

IN THE CRIMINAL COURT FOR KNOX COUNTY | DIVISION I
AT KNOXVILLE, TENNESSEE

STATE OF TENNESSEE

VS.

BILLY RAY IRICK

)
FILED

) CASE NO. 24527

AUG 27 2010

)
By Joy R. McCroskey, Clerk

TRANSCRIPT OF THE EVIDENCE

Volume 2 of 3 Volumes

(Proceedings on 8/16/10 and 8/17/10)

THE HONORABLE RICHARD R. BAUMGARTNER, PRESIDING JUDGE

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1 THE COURT: All right.

2 MR. PRICE: I'll call Dr. Seidner as soon as I get
3 out of court.

4 THE COURT: All right. All right. We'll continue
5 tomorrow morning. I may have to take up a few other matters
6 that'll be on the docket, but if I do, it'll be very short
7 like it was this morning, and as soon as we can, we'll get to
8 this--to this matter.

9 MR. SHILES: Yes, sir.

10 THE COURT: Thank you.

11 MR. CLEMENTS: Yes, sir. Thank you.

12 THE COURT: Appreciate all of you.

13 (Adjourned.)

14 * * *

15 (This cause further came on to be heard on the 17th
16 day of August, 2010, when the following proceedings
17 were had:)

18 THE COURT: Yeah. Let's go ahead and--there aren't
19 any other attorneys here. So let's go ahead and get back on
20 Mr. Irick's case.

21 THE COURT: All right. Mr. Irick's with us. As I
22 understand it now--did we get the report from--from the other
23 doctor in the case?

24 MR. SHILES: Yes, sir, we did, and it was delivered
25 to me.

1 THE COURT: Okay.

2 MR. PRICE: I have an extra copy, your Honor.

3 THE COURT: Do you have a copy of that? I haven't
4 seen this yet.

5 MR. SHILES: Your Honor, also, if it may please the
6 Court, I have just a few, perhaps, housekeeping matters of
7 which I have discussed with the state. Yesterday, when I was
8 asking questions on direct of Dr. Brown, I referred to and
9 actually read from a particular statement that was taken on
10 April the 16th, 1985, and in fact, I did identify that during
11 direct, and what I had intended to do is to make that as an
12 exhibit to Mr. Brown's testimony. So if I may now, your
13 Honor, at this date tender that as--and I believe it's Exhibit
14 4 to this--

15 THE COURT: And it's a statement of whom?

16 MR. SHILES: I'm sorry, your Honor. Forgive me,
17 Kathy Ann Jeffers, 4/16/1985.

18 THE COURT: Okay.

19 (Exhibit 5 was marked.)

20 THE COURT: And that was given to Detective Wiser?

21 MR. SHILES: Yes, sir.

22 THE COURT: Okay.

23 MR. SHILES: And the only other thing that might
24 have been discussed, obviously, with the order from the
25 Tennessee Supreme Court, we're on a very short chronology, and

1 we would ask, if necessary, or move for an expedited
2 transcript in this matter, your Honor.

3 THE COURT: Well, of course, everybody in the world
4 wants an expedited transcript out of Ms. Muffler. We'll
5 discuss that here at the end of this--at the end of this
6 hearing, but I understand the situation. So--all right.

7 Is Dr. Seidner here?

8 MR. PRICE: Dr. Seidner is here, your Honor.

9 THE COURT: All right.

10 MR. PRICE: He'll be our witness. Call Dr. Seidner.

11 (Witness was sworn.)

12 BRUCE G. SEIDNER, called as a witness, being duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PRICE:

16 Q Dr. Seidner, can you tell us your full name and
17 spell your last name for us.

18 A I'm Dr. Bruce G. Seidner, S-E-I-D-N-E-R.

19 Q And, Dr. Seidner, where do you work?

20 A I'm in practice here in Knoxville, Tennessee.

21 Q And do you have a private practice?

22 A I do.

23 Q Okay. And what were you asked to do in this case?

24 A I was asked to evaluate the competence for execution
25 for the Court and examine Mr. Billy Irick.

1 Q Okay. And I understand this was under a short time
2 frame you were asked to do all this; is that right?

3 A It was, but I was able to meet with him over the
4 weekend and finish the job.

5 Q And you were able to rearrange your schedule to get
6 all--all of it done?

7 A Yes, sir.

8 Q Yeah. Okay. We appreciate your willingness to do
9 that.

10 Let me ask you to identify your vitae for us.
11 Exhibit No. 6, I ask if you recognize what that is and tell
12 the Court what it is.

13 A This is my vitae.

14 Q And is that relatively current and accurate?

15 A Yes. It's--there have been no changes since this
16 was edited last year.

17 MR. PRICE: Okay. I'll tell you what while we're
18 identifying, I'll offer No. 6 into evidence.

19 THE COURT: That'll be Exhibit 6.

20 (Exhibit 6 marked.)

21 Q Number 7, if you can identify that for us?

22 A This is the evaluation I prepared in this competency
23 evaluation.

24 MR. PRICE: We'll be discussing that further. We'd
25 offer Exhibit 7 as well into evidence in this hearing.

1 THE COURT: No objection, I take it?

2 MR. SHILES: No, sir.

3 THE COURT: Okay.

4 (Exhibit 7 was marked.)

5 Q Concerning your qualifications as a psychologist,
6 can you just tell us your--briefly tell us your educational
7 background and then your training that you've undergone since
8 your education that qualifies you for your position and to do
9 this evaluation.

10 A I completed my doctorate in clinical psychology here
11 at the University of Tennessee, and I've been in continuous
12 practice, licensed at a doctoral level since '87. I've worked
13 in a variety of settings, mental health centers, inpatient
14 settings, and in private practice. I have testified at the
15 federal, state, and county levels, an expert, for probably
16 about 15 years now, pretty regularly.

17 Q Okay. And have you performed competency for
18 execution before?

19 A I have.

20 MR. PRICE: All right. Your Honor, at this time
21 based on the vitae that's been tendered and his educational
22 and professional background, we'd tender Dr. Seidner as an
23 expert in psychology, clinical and forensic psychology.

24 THE COURT: Would you like to voir dire him at this
25 time?

1 MR. SHILES: No, sir. We--there's no objection.

2 THE COURT: Very well.

3 Q Okay. Now, Dr. Seidner, concerning competency for
4 execution, are you aware of professional or literature put out
5 by peer review journals in psychology and psychiatry that deal
6 with that, doing evaluations?

7 A Yes. There--probably over the past 10 years there's
8 been a dozen or so articles that have spoken specifically to
9 the issues in general and specifically as to a standard of
10 practice.

11 Q And were you--had you reviewed those, and were you
12 aware of those at the time you performed the evaluation on
13 Mr. Irick?

14 A Yes.

15 Q In particular, there's an article by a Dr. Zapf. I
16 hope I'm saying that name right. That includes an appendix
17 with different questions and subjects that can be covered in
18 a--in a competency to be evaluated. Are you aware of that
19 article?

20 A That's--

21 Q Let me--I think it's been introduced. Let me--

22 A I mean, there's several--there's--okay. This is
23 the--the 2003 with Brodsky, yes.

24 Q And you said there are other articles as well?

25 A They've written--there are articles by Heilbrun and

1 Brodsky before this. There's two or three with these authors,
2 and I think Heilbrun's written again a more recent article,
3 but this is representative of--of them, yes.

4 Q Okay. And on that Exhibit No. 4 then that you're
5 referring to, you see there's an appendix there in the back
6 that has a--some suggested topics and questions that are to be
7 covered in--during this evaluation?

8 A Yes.

9 Q Were you mindful of those as you went through your
10 evaluation of Mr. Irick?

11 A Yes, I was.

12 Q Okay. Let's talk about your report now. Do you
13 have your report in front of you?

14 A I do.

15 Q All right. When did you see Mr. Irick?

16 A I saw him on two consecutive days this past Saturday
17 and Sunday the 14th and the 15th.

18 Q Okay. For how long did you see him on Saturday the
19 14th?

20 A We spent eight hours together.

21 Q And then on the Sunday, the 15th?

22 A Four and a half hours.

23 Q Okay. And what was your general procedure then on
24 those two days?

25 A We interviewed, and we also engaged in some

1 standardized testing. I used Wechsler Adult Intelligence
2 Test. It's now in the fourth revision. And I used the
3 Minnesota Multiphasic Personality Inventory. It's in its
4 second revision, and the rest was mental status. I had access
5 to a whole history of previous psychological evaluations which
6 included those measures as well as other measures, and I was
7 concerned to see where we were today, competence being an
8 issue of present state.

9 Q Okay. And so I think on your--in your report, in
10 addition to the interviews you're talking about, and you did
11 review these materials, and are they listed in your report on
12 pages--

13 A I have an appendix of the documents reviewed, and
14 there's--there's more than 52. Some of them are kind of
15 pushed together, but it's--it's pretty close, and it was
16 produced under some time constraints.

17 Q Sure. Okay. And you--so you--these materials
18 listed on this--in your report, those are materials you used?

19 A Those are materials that I relied upon and reviewed
20 in preparation of this report.

21 Q Okay. Well, let's look on page 1 of your report.
22 You talk about this history of Mr. Irick, and you indicated
23 there's extensive documentation that Mr. Irick has long
24 suffered major psychiatric illness and substance dependence.
25 I wonder if you could elaborate on that based on your review

1 of the documents? What did you find?

2 A There's an evaluation at age seven in 1965. It's
3 followed by an evaluation in '66 which was his admission to
4 Eastern State Psychiatric Hospital. He was living in
5 residence at the hospital for 10 months, and the record is
6 consistent relative to the behavioral and psychological and
7 substance problems that he has had through his childhood
8 adolescence and early adulthood until his incarceration.

9 Q So did you consider that background of mental
10 illness in formulating your opinion in your report?

11 A Yes, sir.

12 Q You also note that, further on down there, that he
13 relates that this--I guess this is Mr. Irick relating to you
14 during the interview, is that right, that he's capable of
15 great loyalty and attachment?

16 A Yes. He stated that, and it is my inference from
17 the way he was describing his relationships that that is
18 factual, that he is, in fact, capable of great loyalty and
19 attachment to people.

20 Q And then he went on to describe--or this might be
21 your judgment is that he does better when he's in relatively
22 solitary situations and unfettered with obligations; is that
23 right?

24 A Based on the record, based on his perspective and
25 based on my inferences, yes, that is correct.

1 Q Okay. Did you see that borne out in his history
2 while he's been at Riverbend, as far as him doing better in a
3 structured setting?

4 A Yes. He--he described himself as well able to, you
5 know, judge the state of--you know, security needs and the
6 level of attention and to stay well below the radar. When we
7 were at the Knoxville facility, he noted just how anxious the
8 guards were because of his status and how anxious they were
9 to--how alert they were, and he has a lot of experience in
10 these situations and had, I think, some empathy for their
11 concern.

12 Q Okay.

13 A Yeah.

14 Q Now, when you were talking about his history of
15 mental illness, did you discuss with him his perception of his
16 history of mental illness?

17 A I did. You know, he has met a lot of professionals,
18 some of which I think he's respected, some of which he's--has
19 not respected, and I think he has experienced a range of
20 competency among mental health professionals, people that he
21 has felt were appropriate and straight forward with him.
22 People that he's felt have not been especially thorough and
23 have been perfunctory or advocates for one perspective or
24 another. So he's seen a wide range of--of mental health
25 professionals, and so I don't think he is going to somehow

1 privilege their perspective over his, and if they use
2 diagnoses and language that he doesn't agree with, then, you
3 know, he's been pretty straightforward about people he agrees
4 with and doesn't agree with. From his perspective, he has had
5 an anger problem. From his perspective, he knows that he's
6 had pretty significant drug and alcohol problems. He
7 understands that there are periods of time that he describes
8 loss of memory, loss of awareness of what has--what has
9 occurred, what his behavior has been, but I think--my sense is
10 he's pretty resistant to describing that as a mental illness,
11 you know, depression, psychosis, schizophrenia, those are
12 not--I don't think those are ways of characterizing himself
13 that he has used for himself.

14 Q Looking at page 2 of your report, under the heading
15 of "method," during these--you've--I think you've already
16 begun to describe how he behaved during your interviews, but
17 how would you characterize his cooperative nature or whether
18 he cooperated with you or not during these interviews and
19 felt--you felt he was being candid with you?

20 A He was entirely cooperative and gave his--his best
21 effort. In previous testing when they had employed--there are
22 tests that you can employ to get a more fine-grain sense of
23 what someone's cooperation level is, what their approach to
24 testing is, and he has not been uncooperative or malingered in
25 the most recent testing, and I was--I had with me a test that

1 would measure malingering if I had needed, but his effort was
2 so--you know, he was clearly doing his best, and so I didn't
3 think it made a lot of sense to spend the time doing
4 malingering measures when someone was doing so well, and
5 didn't appear to be malingering.

6 Q Okay.

7 A Those measures had been given in the past, and he
8 wasn't malingering then either.

9 Q And in addition to the cooperative nature, you
10 indicated in your report that he had no hesitation consenting
11 to the evaluation. I mean, did--how did you discuss the
12 purpose of the evaluation, and how did you obtain consent from
13 him for the evaluation?

14 A Well, I first asked him if--if he knew why I was
15 there on the first day. He said, "Yeah. Yeah. One side
16 wants to kill me, and one side wants to save me, and you know,
17 you're--you're here to interview me to see if I'm competent to
18 be executed."

19 And then I asked him the second day, and the quote
20 in my report is from the second day when he--I asked him again
21 if he understood why I was there, and he said that I was hired
22 by the judge or the D.A. to evaluate his competence. He has
23 the intelligence, vocabulary, and experience to use competence
24 in a meaningful and accurate way. So, yeah, there's no
25 question that he knew what we were about.

1 Q Okay. And he did--did he consent then for you to
2 proceed?

3 A He did. I also have a signed consent form that I
4 have that explains my procedure, talks about the importance of
5 an individual being informed and asking them to let me know if
6 they're, you know, tired or if they feel there's some stress
7 or confusion about what we're doing. It's a written contract
8 that he signed on the first day.

9 Q In your professional opinion, you felt confident
10 enough that he was aware of the situation and able to sign
11 that consent voluntarily and knowingly?

12 A Yes, sir.

13 Q Did he talk about dealing with--and the purpose of
14 this evaluation, there on page 2, under the subsection
15 "method," you make the statement that he viewed this
16 evaluation as a formality because all his legal efforts to be
17 exonerated and found not guilty of this crime have failed, but
18 that he's nevertheless going to fight to the end. I wonder if
19 you could tell us, if you recall, what kind of words he used
20 and what he exactly said--

21 A Well, that's--

22 Q --about that issue.

23 A That tracks his--his language--I'm paraphrasing--his
24 perspective of the history of this litigation, which he fully
25 understands the history of this litigation. He feels strongly

1 that there have been substantive errors made in the course of
2 his litigation, but that given the structure and, you know,
3 the procedures and rules of the Court, that he's run out of
4 road; that--that he has, in fact, tried to employ the rules
5 and procedures of the Court and the history of his litigation
6 to be exonerated, to challenge the original verdict which he
7 thinks is inaccurate, and he understands that at this point in
8 time the evaluation is not about his--you know, the issues of
9 state of mind or competency relative to the guilt/innocence;
10 that this is an evaluation relative to his competency to be
11 executed, and he understands how this competency is different
12 than other types of evaluations.

13 Q Okay. And did you--also you mentioned there that he
14 says he believes he will ultimately be executed or if--I think
15 it says, "He's going to fight to the end, which he believes
16 will ultimately be his execution on December the 7th, 2010."
17 Was he aware then of that date, or is that something you
18 informed him of?

19 A No. No. He--he knows that date.

20 Q Okay. All right. Let me move on then to page--the
21 mental status.

22 A I mean, I--the only thing to add is that he knows
23 that at each stage of this, that after each litigation there
24 are dates that are set, and that is defined by statute. So he
25 knows that date, and he knows why that date was set.

1 Q You indicated that during this interview, there
2 under mental status, that he was largely good-humored and kind
3 throughout the interview?

4 A Yes.

5 Q You never detect any animus towards you?

6 A No. No. I evaluate people sometimes who are not
7 cooperative, who are bitter, who will be enormously
8 provocative during an interview, and he was not. He was as
9 cooperative as one could have asked anyone to be.

10 Q Okay. You also--on page 3 then on your report,
11 you're talking about discussing the victim in this case. Did
12 you ask him about the victim?

13 A Yes.

14 Q All right. Was he able to name the victim?

15 A He--he was. It was one of the times where he needed
16 to regain his composure, and he named her. He named her age.
17 He named her relationship to the family in which he was
18 staying at the time and described his responsibilities. He
19 described his caring and loyalty and felt enormously. He
20 described feeling very hurt that anyone would have considered
21 him to have perpetrated this--this murder. He reported that
22 there had been a fire in which he had rescued two children. I
23 don't know that he named her, but that he'd rescued two
24 children, that it's--these were examples of his knowledge of
25 the victim in particular by name and by history. So there's

1 no question about his identification of the victim.

2 Q Well, and talking about the--throughout this
3 interview--these two interviews, I guess, he maintained his
4 innocence of the crime itself?

5 A Yes.

6 Q Did he--did he offer any explanation, possibilities
7 of who committed this crime?

8 A He did.

9 Q And what was that?

10 A Well, let me preface this by saying that I was
11 wanting to discover any potential, you know, delusional
12 material, magical thinking, introduction of time frames that
13 would indicate some kind of mental defect, and I have no
14 knowledge--no factual knowledge of this matter other than what
15 is mostly the mental health information. So I can tell you
16 what he told me, and I can tell you what I think about it. I
17 don't know whether these are--are factual. What he--what he
18 reported was that he was a guest in the home where the
19 parents, a mother and a stepfather, were in very significant
20 conflict and in which the mother had been planning on leaving
21 the relationship and where the mother had, in fact, filed for
22 divorce. He felt that the stepfather erroneously identified
23 him as somehow involved in this when, in fact, he viewed
24 himself in a platonic and supportive relationship with the
25 mother like--like a sister, and that while he was identified

1 as the perpetrator of this murder, he feels that there's no
2 objective motivation for him, whereas there's enormous
3 objective motivation for the stepfather who he claims is now
4 living in Canada which has no possibility of extradition
5 to--to Tennessee.

6 He describes the political--the time period as one
7 in which the--the judge was, now our representative, Duncan,
8 where there, in his view, any number of careers that he has,
9 you know, de facto, promoted, and his discussion of these
10 facts and context may or may not be historically factual, but
11 there was nothing in his, you know, narrative or redaction of
12 these facts that seemed delusional or that seemed especially
13 persecutory in some paranoid way. He's saying that's the way
14 the world works. This is how politics is. It's his view that
15 the death penalty is more a political tool than a justice
16 tool.

17 Q Okay. So I guess it's fair to say that in your
18 opinion in your interview of him, he understood that for right
19 or wrong, whatever the motivation of the state, the state had
20 convicted him of this murder of Paula and obtained the death
21 penalty on that?

22 A There's no question that he understands those facts.

23 Q Did you discuss with him about the death penalty
24 then? You've mentioned that there at the end, that last
25 discussion. Did you discuss with him his views of the death

1 penalty?

2 A Yes, and his views of death. We talked for some
3 time about the death penalty, and his--you know, and really
4 the pendency of his death, yes.

5 Q Can you briefly then summarize what his--what he
6 told you about his views of the death penalty in general are.

7 A That in principle he does not oppose the justice of
8 a life for a life. He is really quite critical and quite
9 aware of the issues relative to the consistency of application
10 of the death penalty or the inconsistency where some
11 individuals who have done the same crime will be given a life
12 without parole while others will be given a death penalty. He
13 notes the number of people who have been given a death penalty
14 who have later been exonerated based on DNA evidence, based on
15 false--false confessions. He has thought about the deterrence
16 in the death penalty, and does not believe that deterrence is
17 a reason to support death penalty. He thinks that it has very
18 little deterrence effect. He's aware--he called it vengeance,
19 and--and he does not think it is appropriate to take a life
20 out of vengeance. So if I were to summarize, you know,
21 it's--it's the application and the rationale for the death
22 penalty that troubles him, but he is well aware of the sense
23 of closure that some families might experience and also the
24 justice issue of a life for a life.

25 Q Okay. Well, while we're on that topic, then, about

1 that his own impending execution, does he--did you discuss
2 with him his views of death and what happens at death?

3 A Yes. When you're very concerned that someone is,
4 you know, not so overborne by depression or so overborne by
5 some, frankly, suicidal impulse, that they're not able to
6 participate in this process and their defense work with their
7 attorneys, and he describes death as part of the process of
8 life. He said a number of times, you know, we're all born
9 with a death sentence, that everyone alive will die, and that
10 given those facts, what we have is some limited time of life
11 to do something that is meaningful and that is our purpose.
12 He recognizes that he's had to work within some pretty limited
13 parameters while in jail, but that his time in jail has been
14 spent developing--developing his art.

15 He is an avid consumer of historical information,
16 and he's developed a number of relationships over the years
17 with both guards and prisoners that he's come to value. He
18 views that as I'm coming to an end with his execution. He
19 doesn't have a belief in an afterlife. He describes himself
20 becoming worm food, and you know, he said that in a good-
21 humored way, not in some morbid way. He admits to teasing
22 people who are probably--experience them as arrogant relative
23 to their views of heaven and hell, and so he'll tease people
24 who he thinks are arrogant relative to, you know, their
25 feeling that they're assured of being in heaven, and

1 confronting them with the potential that they're going to have
2 to face any number of people that they have wronged in their
3 life. So he likes popping that balloon on a regular basis.

4 Q But he doesn't share--you indicated he doesn't share
5 that view of heaven and hell or an afterlife?

6 A No, he doesn't. He sees things as part of a natural
7 order and doesn't see much outside of that natural order.
8 There's--there's birth, there's a course of life, and there's
9 death.

10 Q Does he believe then that this execution will
11 be--will mark the death for him, the end of his life?

12 A He fully understands that if and when he is executed
13 that is the end of his life.

14 Q Let me ask you about the--on page 4 you had some
15 test results?

16 A Uh-huh.

17 Q What tests did you administer?

18 A Well, there are two tests that I administered. One
19 is an IQ measure, and the other is a personality measure.
20 Frankly, one of the reasons we give IQs is we've given so many
21 of them it's--you have a certain set of expectations, and
22 there's a lot of mental status evaluation that's going on
23 during the administration of an IQ test, but there's no
24 question about his intellectual competence. He's got at least
25 an average IQ. There are--he's got very strong abstract

1 verbal capacity. He can put together ideas. He can abstract
2 ideas, see their commonalities and differences and carry on
3 pretty high level abstract discussions. Those are his
4 strengths. He's also very strong in terms of his perceptual
5 organizational capacities.

6 The relative deficits are in processing speed. He's
7 pretty deliberate. The tests that are timed and give--and
8 take points for processing speed, he's not--he's not
9 efficient, but he's accurate. You know, there are no errors,
10 but he will be pretty careful to get it right. He describes
11 some memory deficits. I didn't notice deficits that I
12 wouldn't consider well within the range of age-related memory
13 decline. I think there's any number of people in their
14 fifties who notice that their memory is not what it was,
15 and--but he also describes experiences that sound like he's
16 got a history of some dissociative experiences, and so I
17 considered that, but there's--there's no impairment of memory
18 that I could find based on this testing, but it is a relative
19 weakness, compared to the strengths of abstract capacities.

20 You know, if you're playing golf, and you know, you
21 hit a--you do 90 on the course, but you're on the eighth hole,
22 you kind of flubbed, and you know, you're like three over, or
23 four over par, you know, you look at that and say, yeah, I did
24 poorly on that hole, but overall, you know, it's average, and
25 I think in the IQ testing--and I reviewed other testing as

1 well. I think there are a lot of--everyone's got strengths
2 and deficits, and there's variations among people. There's
3 nothing here that I could describe as an impairment. I think
4 there are strengths and deficits, but there's no impairment in
5 his cognitive functioning that I could find.

6 The personality testing, the MMPI II was not going
7 to be helpful because of his approach to testing. There are
8 validity scales that look at an individual's approach to the
9 testing, and these were at a level that made the subsequent
10 clinical scales not interpretable. There's a range of
11 inferences one can make when someone is scoring that high in
12 this cluster of scales. If someone were malingering, for
13 instance, if someone came in and it was to their advantage to
14 look especially disturbed, those scales would be very high,
15 but it's also the case, and I've seen this quite a bit if I'm
16 working with hospitalized individuals, Veterans Administration
17 individuals, especially Veteran Administration individuals
18 with psychiatric and post-traumatic stress disorders, you'll
19 see that same level of--of score, and it's--it's not some
20 conscious intention to malingering or exaggerate so much as to
21 say, I've been through a terrible time. I have had just an
22 awful set of experiences, and so they're way up there, and
23 that is--it doesn't make the rest of the testing
24 interpretable, but it--it speaks, I think, to the motivation.
25 You know, someone can look at those scale scores and say this

1 person is malingering, but I think would be an inexperienced
2 person. You want to say, what's the context to this person?
3 Why are the scales essentially pegged? I mean, they're as
4 high as they can be. Well, this is someone who's saying that
5 they had just a very--a life filled with a lot of turmoil and
6 trauma and upset.

7 Q Okay. Does that--so you didn't conclude that he was
8 malingering on that test?

9 A No. No. I concluded that he was saying, "I have a
10 very significant psychiatric history, and I've been through
11 the ringer, and let me tell you how bad it's been."

12 Q Okay. Did you see that score or that--results of
13 that test?

14 A There's a--there's a set of scores.

15 Q Set of scores?

16 A Yeah.

17 Q Results of that testing as indicative that he's
18 incompetent to be executed? I mean, how did that--the scoring
19 on that particular series of tests impact your opinion?

20 A It was not consistent with his mental status as we
21 are sitting there talking. This was not an individual who was
22 hallucinating and having, you know, delusory experiences while
23 we were interacting over the two days. If you were to look at
24 the testing, you would say that this is somebody who wanted to
25 appear as though they were somebody who were, you know, that

1 grossly disturbed unless you knew the context. So if you show
2 a psychologist this testing, they're going to hopefully say,
3 Well, who gave it to you? Because if the person who gave it
4 to you was applying for social security disability, or the
5 person was someone who had been institutionalized for a lot
6 years, you know, in a prison or a VA, they go, oh, okay.
7 Yeah, that's--you can't really interpret the testing, but you
8 know, that's--you know, that's the reason for that. They're
9 not--they're not malingering for some door price. They're
10 just saying, you know, this is who I am, and it tends to peg
11 the test-taking orientation scales.

12 Q Okay. But in the end, those test results didn't
13 lead you to believe that he's incompetent to be executed?

14 A No. No. It led me to believe I couldn't use the
15 testing to interpret his personality. I mean, I couldn't use
16 the testing to get meaningful information is the only thing
17 that meant.

18 Q Let's see. I think we've already discussed a good
19 portion of the rest of your report, but let me--on page 5 you
20 mentioned the stability and consistency of prison life. Has
21 that helped him or hurt him in his mental health?

22 A Oh, it's given him an opportunity to learn how to
23 control his emotions, to have a sense of--there's--there's a
24 lot of folks who don't have a lot of support and a lot of
25 structure in their life, and they really over drive their

1 headlights, as it were. You know, things are upon them before
2 they have some ability to anticipate that they might be upset
3 or to find alternatives to becoming upset, and I think in jail
4 he has had an opportunity to anticipate, okay. This is
5 potentially emotional; to anticipate, okay, this person is
6 most likely experiencing me in this way, and I need to think
7 about the best way to relate to them.

8 When we were walking down the hallway the first day,
9 they had him shackled top and bottom, and we were walking
10 close together and in a way that I didn't realize that I was
11 somewhat in front of him, and he very kindly and quietly said,
12 "It would better for you to walk to the left of me." And he'd
13 already talked about how anxious the guards were about him,
14 and he was not bemused but, you know, accepting like, okay. I
15 understand. They don't know me. They got no history with me.
16 They don't want to mess up. So--so he's able, I think, to
17 anticipate social situations, and within that range of prison
18 life, he's adapted quite well. He demonstrated a number of
19 times during our interview that he was capable of regaining
20 his composure. I mean, are--you talk about things that are
21 without question upsetting, and he paused appropriately and
22 regained his composure.

23 Q I think I'll--let me skip over some of this stuff I
24 think we already covered.

25 Oh, did he--I don't know if we asked you this about

1 did he--did you talk about his relation with his lawyers and
2 as whether he has confidence in them or not, without getting
3 into specifics, but--

4 A Yes. He--he was critical of his original
5 representation, but it's been--I think I wrote in error that
6 it was 25 years with his current attorneys. I think it's, in
7 fact, 15 or 20 years. I think I wrote 25, and as I think
8 about it, I think it's probably about 15 years with his
9 present attorneys. I asked if there's anything that he can't
10 tell them, and he said, no. I asked him if he had gone into
11 more detail around some of the issues he was reticent to go
12 into detail with me around, and he said, yes. He feels like
13 they're doing everything they can to resist this execution and
14 trusts that they're working on his behalf.

15 Q Okay. Dr. Seidner, in your opinion, as a forensic
16 psychologist and to a reasonable degree of medical certainty,
17 is it your opinion that he's aware--that Mr. Irick's aware of
18 the punishment he's about to suffer?

19 A Yes.

20 Q And is it your opinion, to a reasonable degree of
21 medical certainty, that he understands the reason for that
22 punishment?

23 A Yes.

24 Q And does he appear to have a rational understanding
25 of that?

1 A Yes.

2 MR. PRICE: If I may have just a moment, your Honor?

3 Q Let me just clarify something I may have skipped
4 over, but during your two interviews this last weekend, did
5 you find any evidence or did Mr. Irick describe to you any
6 recent delusions or hallucinations?

7 A No, he did not. I asked and he--he denies--you
8 know, there's a range of hallucinations, you know, command
9 hallucinations, you know, visual, auditory, olfactory. He's
10 not had any hallucinations that I know about.

11 Q And did--your review of his records from the
12 Riverbend, did you see any evidence of any mental health
13 emergencies or self-mutilation or harm?

14 A No. I'm aware of an early suicide and--attempt
15 rather, and his perspective is, you know, everybody feels
16 suicidal at first and then you come to understand and accept
17 your situation, and that he's had no significant contact with
18 medical or psychiatric at Riverbend. One, he's someone who
19 describes himself as pretty self-sufficient, and he's not
20 especially sanguine of the services that are available; and
21 two, there's not been any, to my knowledge, major disciplinary
22 problems or out-of-control behavior. I mean, there's a
23 recent--I knew about, from the record, a recent infraction.
24 There was a cigarette stub in front of his cell, and I knew
25 about that going in, and he volunteered it, so--on his own

1 when I talked about how he was doing, and so I'm unaware of a
2 history of these, and the infraction I was aware of he
3 volunteered himself. So, no, there's been no history that I'm
4 aware of that would raise questions about his mental status
5 while incarcerated.

6 I just have one point I'd like to make. When you
7 were asking me about my opinion being within range of medical
8 certainty, that is sometimes an issue. I'm a licensed
9 clinical psychologist, and I can tell you with a reasonable
10 degree of psychological certainty, and that becomes an issue
11 sometimes.

12 Q Sure. That was poorly phrased on my part. I
13 apologize.

14 A I have to describe sometimes the difference between
15 a psychologist and a psychiatrist, and I assure people that
16 we're better trained.

17 Q Okay. You're not a--you're not claiming to be a
18 medical doctor?

19 A Heavens, no.

20 MR. PRICE: Okay. No further questions, your Honor.

21 THE COURT: I'm going to take a short break, and
22 we'll do cross-examination after that.

23 MR. SHILES: Yes, sir. Thank you.

24 THE COURT: You may step down if you want to.

25 (Recess was taken.)

1 THE COURT: All right. Cross-examination.

2 MR. SHILES: Yes, sir. Thank you.

3 CROSS-EXAMINATION

4 BY MR. SHILES:

5 Q Dr. Seidner, I'm Gene Shiles, and I represent
6 Mr. Irick today, and we've met in the hall.

7 A Yes, sir.

8 Q But I'm going to be asking you just a few questions.
9 Now, if I ask you something that you don't understand, please
10 interrupt me and let me know that you--you know, you don't
11 understand my question. I'll be happy to either rephrase it
12 or repeat it. I'll try to do whatever is necessary to try to
13 convey the question that I'm trying to ask you. Is that okay?

14 A Yes, sir. Thank you.

15 Q Sure. Let me first ask you about your report in
16 general, what it does and what it does not do. I think I know
17 the answer to your question, but just to make it clear on the
18 record, your report and your examinations, you did not attempt
19 to confirm or disapprove--or disprove, I should say, any of
20 the diagnoses that Dr. Robert--I mean, that Dr. Brown provided
21 in his report, did you?

22 A No.

23 Q In fact, are you expressing any opinions as to the
24 diagnosis that Dr. Brown reported?

25 A I have no opinion on Dr. Brown's evaluation or

1 report. I've read it, but I have no opinion.

2 Q And so, therefore, you don't have any opinion as to
3 whether or not Mr. Irick was competent or sane at the time of
4 the offense; is that also correct?

5 A I have no opinion relative to those issues.

6 Q And I think it's actually clear from your report
7 because you do use quotations, but throughout your report
8 there are certain words that are sprinkled through the report.
9 I noted just a few, machinations, capricious, and I don't
10 point these words out to try to criticize, but those aren't
11 the type of words that Billy Ray Irick was using in his--
12 during the examinations or discussions that he had with you,
13 is it?

14 A No. Those are my characterizations of his report.
15 It's a way to paraphrase and give a character to his report.

16 Q Very well. Let me then turn to your report and ask
17 a few questions, and I'm just going to probably go through
18 sequentially, and then ask some other questions, but let me
19 ask you, on the history, which you document to some extent on
20 page 1 and also on page 2, you're aware, are you not, that
21 during times of his life, especially in his early childhood,
22 say, from about eight through some period of time, that he was
23 prescribed and was given Thorazine; is that correct?

24 A Yes, sir.

25 Q Okay. What is Thorazine?

1 A Thorazine is a type of chlorpromazine. It's a
2 family--what used to be called major tranquilizers, and there
3 is just an amazing bit of marketing that happened in the mid
4 '70s where the major tranquilizers were rebatched as
5 antipsychotic medications.

6 Q And were they used as antipsychotic medications?

7 A They were used with individuals who were psychotic
8 and agitated, and they have done a very, very good job in
9 their time of quelling the turmoil and agitation and
10 hallucinatory experience that individual suffered with.

11 They've been--there are newer, what are called "atypical
12 antipsychotics" that do a better job with less side effect.
13 There were tremendous side effects that were associated with
14 these medicines.

15 Q But back in the 1960s that's really all they had;
16 isn't that correct, Thorazine as far as--

17 A Well--

18 Q --antipsychotics and--

19 A --there's a class. There's Thorazine, Stelazine,
20 Prolixin. There's a bunch in that class, but those were the
21 medicines that were most helpful at that time in helping
22 people who were--really expressed that kind of major
23 psychopathology, you know, who were--disinhibited psychotic
24 suffering.

25 Q All right. And as you reviewed the medical records

1 from the Knoxville Mental Health Center, from Eastern State
2 Psychiatric Hospital, you saw actually, I'm sure, a range of
3 diagnoses, but that range of diagnoses including psychosis and
4 perhaps even childhood schizophrenia; is that correct?

5 A Those--yes. There's--there's a range of diagnoses
6 that are all talking about a very disturbed, disinhibited, and
7 out-of-control child.

8 Q Okay. You--returning back to your report,
9 Dr. Seidner, and to a sentence that I think you have described
10 or made comment on in direct, but I'm looking at again the
11 first page under "history" towards the bottom. "He relates
12 that he is capable of great loyalty and attachment, but does
13 better when he is relatively solitary and unfettered with
14 obligations." The question I want to ask you is about the
15 latter part of that sentence which has to do why, apparently,
16 and correct me if I'm wrong, but the gist of it, I get, is
17 that he actually does do better when he is relatively solitary
18 and without obligations, and if that's true, if I've
19 interpreted that correctly, tell me medically why or
20 psychologically why that would be true of Mr. Irick?

21 A He can get overwhelmed and impulsive, and that
22 having a few relationships that you know and trust is
23 manageable. Being in a crowd of people that you don't know
24 and don't trust is pretty overwhelming. Having expectations
25 to be consistent and to do the same thing day out of day--day

1 after day, rather, is--creates a certain stress, and he
2 described his history of leaving jobs when they become
3 stressful or where they're not meeting his needs and looking
4 forward to what's next, which is a type of freedom that he
5 privileges over the kind of obligation that he avoids.

6 Q When you use the word "overwhelmed," and I think
7 actually it may appear in your report--actually, I don't
8 remember, but it may. What do you mean? What processes, what
9 faculties of Billy Ray are getting overwhelmed in the
10 situations that you've described for us?

11 A That there is an emotional experience of tension and
12 frustration and anger and a number of competing thoughts about
13 how best to negotiate this that do not have enough traction
14 to, you know, integrate the feelings with the different
15 options, and this will lead to some impulsive action, and that
16 is--does that answer your question about what I mean by
17 overwhelmed?

18 Q Yes.

19 A Yeah. That's what I mean.

20 Q Yeah. Thank you, Doctor.

21 The--turning to page 2, again following--just really
22 following that sentence that we were talking about, and please
23 read whatever portions you would like, but as you get to page
24 2, at the top, it says, "He," I'm referring to Billy--or
25 you're referring to Billy Ray Irick, "denies a history of

1 hallucinations or psychosis"--

2 A Uh-huh.

3 Q --"that is discrepant from his document--documented
4 evaluation history." What did you mean by that? I think it's
5 fairly self-evident, but go ahead and tell us.

6 A That--that in the report there are people who make
7 reference to psychosis and hallucinations who've made these
8 observations and diagnoses, and--and that he is not in
9 agreement with that characterization of his experience.

10 Q And so that would certainly fit into, I believe,
11 something you said on several occasions which he is not trying
12 to malingering, he is not trying to exaggerate symptoms. In
13 fact, apparently here you are documenting that he is
14 downplaying things that are in his own record?

15 A Correct.

16 Q Did you have any reason to doubt or question the
17 diagnoses or the accounts that--which led to these diagnoses
18 of psychotic episodes?

19 A I looked through the record.

20 Q Yes, sir.

21 A And my experience when I read records is, I find
22 evaluations that have what I would consider a range of
23 credibility, and there are reports that I don't find at all
24 credible. There are reports I do find credible. There are
25 people who demonstrate either certain theoretical biases or

1 certain biases of advocacy that knock it out of the box for
2 me. There are people who I think are inexperienced or have
3 other deficits. So I have not gone through the record in a
4 way that would allow me to speak to the credibility. My
5 opinion, and--I mean, and there's an old saw if you ask two
6 psychologists for an opinion, you'll get no less than three
7 opinions so--

8 Q Right. And in not trying to critique mental health
9 providers that are in the past. Let's--I agree with you.
10 Let's not do that. I mean, it might be one of us one of these
11 days. Let me ask you about certain instances, though, and I
12 don't have too many, but let me just point out a couple
13 instances throughout Mr. Irick's history. Let me see if you
14 can comment on that, if you can. Did you, in looking over the
15 mental health history of Billy Ray Irick, come across an
16 account--one or more accounts of the summer of 1972 when Billy
17 Ray Irick was 13? The--the factual circumstances are that he
18 had--was at the Church of God Home in Sevierville, Tennessee.
19 Another fact is that he was on a rare visit with his family.

20 A Uh-huh.

21 Q And that at that time he was told by his mother that
22 in a question posed by him as to whether or not he could
23 return home after five years of separation, that the answer
24 was basically "no" or "not now" or some sort of equivocation.
25 Subsequently, thereto, it is reported that Billy Ray Irick

1 took a razor, at least cut some portions of his younger
2 sister's pajamas from her as she slept during one night. Did
3 you run across that account?

4 A I don't recall it.

5 Q Okay. Let me--let me have you--and you do not to
6 have to agree with those facts. I'm just simply going to ask
7 you on a theoretical basis to assume those facts to be true.

8 A Okay.

9 Q All right. Now, if Billy Ray Irick is your patient,
10 and if, in fact, he is 13 years old, and if, in fact, all
11 those facts were true, would that give you some cause for
12 concern?

13 A I would have deep concern about that behavior, yes.

14 Q What would be your initial opinion as to what was
15 troubling this young man mentally?

16 A I can give you--

17 Q If you can.

18 A Well, I--the problem is I can give you a range of
19 things. There are people who are so conduct-disordered and
20 antisocial that they would do that behavior as a way to
21 manipulate and threaten a family. There are people who are so
22 psychologically vulnerable that they would feel terrified that
23 they would be abandoned, and their dependency needs would
24 overwhelm their rational process, and they would become
25 psychotic and behave in this disturbed way, and--and I can't

1 tell--

2 Q Okay.

3 A --you within that range, but it is a disturbing
4 behavior, and your--as a psychologist, you're wondering is
5 this a product of a conduct disorder and/or, 'cause they're
6 not exclusive, is this the product of some, you know,
7 disturbed psychological process.

8 Q Knowing which or--and I know you've had a limited
9 chance to look through the records, and no one's criticizing
10 that. Given what you've been able to see from Billy Ray
11 Irick's history, can you say any more about the question that
12 I've posed to you knowing the records that you've reviewed as
13 to--as to what end that might--he might fall?

14 A No. No, I can't.

15 Q Let me ask you to assume another set of facts, that
16 just subsequent to that he was returned back to the Church of
17 God Home; he breaks into a girl's dormitory and in similar
18 sort of fashion is found hovering over her at her bedside as
19 she sleeps until she wakes up, screams, and knife is found
20 there at the bedside. Again, does that help or does that add
21 any additional information about your concern or what might be
22 troubling or the range of problems this child might be
23 experiencing at the age of 13?

24 A I don't think there's any question about the
25 management issues in terms of their requirement to contain an

1 individual such as this in some sort of safe residential
2 treatment to--and to evaluate. So I don't think you'd have
3 much question about the behavioral response. What this means,
4 again, there's that range, and I've evaluated people who are
5 really just egregiously psychopathic, and I've evaluated
6 people who are enormously psychiatrically disturbed, and I
7 don't know, but I think the management issue is--is clear.

8 Q Let me ask you--I'm sorry. Were you finished?

9 A I am finished.

10 Q I'm sorry. Forgive me. Let me ask you one more
11 question before we leave that scenario. In both scenarios, we
12 have two young girls. Any--does that add any additional
13 information, cause concern or line of thought in your--from
14 your professional experience and--

15 A Okay. It would help me to understand the context of
16 your question.

17 Q Yes, sir.

18 A The context of my evaluation is being his competence
19 relative to execution.

20 Q Yes.

21 A And so that's where I've been thinking about
22 Mr. Irick, and I'm--and I want your help in locating--

23 Q Yeah. We're going to bring--

24 A --these questions.

25 Q Yes. We're going to make this relevant. I'm going

1 to ask another series of questions that's going to bring it up
2 into--

3 A Okay.

4 Q --into present period of time, but if you can answer
5 that question I posed to you.

6 A I don't have some way to--you're looking for a red
7 thread between these narratives, and--

8 Q Looking for consistencies.

9 A --and I--there's no question that these are
10 disturbing behaviors.

11 Q Yes. And directed at young girls?

12 A Well, and you've given me--

13 Q Is there any--with that similarity, do you see a
14 pattern, or do you see an explanation?

15 A There--again, there's a range. There are people who
16 are gratified by having a sense of power and sadistic control
17 over others, and they'll find vulnerable people to exercise
18 this experience of sadistic control. There are other people
19 who are enormously needy and are conflicted about their needs.
20 If you gave me time, I could give you no less than a dozen
21 other inferences I could make. So if we could move to the
22 context for this question, I might be able to focus it, and
23 I'm not trying to avoid.

24 Q Right.

25 A I just am saying that, honestly, there's a huge

1 range.

2 Q Right. Well, my question was focused--and we can
3 move on if you see no particular pattern or anything suggested
4 in the information. My question was--as posed to you, was
5 just simply is it a coincidence that there are two young girls
6 who are the potential victims in these cases, and as a trained
7 psychologist, does--what does that tell you, if anything, and
8 if nothing--

9 A Well, it raises other questions. Do I have a
10 history of fire setting? Is there aggression towards animals?
11 Is there aggression towards male peers? What is the
12 intellectual capacity of the person? What is the family
13 context of the person? What is the medical status of the
14 person? I--

15 Q Let me help you on one or two of those. I think the
16 records clearly show that there was history of fire setting,
17 and that, in fact, he was mistreating animals at a very young
18 age. That's documented in Ms. Braswell's--Lunn's initial
19 report, I believe, from Knoxville Mental Health.

20 A Okay.

21 Q Does that--does that add anything?

22 A Well, that moves the concerns in the direction of
23 conduct disorder.

24 Q Now, you talked that in your examinations of Billy
25 Ray Irick you did not see or have any--you did not know any

1 sort of hallucinations; is that correct?

2 A He denied them.

3 Q Do you--in looking back through his medical history,
4 however, did you see any documentation or record of
5 hallucinations or anything that was documented whether it was
6 a diagnoses or--

7 A Yes. There's multiple instances and--

8 Q What comes to mind, Doctor?

9 A Well, the thing that comes up frequently is
10 summaries in these reports of previous diagnoses and
11 histories, and I had a limited time to go through these
12 records, and so if you want to point me to one, I can--

13 Q Let me do that, and let me see if this is one of
14 those particular incidences that you were trying to recollect,
15 and I'm going to read just very briefly from the affidavit of
16 Ms. Kathy Jeffers that was executed on November the 3rd, 1999.
17 It's been premarked, Bate's stamped, Irick 759, reading from
18 the top or just portions thereof: "Billy Ray Irick
19 continuously mumbled to himself. I remember him asking
20 Mr. Irick what he was saying or to whom he was talking to. I
21 distinctly remember that Billy Ray Irick told me that he was
22 listening and talking to a voice. He continued by commenting
23 in a stern voice, firm conviction that, quote, the only person
24 that tells me what to do is the voice, end quote. I remember
25 that he had a strange look on his face when he told me about

1 the voice. Upon hearing this information, I purposely had no
2 further conversations with Mr. Irick about this matter."

3 She goes on to say, "I slept at my parents'
4 apartment during one evening in April 1985 when Billy Ray
5 Irick awoke at night, walked, and mumbled through the
6 apartment and woke me up to warn me that the police were in
7 the apartment, and that they were there to kill us with chain
8 saws. I told Billy Ray Irick that such was not the case and
9 that he should go back to sleep."

10 Do you remember reviewing this affidavit?

11 A Yes, these affidavits.

12 Q Okay. Would that be an incident of--or incidents of
13 auditory hallucinations?

14 A Well, and delusions and then the question would be,
15 you know, what is going on in his life, what drugs and alcohol
16 is he using, what medications is he using, what is his medical
17 status? I mean, there's a number--there's no question that
18 this is the description of someone who is having auditory
19 hallucinations and a description of someone who's having
20 command hallucinations and a description of someone who is
21 having a persecutory delusions. Now, what is the predicate of
22 that, I don't know.

23 Q All right. What if you were to be told or what if
24 the facts were that this affidavit, which was prepared, or
25 signed, I should say, by Ms. Kathy Jeffers was describing days

1 or weeks just before the offense?

2 A Can you restate that as the question?

3 Q Well, what if you were to be told that the incidents
4 that are being described here took place in close proximity,
5 within days, if not a week or so, before the offense? Would
6 that tell you much about Billy Ray Irick's state of mind
7 during that general period of time?

8 A Well, that's a really--that's a--I'm not avoiding
9 your question.

10 Q Okay.

11 A I'm just aware of the complexity of it, and my lack
12 of information to fully answer it. I'm also aware of how
13 consequential a question that is, and I am anxious about
14 answering such a consequential question with this limited set
15 of facts that I--I mean, I don't know the credibility of this
16 witness. I don't know the--

17 Q I understand.

18 A I don't know the--I--

19 Q Let's assume--and those are proper and fair
20 observations or comments. Let's assume--I--you don't have to
21 agree. Let's assume that it was a valid and trusted source,
22 and that, in fact, the facts that were cited in the affidavit
23 are true.

24 A Let me speak in--

25 MR. PRICE: Your Honor, if I may. I'm sorry to

1 interrupt and I don't mean to cut defense counsel off, but
2 what I would object to at this point, with all respect, is
3 trying to get this expert witness to commit to Mr. Irick's
4 mental status at the time of the offense or any kind of
5 opinion as to that. What we're here to address is his
6 competency for execution now presently. Now, if it was
7 question that relates to--up to that question, I don't have an
8 objection to that, but to try to get this witness to commit to
9 an opinion on that issue I think is inappropriate to this
10 hearing.

11 MR. SHILES: Your Honor, may I respond?

12 THE COURT: Yes, sir.

13 MR. SHILES: Your Honor, I understand the objection
14 and anticipate it. Let me put it this way, your Honor. We
15 think that it is relevant and it's relevant for this reason,
16 and I'll just state it. If Billy Ray Irick did not--if he, in
17 fact, was in a psychotic episode when Paula Dyer died on April
18 15, 1985, how can he have a rational understanding today? No
19 matter how lucid he may be today, how can he have a rational
20 understanding of his pending execution when whatever happened
21 for which he is being punished he was in the midst of a
22 psychotic episode? That, simply put, your Honor, is what I'm
23 talking about, and that's what--we're asking that it be
24 relevant.

25 THE COURT: I don't--I don't think that's the

1 question here. Now, I've--I've given you a lot of leeway
2 here. It--I've candidly been surprised that we haven't had an
3 objection before this, but we--we're going back and exploring
4 these questions about Mr. Irick's childhood and incidents that
5 occurred when he was 13, and you know, the question, as I
6 understand it, before the Court is, Does he have a rational
7 understanding of--of his pending execution, and does he
8 understand--have a rational understanding of why he's being
9 executed and--and have an appreciation for those actions?

10 We have long ago determined his competency. That
11 issue has been--has been litigated many times, his competency
12 at the time of the event, and that's not what we're here to
13 determine today, whether or not he was competent at the time
14 of the event itself. So to go back and now have Dr. Seidner
15 try to make that determination when he's come in, met with
16 Mr. Irick two days over the weekend with the specific purpose
17 of determining whether or not he's competent to be executed
18 and to go back and try to get him to make a determination of
19 his mental state at the time of the--of the actual event is
20 just--No. 1, it's not what we're here to do; and No. 2, it
21 doesn't seem to me that he's in a position to be able to do
22 that. So I'm--you know, I've been very lenient in terms of
23 allowing you to explore a lot of these things which I
24 don't--which I think are way beyond the scope of what we're
25 here to do today. But now that this objection has been

1 raised, I'm--I tend to agree. I mean, whether he was
2 competent back in 1986 or 1985 is not the issue.

3 MR. SHILES: Your Honor, if I may ask for a
4 clarification or a direction from the Court, and I've
5 certainly been listening to what the Court said, and I think I
6 understand it. Your Honor, what I would like or would ask
7 permission to do is to inquire of this witness, as I tried to
8 succinctly state just a minute ago, not going--asking any
9 further questions about his opinions as to his competency at
10 the time of the offense but asking him, your Honor, to assume
11 that, in fact, Billy Ray Irick was in the midst or in the
12 grips of a psychotic florid episode at the time that Paula
13 Dyer died and ask if the witness can then say that Billy Ray
14 Irick, regardless of his competency today, can he have a
15 rational understanding of his pending execution given that his
16 only understanding of the event was a psychotic event that I
17 think by the medical definition is an altered or distorted or
18 even missing understanding of reality? That is my question,
19 your Honor.

20 THE WITNESS: I believe I can answer that.

21 THE COURT: Okay. If you feel comfortable--if you
22 feel comfortable in addressing that one.

23 THE WITNESS: What you're--and let me restate this.
24 How can he have a rational understanding of his execution if
25 he's being executed for something that he feels he didn't do,

1 something that you're arguing he was in an altered state if he
2 was involved?

3 His experience of this is that this is a litigation
4 that has gone very, very badly, that it has been mishandled,
5 that there has been a number of political dynamics and--and
6 failures, and that--and that he understands the whole process
7 of the litigation. He understands the strengths of his case.
8 He understands how evidence is entered, and how it's accepted
9 or not accepted, how to plea bargain, how to do all the things
10 that a competent defendant needs to do in the course of a
11 litigation. He understands that he has lost this litigation,
12 in spite of trying, and he's going to continue fighting this
13 litigation because he feels it has gone wrong. So he
14 understands that he's in a litigation that has gone very
15 badly, from his perspective. He knows how to work within that
16 system. He knows the penalties and reasons for that system.
17 He doesn't agree with it in his case, but he has an entirely
18 rational appreciation and understanding of the death penalty.

19 Now, nowhere, to my knowledge, is there a threshold
20 issue of specific remorse. So if there were a threshold issue
21 of remorse, it would be appropriate to say, well, how can
22 somebody have remorse for something they say they didn't do,
23 or how can someone have remorse for something that was
24 committed in a psychotic state, but to my knowledge, there's
25 no threshold issue of remorse. There are threshold issues of

1 understanding in terms of the structure of this. There are
2 threshold issues in terms of appreciation. The capacity to
3 understand and differentiate options and to weigh and consider
4 one's direction, and there's issues of the capacity to assist
5 counsel, that there are threshold issues there that he meets
6 without question on the side of competency. So your question
7 would go to the heart of a threshold issue of remorse, and I
8 don't want to mischaracterize it. That's just how I'm hearing
9 it. And I don't have an opinion on that, and I'm unaware that
10 that is a threshold issue relative to this litigation.

11 MR. SHILES: Your Honor, may I have a moment,
12 please?

13 Now, just another minute, your Honor, if you don't
14 mind. Maybe we can--

15 THE COURT: Yes, sir.

16 Q Let me take a look at--just let me maybe ask you a
17 couple more questions, Dr. Seidner. You mentioned
18 dissociative experience on one of your pages. Oh, it's on
19 page 5. What is a dissociative experience?

20 A A dissociative experience is one where an individual
21 is conscious and behaving, but has no self-experience of that
22 period of being conscious and behaving.

23 Q Would that result in an inability to remember those
24 particular experiences?

25 A Yes.

1 Q Is that also a psychotic experience, a dissociative
2 experience that is?

3 A Not necessarily.

4 Q Okay.

5 A I mean, you--they're not exclusive of each other,
6 but they're talked about as different types of pathology. You
7 can be psychotic and have dissociative experiences.

8 Q Right.

9 A You can have dissociative experiences and not be
10 psychotic.

11 MR. SHILES: Okay. No further questions right now.
12 Thank you, Dr. Seidner.

13 THE WITNESS: You're welcome.

14 MR. PRICE: No other questions, your Honor.

15 THE COURT: I assume--you did not ask any questions,
16 Mr. Gaylord. I assume you don't have any?

17 MR. GAYLORD: Your Honor, I--excuse me. I haven't
18 entered an appearance before this Court. In fact, I lack
19 authority to do so unless I'm appointed as a special district
20 attorney. So I do not.

21 THE COURT: Very well.

22 Have we made his report an exhibit now? So that's--

23 MR. PRICE: If I failed to ask that to be entered, I
24 do at this point, but I think we did.

25 THE COURT: Very well.

1 All right. On the issue of the transcript, I agree
2 that you need to have that. So as I understand the timing of
3 this now, the ball is in our court. When I speak of our
4 court, I'm talking about Ms. Jones and myself, and I think we
5 have five days to file an order, and then what's the time
6 table after that?

7 MS. JONES: Then it goes to them.

8 THE COURT: And then it will be up to you to take it
9 from there.

10 MR. PRICE: I think that there's a 10-day
11 requirement for the record to be filed after your Honor puts
12 down the order.

13 THE COURT: So the record has to be filed within 10
14 days after that?

15 MR. PRICE: That's my understanding.

16 THE COURT: Well, Mary, I'm going to--

17 MR. PRICE: Or ten days after your order.

18 THE COURT: I'm going to tell you that everybody--
19 that this takes precedence over everything else; that if
20 anybody comes to you about anything else, you tell them to see
21 me. So, if you would, devote your full time to this.

22 I want to say to you--go ahead.

23 (Court conferring with court reporter.)

24 MR. SHILES: Your Honor, may I address the Court,
25 please?

1 THE COURT: You certainly may, Mr. Clements.

2 MR. PRICE: May Dr. Seidner be excused?

3 THE COURT: Yeah. I wanted to say to him I know
4 that you were--you came on board on very short notice, and
5 Dr. Tennison, who I have a very great regard for, made the
6 recommendation that you be contacted by the--by the state, and
7 I want to express my personal appreciation to you to come on
8 board to do this and under the time frame that you were under.
9 I know you took your weekend to do this, and that was above
10 and beyond your duty here. So I just wanted to let you know
11 how much we appreciate your willingness and your ability to do
12 this, and it's greatly appreciated.

13 THE WITNESS: Very well.

14 THE COURT: Thank you very much. You are free to
15 go, and we'll figure out how to get you paid.

16 THE WITNESS: Beg your pardon?

17 THE COURT: We'll figure out how to get you paid.

18 THE WITNESS: That's good.

19 THE COURT: Yeah.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: All right. Yes, sir, Mr. Clements. You
23 have the floor.

24 MR. CLEMENTS: Thank you, your Honor. I'd like you
25 to get me paid too, your Honor.

1 THE COURT: Well, I'm not in control of that.

2 MR. CLEMENTS: I paid for this myself.

3 THE COURT: Well, I'm not in control of that, but
4 I'll certainly do anything I can to help you.

5 MR. CLEMENTS: Well, thank you.

6 Your Honor, without boring the Court, this may be,
7 in long run, a procedural nightmare that I'm not going into.
8 We would like the record to reflect that this not only
9 encompasses this testimony here, encompasses a competency
10 hearing but encompasses Furman where we say the whole
11 proceeding is unconstitutional because different states have
12 different definitions of competency which puts it back to the
13 pre Furman hearing, that it also involves Atkins v. Virginia
14 which is a constitutional Eighth Amendment prohibition against
15 execution of mentally ill people, and Roper v. Simmons which
16 is execution of a juvenile, that this--and I believe that is
17 reflected in the pleadings, but just for the record, and I'm
18 not particularly in this court, but in the event it's in some
19 other court that this--that we're raising those issues here.
20 Thank you.

21 THE COURT: Thank you.

22 Anything else that anybody wants to put on the
23 record here?

24 All right. We will get an order filed, and then
25 Mary will get this transcript done, and I assume Mr. Irick

1 would like to be transported back to Riverbend, which we will
2 do.

3 And, gentlemen, I appreciate your being here and
4 enjoyed meeting you, and I don't know whether we'll have
5 further proceedings or not, but I appreciate your
6 participation up here and--

7 MR. SHILES: Thank you very much, your Honor.

8 THE COURT: Thank you. Thank you for being here.

9 MR. CLEMENTS: Thank you, your Honor.

10 THE COURT: Thank you.

11 (Adjourned.)

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(END OF REQUESTED TRANSCRIPT OF THE EVIDENCE)

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