks, obviously, all of this is occurring very

quickly, on a short time line, and I'm not intending to cut off defense requests. If there's some further request that needs to be made, I prefer that there, first, be a conference with opposing counsel just in case that might have an impact on their schedule as well. But the Court will, obviously, consider additional requests if -- if they are presented.

So then that takes us, I believe, to the hearing date. And as I understand it, the execution date that was set by the Supreme Court was May 11. And it seemed that May 3rd was the -- the earliest possible date. And I think what I'm hearing from everybody, in response to my first question, is that May 3rd is a workable date.

Is that correct, Mr. Sandman?

MR. SANDMAN: Yes, Your Honor.

THE COURT: And, Mr. Sparks?

MR. SPARKS: Yes, Your Honor.

THE COURT: Any objection with starting on May 3rd at 9:00 o'clock? And I don't know how long the hearing will last and whether we will conclude on May 3rd or we will need additional days, but my intention would be that we would start at 9:00 a.m. on May 3rd and, during normal court hours, continue until we finish.

Mr. Sandman, concur?
MR. SANDMAN: Sounds good.
THE COURT: And, Mr. Sparks?
MR. SPARKS: Yes, Your Honor, concur.
THE COURT: Are there any other -- before we get to the actual conduct of the hearing, any other preliminary matters that either party is asking the Court to address?
And, I guess as part of that, whether there's any need for any other orders to accommodate the -- the review that the doctors will need to -- to provide? And, obviously, if something comes up after today, we will deal with that upon request.
Mr. Sandman, anything else come to mind right now?
I'm sorry. If you need a moment, please take it.
MR. SANDMAN: No. That's okay. One thing I was thinking about was that counsel may want the opportunity to interview each other's experts before the hearing. If Mr. Sparks doesn't have any objection to that, I'm sure he and I could work out a schedule for that, after the reports are submitted.
THE COURT: Mr. Sparks, any objection to that plan?

MR. SPARKS: No, I don't object to that.

THE COURT: All right. Then it is ordered that counsel use best efforts to arrange a -- times that are convenient for -- for the doctors and attorneys for the interviews to be completed between the receipt and due date of the report, and sufficiently in advance of the hearing date for counsel to prepare.

Okay. Anything else, Mr. Sandman, before I go to Mr. Sparks?

MR. SANDMAN: No, Your Honor.

THE COURT: Mr. Sparks, any other preliminary matters or preparatory matters before we get to the conduct of the hearing?

MR. SPARKS: One issue, Your Honor. Obviously, I recognize that the Court has granted the motion or petition filed on Friday by Mr. Dixon. The statute contemplates a response by the State. So I -- I wanted to let Mr. Sandman and the Court know that we do intend to file a response this week. Not expecting the Court to take action on that; it's just the State would like to have its position and, you know, response to the allegations in the petition as part of the record in this case.

So I just wanted to let the Court know that that's the reason that we intend to -- to file that this

week, unless the Court, you know, prefers that we not. But we would just like to have our position in the record.

THE COURT: To the contrary. My expectation was that you would be doing exactly that. And I would request you to do so, as, obviously, we're operating on an accelerated time basis. But just as quickly as is practicable.

And since the defense, I believe, has the burden of proof in this matter, obviously, defense can -- may file a reply, as well, in advance of the hearing.

Okay. Any other preliminary matters, Mr. Sparks?

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

THE COURT: And, Ms. Clase -- I mispronounce your name every time, and I apologize.

MS. CLASE: It's okay, Your Honor. It's Clase.

THE COURT: Clase.

MS. CLASE: Yes.

THE COURT: I'm sorry.

MS. CLASE: And nothing from the victim, Your Honor.

THE COURT: Very well. Thank you.

1 And just to be clear, that May 3rd date
2 works for victim, victim representatives?
3 MS. CLASE: It does. She is available.
4 THE COURT: Okay. And, obviously, the --
5 any victim or victim representatives who wish to
6 participate and be present in the courtroom, obviously,
7 the victim's face will be available. But, also, if they
8 wish to appear by Webex, that's also an option that will
9 be -- will be afforded.
10 MS. CLASE: Thank you.
11 THE COURT: Certainly.
12 Okay. That takes us to the conduct of the
13 hearing. And I don't really want to turn this into an
14 argument today. But just in the interest of economy,
15 when we get to the hearing, I thought it would be useful
16 to -- to flesh out a little bit the -- sort of the
17 standards for the hearing.
18 And in all candor, there's not a lot of --
19 not a lot of information out there that I was able to
20 find regarding the conduct of these hearings. And so
21 you have seen, in the middle of the second page of my
22 order, my effort to provide a very brief summary of what
23 I think the standard and the conduct of the hearing
24 would be.
25 And as you see there, that is not an order.

1 That is not even a draft order. It is simply letting
2 you know what I'm thinking. And if -- if any party
3 feels that the standard or the conduct of the hearing
4 should be conducted in a different manner, please --
5 please file your memorandum by Monday, and then any
6 response would be by Friday, so that we're -- we're all
7 on the same page, or at least have the opportunity to be
8 prepared for any discussions that need to occur before
9 we start the hearing. So that is everything on my list
10 for today.
11 So, Mr. Sandman, anything else you want to
12 talk about?
13 MR. SANDMAN: No, Your Honor. I think we've
14 covered it.
15 THE COURT: Okay. And, Mr. Sparks, anything
16 else from the perspective of the State?
17 MR. SPARKS: No, Your Honor. Nothing else
18 from the State.
19 THE COURT: And, Ms. Clase?
20 MS. CLASE: No, Your Honor. Thank you.
21 THE COURT: All right. Well, thank you all
22 for making yourselves available on such short notice and
23 for working hard to meet the schedule that the Court has
24 provided.
25 I have communicated to the court reporter

the need for transcripts to be prepared promptly for any -- any further proceedings that will be necessary. So just know that there won't be any vacations, or anything like that, that will delay the preparation of the transcripts.

So with that, thank you everybody. And we are adjourned.

MR. SANDMAN: Thank you, Your Honor.

THE COURT: Bye.

(The proceedings adjourn at 3:52 p.m.)

* * * *

C E R T I F I C A T E

I, LESLIE C. CRAITH, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered from 1 to 16, constitute a full, true, and accurate transcript of all proceedings had in the above matter, all done to the best of my skill, ability, and understanding.

DATED this 14th day of April, 2022.

_____
Leslie C. Craith, RPR
Arizona Certified Reporter
Certificate No. 50850

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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

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20

21

22

23

24

25

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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

was convicted of committing, but, rather, his execution is an illegal, immoral, extrajudicial killing intended to silence him in order to protect State agencies from political embarrassment.

The evidence presented at this hearing will demonstrate that although Clarence has a surface awareness of the fact that he was convicted of murder and sentenced to death for it, Clarence is not mentally competent to be executed because he does not rationally understand the State's reasons for his execution.

Thank you.

THE COURT: Thank you, sir.

Mr. Sparks.

MR. SPARKS: Your Honor, the evidence will show that nothing about Mr. Dixon's belief in the legal challenge he's raising to his conviction prevents him from rationally understanding the State's reasons for his execution.

The Court will hear that he told Dr. Vega that he doesn't -- he claims not to remember committing the murder, but that if he did, he would be relieved because then he would feel that the death sentence was warranted.

I think that right there shows that he does 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.

So the competency is basically looking at two areas, you know, the factual understanding of the law, and the rational understanding of the process.

Q. Now -- and we're going to talk about this, but before we get ahead of ourselves, as part of that evaluation, do you see people in person?

A. Yes, I do.

Q. Okay. And is there a reason that you see people in person as opposed to doing a video interview of that person through videoconferencing software on a computer?

A. Medicine, in general, psychiatry in particular, requires understanding of behavior in front of you. So there's a lot of nonverbal information we're trying to collect in terms of interaction, empathy, emotions going back and forth, body posture.

There are a multitude of issues that we're trained to do in terms of psychiatric interviewing that requires the connection with the patient so you can at least attempt to make it. Not that it's always possible, though.

Q. And do you generally see someone more than once, or are there advantages with seeing someone more than once?

A. There are a lot of advantages in -- in the 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

have to be very neutral and not be judgmental of their thinking. If you -- if you get critical of their way of thinking and their perception of reality, they will shut you out. They will not let you in.

Q. Are people who -- can people who have schizophrenia also be intelligent?

A. Oh, absolutely. There is a percentage of people with schizophrenia that maintain a high level of sophistication in their thinking, even though they may have other cognitive issues in terms of problem solving, attention, concentration, things of that sort.

Q. Do you face situations when you're interviewing patients where symptoms of schizophrenia are not apparent immediately, but then become apparent over time?

A. Yes. But that's commonly the progression of schizophrenia.

Q. I -- that was a poorly phrased question.

Over the course of your interview, are you able to reveal symptoms of schizophrenia that you might not have been able to see immediately when you began your interview with the person?

A. Yeah. That's particularly true for delusional thinking. Because to reach the conclusion of delusional thinking, you have to have a reality that is intense,

unique, and unbreakable for that particular person in the context of their environment.

So -- so sometimes you have to get secondary information, you know. Because sometimes a patient may tell you something that is delusional that sounds rational.

Q. And what do you mean by secondary information? What types of things would you look to?

A. Well, observations from other people, writings from them, situations in terms of their behavior, isolation, refusal to participate in certain activities, the consistency and repetitiveness of the same thinking. So we have to explore that.

Q. Is there an age at which schizophrenia symptoms commonly manifest in men?

A. Yes. The full-blown symptoms of schizophrenia usually get manifested in the late teens, early 20s. I'm hesitant, because there are confounding factors that may accelerate or delay some of those things.

Q. Are there sometimes triggering events that can cause the symptoms to manifest in a person -- a triggering event in a person's life that could then cause the symptoms to manifest?

A. Any stressful event in anybody's life can have a serious impact on brain functioning. So in terms of a

schizophrenia, we have to understand it's a lifelong disorder and it has multiple risks. And there are certain situations that may increase the risk of developing schizophrenia, of which Mr. Dixon has a multitude of those.

But I -- I think that there's certain ways that the individuals try to cope with their distorted thinking that may actually make things worse.

Q. You just said that schizophrenia is a lifelong illness. Does that mean it's not curable?

A. I think there's a misconception on the treatment of schizophrenia. There is no treatment for schizophrenia. There is treatment for some of the symptoms associated with schizophrenia, but we haven't gotten to the point that we understand schizophrenia well enough that we can say if we do A, B, and C, the patient is going to go back to an acceptable, normal self.

Q. Now, we've talked a lot about schizophrenia generally. And your role here today is to assess whether Mr. Dixon is competent to be executed.

A. Correct.

Q. Is it fair to say that just because someone has schizophrenia doesn't mean that they're incompetent to 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.

For example, trauma at birth. Being born with anoxia to the brain, that increases the risk substantially. Malnutrition increases your risk substantially. Psychological trauma increases your risk substantially. So as you keep adding factors, you keep increasing the risk.

Q. Now, in Mr. Dixon's case, did he have trauma at birth as far as you're aware?

A. Yeah. I believe he was born as a blue baby. He had anoxia at birth.

Q. Could you just explain to us what that means to be born as a blue baby?

A. It means that -- that something happened in the process of delivery that caused you to not be able to breathe. So, basically, you turn blue. And then emergency measures have to be taken to keep you from dying.

Q. So the lack of oxygen that Clarence Dixon experienced at birth raised his risk of developing schizophrenia; is that an accurate statement?

A. That is correct.

Q. Okay. What about emotional and physical abuse or neglect? Is that something that's present in Mr. Dixon's case as well?

A. Yes. We usually think of abuse or chronic

neglect in the context of psychological issues or psychological trauma. But the reality is that chronic stress is a biological trauma because of your stress response that is always active. So that in itself is somewhat toxic to the brain. So that precipitates or increases the risk of developing schizophrenia.

Q. And was that present in Mr. Dixon's case?

A. That is correct.

Q. And what about -- this is sort of similar, but sexual exploitation in teenage years, is that something that can be a contributing factor?

A. If it is in the context of another stress. So that creates another chronic stress reaction.

Q. And is that something that is present in Mr. Dixon's social history?

A. That is correct.

Q. And what about chronic illness, such as problems with your heart, needing heart surgery, other chronic illnesses? Is that something that can be a contributing -- contributing to predisposition for schizophrenia?

A. Illness -- medical illnesses, in general, actually, particular viral infections during early childhood, has been associated with schizophrenia. 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.

Now, is that something that you considered as historical evidence of possible schizophrenia for Mr. Dixon?

A. Yes, I did.

Q. Okay. Now, I believe that you mentioned early on in your testimony that Mr. Dixon was found not guilty by reason of insanity in Superior Court; is that correct?

A. That is correct.

Q. Is that something that you considered as well?

A. Yes.

Q. Okay. And what is the significance of these -- these findings from 1977, which are from so long ago?

Why are they significant to your determination about whether Mr. Dixon has schizophrenia today?

A. Well, it's one chapter of the movie. That it was so severe that two psychiatrists were concerned that he could not be tried, and he was not guilty by reason of insanity. That's a pretty serious finding, if you may.

Now, if you put that in the context of his age and the time that this was happening, that is also correlated with potential schizophrenia. And not unusually, the first episode of schizophrenia is like that.

Actually, in the natural history of 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.

1 Did you review this document as part of your
2 analysis?
3 A. Yes, I did.
4 Q. Okay. And do you see on the top in handwriting
5 it says: Thorazine 75 milligrams or 200 milligrams?
6 A. That is correct.
7 Q. And could you tell the Court, what is Thorazine?
8 A. Thorazine is the oldest antipsychotic on the
9 market. It was developed in the 1950s. Actually, it
10 was developed as an antivomiting sedative medication,
11 where they found that it had some positive effect on
12 psychosis. So it was widely used.
13 Even at the time that I was in training in 1985
14 to '88, it was highly used antipsychotic medication.
15 Unfortunately, it had a lot of bad side effects. So we
16 don't use it as much anymore because of the multitude of
17 effects on the brain that may cause more damage than
18 benefit.
19 Q. Was this a drug that was commonly prescribed for
20 people who had been diagnosed with schizophrenia?
21 A. That is correct.
22 MR. ZUCKERMAN: Let's pull up Exhibit --
23 what's been admitted as Exhibit 5. If you could just
24 zoom in on the top of that please so we can see what the
25 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

1 elements of chronicity suggested a guarded
2 prognosis with treatment.
3 And on the next page we have the Sixteen
4 Personality Factor test. We haven't really talked about
5 this yet, but can you talk about what significance, if
6 any, standardized testing administered to patients can
7 play in determining what their ultimate diagnosis is?
8 A. In simple terms, there's no psychological test
9 diagnostic of anything. Right? Psychological tests and
10 investigation are patterns of either behavior or brain
11 functioning that allow the diagnostician to connect the
12 dots to the movie.
13 So it's no different than a pneumologist
14 listening to somebody's lungs and hearing some crackles
15 and order an x-ray, and then they make an interpretation
16 of how that x-ray connects to this.
17 So there's no -- even though -- and even though
18 psychological testing can be very useful, it's not
19 diagnostic in any sense.
20 Q. Is it fair to say that it can help confirm a
21 belief that you -- or a suspicion that you have that
22 someone might have a particular mental illness?
23 A. It can help you refine the movie. And it can
24 help you understand the movie a little better. But
25 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.

Q. Is it significant to you the findings from this report and the recommendations for the prescriptions in making your ultimate decision about what's going on with Mr. Dixon's brain today?

A. It's important understanding that these medications are antipsychotic medications, not antischizophrenia medications. The psychosis can come from a lot of different reasons. So we use them to treat psychosis.

If the psychosis is so severe that it's impeding the ability of the individual to function, then we need to reduce the intensity of those symptoms so they can be more functional. So we talk sometimes about we used a lot in certain settings more to control behavior than necessarily to treat an illness.

Q. Okay. I want to pull up what's been admitted as Exhibit -- Defense Exhibit 6.

And this is a psychological evaluation done by Dr. Toma in 2012. Is this a document that you reviewed?

A. Yes, I did.

Q. Okay. I'm going to go to page 19.

Now, are you aware whether Dr. Toma administered a full neuropsychological battery on Mr. Dixon in 2012?

A. I believe he did. Yes.

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.

What significance does it have that we -- over such a large period of time, we're still seeing symptoms and evidence of schizophrenia?

A. If you remember when I testified before, I said that schizophrenia is a lifelong disorder. This backs up our consistency. Right?

Q. Are you familiar with the MMPI-2?

A. Yes, I am.

MR. ZUCKERMAN: Let's go to page 20.

Q. BY MR. ZUCKERMAN: The results of the MMPI-2 are consistent with observations, his reported history, and outside sources of information that indicate that Mr. Dixon seems to experience thought, mood, and perhaps perceptual differences. He tends to be isolative and is generally mistrustful of others. A psychotic disorder such as schizophrenia is suggested by these tests and is consistent with the observations made back in 1977 when two Rule 11 psychiatrists opined he was experiencing a severe depression with underlying psychotic disturbances.

Can you just give the Court a little background of what the MMPI is and what, if anything, these types 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.

So the fact that he has been in that role for so long actually has facilitated him being inside of himself for a very long time.

Q. So does the fact that there are not records of Mr. Dixon being prescribed antipsychotic medication over the past 35 years while he's been incarcerated mean he doesn't have schizophrenia?

A. Absolutely not.

Q. And are people who have schizophrenia -- generally, do they believe that they're mentally ill?

A. Most of them don't.

Q. Okay. And as I understand your testimony, unless someone is dangerous, or violent, or is in the midst of a obvious psychotic episode, if they don't seek treatment themselves, they likely won't get treatment?

A. Most -- most -- yes. Most of the patients with schizophrenia that I come across, they come to the hospital because of the manifestations of acute psychosis, actively hallucinating, being agitated, fighting, many of them being hospitalized against their will.

And we can stabilize them, and we recommend that they continue treatment. I'm not saying that we shouldn't recommend that, but treatment is complex and 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

1 frustration. He actually lives in a separate reality
2 inside of his head. And we see glimpses of that reality
3 when he writes, for example, or when he talks to you, or
4 when you try to push him into something, he may -- he
5 may react angrily.
6 And I think that that was seen in Dr. Toma's
7 evaluation where he -- after doing the Rorschach,
8 looking at distorted thinking, he became very paranoid,
9 very agitated.
10 Q. Now, are you aware whether Mr. Dixon has any
11 physical limitations as far as his sight?
12 A. Yeah. I believe he's legally blind.
13 Q. Okay. Do you think that that blindness has any
14 impact on the presentation of any symptoms that he might
15 have?
16 A. Well, I mean, again, I think it -- his blindness
17 has temporarily become a barrier for him to be able to
18 get inside of himself, because he likes to read. So,
19 fortunately, he was allowed to have, like, talking
20 books, you know, something to help him stay connected
21 with some reality outside of him.
22 Q. Now, you said that you've diagnosed Mr. Dixon
23 with schizophrenia. I just want to talk about some of
24 his specific symptoms.
25 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?

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

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

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

over time, which -- I mean, it's delusional in itself, but it also negates -- I mean, also describes some of the degree of delusional grandiosity that he can know more than the law experts.

Q. So my understanding of what you're saying is that Mr. Dixon believes that his claim about the NAU police is being denied not because it's legally wrong, he believes that the judges believe it's legally correct, but deny it anyway?

A. Correct.

Q. And he believes that because the judges are trying to protect themselves and the police department from embarrassment?

A. Correct.

Q. Okay. I'm going to go to the next one, which is 13 -- Defense 13. Starting on page 2 -- this is a letter that Mr. Dixon wrote to Judge Nelson in 1997.

And you reviewed this document, right?

A. Yes, I did.

Q. Okay. I firmly believe the courts sought to deny me the constitutional protections of due process and search and seizure not only because these courts felt me guilty, but because to follow and apply the law would've been politically 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.

Mine is a unique and exceptional claim, and I firmly believe all commission members need to know this very valid challenge to the police authority and the judicial bad faith involved. Beyond the possibility of my freedom lies the very real damage to the judiciary and the rule of law bad faith acts endanger. My complaint against Judge Flournoy is real and an integral part of the Arizona justice system. And because my police authority claim is rare and a political firebomb, the public needs to be represented by the Commission on Judicial Conduct.

You talked previously about grandiosity. Could you explain whether evidence of grandiosity comes out in this writing and, if so, what significance that has?

A. Delusional grandiosity comes in different forms. It can come in the form of I know better and I know more, even though the evidence is not rational. Right? It's not supportive of that.

And someone that is consistent on his presentation, it's not the irrationally of thinking that there's a conspiracy, it's actually the irrationality of his defense. I mean, the defense that he's been claiming since 1970-something is irrational.

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

that multiple courts and multiple judges are conspiring to wrongfully deny his claim?

A. That is correct.

Q. Defense Exhibit 20 is a Motion to Reconsider Denial of Change of Venue.

On the first page -- this is a document you reviewed?

A. Yes.

Q. Defendant seeks to preserve for appeal, if necessary, allegations of interest and prejudice which prevent a fair and impartial pretrial and trial environment.

Page two: Judge Klein's negative response to a duty of office is prima facie evidence of interest and prejudice. Allowing the State's response to stand without prior judicial scrutiny is a violation of the Code of Judicial Conduct.

Now we're at 2002 here. Is this a further continuation of the consistency of delusions that you've talked about?

A. That is correct.

Q. Okay. Defendant Exhibit 21, page 8. I'm sorry. This is PDF page 8. This is page 5 of the pleading. You'll see -- this is a document you reviewed as well, 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

cross-examination, I just want to ask Dr. Patiño a couple quick questions about Dr. Vega's report.

Q. BY MR. ZUCKERMAN: Dr. Patiño, you've had the opportunity to review Dr. Vega's report?

A. Yes, I have.

Q. Okay. Do people with antisocial personality disorder generally experience delusions?

A. Generally not.

Q. When you are seeing delusions and hallucinations, what -- do you then consider -- would you then typically consider a diagnosis of antisocial personality, or would you look to other diagnoses in the DSM?

A. The acute diagnosis of psychosis, delusional thinking, hallucinations, does not include antisocial personality initially, because you want to look at the most probable causes of the problem. And it can be schizophrenia, it can be drug-induced, it can be depression, it can be mania. There are a lot of other, more significant, possibilities. That is because personality disorders are pervasive and lifelong. So it's not something that is just looked at initially when somebody is suffering from psychosis.

Q. And delusions are not part of the DSM criteria for antisocial personality disorder; is that correct?

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.)

C E R T I F I C A T E

I, LESLIE C. CRAITH, having been first duly sworn and appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered from 1 to 93, constitute a full, true, and accurate transcript of all proceedings had in the above matter, all done to the best of my skill, ability, and understanding.

DATED this 4th day of May, 2022.

_____
Leslie C. Craith, RPR
Arizona Certified Reporter
Certificate No. 50850

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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	

APPEARANCES:

For the Plaintiff — Jeffery Sparks, Greg Hazard, Attorneys at Law

For the Defendant — Eric Zuckerman and Amanda Bass, Attorneys at Law

BEFORE THE HONORABLE ROBERT CARTER OLSON

*****

Florence, Arizona

May 3, 2022

THE COURT: All right. Lets go back on the record on CR20200692. All counsel previously identified are present.

MR. ZUCKERMAN: Eric Zuckerman for Clarence Wayne Dixon and with me are Amanda Bass, and Cary Sandman and our paralegal is Angela Fairchild.

MR. SPARKS: Jefrey Sparks for the state along with Greg Hazard and our paralegal Daniel Mccall.

THE COURT: Very well. Thank you. Very well. As you see, we have switched court reporters so on we go.

Anything to address before we get Dr. Patino back on the stand?

MR. ZUCKERMAN: Your honor, I'd just like 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

thia matter?

A. Yes, I am.

Q. And what rate or what fee are you?

A. Fee is $450 an hour.

Q. And we just limit it, I know that you did work on the Dixon' case back in 2012 in another type of proceeding, but I just want to focus on your work on the competency determination proceedings and I see that you evaluated Mr. Dixon first on August 25 of 2021, correct?

A. Correct.

Q. And then February 17 of 2022?

A. Correct.

Q. March 10th of 2022?

A. Correct.

Q. And then most recently April 19 of 2022?

A. That is correct.

Q. And your testimony on direct was that this is -- this is a nice thing to be able to see Mr. Dixon, interview Mr. Dixon over time, correct?

A. That is correct.

Q. And numerous times?

A. Yes.

Q. Okay. Do you have an estimate of how many hours you have devoted to the Dixon' matter on these competency 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.

THE COURT: You may answer if you're able.

THE WITNESS: I don't know.

Q. Okay. Are you sure that your work on Detrich's case involved evaluating for determination for competency to be executed?

A. As far as I remember, I mean, I lost track of that particular case, but I didn't normally don't follow the cases after my testimony. I don't really know what happened with it. I do know that there were issues of cognitive impairment and he ended up being remanded to trial again or something like that by the 9th circuit.

Q. It is possible that your work was more involving a psychiatric evaluation like you did for Dixon in 2012, that kind of work?

A. It is possible.

Q. Okay. Opposing counsel also asked you on direct about your experience in doing competency determinations, correct?

A. Correct.

Q. And you mentioned it had been awhile since you had done one. Do you by awhile, do you know what you mean by that?

A. Not really. I know that there was a moment in time -- when I was doing my PSRB work between '95 to 2002, 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

1 Dr.' Opinion of the doctor testifying about his opinions
2 of what Mr. Dixon has told him so.
3 THE COURT: Mr. Hazard, I'm not sure I
4 understood the question, if you rephrase that question?
5 Q. Do you agree that Dixon is aware the state
6 intends to execute him for the crime of murder of Ms.
7 Bowain?
8 A. I think I have testified before that he knows
9 those facts, yes.
10 MR. HAZARD: No further questions, your
11 honor.
12 THE COURT: Okay. Counsel, I am going to
13 ask the witness a few questions and then I will return to
14 Mr. Hazard for further cross-examine and then obviously
15 for rebuttal, redirect.
16 Q. Doctor, I'd like you to help walk me through
17 your, your testimony and specifically as it relates to
18 delusions about the NAU police scenario and his diagnosis
19 he has schizophrenia.
20 First off, with respect to the
21 schizophrenia, I think you make the point in your report,
22 that it is most commonly found in lower IQ people but also
23 applies to higher IQ people but the systems or the traits
24 or the functionality of the patient is different depending
25 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.

Q. Okay. And you said on direct examination that the reason that they have conspired to deny his claim is not because they think it is without merit, but because they believe that to agree with the claim would lead to embarrassment on the state university system and the government in general?

MR. HAZARD: Objection, asked and answered.

THE COURT: You may answer if you are able.

THE WITNESS: That is correct.

Q. Okay. So it seems to me that we are dealing with two related delusions, one related to the factual basis of his claim and the other related to the fact that Mr. Dixon believes that his claim is being denied, not because judges disagree with him legally, they actually agree with him, but they're nonetheless denying his claim to silence him and so that they can protect other state agencies, correct?

A. That is correct.

Q. Okay. So we are talking about complicated issues here, but it seems that there -- scratch that.

When Mr. Dixon writes about an extrajudicial killing, why do you think he characterize it that way?

MR. HAZARD: Objection beyond the scope.

THE COURT: You may answer if you are able?

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.

Q. Mr. Dixon was convicted of a crime resulting from his arrest by the NAU police in Flagstaff, right?

A. That is correct.

Q. And that's different from the crime that we are here about today that he has been sentenced to death for which occurred in Maricopa county?

A. That is correct.

Q. Okay. And Mr. Dixon' belief is that the courts are conspiring to deny an otherwise meritorious claim and execute him because they want to protect the system from admitting that his arrest in a different crime arising from Coconino county because they want to protect agencies from admitting that that arrest was illegal, a different crime?

A. That is correct.

Q. When Mr. Dixon thinks about when he is -- when he is prompted to think about the fact that he is going to be executed, in a number of days, is he able to contemplate the severity of the crime and society' goals in vindicating societal interest by executing him or does he automatically go and think about a different unrelated crime?

A. We talked specifically about that and he has a he admittedly goes back to the issues of why he is not going to be executed meaning that he is going to have these

1 claims and he is, I don't know, he is going to be filing
2 more appeals and things of that sort and now, his reaction
3 though is very schizophrenic like. He is very
4 disconnected from death.
5 MR. ZUCKERMAN: Nothing further. Thank
6 you.
7 THE COURT: Thank you.
8 Is Dr. Patino subject to recall?
9 MR. ZUCKERMAN: Yes, your honor. I would
10 like him to sit in on Dr. Vega' testimony and do plan to
11 recall.
12 THE COURT: Okay. Dr. Petino, we ask you to
13 stay here because you are subject to recall but this will
14 conclude your testimony.
15 The witness: Can I wait over there?
16 THE COURT: Wherever you like.
17 THE WITNESS: Okay. Thank you.
18 MR. ZUCKERMAN: Possible to a take a 5
19 minutes recess before we begin with the next witness?
20 THE COURT: Certainly.
21 MR. ZUCKERMAN: Thank you.
22 (Break)
23 THE COURT: Counsel ready to resume?
24 MR. ZUCKERMAN: Yes, Your Honor.
25 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.

1 So you mentioned having done a number of
2 psychological evaluations for the court, when you do that
3 an evaluation, whether it is for a DCS as you mentioned or
4 Rule 11, how many times do you generally interview the
5 subject of the evaluation to complete an evaluation?
6 A. Generally one time. I see help one time.
7 Q. Okay. And that is sufficient to complete the
8 evaluation in most of those cases?
9 A. Yes, it is sufficient you know depending on the
10 referral question I take the time that is necessary and I
11 only opine after I have sufficient information to opine.
12 Q. Okay. How did you become involved in this case?
13 A. I believe that you was is you that contacted me?
14 Somebody contacted I believe it was you correct you asked
15 if I would be interested and I said yes I would be
16 interested.
17 Q. Okay. And did you complete an evaluation of
18 Clarence Dixon and prepare a report based on your
19 involvement in this case?
20 A. I did. I did.
21 Q. Okay. Okay. And as part of your, the evaluation
22 that you conducted in this case, were you asked to answer
23 the question whether Clarence Dixon' mental state is so
24 distorted or his concept of reality is so impaired that he
25 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.

We know that politicians in particularly are good at that. And so, you know, I don't think I mean I can understand how someone could call it delusional and having heard that Dr. Patino, I can understand the reasoning but I don't agree. I mean, I think that you have delusions, you have paranoia and you have cognitive distortions and this, at best falls on the paranoia at best. I think it is like it as a narcicisstic, narcissist aspect of his personality that he believe that he is convinced that he is right. And and and Frankly, you know when I hear that he is trying something that has a what judge Olson referred to low probability proposition. You know a low probability proposition means it isn't impossible. So therefore it cannot be a delusion because for in order for there to exist, a delusion, in order for there to be a delusion, you it is impossible for it to happen. It is a matter of, you know, is the aliens and were the aliens that provided the DNA evidence, you know. And that is the distinction.

Q. Okay. Let me ask you a few questions about a few things that you mentioned in there.

One, you talked about and you're also referred to in your report you know potential personality disorders. There has been, you know, testimony and 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

and he was incompetent at the time, then they should have had an incompetency hearing with regards to him representing himself. Again, that didn't happen. Not only did it not happen but according to judge Olson, he said well I nobody has written and he does better than a lot of the lawyers that I have seen. I'm sorry, that is not delusional. You can call it socracy, maybe I don't know or rationalization, intellectualization, but I don't think it meets the criteria of delusion because low probability of something happening is still probable that it could happen. It is probable. That he could that that hail Mary pass could be caught okay. And so, you know, that just it is just not there in my opinion.

Q. So I think that you essentially stated this but to answer the question, in your professional opinion, is Mr. -- does Mr. Dixon have a rational understanding of the state's reasons for his execution?

A. Yes, he does.

Q. Just one moment, please. Okay. And in your opinion, does Mr. Dixon make a connection between the 1978 murder he was convicted of and his upcoming execution?

A. Yes, he does.

MR. SPARAK: Thank you. No further questions, Your Honor.

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

1 now with a psychologist where they come in and I say the
2 person has a 70 IQ. All right. And they didn't do an
3 adaptive functioning or they did an adaptive functioning
4 scale and the adaptive functioning was above average or
5 superior.
6 And the person was perfectly functional and
7 had a driver's license, work, had you know, married, had a
8 mortgage. And so okay he didn't do well on the test, he
9 didn't test well.
10 Q. Dr. Vega, you wrote in your report, quote,
11 Clarence was alert and oriented across all spheres. He
12 was capable of providing all of his personal identifying
13 information without hesitation and this includes his
14 height at 5 feet 8 inches tall, and weight of 145 pounds,
15 he stated that lately he has been losing weight and he
16 attributes this to the normal process of aging.
17 A. Yes, he said that.
18 Q. Okay. Can you pull up -- pull up --
19 THE COURT: Dr. Vega, wait for the next
20 question, please.
21 MR. ZUCKERMAN: Your honor I am going to
22 put up what I am going to mark for identification purposes
23 as exhibit 33 and I have a copies for the court and
24 counsel.
25 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

deluding himself and how does he have deluded notions that are not delusional?

A. No, because he believes he is right -- he is fixated on the fact that he is right and they're wrong. And that he is going to and and that he has no other choice but to continue to try to prove to them that this is right and in every single case at the end of it all, he says I him right they're wrong. They're really not coming they're not look at a to me any narcissists would say the same thing, you know, any narcissists that believes that you know that he has the you know the monopoly of truth on truth, right, and that everybody else doesn't because they know more. And so you know the issue is you know we are splitting hairs here, is that a delusion? I don't think so. I think it's a function of his personal diagnosis while is personality disorder and not schizophrenic.

Q. Now you say it is not a delusion and you said the on direct examination because delusion the definition of delusion involved wild ideas such as aliens being involved or something completely unbelievable, is that correct?

A. That is correct.

Q. Okay.

A. There is no possibility, no probability of ever of it being correct.

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.

And delusions, the delusions you know I hate to say it but delusions, there is a difference between delusions and paranoia, know know and the difference is, is that a delusion for in order for there to be a delusion, there is no possibility of what they are -- what they are alleging for to occur and on the other hand, it is is a very low, very little probability.

Q. Right. Lets scroll down to the second paragraph and the definition for delusions.

I am going to read this here, delusions are deemed bizarre if they are clearly implausible and not understandable to same cultured peers and do not derive from ordinary life experiences. An example of a bizarre delusion is the belief that an outside force has removed his or her internal organs and replaced them with someone else' organs without leaving any wounds or scars.

Sort of like the example that you gave about aliens being involved, right?

A. Exactly.

Q. Okay. So in the DSM diagnosis of delusions, there are 2 categories. One category is delusions are fixed beliefs that are not amenable to change in light of conflicting evidence.

And the second category is bizarre delusions that involve wild beliefs such as aliens being involved or

1 having your organs replaced, is that an accurate statement
2 that I just said?
3 A. That is what the DSM, that is what the DSM five
4 stated, correct.
5 Q. And are you saying that the DS five is wrong
6 about the definition of delusions?
7 A. I am saying that -- I am saying that the DSM.
8 five is defining it this way, but the and my court over 40
9 years of working in this field, delusions are beliefs that
10 are impossible. Paranoia are beliefs that are improbable.
11 And then cognitive distortions is the one further below.
12 So that is what I am saying.
13 That is a lot and if I may, if you look at
14 case law, like this Panetti case, you know, is it that --
15 did you I guess you, I don't know who wrote it up, you
16 know, in that particular case. Take a look at the
17 delusions. Take a look at what the delusions are. Take a
18 look. And delusions are not that he filed 26 motions that
19 were almost as good as any lawyer can file, but that the
20 motions are what, you know.
21 Q. So just to be clear --
22 A. That there is a force, an evil force that is
23 preventing you know something that is impossible and that
24 is what I believe but yeah so if you want to -- if so
25 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.

And so there is that, but, you know, other than the issue of the you know of the existence of the evidence, I don't -- I just don't think it is reaches that point, you know, but we can call the paranoia. I mean, I I be okay calling it paranoia, if you want. I don't, you know.

Q. And --

A. I think that it isn't that we will say that it is close so lets say it is pre paranoia.

Q. And you gave an example of the paranoia being the situation with his address book but you said this he then recovered from the paranoia, correct?

A. No. I -- no, that wasn't necessarily a definition of paranoia. That is not a definition of paranoia. It was he was being, you know, he was being accusatory and he was trying to externalize blame if you will and certainly was that would have been a good occasion to get paranoid, good occasion to get delusional and he didn't do either.

He just recovered and said no hey, look I think I need to relook at.

So that was a huge revelation because it does show that, you know, his propensity of course is to what are they doing to me and then he realizes maybe the 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,

regardless of the label put on them, or let me rephrase that, I apologize.

If those beliefs did qualify as delusions, would that change your opinion about his ability to rationally understand the reasons for his execution?

A. No, it would not.

Q. You were also asked a number of questions about the DSM 5 and the diagnostic criteria regarding schizophrenia and antisocial personality disorder. When it comes to reaching a diagnosis, is the DSM a checklist that you just check off you know the requirements or does it require application of your clinical judgment to reach a diagnosis?

A. The DSM 5 is a guide and it is the judgment of the clinician.

Q. Okay. And then lastly, it is has been emphasized today that Mr. Dixon has repeatedly made a number of challenges to his convictions, what does the fact that he has been for years and continues to this day to be challenging those convictions, what does that tell you about his understanding of the reasons for his execution, if anything?

A. He wants to prevent it. He wants to do everything that he can in order to see whether there is a 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

that quote the reason the state has given for his execution is his commission of the crimes in question. End quote.

Such an awareness standard, the supreme court held is too restrictive to afford a prisoner the protections guaranteed by the 8th amendment.

The evidence before the court today establishes by clear and convincing evidence that first Clarence suffers from a long-standing psychotic disorder, namely paranoid schizophrenia.

And second the evidence establishes that Clarence's schizophrenia illness and the delusions that are it's hallmark prevent him from rationally understanding the state's reasons for executing him.

And that is because Clarence believes that his execution will amount to what he calls an extrajudicial killing. That is the result of the judicial system and actors in it deliberately denying his legal claim related to the NAU police, not because his arguments are unsound, not because they believe he is simply wrong on the law, but rather as even Dr. Vega recognizes in his report, quote, because the government is afraid of the consequences of admitting that they are wrong, end quote.

Under Panetti Clarence' understanding of why 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

1 page 6.
2 The issue here today is not about the merits
3 of Clarence' NAU claim. Is it viable legally or not? Is
4 there a legal argument to be made in support of his
5 position ? The crux of this issue is not the ultimate
6 merits of Clarence' NAU issue and whether some lawyer may
7 have opted to raise it at some point. The issue is
8 Clarence' reasons, fundamental delusional beliefs that
9 span decades about why the system has denied relief on
10 that issue.
11 That is what is fundamentally delusional,
12 that is what is contaminated by the schizophrenic
13 thought-process that he experiences.
14 Dr. Amezcua-Patino's report and testimony
15 explain how Clarence' delusions are functions of his
16 psychosis which contaminates his thought-process and
17 prevents him from being able to rationally understand that
18 he is going to be executed by the State of Arizona as an
19 expression of it's outrage at the murder that he was
20 convicted of carrying out.
21 Dr. Vega' testimony has not rebutted this.
22 His entire competency inquiry was premised on answering
23 the wrong questions. As reflected on page 5 of his
24 report. Under the competency inquiry section, Dr. Vega
25 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

that because he continues to make this legal challenge to his convictions and because of the nature of his belief as to why they're being rejected, he doesn't understand the reason for his execution.

But that evidence doesn't meet the Panetti standard. There is -- it is not inconsistent for Dixon to have an irrational understanding of the reasons for his execution and to have beliefs that may be incorrect about why his claim challenging the convictions that ultimately are the bases for that execution are being denied.

You know, there has been a lot of talk about using the phrase an extrajudicial killing. I think if you look at that in context, what are you saying that because my convictions are invalid and no court will recognize that fact, my execution is unlawful? I think that nothing about that suggests that because he used that phrase or is making that argument again shows that he is incapable of reaching a rational understanding of the reasons for his execution. And I think that has been recognized in the response the state filed to the original motion for a competency determination by numerous courts throughout the history of his case.

This claim he is raising and continues to raise is nothing new. He has been raising it since the 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.

I, Yvonne M. De La Torre, RPR, do hereby certify that the foregoing pages constitute a complete, accurate, typewritten record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED this 5th day of May, 2022.

_____/S/_____

Certified Reporter

No. 50470